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Total no. of page: 108

.... From the Desk of Editors



Respected Seniors and my Dear Friends,

"The Indian economy has witnessed profound positive transformation in the last ten years. The people of India are looking ahead to the future with hope and optimism."

Smt. Nirmla Sitharaman
Hon'ble Finance Minister



"Ram Rajya" is the buzz word we all are listening in our surroundings. The point to ponder is that are we heading towards the same or we already stepped into the same. As far as numbers relating to revenue to the Govt. is concerned, Direct Tax collections at 80.23% of even total Revised Estimates for F.Y. 2023-24 at the mid of February itself which remarkably is 17.30% higher than the gross collections for the corresponding period of last year and GST collections are 2nd highest ever; crosses ₹1.70 lakh crore mark for the third time in FY 2023-24 which is records 10.4% Year-on-Year growth. More so, Govt. is working to make India a **'Viksit Bharat'** by 2047.

Continuing to our discussion in the last month's edition of our e-journal on controversies over section 148 of the Income Tax Act after **Hon'ble Delhi High Court in the matter of Ganesh Dass Khanna vs. ITO Officer [2023] 156 taxmann.com 417 (Delhi)**, **Hon'ble High Court Of Gujarat in the matter of Keenara Industries Private Limited Vs. ITO [2023] 147 taxmann.com 585 (Gujarat)** and **Hon'ble High Court Of Allahabad Rajeev Bansal v. Union of India [2023] 147 taxmann.com 549 (Allahabad)** in the last calendar year recently **Hon'ble Bombay High Court in the matter of New India Assurance Company Ltd. v. ACIT - [2024] 158 taxmann.com 367 (Bombay)** has decided the issue in favour of assessee and held that where limitation under Act (erstwhile section 149) for reopening assessment for assessment year 2013-14 expired on 31-3-2020, notice issued in June 2021 in case of assessee was barred by limitation, hence, section 148 notice dated 28-7-2022 issued pursuant to **Ashish Agarwal v. ITO [2022] 130 taxmann.com 246 (SC)** and **CBDT Instruction No. 1/2022** to revive notice issued under old regime was to be quashed and set aside as it was invalid, without jurisdiction and barred by limitation.

Judgment on the same issue is very soon expected from Hon'ble Calcutta High Court and may be the very same issue is under consideration before many other High Courts in the country in the second round of litigation on section 148 and related provisions. More so Department has already challenged the Order of Hon'ble High Court in the matter before Hon'ble Supreme Court in this second round and assessee are eagerly looking towards the Apex Court for settling the issue for once and all in the interest of justice.

Inside this e-Journal you will find lots of knowledge sessions being scheduled by DTPA on Income Tax, GST and more importantly One Day Conference on Information Technology which is the need of the hour irrespective of subject, practice and specialization. Best of the minds in the country will be sharing the knowledge in these programmes from the platform of DTPA. DTPA welcomes each one of you most personally to take the most out of these unpatrolled programs.

Wish you all heartiest Greetings for **Saraswati Puja**. I pray to the Goddess of knowledge we all adore to bless all of us with knowledge in abandoned. Jai Hind!! Jai DTPA!!

With Best Regards

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

Sujit Sultania
Co-Chairman
Journal Sub-Committee, DTPA

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....From the desk of President

Dear Members,

I hope that the New Year has started on a wonderful footing with fresh bouquet of hopes and dreams for the year ahead. As we are all aware due to the forthcoming general elections, there was only a vote on account this year. Therefore barring a few changes in Direct tax and Indirect tax, no major development was seen this year. The live Budget session held at DTPA Conference Hall was attended by many members.

The month of January was also busy for us in terms of gathering Knowledge. We started the New Year with a wonderful discussion of compulsory use of DIN in the Income Tax notices. CA Anand Tibrewal took us through an interactive discussion vide which the nuances of DIN and its significance was highlighted. After this on 16th of January we had the opportunity to listen to two wonderful speakers CA Mohit Bhuteria and CA Mayur Agrawal on corporate restructuring and recent changes in Companies Act. As it is very important for professionals to keep up with the multitude of changes in the areas of compliance and control, the insights shared by the speakers was of huge value addition.

Due to popular demand from many of our members, we also had a study circle meeting on Recording, Retraction and Cross examination of statements. Dr. Adv. Paras Kochar, took us through some of the practical case studies to highlight the actions to be taken by the professionals and their clients in this regard. The members present in the study circle meeting shared their feedback as to how they were immensely benefitted by attending the meeting on 30th January.

In February DTPA has planned to have a 7 day comprehensive GST course once again on the basis of the wonderful feedback received during the last year. We are fortunate to have the support of all leading GST experts in Kolkata who have agreed to be a faculty. We request all the members to take advantage of this wonderful opportunity.

DTPA believes in the philosophy of a perfect work life balance and with this objective in mind plans a residential conclave every year. I am delighted to share with you the tremendous success we have achieved through our recent residential conclave. As we reflect on the journey, it is evident that our collective efforts and commitment have truly set new standards of excellence. The conclave was attended by 160+ participants and was a resounding success, thanks to the active participation of our attendees, speakers and organizing team. Throughout the conclave, we witnessed insightful discussions, engaging presentations, divine worship, amazing fun, entertainment, sumptuous food and valuable networking opportunities.

The technical sessions were graced by CA Bhupendra Shah on Income tax issues and Mr. Ajay Bagga on Art of Investing. Both the speakers came all the way from Mumbai and gave insightful deliberations and appreciated the quality of case studies prepared and queries raised by participants. Special arrangements were made for visit to Shri Jagannath Temple and the participants had blissful darshan and prasad.

The fun and entertainment quotient was always high. The stage was set on fire by singers Jessica and Soumya along with their band. The participants were no less and showed their talent with melodious karaoke singing and awesome dance moves on the floor with DJ. Apart from these, a lot of games were also conducted. The positive feedback we received reflects the high quality of content and the overall experience provided to our participants.

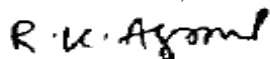
The bonding, exchange of knowledge, networking mixed with spiritual visit to the Jagannath Temple at Puri has been a pivotal moment for us. Our recent residential conclave stands as shining examples of the positive impact we can create when we come together in person. The energy, enthusiasm, and shared experiences during the three days have not only strengthened our bonds but have also paved the way for new opportunities and collaborations. The relationships formed and ideas exchanged during these events have laid the foundation for future growth and prosperity.

I extend my heartfelt gratitude to each and every member who contributed to the success of these offline initiatives. Your dedication and enthusiasm have been instrumental in creating an environment where innovation and collaboration flourish.

Thank you for your unwavering support and here's to many more successful residential conclaves in the future. As with any organization, the constant flow of fresh energy keeps the organization dynamic and relevant. So I express my gratitude to all the members for proudly sharing about DTPA in your professional and personal circles due to which many new professionals are showing their interest to become members of DTPA.

As we celebrate this milestone, let us use this momentum to propel us forward. Together, let's continue to explore new avenues, nurture connections, and elevate our organization to greater heights.

With best wishes,



CA Rajesh Agrawal

President

08th February, 2024

Group Discussion – Compulsory use of DIN in Income Tax Notices at DTPA Conference Hall on 8th January 2024



**DTPA Residential Conclave'24 at The Chariot, Puri
from 12th January – 14th January 2024**







Study Circle Meet Corporate Restructuring – Case Studies And Recent Challenges in COs & LLP Act including SBO and Demat on 16th January 2024



Glimpses of Study Circle Meet on Recording, Retraction and Cross Examination of Statement with Practical aspect by Adv. Paras Kochharat DTPA Conference Hall On 30.01.2024



Forthcoming Programs of Direct Taxes Professionals' Association



Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com



|| VASANT PANCHAMI ||

Join us in the celebration of Saraswati puja

Date : 14/02/24

Time : 11:00 AM

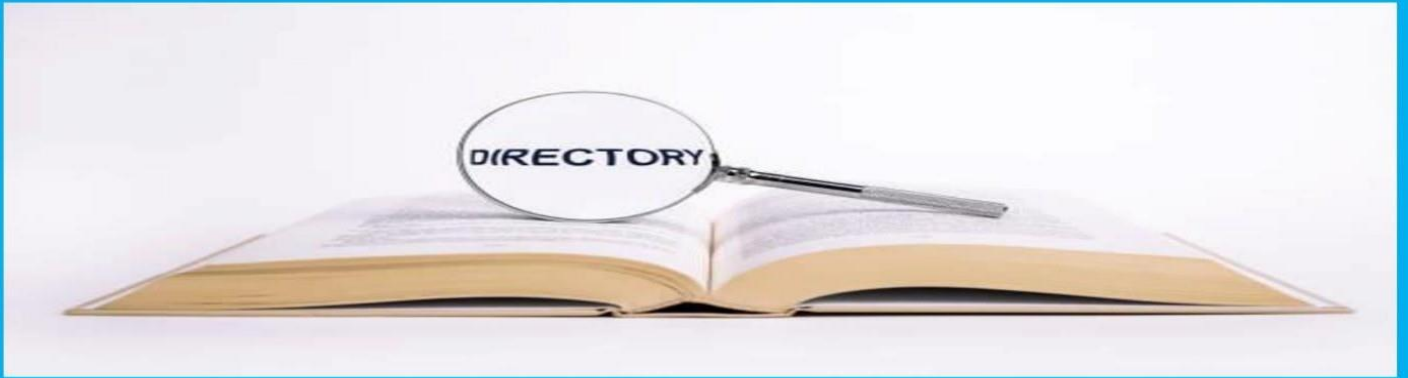
Venue :

DTPA Conference Hall



CA Rajesh Kr Agrawal
President

CA Mahendra K Agarwal
Gen. Secretary



BE PART OF OUR UPCOMING UPDATED DIRECTORY!

Members Fill Out Our Google Form Today!

Why?

- **Visibility**
- **Networking**
- **Opportunities**

How to Fill the Form?

- 1. Open the Below given link or link received in Mail/WhatsApp**
- 2. Complete the Form**
- 3. Submit**
- 4. Stay Connected**

For further details, please contact us at: dtpakolkata@gmail.com and at Mob: 9831016678/8777692789

Thanks and Regards,

<https://forms.gle/ct39hoyzgs1nafay7>

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Co- Chairman
DTPA–Directory Sub-Committee
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Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

GST

7 days Comprehensive GST Training Program

DTPA IS INTRODUCING A GST TRAINING PROGRAM CONDUCTED BY EMINENT GST FACULTIES FROM KOLKATA. THE COURSE WILL BE USEFUL FOR CHIEF FINANCIAL OFFICERS, FINANCE MANAGERS AND ACCOUNTS EXECUTIVES FROM THE INDUSTRY. THIS COURSE WILL ALSO BE USEFUL FOR CA, CMA, CS, ADVOCATES, GST PRACTITIONERS AND THEIR TEAM MEMBERS.

Date – 21st Feb, 24 – 29th Feb, 24, Weekdays Only
 Timing – 3:00 PM – 06:15 PM (Evening)

PARTICIPATION CHARGES:

RS. 3,000/- + GST PER PARTICIPANT

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

Discussion on each Topic will be accompanied by practical examples and case studies

Prizes and Trophies for the Quiz Winners

Venue – DTPA Conference Hall

Program Coordinators – Adv Arup Dasgupta (9831503290)
 CA Anshuma Rustagi (9830391245)

CA Rajesh Kr Agrawal
 President

CA D. S. Agarwala
 Chairman,
 GST & Indirect
 Taxes Committee

Adv Arup Dasgupta
 Co-Chairman,
 GST & Indirect
 Taxes Committee

CA Mahendra K Agarwal
 Gen. Secretary

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



ज्ञानं एक्यं च न्यायार्थम्
Estd. 1982

DTPA Chartered Accountants' Study Circle - EIRC

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

Email :- dtpakolkata@gmail.com

Web :- www.dtpa.org

Study Circle Meeting On: **Re-opening and Revision of Assessments - Recent Developments.**



FRIDAY

16 FEBRUARY 2024



TIME

03:00PM - 06:00 PM



DTPA

Conference Hall

"3 CPE HOURS"

PARTICIPATION CHARGES:

RS. 200/-



SPEAKER

ADV SUBHASH AGARWAL

**CA D S Agarwala
Convenor**

**CA Manjulata Shukla
Deputy Convenor**



PRESENTS

ACCOUNTTECH 3.0

Embracing Accounting & Technology

Registration
Fee: **1250/-**

Plus GST

02nd March
2024

10 A.M. - 05 P.M.



VENUE:
THE PARK, KOLKATA

12+ SPEAKERS

15 SESSIONS

01 PARELLEL
HANDS-ON SESSION

CLICK THE LINK BELOW
OR SCAN TO PAY

https://pages.razorpay.com/pl_NW2KYZjsD6et8J/view





PRESENTS

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02nd

March
2024

10 A.M. - 05 P.M.



THE PARK, KOLKATA

- TOPICS -

1



CHAT GPT FOR PROFESSIONALS

2



DIGITAL BRANDING FOR CA FIRMS

3



AI WITH EXCEL

4



GOOGLE WORKSPACE

5



FIRESIDE CHAT - HOW TO TACKLE
CYBER FRAUD / INCIDENT

6



PANEL DISCUSSION -
FUTURE OF PROFESSION

7



HR MANAGEMENT SYSTEM



PRESENTS

ACCOUNTTECH 3.0

Embracing Accounting & Technology

02nd March 2024 | 10 A.M. - 05 P.M.

 THE PARK, KOLKATA

- DEMO SESSIONS -

1  ADVANCED EXCEL

2  AUDIT TOOL

3  DIGITAL BANKING

4  PAYROLL MANAGEMENT SERVICES

5  PRACTICE MANAGEMENT

6  CLOUD ACCOUNTING

7  GOOGLE WORKSPACE

Compliance Calendar for February, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th February, 2024	Jan-24	Due date for deposit of Tax deducted/collected for the month of January, 2024. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	14th February, 2024	Jan-24	Due date for issue of TDS Certificate for tax deducted under Section 194-IA, Section 194-IB, Section 194M in the month of December, 2023	
	15th February, 2024	Jan-24	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2024 has been paid without the production of a challan	
	15th February, 2024	Dec-23	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2023	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th February, 2024	Jan-24	GSTR-7 (MONTHLY)	Summary of Tax Deducted at Source (TDS) and Deposited under GST Laws
	10th February, 2024	Jan-24	GSTR-8 (MONTHLY)	Summary of Tax Collected at Source (TCS) and Deposited by e-commerce operators under GST Laws
	11th February, 2024	Jan-24	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 February, 2024	Jan-24	B2B Outward Supplies	Uploading of outward supplies by quarterly return filers opting for the Invoice Furnishing Facility (IFF) under the QRMP Scheme
	20th February, 2024	Jan-24	GSTR-3B	Summary return for taxpayers with turnover more than Rs. 5 Crore in the last FY or have not chosen the QRMP scheme for Jan-Mar'24
	25th February, 2024	Jan-24	PMT-06	Challan for depositing GST by taxpayers who have opted for the QRMP Scheme
	28th February, 2024	Jan-24	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 February, 2024	Jan-24	Professional Tax (PT) on Salaries for January 2024	
	15th February, 2024	Jan-24	Provident Fund (PF) & ESI Returns and Payment for January 2024	

Feedback and suggestions are Invited:

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

Compliance Calendar for March, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	02 nd March, 2024	Jan-24	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB or 194M in the month of January, 2024	
	07 th March, 2024	Feb-24	Due date for deposit of Tax deducted/collected for the month of February, 2024.	
	15 th March, 2024	AY 24-25	Fourth instalment of advance tax for the assessment year 2024-25	
		AY 24-25	Due date for payment of whole amount of advance tax in respect of assessment year 2024-25 for assessee covered under presumptive scheme of section 44AD / 44ADA	
		Feb-24	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2024 has been paid without the production of a Challan.	
	17 th March, 2024	Jan-24	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194I-B or 194M in the month of January, 2024	
	30 th March, 2024	Feb-24	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194I-B or 194M in the month of February, 2024	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10 th March, 2024	Feb-24	GSTR-7 (MONTHLY)	Summary of Tax Deducted at Source (TDS) and Deposited under GST Laws
		Feb-24	GSTR-8 (MONTHLY)	Summary of Tax Collected at Source (TCS) and Deposited by e-commerce operators under GST Laws
	11 th March, 2024	Feb-24	GSTR-1(MONTHLY)	Summary of Outward Supplies where turnover exceeds Rs. 5 Crore or have not chosen QRMP scheme for Jan-Mar 2024
	13 th March, 2024	Feb-24	B2B Outward Supplies	Uploading of outward supplies by quarterly return filers opting for the (IFF) under the QRMP Scheme
		Feb-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
		Feb-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20 th March, 2024	Feb-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
		Feb-24	GSTR-3B	Summary return for taxpayers with turnover more than Rs. 5 Crore in the last FY or have not chosen the QRMP scheme for Jan-Mar'24
	25 th March, 2024	Feb-24	PMT-06	Challan for depositing GST by taxpayers who have opted for the QRMP Scheme
	28 th March, 2024	Feb-24	GSTR-11	Statement of inward supplies by persons having Unique Identification Number (UIN) for claiming a GST refund
31 st March, 2024	FY 2024-25	CMP-02	The due date for taxpayers to opt into the composition Scheme for the upcoming FY 2024-25	
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	10 th March, 2024	Feb-24	Professional Tax (PT) on Salaries for February 2024	
	15 th March, 2024	Feb-24	Provident Fund (PF) & ESI Returns and Payment for February 2024	

Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Rajesh Kr. Agrawal
President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

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

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

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

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

Thanks and Regards,

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DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 CBDT notifies four more entities for Section 10(46) exemption - **Notification Nos. S.O. 79, S.O. 80, S.O. 82, and S.O. 83, Dated 05-01-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Polavaram Project Authority', 'District Legal Service Authority Union Territory Chandigarh', 'Haryana State Board of Technical Education' and 'Karmayogi Bharat' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961.

- 1.2 Govt. notifies investment in financial product by NR with 'IFSC capital market intermediary' for Sec. 10(4G) exemption - **Notification No. S.O. 66(E), Dated 04-01-2024**

Editorial Note : Sec. 10(4G) exempts income earned by a non-resident from its portfolio subject to certain conditions. FA 2023 has extended the scope of this exemption to any income received by a non-resident from the specified activity carried out by the specified person. For said purpose, the Govt. has notified activity of investment in a financial product by the non-resident, into by a capital market intermediary, being a Unit of an IFSC.

- 1.3 CBDT notifies three more entities for Section 10(46) exemption - **Notifications Nos. S.O. 40(E), S.O. 41(E) AND S.O. 42(E), Dated 2-1-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Bellary Urban Development Authority', 'Karnataka State Rural Livelihood Promotion Society' and 'Madhya Pradesh Professional Examination Board' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961.

- 1.4 CBDT releases explanatory notes pertaining to provisions of the Finance Act, 2023 - **Circular No. 1/2024, Dated 23-01-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has released the explanatory notes to the provisions of the Finance Act, 2023. These explanatory notes describe the substance of the provisions/amendments made by the Finance Act, 2023 relating to Income-tax.

- 1.5 Govt. increases interest rate for Sukanya Samriddhi scheme from 8.0% to 8.2% for Q4 of FY 2023-24 - **OFFICE MEMORANDUM F.NO.1/4/2019-NS, DATED 29-12-2023**

Editorial Note : The Govt. has notified the interest rates on various Small Savings Schemes for the fourth quarter of the financial year 2023-24, starting from 1st January 2024 and ending on 31st March 2024. The interest rate remains unchanged for the 4th quarter, except for the 3-year time deposit, which has been raised from 7.0% to 7.1% and the 'Sukanya Samriddhi Account Scheme', which is enhanced from 8.0% to 8.2%.

- 1.6 CBDT notifies ITR-6 for the Assessment Year 2024-25 - **Notification No. 16/2024, Dated 24-01-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified Income-tax Return Form 6 for the Assessment Year 2024-25 vide Notification No. 16/2024, dated 24-01-2024. Earlier the board has notified the Income-tax Return (ITR) forms 1 & 4 for the Assessment Year 2024-25 vide Notification no. 105/2023, dated 22-12-2023.

2. SUPREME COURT

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

2.1 Income from other sources : SLP was to be dismissed against order of High Court holding that where assessee owned some agricultural land but failed to furnish any details of receipts and expenses for establishing agricultural income, Assessing Officer was justified in treating agricultural income as income from other sources - *K.M. Fathima v. Commissioner of Income-tax* - [2024] 158 taxmann.com 631 (SC)

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

2.2 Royalties/fees for technical services - Marketing services : SLP dismissed against impugned order of High Court that where assessee-company made payments to US Company for marketing services and scope of work was to generate customer leads using/subscribing customer data base, market research, analysis, and online research data and that service provider had not made available any technical knowledge, experience, knowhow, process to develop and transfer technical plan or technical design, in view of admitted fact that services were utilized in USA, payments so made could not be considered as royalty or FTS and hence, no TDS was required to be deducted - *Commissioner of Income tax, IT v. Ad2pro Media Solutions (P.) Ltd.* - [2024] 158 taxmann.com 408 (SC)

2.3 Royalties/fees for technical services - Marketing services : SLP dismissed against order passed by High Court that where assessee-company made payments to US Company for marketing services and scope of work was to generate customer leads using/subscribing customer data base, market research, analysis, and online research data and that service provider had not made available any technical knowledge, experience, knowhow, process to develop and transfer technical plan or technical design, in view of admitted fact that services were utilized in USA, payments so made could not be considered as royalty or FTS and hence, no TDS was required to be deducted - *Commissioner of Income-tax v. Ad2pro Media Solutions (P.) Ltd.* - [2024] 158 taxmann.com 432 (SC)

2.4 Capital gains - Shares/units, transfer of : Notice issued in SLP against impugned order of High Court that where assessee-company, incorporated in Singapore, claimed benefit under article 13 of DTAA between India and Singapore in respect of capital gains arising on sale of shares of an Indian company since IRAS Singapore had granted assessee, a valid tax residency certificate (TRC) evidencing that it was a tax resident of Singapore and thereby eligible to claim tax treaty benefits between India and Singapore, revenue could not go behind such TRC as same was sufficient

evidence to claim treaty eligibility, residence status, legal ownership and therefore, impugned reopening of assessment to determine issue of residence status was liable to be quashed - *Assistant Commissioner of Income-tax. v. Blackstone Capital Partners (Singapore) VI FDI Three (P.) Ltd.* -0 [2024] 158 taxmann.com 261 (SC)

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

2.5 Scope of provisions : SLP was to be dismissed against order of High Court holding that where assessee sought interim relief on ground that cancellation of registration sought by Commissioner under section 12A with retrospective effect breached principle of natural justice, since said cancellation would disable assessee from accepting contribution/donations and would derail its programmes which were in pipeline, balance of convenience was in favour of assessee and, thus, interim stay was to be granted - *Principal Commissioner of Income-tax (Central) v. Centre For Policy Research* - [2024] 158 taxmann.com 243 (SC)

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

2.6 Leased assets : SLP to be dismissed against impugned order of High Court wherein it was held that where assessee had claimed depreciation on leased assets and such claim was backed by material on record, penalty under section 271(1)(c) could not be imposed merely because claim of depreciation was not acceptable in law - *Principal Commissioner of Income-tax-2 v. Indusind Bank Ltd.* - [2024] 158 taxmann.com 575 (SC)

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

2.7 Foreign exchange fluctuation : SLP dismissed against order passed by High Court that where assessee entered into forward contracts in order to hedge its exchange risk in respect of export proceeds receivable by it in foreign exchange, notional forex loss incurred by assessee, accounted for in accordance with ICAI standards on mercantile system, was an expenditure under section 37(1), even though corresponding liability was not settled in year of foreign exchange fluctuation - *Principal Commissioner of Income-tax-3 v. Emmsons International Ltd.* - [2024] 158 taxmann.com 106 (SC)

2.8 Interest : Where High Court had dismissed appeal of assessee on ground that paper books were not filed within prescribed period of time and due to dismissal of said appeal, another connected appeal was also dismissed, since High Court had not considered matter on merits, delay in filing paper book in appeal no. 817 was to be condoned and said appeal was restored along with connected appeal - *Herbicides India Ltd. v. Assistant Commissioner of Income-tax* - [2024] 158 taxmann.com 594 (SC)

2.9 Corporate social responsibility expenditure : SLP dismissed against order passed by HC that amendment

brought by way of Expl. 2 to section 37(1) by FA 2014, with effect from 1-4-2015 was prospective in nature and thus, CSR expenditure incurred prior to 1-4-2015 was to be allowed - **Principal Commissioner of Income-tax v. Rites Ltd. - [2024] 158 taxmann.com 78 (SC)**

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

- 2.10 Scope of :** SLP dismissed against order of High Court that where assessee paid lease rent to Kerala State Co-operative Hospital Complex without deducting tax at source, in view of fact that said resident receiver filed its return belatedly and did not pay tax on rent received, assessee could not be absolved from consequences flowing from sections 201(1) and 40(a)(ia) - **Academy of Medical Sciences v. Commissioner of Income-tax - [2024] 158 taxmann.com 131 (SC)**

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

- 2.11 Applicability of :** SLP dismissed against impugned order of HC 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 (IT) v. Schlumberger Asia Services Ltd. - [2024] 158 taxmann.com 267 (SC)**

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

- 2.12 Reassessment :** SLP dismissed against impugned order of High Court that provisions of section 47(iv) are not applicable to redemption of preference shares - **National Faceless Assessment Centre/National E Assessment Centre v. Great Eastern Shipping Co. Ltd. - [2023] 157 taxmann.com 443 (SC)**

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

- 2.13 Adjustments - Interest :** SLP to be dismissed against impugned order of High Court where it was held that where AO had made adjustment in hands of assessee-company on account of interest on outstanding receivables, since assessee-company was a debt free company and no interest was paid to creditor/supplier nor any interest had been earned from unrelated party, question of receiving any interest on receivables did not arise - **Principal Commissioner of Income-tax-2 v. Boeing India (P.) Ltd. - [2024] 158 taxmann.com 214 (SC)**

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

PRICING OFFICER

- 2.14 Power of TPO :** SLP was to be dismissed against order of High Court holding that Transfer Pricing Officer is not empowered to hold transaction as sham transaction - **Commissioner of Income-tax-III v. Lge & C Ncc (Joint Venture) - [2024] 158 taxmann.com 626 (SC)**

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

- 2.15 Reassessment :** Where returns filed by assessee were accompanied by tentative profit and loss account and other details of income like cash flow statements, statements showing source and application of funds reflecting increase in capital and current accounts of partners of assessee which were duly enquired into by Assessing Officer in assessment proceedings, Assessing Officer had accepted returns submitted by assessee and, thus, Tribunal was justified in coming to conclusion that reassessments for assessment years under consideration were not justified - **Mangalam Publications v. Commissioner of Income-tax - [2024] 158 taxmann.com 564 (SC)**

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

- 2.16 Amalgamation, in case of :** SLP was to be dismissed against impugned order of High Court wherein it was held that where notice under section 148, assessment order as also penalty notice and demand notice had been issued in name of a non-existing entity despite having been informed to AO about factum of amalgamation of said entity with assessee-company, assessment order and notices impugned were untenable in law - **Deputy Commissioner of Income-tax v. Sterlite Technologies Ltd. - [2024] 158 taxmann.com 242 (SC)**

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

- 2.17 General :** SLP was to be dismissed against order of High Court holding that where search was conducted in case of husband of assessee and documents seized belonged to a company in which assessee along with her husband was a partner and director and during search of assessee's husband revealed that documents seized belonged to said companies, case of assessee came within ambit of section 153A and Assessing Officer was justified in issuing notice under section 153C to assessee and making reassessment - **K.M. Fathima v. Commissioner of Income-tax - [2024] 158 taxmann.com 631 (SC)**

SECTION 195 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PAYMENT TO NON-RESIDENT

- 2.18 Salary payment :** SLP to be dismissed against impugned order of High Court wherein it was held that section 195 has no application once nature of payment is determined as salary and deduction of tax at source has been made under section 192 - **Principal Commissioner of Income-tax-2 v. Boeing India (P.) Ltd. - [2024] 158 taxmann.com 214 (SC)**

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

2.19 Stay of demand : Where High Court by impugned order directed revenue to release lien on remaining fixed deposits only after assessee made a payment of Rs. 1500 crores in cash or gave a letter to bank to remit Rs. 1500 crores to credit of revenue from fixed deposits available and furnish property security for balance tax liability with interest and penalty, said order was to be modified and requirement of security with respect to penalty was to be dispensed - **Cognizant Technology Solutions India (P.) Ltd. v. Assistant Commissioner of Income-tax.** - [2024] 158 taxmann.com 429 (SC)

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

2.20 Monetary limit : SLP dismissed due to low tax effect against order of High Court that in order to bring harmony with National Litigation Policy, Instruction No.3 of 2011 dated 9-2-2011, prescribing monetary limits for filing revenue appeals under section 268A would apply to pending appeals also unless exception indicated in instructions exists at time of hearing appeals - **Commissioner of Income-tax v. Shyam Biri Works** - [2024] 158 taxmann.com 574 (SC)

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

2.21 Issue of order manually without DIN : SC granted an interim stay on impugned order of High Court wherein it was held that where Assessing Officer passed final assessment order without DIN, since there were no exceptional circumstances as mentioned in Circular No. 19/2019, dated 14-8-2019 which would sustain communication of impugned order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained - **Commissioner of Income-tax v. Brandix Mauritius Holdings Ltd.** - [2024] 158 taxmann.com 247 (SC)

3. HIGH COURT

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

3.1 Loan: Where assessee-company had taken loan from a company 'GS' wherein company 'K' held 99.98 per cent shares and also held 63.36 per cent shares of assessee-company, since assessee was not a shareholder of company 'GS', loan received by assessee from company 'GS' could not be treated as deemed dividend in its hands - **GSEC Ltd. v. Deputy Commissioner of Income-tax.** - [2023] 157 taxmann.com 450 (Gujarat)

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

3.2 Reassessment: Where Assessing Officer had issued notice under section 148A(b) stating that assessee had sold two properties for total consideration of Rs. 93 lakhs but sale consideration was not disclosed as capital gain, however, assessee had submitted that it had sold only one property for Rs. 46.50 lakhs and said transaction was reported twice, impugned order and consequently notice issued by Assessing Officer was to be quashed and set aside and matter was to be remanded for de novo consideration - **Deepak Rakhmaji Hadavale v. Income-tax Officer** - [2023] 157 taxmann.com 545 (Bombay)

SECTION 3 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 - PAYMENT OF TAX

3.3 Condonation of delay : Where assessee filed declaration under Direct Tax Vivad Se Viswas Act, 2020 and he was required to deposit arrears of tax on or before 31-10-2021 and since there was Sunday on 31-10-2021, he dropped cheque in drop box of bank which was cleared on 3-11-2021, in view of legal principles on subject, delay of three days in depositing arrears of tax deserved to be condoned - **Digendra Pratap Singh v. Union of India** - [2023] 157 taxmann.com 585 (Allahabad)

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

3.4 Where interest earned by assessee from investment made in fixed deposits, out of funds received for setting up a power transmission system in state of Himachal Pradesh, would be categorised as "capital receipt" as there was an inextricable link between investment of surplus funds and setting up of power transmission system - **Principal Commissioner of Income-tax-5 v. Jaypee Powergrid Ltd.** - [2024] 158 taxmann.com 86 (Delhi)

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

3.5 Royalties/fees for technical services - Broadcasting Services : Where assessee, a Singaporean company, sub-licensed sports broadcasting rights in relation to live feeds to Indian company, since a live feed cannot constitute a 'work' in which copyright can subsist and broadcast or live coverage

does not have a copyright, payment for live telecast is neither payment for transfer of any copyright nor any scientific work so as to fall under ambit of royalty under Explanation 2 to section 9(1)(vi) - **Commissioner of Income tax, IT-1 v. Fox Network Group Singapore (P.) Ltd.** - [2024] 158 taxmann.com 434 (Delhi)

3.6 Permanent Establishment - Fixed PE, Place of business : Where in matter of revenue recognition, Supreme Court upheld view of Tribunal that 15 per cent of revenue generated from bookings made within India was attributable to permanent establishment of assessee, since matter stood closed on merits, appeal was to be closed as having been rendered academic - **Commissioner of Income-tax, IT-3 v. Travelport L.P. USA** - [2024] 158 taxmann.com 351 (Delhi)

3.7 Royalty - Distribution rights : Where assessee, was granted non-exclusive global rights by BBC news and it transferred said distribution rights in favour of BBC India concerning distribution of subject channels to cable operators, DTH operator, hotels, etc and earned revenue and said fee was treated by lower authorities as royalty, Tribunal was right in holding that distribution fee could not be construed as royalty - **Commissioner of Income-tax, (IT)-1 v. BBC World Distribution Ltd.** - [2024] 158 taxmann.com 4 (Delhi)

3.8 Business profits - Consultancy services : Where assessee, a resident of UAE, had entered into Strategic Oversight Services Agreements (SOSA) with AHL India in respect of a hotel located in India for providing strategic planning services and know-how, since fee received by assessee was not for use of or right to use any process or for information of commercial or scientific experience, therefore, said same not royalty under article 12 of DTAA but was in nature of business income - **Hyatt International-Southwest Asia Ltd. v. Additional Director of Income-tax** - [2024] 158 taxmann.com 136 (Delhi)

3.9 Permanent establishment - Fixed place, place of business : Where assessee, a resident of UAE, had entered into SOSA with AHL India for providing strategic planning services and know-how to ensure that hotel located in India was developed and operated as an efficient and highly quality international full-service hotel, since hotel premises were at disposal of assessee in respect of its business activities, Tribunal had rightly held that assessee had a PE in India in form of fixed place through which it carried on its business - **Hyatt International-Southwest Asia Ltd. v. Additional Director of Income-tax** - [2024] 158 taxmann.com 136 (Delhi)

3.10 Royalties/ fees for technical services - Make available : Management fee paid by assessee to its AE could not be categorized as fee for technical service since AO had failed to list out highly technical services provided by AE to assessee and AO failed to allude to relevant clause of agreement which demonstrated that

expertise available with AE was made available to assessee - **Intertek India (P.) Ltd. v. Income Tax Officer, Ward (IT) 211** - [2023] 157 taxmann.com 698 (Delhi)

3.11 Royalties or Fees for technical services - General : Penalty imposed upon assessee under section 271(1)(c) for not declaring income from domain name registration services in its return by treating it as royalty was to be deleted in view of decision of High Court in quantum appeal that domain name registration services income did not amount to royalty - **Principal Commissioner of Income-tax, (IT)-1 v. Godaddy.Com LLC** - [2023] 157 taxmann.com 700 (Delhi)

3.12 Rate of tax : Where assessee filed revision application under section 264 seeking benefit of concessional rate of tax on dividend distributed to its foreign holding company, Pr CIT was not justified in rejecting revision application on ground that assessee could have filed a revised return or an appeal under section 248 - **Dun & Bradstreet Technologies & Data Services (P.) Ltd. v. Principal Commissioner of Income-tax** - [2024] 158 taxmann.com 462 (Madras)

3.13 Royalties / Fees for technical services -Software : Amount received by assessee-company from various entities on account of sale/supply of software could not be treated as royalty within meaning of article 12(3) of India-Singapore DTAA as assessee had not transferred copyright it had qua subject software - **Commissioner of Income tax, IT-1 v. DXC Technology Services Singapore (P.) Ltd.** - [2024] 158 taxmann.com 431 (Delhi)

3.14 Royalties or Fees for technical services - General : Penalty imposed upon assessee under section 271(1)(c) for not declaring income from domain name registration services in its return by treating it as royalty was to be deleted in view of decision of High Court in quantum appeal that domain name registration services income did not amount to royalty - **Principal Commissioner of Income-tax. (IT) v. Godaddy.Com LLC** - [2024] 158 taxmann.com 39 (Delhi)

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

3.15 Audit report : Where Assessing Officer processed return under section 143(1) and denied exemption under section 11(1) and (2) on ground that along with return audit report was not filed, since audit report was filed at a later stage and same was available with Assessing Officer when he processed return, requirement of law was satisfied and assessee was entitled to exemption - **Association of Indian Panelboard Manufacturer v. Deputy Commissioner of Income-tax** - [2023] 157 taxmann.com 550 (Gujarat)

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

3.16 Conditions precedent : Where there was no adverse finding by Assessing Officer concerning fulfillment of conditions subject to which accumulation of income was allowed under section 11(2), assessee could not be precluded from filing a

revised Form No. 10 during reassessment proceedings - **Commissioner of Income-tax, (Exemptions) v. Canara Bank Relief & Welfare Society - [2024] 158 taxmann.com 241 (Delhi)**

SECTION 28(ii) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME COMPENSATION

3.17 Premature termination of agreement : Where assessee entered into agreements with Government of Iraq to operate hotels in that country and lower authorities treated compensation received by assessee on premature termination of agreements as a revenue receipt, matter was to be remanded to Tribunal to decide issue afresh on deciding whether operation of hotels by assessee could be taken as creation of capital or a source of income and whether on termination of agreements assessee could be taken as one for loss of capital - **Oberoi Hotels (P.) Ltd. v. Commissioner of Income-tax - [2024] 158 taxmann.com 284 (Calcutta)**

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

3.18 Passive use of asset for business : Where assessee claimed depreciation on towers, since towers, were constructed during year under consideration which was subsequent to commencement of business of assessee and it was not case that profits earned by assessee had no nexus with towers in question, assessee was to be allowed depreciation on towers - **Principal Commissioner of Income-tax v. Indus Towers Ltd. - [2023] 157 taxmann.com 593 (Delhi)**

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

3.19 Illustrations : Where assessee, engaged in providing telecom infrastructure, incurred interest expenses on loan taken for construction of telecom towers, since assessee had filed relevant evidence with regard to such interest expenses and there was no adverse finding of revenue to effect that said expenses were not utilized for business, said interest paid was to be allowed as revenue expenses - **Principal Commissioner of Income-tax v. Indus Towers Ltd. - [2023] 157 taxmann.com 593 (Delhi)**

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

3.20 Question of law : Where assessee had accounted for certain amount as income under head 'Solid waste disposal charges' in account books for subject assessment year and out of said amount it claimed deduction of certain amount as provision for solid waste disposal site expenses for impugned year, in view of concurrent finding of fact by appellate authorities that provision created by assessee was not a contingent liability as an accrued liability, same was rightly allowed as deduction - **Principal Commissioner of Income-tax v. Green Environment Services Co-operative Services Ltd. - [2024] 158 taxmann.com 26 (Gujarat)**

3.21 Contribution to BATF : Where assessee-company, engaged in mining business, contributed certain amount to Bellary Agenda Task Force (BATF) which was set up for development of infrastructure facilities, since such amount contributed by assessee was to be expended for purpose of road infrastructure which had nexus with business of assessee insofar as road infrastructure was required for purpose of transportation of iron ore, same was to be allowed as business expenditure under section 37(1) - **Principal Commissioner of Income-tax v. Sandur Manganese & Iron Ore Ltd. - [2024] 158 taxmann.com 409 (Karnataka)**

3.22 Loss on sale of loan portfolio : Where transaction of sale of loan portfolio was crystallized during year under consideration, loss on such sale was to be allowed - **Principal Commissioner of Income-tax-2 v. Clix Finance India (P.) Ltd. - [2024] 158 taxmann.com 117 (Delhi)**

3.23 Accommodation and travel : Where Assessing Officer disallowed 70 per cent of expenses incurred by assessee for arranging hotel accommodation and travel for its directors on ground that they were personal in nature and appellate authorities concluded that expenses incurred had a nexus with business interest of assessee and deleted disallowance, since revenue had not proposed any question of law which would suggest that finding returned by appellate authorities was perverse, no interference was called for with impugned order passed by Tribunal - **Principal Commissioner of Income-tax v. Azure Retreat (P.) Ltd. - [2024] 158 taxmann.com 169 (Delhi)**

3.24 Supervisory and risk management charges : Where AO disallowed amount paid by assessee to its sister concerns towards supervisory and risk management charges, since AO had treated said charges as revenue receipt in hands of sister concerns, however, made addition to assessee's income, same transaction could not be treated differently in hands of payer i.e. assessee, thus, impugned disallowance of expenses was unjustified - **Principal Commissioner of Income-tax-7 v. Trinity Insurance Brokers (P.) Ltd. - [2023] 157 taxmann.com 701 (Delhi)**

3.25 Software : Where assessee claimed expenditure incurred for purchase of software as revenue expenditure and Assessing Officer treated expenditure as capital expenditure and Tribunal relying upon its order passed in assessee's own case for previous assessment year allowed claim, since issue that revenue sought to raise before Court was very same issue which Tribunal grappled with in previous assessment year, no substantial question of law arose for consideration - **Principal Commissioner of Income-tax, Central-3 v. Hike (P.) Ltd. - [2024] 158 taxmann.com 162 (Delhi)**

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

3.26 Loan processing fee : Where assessee claimed upfront loan processing fee on loan which was raised by it for purposes of its business, merely because loan processing charges though paid upfront but was amortized over a period of five years

solely to be in consonance with mercantile system of accounting, assessee could not be denied deduction of entire charges in lump sum in relevant year in which same were paid - **Principal Commissioner of Income-tax v. Indus Towers Ltd.** - [2023] 157 taxmann.com 593 (Delhi)

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

3.27 Reassessment : Where Assessing Officer issued on assessee a notice under section 148 seeking to reopen assessment on ground that assessee was beneficiary of long-term capital gains from sale of shares of a penny stock company and he had reason to believe that an amount of Rs. 1.04 crores had escaped assessment, since assessee had submitted details of transaction during scrutiny assessment and there was nothing in reason to believe that how Assessing Officer had reached a figure of Rs. 1.04 crores, impugned notice deserved to be set aside - **Shashi Mohan Garg v. Income-tax Officer** - [2023] 157 taxmann.com 549 (Delhi)

3.28 Business income vs Capital gains: Mutual fund redemption : Where assessee earned profits on redemption of mutual funds, since after an alysing transaction based on quantum of trade, value, purpose, period for which mutual funds were held, and how disclosure had been made in books of accounts/financial statements, it was concluded that transactions concerning mutual funds were in nature of investment and not motivated by trade, gains earned on redemption were to be assessed as capital gains - **Principal Commissioner of Income-tax-18 v. Wig Investment** - [2024] 158 taxmann.com 379 (Delhi)

SECTION 50 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SPECIAL PROVISION FOR COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS

3.29 Revision : Where Assessing Officer while passing assessment order in case of assessee, had taken short-term capital gain as long-term capital gain, Assessing Officer having taken a plausible view in matter, assessment order could not be said to be erroneous so as to cause prejudice to revenue and, thus, Commissioner could not have exercised revisionary powers under section 263 - **Principal Commissioner of Income-tax-1 v. National Dairy Development Board** - [2024] 158 taxmann.com 514 (Gujarat)

SECTION 50B OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SLUMP SALE, COST OF ACQUISITION IN CASE OF

3.30 Scope of : Where assessee entered into a business agreement and transferred its business as a going concern basis, since assessee had transferred only 'right to use immovable properties' and not 'whole' undertaking which was one of essential conditions under section 2(42C), transfer was not to be considered

as a 'slump sale' and, therefore, Assessing Officer was not justified in computing capital gains under section 50B - **Principal Commissioner of Income-tax v. Manipal Health Systems (P.) Ltd.** - [2024] 158 taxmann.com 285 (Karnataka)

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

3.31 Illustrations : Where assessment order under section 143(3) read with section 144 was passed on basis that guideline value of relevant immovable asset represented real market value and sale consideration specified in sale deed did not represent fair market value, assessee was to be granted interim stay of coercive action pending disposal of its statutory appeal - **NAmudha v. Income Tax Officer, Non-Corporate Circle-19(3)** - [2024] 158 taxmann.com 240 (Madras)

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

3.32 Sub-section (2)(vii)(b) : Where Assessing Officer issued a reopening notice under section 148 on ground that there was a difference between guideline value and sale consideration of property purchased by assessee, since there was no reference to difference between guideline value and sale consideration and call for an explanation in show cause notice issued upon assessee under section 148A(b), impugned order under section 148A(d) and reopening notice under section 148 were to be quashed - **Annam Rajasekher Bindu v. Income Tax Officer, Non Corporate Ward-17(6)** - [2024] 158 taxmann.com 406 (Madras)

3.33 Gifts : Where assessee entered into a development agreement with a builder for construction of commercial complex and as per said agreement, builder was to pay an interest free and refundable security deposit of Rs. 50 lakhs to assessee and same was to be repaid within two months after handing over of commercial units, genuinity of development agreement not having been challenged by revenue, said amount of security deposit could not be treated as income for relevant year to impose tax - **Coastal Ceramics and Clay Works (P.) Ltd. v. Union of India** - [2024] 158 taxmann.com 323 (Andhra Pradesh)

3.34 Share premium : Where PCIT passed an order under section 263 holding that Assessing Officer had failed to make enquiry with regard to shares issued at high premium, however, Tribunal on basis of details of shares allotted by it and copies of share certificate issued had returned a finding of fact with regard to enquiry made by Assessing Officer, Commissioner had committed an error in exercising powers under section 263 - **Principal Commissioner of Income-tax-7 v. Trojan Developers (P.) Ltd.** - [2024] 158 taxmann.com 325 (Delhi)

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

3.35 Opportunity of hearing : Where Assessing Officer issued on assessee a notice under section 148 seeking to reopen assessment for reason that certain amount deposited in bank

in name of assessee needed to be brought to tax under section 68 and passed assessment order without hearing assessee, case was to be remitted back to Assessing Officer to pass fresh order after hearing assessee - **Jitendra Kumar v. Central Board of Direct Taxes** - [2024] 158 taxmann.com 164 (Madras)

3.36 Burden of proof : Where assessee issued shares to a foreign company and domestic investors, since identity of investor and creditworthiness of investor was not disputed and revenue had not alluded to any material that would even faintly disclose that this was a case of round tripping addition made under section 68 was to be deleted - **Principal Commissioner of Income-tax v. Azure Retreat (P.) Ltd.** - [2024] 158 taxmann.com 169 (Delhi)

3.37 Cash deposit : Where assessee filed writ petition alleging that its reply to reopening notice issued on ground that assessee had made huge cash deposit in his bank account during demonetisation period was not considered and it was not given personal hearing, since all replies given by assessee were considered and he was also provided VC link and password for personal hearing, impugned writ petition was to be dismissed leaving it open to assessee to take recourse to any other remedy available to him under law - **Oroth Scaria Bobby v. Union of India** - [2024] 158 taxmann.com 407 (Kerala)

3.38 Bogus loan : Where Assessing Officer made addition to assessee's income under section 68 in respect of unsecured loan received by assessee on ground that creditor company had declared nil income and appellate authority accepted all conclusions of Assessing Officer, since there was nothing to indicate that appellate authority while recording conclusion, independently applied its mind, matter was to be remanded for reconsideration by appellate authority - **Sohan Raj Khanted Guvanthraj v. Commissioner of Income-tax (Appeals)** - [2024] 158 taxmann.com 326 (Madras)

3.39 Loan : Where assessee received sum of certain amount from two persons as loan to invest in shares of a company and AO made additions under section 68 in name of assessee on protective basis and in name of said two persons on substantive basis, since source of funds from creditors and their source, i.e., source on source was also proved by assessee and that one party had already been substantially taxed and addition in respect of second party was also deleted by CIT(A) as source was clearly proved by assessee, impugned addition made in case of assessee on protective basis was to be deleted - **Principal Commissioner of Income-tax-3 v. Rachna Finlease (P.) Ltd.** - [2024] 158 taxmann.com 430 (Gujarat)

3.40 Scope of provision : Where assessee received Rs. 45 crores from five companies towards share capital and in turn invested Rs. 25.25 crores in share capital of three companies, since out of Rs. 45 crores, Rs. 25.52 crores

was reinvested by assessee in three companies, transaction failed to meet test of creditworthiness and genuineness and thus, Tribunal was wrong in deleting addition made under section 68 - **Commissioner of Income-tax v. Mayank Service Ltd.** - [2024] 158 taxmann.com 165 (Delhi)

3.41 Insolvency Resolution Process for Corporate Persons : Where National Company Law Tribunal admitted insolvency petition against assessee but revenue in terms of Insolvency and Bankruptcy Code, 2016 had not lodged its claim with RP, revenue could not enforce assessment order and demand notice - **Rishi Ganga Power Corporation Ltd. v. Assistant Commissioner of Income-tax.** - [2024] 158 taxmann.com 72 (Delhi)

3.42 Loans & Advances and Bogus purchases : Where Assessing Officer made additions to assessee's income and Commissioner (Appeals) deleted additions and Tribunal dismissed revenue's appeal, since order of Commissioner (Appeals) was never contested by revenue on merits before Tribunal and only on technicality that Commissioner (Appeals) had taken on record additional evidences, which did not come forth from facts and circumstances, revenue's appeal deserved to be dismissed - **Principal Commissioner of Income-tax, (Central) v. Arora Iron & Steel Rolling Mills (P.) Ltd.** - [2024] 158 taxmann.com 29 (Punjab & Haryana)

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

3.43 Where assessee's assessment for assessment Year 2019-20 was finalized but subsequent information indicated that certain company reported substantial purchases with assessee and said transaction was reflected in GSTR-1 forms for which assessee was unable to furnish purchase details, invoices, and bank statements, in such circumstances, Assessing Officer rightly reopened assessment - **Kordient Ventures (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 13(1)** - [2024] 158 taxmann.com 651 (Delhi)

3.44 Where assessee, wife of late 'S', retired from a partnership in 2011 and Post-retirement, her late husband continued business, misusing dissolved firm's PAN number and revenue alleged financial irregularities, accusing assessee of silence and inadequate response to notices, resulting in an order adding significant amounts, since revenue did not compare proposed additions with deceased husband's declared income, matter was to be remitted back for fresh consideration - **Kajal S. Jain v. Income Tax Officer** - [2024] 158 taxmann.com 212 (Madras)

3.45 Where pursuant to a search, AO made addition on basis of certain incriminating documents found in form of duly written and signed "Sauda Chithi" showing unaccounted land transactions carried out by assessee, Tribunal rightly deleted said addition by treating "Sauda Chithi" as dumb documents having no evidentiary value - **Principal Commissioner of Income-tax (Central) v. Jayantibhai Virjibhai Babariya** - [2024] 158 taxmann.com 545 (Gujarat)

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

3.46 Reassessment : Where Assessing Officer issued on assessee a notice u/s 148 on ground that he was a beneficiary of accommodation entries and passed reassessment order dated 22-3-2022, Assessing Officer could not have issued on assessee a notice u/s 148A(b) on same issue and thus, order passed u/s 148A(d) deserved to be quashed - **Arun Khanna v. Income-tax Officer - [2024] 158 taxmann.com 71 (Delhi)**

3.47 Condonation of delay : Where assessee filed appeal with a delay of 5,318 days against Tribunal's order confirming addition of Rs. 50 lakhs as undisclosed income, since reasons set in affidavit filed in support to condone delay were unconvincing and revealed a callous attitude and a casual approach in availing right of appeal, such inordinate delay of almost 14 years could not be condoned - **M.Srinivasulu v. Assistant Commissioner of Income-tax, Non Corporate Circle 10(1) - [2024] 158 taxmann.com 489 (Madras)**

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

3.48 Recording of reasons : Where Assessing officer had issued notice under Section 148 having received information with regard to time deposits made by assessee, a US resident involved in retail business in USA, with Canara Bank and addition was made under section 69B based on unexplained investment in time deposits, since CIT(A) had exercised his powers under Section 250(4) which was co-equal to that of AO and it also took note of fact that notice was issued to concerned branch of Canara Bank under Section 133(6) and it was only after information was received from Canara Bank and material evidence furnished by assessee, that addition was deleted, no interference was called for as these finding of facts were confirmed by Tribunal - **Commissioner of Income tax, (IT)-2 v. Hotchand Techchand Punjabi - [2024] 158 taxmann.com 244 (Delhi)**

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

3.49 Computation of deduction : Where assessee-company, dealing in Internet Protocol-Virtual Private Network (IP-VPN) services license and in year 2006, Department of Telecommunication (DoT) granted National Long Distance-International Long Distance (NLD-ILD) license, was allowed deduction by AO, CIT was not justified in denying deduction when no material was brought on record by revenue to show that merely by migration from IP-VPN to NLD-ILD license, a new and different "undertaking" of assessee within meaning of Section 80IA(4)(ii) came into existence; - **Principal Commissioner of Income-tax-2 v. BT Global Communications India (P.) Ltd. - [2024] 158 taxmann.com 309 (Delhi)**

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

3.50 Manufacture of books : Where Assessing Officer had disallowed deduction under section 80-IC claimed by assessee, since AO had not disallowed deduction on ground of violation of prescribed conditions but based on finding that assessee did not actually carry out any operation at premise of eligible undertaking and Commissioner (Appeals) on fact observed that publishing activity carried out from premise of eligible undertaking was found to be genuine, thus claim of deduction under section 80-IC was to be allowed - **Principal Commissioner of Income-tax-6 v. Nirja Publishers & Printers (P.) Ltd. - [2024] 158 taxmann.com 403 (Delhi)**

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

3.51 Assessee-Gramin bank would be entitled to deduction under section 80P(2)(a)(i) in respect of interest earned from funds utilised for statutory reserves - **Commissioner of Income-tax - Paschim Banga Gramin Bank - [2024] 158 taxmann.com 460 (Calcutta)**

3.52 Condonation of delay : Where delay in filing return by assessee-Co-operative Society occurred on account of intricate election processes relating to management committee overlapped with ITR filing period, which was beyond assessee's control, in view of Circular dated 26-7-2023 in No. 13/2023, delay was to be condoned - **Sullia Taluk Womens Multi Purpose Co-Operative Society Ltd. - Deputy Commissioner of Income-tax - [2024] 158 taxmann.com 177 (Karnataka)**

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

3.53 Methods for determination of - Most appropriate method, determination of : Where assessee's contention was that in given facts and circumstances obtaining in relevant Assessment Year, CUP Method should be applied, while revenue contended that this aspect had already attained finality, in view of order passed by High Court in assessee's own case in earlier year had upheld TNMM as MAM, matter was remanded to CIT(A) to decide as to whether facts and circumstances obtaining in AY in issue required the usage of CUP Method for determining ALP as against TNM Method - **Bombardier Transportation India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 158 taxmann.com 456 (Delhi)**

3.54 Adjustments - Operating profit/cost, computation of : Where TP adjustment was made by TPO holding that there was opaqueness with regard to allocation of operating expenses concerning salaries paid to employees who worked in AE and non-AE segment and he concluded that expenses incurred on salaries which were part of operating expenses had to be allocated based on turnover of AE and non-AE segments, Tribunal was justified in deleting addition on

ground that employees deployed with AEs and non AEs were identifiable as accounts were maintained project-wise - **Principal Commissioner of Income-tax v. WSP Consultants India (P.) Ltd.** - [2024] 158 taxmann.com 43 (Delhi)

3.55 Comparables, functional similarity -Others : Where assessee -company rendered building design services to its AE and selected company was providing engineering services to steel industries, since information which was obtained from website of selected company was sketchy, said company could not be used as comparable - **Principal Commissioner of Income-tax v. WSP Consultants India (P.) Ltd.** - [2024] 158 taxmann.com 43 (Delhi)

SECTION 115A OF THE INCOME-TAX ACT, 1961 - FOREIGN COMPANIES - TAX ON DIVIDENDS, ROYALTY AND TECHNICAL SERVICES

3.56 Where assessee, a foreign company, made investment in shares in its Indian subsidiary, said investments could not be treated as income as same was in nature of capital account transaction and would not give rise to any income, thus impugned orders passed under section 148A(d) and notices issued under section 148 were to be set aside - **Angelantoni Test Technologies Srl v. Assistant Commissioner of Income-tax, Circle INT. Tax 1(1)(1)** - [2024] 158 taxmann.com 10 (Delhi)

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

3.57 Where assessee wrongly offered to tax compensation received on compulsory acquisition of its land and filed belated revised return for correcting said mistake, fact that assessee felt that he paid more tax than what he was liable to pay would certainly be a 'genuine hardship' and concerned authority should have condoned delay and considered matter on merits - **K. S. Bilawala v. Principal Commissioner of Income-tax-17** - [2024] 158 taxmann.com 658 (Bombay)

3.58 Condonation of delay : Where assessee, a foreign company, did not file its return of income for relevant assessment years on account of its bona fide belief that filing of returns would result in rejection of its applications before AAR, and thereafter filed return on receipt of ruling that income was taxable in India, delay in filing of return was to be condoned under section 119(2)(b) - **Tiong Woon Project & Contracting (P.) Ltd. v. Central Board of Direct Taxes** - [2024] 158 taxmann.com 656 (Madras)

3.59 Sub-section (2)(b) : Where 50 per cent of amount of additional compensation awarded to assessee in land acquisition case was deposited by Irrigation Department in court and TDS was deducted on interest portion of amount deposited, in view of fact that date of filing return of income to claim refund of TDS had already gone and assessee, after coming to know about TDS

deduction, preferred application to condone delay in filing return of income, revenue was to be directed to pass order to condone delay in filing return and to issue refund with interest under section 244A from date of deposit of amount of TDS till date of payment of refund - **Ramjibhai Lavabhai Undhad v. Chief Commissioner of Income-tax** - [2023] 157 taxmann.com 706 (Gujarat)

3.60 Circulars, instructions : Where delay in filing Form No. 10 by assessee, a non-commercial organisation, created for purposes of regulating legal education and profession, occurred because amendments in Act went unnoticed by its officials, delay in filing Form No. 10 was to be condoned - **Bar Council of India v. Commissioner of Income-tax (Exemption)** - [2024] 158 taxmann.com 311 (Delhi)

3.61 Where assessee-hospital sought a refund of TDS accompanied by an application for condoning delay of 26-day in filing return, since there was overwhelming challenges faced by assessee on account of second wave of COVID-19 pandemic, assessee's claim of condonation of 26-day delay was to be deemed genuine and condoned - **Amit Hospital (P.) Ltd. v. Principal Commissioner of Income-tax** - [2024] 158 taxmann.com 296 (Gujarat)

SECTION 124 OF THE INCOME-TAX ACT, 1961 - FACELESS ASSESSMENT

3.62 Jurisdiction : CBDT order dated 13-8-2020 continues to hold field and is saved by Section 24 of General Clauses Act, 1897 and, thus, notices issued under section 143(2) by Addl. Commissioner, NaFAC instead of jurisdictional Assessing Officer to assessee under Central Charge were valid - **Adarsh Developers v. Deputy Commissioner of Income-tax, Central Circle 2(1)** - [2024] 158 taxmann.com 81 (Karnataka)

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

3.63 Conditions precedent : Where case of assessee was transferred from jurisdiction of one Assessing Officer to jurisdiction of another Assessing Officer under section 127 for centralized and coordinated investigation and assessee was in fact given an opportunity of hearing and reasons had also been given in order of transfer, there was no strong case made out by assessee for interference with impugned order passed under section 127 - **Akshara Enterprises (P.) Ltd. v. Principal Commissioner of Income-tax** - [2024] 158 taxmann.com 579 (Telangana)

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

3.64 Release of seized documents : Where petitioner having registered will of mother of late 'P', filed writ petition seeking directions to revenue authorities to return back all documents seized on search relating to P's estate, Competent Authority was to be directed to inform petitioner as to assessing circle where 'P' was assessed so he could proceed further - **B. Sekar v. Commissioner of Income-tax** - [2024] 158 taxmann.com 279 (Madras)

**SECTION 138 OF THE INCOME-TAX ACT, 1961 -
INFORMATION RESPECTING ASSESSEE,
DISCLOSURE OF**

- 3.65 RTI Act** : Provisions of section 138 of Income-tax Act, 1961, which lays down a specific procedure relating to disclosure of information relating to a third party under Income-tax Act would override section 22 of RTI Act - **CPIO/Deputy Commissioner of Income-tax, HQ. Exemption v. Girish Mittal - [2024] 158 taxmann.com 549 (Delhi)**

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

- 3.66** Where AO passed a draft assessment order ignoring assessee's email reply, disclosing vital facts and seeking an extension of time, this non-application of mind rendered draft and final assessment orders invalid - **APHV India Investco. (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle IT 1(1)(1) - [2024] 158 taxmann.com 544 (Delhi)**

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

- 3.67 Illustrations** : Absence of notice under section 143(2) to assessee before framing assessment order under section 143(3) would render assessment order defective - **Principal Commissioner of Income-tax (Central) v. Grand Express Developers (P.) Ltd. - [2024] 158 taxmann.com 24 (Delhi)**

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

- 3.68 Rectification of mistake** : Where there was an error in intimation issued under section 143(1), assessee was to be directed to file application for rectification before Central Processing Centre, who shall pass order in accordance with law - **Caroline (India) (P.) Ltd. v. Assessing Officer, Income Tax Department - [2024] 158 taxmann.com 171 (Madras)**

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

- 3.69** Where despite assessee's request via e-mail for a video conference hearing, department did not grant same and further insisted on submission of Village Administrative Officer's certificate in English or Hindi for confirming ownership of land by assessee, same amounted to a violation of principal of natural justice and therefore assessment order passed in violation of same deserved to be quashed - **C. Chellamuthu v. Principal Commissioner, National Faceless Assessment Centre - [2024] 158 taxmann.com 132 (Madras)**

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

- 3.70 Opportunity of hearing** : Where assessee sought hearing through video conference, however, same was

not acceded to by department and no opportunity of VC hearing was provided to assessee, order of asst. passed u/s 143(3), read with section 144B along with demand notice under section 156 deserved to be set aside and quashed - **Applewoods Estate (P.) Ltd. v. Addl./Jt./Dy./Assistant Commissioner of Income-tax/Income-tax Officer - [2024] 158 taxmann.com 178 (Gujarat)**

- 3.71 Principle of natural justice-Personal hearing** : Where video recording of personal hearing indicated that petitioner's CA was heard patiently and he requested time for uploading written submissions, thus, petitioner's contention that no personal hearing was given to it which resulted in violation of principles of natural justice was incorrect, impugned assessment order passed by Assessing Officer did not warrant interference - **Gajaananda Jewellery Mart India (P.) Ltd. v. Assessment Unit, Income Tax Department, Ministry of Finance - [2024] 158 taxmann.com 374 (Madras)**

- 3.72 Sub-section (1)** : Where draft assessment order was made without taking into account objections filed by assessee, it would vitiate entire proceeding and said proceedings had to be set aside - **CPF (India) (P.) Ltd. v. Additional / Joint / Deputy / Assistant Commissioner of Income-tax / Income-tax Officer - [2024] 158 taxmann.com 600 (Madras)**

- 3.73 Opportunity of being heard** : Where in case of assessee, selected for scrutiny, reply to show cause notice was not considered by National Faceless Assessment Centre (NFAC) and no opportunity of personal hearing was provided to assessee, impugned assessment order passed under section 143(3) read with section 144B was to be set aside - **N. Kannammal v. Assessment Unit, Income Tax Department, National Faceless Assessment Center - [2024] 158 taxmann.com 461 (Madras)**

- 3.74 Opportunity of hearing** : Where assessee had failed to file reply to SCN within time stipulated and AO confirmed proposal contained in show cause notice by virtue of order passed u/s 144B, since time granted to file reply was not sufficient, matter was to be remanded to AO to pass fresh order - **Gemini Film Circuit v. Additional/Jt/ Dy/ Asst Commissioner of Income Tax/Income Tax Officer/Income Tax Department/National Faceless Assessment Centre, Delhi - [2023] 157 taxmann.com 445 (Madras)**

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

- 3.75 Jurisdiction and powers of DRP** : Where objections against draft assessment order were filed by assessee before DRP but a copy of such objections could not be placed before Assessing Officer and AO had proceeded to issue assessment order and assessee was put to considerable prejudice, impugned assessment order was to be quashed and Assessing Officer was to be directed to await decision of DRP before issuing a fresh assessment order - **PAR Formulations (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-1, LTU - [2024] 158 taxmann.com 455 (Madras)**

3.76 Objections to draft assessment order : Where assessee filed objections to proposed variation within thirty days from date of receipt of draft assessment order as contemplated under section 144C(2) only with DRP and a copy of same was not marked to AO, since objections with filed DRP would result in directions to AO and Assessing Officer must complete assessment in light of directions as envisaged under Section 144C(13), thus final assessment order passed under section 144C(3)(a) was to be set aside and DRP was to be directed to consider assessee's objections afresh - **Google India (P.) Ltd. v. National Faceless Assessment Centre - [2024] 158 taxmann.com 9 (Karnataka)**

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

3.77 Scope of provision: Reassessment initiated in case of assessee without conducting independent inquiry by Assessing Officer, merely on basis of Shah Committee Report, was to be quashed, particularly when High Court had already concluded that observations in Shah Commission Report were merely opinion and same could not form basis alone for purpose of reopening assessment which were already finalised - **Sociedade de Fomento Industrial (P.) Ltd. v. Assistant Commissioner of Income tax, Circle-1 - [2024] 158 taxmann.com 576 (Bombay)**

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

3.78 General : Where Assessing Officer issued on assessee a notice under section 148A(b) and passed an order under section 148A(d) without granting an opportunity of hearing to assessee, impugned notice and order were to be set aside and matter was to be remanded back to Assessing Officer to grant an opportunity of hearing to assessee to file a reply - **Ahmedabad District Co-Op Milk Producers Union Ltd. v. Income Tax Officer, Ward 5(3)(1) - [2024] 158 taxmann.com 577 (Gujarat)**

3.79 Scope of provision : Where Assessing Officer sought to initiate reassessment proceedings only for assessment year 2016-17 and information furnished to assessee contained information pertaining to three assessment years, email sent by Assessing Officer clarifying that they were required to submit details of cash deposits made in a particular bank account during financial year 2015-16 relevant to assessment year 2016-17 could not be construed to be an amendment of notice dated 31-3-2023 - **Champa Impex (P.) Ltd. v. Union Of India - [2024] 158 taxmann.com 629 (Calcutta)**

3.80 Scope of provision : Conduct of enquiry has not been made mandatory but discretion and has been vested with Assessing Officer as provision uses its expression

"if required" - **Champa Impex (P.) Ltd. v. Union Of India - [2024] 158 taxmann.com 629 (Calcutta)**

3.81 Where AO passed order on ground that assessee did not submit a reply to notice passed under section 148A(b), since assessee submitted reply physically and said reply bore acknowledgment of Assessing Officer, impugned order was to be quashed and matter was to be remanded for consideration - **Jaganathan Bhaarath v. Assistant Commissioner of Income-tax, Non-Corporate Circle 10(1) - [2024] 158 taxmann.com 404 (Madras)**

3.82 Approval for PCIT : Where Assessing Officer did not obtain prior approval of specified authority, impugned notice issued under section 148 was liable to be quashed - **Tia Enterprises (P.) Ltd. v. Income-tax Officer - [2024] 158 taxmann.com 63 (Delhi)**

3.83 Constitutional validity : Where notice under section 148 was issued on 9-6-2021 without following procedure as provided under section 148A, notice issued under section 148 was in violation of principle of natural justice and therefore entire proceedings initiated of passing of an order of assessment was in violation of principle of natural justice and entire proceeding was vitiated in eyes of law - **Gouri Construction v. Principal Commissioner of Income-tax - [2024] 158 taxmann.com 112 (Chhattisgarh)**

3.84 Writ remedy : Where assessee by way of writ challenged order passed under section 148A(d) and reopening notice on ground that impugned order was passed without taking into account assessee's reply, since proceedings initiated against petitioner were yet to be concluded by statutory authorities, writ Court should not interfere at such premature stage - **Rajesh Patidar v. Income Tax Officer - [2024] 158 taxmann.com 2 (Madhya Pradesh)**

3.85 Reassessment : Where limitation under Act (erstwhile section 149) for reopening assessment for assessment year 2013-14 expired on 31-3-2020, notice issued in June 2021 in case of assessee was barred by limitation, hence, section 148 notice dated 28-7-2022 issued pursuant to Ashish Agarwal v. ITO [2022] 130 taxmann.com 246 (SC) and CBDT Instruction No. 1/2022 to revive notice issued under old regime was to be quashed and set aside as it was invalid, without jurisdiction and barred by limitation - **New India Assurance Company Ltd. v. Assistant Commissioner of Income-tax, Circle-3(2)(1) - [2024] 158 taxmann.com 367 (Bombay)**

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

3.86 Limitation : Where impugned reopening notice was digitally signed on 31-3-2021 before limitation expired and was delivered to assessee on following day on 1-4-2021, it could not be said that impugned notice was time barred and, thus, challenge to impugned notice deserved to be dismissed - **Subramaniam Rohini v. Income-tax Officer - [2024] 158 taxmann.com 180 (Madras)**

3.87 General : Where assessee filed writ petition against notice issued under section 148 upon it for reason that LTCG arose on sale of property by assessee had escaped assessment contending that income after deduction of cost of acquisition and expenses in connection with transfer of property was less than taxable income, it was not that assessee would not have any opportunity to raise jurisdiction issue in section 148 proceedings, thus, assessee was to be directed to file reply to show cause notice issued under section 148, raising issue on jurisdiction along with relevant documents in support of her claim and impugned writ was to be dismissed - **Jothiramalingam Sangeetha v. Income Tax Officer, Ward-1 - [2024] 158 taxmann.com 375 (Madras)**

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

3.88 Sub-section (1) as amended by Finance Act, 2021 : Where revenue issued a notice under section 148A(b) to assessee-HUF after taking requisite approval of specified authority, since approval was sought from authorities specified in clause (i), as against clause (ii) of section 151, impugned notice and order were to be quashed on ground that there was no approval of the specified authority as indicated in section 151(ii) - **Twilight Infrastructure (P.) Ltd. v. Income Tax Officer, Ward 25(3) - [2024] 158 taxmann.com 378 (Delhi)**

SECTION 194-IA OF THE INCOME-TAX ACT, 1961 - TDS ON TRANSFER OF IMMOVABLE PROPERTY OTHER THAN AGRICULTURAL LAND

3.89 Reassessment : Where Assessing Officer issued reopening notice against assessee on ground that TDS in respect of sale of property was reflected in name of assessee and, thus, income from capital gain on sale of property had escaped assessment, in view of fact that property was sold by assessee and her husband as equal co-owners and since her husband did not have PAN, TDS was reflected in name of assessee and assessee could only have received 50 per cent of sale consideration which would be less than Rs. 50 lakhs, impugned reopening notice was to be set aside - **Pramila Mahadev Tatkase v. Income Tax Officer, Ward 1 - [2024] 158 taxmann.com 246 (Karnataka)**

SECTION 194N OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - CASH WITHDRAWALS IN EXCESS OF PRESCRIBED LIMIT

3.90 Constitutional validity : Section 194N provides for a mechanism to tap income which accrues or arises under machinery provisions and objects for insertion of impugned provision are clear from Budget speech of Finance Minister, object and reasons and explanatory Circulars issued by Central Board of Direct Taxes; section 194N does not fasten any charge per se; it only provides for a mechanism for collection of tax; hence, challenge to constitutional validity of section 194N was

to be rejected - **Income Tax Officer, TDS Ward-2 v. Thanjavur District Central Co-operative Bank Ltd. - [2024] 158 taxmann.com 490 (Madras)**

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

3.91 Alternate remedy - Writ jurisdiction : Where Commissioner (TDS) had rejected prayer of assessee to issue lower tax deduction certificate under section 197, since alternative efficacious remedy by way of filing an appeal challenging impugned order was very much available with assessee, instant writ petition filed by it against said order without exhausting such alternative efficacious remedy of law could not be entertained - **Coforge Solutions (P.) Ltd. v. Deputy Commissioner of Income-tax (TDS) [2024] 158 taxmann.com 160 (Punjab & Haryana)**

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

3.92 Limitation period : There is no specific period of limitation prescribed for initiating a proceeding under section 201(1) and 201(1A) and that 'reasonable period' is to depend on facts and circumstances of each case and therefore, where CIT(A) so also Tribunal held that show cause notice issued by AO initiating proceedings under section 201(1) against assessee after four years was barred by limitation, same could not be said to be proper, legal or justified - **Commissioner of Income-tax v. Idea Cellular Ltd. - [2024] 158 taxmann.com 163 (TELANGANA)**

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

3.93 Scope of provision : Where employer paid salary to assessee after deduction of tax at source but employer did not deposit same with department, assessee could not be penalized for failure of employer to perform his duty to deposit deducted tax - **Chintan Bindra v. Deputy Commissioner of Income-tax - [2024] 158 taxmann.com 27 (Delhi)**

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

3.94 Sale of scrap : Where assessee-State owned liquor giant had exclusive monopoly for retail and wholesale of Indian Made Foreign Spirits (IMFS) in entire State of Tamil Nadu and it floated tenders to select third-party bar contractors (licensees) to sell eatables and collect empty bottles left by consumers at bars situated adjacent to/within assessee's retail shop of liquor, since empty bottles were neither 'scrap' nor a property of either assessee or bar licensee, assessee would not be liable to collect tax at source under section 206C(1) from bar licensees on account of sale of empty liquor bottles - **Tamil Nadu State Marketing Corporation Ltd. v. Deputy Commissioner of Income-tax, TDS Circle - 3(1) - [2023] 157 taxmann.com 704 (Madras)**

**SECTION 222 OF THE INCOME-TAX ACT, 1961 -
COLLECTION AND RECOVERY OF TAX -
CERTIFICATE PROCEEDINGS**

- 3.95 Attachment of bank account :** Where Assessing Officer had attached two bank accounts of assessee, i.e., pension account and other account, since entire pension amount with arrears was lying in pension account and only a certain sum lying in that account related to other amount, assessee was to be permitted to operate pension account and make transactions with amount lying therein, excluding sum which pertained to other amount - *G.K. Reddy v. Deputy Commissioner of Income-tax.* - [2024] 158 taxmann.com 154 (Madras)

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

- 3.96 Illustration :** Where assessee had filed writ petition seeking issuance of refund for assessment year 2000-01 and 2015-16 along with up-to-date interest, Assessing Officer was to be directed to pass an appeal effect order within four weeks and refund amount along with interest, if any, in assessee's bank account within a further period of four weeks - *Brillon Consumer Products (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 4-2* - [2024] 158 taxmann.com 512 (Delhi)

- 3.97 Scope of provision :** Where Complaint Authority via an order determined that a certain amount was refundable to assessee and Assessing Officer refused to refund amount on ground that proceedings were pending before DRP, since there was no recoverable demand from assessee as of today, Assessing Officer was to be directed to refund amount to assessee - *IBM India (P.) Ltd. v. Deputy Commissioner of Income-tax.* - [2024] 158 taxmann.com 70 (Karnataka)

**SECTION 241A OF THE INCOME-TAX ACT, 1961 -
REFUND - POWER TO WITHHOLD, IN CERTAIN
CASES**

- 3.98 General :** Where refund of assessee was withheld by revenue authorities on ground that there was a pending scrutiny assessment with TPO, however, if reference to TPO was under investigation, it would suffice that if adjudication, after due process, results in a demand, assessee will have to answer demand, but in anticipation of a conclusion for a demand without even recording reasons, assessee could not be denied refund - *Myntra Designs (P.) Ltd. v. National Faceless Assessment Centre* - [2024] 158 taxmann.com 38 (Karnataka)

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

- 3.99 Non-resident :** Whereas per intimation assessee was entitled to refund but refund was not made, when assessee requested department to enable assessee to provide SWIFT Code and IBAN, since delay in

processing of return could not be attributed to assessee, revenue was to be directed to pay interest on refund amount at rate specified in section 244A - *Coda Global LLC v. Deputy Commissioner of Income-tax, I(1)* - [2024] 158 taxmann.com 458 (Madras)

- 3.100** Where agricultural land of assessee was acquired by State of Gujarat under "Survo Scheme" which led to compensation dispute and Court directed Irrigation Department to deposit 50% of awarded amount, who while depositing same deducted Tax at Source on interest portion of said amount without informing assessee and did not issue Form-16A and assessee, being unaware of deduction, applied to condone delay in filing return for a refund, since, delay was not attributable to assessee, department was directed to grant interest on refund claim from date of TDS deposit to refund date, as per section 244A - *Mohanbhai Madhavjibhai Bharad v. Principal Commissioner of Income-tax-1* - [2024] 158 taxmann.com 13 (Gujarat)

**SECTION 245 OF THE INCOME-TAX ACT, 1961 -
REFUNDS - SETTING OFF AGAINST TAX DUE**

- 3.101 Conditions precedent :** Where department, without granting mandatory intimation to assessee under section 245, adjusted refund against demand for earlier assessment year, such adjustment was wholly illegal - *G. E. Power India Ltd. v. Assistant Commissioner of Income-tax.* - [2024] 158 taxmann.com 173 (Bombay)

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

- 3.102 Power to remand matter :** Where Commissioner (Appeals) after having fully agreed with assessee and reached a conclusion that Assessing Officer committed an error in making certain additions, remanded matter back to Assessing Officer for certain verifications, since Finance Act, 2001, omitted power to remand, in view of said statutory embargo, Commissioner could not have remanded matter back to Assessing Officer after having decided case in favour of assessee in its entirety - *Arun Kumar Bose v. Income-tax Officer* - [2024] 158 taxmann.com 282 (Calcutta)

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

- 3.103 Condonation of delay :** Where Tribunal dismissed appeal of assessee-bank on ground of delay, since depositors were being paid their amounts in pro-rata basis if delay application was dismissed on technicalities, depositors would be put to further hardship for no fault of them and thus, delay of 1529 days in preferring appeal deserved to be condoned - *Prudential Co-operative Bank Ltd. v. Deputy Commissioner of Income-tax.* - [2024] 158 taxmann.com 280 (Telangana)

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

- 3.104 Rectification of mistake :** Where addition was made to income of assessee on basis of information received from CBI, in view of Circular No. 3/2018, dated 11-7-2018, adverse

judgment relating to said addition was to be contested on merits notwithstanding that tax effect entailed was less than monetary limits specified in para 3 of said circular - **Ajit Pramod Kumar Jogi v. Income Tax Officer 3(3) - [2024] 158 taxmann.com 578 (Chhattisgarh)**

3.105 Revival of appeal : Where assessee having applied under DTVSV Scheme filed an application to withdraw appeal and Tribunal allowed withdrawal with an option to reinstate if DTVSV application was rejected, assessee's application for revival of appeal in terms of earlier order should be allowed - **Mahesh Goud Voruganti v. Income-tax Officer - [2024] 158 taxmann.com 286 (TELANGANA)**

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

3.106 Scope of provision : Powers conferred under section 264 are very wide and Commissioner is bound to apply his mind whether assessee's income was taxable and to what extent - **Smita Rohit Gupta v. Principal Commissioner of Income-tax. - [2024] 158 taxmann.com 157 (Bombay)**

3.107 Where Commissioner rejected assessee's application under section 264 on ground that there was a substantial delay in filing application, since it took a long time for Commissioner(Appeals) to dispose of assessee's appeal, Commissioner should have condoned delay and decided matter on merits - **Hindalco Industries Ltd. v. Union of India - [2024] 158 taxmann.com 485 (Bombay)**

SECTION 269SS OF THE INCOME-TAX ACT, 1961 - MODE OF TAKING OR ACCEPTING CERTAIN LOANS

3.108 Penalty : Where assessee-company had advanced a sum to a company which, in turn, made repayment to three entities on instructions of assessee and with regard to such payments suitable entries had been made in books of account of assessee and same had been reflected in audited books of account, initiation of penalty proceedings under section 271E against assessee appeared to be under wrong assumption that there was cash transaction and, thus, penalty proceedings were to be set aside - **Anamallais Bus Transports (P.) Ltd. v. Principal Commissioner of Income-Tax-1 - [2024] 158 taxmann.com 245 (Madras)**

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

3.109 Where assessee withdrew its claim for deduction of education cess in view of insertion of sub-section (18) of section 155 before it came into force w.e.f. 1-4-2022, assessee would be entitled for immunity from imposition of penalty under section 270A though proceedings

against it were initiated for imposition of penalty - **G R Infraprojects Ltd. v. Assistant Commissioner of Income-tax, Circle-2 - [2024] 158 taxmann.com 80 (Rajasthan)**

SECTION 270AA OF THE INCOME-TAX ACT, 1961 - PENALTY - IN RELATION TO UNDERREPORTING AND MISREPORTING OF INCOME

3.110 Immunity from imposition of penalty : Application under section 270AA would not be maintainable if there is a specific finding recorded in assessment order that assessee had under-reported income by misrepresenting facts in return of its income - **IBS Software (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 209 (Kerala)**

3.111 Opportunity of hearing : Where during scrutiny assessee realized aspect of merging GST Input Credit with expenses and same was suo moto surrendered by assessee by revising its return, however revenue imposed penalty under section 270A and thereafter, rejected application of assessee under section 270AA, since revenue wasn't sure whether it was a case of misrepresentation or suppression of facts or claim of expense and application under section 270AA was rejected in a wholly cursory manner indicating that case of assessee was within ambit of clause (a) and (c) of section 270A(9) and without giving any cogent reasons, same could not be sustained - **Chambal Fertilizers and Chemicals Ltd. v. Office of the Principal Commissioner of Income-tax - [2024] 158 taxmann.com 184 (Rajasthan)**

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

3.112 Computation error in return : Where assessee failed to add back certain expenses which were not allowable under Act to its total income in computation of income on ground that there was mistake of uploading return of income, since there was no intention of furnishing any inaccurate particulars or concealment of income, penalty under section 271(1)(c) was not leviable - **Principal Commissioner of Income-tax-13 v. Pinstorm Technologies (P.) Ltd. - [2024] 158 taxmann.com 511 (Bombay)**

3.113 Where assessee in its profit and loss account had claimed certain expenses as deduction and tax audit report also mentioned those expenses as disallowable but while filing return, due to mistake, assessee did not make disallowance of said expenses and showed loss, since tax audit report was filed along with return, it was only a mistake while uploading return and not an intentional concealment of income and, thus, levy of penalty under section 271(1)(c) was not justified - **Principal Commissioner of Income-tax-13 v. Pinstorm Technologies (P.) Ltd. - [2024] 158 taxmann.com 511 (Bombay)**

3.114 Scope of provision : Where Assessing Officer made addition to assessee's income on account of annual letting value of vacant commercial/self occupied assets and thereafter levied penalty under section 271(1)(c) and appellate authorities deleted penalty, since penalty notice did not indicate as to which limb of section 271(1)(c) was triggered for initiation of penalty proceedings, no interference was called for -

Principal Commissioner of Income-tax v. Ansal Properties & Infrastructure Ltd. - [2023] 157 taxmann.com 584 (Delhi)

3.115 Objection in regard to defect in notice : An alleged defect in notice issued to assessee under section 271(1)(c) read with section 274, in regard to which assessee had never raised an objection from very inception, that is, since last 30 years, could not now be permitted to raise it in absence of any prejudice being caused - **Veena Estate (P.) Ltd. v. Commissioner of Income-tax - [2024] 158 taxmann.com 341 (Bombay)**

SECTION 271AA OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - PENALTY FOR FAILURE TO KEEP AND MAINTAIN INFORMATION AND DOCUMENT IN RESPECT OF INTERNATIONAL TRANSACTION UNDER SECTION 92D

3.116 Others : Where tribunal deleted addition concerning purchase of tunnel boring machine holding that transaction was at arm's length price and based on it deleted penalty imposed upon assessee under section 271AA, no substantial question of law arose for consideration - **Principal Commissioner of Income-tax v. MS L & T SUCG JV CC27 - [2023] 157 taxmann.com 548 (Delhi)**

SECTION 271C OF THE INCOME-TAX ACT, 1961 - PENALTY - FOR FAILURE TO DEDUCT TAX AT SOURCE

3.117 Limitation : Where Joint Commissioner submitted a proposal on 27-3-2019 for initiation of penalty proceedings under section 271C against assessee for A.Y. 2005-06 and A.O. levied penalty vide order passed on 31-10-2019, impugned order of penalty passed beyond period of six months from date of proposal of penalty was barred and thus not sustainable - **Principal Commissioner of Income tax(TDS)-1 v. Hindustan CocaCola Beverages (P.) Ltd. - [2023] 157 taxmann.com 587 (Delhi)**

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

3.118 Sanction for prosecution : Where Assessing Officer filed a complaint against a company and its directors (petitioners herein) for offence punishable under sections 276B and 278B and sanction was granted by competent authority without considering facts of case, since sanction was invalid, proceedings against petitioners were liable to be quashed - **Rajesh Agarwal v. State of Telangana - [2024] 158 taxmann.com 166 (Telangana)**

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

3.119 Illustrations : Where Assessing Officer made addition to assessee's income on ground that it incurred

expenses in cash and did not explain source and thereafter levied penalty under section 271(1)(c) and Tribunal, having found that there was no material for cash payment made by assessee set aside penalty, criminal prosecution for offence under sections 276C(1) and 277 on same set of facts was not maintainable - **TVH Energy Resources (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 157 taxmann.com 590 (Madras)**

3.120 General : Where assessee filed revised return waiving off claims of deduction of long term capital gain/short term capital loss after search was conducted upon him, it was a case of delayed payment of tax, therefore, proceedings initiated against assessee for offence punishable under section 276C(1) were to be quashed - **Anurag Bagaria v. Income Tax Department - [2024] 158 taxmann.com 546 (Karnataka)**

3.121 At pre-cognizance stage, Magistrate can't hear arguments on and decide issues of territorial jurisdiction & existence of criminal conspiracy - **Income Tax Officer v. Anil Tuteja - [2024] 158 taxmann.com 203 (Delhi)**

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

3.122 Offences under sections 276C and 277 : Where assessee was prosecuted under sections 276C and 277 in relation to alleged offences of escaping assessment and evasion of tax and penalty was imposed, however, in view of reduction of penalty from 300 per cent to 100 per cent by appellate authority, assessee able to get penalty reduced from 300 per cent to 100 per cent, assessee would be entitled to compounding of offence under section 279(2) - **Principal Commissioner of Income-tax, Central-I v. K. M. Mammen - [2024] 158 taxmann.com 46 (Madras)**

4. TRIBUNAL

SECTION 2(31) OF THE INCOME-TAX ACT, 1961 - PERSON - ASSOCIATION OF PERSONS

- 4.1 Consortium:** Where consortium was formed by three entities for taking certain contracts in relation with Commonwealth Games held in Delhi and there was unified control and management of consortium as far as statutory tax liabilities was concerned, consortium was to be treated as an AOP and all members of consortium were to be treated as member of AOP - **Pico Deepali Overlays Consortium (By Deepali Designs Exhibits (P.) Ltd.) v. Deputy Commissioner of Income-tax, Central Circle-17 - [2023] 157 taxmann.com 679 (Delhi - Trib.)**

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

- 4.2 Termination of call option :** Where assessee had been specifically called for details relating to taxability of proceeds on cancellation of call option agreement, and after examining same, Assessing Officer was of view that post-amendment to section 2(14), right to purchase shares would fall within purview of definition of capital assets and hence, consideration received upon termination of such agreement resulting into relinquishment of right to purchase shares would amount to transfer under section 2(47) exigible to tax under section 45, assessment order so passed was not erroneous and prejudicial to interest of revenue - **Sindya Securities & Investments (P.) Ltd. v. ACIT - [2023] 157 taxmann.com 591 (Chennai - Trib.)**

- 4.3 Reduction of share capital :** Where assessee's shareholding in TTSL was reduced pursuant to a scheme of arrangement and restructuring and no consideration was paid by TTSL to assessee, long term capital loss arising to assessee on account of reduction of capital was to be allowed or set-off against any other capital gain - **Tata Sons Ltd. v. Commissioner of Income-tax-2 - [2024] 158 taxmann.com 601 (Mumbai - Trib.)**

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

- 4.4 Severance compensation :** Severance compensation received by assessee on voluntary basis from his employer towards termination of his employment was a 'capital receipt' and, hence, not chargeable to tax - **Shamik Pankajbhai Parikh v. Income-tax Officer - [2024] 158 taxmann.com 283 (Ahmedabad - Trib.)**

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

- 4.5** Where AO made addition on account of notional interest income, CIT(A) rightly deleted said addition by observing that notional/hypothetical income could not be

taxed as it was never earned by assessee - **Assistant Commissioner of Income-tax, (Central), Ujjain v. Greater Kailash Hospital (P.) Ltd. - [2023] 157 taxmann.com 644 (Indore - Trib.)**

SECTION 6 OF THE INCOME-TAX ACT, 1961 - RESIDENCE IN INDIA - RESIDENT

- 4.6 Employment outside India :** Where assessee, an Indian citizen, claimed to be non-resident as per provisions of section 6(1)(c) and Explanation 1(a) to section 6(1) and revenue authorities held him to be resident in India, since assessee had left India for purpose of business or profession, same had to be considered to be for purpose of employment outside India under Explanation 1(a) to section 6(1) and thus, assessee having stayed in India only for a period of 176 days during year, he was rightly held to be a non-resident - **Assistant Commissioner of Income-tax, Central Circle-5(4) v. Nishant Kanodia - [2024] 158 taxmann.com 262 (Mumbai - Trib.)**

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

- 4.7 Royalties/fees for technical services - Telecom or transmission services :** Payments received by assessee towards interconnectivity utility charges from Indian customers/end users could not be considered as royalty/FTS to be brought to tax in India u/s 9(1)(vi)/(vii) and also as per DTAA - **Deputy Commissioner of Income-tax, Circle - 2(2), IT v. Orange (formerly known as France Telecom) - [2024] 158 taxmann.com 186 (Bangalore - Trib.)**
- 4.8 Royalties/Fees for technical services - Software :** Where assessee, a Singaporean company, was merely selling software product to Indian end users and there was no transfer of copyright, receipts earned by it from said activity could not be treated as royalty/FTS under section 9(1)(vi) - **Finastra International Financial Systems PTE Ltd. v. A. Commissioner of Income-tax (International Taxation) - [2024] 158 taxmann.com 632 (Delhi - Trib.)**
- 4.9 Interest - Management fee :** Management fee being closely linked to loan granted, is of similar nature as documentation fee and commitment fee and, thus, partake of character of interest under section 2(28A) and, hence, would be exempt from taxation in India in terms of article 11 of India Germany DTAA - **Aka Ausfuhrkreditgesellschaft MBH v. Assistant Commissioner of Income-tax, Central Circle-1(1)(1) - [2024] 158 taxmann.com 627 (Delhi - Trib.)**
- 4.10 Royalties/Fees for technical services - Education services :** Where assessee, an education Institution of USA, had received fees from industrial liaison program ('ILP') membership, as assessee had only provided factual information related to research projects and same did not involve rendering of any technical services or making available any technical knowledge or experience or skill, thus, receipts under head ILP were not FIS in terms of article 12 of India-US DTAA - **Massachusetts Institute of Technology v. Deputy Commissioner of Income-tax (IT), Circle 3(2)(1) - [2024] 158 taxmann.com 6 (Mumbai - Trib.)**

4.11 Royalties/Fees for technical services - Education services : Where assessee, an education Institution of USA, had received fees from sponsorship assignment for research, since assessee undertook specific research for corporate and technology and knowledge from research was provided to corporate in form of research report, who would apply same and derive an enduring benefit, it was clearly making available of technical designs and know-how and accordingly, Assessing Officer had rightly concluded that receipts under this programme fell under article 12(4) of India-US DTAA - **Massachusetts Institute of Technology v. Deputy Commissioner of Income-tax (IT), Circle 3(2)(1) - [2024] 158 taxmann.com 6 (Mumbai - Trib.)**

4.12 Business profits - Offshore supplies : Payments made by assessee to non-residents for rendering installation and testing services fall under provisions of section 9(1)(vii)(b) and thus, not liable to tax in India and assessee was not required to deduct TDS under section 195, disallowance of said payments under section 40(a)(i) was to be deleted - **Dy. CIT/Jt. CIT (OSD), Corporate Circle -1(1) v. Aspire Systems India (P.) Ltd. - [2023] 157 taxmann.com 699 (Chennai - Trib.)**

4.13 Royalties/fees for technical services - Broadcasting service : Broadcasting 'live events' does not amount to a work in which copyright subsists, meaning thereby right to broadcast live events i. e., 'Live Rights', is not 'copyright', and therefore, any payment made thereto can't be said to be chargeable to tax as royalty under section 9(1)(vi) - **Lex Sportel Vision (P.) Ltd. v. Income Tax Officer - [2024] 158 taxmann.com 129 (Delhi - Trib.)**

4.14 Capital gain- Shares/units, transfer of : Where assessee, a tax-resident of Mauritius, invested in shares of an Indian company, thereafter made foreign remittance from sale of said investments and did not file return claiming that capital gains were exempt in terms of article 13(4) of India-Mauritius DTAA, since AO issued reopening notice merely on basis of such remittances which he came to know from form 15CA filed by assessee, there was no prima facie satisfaction from reasons recorded, and notice issued under section 148 was considered to be void ab initio - **AEP Investments (Mauritius) Ltd. v. Assistant of Commissioner of Income-tax, Circle (IT) 1(1)(1) - [2024] 158 taxmann.com 472 (Delhi - Trib.)**

4.15 Royalties/Fees for Technical Services - Sub Scription FEES : Where assessee, a US company, provided online technology learning platform on its website and earned subscription revenue, and Assessing Officer held that subscription revenue was towards granting of right to use any copyright of a literary, artistic or scientific work and, hence, same amounted to royalty, since subscribers only got a non-exclusive, non-transferable license to view videos on website and neither any copyright in software/database, nor any copyright in videos was granted to subscribers

and assessee reserved all intellectual property rights in its proprietary material, said subscription fees did not amount to royalty - **Plural Sight LLC v. Deputy Commissioner of Income-tax, ASMT, Circle-2(1) - [2024] 158 taxmann.com 595 (Bangalore - Trib.)**

4.16 Royalties/Fees for technical services - Interconnect usage charges : Amount received by assessee, a foreign company, from Indian telecom operator for interconnect usage was not chargeable to tax as 'royalty' - **HCG Global Communications Ltd. v. Deputy Commissioner of Income Tax - [2024] 158 taxmann.com 633 (Bangalore - Trib.)**

4.17 Royalty/ Fee for technical services - General : Where assessee received an amount from sale of software and provision of maintenance services to its Indian clients and Assessing Officer held that software and services supplied by assessee to Indian companies were highly specialised and services provided by assessee company in form of maintenance was a part of supply of software and charges for services provided by assessee were inseparable from software and formed a single, indivisible, and composite, since multiple instances of provision of maintenance services could not be equated with standalone service and nature of maintenance service was also required to be examined before coming to conclusion that income received in respect of same was Fees for Technical Services, it was necessary to restore issue to file of AO for de novo Adjudication - **Cadmatic OY v. Assistant Commissioner of Income- tax, IT, Circle-2(1)(1) - [2024] 158 taxmann.com 213 (Mumbai - Trib.)**

4.18 Business profits - Commission : Where assessee had entered into certain international transactions with agents in an overseas jurisdiction to carry out marketing and sales related activities therein and it had made commission payment to such overseas agents for securing order etc. and such services were utilized for purpose of making or earning income from a source outside India, in absence of any services of technical nature, commission payments to selling agents outside India was outside ambit of provisions of section 9(1)(vii) read with section 5 - **Bhartiya International Ltd. v. Deputy Commissioner of Income-tax - [2024] 158 taxmann.com 239 (Delhi - Trib.)**

4.19 Interest : Interest paid by Indian branch of assessee-bank to head office/overseas branches would not be chargeable to tax in India - **Bank of Nova Scotia v. Assistant Director of Income-tax (IT)-3(2) - [2024] 158 taxmann.com 82 (Mumbai - Trib.)**

4.20 Royalties or fees for technical services - Computer software : Payment received by assessee-company for providing for providing standard facilities or services and access to business applications to its Indian group entities did not amount to 'royalty' liable to be taxed in India under section 9 as well as DTAA as there was no transfer of right to use copyright in any of software/business application - **Volvo Information Technology AB v. Deputy Commissioner of Income-tax, (IT), Circle-3(1)(1) - [2024] 158 taxmann.com 36 (Delhi - Trib.)**

4.21 Royalties and fee for technical services : Where assessee, a Singapore based company, was engaged in providing onsite software services to clients of HCL India, since place of provision of services was outside India and contract for providing such services had been effectively concluded outside India, payment received by assessee, from its Indian subsidiary was only in nature of revenue share and could not be construed as income that accrues or arises in India or deemed to accrue or arise in India and, hence, could not be brought to tax as fee for technical services under section 9(1)(vii)(b) - **HCL Singapore PTE. Ltd. v. Assistant Commissioner of Income-tax, Circle IT-2(1)(1) - [2024] 158 taxmann.com 45 (Delhi - Trib.)**

4.22 FTS/Royalty - Advisory Service : Where assessee made payment to a partnership firm of Chartered Accountants located in Germany towards professional fee for due diligence of a client, payment was for professional services rendered by firm and it had to be treated as business profits at hands of recipient and in absence of permanent establishment of recipient in India, there was no obligation on assessee to withhold tax at source on such payment - **Grant Thornton India LLP v. Joint Commissioner of Income-tax - [2023] 157 taxmann.com 546 (Delhi - Trib.)**

4.23 Permanent Establishment - Fixed place, place of business : Fixed place of business" should satisfy "power of disposition" test to qualify as PE under Article 5(1) and 'core business' of foreign enterprise should be conducted through place of business which means that there should be a nexus between place of business and carrying on of business - **EXL Service.Com INC v. Additional Director of Income-tax, Range -2(1) - [2023] 157 taxmann.com 678 (Delhi - Trib.)**

4.24 Permanent Establishment - Fixed place PE : Agency PE is constituted where a person, other than an agent of an independent status, is acting on behalf of a US enterprise in India and such person has authority to conclude contracts on behalf of the US enterprise and such authority habitually secures orders in India wholly or almost wholly for foreign enterprise - **EXL Service.Com INC v. Additional Director of Income-tax, Range -2(1) - [2023] 157 taxmann.com 678 (Delhi - Trib.)**

SECTION 10(10AA) OF THE INCOME-TAX ACT, 1961 - LEAVE ENCASHMENT

4.25 Government employees : Where assessee was employed with Madhya Pradesh State Electricity Board, a government organization, which was later converted into a company, leave encashment received by assessee was to be allowed in proportionate of services rendered in Government department as well as public sector undertaking - **Devendra Mehta v. Deputy Commissioner of Income-tax, Circle-2(1) - [2024] 158 taxmann.com 349 (Jabalpur - Trib.)**

SECTION 10(21) OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - SCIENTIFIC RESEARCH ASSOCIATIONS

4.26 Objects of research association : Where Assessing Officer, after examining all details pertaining to eligibility of assessee for exemption under section 10(21), had taken a possible view that impugned incomes were correctly included for purpose of exemption, Commissioner could not have invoked section 263 to deny said exemption - **Synthetic & Art Silk Mills Research Association v. Commissioner of Income-tax (Exemption) - [2024] 158 taxmann.com 264 (Mumbai - Trib.)**

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

4.27 Scope of provision : Where assessee-educational institution was approved under section 10(23C)(vi), no disallowance could have been made by applying provisions of sections 11 and 12 - **Baba Hira Singh Bhattal Institute of Engineering & Technology v. Deputy Commissioner of Income-tax (Exemptions), Circle-1 - [2024] 158 taxmann.com 488 (Chandigarh - Trib.)**

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

4.28 Forms : Where assessee charitable trust was running 12 educational institution, since annual receipts of each of institutions of assessee was less than prescribed limit under provision, exemption under section 10(23C)(iiiad) was to be granted to assessee - **D. Banumaiah's Educational Institutions v. Income Tax Officer - [2024] 158 taxmann.com 597 (Bangalore - Trib.)**

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

4.29 Grant-in-aid : Where assessee-educational institute collected development fund, hostels fund, student activity fund and other funds from students as per express notification of State Government, surplus left under funds collected from students belonged to consolidated fund of State and could be spent for specified purposes as per approval of State Government and, thus, it could not be considered as assessee's income - **Baba Hira Singh Bhattal Institute of Engineering & Technology v. Deputy Commissioner of Income-tax (Exemptions), Circle-1 - [2024] 158 taxmann.com 488 (Chandigarh - Trib.)**

SECTION 10AA OF THE INCOME-TAX ACT, 1961 - SPECIAL ECONOMIC ZONES - NEWLY ESTABLISHED UNITS IN

4.30 Partner's remuneration : Where partners of assessee-firm had not charged any interest or remuneration as per partnership deed, they could not be compelled to charge interest of remuneration and thus, reduction of interest on capital and remuneration from profit allowable for deduction under section 10AA was not correct - **Dinesh India Co. v. ACIT - [2024] 158 taxmann.com 153 (Surat-Trib.)**

**SECTION 11 OF THE INCOME-TAX ACT, 1961 -
CHARITABLE OR RELIGIOUS TRUSTS -
APPLICATION OF INCOME**

- 4.31 Depreciation** : Where assessee-educational institute had not claimed cost incurred on acquisition of fixed assets as application of income, order disallowing depreciation as application of income was to be deleted - **Baba Hira Singh Bhattal Institute of Engineering & Technology v. Deputy Commissioner of Income-tax (Exemptions), Circle-1 - [2024] 158 taxmann.com 488 (Chandigarh - Trib.)**
- 4.32 Form 10B, filing of** : Where assessee-trust filed Audit Report in Form 10B belatedly and AO denied exemption under section 11 on ground that Form 10B was not filed along with return of income, since Audit report was not considered and verified by AO, impugned order was to be set aside and AO was to be directed to verify Form 10B and then allow claim of exemption under section 11 in accordance with law - **Shree Charitable Trust v. Income-tax Officer (Exemption) - [2024] 158 taxmann.com 159 (Ahmedabad - Trib.)**
- 4.33 Accumulation of income** : Where assessee-trust filed Form 10 for accumulation of income belatedly and sought condonation of delay in filing Form 10 and Form 10B and, further, filed application for condonation of delay in filing return of income, which was pending consideration, matter was to be restored to AO to take a decision in matter after outcome of condonation petition filed by assessee - **Lord Venkateshwara Ladies Educational and Welfare Trust v. Income Tax Officer (Exemption), Ward-1 - [2023] 157 taxmann.com 668 (Bangalore - Trib.)**
- 4.34 Form 10 /10B** : Where the assessee revised its return of income with higher claim of deduction under Section 11(2), Assessing Officer was not justified in restricting exemption under Section 11(2) as per original return of income, on the ground that assessee had not filed "ITR" and "Form 10" within the due date prescribed under Section 139(1) - **Income Tax Officer v. Ramji Mandir Religious and Charitable Trust - [2024] 158 taxmann.com 114 (Ahmedabad - Trib.)**

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

- 4.35 Form 10B** : Where assessee, a trust, filed Form 10B after filing return but before assessment/intimation under section 143(1) was made by revenue, benefit of exemption under section 11 could not be denied merely on account of delay in furnishing audit report - **S.M.K.R Vashi High School v. Income Tax Officer-Exemption Ward - [2023] 157 taxmann.com 702 (Surat-Trib.)**

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

- 4.36 Scope of provision** : Where Competent Authority rejected assessee-trust's application seeking registration under section 12AA stating that trust was not engaged in any charitable activity, since it was apparent from facts that trust was formed with charitable objects, Competent Authority was to be directed to grant registration as per law - **Shri Agrasen Jan Kalyan Trust v. Commissioner of Income-tax (Exemption) - [2023] 157 taxmann.com 589 (Raipur - Trib.)**
- 4.37 Objects of charitable or religious trust** : Where assessee trust was denied registration under section 12AA on ground that genuineness of activity undertaken by society i.e., selling of medicines or charity activities had not been proved, however, assessee had produced numerous documents under rule-29 and also produced financials, matter was to be remanded back for consideration afresh - **Radha Madhav Nishkam Seva Samiti v. Commissioner of Income-tax (Exemption) - [2024] 158 taxmann.com 598 (Delhi - Trib.)**
- 4.38 General** : Where Commissioner (Exemptions) rejected claim of assessee-society for registration under section 12AA by considering Memorandum of Association and bye laws of society which were amended by assessee, matter was restored to Commissioner (Exemptions) to consider amended memorandum and bye laws of society - **DVM Public School Managing Committee v. Commissioner of Income-tax (Exemptions) - [2023] 157 taxmann.com 586 (Delhi - Trib.)**

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

- 4.39 Scope of provision** : Where assessee-trust was created by a company to carry on and execute CSR activities and Commissioner rejected its application seeking registration under section 12AB and approval under section 80G without adjudication of basic conditions required for grant of registration under section 12AB, matter was to be remanded back to him for afresh adjudication - **Sarfaroosh Foundation v. Commissioner of Income-tax, (Exemptions) - [2024] 158 taxmann.com 65 (Amritsar - Trib.)**
- 4.40 Illustrations** : Where Commissioner rejected assessee's applications seeking registration under sections 12AB and by time assessee's appeals came up for hearing before Tribunal, registration was granted under sections 12AB and 80G by Commissioner, assessee was to be permitted to withdraw appeals preferred against orders of Commissioner - **Sri Chandra Mouleswara Charitable Trust v. Income-tax Officer (Exemption Ward) - [2024] 158 taxmann.com 62 (Visakhapatnam - Trib.)**
- 4.41 Scope of provision** : Where belated payment of TDS, short deduction of TDS PF/ESIC cannot be a ground for refusal of registration in terms of section 12AB(1)(b)(i) - **Disha Education Society v. Commissioner of Income-tax (Exemption) - [2024] 158 taxmann.com 172 (Indore - Trib.)**

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

4.42 Scope of provision : Where assessee had not earned any exempt income during year, no disallowance u/s 14A could have been made by AO, thus initiation of revisionary proceedings on ground that Assessing Officer had not considered voluntary disallowance offered by assessee could not be sustained - **Sindya Securities & Investments (P.) Ltd. v. ACIT - [2023] 157 taxmann.com 591 (Chennai - Trib.)**

4.43 General : Where assessee-film artist invested in shares and partnership firm, since expenses in nature of personal expenses were already disallowed, it would be fair to disallow an adhoc sum of Rs. 50,000 - **D. Venkatesh v. Deputy, Central Circle 1(2) - [2024] 158 taxmann.com 478 (Hyderabad - Trib.)**

4.44 Rule 8D : Where Commissioner (Appeals) passed ex-parte order and confirmed disallowance under section 14A, since assessee failed to participate in first appellate proceedings before Commissioner (Appeals) and sought remand of matter, impugned order was to be set aside and matter was to be remanded back for fresh consideration - **RMP Infotec (P.) Ltd. v. Assistant Commissioner of Income-tax, Corporate Circle-5 - [2024] 158 taxmann.com 266 (Chennai - Trib.)**

SECTION 17 OF THE INCOME-TAX ACT, 1961 - SALARIES - PERQUISITE

4.45 Rent-free accommodation : Where Assessing Officer passed an order under section 201(1) holding that assessee was required to deduct TDS on perquisite value of accommodation provided to its employees at rate of 15 per cent of salary, without first recording a finding as to whether there was 'concession' and case was covered by section 17(2)(ii), impugned order was to be set aside - **Assistant Commissioner of Income-tax, Circle-74(1) v. Indian Institute of Technology - [2024] 158 taxmann.com 457 (Delhi - Trib.)**

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

4.46 Deemed let out : Estimation made by Assessing Officer in assessee's husband case could be adopted and notional rent could be assessed at same rate in assessee's case - **Smt. Geetha Vasani v. Income Tax Officer, Non-Corporate Ward-16(3) - [2024] 158 taxmann.com 345 (Chennai - Trib.)**

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

4.47 Bank Interest : Where bank interest had already been offered by assessee as business income and considering same as income from other sources would be tax neutral, PCIT was not right in holding that assessment order was erroneous or prejudicial to interest of revenue - **Sindya Securities & Investments (P.) Ltd. v. ACIT - [2023] 157 taxmann.com 591 (Chennai - Trib.)**

4.48 Adventure in nature of trade : Where assessee along with other co-owners had purchased a land and thereafter established a partnership firm with same co-owners and entered into a development agreement with said firm to develop land into 18 bungalows, this clearly established motive, intention and interest of assessee in doing real estate business, thus, profit earned by assessee was to be treated as business income and not LTCG as claimed by assessee - **Bhanuprasad Maganlal Patel v. Deputy Commissioner of Income-tax, Circle-3(3) - [2024] 158 taxmann.com 426 (Ahmedabad - Trib.)**

SECTION 28(ii) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME COMPENSATION

4.49 Termination fee : Compensation received by the assessee from RDG, Germany in out of court settlement towards termination of agency, distribution and manufacturing rights granted to it by RDG vide an agreement was a business income under section - **Piramal Enterprises Ltd. v. Deputy Commissioner of Income-tax, Range-82(1) - [2024] 158 taxmann.com 547 (Mumbai - Trib.)**

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

4.50 Where assessee-firm had borrowed loan from bank and raised fresh capital from incoming partner to settle debt/capital account of retiring/outgoing partners, since, loan borrowed from Bank and capital raised from incoming partner was for purpose of business of assessee, any interest paid on said loan and capital account was nothing but interest paid on loan borrowed for purpose of business of assessee and allowable under section 36(1)(iii) - **Ariff & Co. v. Assistant Commissioner of Income-tax, Central Circle-II(3) - [2024] 158 taxmann.com 135 (Chennai - Trib.)**

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

4.51 PF/ESI : Employees' contribution to PF and ESI would not be allowable in case of assessee if it was remitted beyond due date prescribed under respective Acts - **Himenviro Environmental Engineering Co. (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-11(2) - [2024] 158 taxmann.com 515 (Delhi - Trib.)**

4.52 National Pension Scheme : Where lower authorities disallowed payments made by assessee of employee's contribution to National Pension Scheme on ground that same had been made beyond due date prescribed under relevant Act, since under PFRDA Act, 2013 no due date had been prescribed for making aforesaid payments, this issue required to be restored to Commissioner (Appeals) for afresh adjudication - **Adani Enterprises Ltd. v. Deputy Commissioner of Income-tax - [2024] 158 taxmann.com 168 (Ahmedabad - ITAT)**

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

4.53 Conditions precedent : Where amount of bad debts claimed had already been taken into account while computing income by way of showing it as gross receipts and outstanding amount as sundry debtors, claim of bad debts under section 36(1)(vii) should be allowed as an expenditure - **Harmuny Entertainment (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 157 taxmann.com 547 (Kolkata - Trib.)**

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

4.54 Where Assessing Officer disallowed a deduction claimed by assessee under section 36(1)(viii) for provisions made for Non-Performing Assets (NPA) and standard assets and CIT(A) accepted this, allowing entire provision of Rs. 10,00,00,000, since section 36(1)(viii) had a prescribed limit, and lower authorities did not verify if deduction was within that limit, issue was referred back to AO for verification - **Assistant Commissioner of Income-tax v. Jila Sahakari Kendriya Bank - [2024] 158 taxmann.com 40 (Indore - Trib.)**

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

4.55 Foreign travel expenses : Where assessee-film artist claimed foreign travel expenses, however, he failed to produce any evidence to substantiate any nexus with foreign trip with professional activities carried out by him more particularly when expenses of film shoot/stay were taken care of by producers, impugned disallowance made by Assessing Officer was to be upheld - **D. Venkatesh v. Deputy, Central Circle 1(2) - [2024] 158 taxmann.com 478 (Hyderabad - Trib.)**

4.56 Physical fitness expenses : Physical fitness expenses could not be held to be incurred wholly and exclusively for profession of assessee-film artist, thus, AO was justified in disallowing 25 per cent of said claim - **D. Venkatesh v. Deputy, Central Circle 1(2) - [2024] 158 taxmann.com 478 (Hyderabad - Trib.)**

4.57 Other expenses : Where assessee-film artist incurred costume expenses, water charges, telephone bills etc. and said expenses had were having element of personal and it was not possible to segregate professional with personal expenses, AO was justified in disallowing 20 per cent of said claim - **D. Venkatesh v. Deputy, Central Circle 1(2) - [2024] 158 taxmann.com 478 (Hyderabad - Trib.)**

4.58 Security charges : Where assessee claimed security charges paid towards office cum residence, since no evidence was filed by assessee to prove that these expenses were wholly and exclusively incurred for his profession, impugned disallowance made by Assessing Officer was to be upheld - **D. Venkatesh v. Deputy, Central Circle 1(2) - [2024] 158 taxmann.com 478 (Hyderabad - Trib.)**

4.59 Swimming pool charges : Where assessee-film artist claimed rent paid on land on which he had constructed swimming pool, since there would be a probability of using facility by his family members also, there was involvement of personal element and Assessing Officer was justified in disallowing 50 per cent of said claim - **D. Venkatesh v. Deputy, Central Circle 1(2) - [2024] 158 taxmann.com 478 (Hyderabad - Trib.)**

4.60 Product development expenses : Where assessee, engaged in business of manufacturing, supply, erection and commissioning of pollution control equipments, incurred certain expenses towards product development which were genuine regular revenue expenses, same was to be allowed as deduction under section 37(1) - **Himenviro Environmental Engineering Co. (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-11(2) - [2024] 158 taxmann.com 515 (Delhi - Trib.)**

4.61 Liquidated damages : Where assessee incurred liquidated damages as part of contractual obligation with its customers for delayed supply of goods or delayed completion of projects, same was to be allowed as deduction under section 37(1) - **Himenviro Environmental Engineering Co. (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-11(2) - [2024] 158 taxmann.com 515 (Delhi - Trib.)**

4.62 Where assessee a registered cooperative society engaged in banking business claimed deduction for certain provisions made in accounts by relying on provisions of section 43A of MP/CG co-operative Societies Act, since said provisions relied upon by assessee talks of "appropriate of profits" only and there was no material available on record by which it could be verified that conditions of section 37(1) were fulfilled in instant case, matter required a complete verification at stage of AO - **Assistant Commissioner of Income-tax v. Jila Sahakari Kendriya Bank - [2024] 158 taxmann.com 40 (Indore - Trib.)**

4.63 Registration charges : Where assessee incurred land registration charges in executing agreement for taking business premises on rent, said charges would be revenue expenditure - **RMP Infotec (P.) Ltd. v. Assistant Commissioner of Income-tax, Corporate Circle-5 - [2024] 158 taxmann.com 266 (Chennai - Trib.)**

4.64 Overburden removal charges : Where assessee was engaged in business of mining contracts and it awarded sub-contract to a business concern who had given sub sub-contracts to its employees and Assessing Officer disallowed entire expenditure incurred by assessee on overburden removal on ground that no written agreements available for subcontract and sub sub-contracts, since there were business operations in mining by assessee during year, it was reasonable to estimate disallowance at 25 per cent of such expenditure - **Assistant Commissioner of Income-tax v. eerabhadra Minerals (P.) Ltd. - [2023] 157 taxmann.com 552 (Hyderabad - Trib.)**

4.65 Repairs : Expenditure incurred by assessee towards interior decoration work of a rented office premises was allowable as

revenue expenditure - ***Harmuny Entertainment (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 157 taxmann.com 547 (Kolkata - Trib.)***

- 4.66 Commission** : Where Assessing Officer made disallowance of commission payments made by assessee to associated companies being for non-business purposes and for want of actual services provided by said companies, since assessee had given names, addresses and PAN to Assessing Officer and assessee deducted TDS on such payments and entire transactions were through banks, claim of assessee in respect of commission was to be allowed - ***Shree Automotive (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-10 - [2024] 158 taxmann.com 353 (Kolkata - Trib.)***

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

- 4.67** Where assessee and JWIL formed a Joint Venture (JV) for a construction project awarded by Delhi Jal Board whereby TPPL executed work, and assessee JV raised bills on Delhi Jal Board, Assessing Officer was not justified in making disallowance under section 40A(2)(b) on merely estimating that more income should have been earned from sub-contracting without bringing any comparable figures - ***Tapi Jwil JV v. Income Tax Officer, Ward-62(4) - [2024] 158 taxmann.com 433 (Delhi - Trib.)***

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

- 4.68 Rent** : Where assessee had made payment towards godown rent in cash, since assessee submitted that respective payments made towards rent of four godowns were lower than Rs.10,000/- each, therefore, no disallowance of same could be made in absence of violation of mandate of section 40A(3), in all fairness, matter was to be remanded back to to Assessing Officer for verification of aforesaid fact claimed by assessee - ***Shubh Karan Mahnot v. Income Tax Officer - [2024] 158 taxmann.com 133 (Raipur - Trib.)***
- 4.69 Payment to Government** : Where assessee paid electricity charges in cash to a State Government undertaking, since payment to Government undertaking was in legal tender, same would be covered by exception carved out in rule 6DD(b) and, thus, same would not be disallowed under section 40A(3) - ***Shubh Karan Mahnot v. Income Tax Officer - [2024] 158 taxmann.com 133 (Raipur - Trib.)***

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

- 4.70 Illustrations** : Where Assessing Officer made an addition invoking provisions of section 41(1) on account of cessation of liability for amount payable to sundry

creditor, since assessee had nowhere stated that said liability was not payable and all documentary evidence were submitted to prove that liability was active, impugned addition was to be deleted - ***Harmuny Entertainment (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 157 taxmann.com 547 (Kolkata - Trib.)***

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

- 4.71 Bonus** : Where tax auditor had certified bonus amount under section 43B as a pre-existing liability which was paid during previous year, same deserved to be allowed - ***Adani Enterprises Ltd. v. Deputy Commissioner of Income-tax - [2024] 158 taxmann.com 168 (Ahmedabad - ITAT)***

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

- 4.72 Additional evidence** : Where Commissioner (Appeals) did not admit additional evidence against assessment of capital gains as filed by assessee and confirmed assessment order, since additional evidence would go to root of dispute, matter was to be restored to Commissioner (Appeals) for deciding appeal afresh after considering additional evidence - ***FR. Sauter AG v. Income-tax officer (International Tax) - [2024] 158 taxmann.com 161 (Delhi - Trib.)***

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

- 4.73 Deduction** : Where assessee was gifted a property by his parents and he sold property and offered capital gains to tax after claiming deduction of interest paid to a party on loan taken from him to pay amount to family members as per family settlement, since payment of interest had nothing to do with capital gains, deduction of interest paid was not allowable - ***Sanjay Atchut Poy Raiturcar v. Income-tax Officer - [2024] 158 taxmann.com 176 (Panaji - Trib.)***

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

- 4.74 Computation of capital gain - Land and building** : Where difference in fair market value as per actual sale consideration received by assessee and DVO was much lesser in comparison to difference in value as per Stamp Valuation Authority and DVO, deeming provisions of section 50C could not be pressed into action - ***Baba Export House v. Assistant Commissioner of Income-tax, Circle-30(1) - [2024] 158 taxmann.com 210 (Delhi - Trib.)***

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

- 4.75 Purchase of new house** : Where assessee, a non-resident individual, sold a property in India and reinvested sale proceeds in purchase of a new residential property in name of her spouse, since sale proceeds had been duly invested in acquisition of new property within due time allowed, assessee

would be eligible for claim of deduction under section 54 - **Simran Bagga v. Assistant Commissioner of Income-tax, Circle-1(1)2** - [2024] 158 taxmann.com 265 (Delhi - Trib.)

4.76 Revision: Where assessee claimed deduction under section 54 in respect of capital gains earned on sale of plot of land and AO allowed same, since Principal Commissioner invoked revisionary proceedings on account of incorrect allowance of claim of exemption u/s 54 and directed AO to examine assessee's eligibility to claim of exemption under section 54F, there was no infirmity in order of Principal Commissioner and same was to be upheld - **Smt. Janki Kishan Hingorani v. Principal Commissioner of Income-tax, Rajkot-1** - [2024] 158 taxmann.com 3 (Rajkot - Trib.)

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

4.77 Revision : Where adequate enquiries were indeed carried out by AO before allowing claim of exemption u/s 54B to assessee, such assessment order could not be subjected to revision by Pr. Commissioner u/s 263 - **Smt. Omwati v. Principal Commissioner of Income-tax** - [2024] 158 taxmann.com 64 (Dehradun - Trib.)

4.78 Scope of provision : Where assessee sold agricultural land and made payment for purchase of another agricultural land and took possession of land thereon, exemption under section 54B was admissible - **Smt. Omwati v. Principal Commissioner of Income-tax** - [2024] 158 taxmann.com 64 (Dehradun - Trib.)

SECTION 54EC OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - NOT TO BE CHARGED ON INVESTMENT IN CERTAIN BONDS

4.79 Scope of provision : For impugned A.Y. 2014-15, as it stood at relevant time, if assessee made investment in REC Bonds for Rs. 50 lakhs each, assessee would be eligible for deduction under section 54EC provided both investments were made within a period of six months as prescribed under 54EC - **Shangar v. Deputy Commissioner of Income-tax, Circle-1(2)** - [2024] 158 taxmann.com 113 (Ahmedabad - Trib.)

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

4.80 Construction of residential house : Where assessee claimed exemption under section 54F in respect of a building constructed by him, since said building was predominantly used for religious purposes namely Mosque, Orphanage School and Staff quarters, and therefore, it did not fit within definition of residential house as contemplated under section 54F, assessee was not entitled to any relief under section 54F - **Assistant Commissioner of Income-tax, Circle 6(1) v. Iqbal Ali Khan** - [2024] 158 taxmann.com 377 (Hyderabad - Trib.)

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

4.81 Gift : Where assessee entered into an agreement fixing amount of consideration for purchase of immovable property in year 2010 but actual registration took place in 2013 and, further, assessee paid a part of consideration by cheque in year 2010 before date of agreement, it was to be held that it was stamp value on date of agreement in year 2010, which was to be considered for section 56(2)(vii)(b) - **Shyamkumar Madhavdas Chugh v. Assistant Commissioner of Income-tax, (IT), Circle 1(2)(1)** - [2024] 158 taxmann.com 513 (Delhi - Trib.)

4.82 Sub-section (2)(x) : Where assessee's appeal against addition made by Assessing Officer under section 56(2)(x)(b) was dismissed by Commissioner (Appeals) without giving any detailed reason, in view of fact that in ground of appeal before Commissioner (Appeals) there was a specific ground raised about addition made under section 56(2)(x)(b), appeal was to be restored back to Commissioner (Appeals) with a direction to decide issue on merits of case after giving proper opportunity of hearing to assessee - **Rajkumar Anandchand Jain v. Deputy Commissioner of Income-tax, Circle 19(3)** - [2024] 158 taxmann.com 310 (Mumbai - Trib.)

4.83 Valuation of shares : Where assessee-company issued shares to a party at certain premium and adopted discount cash flow (DCF) method for calculating Fair Market Value [FMV] of shares, since there was no dispute about correctness of data as supplied by assessee to CA and data in valuation of shares was basis of projection which was calculated by CA, AO could not have rejected DCF method adopted by assessee - **Joint Commissioner of Income-tax (OSD) v. Om Sons Marketing (P.) Ltd.** - [2024] 158 taxmann.com 175 (Amritsar - Trib.)

4.84 Valuation of shares : Where assessee made investment in shares at lower price than market value however, he did not furnish any reliable and robust basis of valuation of such shares as per methods contemplated under rules, Assessing Officer was justified to carry on valuation on basis of NAV method and make additions on account of difference between value of shares determined by him and total purchase consideration of shares received by assessee in light of provision of section 56(2)(vii) - **Kanti Commercial (P.) Ltd. v. ACIT** - [2023] 157 taxmann.com 447 (Delhi - Trib.)

4.85 Gift : Where in respect of sale of property, as per sale deed and deed of nomination, there was a clear demarcation between sale consideration and compensation received, amount received by assessee on account of compensation by way of deed of nomination was compensation for transferring rights accrued and could not be assessed under head long term capital gains - **Smt. Geetha Vasan v. Income Tax Officer, Non-Corporate Ward-16(3)** - [2024] 158 taxmann.com 345 (Chennai - Trib.)

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

- 4.86 Loans** : Where Assessing Officer held a bonafide belief that income of another person, had escaped asst, and on said basis had initiated proceedings u/s147 on a substantive basis in case of said person, then, AO could not have thereafter simultaneously held said amount as income of assessee chargeable to tax that had escaped assessment - **Keshnath Sahu Shri Balaji Construction Company v. Income Tax Officer - [2024] 158 taxmann.com 41 (Raipur - Trib.)**
- 4.87 Share premium** : Where AO had accepted capacity and credit-worthiness to subscribe shares of creditor, addition made u/s 68 as regards share premium received by assessee was to be deleted - **Hiranandani Healthcare (P.) Ltd. v. Commissioner of Income tax (Appeal), National Faceless Appeal Centre, Delhi - [2023] 157 taxmann.com 551 (Mumbai - Trib.)**
- 4.88 Bank deposits** : Where AO made an estimation of contract charges received by assessee to make additions to total income of assessee and also made additions u/s 68 towards cash deposits, in view of fact that assessee had not responded to notices issued u/s 148 nor subsequent notice calling for details under section 142(1) and assessee also did not appear before Commissioner (Appeals) who had concluded appellate proceedings ex parte based on materials available on records, matter was to be remanded to Assessing Officer for de novo verification - **Alpha Heavy Engineering (P.) Ltd. v. Income-tax Officer-15(1)(1) - [2024] 158 taxmann.com 324 (Mumbai - Trib.)**
- 4.89** Where assessee-group surrendered before search/survey teams; then disclosed income in return, and maintained silence till completion of assessment, thus stopping AO from making further probe; and ultimately attempted before commissioner(Appeals) to get out of 'undisclosed income', this kind of strategy adopted by assessee could not be accepted and CIT(A) was not justified in allowing assessee's claim of withdrawal of surrender without confronting AO - **Assistant Commissioner of Income-tax, (Central), Ujjain v. Greater Kailash Hospital (P.) Ltd. - [2023] 157 taxmann.com 644 (Indore - Trib.)**
- 4.90** Where assessee, engaged in financial activities, took loan from PFSP which was treated as unexplained credit by AO, since records revealed that those were repayments, not loans, and PFSP was not a stranger entity and transactions were transparent and had been found to be routed through banking channel and reported in return of income by assessee as well as PFSP, it could be said that assessee had proved genuineness and credit worthiness of transaction and accordingly, addition under section 68 was to be deleted - **Assistant Commissioner of Income-tax, Circle-8(2) v. Evermore Stock Brokers (P.) Ltd. - [2024] 158 taxmann.com 211 (Delhi - Trib.)**

- 4.91 Bank deposit** : Where assessee had two bank accounts in her name and she had sufficient cash in hand from corresponding cash withdrawals made by her from her one account which was deposited with second bank account for repayment of housing loan, impugned addition made on account of cash deposited in said second bank account was to be deleted - **Poonam Garg v. Income Tax Officer, Ward-55(3) - [2023] 157 taxmann.com 729 (Delhi - Trib.)**
- 4.92 Share application money** : Where Assessing Officer made addition to assessee's income under section 68 in respect of share capital and share premium received by assessee from a company on ground that assessee had not been able to establish genuineness of transaction and identity and creditworthiness of share applicant company, however, assessee had not been able to give any basis as to why it would command such a huge premium for issuance of share capital; impugned addition was justified- **Maharaja Corporate Services (P.) Ltd. v. Income Tax Officer, Ward-2(1)(4) - [2024] 158 taxmann.com 42 (Ahmedabad - Trib.)**
- 4.93 Share capital** : Where Assessing Officer made disallowance holding that unexplained share capital along with share premium was introduced on allotment of shares with premium to group company , since share applicant was income tax assessee, filing its income tax returns, share application money was made by account payee cheque, and share applicant was having substantial creditworthiness represented by its capital and reserves, assessee had discharged its onus to prove identity and creditworthiness of share subscribing company and genuineness of transaction and , accordingly, addition made under section 68 by Assessing Officer was to be deleted - **Shree Automotive (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-10 - [2024] 158 taxmann.com 353 (Kolkata - Trib.)**

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

- 4.94 Stamp duty** : Where assessee had source of income such as tuition income, interest income and rental income which was converting to in cash since 20 to 25 years and she was continuously filing her return of income with department, amount of Rs. 6 lakhs paid towards stamp duty on purchase of property could not be treated to be paid out of unexplained sources - **Poonam Garg v. Income Tax Officer, Ward-55(3) - [2023] 157 taxmann.com 729 (Delhi - Trib.)**
- 4.95 Bogus sundry debtors** : Where assessee had shown sundry debtors of certain amount, since on perusal of profit and loss account it was found that assessee had not carried any business during current year, and further, assessee had purchased huge investments through book entry from its opening sundry debtors without any actual receipts, impugned additions made on account of such bogus debtors was justified - **Kanti Commercial (P.) Ltd. v. ACIT - [2023] 157 taxmann.com 447 (Delhi - Trib.)**
- 4.96 Interest income** : Where assessee was confronted with interest income and assessee stated that said income was on account of assessee's spouse investing some of his funds in

assessee's name and said interest income was already included by assessee's spouse under section 64(1)(iv), however, assessee could not produce any evidence in support of his claim, addition of said interest income was to be sustained - **Smt. Geetha Vasan v. Income Tax Officer, Non-Corporate Ward-16(3) - [2024] 158 taxmann.com 345 (Chennai - Trib.)**

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

4.97 Undisclosed income : Where assessee was found transporting/transferring cash from one place to another during demonetization period, packed in two bags and in train, which was intercepted by ATS authorities and assessee categorically accepted that he was unable to explain source of cash and that impugned cash was his income from undisclosed sources, Assessing Officer rightly assessed income under section 69A along with higher rate of tax under section 115BBE - **Gaurav Ajmera v. Deputy Commissioner of Income-tax, Central Circle 2 - [2024] 158 taxmann.com 294 (Indore - Trib.)**

4.98 Reasons to believe : Where AO issued a reopening notice against assessee on ground that he had purchased an immovable property out of his undisclosed sources, since assessee had specifically requested for a copy of reasons to believe that formed very basis for reopening of his case under section 147, however, Assessing Officer had failed to make available copy of aforesaid reasons to believe to assessee before culmination of assessment proceedings, impugned reassessment order passed by Assessing Officer was to be quashed - **Gajraj Giri v. Income Tax Officer, Ward 2(1) - [2024] 158 taxmann.com 8 (Raipur - Trib.)**

4.99 Cash deposits : Where assessee deposited cash in bank account during demonetization period and claimed that cash deposited was out of opening cash balance which was utilized for making payment to sundry creditors and partners of firm, since Assessing Officer had not established that opening cash in hand available with assessee was utilized/invested somewhere else by assessee-firm, impugned addition made under section 69A was to be deleted - **Arihant Associates v. Income Tax Officer-2(1) - [2024] 158 taxmann.com 7 (Raipur - Trib.)**

4.100 Where assessee had deposited a sum of Rs.27,87,500/- into his bank account during demonetization period and same had been considered by Assessing Officer as income under section 69A, additions under section 69A would be remitted to file of AO to examine issue in light of various circulars issued by CBDT on addition relating to deposit of demonetized currency to bank account of assessee - **Marate Venkateshkumar v. Income Tax Officer, Ward-1(6) - [2024] 158 taxmann.com 116 (Bangalore - Trib.)**

4.101 Survey : Where during course of survey, assessee surrendered excess stock, cash and receivables and offered same to tax as business income, however, AO treated said surrendered amount as unexplained investment u/s 69 and 69B, since it emerged that source of income of assessee was from its business operations, income surrendered by assessee during survey could not be brought to tax under deeming provisions of sections 69A and 69B - **Veer Enterprises v. Dy. Comm. of Income-tax, Central Circle-III - [2024] 158 taxmann.com 655 (Chandigarh - Trib.)**

4.102 Cash deposits: Where assessee, engaged in business of trading wood, deposited cash in bank account during demonetization period out of sales made to various parties in cash, since such sales were duly recorded in books of account which were audited under various laws applicable and supported by credible evidence like copies of invoices, stock register maintained on a day to day basis, VAT returns filed from time to time and order of VAT authorities accepting sales made by assessee during year under consideration, impugned addition made u/s 69A was to be deleted - **Income Tax Officer, Ward-2 v. J.K. Wood India (P.) Ltd. - [2024] 158 taxmann.com 208 (Delhi - Trib.)**

4.103 Reopening of assessment: Where AO issued a reopening notice against assessee on account of cash deposits in her saving bank account during relevant period, however, he failed to provide to assessee reasons recorded for reopening assessment and approval obtained u/s 151, impugned reassessment order passed without providing reasons for reopening and approval was to be set aside - **Saraswati Garewal v. Income Tax Officer, Ward 2(1) - [2024] 158 taxmann.com 37 (Raipur - Trib.)**

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

4.104 Where on basis of papers seized during search AO inferred that assessee had made a cash loan of Rs. 3,00,000/- to certain Jewellers, since assessee filed copies of seized documents and demonstrated that documents were blank and do not contain any detail as to name in whose favour they were issued by said jewellers, in said circumstances, CIT(A) rightly gave credence to assessee's submission and deleted addition - **Assistant Commissioner of Income-tax, (Central), Ujjain v. Greater Kailash Hospital (P.) Ltd. - [2023] 157 taxmann.com 644 (Indore - Trib.)**

4.105 Where assessee admitted undisclosed jewellery investment during a search but did not disclose it in return and therefore, AO allowed relief for a part-quantity as per guidelines in CBDT Circular No. 1916 and arrived at excess quantities and CIT(A) deleted addition of certain sum out of addition made on account of unexplained jewellery and he worked out quantum of credit considering various sources of acquisition of jewellery by assessee/family members and arrived at a final difference, it could be said that, order passed by CIT(A) was a well-reasoned order and did not require any interference - **Assistant Commissioner of Income-tax, (Central), Ujjain v. Greater Kailash Hospital (P.) Ltd. - [2023] 157 taxmann.com 644 (Indore - Trib.)**

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

4.106 Bogus purchases : Where issue of bogus purchases had already been considered during assessment under section 143(3) and Tribunal in assessee's own case in earlier year had held 4 per cent to be GP rate that was to be applied on gross turnover for addition towards bogus purchases, addition made by AO on peak credit of purchases under section 69C in assessment under section 147 was not tenable - *Hemant Associates v. Income-tax Officer* - [2024] 158 taxmann.com 66 (Mumbai - Trib.)

SECTION 79 OF THE INCOME-TAX ACT, 1961 - LOSSES - CARRY FORWARD AND SET-OFF OF IN CASE OF CERTAIN COMPANIES

4.107 Change in shareholding pattern : Where both shareholders of assessee viz., FHL and FHHPL, as a group, had beneficially held 51 per cent of voting power and increase in shareholding of FHL in assessee-company, in any case, would not result in change in voting power of shareholders, provisions of section 79 would not be applicable and, therefore, Assessing Officer was to be directed to allow set off brought forward losses - *Hiranandani Healthcare (P.) Ltd. v. Commissioner of Income tax (Appeal), National Faceless Appeal Centre, Delhi* - [2023] 157 taxmann.com 551 (Mumbai - Trib.)

SECTION 80C OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - INVESTMENTS

4.108 Others : Where assessee claimed deduction under section 80C, however, could not produce any evidence in support of his claim, order of Assessing Officer disallowing claim for deduction was to be sustained - *Smt. Geetha Vasan v. Income Tax Officer, Non-Corporate Ward-16(3)* - [2024] 158 taxmann.com 345 (Chennai - Trib.)

SECTION 80GGA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - DONATION FOR SCIENTIFIC RESEARCH OR RURAL DEVELOPMENT

4.109 Reassessment : As per Explanation to section 35-AC(2) as well as Explanation-1 to section 80-GGA(2)(bb), subsequent withdrawal of approval granted to association or institution or subsequent withdrawal of notification notifying eligible project or scheme cannot be sole basis for disentitling assessee to claim deduction in respect of payment made to said association or institution - *Rabi Narayan Bastia v. Deputy Commissioner of Income-tax, Circle-32(2)* - [2024] 158 taxmann.com 115 (Mumbai - Trib.)

SECTION 80GGC OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - POLITICAL PARTIES

4.110 Donations to political parties : Where assessee claimed deduction under section 80GGC for donation made to a political party, since Assessing Officer did not

enquire into details/list of donations received by such party which was available in public domain and such list did not include name of assessee, there was an evident lack of enquiry by Assessing Officer while accepting claim of deduction of donation by assessee, thus, impugned order passed by Principal Commissioner under section 263 was justified - *Rakesh Balubhai Padariya v. Principal Commissioner of Income-tax-3* - [2023] 157 taxmann.com 695 (Ahmedabad - Trib.)

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

4.111 Revision: Where assessee, engaged in civil construction work, claimed deduction under section 80-IA(4) but Principal Commissioner invoked section 263, questioning deduction eligibility and ownership, since Assessing Officer after making thorough scrutiny and acceptance of evidence allowed claim, Principal Commissioner's mechanical invocation of section 263 without considering factual context was unjustified and was to be quashed - *Agarwal Joint Venture v. Commissioner of Income-tax* - [2023] 157 taxmann.com 582 (Ahmedabad - Trib.)

4.112 Conditions precedent : Where assessee, involved in civil construction work, claimed section 80-IA(4) deduction for infrastructure development, despite being termed a contractor in agreements, since various clauses in tender documents demonstrated comprehensive responsibilities and risks shouldered by assessee for project execution, overall nature of work established assessee as a developer, entitling it to section 80-IA(4) benefits - *Agarwal Joint Venture v. Commissioner of Income-tax* - [2023] 157 taxmann.com 582 (Ahmedabad - Trib.)

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

4.113 Setting up of new unit : Where assessee claimed deduction under section 80-IB at rate of 100 per cent in respect of its new unit, since assessee's claim was based on auditor's report and earlier year claim made from basis of audit report of Form 10CCB had not been disturbed, there could not be a case of furnishing of inaccurate particulars and, accordingly, penalty levied under section 271(1)(c) was to be deleted - *Procter & Gamble Hygiene & Healthcare Ltd. v. Joint Commissioner of Income-tax, (OSD) Range-8(2)* - [2024] 158 taxmann.com 183 (Mumbai - Trib.)

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

4.114 Interest income : Interest income earned by a co-operative society on deposits made out of surplus funds with co-operative banks as well as scheduled banks qualifies for deduction both under section 80P(2)(a)(i) and section 80P(2)(d) - *Kolhapur District Central Co-op. Bank Kanista Sevakanchi Sahakar Pat Sanstha Ltd. v. Income Tax Officer, Ward-2(1)* - [2024] 158 taxmann.com 322 (Pune - Trib.)

4.115 Opportunity of hearing : Where Assessing Officer disallowed assessee's claim for deduction under section 80P and Commissioner (Appeals) considering difference between receipts and payments made fresh addition, since assessee was not given opportunity before Commissioner (Appeals) to substantiate its case, Commissioner (Appeals) was to be directed to afford one more opportunity of being heard to assessee - **Central Goods & Service Tax and Employees Thrift and Co-op Credit Society Ltd. v. Income-tax Officer - [2023] 157 taxmann.com 544 (Visakhapatnam - Trib.)**

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

4.116 Elimination of double taxation - Foreign tax credit : Where there is no amendment section 90 with regard to claim of FTC, rule procedures are directory and not mandatory, thus, FTC could not be disallowed for delay in filing Form 67 - **Gaurav Singh v. Income Tax Officer - [2024] 158 taxmann.com 350 (Jabalpur - Trib.)**

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

4.117 Adjustments - General issues : Where assessee entered into international transaction and TPO proposed an adjustment and on assessee's appeal, CIT (A) noted that despite notices, nobody had attended, so he summarily referred to TPO's order and dismissed assessee's appeal, since section 251 does not give any power to CIT (A) dismissing appeal for non-prosecution, issue was remitted to file of CIT (A) - **DSI – Bridgecon India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-7(2) - [2024] 158 taxmann.com 185 (Delhi - Trib.)**

4.118 Illustrations : Where TPO had not proposed any adjustment in international transactions entered into by assessee in purchase/sale of rough and polished diamonds, levy of penalty under section 271G was not justified - **Assistant Commissioner of Income-tax-3(1)(2) v. Eurostar Diamonds India (P.) Ltd. - [2024] 158 taxmann.com 410 (Mumbai - Trib.)**

4.119 Adjustment : Where TPO determined ALP of payment made by assessee towards 'intra-group services' at Rs. Nil on ground that assessee failed to demonstrate that it had received services or that it had benefited from such services as claimed, since assessee could not file all documents before TPO due to short period of time allowed and Covid-19 pandemic, additional evidences filed by assessee after TPO proceedings were to be admitted and matter was to be remanded back for fresh adjudication - **Limagrain India (P.) Ltd. v. National Faceless Assessment Centre - [2024] 158 taxmann.com 548 (Indore - Trib.)**

4.120 Comparables, functional similarity - Information technology enabled services (ITeS) : Where

assessee-company was engaged in rendering IT enabled services to its AEs as a captive services provider, a company engaged in diversified activity of medical transcription, medical coding, billing and receivable management could not be accepted as a valid comparable - **Google India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-11(3), Bangalore - [2024] 158 taxmann.com 297 (Bangalore - Trib.)**

4.121 Comparables, functional similarity - Information technology enabled services (ITeS) : Where assessee-company was engaged in rendering IT enabled services to its AEs, a company engaged in diversified activity of providing services including analytic services and data process solutions to its global clients could not be accepted as a valid comparable - **Google India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-11(3), Bangalore - [2024] 158 taxmann.com 297 (Bangalore - Trib.)**

4.122 Comparability factors - Abnormal events : A company which had gone through an extraordinary event of amalgamation during relevant year could not be accepted as a good comparable to assessee - **Google India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-11(3), Bangalore - [2024] 158 taxmann.com 297 (Bangalore - Trib.)**

4.123 Permanent Establishment - DAPE : Where assessee entered into an agreement with its AE, Google Ireland Ltd. (GIL) for marketing and distribution of Ad Word programs for distributing online advertisement space to advertisers in India, since distribution agreement between assessee and GIL as well as Standard Contract entered into by assessee with advertisers in India did not contain any clauses that could lead to conclusion that assessee had any authority to bind GIL, assessee could not be treated as dependent agent PE of GIL and thus, distribution fees paid to GIL was not liable for TDS under section 195 - **Google India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-11(3), Bangalore - [2024] 158 taxmann.com 297 (Bangalore - Trib.)**

4.124 Royalties/Fees for technical services - Advertising fee : Income from sale of advertisement space on a website is not taxable in India if there is no PE of foreign enterprise in India and such income is not to be regarded as royalty or FTS - **Google India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-11(3), Bangalore - [2024] 158 taxmann.com 297 (Bangalore - Trib.)**

4.125 Comparables, functional similarity- General : Where Tribunal in case of assessee for A.Ys. 2011-12 and 2012-13, treated assessee as BPO/KPO whereas while deciding appeal for A.Y. 2014-15, Tribunal held that assessee was not a KPO / ITeS, said issue was required to be examined afresh by TPO on basis of agreements entered by assessee with its AEs and functions performed and based on above said data, TPO would adjudicate and decide whether assessee was a ITeS / KPO / high end BPO or merely low end BPO - **Hyundai Motor India Engineering (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-2(1) - [2024] 158 taxmann.com 321 (Hyderabad - Trib.)**

4.126 Comparability factors - Renedition of services : Once availing of various services from the AEs is duly substantiated by the documentary evidence and the cost allocation among the group companies is also on the basis of a well-accepted allocation key method, there is no basis in upholding the transfer pricing adjustment made by the TPO/AO - **Michael Page International Recruitment (P.) Ltd. v. Deputy Commissioner of Income-tax, 14(2)(2) - [2024] 158 taxmann.com 486 (Mumbai - Trib.)**

4.127 Adjustments : Where TPO made adjustment to value of assessee's international transactions of management services fees by determining its arm's length price at 'NIL', since Tribunal in assessee's own case in earlier year held that management support services were actually rendered and were not in nature of stewardship or shareholder activities, addition made by TPO was to be deleted - **Deputy Commissioner of Income-tax, Circle-1(1)(1) v. INA Bearing India (P.) Ltd. - [2024] 158 taxmann.com 487 (Ahmedabad - Trib.)**

4.128 Adjustments- Depreciation : Depreciation is a part of operating costs not only of assessee but also of comparables in process of determining operating profit under TNMM and as such, there can be no question of excluding depreciation from ambit of operating costs for purpose of determining operating profit - **Deputy Commissioner of Income-tax, Circle-1(1)(1) v. INA Bearing India (P.) Ltd. - [2024] 158 taxmann.com 487 (Ahmedabad - Trib.)**

4.129 Adjustment - Aggregation of transactions : Where assessee had entered into international transactions including payment of royalty to its AE and applied TNMM at entity level after aggregating all international transactions but TPO had concluded that royalty should be separately benchmarked, since assessee's margins had been computed including royalty payment which was higher than margin of comparables and in case of comparables, margins were computed after including royalty and research and development expenses, no separate adjustment for royalty was required - **Toyota Kirloskar Motor (P.) Ltd. v. Assistant Commissioner of Income-tax, LTV, Circle 2 - [2024] 158 taxmann.com 79 (Bangalore - Trib.)**

4.130 Adjustments - Reimbursement of expenses : Where assessee had reimbursed expenditure incurred by its Sri Lankan AE being cost overrun on execution of power project in Sri Lanka and TPO made an adjustment at 80 per cent of total cost overrun expenses remitted by assessee for reason that assessee held 80 per cent equity shares in Sri Lankan AE, since TPO was required to determine ALP by following one of method prescribed, issue was to be remitted back to TPO for determination of ALP of transaction of reimbursement of expenses and recomputed TP adjustment, if any - **Larsen & Toubro Ltd. v. Deputy Commissioner of Income-tax, Range 2(2) - [2024] 158 taxmann.com 83 (Mumbai - Trib.)**

4.131 Adjustments - Others : Where assessee claimed it provided specific services to its head office/foreign branches and as per article 7 of DTAA same was to be accounted for on cost basis alone, since payment was made for banking charges, it was case of TP adjustment and not a case of determination of taxability of income in international taxation, and thus, provisions of Article 7(3) of India-Canada DTAA were not applicable and upward addition made by TPO with respect to said charges was to be upheld - **Bank of Nova Scotia v. Assistant Director of Income-tax (IT)-3(2) - [2024] 158 taxmann.com 82 (Mumbai - Trib.)**

4.132 Comparability factors - Others : Where assessee entered into contract with telecom operators in India or abroad to provide certain services, since TPO had not considered agreements between assessee and its AE and nature of transaction entered, in interest of justice, this issue was remanded back to AO/TPO to consider the claim of assessee by analysing all the details vis-à-vis the contract - **OnMobile Global Ltd. v. Deputy Commissioner of Income-tax, Circle-5(1)(2) - [2024] 158 taxmann.com 347 (Bangalore - Trib.)**

4.133 Comparability factors - Turnover filter : Turnover filter could not be applied as a tool for cherry picking comparables at later stage after completion of search process with object of excluding comparables which were otherwise found to be functionally comparables after Functions Assets Risks (FAR) Analysis - **DNV Business Assurance India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle 14(1)(2) - [2024] 158 taxmann.com 263 (Mumbai - Trib.)**

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

4.134 Illustrations : Where Assessing Officer passed final assessment order without incorporating DRP's directions, matter was to be remitted to Assessing Officer to pass order incorporating DRP's directions - **Hitachi Astemo Haryana (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 158 taxmann.com 25 (Delhi - Trib.)**

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

4.135 Finance Act, 2016 amendment : Amendment made on 15.12.2016 in section 115BBE by Finance Act, 2016, enhancing rate of tax to 60 per cent would apply to entire previous year 2016-17 relevant to assessment year 2017-18 - **Gaurav Ajmera v. Deputy Commissioner of Income-tax, Central Circle 2 - [2024] 158 taxmann.com 294 (Indore - Trib.)**

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

4.136 Computation of book profits : Where assessee incurred revenue expenditure during relevant year which was treated as deferred expenditure under intangible assets for write off over next few years and only a part had been shown and debited in profit and loss account, since tax liability had been

computed under section 115JB, book profit had to be determined in terms of Part II of Schedule VI of Companies Act which necessarily include book profit after allowing deduction for whole of revenue expenditure - *M/s Venus Remedies Ltd. v. Assistant Commissioner of Income-tax, Circle 5(1) - [2024] 158 taxmann.com 459 (Chandigarh - Trib.)*

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

4.137 Illustration : Where AO had put reasons for picking of case of assessee for scrutiny and had sought all replies pertaining to issue as per criteria for scrutiny selection, it could not be said that AO had expanded scope of limited scrutiny without prior permission, therefore, order passed by Assessing Officer under section 143(3) was to be sustained - *Kanti Commercial (P.) Ltd. v. ACIT - [2023] 157 taxmann.com 447 (Delhi - Trib.)*

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

4.138 Where no incriminating material was found during search action at assessee's residential premises, in such circumstances, authorized officer could not exceed his jurisdiction u/s 132 (4) by requiring assessee to explain Xerox copies of sheets which were in possession of revenue as a result of search u/s 132 in other group cases *Ravi Badalia v. Dy. CIT/ACIT, Central Circle 4(1) - [2024] 158 taxmann.com 373 (Kolkata - Trib.)*

4.139 Loose sheet recovered in an unconnected earlier search action from premises of third party cannot be brought in and used to confront assessee during course of search action - *Ravi Badalia v. Dy. CIT/ACIT, Central Circle 4(1) - [2024] 158 taxmann.com 373 (Kolkata - Trib.)*

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

4.140 Where assessee initially filed original return on 30-10-2019 within extended due date and later revised it on 15-1-2020, denial of current year's loss by CPC, treating revised return as original was not correct - *Khadi Grammodhyog Prathisthan v. Assistant Director of Income-tax, CPC - [2024] 158 taxmann.com 517 (Jodhpur - Trib.)*

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

4.141 Where assessee sought award for cost of filing instant appeal on account of revenues' negligence in misinterpreting nature of return, since appeal of assessee had been disposed under faceless regime, revenue could not be made responsible in said situation and thus, no cost could be granted to assessee - *Khadi Grammodhyog Prathisthan v. Assistant Director of Income-tax, CPC - [2024] 158 taxmann.com 517 (Jodhpur - Trib.)*

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

4.142 Limitation period : Where impugned order was passed on 1-8-2022, i.e. beyond one month from end of month in which directions of DRP were received by Assessing Officer, on 14-6-2022, in view of provisions of section 144C(13) read with rule 11 of Income Tax (Dispute Resolution Panel) Rules, 2009, impugned order was to be quashed as being barred by limitation - *Lubrizol Advanced Materials India (P.) Ltd. v. Assessment Unit (Income Tax Department) - [2024] 158 taxmann.com 405 (Mumbai - Trib.)*

4.143 Passing assessment order without DIN : Order passed by the DRP without a valid computer-generated Document Identification Number (DIN) and quoted in body of the order was illegal and non-est and deemed to have never been issued and, consequently, assessment order passed by Assessing Officer in pursuance to DRP's order was bad in law and liable to be quashed - *Sutherland Global Services Inc. v. ACIT/DCIT, (IT), Circle 2(2) - [2024] 158 taxmann.com 11 (Chennai - Trib.)*

4.144 Passing assessment order : Where draft of assessment order had been passed on 04-03-2022 but assessee filed objections before DRP on 06-04-2022, i.e., after due date of time allowed for filing of objections before DRP, final assessment order having been passed on 27.12.2022 though due date of passing assessment order was 31-5-2022, was barred by limitation, and hence, treated as void - *Mavenir UK Holdings v. Assistant Commissioner of Income tax, Circle INT Tax 2(2)(1), IT - [2024] 158 taxmann.com 238 (Delhi - Trib.)*

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

4.145 Net profit rate : Where assessee prepared books of account duly adhering to accounting standards and same were duly audited by statutory auditor and no defect had been pointed out in purchases or closing stock or creditors or debtors reported by assessee, merely because net profit had declined, Assessing Officer could not reject books of accounts by invoking section 145(3) - *Assistant Commissioner of Income-tax, Circle-63(1) v. Friends Medicos - [2024] 158 taxmann.com 348 (Delhi - Trib.)*

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

4.146 Only those assessments or reassessments shall abate which are pending on date of initiation of search u/s 132 - *Ravi Badalia v. Dy. CIT/ACIT, Central Circle 4(1) - [2024] 158 taxmann.com 373 (Kolkata - Trib.)*

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

4.147 Assessing Officer has to adhere to provisions of section 153C while relying upon material seized during search in case of third party - *Ravi Badalia v. Dy. CIT/ACIT, Central Circle 4(1) - [2024] 158 taxmann.com 373 (Kolkata - Trib.)*

SECTION 194B OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - WINNINGS FROM LOTTERY OR CROSSWORD PUZZLE

4.148 Revision : IT Where assessee-company, engaged in business of providing online games service, deducted TDS on winning amount paid to players of game of Rummy, when prize money paid was more than Rs. 10,000 as per provisions of section 194B, since Assessing Officer had not examined or verified details furnished by assessee regarding deduction of tax as per provisions of section 194B, Commissioner was justified in setting aside assessment order for limited purpose of examining issue of deduction of TDS under section 194B - **Play Games24x7 (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 158 taxmann.com 484 (Mumbai - Trib.)

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

4.149 JV and its constituents : Where assessee-JV received work contract which was executed by its constituents independently, since assessee fulfilled attributes stated in CBDT Circular No. 7/2016 whereby JVs were not to be treated as an AOP so as to avoid income tax disputes, and further, there did not exist a relationship of a contractor and sub-contractor within meaning of section 194C between assessee and its constituent, assessee was not required to deduct TDS under section 194C on payment made to its constituent for executing work contract - **Ramky ECI JV v. Income-tax Officer(TDS)** - [2024] 158 taxmann.com 167 (Kolkata - Trib.)

4.150 EDC Charges : Payment made by assessee-society with respect to external development charges (EDC) to GMADA, development authority were not out of contractual obligations and would not attract section 194C - **Punjab IAS & PCS Officers House Building Society Ltd. v. Income Tax Officer (TDS)** - [2024] 158 taxmann.com 293 (Chandigarh - Trib.)

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

4.151 Discount : Where assessee filed rectification application contending that since it had already deducted taxes at source on trade discounts under section 194H, it could not be held to be an assessee in default under section 200, since department had not analysed this aspect/ contention of assessee, matter was to be restored back for necessary verification - **Bharat Sanchar Nigam Ltd. v. Deputy Commissioner of Income Tax** - [2024] 158 taxmann.com 516 (Rajkot - Trib.)

4.152 Payment by JV to its constituent : Where assessee JV received contract which was executed by its constituents independently and assessee paid

compensation to its constituent, since compensation paid by assessee JV was not for acting on behalf of JV for any service, and further, there were no services taken by JV in course of buying or selling of goods nor there was any transaction relating to any asset, valuable articles or thing, accordingly, said payment made by assessee to constituent was not in nature of commission and section 194H was not attracted - **Ramky ECI JV v. Income-tax Officer(TDS)** - [2024] 158 taxmann.com 167 (Kolkata - Trib.)

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

4.153 General : In case the assessee has not claimed double deduction of credit of TDS, then the assessee is entitled to claim deduction of TDS in the year in which the corresponding income has been offered to tax by the assessee and the assessee has raised invoices on the payer - **Adroit Structural Engineers (P.) Ltd. v. Assistant Director of Income-tax** - [2024] 158 taxmann.com 134 (Ahmedabad - ITAT)

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

4.154 Where assessee a 74 years old person being unfamiliar with digital systems and unaware of faceless assessment scheme discovered NFAC's order through a penalty notice message and thereafter, consulting an advocate, he took steps to file appeal before this Tribunal which resulted in 424 days delay in filing appeal before this Tribunal, since assessee had shown sufficient cause for delay in filing appeals before Tribunal, accordingly, delay was to be condoned - **Marate Venkateshkumar v. Income Tax Officer, Ward-1(6)** - [2024] 158 taxmann.com 116 (Bangalore - Trib.)

4.155 Maintainability of : Where revenue against order of Commissioner (Appeals) filed appeal before Tribunal, since Corporate Insolvency Resolution Proceedings were pending against assessee, for time being, instant appeal could not be proceeded with - **ACIT v. Unijules Life Sciences Ltd.** - [2024] 158 taxmann.com 156 (Nagpur - Trib.)

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

4.156 Power to recall and to pass any order : Where assessee's counsel made a submission that assessee did not want to press ground No. 1, it meant that decision of non-pressing was taken by assessee himself and counsel had simply made a statement conveying assessee's decision and, thus, withdrawal/non-pressing of ground by counsel was within power and authority of assessee and, therefore, impugned order passed by Tribunal dismissing assessee's application being not pressed by assessee did not suffer from any mistake apparent from record to be rectified under section 254(2) - **Dhanwan Leasing and Finance Co. Ltd. v. Income Tax Officer, Ward 2(2)** - [2024] 158 taxmann.com 44 (Indore - Trib.)

**SECTION 269SS OF THE INCOME-TAX ACT, 1961 -
DEPOSITS - MODE OF TAKING/ACCEPTING**

4.157 Payment for immovable property : Where assessee received payment in cash for sale of immovable property, and AO opined that it resulted in violation of provisions of section 269SS and, therefore, imposed penalty U/s. 271D, since cash received by assessee had been deposited by assessee into bank account, there was no suppression of cash receipts by assessee and assessee had also offered capital gains to tax, penalty was unsustainable in law - **Smt. Vijapurapu Sudha Rao v. Income Tax Officer, Ward-3(1)** - [2023] 157 taxmann.com 669 (Visakhapatnam - Trib.)

**SECTION 269T OF THE INCOME-TAX ACT, 1961 -
DEPOSITS - MODE OF REPAYMENT OF CERTAIN**

4.158 Loans : Where assessee made repayment of loan in cash for reasons that she was insisted by financier of loan to do so due to poor track record of clearance of cheque and also she was ignorant of provisions of section 269T, since there were multiple other methods of repayment of loan envisaged in section 269T apart from payment through cheque and assessee had failed to come forth with any reasonable cause for such payment in cash, impugned penalty under section 271E imposed upon her was justified - **Kamaljeet Kaur Gill v. Joint Commissioner of Income-tax** - [2023] 157 taxmann.com 446 (Raipur - Trib.)

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

4.159 Penalty notice : A mere defect in the notice - not striking off the irrelevant matter, would vitiate the penalty proceeding - **S Sagar Enterprise v. Deputy Commissioner of Income-tax, Central Circle 1(1)** - [2024] 158 taxmann.com 5 (Mumbai - Trib.)

4.160 Where AO had failed to discharge his statutory obligation of fairly putting assessee to notice as regards default for which penalty under section 271(1)(c) was sought to be imposed on him by clearly and explicitly pointing out specific defaults in SCN(s), penalty imposed by AO under section 271(1)(c) imposed being in clear violation of mandate of section 274(1) was to be deleted - **Prashant Manohar Bhagwat v. Income-tax Officer-1(2)** - [2024] 158 taxmann.com 596 (Raipur - Trib.)

**SECTION 271E OF THE INCOME-TAX ACT, 1961 -
PENALTY - FOR FAILURE TO COMPLY WITH
SECTION 269T**

4.161 Payment through adjustment : Where assessee received Rs. 6.38 lakhs as unsecured loan from a party and stated that during year he sold goods worth Rs. 6.38 lakhs to said party and adjusted sale consideration against amount standing to credit of party, since explanation of assessee had been rejected merely on

basis of apprehension, levy of penalty under section 271E deserved to be set aside - **Gurinder Makkar v. Deputy Commissioner of Income-tax** - [2024] 158 taxmann.com 155 (Chandigarh - Trib.)

**SECTION 271G OF THE INCOME-TAX ACT, 1961 -
TRANSFER PRICING - PENALTY FOR FAILURE TO
FURNISH INFORMATION OR DOCUMENT UNDER
SECTION 92D**

4.162 No penalty under Section 271G can be imposed if neither Assessing Officer during assessment nor Commissioner of Income Tax (Appeals) during appellate proceedings requested specific information or documents under section 92D(3) from assessee - **Tapi Jwil JV v. Income Tax Officer, Ward-62(4)** - [2024] 158 taxmann.com 433 (Delhi - Trib.)

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

4.163 Authentication of notice : Signing of an assessment order by AO is a mandatory requirement and not merely a procedural formality and thus, would not be a curable procedural defect which could be fixed by signing of order after same was serviced to assessee - **Reuters Asia Pacific Ltd. v. Deputy Commissioner of Income-tax, International Tax Circle - 4(1)(1)** - [2023] 157 taxmann.com 705 (Mumbai - Trib.)

4.164 Validity of : Where assessee challenged show-cause notice, arguing it was legally invalid as it was affixed at registered office instead of correspondence address, violating principles of natural justice, however, it was found that notice was issued on registered office address, consistent with information in return of income and last correspondence, and aligned with Permanent Account Number, there was no violation of principles of natural justice in serving notice - **Maharaja Corporate Services (P.) Ltd. v. Income Tax Officer, Ward-2(1)(4)** - [2024] 158 taxmann.com 42 (Ahmedabad - Trib.)

Union Budget 2024-2025 Key Announcements

By CA. Subhash Saraf
Mr. Raman Batra & Mr. Vikky Agarwal

DIRECT TAXES

- No changes in Income Tax Slabs
- No change in tax rates for Company, LLP or any other person
- Tax break for startups, investment made by sovereign wealth funds extended to 31st March 2025
- Focus on improving ease of tax return filing & processing
- Finance Minister proposes some tax benefits for pension funds
- The finance minister, in her budget speech, has proposed the withdrawal or waiver of small, unresolved, unverified, or disputed direct tax demands related to financial years up to 2014-15. This initiative aims to address concerns related to demands amounting to Rs. 25,000 for the period up to financial year 2009-10 and Rs. 10,000 for financial years 2010-11 to 2014-15

Extension of Due Dates –

Section	Clause Reference	Provision to extend the sunset date to 31st March 2025 from 31st March 2024
Sec 10	Clause 4D	"investment division of offshore banking unit" means an investment division of a banking unit of a non-resident located in an International Financial Services Centre, as referred to in sub-section (1A) of section 80LA and which has commenced its operations on or before the 31st day of March, 2025
Sec 10	Clause 4D	investment division of an offshore banking unit, which has been— (I) granted a certificate of registration as a Category-I foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and which has commenced its operations on or before the 31st day of March, 2025
Sec 10	Clause 4F	any income of a non-resident by way of royalty or interest , on account of lease of an aircraft 45[or a ship] in a previous year, paid by a unit of an International Financial Services Centre as referred to in sub-section (1A) of section 80LA, if the unit has commenced its operations on or before the 31st day of March, 2025.
Sec 10	Clause 23FE	any income of a specified person in the nature of dividend, interest 9[, any sum referred to in clause (xii) of sub-section (2) of section 56] or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit, if the investment— (i) is made on or after the 1st day of April, 2020 but on or before the 31st day of March, 2025

Sec 80-IAC	"eligible start-up" means a company or a limited liability partnership engaged in eligible business which fulfils the following conditions, namely:— (a) it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2025 ;
Sec 80LA	The income referred to in sub-section (1) and sub-section (1A) shall be the income- arising from the transfer of an asset, being an aircraft or a ship, which was leased by a unit referred to in clause (c) to a person, subject to the condition that the unit has commenced operation on or before the 31st day of March, 2025.
Sec 92CA	The Central Government may, for the purpose of giving effect to the scheme made under sub-section (8), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification: Provided that no direction shall be issued after the 31st day of March, 2025.
Sec 144C	The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14B), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification: Provided that no direction shall be issued after the 31st day of March, 2025.
Sec 253 (9)	The Central Government may, for the purpose of giving effect to the scheme made under sub-section (8), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification: Provided that no direction shall be issued after the 31st day of March, 2025.
Sec 255	The Central Government may, for the purposes of giving effect to the scheme made under sub-section (7), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply to such scheme or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification: Provided that no such direction shall be issued after the 31st day of March, 2025.

Rates of TCS for Remittances

Type of remittance	Up to 30-09-2023		On or after 01-10-2023	
	Threshold for no collection of tax	TCS from remittance in excess of the threshold	Threshold for no collection of tax	TCS from remittance in excess of the threshold
Remittance for the purpose of education out of a loan obtained from any financial institution	Rs. 7 lakhs	0.5%	Rs. 7 lakhs	0.5%
Remittance for the purpose of education (other than referred to above)	Rs. 7 lakhs	5%	Rs. 7 lakhs	5%
Remittance for the purpose of medical treatment	Rs. 7 lakhs	5%	Rs. 7 lakhs	5%
Remittance under LRS for any other purpose	Rs. 7 lakhs	5%	Rs. 7 lakhs	20%
Sale of overseas tour program package	Nil	5%	Rs. 7 lakhs	5%
			Exceeding Rs. 7 lakhs	20%

INDIRECT TAXES

GST & Custom Rates

- No changes in GST/ Custom Rates

Input Service Distributor

- The definition of "Input Service Distributor" is revised to mean an office of the supplier that receives tax invoices for input services and is responsible for distributing input tax credit.
- Any office receiving tax invoices for input services on behalf of distinct persons must register as an Input Service Distributor and distribute the input tax credit as prescribed.
- The manner of distribution, time limit, and other conditions for the distribution of central or integrated tax credits shall be prescribed

Insertion of New Section 122A - Penalty for Failure to Register Certain Machines notified u/s 148

- A penalty of one lakh rupees is imposed for each machine not registered as notified under section 148 (being used for special procedures for goods manufacturing).
- Provides for the seizure and confiscation of unregistered machines, except when the penalty is paid, and registration occurs within three days of penalty communication.

Amendment in Section 43B of Income-Tax Act related to MSME's

- SHAH RAVI & CO

“If you think compliance is expensive, try non-compliance”

Compliance Requirement Under

1. Income Tax Act, 1961
2. MSMED ACT 2006

Amendment in Section 43B Of Income Tax Act Related To MSMEs

Let us First Understand the MSMED Act 2006 and definition of micro,small and medium Enterprises.

The Micro, Small, and Medium Enterprises Development (MSMED) Act, 2006 is a significant piece of legislation in India aimed at promoting the growth and development of micro, small, and medium enterprises (MSMEs).

Definition of Micro,Small and Medium Enterprises

Micro Enterprises → Investment in Plant and Machinery or equipment does not exceed 1 crore and turnover doesnot exceed 5 crores.

Small Enterprises → Investment in Plant and Machinery or equipment does not exceed 10 crore and turnover doesnot exceed 50 crores.

Medium Enterprises→ Investment in Plant and Machinery or equipment does not exceed 50 crore and turnover doesnot exceed 250 crores.

Now lets get a overview of sec 43B of income Tax act and its relation with MSME enterprises.

SECTION 43B

Section 43B of the Income Tax Act 1961 is a provision that allows certain statutory expenses to be claimed as deduction from the business income only in the previous year of actual payment and not in the year of accrual. This provision applies to profits and gains of business or profession . Some of the expenses covered by this section are tax, duty, cess, fee, interest on loans, bonus or commission to employees, etc.

However if the payment is made before due date of filling of income tax return as per section 139(1) then also the assessee can claim the expenses mentioned in 43B (except expense mentioned in clause (h) as deduction in the previous year.

As per the recent Amendment in Finance bill 2023 a new **clause (h)** has been added in sec 43B.

Section 43B (h): “any sum payable by the assessee to a MICRO or SMALL enterprise beyond the time limit specified in 15 of the Micro, Small and Medium Enterprises Development Act, 2006,”

The mentioned above clause shows that the payment will need to be made under the specified time duration mentioned in section 15 of the Micro, Small, and Medium Enterprises Development Act, 2006 for qualifying the claim deduction of the sum liable to get paid to the micro and small enterprises.

Section 15 of MSMED ACT 2006

Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing (in case where there is written agreement)

Or,

Where there is no agreement in this behalf, before the **appointed day**.

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed 45 days from the day of acceptance or the day of deemed acceptance.

APPOINTED DAY

The day following immediately after the expiry of the period of fifteen days from the

(i) Day of acceptance, or

(ii) Day of deemed acceptance of any goods or any services by a buyer from a supplier.

THE DAY OF ACCEPTANCE

The day of the actual delivery of goods or the rendering of services;

where any objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier (objection within 15 days is mandatory)

THE DAY OF DEEMED ACCEPTANCE

The day of the actual delivery of goods or the rendering of services;

Where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services

Example:

In case where there is a written Agreement between micro ,small enterprises and assessee

If Agreement is of 20 days→Payment is to be made within 20 days from the receipt of Goods/services.

If Agreement is of say ,60 days→Payment is to be made within 45 days from the receipt of Goods/services.

(in simple words payment need to be done in 45 days to claim deduction in previous year)

In case where there is no written Agreement between micro, small enterprises and assessee

Payment is to be made within 15 days from the receipt of Goods/services.

SECTION 16 (Consequences of Delay in payment)

Where the assessee fails to make payment within the period mentioned in section 15 (45 days,15 days,20 days as per the example) he is liable to pay compound interest with monthly rest to the supplier from the appointed date having a intrest rate of 3 times the RBI interest rate.

This interest is never allowed as deduction for the purpose of computing income tax (Section 23).

EXAMPLE :

Date of delivery of Goods/services	Agreement (yes/no)	Agreed Date	Date in Case of No Agreement	Amount	Payment Date	Allowance
01-04-2023	Yes	01-05-2023	_	12,00,000	31-03-2024	FY 23-24
01-04-2023	Yes	01-05-2023	_	12,00,000	01-05-2023	FY 23-24
01-04-2023	Yes	01-05-2023	_	12,00,000	01-04-2024	FY 24-25
01-04-2023	No	_	16-04-2023	12,00,000	16-04-2023	FY 23-24
01-04-2023	No	_	16-04-2023	12,00,000	01-04-2024	FY 24-25
12-07-2023	Yes	26-08-2023	_	12,00,000	4,00,000 paid 31/10/2023 and remaining 8,00,000 on 15/04/2023	FY 23-24 4,00,000 FY 24-25 8,00,000
31-03-2024	No	_	15-04-2024	12,00,000	15-04-2024	FY 23-24
31-03-2024	No	_	15-04-2024	12,00,000	20-04-2024	FY 24-25
31-03-2024	Yes	_	14-05-2024	12,00,000	14-05-2023	FY 23-24

Conclusion:

In case where the agreement is of 45 days then payment on 14/05/2024 will result in claiming deduction in FY 23-24.

In case there is no agreement then payment on 15/04/2024 will result in claiming deduction in FY 23-24.

The amendment is aimed that micro,small enterprises receive their payment on time and is expected to provide a boost to the sector.

It is a welcome move for the micro and small enterprises ,as it will help them to manage their cash flow better and improve their financial stability.

THANKYOU

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GST & INDIRECT TAXES

1. STATUTORY UPDATES

- 1.1** Due date for filing GSTR-3B for November, 2023 extended for several districts of Tamil Nadu - **Notification No. 01/2024 – CENTRAL TAX, Dated 05-01-2024**

Editorial Note : The CBIC has issued a notification to further extend the due date for furnishing the return in FORM GSTR-3B for the month of November, 2023 till 10th January, 2024, for the registered persons whose principal place of business is in the districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.

- 1.2** CBIC extends due date of GSTR-9 and GSTR-9C for several districts of Tamil Nadu - **Notification No. 02/2024 – CENTRAL TAX, Dated 05-01-2024**

Editorial Note : The CBIC has issued a notification to extend the due date for furnishing of GSTR-9 and GSTR-9C for the financial year 2022-2023 till 10th January, 2024, for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.

- 1.3** CBIC notified special procedure for persons engaged in manufacturing of Pan Masala & Tobacco products from 01.04.2024 - **Notification No. 04/2024- Central Tax, Dated 05-01-2024**

Editorial Note : The CBIC has notified special procedure which shall be followed by registered persons engaged in manufacturing of Pan Masala & Tobacco products from 01.04.2024.

- 1.4** Govt. constitutes the Principal Bench of the Goods and Services Tax Appellate Tribunal at New Delhi - **NOTIFICATION NO. S.O. 1(E). DATED 29-12-2023**

Editorial Note : The Central Government constitutes the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi. In this regard, notification has been issued.

- 1.5** Rs. 14.97 lakh crores gross GST collection during April-December 2023 period: Press Release

Editorial Note : The gross GST revenue collected in the month of December, 2023 is Rs. 1,64,882 crores. During the April-December 2023 period, gross GST collection witnessed a robust 12% y-o-y growth, reaching Rs. 14.97 lakh crores as against Rs. 13.40 lakh crores collected in the same period of the previous year.

- 1.6** GSTN issued advisory on filing of online declaration in Annexure V and Annexure VI for GTA Taxpayers

Editorial Note : The GSTN has issued an advisory to inform that online filing in Annexure V Form and Annexure VI Form is available on the portal for the existing GTA taxpayers for filing declaration in Annexure V Form or Annexure VI Form for the succeeding FY 2024-25 from 01.01.2024 to 31.03.2024.

- 1.7** GSTN issued advisory on payment through Credit Card/Debit Card and Unified Payments Interface

Editorial Note : The GSTN has issued an advisory to inform that two new facilities of payment have now been provided under e-payment in addition to net-banking. The two new methods are Debit or Credit Cards and Unified Payments Interface (UPI).

- 1.8** GSTN issues new advisory on furnishing bank account details by registered taxpayers under Rule 10A

Editorial Note : The GSTN has issued an advisory for taxpayers to promptly furnish their bank account details, who have not provided it to avoid disruption in business activities and the subsequent suspension of GST.

2. SUPREME COURT

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

- 2.1 Writ petition filed under Article 32 of Constitution challenging constitutional validity of provisions of para 2 of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as applicable to valuation of construction services could not be entertained by Supreme Court; petitioner was given liberty to approach High Court - **Zonasha Estates & Projects v. Union of India** - [2024] 158 taxmann.com 140 (SC)

RULE 36 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - DOCUMENTARY REQUIREMENTS AND CONDITIONS FOR CLAIMING INPUT TAX CREDIT

- 2.2 In terms of proviso to Rule 36(4) of CGST Rules, 2017, benefit of cumulative adjustment instead of monthly adjustment was to be available during period February, 2020 to August, 2020 - **State of Uttar Pradesh v. Vivo Mobile India (P.) Ltd.** - [2024] 158 taxmann.com 276 (SC)

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

- 2.3 Where assessee executed work contracts for GAIL in State of West Bengal and mobilizing machine which was required for execution of said work contracts was intercepted as transportation was not done within validity period of E-way bill, assessee cannot shirk from its responsibility of complying with requirement in law to generate a fresh E-way bill, if for any reason consignment had not been transported, since there was an e-way bill that was generated, penalty amount was to be reduced to 50 % of penalty imposed and tax imposed by revenue was to be upheld - **Vardan Associates (P.) Ltd. v. Assistant Commissioner of State Tax.** - [2024] 158 taxmann.com 89 (SC)

3. HIGH COURT

SECTIONS 2(91) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PROPER OFFICER

- 3.1 Where during inspection/search of premises of assessee an amount of Rs. 40 lakh were deposited by assessee, and assessee had informed about same to proper officer in Form GST DRC-03, writ of assessee alleging coercion by intelligence officer to make such payment under threat of arrest was to be dismissed - **R.C. Infra Digital Solutions v. Union of India** - [2024] 158 taxmann.com 272 (Allahabad)

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

- 3.2 Proceedings on basis of search and seizure by State authorities, being prior in point of time and all proceedings being interrelated, State authorities should continue with proceedings, therefore, Preventive Wing of CGST and DGGI Wing of CGST, shall forward all their investigation carried out as against petitioner and inter-related transaction to State authorities, who shall continue with proceedings from same stage - **Vivek Narsaria v. State of Jharkhand** - [2024] 158 taxmann.com 523 (Jharkhand)

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

- 3.3 Writ petition challenging show cause notice/ass.t order issued raising demand of GST on royalty paid to Mining Department towards mining lease was to be dismissed in view of order passed by Jaipur Bench in Sudershan Lal Gupta v. Union of India [2022] 143 taxmann.com 147 (Raj.), wherein it was held that imposition of GST on royalty is not liable to be interfered with - **Smt. Minaxi Kanwar v. Union of India** - [2024] 158 taxmann.com 635 (Rajasthan)
- 3.4 Where assessee filed writ petition challenging notice issued by respondent State Tax Officer in Form GST DRC-01 alleging short payment of GST, High Court declined to interfere with said notice and assessee was at liberty to reply to impugned show cause notice and raise all objections in respect thereof, whereas respondent was to be directed to consider all such objections before taking a decision in matter - **KPR Concrete Readymix v. State Tax Officer** - [2024] 158 taxmann.com 301 (Madras)
- 3.5 Where assessee filed writ petition challenging three separate assessment orders relating to financial years 2017-18, 2018-19 and 2019-20, concerning issues of (i) suppression of purchases by not availing available Input Tax Credit (ITC); (ii) payment of performance linked incentives to two persons who held office as whole time directors of company; and (iii) discrepancies relating to E-way bills, since impugned orders were not issued after taking relevant aspects into consideration, matter was to be remanded back to Assessing Officer for fresh consideration - **Global Calcium (P.) Ltd. v. Assistant Commissioner (ST)** - [2024] 158 taxmann.com 555 (Madras)

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

- 3.6 Composite supply of sale of applications for registration of course, inspection, etc., with "principal supply of affiliation" by university to its constituent colleges is not exempted under Entry No.66 of Notification No.12/2017 - Central Tax (Rate) as said entry only deal with is confined only to services relating to admission to, or conduct of examination by educational institution and not to services relating to affiliation of constituent colleges - **Sree Ramu College of Arts and Science v. Authority for Clarification and Advance Ruling - [2024] 158 taxmann.com 417 (Madras)**
- 3.7 Services rendered in relation to 'agricultural produce' by way of loading, unloading, packing, storage or warehousing are exempt from GST under Sl.No.54(e) of Notification No.12/2017-Central Tax (Rate), regardless of whether produce was intended for primary market - **Naga Ltd. v. Puducherry Authority for Advance Ruling - [2024] 158 taxmann.com 306 (Madras)**
- 3.8 Solid waste management undertaken for municipality is exempted from GST; Assessing Authority to consider matter afresh after setting aside orders passed based on TDS made under Income Tax Act - **Mahavir Sharmik and Nirman Swalambi Sahkari Samiti Ltd. v. State of Bihar - [2024] 158 taxmann.com 496 (Patna)**

SECTION 12 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - TIME OF SUPPLY OF GOODS

- 3.9 Petitioner, a public limited company engaged in manufacture and sale of ornaments in India formulated a sales promotion scheme using Gift Vouchers, sold both in retail outlets and online, as per section 12(4) for identified goods specified in vouchers, tax is payable at issuance, while for unspecified goods, tax is due at time of redemption, partly allowing writ petition for clarity on taxability of Gift Vouchers - **Tvl.Kalyan Jewellers India Ltd. v. Union of India - [2024] 158 taxmann.com 302 (Madras)**

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

- 3.10 Where assessee had participated in a tender process and was declared as successful bidder and subsequently rate of GST was enhanced vide a memorandum from 12 per cent to 18 per cent, respondent authorities were to permit assessee to incorporate such enhancement in rates quoted by assessee and refusal by respondents to give work order to assessee was to be set aside - **Asha Construction v. State of West Bengal - [2024] 158 taxmann.com 463 (Calcutta)**

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

- 3.11 Where assessee was unable to claim ITC due to non-availability of GSTR-2 and non-filing of GSTR-3B online, impugned order disallowing ITC deserved to be set aside - **Tvl.Kavin HP Gas Gramin Vitrak v. Comm.of Commercial Taxes - [2024] 158 taxmann.com 204 (Madras)**
- 3.12 Where assessee wrongly claimed IGST credit under CGST and SGST in GSTR 3B, revenue authority was directed to consider assessee's rectification application expeditiously and, until then, no coercive action could be taken for wrongly assessed tax - **Jayakrishnan K.S v. Union of India - [2024] 158 taxmann.com 637 (Kerala)**
- 3.13 Where assessee's claim for ITC was rejected and assessee filed writ petition challenging impugned order, since a statutory remedy was available to assessee, HC was not inclined to exercise discretionary jurisdiction - **Peter Tyres v. Assistant Commissioner of CGST & Excise - [2024] 158 taxmann.com 249 (Madras)**
- 3.14 Where assessee was denied ITC on ground that assessee availed such credit on basis of supplies from a non-existent supplier, since disputed question of fact arose, assessee was to be directed to avail statutory remedy before Appellate Authority and such disputes could not be conveniently addressed in writ petition - **Malar International v. Deputy State Tax Officer-I - [2024] 158 taxmann.com 223 (Madras)**
- 3.15 Where petitioner engaged in business of trading of cotton yarn and cotton waste made exports and since clearing and forwarding agent had erroneously selected option of export without payment of tax while filing shipping bill, amount of IGST paid was shown as Nil in shipping bills and as a result thereof, Custom Authorities did not grant refund of IGST paid on exports, respondent authorities were directed to sanction refund of IGST after deducting differential duty drawback with 7 percent interest - **Real Prince Spintex (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 191 (Gujarat)**
- 3.16 Where in spite of assessee replying to SCN and providing all supporting documents, including CA's certificate, order came to be issued on basis of total trade payable of assessee, since assessing authority failed to consider certificate from a CA and all documents submitted by assessee, impugned order was liable to be quashed and matter was remanded for reconsideration by assessing authority - **Ingram Micro India (P.) Ltd. v. State Tax Officer - [2024] 158 taxmann.com 554 (Madras)**
- 3.17 Where assessee's claim for ITC was rejected on ground that principal supplier had failed to upload bills during period under appeal, assessee was to be directed to approach Appellate Authority and Appellate Authority was to be directed to reconsider claim of assessee for availing benefits including ITC - **Malik Traders v. Union Territory of J & K - [2024] 158 taxmann.com 118 (Jammu & Kashmir and Ladakh)**

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

- 3.18** Where assessee was not provided with reasonable opportunity to submit response to show cause notice, impugned order directing assessee to reverse ITC was to be set aside and matter was to be remanded back to Adjudicating Authority for re-consideration - **Brakes India (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 219 (Madras)**
- 3.19** Where Commissioner (Special Investigation Branch) had blocked input tax credit of assessee, in view of order passed in Amarnath Trading Co. V. State of U.P. [2024] 158 taxmann.com 383 (All.), assessee was to be directed to file an application before Assistant Commissioner to recall said order and said authority was to pass an appropriate and reasoned order - **House of Engineering & Solutions (P.) Ltd. v. State of U.P. - [2024] 158 taxmann.com 466 (Allahabad)**
- 3.20** Where Competent Authority had blocked ITC of assessee and period of blocking of ITC could remain valid only for a period of one year as per rule 86A(3), since prescribed period of one year expired in instant case, Competent Authority was to be directed to unblock ITC of assessee - **S.P. Metals v. Assistant Commissioner of Central Taxes - [2024] 158 taxmann.com 273 (Karnataka)**
- 3.21** Where Competent Authority had blocked ITC of assessee on ground that supplier was found to be non-existent at his disclosed place of business, since change of address of said supplier had been recorded by GSTN after passing of said order blocking ITC, Competent Authority was to be directed to verify correct facts from GSTN and pass appropriate order - **Amarnath Trading Co. v. State of U.P. - [2024] 158 taxmann.com 383 (Allahabad)**

SECTION 18 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - INPUT TAX CREDIT - TRANSFER OF

- 3.22** Where assessee by mistake claimed entire IGST credit under heads of CGST and SGST instead of claiming it under head IGST and filed rectification application before GST Authorities, authority was to be directed to consider application of assessee and pass necessary order expeditiously - **Divya S. R. v. Union of India - [2024] 158 taxmann.com 356 (Kerala)**

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

- 3.23** Where SCN issued to assessee for cancelling of GST registration failed to mention which specific provisions had not been complied with and there was not material on record to show as to why registration was sought to be cancelled retrospectively, therefore, both SCN and

order cancelling GST registration were bereft of any reasoning and particulars and were to be set aside and registration was to be restored - **Shreya International v. Principal Commissioner - [2024] 158 taxmann.com 636 (Delhi)**

- 3.24** Assessee's request for GST registration reconsideration was granted by High Court, allowing him to file fresh application for review in absence of available Appellate Tribunal - **AKSA Lagacies (P.) Ltd. v. State Taxes Department (Goods & Services Tax) - [2024] 158 taxmann.com 638 (Jammu & Kashmir and Ladakh)**
- 3.25** Where ground for cancellation of registration was that assessee filed nil returns continuously for more than six months, impugned order of cancellation was without jurisdiction and without any valid statutory ground and same could not be sustained - **Kali Shankar Enterprises v. Additional Commissioner - [2024] 158 taxmann.com 190 (Andhra Pradesh)**
- 3.26** Where registration of assessee was suspended by impugned show cause notice did not contain requisite details neither letter issued by department gave any clarity as to allegation of availing of fraudulent input tax credit by assessee, show cause notice was to be set aside - **Kundan Impex v. Principal Commissioner of Department of Trade and Taxes - [2024] 158 taxmann.com 300 (Delhi)**
- 3.27** Where both SCN and order cancelling assessee's GST registration were vitiated on account of lack of reason and clarity regarding reasons for retrospective cancellation, thus, same were to be set aside and registration was to be restored - **Ramesh Chander v. Assistant Commissioner of Goods & Service Tax - [2024] 158 taxmann.com 584 (Delhi)**
- 3.28** Registration cannot be cancelled with retrospective effect mechanically; it can be cancelled only if proper officer deems it fit to do so - **Bridgekala Luxurious Lifestyle Management (P.) Ltd. v. Commissioner of Delhi Goods & Services Tax - [2024] 158 taxmann.com 581 (Delhi)**
- 3.29** Where assessee was not put to notice about retrospective cancellation of registration and order canceling registration was bereft of any reasoning, same was to be set aside and registration of assessee was to be restored - **Een Een Sales Corporation v. Assistant Commissioner of Central Goods and Service Tax - [2024] 158 taxmann.com 411 (Delhi)**
- 3.30** Where petitioner's husband, who was sole proprietor of firm had expired and no GST returns were filed after July, 2021, registration of firm could not be canceled with retrospective effect covering period when returns were filed and petitioner's request for prospective cancellation of registration was to be accepted - **Inderjeet Kaur v. Union of India - [2024] 158 taxmann.com 412 (Delhi)**
- 3.31** Non-filing of return for a period of six months or more cannot lead to conclusion that petitioner's GST registration is

required to be cancelled even for period while it was carrying on its business and duly filing its returns - **Raj Enterprises v. Superintendent, Range 25 GST Division - [2024] 158 taxmann.com 143 (Delhi)**

- 3.32** Where impugned order cancelling petitioner's GST registration with retrospective effect was passed without affording petitioner an opportunity to contest same, impugned order was to be modified to be effective from date on which petitioner had closed its business - **Shree Shyam Metals v. Commissioner of Goods & Service Tax - [2024] 158 taxmann.com 144 (Delhi)**
- 3.33** Where Competent Authority had suspended GST registration of assessee on ground that registration was obtained by means of fraud, wilful misstatement or suppression of facts and also issued a show cause notice proposing to cancel registration of assessee without giving any specific reason for proposing cancellation, said show cause notice was to be set aside and GST registration of assessee was to be restored forthwith - **Neelkanth Metal v. Union of India - [2024] 158 taxmann.com 142 (Delhi)**
- 3.34** Where pursuant to issuance of show cause notice, registration of assessee was canceled retrospectively, since assessee was not put to notice that registration was liable to be canceled retrospectively and order of cancellation was bereft of any reasoning or discussion, show cause notice as well as cancellation order was to be set aside - **Radhey Trading Co. v. Principal Commissioner of Goods & Services Tax - [2024] 158 taxmann.com 336 (Delhi)**
- 3.35** As per rule 22, when a person who had been served with a show cause notice under section 29(2)(c) is ready and willing to furnish all pending returns and to make full payment of tax itself along with applicable interest and late fee, officer, duly empowered, can drop proceedings and pass an order in prescribed form, therefore, applying aforesaid rule, writ petition was disposed of and assessee was directed to follow aforesaid rule - **Sanjoy Nath v. Union of India - [2024] 158 taxmann.com 328 (Gauhati)**
- 3.36** Where impugned order canceling registration of assessee was passed without assigning any reasons and without providing any particulars and show cause notice also did not mention quantum of wrongful avilment of ITC or any refund claimed on said account, impugned order as well as SCN was to be set aside - **Sharda Metal Works v. Commissioner of Central Goods and Services Tax - [2024] 158 taxmann.com 274 (Delhi)**
- 3.37** Where department cancelled registration a assessee was not available at given address while assessee claimed that it had changed its place of business, department should visit current premises and restore cancelled registration, if assessee was operating from

that premises - **Roxy Enterprises v. Union of India - [2024] 158 taxmann.com 275 (Delhi)**

- 3.38** Where non-communication of reasons in an order amounts to denial of reasonable opportunity of hearing, violating principles of natural justice, therefore, SCN issued to assessee under section 29 lacking details about allegations and supporting documents was to be quashed and set aside - **Akshar Enterprise v. State of Gujarat - [2024] 158 taxmann.com 123 (Gujarat)**
- 3.39** Where impugned order cancelling petitioner's GST registration did not indicate any reason for doing so retrospectively, but merely mentioned that no reply had been received to impugned SCN, said order was to be set aside - **Shree Ram Metal v. Commissioner of Delhi Goods and Services Tax Act - [2024] 158 taxmann.com 90 (Delhi)**
- 3.40** Cancellation of registration sought from date of closure of business cannot be given retrospective effect by department; High Court directs order of cancellation to be the date of closure of business - **Hari Om Metals v. Commissioner of Central Goods & Services Tax - [2024] 158 taxmann.com 605 (Delhi)**

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

- 3.41** Where assessee's registration was revoked on ground that at time when registration was obtained, it had uploaded electricity payment receipt and rental agreements, which were found to be forged document, Appellate Authority was well justified in dismissing appeal and there was no grounds to interfere with same - **Suresh Kumar Chaudhary v. Assistant Commissioner - [2024] 158 taxmann.com 299 (Calcutta)**
- 3.42** Where impugned SCN for cancelling GST registration was issued solely on basis of a letter received from another authority and said letter was neither attached to impugned SCN nor did impugned SCN referred to any contents, and, further, it was not indicated in impugned order as to how proper officer was satisfied as to fulfillment of conditions mentioned in section 29(1) or 29 (2) of Central Goods and Services Tax Act, 2017, impugned order cancelling assessee's GST registration was to be set aside - **Sant Ram v. Delhi State GST - [2024] 158 taxmann.com 253 (Delhi)**
- 3.43** Cancellation of registration of a deceased assessee was just even if no personal hearings were being conducted to legal heir; however, cancellation should take effect from date of issuance of SCN, and not retrospectively - **Varyam Dass Khurana v. Commissioner of GST, New Delhi - [2024] 158 taxmann.com 47 (Delhi)**

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

- 3.44** High Court permits rectification of mistakes in Form-GSTR-1 return as otherwise petitioner would not be able to get refund

of tax paid on supplies to SEZ - **Satyam Auto Components (P.) Ltd. v. Union of India** - [2024] 158 taxmann.com 360 (Punjab & Haryana)

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

3.45 Where assessee had inadvertently not disclosed certain sales invoices in Form GSTR-1 and hence said invoices were not reflected in Form GSTR-2A of its customer; assessee was to be directed to file an application for rectification of Form GSTR-1 for period in question before concerned GST Authorities, who were to decide same in accordance with law - **Anvita Associates v. Union of India** - [2024] 158 taxmann.com 660 (Bombay)

3.46 Where assessee filed writ petition seeking direction upon GST Authorities to allow it to file Form GSTR-3B return for certain period and also to consider its application for revocation of cancellation of registration, as long as assessee deposited all taxes, interest, late fee, penalty etc. due and complied with other formalities, GST Authorities were directed to open portal to enable assessee to file GST return - **Rakesh Kumar Sethi v. Commissioner of Central Goods & Service Tax** - [2024] 158 taxmann.com 385 (Orissa)

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

3.47 Where assessee was called upon to pay interest in respect of four assessment years vide a caution notice, since business of assessee was affected during COVID-19 pandemic, assessee was to be directed to pay amounts demanded in caution notice in three equal monthly installments - **Everyday Banking and Retail Assets v. Office of the Assistant Commissioner (ST)** - [2024] 158 taxmann.com 189 (Madras)

3.48 High Court sets aside order passed without considering retrospective amendment to section 50 and remands matter back for fresh consideration - **AD North East Air Cargo (P.) Ltd. v. Joint Commissioner** - [2024] 158 taxmann.com 665 (Calcutta)

3.49 Where recovery was sought against assessee primarily concerning payment of interest on amounts that had been refunded and assessee contended that original authority had committed an error of jurisdiction, considering that final order had been challenged, and objection on maintainability would be considered at final hearing, impugned recovery was to be stayed except for differential amount of Rs.16.55 lakhs until further orders - **Hindustan Copper Limited a Public Limited Company v. Union of India** - [2024] 158 taxmann.com 494 (Madhya Pradesh)

3.50 Where assessee had routinely deposited GST amount into ECL within due date, it would not be liable to pay

interest even if assessee could not file monthly return in Form GSTR 3B within due date but filed belatedly - **Eicher Motors Ltd. v. Superintendent of GST and Central Excise, Range-II** - [2024] 158 taxmann.com 593 (Madras)

3.51 Where assessee filed a writ petition praying for grant of instalment for making payment of tax and interest in question, considering financial hardship of assessee and delay on part of revenue in detecting dues against assessee, writ petition was to be allowed and assessee was to be granted opportunity to make payment in 10 monthly installments - **Neel Kamal v. Assistant Commissioner, State Tax** - [2024] 158 taxmann.com 334 (Calcutta)

3.52 Where GSTIN of assessee was cancelled without notice, leading to delays in filing returns and payment of taxes due to technical glitches; demand for interest on delayed payments for period of cancellation was inequitable and liable to be set aside - **Hilton Garden INN v. Commissioner of Kerala Goods & Service tax** - [2024] 158 taxmann.com 93 (Kerala)

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

3.53 Where due technical glitch in system, documents supporting petitioner's application for refund were uploaded but not registered by system and said application was rejected on ground of non-submission of authenticated document, since a refund cannot be rejected merely on ground of non-supply of authenticated document, matter needs to be relegated to concerned authority to re-adjudicate application of petitioner by taking into account documents filed by petitioner in support of his application for refund - **Mittal Footcare v. Commissioner of Central Goods & Services-tax** - [2024] 158 taxmann.com 145 (Delhi)

3.54 Where assessee had deposited amount under coercion and then preferred appeal against refund rejection order, revenue authority was directed to dispose of appeal within time bound manner, considering relevant legal principles including proposition in Union of India v. Bundle Technologies (P.) Ltd. [2022] 136 taxmann.com 112 (Karnataka) and Instruction No. 1/2022-23, dated 25-5-2022 - **Gland Chemicals (P.) Ltd. v. Principal Additional Director General Directorate General of Goods & Services** - [2024] 158 taxmann.com 586 (Karnataka)

3.55 Where authorities were directed to issue refund to assessee by co-ordinate Bench, however a show cause notice was issued to assessee by department to reject refund claim, since said order of co-ordinate bench was under review, grievance of assessee could be looked into only after review application was decided, however authorities were to be directed to not to take any further step in show cause notice - **S Mahendrakumar Devichand v. State of Maharashtra** - [2024] 158 taxmann.com 298 (Bombay)

3.56 Where assessee preferred representation before revenue to consider refund claims problems because of faulty GSTN portal, considering submissions of assessee regarding denial of refund, revenue was directed to consider assessee's

representation within four weeks after giving an opportunity of hearing to assessee - **Dharmdeep Commodities (P.) Ltd. v. State of Gujarat - [2024] 158 taxmann.com 438 (Gujarat)**

3.57 ITC reversed late at night during search proceedings was not voluntary and was liable to be returned to taxpayer - **Santosh Kumar Gupta v. Commissioner, Delhi Goods & Services Tax Act - [2024] 158 taxmann.com 226 (Delhi)**

3.58 High Court directs refund of amount deposited at date hours during inspection by GST officers and immediate claim by taxpayer as to payment made under coercion and not voluntary - **Santosh Kumar Gupta v. Union of India - [2024] 158 taxmann.com 194 (Delhi)**

3.59 Where assessee, an exporter of processed tea, claimed refund of unutilised ITC in respect of period from July, 2017 to November, 2017, since refund application was made within period of limitation of two years prescribed by statute, appellate authority erred in concluding that refund claim can only be made with regard to a specific calendar month - **Tulip Nilgiris Exports (P.) Ltd. v. Additional Commissioner of Central Taxes and Central Excise (Appeals) - [2024] 158 taxmann.com 539 (Madras)**

3.60 Where assessee's application for refund of unutilized Input Tax Credit (ITC) due to an inverted duty structure was rejected by deficiency memos on three reasons (a) refund claimed and received earlier pertained to zero-rated supplies, (b) debit entries for claims were not made, and (c) non-submission of supporting documents, said reasons were to be rejected directing assessee to submit all necessary documents to establish refund claim and matter was to be remanded back - **VSM Weavess India (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 519 (Madras)**

3.61 Where assessee applied online for refund as per order of appellate authority, action of adjudicating authority in seeking bank guarantee from assessee was ex facie contrary to directions of appellate authority, same, could not be sustained - **Raj Kamal Cargo Movers v. Assistant Commissioner, Jaipur - [2024] 158 taxmann.com 252 (Rajasthan)**

3.62 Where assessee filed writ petition seeking quashing of order passed by Authority rejecting refund on ground that no opportunity of being heard was provided to assessee, since it was a case of tax evasion as detected in inquiry conducted by revenue and separate notice had been issued to assessee, writ petition was to be dismissed and assessee was to be relegated to remedy of appeal - **Pandey Drug House v. Assistant Commissioner of State-tax, Circle-4 - [2024] 158 taxmann.com 250 (Madhya Pradesh)**

3.63 Where assessee sought a direction for refund of a GST and assessee contended that not to have received deficiency memo, revenue assured that deficiency memo shall be furnished to assessee during course of day, instant writ petition was to be disposed of directing revenue to expedite adjudication of application of refund filed by assessee and aims to dispose of it within four weeks - **Truth Fashion v. Commissioner of Delhi Goods & Services Tax - [2024] 158 taxmann.com 437 (Delhi)**

3.64 GST collected by hospitals on fees of DNB trainees, being illegal, refund was to be made - **Association Of Diplomate Of National Board Doctors v. National Medical Commission - [2024] 158 taxmann.com 388 (Delhi)**

3.65 Where refund application filed on 4-9-2020 in respect of unutilised ITC was rejected on ground of limitation, since period from 1-3-2020 to 28-2-2022 was required to be excluded for computation of period of limitation, refund application of assessee was within limitation and authority was to be directed to issue refund to assessee = **Acrologic Business Solutions (P.) Ltd. v. Assistant Commissioner of Central Taxes - [2024] 158 taxmann.com 381 (Madras)**

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

3.66 Where assessee filed application seeking refund of unutilized input tax credit and amount of refund was paid to assessee beyond sixty days, respondent-Authorities were to be directed to calculate period of delay and make payment of amount of interest to assessee in terms of provisions of section 56 - **Baba Super Minerals (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 221 (Rajasthan)**

SECTION 62 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - NON - FILERS OF RETURNS

3.67 Where assessee was unable to participate in proceedings before Adjudicating Authority due to fact that he was not aware of show cause notice, impugned order was to be set aside and Adjudicating Authority was to be directed to grant assessee sufficient opportunity of personal hearing in accordance with law - **Basheer Bags v. Deputy State Tax Officer - 2 - [2024] 158 taxmann.com 583 (Madras)**

3.68 Where assessee could not reply to defects in Form GST DRC-01 because relevant documents were in custody of Central GST authority, and impugned assessment order was passed against assessee, said assessment order was to be set aside and matter was to be remanded back to Assessing Officer for re-consideration - **Sri Guberan Steels v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 662 (Madras)**

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

3.69 Where petitioner filed reply to discrepancy notice under Rule 101 (4) served on assessee and same was not considered while finalizing findings of audit, final Audit Report is

therefore in violation of principles of natural justice and was to be quashed - **PBL Transport Corporation (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 552 (Andhra Pradesh)**

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

- 3.70** Where raids were conducted upon assessee in terms of section 67 during which all their documents had been attached and seized, revenue authorities should supply to assessee either documents or copies of attached and seized documents to enable assessee to file effective responses to show-cause cum demand notices - **Harp Resorts (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 354 (Bombay)**
- 3.71** Authorization for search cannot be held as invalid on ground of absence of specific reason when all specified reasons have been selected in relevant form - **Santosh Kumar Gupta v. Commissioner, Delhi Goods & Services Tax Act - [2024] 158 taxmann.com 226 (Delhi)**
- 3.72** Inspection and search are not invalid when allegation pertains to wrongful availment of ITC based on invoice issued by non-existent supplier; CGST officers are not precluded from carrying out inspection merely because SGST officers had conducted prior inspection - **Santosh Kumar Gupta v. Union of India - [2024] 158 taxmann.com 194 (Delhi)**

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

- 3.73** Where it was held that section 174(2)(e), saves any investigation, inquiry, verification, assessment, adjudication and any other legal proceedings as if these acts have not so amended or repealed, therefore, department was incorrect in holding that Input Tax Credit so transited from pre-GST regime was inadmissible; show cause notice was to be quashed - **Tripati Ispat Udyog v. State of Jharkhand - [2024] 158 taxmann.com 124 (Jharkhand)**
- 3.74** Where department without issuing any detailed Show Cause Notice had proceeded with matter by merely issuing a "Summary of Show Cause Notice" being FORM GST DRC-01 dated 21-7-2018, therefore, aforesaid Form GST DRC-01 was to be quashed - **Tripati Ispat Udyog v. State of Jharkhand - [2024] 158 taxmann.com 124 (Jharkhand)**
- 3.75** Where show cause notice issues to assessee lacked essential details such as date, time, and venue of hearing, which is mandated by section 75(4), absence of a mention of hearing details in notice was a violation of statutory mandate, therefore assessment order could

not be sustained due to lack of a proper opportunity of hearing and said order was to be quashed and matter was to be remanded back - **Goutam Bhowmik v. State of West Bengal - [2024] 158 taxmann.com 399 (Calcutta)**

- 3.76** Where notices were issued to assessee under sections 61 and 73 and assessee had admittedly made certain disclosures in reply to same, it could not be said that there was no dispute that required adjudication, thus writ petition filed by assessee against said notices was to be dismissed - **Mgs Palace v. State of U.P. - [2024] 158 taxmann.com 435 (Allahabad)**
- 3.77** Writ petition was to be disposed of as assessee was having statutory appeal remedy against Recovery order passed by revenue, confirming demand for recovery of ITC along with interest and penalty and assessee was directed to file statutory appeal before appellate authority within four weeks and as an interim arrangement assessee was permitted take 10% of amount required for filing appeal from its bank account - **Rathinavel Pandian v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 439 (Madras)**
- 3.78** High Court considered overlapping of show cause notices and directed GST authority to issue detailed SCN, club SCNs and pass orders - **HDFC Sales (P.) Ltd. v. Assistant Commissioner (ST)(FAC) - [2024] 158 taxmann.com 642 (Madras)**
- 3.79** Where multiple SCN's were issued in connected matters and highest demand was raised under a notice issued to company registered in jurisdiction of a particular Commissionerate, jurisdiction to adjudicate all such SCNs vested with said Commissionerate, even if principal place of business of another noticee fell under different Commissionerate - **Aasanvish Technology (P.) Ltd. v. Director General of GST Intelligence - [2024] 158 taxmann.com 50 (Delhi)**
- 3.80** Where assessee had not received any notice before passing order and assessee was unaware about demand, said issue requires adjudication of facts which could not be gone into under Article 226 of Constitutions of India and thus, writ petition was to be disposed of directing assessee to remedy of appeal for adjudication of his all contentions - **Amit G. Modi (HUF) v. Union of India - [2024] 158 taxmann.com 386 (Bombay)**
- 3.81** Where summary of SCN was issued without specifying date of hearing, thus, depriving opportunity of personal hearing, demand order in Form GST DRC-07 was to be quashed and set aside - **Alok Steel Industries (P.) Ltd. v. State of Jharkhand - [2024] 158 taxmann.com 604 (Jharkhand)**
- 3.82** Order was passed demanding GST without referring to reply filed by taxpayer or offering personal hearing was not sustainable - **Menacherry Lonappan Jayan v. State tax officer - [2024] 158 taxmann.com 610 (Kerala)**
- 3.83** Non-consideration of assessee's reply to show cause notice certainly prejudices assessee and denies assessee a

reasonable opportunity to establish its position, therefore, without expressing any opinion on merits of matter, orders were to be quashed and matter was remanded - **MakeMyTrip (India) (P.) Ltd. v. State Tax Officer - [2024] 158 taxmann.com 492 (Madras)**

3.84 Show Cause Notice was issued mechanically without necessary information or materials and bereft of facts was not sustainable - **Mondelez India Foods (P.) Ltd. v. Deputy Commissioner (ST) - [2024] 158 taxmann.com 497 (TELANGANA)**

3.85 Where notices were uploaded in web portal only and same were not at all physically served to assessee and, thus, assessee was unaware about said notice, impugned assessment order was liable to be set aside - **Jak Communications (P.) Ltd. v. Deputy Commercial Tax Officer - [2024] 158 taxmann.com 332 (Madras)**

3.86 Notice for personal hearing issued without details of date, time and venue is not valid; authority was directed to grant personal hearing in accordance with Section 75(4) of CGST Act, 2017 - **Tata Steel Ltd v. State of Chhattisgarh - [2024] 158 taxmann.com 256 (Chhattisgarh)**

3.87 Where on consecutive death of two employees of assessee engaged for filing returns assessee was not aware about impugned proceedings initiated against them and orders passed, assessee was to be granted liberty to approach appellate authority - **Samadhu Medicals v. Deputy State Tax Officer/Deputy Commercial Tax Officer - [2024] 158 taxmann.com 251 (Madras)**

3.88 Where petitioner/assessee, suffering from medical condition, could not reply to show cause notice issued under section 73, and an assessment order was passed, same was to be set aside and assessee was to be granted an opportunity to first file response to SCN and fresh assessment order was to be passed thereafter - **Pragati Construction v. Commissioner of C.T. & G.S.T. - [2023] 157 taxmann.com 681 (Orissa)**

3.89 Where GST audit revealed discrepancies and revenue authorities issued summary order without uploading detailed order, and later produced detailed order with signing date after summary order date, impugned order was to be set aside and matter was to be remitted for re-adjudication - **Ojus Power & Technologies (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 19 (Madras)**

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

3.90 Where petitioner/ assessee had no justifiable reason for not appearing for personal hearing on date fixed in show cause notice, writ petition filed against order passed under section 74 on ground of violation of principle of natural was to be dismissed - **TSN Old Iron Scrap Mechants v. Deputy/Assistant Commissioner of State tax - [2024] 158 taxmann.com 196 (Andhra Pradesh)**

3.91 Where assessee had filed rectification application challenging revenue authority's assessment order alleging tax liability based on seigniorage fee details, revenue authority was directed to dispose of rectification application within three months - **M.Venkataraj v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 49 (Madras)**

3.92 Where assessee filed writ petition challenging alert circular issued by Joint Commissioner against assessee on ground that numerous adjudication proceedings had been initiated by different jurisdictional authorities against registered persons who had purchased goods from assessee, writ petition was to be dismissed as assessee was not seen to be a person aggrieved and adjudication proceedings had arisen upon violation being noted by competent authorities - **Kps Iron and Alloys Company (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 467 (Allahabad)**

3.93 Where petitioner had already voluntarily canceled its registration and a notice under section 74 was issued thereafter by way of uploading same on web portal, impugned order passed on basis of said notice was bad in law and was to be set aside and authority was to be directed to grant an opportunity of hearing to assessee - **Eastern Machine Bricks & Tiles Industries v. State of U.P - [2024] 158 taxmann.com 384 (Allahabad)**

3.94 Where private respondents engaged by company to look after its accounts misused digital signature of company, and pursuant to direction issued by court, FIR was lodged, however same was not being investigated properly, investing agency was to be directed to conclude investigation expeditiously and in accordance with law - **Sauryajyoti Renewables (P.) Ltd. v. State of West Bengal - [2024] 158 taxmann.com 359 (Calcutta)**

3.95 Where refund claim of assessee was rejected and demand of tax was made, and on writ petition, single Bench did not grant any interim relief to assessee on demand of tax, assessee was to be granted liberty to file fresh application for stay of demand before single Bench - **Shree Madhav Sol Vextracts (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 358 (Calcutta)**

3.96 Amount deposited during midnight when investigations were in progress is not voluntary; Department was directed to refund amount with interest - **Neeraj Paper Marketing Ltd. v. Special Commissioner, Department of Trade & Taxes, GNCTD - [2024] 158 taxmann.com 470 (Delhi)**

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

3.97 Where adverse decision of imposing tax and penalty was contemplated against assessee, an opportunity of hearing was mandatorily required to be given to assessee and merely marking 'NO' in option of reply to show cause notice could not entitle department to pass an order without giving any opportunity or even without waiting for assessee to appear on date fixed - **Primeone Work Force (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 436 (Allahabad)**

3.98 Where Competent Authority had passed an order under section 75 demanding certain amount from assessee, since impugned order **was** issued without providing assessee opportunity of personal hearing as mandated by section 75, impugned order was to be set aside and matter was to be remanded for reconsideration - **A.H. Enterprises v. Deputy Commercial Tax Officer - [2024] 158 taxmann.com 220 (Madras)**

3.99 Where no opportunity of hearing at any stage had ever been granted to **assessee** and no adjudication order was granted to assessee, therefore, there was violation of principles of natural justice, hence, writ application was to be allowed - **Tripati Ispat Udyog v. State of Jharkhand - [2024] 158 taxmann.com 124 (Jharkhand)**

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

3.100 Special Tahsildar Recoveries acting under instructions of District Collector is competent to undertake recovery proceedings in respect of GST dues - **Sheikh Mohammad Yaqoob v. Union Territory of Jammu & Kashmir - [2024] 158 taxmann.com 225 (Jammu & Kashmir and Ladakh)**

3.101 Additional information furnished after passing of recovery order shall be considered and further examined for passing order afresh - **Lupin Ltd. v. Union of India - [2023] 157 taxmann.com 710 (SIKKIM)**

3.102 Where in a writ petition filed by assessee for restraining revenue from initiating any recovery proceedings, assessee was permitted to move representation before Executive Engineer concerned, and representation made by assessee was not decided in period as directed by Court, remedy available to assessee was to file a contempt petition before appropriate Court and not successive writ petition - **Parul Dixit v. State of U.P. - [2024] 158 taxmann.com 357 (Allahabad)**

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

3.103 High Court directs lifting of provisional attachment of bank accounts for payment of GST and for submission of bank guarantee in lieu of attachment - **Guntupalli Marble and Granites v. Principal District General DGGI - [2024] 158 taxmann.com 611 (Madras)**

3.104 Where provisional attachment order issued under section 83 did not contain any reasons except mentioning that in order to protect interest of revenue and in exercise of powers conferred under section 83 said order was issued, same was to be set aside - **Arhaan Ferrous and Non Ferrous Solutions (P.) Ltd. v. Senior Intelligence Officer 3 - [2024] 158 taxmann.com 91 (Andhra Pradesh)**

SECTION 84 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - CONTINUATION AND VALIDATION OF CERTAIN PROCEEDINGS

3.105 Where after business of assessee was discontinued and its GST registration was canceled, show cause notices and reminder notices were issued to assessee, however without considering request of assessee for personal hearing, impugned order was passed, same was to be set aside and matter was to be reminded for fresh consideration - **Ogun Steels (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 158 taxmann.com 414 (Madras)**

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

3.106 Where writ petition was filed by assessee who was not party to advance ruling proceedings but was adversely affected by advance ruling, writ petition was maintainable - **Naga Ltd. v. Puducherry Authority for Advance Ruling - [2024] 158 taxmann.com 306 (Madras)**

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

3.107 Where assessee's appeals was rejected on ground of delay upon holding that there was no scope under provisions of GST act for condoning delay in submitting appeal beyond four months, since section 107 does not exclude applicability of Limitation Act, 1963, section 5 of Limitation Act, 1963, providing for condonation of delay, stands attracted and appellate authority has power to condone delay in filing an appeal beyond limitation specified in Section 107, thus instant delay in presenting appeal was condoned, and appeal was to be restored to file of appellate authority - **Arvind Gupta v. Assistant Commissioner of Revenue State Taxes - [2024] 158 taxmann.com 551 (Calcutta)**

3.108 Where impugned order violated natural justice by lacking necessary details and being issued on same day as notice, impugned order was to be quashed, even though alternative remedies existed - **Tvl. Shanthi Vijay Granites v. Assistant Commissioner (ST), Hosur. - [2024] 158 taxmann.com 415 (Madras)**

3.109 Appeal under BGST Act filed beyond statutory period could be entertained on satisfying conditions of CBIC Notification No. 53 of 2023-CT, failing which appeal stood rejected - **Arihant Projects LLP v. Union of India** - [2024] 158 taxmann.com 639 (Patna)

3.110 Where order-in-original was passed imposing penalty and interest on assessee and Single Judge granted liberty to challenge said order by way of appeal to be filed within 30 days along with pre-deposit of 10 per cent of penalty and interest, further time of eight weeks for filing said appeal was to be granted to assessee - **Trans Car India (P.) Ltd. v. Additional Commissioner** - [2024] 158 taxmann.com 192 (Madras)

3.111 Where assessee challenged an order passed by Assistant Commissioner (ST) directing assessee to pay taxes due along with interest thereon in respect of alleged mismatch between input tax credit in GSTR-2A and GSTR-3B, since impugned order was subject to a statutory appeal, writ petition was not maintainable - **Tvl. SKB Construction v. Assistant Commissioner (ST)** - [2024] 158 taxmann.com 119 (Madras)

3.112 Where appeal was filed manually and, hence, rejected for not being filed electronically, relying on rule 108 of Haryana GST Rules, 2017, appeal was to be restored - **Optum Global Solutions (India) (P.) Ltd. v. State of Haryana** - [2024] 158 taxmann.com 20 (Punjab & Haryana)

3.113 Since assessee had deposited 10% of total outstanding tax dues along with penalty, bank account of assessee should be de-frozen as per section 107 - **Jey Tech Moulds Dies v. Deputy Commissioner (GST)-II** - [2024] 158 taxmann.com 15 (Madras)

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

3.114 Where assessee owned detained goods accompanied by proper e-invoice and e-way bill, penalty imposed under Section 129(1)(b) of CGST Act was to be quashed and recomputation under Section 129(1)(a) of CGST Act was to be directed - **Shri Sai Enterprises v. State of U.P.** - [2024] 158 taxmann.com 125 (Allahabad)

3.115 Where vehicle No. in Part-B of e-way was not mentioned and all details of vehicle were available in invoice; same being a technical breach, penalty was not to be imposed on assessee - **Roli Enterprises v. State of U.P.** - [2024] 158 taxmann.com 468 (Allahabad)

3.116 Where Competent Authority had seized vehicle of assessee under section 129(1) and imposed penalty under section 129(3), said authority was to be directed to pass a reasoned order after affording due

opportunity of hearing to assessee for release of vehicle - **Akbar Ali Transport Services v. State of U.P.** - [2024] 158 taxmann.com 382 (Allahabad)

3.117 Where assessee did not fill up Part 'B' of e-Way Bill, since invoice itself contained details of truck and error committed by assessee was of a technical nature only and without any intention to evade tax, order of penalty passed against assessee under section 129(3) was to be set aside - **Rawal Wasia Yarn Dying (P.) Ltd. v. Commissioner Commercial Tax** - [2024] 158 taxmann.com 609 (Allahabad)

3.118 Penalty was not imposable where wrong vehicle number was mentioned in E-Way Bill as it was merely a typographical error - **Hindustan Herbal Cosmetics v. State of U.P.** - [2024] 158 taxmann.com 200 (Allahabad)

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

3.119 Taxpayer was directed to approach GST authorities for release of vehicle on furnishing bond and sureties - **Biju V.T. v. Senior Enforcement Officer** - [2024] 158 taxmann.com 442 (Kerala)

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

3.120 Where It was alleged that assessee had used fake documents to register a company and commit tax fraud and also assessee had undergone custody of approx 2 years and four months, since, there was no likelihood of trial concluding anytime soon as out of total 31 prosecution witnesses, only 18 prosecution witness had been examined so far, without getting into merits of case assessee was to be released on regular bail - **Rakesh Puri v. State of Haryana** - [2024] 158 taxmann.com 520 (Punjab & Haryana)

3.121 Where assessee was managing and operating four forged firms and had fraudulently availed benefit of Input Tax Credit, said GST fraud committed by assessee was having humongous ramification on revenue collection by State, thus, in view of allegations made against assessee, evidence collected by prosecution and seriousness of offence, bail application was to be rejected - **Anush Kumar Gangwani v. Union of India** - [2024] 158 taxmann.com 522 (Chhattisgarh)

3.122 Where accused allegedly provided false seals to co-accused for applying on containers, leading to transportation of goods with intent to commit tax evasion, if accused was released on bail then, there was possibility of tampering with evidence and hampering with witnesses, which would affect trial, therefore application of bail was to be rejected - **Devendrakumar @ Rahul Gangaram Thakur v. State of Gujarat** - [2024] 158 taxmann.com 521 (Gujarat)

3.123 Where petitioner/sole accused arrested for an offence punishable under section 132 was in custody for more than seven months and was ready to deposit a sum of Rs. 50

lakhs to GST Authorities, he was to be released on bail - **Isithore v. Senior Intelligence Officer - [2024] 158 taxmann.com 663 (Madras)**

- 3.124** Where complaint was filed by de-facto complainant alleging that petitioner and his friend raised fake invoices from de-facto complainant's GST login without his knowledge and wrongfully gained Rs 75,00,000, as there are aspects which requires subject matter of investigation in said issue, relief of anticipatory bail was to be granted to petitioner - **Nalamati Murali Krishna @ Nallamati Murali Krishna v. State of Telangana - [2024] 158 taxmann.com 141 (Telangana)**
- 3.125** Where petitioner was arrested for offence under section 132 and he was in custody for more than 4 months, he was ordered to be released on bail on his furnishing bail bonds/surety bonds to satisfaction of trial Court - **Adwait Gupta @ Monu v. State of Haryana - [2024] 158 taxmann.com 582 (Punjab & Haryana)**
- 3.126** Where assessee was in custody for more than two years for offence punishable under section 132(1)(i) and (iv) read with section 132(5) and (6) and High Court found that there was no concrete material against assessee, assessee was to be released on bail - **Sagar Dilip More v. State of Maharashtra - [2024] 158 taxmann.com 606 (Bombay)**
- 3.127** Assessee was sole accused in crime under Section 132(1) where he was supplying goods without issuing invoices, evading tax payment due from 2018 onwards, considering fact that assessee had been in custody since 13-11-2023, that investigation had progressed, bail was to be granted to assessee - **Badha Ram v. Intelligence Officer - [2024] 158 taxmann.com 271 (Kerala)**
- 3.128** Where assessee was in jail since 7-10-2023, assessee was to be released on bail subject to condition that assessee would deposit entire amount of tax under protest before Trial Court and furnish personal bond of Rs. 50 thousand with one solvent surety in like amount - **Deepak Singhal v. State Of MadhyaPradesh - [2024] 158 taxmann.com 464 (MadhyaPradesh)**
- 3.129** High Court grants bail to accused alleged as involved in ITC fraud on the ground that accused has been in jail for more than 4 months, prosecution report has been filed and evidence would be documentary and no apprehension of tampering or intimidation - **Nitin Kapoor v. State of Odisha - [2024] 158 taxmann.com 387 (Orissa)**
- 3.130** Since, accused persons were involved in fraudulently obtaining Input Tax Credit worth Rs. 200 crores by projecting transactions only on paper and without actual purchase or sale of goods, anticipatory bail earlier granted to accused persons stood cancelled - **Directorate General of GST Intelligence v. Chaman Goel - [2024] 158 taxmann.com 493 (Delhi)**

3.131 Bail should not be denied solely based on pendency of other cases and appreciation of evidence during course of trial had to be looked into with reference to evidence in that case alone and not with respect to evidence in other pending cases - **Praveen Kumar v. State of Haryana - [2024] 158 taxmann.com 491 (Punjab & Haryana)**

3.132 Where Serious economic offence was made out against petitioner/accused for obtaining financial benefits in form of input tax credit illegally by opening GST Account on basis of false and fabricated documents, which caused huge loss to government exchequer, application of accused seeking pre-arrest bail was to be dismissed - **Hitendra Chandrakant Shah v. State of Gujarat - [2023] 157 taxmann.com 709 (Gujarat)**

3.133 Where bail granted to accused involved in an offence relating to evasion of GST was canceled for non-appearance on few occasions upon summons issued by department, cancellation of bail was harsh and same was to be set aside, however accused was to be warned - **Directorate General Of Gst Intelligence v. Manish Goyal - [2024] 158 taxmann.com 608 (Delhi)**

3.134 Where department sought setting aside of order of anticipatory bail granted to respondent, since respondent was not main player involved in GST fraud and had clean antecedents, grant of anticipatory bail was to be sustained - **Directorate General of GST Intelligence v. Jitender Kumar - [2024] 158 taxmann.com 607 (Delhi)**

3.135 Where applicant was person who had prepared false and fabricated document like purchase invoices as also prepare false seals which were affixed on containers for transportation and committed an offence of tax evasion in crore of rupees, If applicant was released on bail then, there was possibility of tampering with evidence and fleeing away from trial, therefore considering nature of offence, role attributed to applicant, played by him and past antecedents of applicant similar in nature, instant bail application deserves to be rejected - **Pankaj Karsanbhai Thacker v. State of Gujarat - [2024] 158 taxmann.com 585 (Gujarat)**

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

3.136 Order taking cognizance arising out of section 167 Cr. PC was to be set aside as cognizance was taken in absence of any complaint and without any sanction under CGST Act, 2017 - **Dinesh Vyas v. Union of India - [2023] 157 taxmann.com 690 (Jharkhand)**

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

3.137 Where Authority had passed an assessment order holding that assessee had registration under Kerala Value Added Tax regime and availing of ITC under CGST Rules, 2017 on

goods held in stock on appointed day was in violation of Act and Rules, since assessee had remedy of statutory appeal, assessee was to be directed to file appeal before Appellate Authority and writ petition was to be dismissed - **Goodyear India Ltd. v. State Tax Officer - [2024] 158 taxmann.com 465 (Kerala)**

3.138 Transitional credit availed using extended period without obtaining permission from Commissioner is not valid and rejection of condonation application filed after five years, was sustainable - **Malabar Cements Ltd. v. Assistant Commissioner, Central Tax & Central Excise - [2024] 158 taxmann.com 329 (Kerala)**

3.139 Where High Court had directed Competent Authority to take a final decision on transitional input tax credit (ITC) claim of assessee, and necessary order had been passed by authority, instant contempt case filed by assessee for wilful violation of said order of High Court become infructuous and same was to be disposed of - **Sanjay Agencies v. State of Jharkhand - [2024] 158 taxmann.com 337 (Jharkhand)**

3.140 Where assessee had inadvertently filed for Cenvat credit under wrong head, i.e., 7(d) instead of 7(b), but possessed documents to substantiate his claim under correct head; claim deserved consideration under correct head - **S V Halavagali & Sons v. Superintendent of Central Excise - [2023] 157 taxmann.com 711 (Karnataka)**

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

3.141 Anti-profiteering measures under section 171 of CGST Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of CGST Rules, 2017 are constitutionally valid; for arbitrary exercise of power under anti-profiteering mechanism by erroneously enlarging scope of proceedings beyond jurisdiction or on account of not considering genuine basis of variations, such orders are to be set aside - **Reckitt Benckiser India (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 675 (Delhi)**

4. AAR

CLASSIFICATION OF GOODS

4.1 Frozen chicken - Pre-Packaged and labelled : Where frozen chicken is pre-packaged, labelled "not for retail sale", and supplied to institutional consumers directly or through distributors for their own use, it is exempt from GST, however, supplies to non-institutional consumers are taxable - **Abhithanjali Traders, In re - [2024] 158 taxmann.com 94 (AAR - TAMILNADU)**

CLASSIFICATION OF SERVICES

4.2 Construction of Community Hall : Construction of community hall by assessee, in accordance of work contract allotted by UIT, Kota falls under definition of civil work under heading no 9954 and is liable to pay GST at 18 percent on supply of said service and no deduction or exemption is available to assessee in respect of said service provided to UIT Kota - **Raghubala Construction, In re - [2024] 158 taxmann.com 248 (AAR- RAJASTHAN)**

4.3 Construction service : Supply of services made by applicant relating to construction, erection, civil works, testing, commissioning etc of 800 KV, 6000 MW HVDC terminals to PGCIL which include service of transportation, freight and insurance is a composite supply of works contract and said activity of applicant being composite work contract classifiable under construction services falling under Heading no 9954 - **Hitachi Energy India Ltd., In re - [2024] 158 taxmann.com 553 (AAR - CHHATTISGARH)**

4.4 Accommodation services : Premises taken on rent, further let out as hostel accommodation to female students and working women, having in-house kitchen for inmates, neither qualified as residential dwelling nor as hotel accommodation, but it is supply of accommodation services under Tariff heading 9963 and taxable @ 9% CGST + 9% SGST under Sl. No. 7(vi) of Notification No. 11/2017, Central Tax (Rate), dated 28-6-2017; hostels maintained for commercial purpose are not entitled to exemption under Entry 12 of Notification No. 12/2017-CT(Rate) dated 28-6-2017 - **Nithiyashree Ladies Hostel., In re - [2024] 158 taxmann.com 524 (AAR - TAMILNADU)**

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

4.5 Hostel with in-house kitchen for inmates, having consolidated charges for food and other like services, supplied composite services in consolidated manner; hostel accommodation being taxable @18%, is tax rate for composite supply - **Nithiyashree Ladies Hostel., In re - [2024] 158 taxmann.com 524 (AAR - TAMILNADU)**

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

4.6 Arrangement between assessee running ladies' residential hostel and its occupants is transaction in course of

furtherance of business that constitutes "supply" for which assessee is required to take GST registration - **Nithiyashree Ladies Hostel., In re - [2024] 158 taxmann.com 524 (AAR - TAMILNADU)**

- 4.7** Nature of supply of contract between applicant and company Airbus for supplying aircrafts is a composite supply under section 8 wherein principle supply is supply of aircrafts - **Tata Advanced Systems Ltd., In re - [2024] 158 taxmann.com 270 (AAR - GUJARAT)**
- 4.8** Where Surat Textile Market is leased to assessee co-operative society by Surat Municipal Corporation and one time premium on lease renewal are payable by assessee to surat municipal corporation, since transactions are not exempt as per circular no. 101/20/2019-GST dated 30-4-2019 read with Notification No. 12/2017CT (Rate) dated 28-6-2017, assessee is liable to pay reverse charge liability on one time premium on lease renewal payable to surat municipal corporation as per Section 9 - **Surat Textile Market Cooperative Shops and Warehouses Society Ltd., In re - [2024] 158 taxmann.com 147 (AAR - GUJARAT)**
- 4.9** Where assessee co-operative society maintaining surat textile market collects amount from shop owners in surat textile market who are shareholder of assessee, since transaction falls within definition of "supply" and co-operative society and its members are deemed to be two separate persons, applicant is liable to collect GST on forward charge basis on collection made from shop owner - **Surat Textile Market Cooperative Shops and Warehouses Society Ltd., In re - [2024] 158 taxmann.com 147 (AAR - GUJARAT)**

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

- 4.10** Where hostel accommodation was bundled with food and other services for consolidated charge, these services constituted a composite supply with hostel accommodation as principal service - **Comfort Stay Ladies Hostel., In re - [2024] 158 taxmann.com 556 (AAR - TAMILNADU)**
- 4.11** Food and other ancillary services provided with principal service of providing hostel accommodation, becomes composite supply and will attract same rate as its principal supply - **Bharath Jothi Ladies Hostel., In re - [2024] 158 taxmann.com 612 (AAR - TAMILNADU)**

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

- 4.12** As per Circular No 178/10/2022 amounts paid for early termination of lease as contemplated by contract as part of commercial terms agreed to by parties, constitute consideration for supply of facility, therefore

damages received by assessee for tolerating breach of lease agreement by client is a consideration for supply of facility and is liable to GST at 18 percent - **Enzyme Business Center, In re - [2024] 158 taxmann.com 16 (AAR - KARNATAKA)**

- 4.13** Hostel services should not be compared to hotel services due to differences in duration of stay, facilities provided, and pricing mode - **Comfort Stay Ladies Hostel., In re - [2024] 158 taxmann.com 556 (AAR - TAMILNADU)**
- 4.14** Where Surat Textile Market is leased to assessee co-operative society by Surat Municipal Corporation and lease renewal charges are payable by assessee to surat municipal corporation, since assessee is a business entity falling as per Section 2(17) and surat municipal corporation is a local authority as per section 2(69), assessee is liable to pay reverse charge liability on lease renewal charges payable to Surat Municipal corporation as per Section 9 - **Surat Textile Market Cooperative Shops and Warehouses Society Ltd., In re - [2024] 158 taxmann.com 147 (AAR - GUJARAT)**
- 4.15** Where assessee offered bundled accommodation and food, incidental food service didn't confer exemption for entire activity, instead, bundled services form composite supply taxed at rate of main service - **Arputha Womens Hostel, In re - [2024] 158 taxmann.com 122 (AAR - TAMILNADU)**
- 4.16** Services provided by hostels would attract GST at 18 per cent and rate of tax applicable for hotels and lodges would not be applicable - **Bharath Jothi Ladies Hostel., In re - [2024] 158 taxmann.com 612 (AAR - TAMILNADU)**
- 4.17** Supply of aircrafts by applicant are classifiable under Heading No. 8802 and will attract GST at 5 per cent in terms of Notification No. 1/2017- Integrated Tax(Rate), dated 28-6-2017 - **Tata Advanced Systems Ltd., In re - [2024] 158 taxmann.com 270 (AAR - GUJARAT)**

- 4.18** Where assessee provides accommodation services consisting of rooms or units, without kitchen and with daily housekeeping services on a single or multi occupancy basis, said service is an that are akin to services provided by hotel, INN , guest houses, clubs and other similar establishments and rent being charged per person per unit per day is less than five thousand and thus impugned services are covered under heading no 9963, attracts 12 per cent in terms of Sl 7(i) of Notification No 11/2017-Central Tax (Rate) - **Ms. Deeksha Sanjay, In re - [2024] 158 taxmann.com 17 (AAR - KARNATAKA)**

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

- 4.19** Services by way of providing hostel accommodation supplied by applicant would not be eligible for exemption - **Comfort Stay Ladies Hostel., In re - [2024] 158 taxmann.com 556 (AAR - TAMILNADU)**

4.20 Where assessee provided boarding and lodging with ancillary services, charging single fee, it did not qualify for exemption under GST Entry No. 12 of Exemption Notification No. 12/2017-CT(Rate) dated 28-6-2017 for renting of residential dwelling for use as residence - **Arputha Womens Hostel, In re - [2024] 158 taxmann.com 122 (AAR - TAMILNADU)**

4.21 Where supply of canteen services by factory to its employees is exempt from GST, and applicant provides canteen services in terms of contractual agreement between employer and his employees, therefore, canteen services provided by applicant are exempted from GST under Circular No. 172/04/2022, dated 6-7-2022 - **Kirby Building Systems & Structures India (P.) Ltd., In Re - [2023] 157 taxmann.com 714 (AAR-TELANGANA)**

4.22 Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 at Sl. No. 15 exempts transport of passengers by non-air conditioned contract carriage as well as stage carriage, therefore, supply of transport services by applicant to their employees is exempt under this notification - **Kirby Building Systems & Structures India (P.) Ltd., In Re - [2023] 157 taxmann.com 714 (AAR- TELANGANA)**

4.23 Accommodation Services provided by hostels are not classifiable as renting of residential dwelling and GST exemption is not available - **Bharath Jothi Ladies Hostel., In re - [2024] 158 taxmann.com 612 (AAR - TAMILNADU)**

4.24 Where assessee offer a unit i.e. a portion of room with a cot on monthly basis and monthly rent is also charged and collected for unit but not for residential dwelling and also it does not have individual kitchen facility to each inhabitant and also cooking of food by inhabitants is not allowed, which are essential characteristics for any permanent stay, therefore, impugned accommodation service are not renting of residential dwelling and is not exempted under Sl 12 of Notification No 12/2017-Central Tax (Rate) - **Ms. Deeksha Sanjay, In re - [2024] 158 taxmann.com 17 (AAR - KARNATAKA)**

SECTION 12 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - TIME OF SUPPLY OF GOODS

4.25 Time of supply for purpose of supply of aircrafts by applicant shall be determined according to section 12 - **Tata Advanced Systems Ltd., In re - [2024] 158 taxmann.com 270 (AAR - GUJARAT)**

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

4.26 Value to be adopted for purpose of payment of GST in supply of aircrafts by applicant will include supply made free of cost by airbus i.e. value of FIMs - **Tata**

Advanced Systems Ltd., In re - [2024] 158 taxmann.com 270 (AAR - GUJARAT)

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

4.27 Where assessee co-operative society maintaining surat textile market collects amount along with GST from shop owners who are also a shareholder of assessee for payment of lease to be made to surat municipal corporation, and advance ruling is sought on eligibility of ITC to shop owners, since applicant does not intends to take ITC, and ruling is sought on behalf members and shareholders who are distinct persons, it was held that assessee had no locus standi on question raised before authority - **Surat Textile Market Cooperative Shops and Warehouses Society Ltd., In re - [2024] 158 taxmann.com 147 (AAR - GUJARAT)**

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

4.28 Where applicant has recovered only nominal amounts and had recorded these costs borne in their books of accounts for providing canteen services, therefore, input tax credit in respect of such canteen facilities shall be available to applicant - **Kirby Building Systems & Structures India (P.) Ltd., In Re - [2023] 157 taxmann.com 714 (AAR-TELANGANA)**

4.29 Where provision of service of transportation of employees from residence to office premises is for personal consumption or comfort of employees but not an activity which is part of business as business of applicant is to manufacture and supply of pre-engineered buildings, therefore, applicant is not under any statutory obligation to provide these services to his employees; input tax credit is not available to applicant - **Kirby Building Systems & Structures India (P.) Ltd., In Re - [2023] 157 taxmann.com 714 (AAR- TELANGANA)**

4.30 Where assessee will be installing a roof Solar Plant on its factory roof to generate electricity which will be solely and capetively used for manufacture of welding wires within same premise and said roof solar plant, affixed on roof of building is not embedded to earth and is not permanently fastened to building, and thus it is not immovable property, therefore applicant is eligible for input tax credit on roof solar plant - **Unique Welding Products (P.) Ltd., In re - [2024] 158 taxmann.com 425 (AAR - GUJARAT)**

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

4.31 Registration is required for hostels used by working persons as exemption applicable to residential dwelling is not available - **Bharath Jothi Ladies Hostel., In re - [2024] 158 taxmann.com 612 (AAR - TAMILNADU)**

Navigating the GST Reconciliation Maze with Technology



CA. Tapas Ruparelia

Introduction:

The implementation of Goods and Services Tax (“GST”) in India has transformed the taxation landscape, bringing with it a complex maze of compliance requirements which is entirely online (well, almost) which empowers the departmental officers with more data about the taxpayers than they ever had.

With the availability of the data in the hands of the department, generated from various sources such as vendors, financial institutions, other Governmental departments etc, the need to reconcile the data generated from such various sources has become an integral part of the compliances undertaking by any taxpayer. The GST law, in particular, is seen by many professionals as a reconciliation law requiring the taxpayers (or their consultants) to perform countless reconciliation. Navigating this maze is a challenging task especially for small and mid-sized enterprises and their consultants. In this article we explore how technological advancements can streamline the GST reconciliation process, turning a daunting task into a manageable and a more efficient routine. This article is primarily meant for small and medium size businesses or consultants, however, may also be relevant for large organizations if they are still using the legacy methods for doing reconciliations.

The various reconciliations required under the GST law

At the heart of GST compliances lies the need for meticulous reconciliations. The law requires several reconciliations, including:

1. Reconciling the purchase register with GSTR 2B
2. Annual reconciliation of the purchase register with Table 8A of GSTR 9 which is based on GSTR 2A
3. Reconciliation of the outward supply register with E-Invoices generated and the E-Way Bills (EWBs) generated
4. Matching the full year's outward and inward data with the GSTR 1 and GSTR 3B returns filed.

There have been cases where due to ERP or other system issues, the data of EWB, E-Invoices, Outward supply and GSTR 1 all have to be reconciled since none would match. There have also been cases where reconciliation between the data in Table 8A of GSTR 9

and the data of GSTR 2B would show a difference. On the top of all these, the departmental officers may require taxpayers to prepare numerous other reconciliations based on the data that they have (sometimes incorrect), making the process even more complex.

The Traditional Approach and Its Limitations

Conventionally, these reconciliations are performed using spreadsheets like MS Excel, especially in small and medium companies as well as by most consultancy firms. This approach, although familiar, is fraught with inefficiencies and risks. It is time-consuming, error-prone, and involves repetitive tasks that can lead to fatigue and inaccuracies.

Even when specialized software (popularly known as GST ASP Tools) are used for performing reconciliations, majority of the data preparation activity still happens outside these tools on MS Excel which typically involves a tedious process of data sanitization, validation, transformation, and conversion of data into the format of the ASP tool.

Reimagining the process

The advent of AI and no-code/low-code software platforms has revolutionized the approach with which we deal with data today. If one looks at the compliances to be undertaken GST specifically the reconciliations, it is no different than the process that is normally employed in data science and data analytics. Data science / data analytics is completely dependent on the quality of the data in order to achieve meaningful results which is why processing the raw and messy data into clean, fresh, reliable data is a critical step which is achieved using the ETL process (Extract, Transform and Load).

To put this into a perspective, let's try to put the process of inward reconciliation into the ETL framework

1. **Extract** – Unless an ERP or accounting package has the ability to download the GSTR 2B from the GSTN portal and the perform reconciliation within the ERP, the following data shall have to be extracted at the minimum
 - Purchase register from the ERP / accounting package; and
 - GSTR 2B from the GSTN Portal
2. **Transformation** – The transformation part is the most crucial part as includes all the following activities:
 - Sanitization of data – Removal of extra spaces and unwanted characters, removal of blank cells / columns / rows, correcting the erroneous data in cells
 - Validation of data – Validating invoice number format, place of supply with the GST charged, characters of supplier GSTIN etc.

- Presentation of data – Change in date format, creation of new data points such as adding invoice value or splitting of total tax into CGST and SGST, change in column arrangements in the required format
3. **Load** – While the result of the reconciliation would ultimately be a data point such as ITC value for GSTR 3B in case of inward reconciliation, and may not be required to load it anywhere, let us consider the process of loading the data as having the following steps:
- Loading the data in a predefined format and uploading to the ASP tool to perform the reconciliation; or
 - Performing the reconciliation in MS Excel using various functions (predominantly VLookup or Pivot). This step can be considered to be a part of the “transformation” part as well if the reconciliation itself is not being performed in a separate tool.

The entire process mentioned above is repeated every month in most of the cases on a new set of data which essentially is in the same format. Now, if the format in which data is received i.e. “extracted” and the format in which the final output is required “load”, the entire transformation process being normally done on MS Excel can be automated.

There are various tools (including MS Excel) that can perform this automation and the entire process can be completed in a jiffy. Not only can technology tools automate repetitive tasks, it can drastically minimize errors, and significantly reduce the time spent on reconciliations.

How can this Automation be achieved?

I am sure that the comparison drawn with data science would have led to a thought that the tools used in data science would be expensive and the cost incurred may not justify the saving in time achieved. Well, the automation need not happen in any specific data science related software (although it can). The automation can be carried out within MS Excel and some open-source software available. Most of the readers may also be aware of most tools that are referred below but may not have given them a try. The suggested tools for automation are:

- **VBA Macro**

Most of us know “Macro” as an ability of MS Excel record certain steps and then execute the same as a command when needed. What we don’t know is that Macro in MS Excel is a classic “No-code” tool where MS Excel essentially writes a code at the back end based on the steps that the user “records”. These steps are then performed by MS Excel every time the Macro is called. MS Excel can automate routine tasks such as data formatting, error checking and data transformation. Let’s say you want to perform the Purchase Register vs the GSTR 2B reconciliation in MS Excel, now every time you download the GSTR 2B, the process of removing blank rows and rows with

totals, changing headers etc. can be automated through a simple Macro. Infact the entire process of reconciliation can be automated through Macros in following suggested steps:

1. Macro 1 – Loading the data from the report generated by the ERP and GSTR 2B into a fixed format
2. Macro 2 – Performing data sanitisation and validation
3. Macro 3 – Performing reconciliation

A pro tip – If you are using MS Office 365 or MS office 2021, try using the “Xlookup” function instead of “Vlookup” function to perform the reconciliation. With the XLookup function you can Look up 2 criteria at the same time (avoiding the need to having to merge the GSTIN and Invoice number) and you can also have your “Array” anywhere in the table (avoiding the need to bring the column containing the lookup values at first place).

• Power Query

Power Query, as the name suggest is indeed a powerful tool to automate the entire ETL process. It is available in all MS Excel versions starting from 2016. For older versions such as 2010 and 2013, it is available as a free add-in.

Similar to MS Excel Macro, Power Query also records the steps that one performs and writes the code for performing the said steps again. While Macros run on a native Microsoft language called “Visual Basic for Application” or “VBA”, Power Query runs on “M” language. Power Query is essentially designed to perform the ETL tasks and is very efficient in processing high volume data. All one needs to do is get all the steps in the Power Query and save the file. All the steps right from importing the data into the Power Query to giving out the results of the reconciliation can be done with a click of a single button using Power Query. To put it simply, once the Power Query is taught on from where to **load** the data, what **transformation** is to be done on the data and what is the final output desired, Power Query can execute it with a click of a button every time there is new data. The only thing to be kept in mind that the format, specially the headers of the data need to be the same for the new data as well so that Power Query can recognise the data and perform the functions it has been taught.

While VBA is capable of performing functions outside MS Excel or the other MS Office apps (for eg, opening browsers and downloading data), in case of large data and a long code may make the MS Excel file heavy and consequently slow. On the contrary Power Query, can only work on the data that is provided to it, the Queries which contain the steps do not make the file heavy and it can process large volume of data.

No-code/Low-code data analytics software

Apart from above, there are No-code/Low-code data analytics softwareare also available which can essentially automate the entire ETL Process. One can use Robotic

Process Automation (RPA) tools in order to extract the data automatically at a predetermined time and saving them at a predetermined place. The modern RPA tools such as Microsoft Power Automate, UI Path, Automation Anywhere are amongst few which provide no code platform where the user just needs to select the tools and teach the software on the UI items to be clicked and the software writes the entire code at the backend doing away with the process of coding.

Similarly, for performing the transformation task, there are tools where you can create one time workflows for a input data and the tool would perform the entire transformation exercise right from cleaning the data to performing the reconciliation at a click of a button. These tools are Alteryx, Gathr, Qlick, KNIME and countless others. These software require minimal coding and work with drag and drop tools for each part of the process and allow to create customised data processing and reconciliation tools.

Leveraging AI for automation using various tools

Large Language Models like ChatGPT / Microsoft Copilot, Google Bard / Google Gemini, Claude(let's refer to them collectively as "AI Tools") represent an innovative frontier in automation. These tools can assist in generating the VBA and Power Query codes and give a step-by-stepguide to implement the automation process without you having to really learn the technology in detail. The AI tools also come in handy for troubleshooting and give specific results as compared to endless search of Google for finding the answer.

Conclusion

Consider a mid-sized retail business struggling with reconciling its purchase register with GSTR 2B. Traditionally, this process might take several hours, if not days, with a high risk of errors. By implementing a tool, this business could automate the data fetching and matching process, reducing the time taken to a fraction and significantly lowering the likelihood of errors if not completely eliminating them.

While the benefits of using technology for GST reconciliations are clear, the transition comes with its challenges. There is a learning curve associated with any new technology. Additionally, the initial setup and customization of these tools can require time and resources. However, the long-term benefits – increased accuracy, time savings, and reduced compliance risks – far outweigh these initial challenges.

The realm of GST compliance, with its intricate reconciliation requirements, need not be a daunting task. With the aid of technology, no-code/low-code platforms and tools like ChatGPT – these processes can be transformed into efficient, error-minimized tasks. For Chartered Accountants and businesses alike, embracing these technological solutions is not just a step towards easier compliance, but a leap towards future-ready taxation practices.

As we continue to evolve in the digital age, the integration of technology in routine tax compliance is becoming imperative. It's a journey from manual, error-prone processes to automated, precise, and efficient practices – a journey that every forward-thinking professional and business should embark on.

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1 SEBI strengthens short-selling norms, tightening norms particularly for Institutional Investors - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/1, Dated 05-01-2024**

Editorial Note : SEBI has modified the short-selling norms. As per the amended norms, institutional investors must disclose upfront at the time of placement of order whether the transaction is a short sale. Further, the retail investors will have to disclose the same by the end of the trading hours on transaction day. The brokers are mandated to collect the details on scrip-wise short sell positions, collate them and upload them to the stock exchanges before the trading commencement.

- 1.2 SEBI tweaks AIF norms, modifies the norms w.r.t demat holding and appointment of custodian - **Notification No. SEBI/LAD-NRO/GN/2024/163, dated 05-01-2024**

Editorial Note : SEBI has modified the Alternative Investment Norms. An amendment has been made in Regulations 15 & 20. A new clause has been added in Regulation 15 which provides the list of situations where an AIF can hold the investment in a non-dematerialised form. This includes investments in instruments and liquidation schemes of AIFs that are not eligible for demat. Further, the norms w.r.t the appointment of custodians has also been modified.

- 1.3 MCA floats a policy for pre-legislative consultation to ensure greater transparency and involvement of the stakeholders

Editorial Note : Currently, the practice of public consultation for regulation making is not uniform across regulators i.e. SEBI, IBBI, CCI etc. Therefore, a need has been felt to frame a policy for public consultation in rule/regl making exercise for bringing in greater transparency & involvement of the stakeholders. However, where there is a specific statutory provision on the subject of or manner of consultation, it shall be followed. It shall be effective from 01.01.2024

- 1.4 MCA seeks public input on extant rules issued under various legislations through e-Consultation Platform

Editorial Note : MCA has released a Policy for Pre-Legislative consultation and a comprehensive review of existing Rules and Regulations prescribed under various legislations. Accordingly, it has been decided to invite comments/suggestions on the Rules issued under such legislation from all the stakeholders through the e-Consultation Platform on the MCA website. Initially, rules relating to Companies Act & LLP Act shall be posted for inviting comments/suggestions with effect from 25.01.2024.

- 1.5 SEBI grants renewal of recognition to AMC Repo Clearing Limited for one year - **Notification No. SEBI/LAD-NRO/GN/2024/164, Dated 15-01-2024**

Editorial Note : SEBI has granted renewal of recognition to AMC Repo Clearing Limited, for one year commencing on the 17th day of Jan, 2024 and ending on the 16th day of Jan, 2025. However, the recognition is granted subject to the condition that the Clearing Corporation shall not undertake any activity except that of clearing and settling of transactions in repo and reverse repo in the debt securities that are dealt with or traded on a recognized stock exchange.

- 1.6 SEBI issues detailed guidelines w.r.t holding of investment in demat and appointment of custodian by an AIF - **Circular No. SEBI/HO/AFD/PoD/CIR/2024/5, Dated 12-01-2024**

Editorial Note : Earlier, on 5th Jan SEBI had notified certain amendment to the AIF regulations. In this regard the SEBI further specifies that Any investment made by an AIF on or after Oct 01, 2024 shall be held in demat form only, irrespective of whether investment is made directly in the investee company or is acquired from another entity. Further, the norms w.r.t appointment of custodian has also been specified like custodian for a scheme of an AIF shall be appointed prior to the date of first investment.

- 1.7 SEBI issues consultation paper to provide flexibility in handling unliquidated investments by AIFs & VCFs

Editorial Note : The SEBI has issued consultation paper on providing flexibility to AIFs, VCFs and their investors to deal with unliquidated investments of their schemes beyond expiry of tenure. It has been proposed to allow schemes of AIFs to enter into a dissolution period / process to deal with unliquidated investments of their schemes upon completion of tenure, without the requirement of launching liquidation scheme. Various other proposals has also been made.

- 1.8 Warrant-to-equity conversion not deemed corporate action as it is not caused due to any action taken by company: SEBI

Editorial Note : A company engaged in business of stock broking came up with issuance of equity shares along with detachable warrants, via rights issue. The company sought through informal guidance whether the act of conversion of warrants into equity shares forms part of corporate action. The SEBI directed that such conversion shall not be treated as corporate action since it is not caused due to the action taken by the company. Further, such exercising of warrant shall be treated as acquisition.

- 1.9 Govt. authorizes Mumbai DRAT Chairperson to discharge Delhi DRAT functions for PNB vs Jalan

Containers appeals - **Order No. S.O. 93(E), Dated 01-01-2024**

Editorial Note : Govt. authorizes Mumbai DRAT Chairperson to discharge Delhi DRAT functions for PNB vs Jalan Containers appeals Order No. S.O. 93(E), Dated 01.01.2024 (Indian acts.bnf) The Central Government has now authorised the Chairperson of the Debts Recovery Appellate Tribunal, Mumbai to discharge also the functions of the Chairperson of the Debts Recovery Appellate Tribunal

1.10 Unlocking Global Opportunities: Indian Companies Embrace Direct Listing on GIFT-IFSC International Exchanges

Editorial Note : The Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024, introduced by the MCA, enable both unlisted and listed public companies to issue securities for listing on international stock exchanges in permissible foreign jurisdictions. Coupled with recent FEMA amendments, this facilitates foreign investor engagement in trading Indian company shares on International Exchanges. The article analyzes both the Companies Rules and the FEMA Amendments for a comprehensive overview.

1.11 SEBI Streamlines regulatory reporting by Designated Depository Participants (DDPs) and Custodians through SI Portal - **Circular No. SEBI/HO/AFD/ AFD-SEC-2/P/CIR/2024/8, Dated 25-01-2024**

Editorial Note : The SEBI has reviewed various reports submitted by DDPs and Custodians in order to have uniform compliance standards. Subsequent to the review, SEBI has decided that the reports shall now be submitted on the SEBI Intermediary Portal (SI Portal) by DDPs and Custodians. Such reports include Annual audit reports on internal controls of DDPs, Annual review report of the systems, procedures & controls of the Custodian, etc. This circular shall be effective from the month ending February 2024.

1.12 SEBI extends timeline for complying with provisions relating to verification of market rumours by listed entities - **Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/7, Dated 25-01-2024**

Editorial Note : As per Reg. 30(11) of LODR norms, top 100 listed entities and thereafter Top 250 listed entities by Market-Cap are required to verify/confirm/deny or clarify market rumours from the date specified by SEBI. In Sep 2023, SEBI, through a Circular specified 01.02.2024 as the effective date for Top 100 listed entities and 01.08.2024 as effective date for next top 250 entities. Now, the dates have been extended to 01.06.2024 for top 100 listed entities and 01.12.2024 for next top 250 listed entities.

1.13 AIF norms don't specify a provision to extend 5-year period for accepting funds from angel investors u/r 19D(3): SEBI

Editorial Note : A Category I-VCF registered with the SEBI sought informal guidance as to whether the time limit provided under the Reg. 19D(3) i.e., Angel funds shall accept, up to a maximum period of 5 years, an investment of not less than 25 lakhs from an angel investor, be extended further. The SEBI clarified that AIF norms lack provision relating to an extension of 5-year period for accepting funds from angel investors under Reg. 19D(3).

1.14 MCA notifies norms w.r.t listing of equity shares in IFSC by public companies - **Notification No. G.S.R. 61(E), Dated 24-01-2024**

Editorial Note : MCA has notified the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024. These rules shall apply to unlisted public Cos. or listed public Cos. which issue their securities for listing on permitted stock exchanges in permissible jurisdictions (i.e. IFSC). Permitted exchanges mean India International Exchange and NSE International Exchange. Further, MCA specifies certain Cos. which shall not be eligible under these rules like Nidhi Co., Cos.- limited by Guarantee etc.

1.15 SEBI allows Promoters to offer shares to employees in 'Offer for Sale' through Stock Exchange Mechanism - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/6, Dated 23-01-2024**

Editorial Note : As per the extant procedure, Offer for Sale (OFS) to employees of the eligible company is happening outside the stock exchange (SE) mechanism. SEBI observed that said procedure is time-consuming & involves additional costs, therefore, it has now decided that the promoters can also offer the shares to employees in OFS through the SE Mechanism. The procedure for OFS to employees through the SE Mechanism is an additional option to the existing procedure of OFS to employees.

1.16 SEBI modifies the AIF norms to align the same with amended PMLA rules - **Circular No. SEBI/HO/AFD/PoD1/CIR/2024/2, Dated 11-01-2024**

Editorial Note : Earlier, the Govt. has amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 whereby the threshold limit for determining the beneficial ownership has been revised. Therefore, the respective changes have been made in the master circular on AIFs. Further, in case an investor who has already been on-boarded to AIF scheme, who doesn't meet the revised condition the manager of AIF shall not drawdown any further capital contribution, until the investor meets the condition.

1.17 SEBI streamlines reporting for stock brokers; ends certain fund reconciliation reports for ease of doing business - **Draft Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/03, Dated 12-01-2024**

Editorial Note : In order to bring in efficiencies in reporting and a step towards ease of doing business, SEBI has decided to discontinue certain reports relating to the reconciliation of a) funds of credit balance clients used for settlement obligation, b) client's funds used for margin obligation and c) Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading.

- 1.18 SEBI proposes to float the framework for voluntary freezing/blocking the online access of the trading account - **Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2024/4, Dated 12-01-2024**

Editorial Note : It was noticed that many investors raise issues of suspicious activities in their trading accounts. Therefore, SEBI decided to float the framework for Trading Members to provide the facility of voluntary freezing/blocking the online access of the trading account to their clients on account of suspicious activities on or before April 01, 2024.

- 1.19 SEBI notifies consultation papers on interim recommendations for harmonizing ICDR & LODR norms

Editorial Note : SEBI has notified consultation paper to seek comments from the stakeholders on interim recommendations of the Expert Committee for facilitating EODB & harmonization of the provisions of the ICDR and LODR norms. The committee has given its recommendations on Applicability of the regulations on the basis of market capitalization, Thresholds for increase/decrease in issue size triggering re-filing of draft offer documents, limit of membership and chairmanship of committees for a director, etc.

- 1.20 SEBI proposes major regulatory changes for Indian-listed entities for a dynamic market and board effectiveness

Editorial Note : On Jan 11, 2024, the SEBI issued a consultation paper to seek comments from the stakeholders on interim recommendations of the Expert Committee for facilitating EODB & harmonization of the provisions of the ICDR & LODR norms. The committee has proposed the key amendments relating to the applicability of the regulations on the basis of based on market cap, limit of membership and chairmanship of committees for a director, timeline for prior intimation of BM, etc.

- 1.21 SEBI proposes checks to prevent AIFs from facilitating the circumvention of financial regulations

Editorial Note : The SEBI has floated a consultation paper on a proposal to enhance trust in the Alternative Investment Funds ('AIF') ecosystem to facilitate Ease of Doing Business measures. The paper also proposes to introduce a requirement that AIFs, Managers of AIFs and the Key Management Personnel of AIFs and their managers ensure that AIFs do not facilitate circumvention of extant financial sector regulations.

2. SUPREME COURT

SECTION 12A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

- 2.1 SC declines to transfer Adani-Hindenburg probe from SEBI to SIT and to direct SEBI to revoke amendments to FPI & LODR Regulations - **Vishal Tiwari v. Union of India - [2024] 158 taxmann.com 85 (SC)**

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

- 2.2 Court cannot modify arbitral award in proceedings u/s 34 or u/s 37 of A&C Act on the ground that damages/interest awarded will be paid from public exchequer - **S. V. Samudram v. State of Karnataka - [2024] 158 taxmann.com 137 (SC)**

SECTION 423 OF THE COMPANIES ACT, 2013 - SUPREME COURT - APPEAL TO

- 2.3 Where appellant had alleged syphoning of funds by respondent and matter had been subsequently, settled between **parties** and joint applications for settlement on behalf of these parties had been filed before Supreme Court, said application was to be allowed - **Pratik Jayesh Vira v. Sunshine Housing and Infrastructure (P.) Ltd. - [2024] 158 taxmann.com 372 (SC)**
- 2.4 In matters requiring technical, commercial, administrative, expert knowledge, etc, Courts should ordinarily exercise caution and judicial restraint and thus, instant petition to challenge amended Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 by which threshold of paid up capital for appointment of whole time company secretary had been increased from Rs.5 crores to Rs.10 crores was to be dismissed - **Suman Kumar v. Union of India - [2024] 158 taxmann.com 344 (SC)**
- 2.5 Where Serious Fraud Investigation Office (SFIO) has been established to take appropriate action in cases of fraud etc, and there are stringent penalty provisions, thus, no relief can be sought by or on behalf of these defaulting companies, as that would mean approaching Court with unclean hands, given that these companies were non-compliant with provisions of the Companies Act, 2013 - **Suman Kumar v. Union of India - [2024] 158 taxmann.com 344 (SC)**

3. HIGH COURT

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

3.1 Where respondent awarded a contract in favour of applicant company for replacement of existing AC sheets with Galvalume sheets inside its factory area and Final Bill of applicant had been settled on 06.09.2022 and before expiry of three years limitation period prescribed under Article 137 of Limitation Act, 1963, applicant had raised a dispute in relation to statutory dues being deducted from his bid amount and filed an application for appointment of arbitrator to adjudicate disputes between parties Arbitrator, said application was to be admitted - **Triveni Constructions v. Military Engineer Services** - [2024] 158 taxmann.com 427 (Telangana)

REGULATION 28 OF THE SEBI (SETTLEMENT PROCEEDINGS) REGULATION, 2018 - REVOCATION OF THE SETTLEMENT ORDER

3.2 Where certain shareholders of appellant alleged violation of SEBI's Minimum Public Shareholding Norms (MPS Norms) by appellant and SEBI issued SCN to appellant for alleged violation and subsequently SEBI passed a settlement order which order stood revoked by SEBI on ground of alleged failure of appellant to comply with terms of settlement order and appellant preferred petition before Single Judge, Delhi seeking a direction to set aside revocation order, in view of fact that decision of SEBI to invoke settlement order took place at Mumbai and all events prior thereto with respect to issuing SCN and passing of settlement order also occurred at Mumbai and thus, High Court of judicature at Bombay had jurisdiction and Single Judge had rightly exercised discretion to not to entertain writ petition - **Ashoka Marketing Ltd. v. Securities & Exchange Board of India** - [2024] 158 taxmann.com 602 (Delhi)

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

3.3 Where against award passed by Arbitrator allowing claim of petitioner for arrears of rent and return of vacant possession of his schedule property, respondent filed a petition before Commercial Court invoking section 34 of Arbitration and Conciliation Act, 1996 and since commercial court was on vacation, vacation court, in wake of preserving status quo, had passed an order staying award of Arbitrator till further orders, there was no fault with impugned order which was interim in nature and therefore, instant writ against impugned order was to be dismissed - **UM Projects LLP v. Godolphine India (P.) Ltd.** - [2024] 158 taxmann.com 327 (Karnataka)

SECTION 56 OF THE COMPANIES ACT, 2013 - SECURITIES - TRANSFER AND TRANSMISSION OF

3.4 Physical transfer of shares is not incomplete merely because consideration is not paid by buyer - **Shashvat Nakrani v. Ashneer Grover** - [2024] 158 taxmann.com 453 (Delhi)

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

3.5 Where there were no recoverable assets of a company available for remittance of its dues and no useful purpose would be served by keeping winding up proceedings of said company pending, thus, instant application filed by Official liquidator of said company was to be allowed and respondent company was to be dissolved - **Kotak Mahindra Bank Ltd. v. Manisha Parivahan (P.) Ltd.** - [2024] 158 taxmann.com 483 (Delhi)

3.6 Where company under liquidation had no property/assets which could be realised by official liquidator to make recoveries, no useful purpose would have been served by keeping matter pending, and accordingly liquidation proceeding was to be put to an end and liquidator was to be permitted to close books of accounts of company - **Canara Bank v. Surekha Enterprises (P.) Ltd.** - [2024] 158 taxmann.com 312 (Delhi)

SECTION 397 OF THE COMPANIES ACT, 1956 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

3.7 Whether an act is oppressive or not is not to be judged by its legality; The test is the intent of the majority and intended effect on the minority - **Sunil Kumar Agarwal v. Laxmi Ventures (India) Ltd.** - [2024] 158 taxmann.com 454 (Bombay)

4. NCLAT

SECTION 42 OF THE COMPANIES ACT, 2013 - PRIVATE PLACEMENT - OFFER OR INVITATION FOR SUBSCRIPTION OF SECURITIES ON

- 4.1 Where appellant transferred certain sum to corporate debtor claiming it for share allotment and unsecured loan, since no evidence of a private placement offer or share allotment was found and there was no consideration for time value of money, NCLT's dismissal of section 7 application filed by appellant was to be upheld as said amount could not be treated as financial debt - *Rahul Maroo v. Bruck Pharma (P.) Ltd.* - [2023] 157 taxmann.com 454 (NCLAT- New Delhi)

SECTION 58 OF THE COMPANIES ACT, 2013 - TRANSFER OF SHARES

- 4.2 Where NCLT vide impugned order directed transmission of shares in name of respondent (deceased son) without obtaining a succession certificate, since a Succession Certificate, as mandated by Articles of Association of company, was required for transmission of shares of deceased member therefore, impugned order passed by NCLT was to be set aside - *Avanti Metals (P.) Ltd. v. Alkesh Gupta* - [2024] 158 taxmann.com 650 (NCLAT - Chennai)

SECTION 71 OF THE COMPANIES ACT, 2013 - DEBENTURES

- 4.3 Where NCLT vide impugned order denied an opportunity to be heard to debenture holders of a company 'R' on ground that they did not have a right to be heard, since debenture holders were important parties in financial resolution of 'R' and there was involvement of public money in 'R', debenture holders were to be given opportunity of hearing in petition filed under section 71 of Companies Act and, thus, impugned order was to be set aside and matter was to be remanded back to NCLT - *Bank of Baroda v. IDBI Trusteeship Services Ltd.* - [2024] 158 taxmann.com 73 (NCLAT- New Delhi)

SECTION 175 OF THE COMPANIES ACT, 2013 - BOARD - PASSING OF RESOLUTION BY CIRCULATION

- 4.4 Where board resolution of company 'T' passed by circulation was not circulated to appellant-director of 'T' as per section 175 (1), consent of appellant not having been obtained who was included in majority, said resolutions could not be said to be duly approved by majority directors and same was void in Law and, thus, NCLT erred in rejecting prayer of appellant to stay implementation of said resolution - *M.S. Muralidharan v. Technology Frontiers (India) (P.) Ltd.* - [2024] 158 taxmann.com 31 (NCLAT - Chennai)

SECTION 441 OF THE COMPANIES ACT, 2013 - SPECIAL COURTS - COMPOUNDING OF CERTAIN OFFENCES

- 4.5 Where a company approved an advancement of an inter corporate loan to its fellow subsidiary company and appellant was a common director on board of both companies, since, such approval was in violation of section 185 and appellant had not filed application during defaulting period for compounding of offence, direction issued by NCLT to prosecute appellant for not applying for compounding of offence was free from any legal infirmities - *Neelam Dhawan v. Registrar of Companies* - [2024] 158 taxmann.com 1 (NCLAT - Chennai)

5. SAT

RULE 8 OF THE SECURITIES CONTRACTS (REGULATION) RULES, 1957, READ WITH RULE 5(B) OF CHAPTER III OF RULES OF THE EXCHANGE - QUALIFICATIONS FOR MEMBERSHIP OF A RECOGNIZED STOCK EXCHANGE

5.1 Where appellant company made a temporary investment of their own surplus funds to earn interest with NBFC, since, investment of surplus funds, generated as a consequence of securities business, with an NBFC could not lead to an inference that appellant was engaged as a principal in business other than that of securities, there was nothing on record to indicate that said transaction was a loan, monetary penalty imposed on this account upon appellant was to be struck down - **Magnum Equity Broking Ltd. v. National Stock Exchange of India Ltd.** - [2024] 158 taxmann.com 259 (SAT - Mumbai)

SECTION 12A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

5.2 Where penalty was imposed on appellant and other noticees alleging synchronized trades which increased last traded price (LTP) creating misleading appearance of trading, and trading pattern of appellants with other noticees clearly indicated that there was meeting of mind, appellant could not contend that he had no connection with other noticees and minimum penalty imposed by Adjudicating Officer did not suffer from any error of law - **Nilesh Kishanbhai Pandya v. Securities and Exchange Board of India** - [2024] 158 taxmann.com 215 (SAT - Mumbai)

SECTION 15HB OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - PENALTY FOR CONTRAVENTION WHERE NO SEPARATE PENALTY HAS BEEN PROVIDED

5.3 Where appellants were directors of a company which came out with various types of debentures during financial years 2010-11 to 2012-13, and an order was passed by WTM to refund money collected through issuance of said debentures as same were in violation of companies act, order passed by AO imposing penalty against appellants for non-compliance of order of WTM was to be set aside as appellants had resigned in 2011 and were not in a position to comply with direction of WTM - **Bakil Singh v. Securities and Exchange Board of India** - [2023] 157 taxmann.com 696 (SAT - Mumbai)

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

5.4 Where passed an order restraining appellant-stock broker firm and its director from accessing securities

market, in view of fact that freezing of accounts was only to ensure that appellants did not siphon off monies and that monies were used to pay monies back to investors / clients and in this regard appellants have only to issue a request to stock exchanges for releasing money to investor from their accounts and thus, contention that payments could only be made only after defreezing of accounts was patently erroneous - **CPR Capital Services (P.) Ltd. v. Securities & Exchange Board of India** - [2024] 158 taxmann.com 35 (SAT - Mumbai)

SECTION 152 OF THE COMPANIES ACT, 2013 - DIRECTORS - APPOINTMENT OF

5.5 Regulation 17(1A) and 17(1C) has to be read harmoniously with provisions of Section 152(2) and 161(1) which will make it clear that a person above age of 75 years can be appointed by board of directors and such appointment is required to be approved subsequently within prescribed period by a special resolution in next general meeting by members of company - **20 Microns Ltd. v. Securities & Exchange Board India** - [2024] 158 taxmann.com 295 (SAT - Mumbai)

COMPETITION LAW

1. STATUTORY UPDATES

- 1.1 Every 'Interlocutory Application' filed for scrutiny of information or reference shall be registered & numbered:
CCI - **Notification No. L-3(2)/Regl. -Gen. (Amdt.)/2024/ CCI, Dated 12-01-2024**

Editorial Note : The CCI has notified amendment in CCI (General) Regulations, 2009. A new sub-regulation in regulation 15 i.e., Procedure for scrutiny of information or reference has been inserted. As per the newly introduced norms, every Interlocutory Application filed in a case shall be registered & numbered. All such applications shall be scrutinized within 7 days and defects, shall be communicated to the party. Further, each Application shall be accompanied by proof of having paid the fees prescribed.

2. HIGH COURT

SECTION 21A OF THE COMPETITION ACT, 2002 - REFERENCE BY COMMISSION

- 2.1 App developer cannot file civil suit against Google for abuse of dominance and payment terms violating PSS Act as CCI & RBI can deal with these issues - **Info Edge (India) Ltd. v. Google India (P.) Ltd. - [2024] 158 taxmann.com 580 (Madras)**

3. CCI

SECTION 4 OF THE COMPETITION ACT, 2002 - PROHIBITION OF ABUSE OF DOMINANT POSITION

- 3.1 Where OP was an autonomous corporation established by Government of Kerala under Road Transport Corporations Act, 1950 to operate buses within and outside State of Kerala and OP was granted exclusivity by Government of Kerala for operating buses on Nilakkal Pamba route to reach Sabarimala temple and said exclusivity was granted by Government of Kerala, in exercise of powers conferred under provisions of Motor Vehicles Act, 1988 for providing adequate, economical and properly coordinated passenger road transport service in public interest, such grant of exclusivity to KSRTC was a policy decision of Government of Kerala and would not be considered as anti competitive in facts and circumstances of case - **Shine P. Sasidhar v. Kerala State Road Transport Corporation - [2024] 158 taxmann.com 653 (CCI)**
- 3.2 Where Informant filed information, alleging that OPs selling Electric Two Wheelers had been repeatedly abusing sacrosanct limit set by government by selling integral equipment such as charger and proprietary software/upgrades outside limit, at an additional cost, which otherwise they would not be eligible for, thus undermining basic intent of FAME policy, however, there appeared to be no single player which appeared to demonstrate a position of strength to operate independently of market forces, no prima facie case of contravention of provisions of section 4 was made out against any of OPs and thus Information was to be closed forthwith - **XYZ v. Ola Electric Ltd. - [2024] 158 taxmann.com 603 (CCI)**
- 3.3 Where informant had alleged abuse of dominance by OPs in market for purchase of pollution dust from induction furnaces, wherein OP-1, in connivance with OP-2, was making undue profits by extracting zinc from pollution dust, procured from induction furnaces at low prices vis-à-vis market rate of zinc, in view of fact that there had been entry of at least two entities that purchase pollution dust and further, bills/invoices provided along with information indicate that procurement price of pollution dust had been increased, same were indicative of greater competition and prima facie there was no competition concern arising in present matter and therefore, matter was to be closed forthwith under section 26(2) - **Jarnail Singh v. Madhav KRG Ltd. - [2024] 158 taxmann.com 402 (CCI)**

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 RBI issues revised guidelines on forex risk hedging w.e.f. April 05, 2024 - **A. P. (DIR Series) Circular No. 13, Dated 05-01-2024**

Editorial Note : The RBI has issued the revised directions on 'Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk'. Revised directions, allow Authorised Dealers (AD) to classify users as retail or non-retail to offer forex derivative contracts and foreign currency interest rate derivative contracts. ADs can offer foreign exchange contracts, involving INR or otherwise, to users (both retail and non-retail) for Cash, tom; and spot. Directions shall come into force w.e.f. April 05, 2024.

- 1.2 RBI updates KYC norms; amends the definition of 'Politically Exposed Persons' - **Circular No. RBI/2023-24/107 DOR.AML.REC.66/14.01.001/2023-24, Dated 04-01-2024**

Editorial Note : The RBI has amended the Master Direction on KYC. The amendment introduces an explanatory note within Sec 41 of the Master Direction, providing a comprehensive understanding of 'Politically Exposed Persons (PEPs)'. PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, including Heads of State/Governments, senior politicians and important political party officials.

- 1.3 IFSCA grants renewal recognition to IFSC limited exchanges for one year - **Notification Nos. IFSCA/INDIA ICC/RENEWAL/2023-24 AND IFSCA/INDIA INX/RENEWAL/2023-24, Dated 28-12-2023**

Editorial Note : International Financial Services Centres Authority (IFSCA), has granted the renewal of recognition by India International Clearing Corporation (IFSC) Limited, 1st Floor, Unit No. 101 & 102. The renewal of recognition to the said Clearing Corporation is granted for one year, commencing on the 29th day of December, 2023 and ending on the 28th day of December, 2024.

- 1.4 Govt. notifies the list of reporting entities who can perform aadhaar authentication under the Aadhaar Act - **Notification No. S.O. 180(E), Dated 16-01-2024**

Editorial Note : Central Govt has notified the 6 reporting entities who shall comply with the standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act. Further, these entities are permitted to perform authentication under the Aadhaar Act for the purposes of section 11A of the Money Laundering Act.

- 1.5 RBI issues updated master circular on exposure norms and statutory / other restrictions-UCBs-**Circular No. RBI/2023-24/114 DoR.CRE.REC.71/07.10.002/2023-24, Dated 16-01-2024**

Editorial Note : RBI issues master circular consolidating

all the instructions / **guidelines** on exposure norms and statutory / other restrictions related to the (urban) co-operative banks UCBs. Now users can refer to the consolidated master circular, consolidating different circulars at one place.

- 1.6 RBI unveils layout for appointment/re-appointment of Statutory Auditors for State and Central Co-operative Banks - **Circular No. RBI/2023-24/113 Ref.No.DOS.ARG/SEC.8/08.91.001/2023-24, Dated 15-01-2024**

Editorial Note : The RBI has issued guidelines for the appointment or re-appointment of Statutory Auditors (SAs) of State and Central Co-operative Banks (StCBs/CCBs). The guidelines shall be applicable from April 1, 2024, and the banks shall seek prior approval for the appointment of SAs before July 31 of the reference financial year. The guidelines focus on a) eligibility criteria b) Review performance of SAs c) Independence of Auditors d) Tenure and Rotation of SAs.

- 1.7 RBI proposes aligning Housing Finance Companies with NBFCs, enforcing 15% liquid assets for deposit-taking HFCs - **Press Release: 2023-2024/1678, Dated 15-01-2024**

Editorial Note : RBI proposes changes in regulations for Housing Finance Companies (HFCs), aligning them with NBFCs. Deposit-taking HFCs must maintain liquid assets at 15% of public deposits, phased in gradually. Safe custody rules for liquid assets to align with NBFCs. HFCs to be permitted to issue co-branded credit cards with commercial banks for two years, subject to RBI approval and subsequent review. The aim is to harmonize regulatory frameworks and enhance the financial stability of HFCs.

- 1.8 RBI seeks public comments on draft Circular regarding credit/investment Concentration Norms – Government owned NBFCs - **Press Release: 2023-2024/1680, Dated: 15-01-2024**

Editorial Note : RBI has issued a draft circular on credit/investment Concentration Norms for Government owned NBFCs. As substantial time has elapsed since Government owned NBFCs were brought within the ambit of prudential regulations, a review of the exposure norms for these NBFCs has been carried out and it has been decided to withdraw the case-by-case basis exemptions granted to Government NBFCs. Stakeholders can submit their feedback on the same latest by 29.02.2024.

- 1.9 Guarantees for NBFC-UL credit risk transfer must be direct, explicit, irrevocable, and unconditional: RBI clarifies - **Circular No. RBI/2023-24/112 DOR.CRE.REC.70/21.01.003/2023-24, Dated 15-01-2024**

Editorial Note : In order to ensure uniformity and consistency in computation of concentration norms among NBFCs, RBI has decided that NBFC-Base Layer shall put in place an internal Board approved policy for credit/investment concentration limits for both single borrower/party and single group of borrowers/parties.

Further, it has been clarified that to be eligible as a credit risk transfer instrument, guarantees shall be direct, explicit, irrevocable and unconditional.

- 1.10** Govt. grants exemption to Indian Bank till 31st Mar, 2025; Indian Bank can hold shares exceeding 30% of ASREC (India) Limited - **Notification No. S.O. 166(E), Dated 12-01-2024**

Editorial Note : As per Sec.19(2) of Banking Regulation Act, 1949 a banking Co. shall not hold shares in any Co., whether as pledgee, mortgagee or absolute owner, of an amount exceeding 30% of paid-up share capital of that Co. or 30% of its own paid-up share capital & reserves, whichever is less. The Govt. has granted exemption to Indian Bank, accordingly, Sec. 19(2) shall not apply to Indian Bank, in so far as they relate to its holding shares of an Amount exceeding 30% of paid-up capital of ASREC (India) Ltd.

- 1.11** RBI hikes bulk deposit limit for Urban Co-operative Banks (UCBs) in Tier 3 & Tier 4 to Rs. 1 Crore - **CIRCULAR NO. RBI/2023-24/104 DOR.SPE.REC.63/13.03.00/2023-2024, DATED 01-01-2024**

Editorial Note : RBI has decided to enhance the bulk deposit limit for Scheduled Primary (Urban) Co-operative Banks, in Tier 3 and 4, to Rs. 1 crore and above. Accordingly, "Bulk Deposit" for Primary (Urban) Co-operative Banks would now mean that a Single Rupee term deposits of Rs. 1 Crore and above for Scheduled UCBs categorised as Tier 3 and 4 UCBs under the revised regulatory framework. Single Rupee term deposits of Rs 15 lakhs and above for all other UCBs (i.e., other than Scheduled UCBs in Tier 3 and 4).

- 1.12** RBI issues revised instructions for inoperative accounts/**unclaimed** deposits in Banks - **CIRCULAR NO.RBI/2023-24/105 DOR.SOG (LEG).REC/64/09.08.024/2023-24,DATED 01-01-2024**

Editorial Note : The RBI issued revised guidelines w.r.t. inoperative accounts /unclaimed deposits in banks.The central banks called for steps to trace the customers of inoperative accounts or unclaimed deposits including their nominees or legal heirs for re-activation of accounts, settlement of claims or closure. RBI also stressed a periodic review and measures to prevent fraud in such accounts . No charges must be levied for activation of inoperative accounts

- 1.13** RBI floats draft framework for recognising Self-Regulatory **Organisations** for FinTech Sector - **RBI Press Release: 2023-2024/1677, Dated 15-01-2024**

Editorial Note : RBI with a view to prefer self-regulation approach within the FinTech sector for achieving the desired balance has come out with the draft framework for recognising Self-Regulatory Organisations (SRO) for FinTech Sector. The draft framework defines the characteristics, operations, eligibility and Membership of FinTech SRO along with the governance and management framework. stakeholders and members may submit their comments / feedback on the draft framework by feb end through e-mail.

- 1.14** Govt. unveils Draft Indian Stamp Bill, 2023; proposes new Act for a modern 'Stamp duty' regime

Editorial Note : The Govt. has decided to repeal the Indian Stamp Act, 1899 with the introduction of a new Act. Several provisions within the Indian Stamp Act, 1899, have become obsolete and non-functional. Consequently, there is a requirement to reorient the Indian Stamp Act, 1899. Therefore, the Draft Bill is proposed to seek public feedback. Among other key changes, the Bill proposes to include an electronic stamp or e-stamp in the definition of the impressed stamp.

- 1.15** Facility of exchange/deposit of Rs. 2000 banknotes will not be available on Monday, January 22, 2024: RBI - **Press Release: 2023-2024/1709, Dated 19-01-2024**

Editorial Note : The facility of exchange/deposit of Rs. 2000 banknotes will not be available on Monday, January 22, 2024 at any of the 19 Issue Offices of the Reserve Bank of India due to the half-day closure announced by the Government of India. The facility will resume on Tuesday, January 23, 2024

- 1.16** Govt. notifies accounting, taxation, & financial crime compliance services as 'financial services' under IFSCA Act - **Notification No. S.O. 291(E), Dated 18-01-2024**

Editorial Note : Govt. has notified book-keeping services, accounting services, taxation services, and financial crime compliance services as financial services under the IFSC Authority Act, 2019. Also, the financial services shall be offered by units in an IFSC, to non-residents whose business is not set up either by splitting up/ reconstructing/ reorganising of business already in existence in India. Units shall not transfer or receive services involving existing contracts from their Indian group entities.

- 1.17** Rs.2000 banknotes can't be deposited/exchanged at Mumbai RO on 12.01.2024 due to operational reasons: RBI - **Press Release: 2023-2024/1653, Dated 11-01-2024**

Editorial Note : The facility of deposit/exchange of Rs. 2000 banknotes at the Mumbai Regional Office will not be available on Friday, January 12, 2024, due to operational reasons. The facility will resume on Monday, January 15, 2024, which is the next working day.

- 1.18** RBI issues master direction on Internal Ombudsman for Regulated Entities - **PRESS RELEASE: 2023-2024/1588, DATED 29-12-2023**

Editorial Note : RBI has issued Master Direction – RBI (Internal Ombudsman for Regulated Entities) Directions, 2023 to harmonise instructions applicable to various regulated entities on Internal Ombudsman (IO) mechanism. Directions bring in uniformity in matters like timeline for escalation of complaints to the IO, exclusions from escalating complaints to the IO, minimum qualifications for appointing the IO etc. Instructions are expected to further strengthen IO mechanism.

- 1.19** RBI includes EXIM Bank and NaBFID as National Development Banks for Net Stable Funding Ratio (NSFR) computation - **NOTIFICATION NO. RBI/2023-24/103 DOR.LRG.REC.62/03.10.001/2023-24, DATED 29-12-2023**

Editorial Note : Earlier, the RBI had issued Basel III Framework on Liquidity Standards - Net Stable Funding Ratio (NSFR) framework. Under the extant framework NABARD, NHB and SIDBI are considered as National Development Banks (NDBs). Now RBI has decided that the other All India Financial Institutions (AIFIs) i.e. EXIM Bank and National Bank for Financing Infrastructure and Development (NaBFID) shall also be considered as NDBs for NSFR computation.

1.20 The RBI extends the Payment Infrastructure Development Fund (PIDF) scheme until Dec 31, 2025 - **PRESS RELEASE: 2023-2024/1571, DATED 29-12-2023**

Editorial Note : Earlier, in 2021 RBI has issued a circular on the "Operationalisation of Payments Infrastructure Development Fund (PIDF) Scheme". for a period of 3 years. Now, the PIDF Scheme is being extended by two years, i.e., upto December 31, 2025. As per the revised framework beneficiaries of the PM Vishwakarma Scheme have been included as merchants under the PIDF scheme. Similarly, sandbox devices and Aadhaar-enabled biometric devices are eligible to claim subsidy as part of the scheme.

1.21 RBI extends deadline for implementing penalty charge regulations on loan accounts - **CIRCULAR NO. RBI/2023-24/102 DOR.MCS.REC.61/01.01.001/2023-24, DATED 29-12-2023**

Editorial Note : RBI has decided to extend the timeline for implementation of the instructions on 'Fair Lending Practice - Penal Charges in Loan Accounts' by three months. Accordingly, REs shall ensure that the instructions are implemented in respect of all the fresh loans availed from April 1, 2024 onwards. In the case of existing loans, the switchover to new penal charges regime shall be ensured on the next review/ renewal date falling on or after April 1, 2024, but not later than June 30, 2024.

1.22 The RBI extends the Payment Infrastructure Development Fund (PIDF) scheme until Dec 31, 2025 - **NOTIFICATION NO. RBI/2023-24/101 CO.DPSS.POLC.NO.S940/02-29-005/2023-24, DATED 29/12/2023 & PRESS RELEASE: 2023-2024/1571, DATED 29-12-2023**

Editorial Note : Earlier, in 2021 RBI has issued a circular on the "Operationalisation of Payments Infrastructure Development Fund (PIDF) Scheme". for a period of 3 years. Now, the PIDF Scheme is being extended by two years, i.e., upto December 31, 2025. As per the revised framework beneficiaries of the PM Vishwakarma Scheme have been included as merchants under the PIDF scheme. Similarly, sandbox devices and Aadhaar-enabled biometric devices are eligible to claim subsidy as part of the scheme.

1.23 RBI revises eligibility criteria for UCBs in 2nd Sch. of RBI Act, aligning with the Revised Regulatory Framework - **Circular No. RBI/2023-24/115 DoR.REG/LIC.No.72/16.05.000/2023-24, Dated 17-01-2024**

Editorial Note : After the release of the Revised Regulatory Framework for Urban Co-operative Banks (UCBs), revised categorization norms for UCBs for

regulatory purposes were notified. Now, RBI has decided to revise the eligibility norms for inclusion of UCBs in the Second Schedule to the Reserve Bank of India Act, 1934 to bring them in conformity with the Revised Regulatory Framework. UCBs eligible for Second Schedule inclusion must have CRAR 3% above the minimum requirement and no major regulatory concerns.

1.24 Govt. permits investment by 'permissible holders' in the equity of Indian public Cos. listed on international exchanges - **Notification No. S.O. 332(E), Dated 24-01-2024**

Editorial Note : The Ministry of Finance has notified amendment in FEM (Non-debt Instruments) Rules, 2019. A new rule 34, Investment by permissible holder, has been introduced. Now, a permissible holder may purchase or sell equity shares of a public Indian company which is listed or to be listed on an International Exchange under the Direct Listing of Equity Shares of Companies Incorporated in India on the International Exchanges Scheme. Further, various other definitions have been introduced

2. SUPREME COURT

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

2.1 SC upholds HC order cancelling bail & suspension of sentence in cheque bounce case if amount not paid to creditor as undertaken & imposes Rs. 5 lakhs cost - **Satish P. Bhatt v. State of Maharashtra - [2024] 158 taxmann.com 139 (SC)**

3. SAFEMA

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

3.1 Where appellant, a Non-Banking Finance Company with RBI started disbursing loan to needy borrowers and funds which was ultimately utilized towards lending to borrowers was of overseas company and thereafter recovering same with very high interest rate from borrowers by applying threat, pressure, chatting, blackmailing and other coercive measures, thus, appellant committed scheduled offence of cheating etc. and generated proceeds of crime, order passed by investigating officer provisionally attaching bank accounts of 'Sarvottam' which was subsequently confirmed by Adjudicating Officer was justified - **Sarvottam Fincap Ltd. v. Deputy Director, Directorate of Enforcement - [2024] 158 taxmann.com 510 (SAFEMA - New Delhi)**

4. HIGH COURT

SECTION 3 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCE OF MONEY LAUNDERING

- 4.1 Foreign remittance made by using forged Form 15CB Certificates is not generation of "proceeds of crime" from scheduled offence of forgery - **Amit Aggarwal v. Directorate of Enforcement** - [2024] 158 *taxmann.com* 380 (Delhi)

SECTION 8 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - ADJUDICATION

- 4.2 Where owner of subject property had entered into an oral agreement with petitioner for sale of property and had received entire sale consideration and before sale was registered owner passed away and R2 by impersonating as legal heir of owner had sold said property to R3, against whom proceedings under PMLA had been initiated and a possession notice had been issued for eviction of petitioner from premises, petitioner was certainly aggrieved person and he was entitled to file an appeal and establish his right over property, and till such appeal was decided, petitioner could not be evicted - **Dr. A. Md. Kalifa v. Assistant Director, Directorate of Enforcement, Chennai** - [2023] 157 *taxmann.com* 452 (Madras)

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 4.3 Bank/NBFC is not obliged to adopt the restructuring process under Notification u/s 9 of MSME Act unless any application is made by the MSME borrower - **A. Navinchandra Steels (P.) Ltd. v. Union of India** - [2024] 158 *taxmann.com* 342 (Bombay)

SECTION 19 OF THE RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993 - APPLICATION TO THE TRIBUNAL

- 4.4 Where respondent filed a review application against DRAT's order issuing a recovery certificate of certain amount, since respondent filed a criminal application with review application thereby expanding scope of controversy, DRAT was directed to first consider maintainability of criminal application before proceeding further with review application - **Edelweiss Asset Reconstruction Company Ltd. v. Nishiland Park Ltd.** - [2024] 158 *taxmann.com* 188 (Delhi)

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

- 4.5 Where order under section 14 had been passed by Additional Collector and now petitioners being borrowers

had an alternative remedy to approach DRT by filing an appropriate application which had not been filed, thus, instant writ challenging execution of order under section 14 was to be dismissed - **Rajesh Agrawal v. State of Madhya Pradesh** - [2024] 158 *taxmann.com* 652 (Madhya Pradesh)

- 4.6 No civil court shall have any jurisdiction to entertain any suit or proceeding in respect of any matter, which Debt Recovery Tribunal is empowered by or under SARFAESI Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under SARFAESI Act - **Nishant Guleria v. Punjab National Bank** - [2024] 158 *taxmann.com* 260 (Himachal Pradesh)

- 4.7 Where appellant was aggrieved by action of bank taken under section 13(4)(a), he had a right to approach Debt Recovery Tribunal for redressal of any of his grievances - **Nishant Guleria v. Punjab National Bank** - [2024] 158 *taxmann.com* 260 (Himachal Pradesh)

SECTION 35A OF THE BANKING REGULATION ACT, 1949 - POWER OF RESERVE BANK TO GIVE DIRECTIONS

- 4.8 Where petitioner availed loan from bank on floating rate of interest and bank charged interest at rate of 16-18 per cent per annum whereas as per agreement interest was to be charged @ 12.5 per cent per annum, matter was to be remanded back to Banking Ombudsman to decide same, after giving due opportunity of hearing to parties by passing a speaking order - **Manmeet Singh v. Union of India** - [2024] 158 *taxmann.com* 538 (Allahabad)

SECTION 45 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCES TO BE COGNIZABLE AND NON-BAILABLE

- 4.9 An investigation agency under PMLA is not required to pray for permission for further investigation of case which is a settled principle of law; same is prerogative of investigating agency and, therefore, accused cannot be released on bail merely because there was no prayer for further investigation - **Enforcement Directorate v. Debabrata Halder** - [2023] 157 *taxmann.com* 721 (Calcutta)

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

- 4.10 Directors as signatory or guarantor or person responsible for affairs of company, which has issued cheque to discharge its liability, cannot have advantage of their application to declare them as insolvent as an individual to seek moratorium - **Ashok B. Jeswani v. Redington India Ltd.** - [2024] 158 *taxmann.com* 187 (Madras)

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

- 1.1 IBBI shortens cooling-off period between two consecutive attempts in Limited Insolvency Exam & Valuation examinations - **Circular No. IBBI/EXAM/63/2024, Dated, 18-01-2024**

Editorial Note : The IBBI conducts the Limited Insolvency Examination (LIE) in pursuance of Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Now, the IBBI has decided to reduce the time period between two consecutive attempts from 2 months to 21 days for LIE and the Valuation Examinations. This adjustment would provide candidates with greater flexibility and opportunities to improve, thereby establishing a more dynamic and responsive examination system.

2. NCLT

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

- 2.1 Where operational creditor had failed to place any record to show that demand notice which was claimed to have been sent to corporate debtor by speed post was with 'acknowledgement due', there being non-compliance of rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, CIRP petition filed by operational creditor was not maintainable and same was liable to be rejected - **Tata International Ltd. v. Trident Sugars Ltd. - [2024] 158 taxmann.com 287 (NCLT - Hyd.)**

3. SUPREME COURT

SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY FINANCIAL CREDITOR

- 3.1 NCLAT's order setting aside NCLT's order that CIRP plea was time-barred cannot be read as direction to admit CIRP plea without hearing rival claims - **Maneesh Pharmaceuticals Ltd. v. Export Import Bank of India - [2024] 158 taxmann.com 109 (SC)**

SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR

- 3.2 Properties auctioned under SARFAESI Act are not liquidation assets of CD in liquidation if auction was concluded before moratorium declared under IBC - **Haldiram Incorporation (P.) Ltd. v. Amrit Hatcheries (P.) Ltd. - [2024] 158 taxmann.com 110 (SC)**

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

- 3.3 SC sets aside NCDRC order refusing to execute its decree favouring homebuyers against promoters/directors of developer company in moratorium u/s 14 of IBC - **Ansal Crown Heights Flat Buyers Association (Regd.) v. Ansal Crown Infrabuild (P.) Ltd. - [2024] 158 taxmann.com 592 (SC)**

SECTION 25 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - DUTIES OF

- 3.4 Insolvency set-off under Regulation 29 not applicable when CD undergoing CIRP; only "transaction set-off" - **Bharti Airtel Ltd. v. Vijaykumar V. Iyer - [2024] 158 taxmann.com 108 (SC)**

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

- 3.5 Where as per resolution plan, successful resolution applicant (SRA) was obligated of fulfilment of certain conditions precedent, NCLAT was not justified in allowing SRA to adjust last tranche of payment in resolution plan against its performance bank guarantee (PBG) and, thus, SRA was directed to deposit remaining amount of last tranche of payment in designated account of lenders of corporate debtor - **State Bank of India v. Consortium of Mr Murari Lal Jalan and Mr Florian Fritsch - [2024] 158 taxmann.com 571 (SC)**

- 3.6 SC refers to larger Bench the interpretation of section 30(2)(b)(ii) of IBC regarding entitlement of dissenting financial creditor to minimum value of security interest - **DBS Bank Ltd. v. Ruchi Soya Industries Ltd. - [2024] 158 taxmann.com 111 (SC)**

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

- 3.7 Where corporate debtor was willing to pay claimed amount along with agreed interest to financial creditor within three weeks, in view of pleas and contentions of appellants and corporate debtor, impugned order passed by NCLAT was to be set aside and order passed by NCLT remitted to NCLT to re-examine issues and questions - **Kamal Kant Dewan v. White Water Hospitality (P.) Ltd. - [2024] 158 taxmann.com 77 (SC)**

4. HIGH COURT

SECTION 3(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CLAIM

- 4.1 Where petitioner bank was not directly in control of corporate debtor under liquidation, letters and order of attachment issued by EPFO to petitioner attaching amount received by said bank from liquidator on account of loan account of corporate debtor was erroneous and same were to be set aside - **Tamilnadu Mercantile Bank Ltd. v. Recovery Officer - [2024] 158 taxmann.com 218 (Madras)**

SECTION 22 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - APPOINTMENT OF

- 4.2 Merely because IP is vested with certain roles, responsibilities and duties which could partake nature of 'public duties', it is not a necessary conclusion or a definite inference that same are being discharged in nature of 'public character' - **Dr. Arun Mohan v. Central Bureau of Investigation - [2024] 158 taxmann.com 541 (Delhi)**

SECTION 35 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - POWERS AND DUTIES OF

- 4.3 Where petitioner, initially appointed as RP, later assumed role of Liquidator, sharing the valuation report during the process led to a show-cause notice from IBBI, alleging violation of confidentiality regulations and petitioner challenged same, merely because petitioner was directed to perform a role by NCLT, it did not prima facie entertain an idea that he ceased to be governed by IBC, and Regulations framed thereunder, thus jurisdiction of IBBI to initiate disciplinary action was upheld - **Ad.(CA) V.Venkata Siva Kumar v. Insolvency and Bankruptcy Board of India (IBBI) - [2024] 158 taxmann.com 217 (Madras)**

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - PRIORITIES AND ORDER OF DISTRIBUTION OF ASSETS

- 4.4 Where appellant (ex-director of company) filed letters patent appeal to direct RBI to comply with its past statements, since NCLT had admitted CIRP against company and Resolution Applicants had taken control of company and existing equity share capital of company stood written off in view of Clean Slate Principle envisaged under IBC, appellant as a former director had no locus to file said appeal - **Lalan Kumar Singh v. Hongkong and Shanghai Banking Corporation Ltd. - [2023] 157 taxmann.com 697 (Himachal Pradesh)**

SECTION 96 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - INTERIM-MORATORIUM

- 4.5 Where moratorium had been imposed against accused no. 2, personal guarantor of accused company in its individual insolvency proceeding under section 96, being a personal guarantor to accused company, proceeding under section 138 of Negotiable Instruments Act could not be continued against him during pendency of insolvency proceeding - **Mukund Ajay Kumar Choudhary v. K. B. Board Mills LLP - [2024] 158 taxmann.com 30 (Bombay)**

SECTION 208 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONALS - FUNCTIONS AND OBLIGATIONS OF

- 4.6 Functioning as a resolution professional within territorial jurisdiction could not by any stretch of imagination, be cited as a determinant for territorial jurisdiction when RP's very registration for acting as a RP had been canceled - **Ananda Rao Korada v. Insolvency and Bankruptcy Board of India - [2023] 157 taxmann.com 451 (Calcutta)**

5. NCLAT

SECTION 2(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 5.1 Where appellants (workers engaged by sub-contractor of corporate debtor) filed their claims in resolution plan as operational creditors, since claim filed by operational creditor could not be transposed to be claim of workmen and said claim had been treated as SI No. 5 in distribution of claims in accordance with IBC, there was no infirmity in resolution plan giving different treatment to workmen dues and those claimed by operational creditor - **Amit Kumar Pandey v. Pardeep Kumar Sethi, Resolution Professional (JMT Auto Ltd.) - [2023] 157 taxmann.com 601 (NCLAT- New Delhi)**

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- 5.2 Where appellant sought repayment of a sum from CD and NCLT vide impugned order held that no debt was due as said amount was to be adjusted by sale of summit units between parties, since corporate debtor propounded a new theory for repayment and there was lack of records to indicate that Rs. 2.6 crore was paid to appellant, findings of NCLT were to be removed and repayment issue was to be addressed in separate legal proceedings - **Rahul Maroo v. Bruck Pharma (P.) Ltd. - [2023] 157 taxmann.com 454 (NCLAT- New Delhi)**

SECTION 10A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - SUSPENSION OF INITIATION OF

- 5.3 Where default committed prior to section 10A period and continues in section 10A period, said statutory provision does not put any bar on initiation of CIRP proceedings - **Narendrabhai v. PNB Housing Finance Ltd. - [2024] 158 taxmann.com 401 (NCLAT- New Delhi)**

SECTION 12A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

- 5.4 Where proposal under section 12A was submitted before CoC for payment of 100 per cent dues along with interest with entire CIRP cost and, CoC decided to give six weeks time to deposit entire amount before making a decision on proposal however, within three days, voting was held and proposal was dissented by financial creditors, which clearly showed that CoC acted arbitrarily in not accepting proposal and therefore, Proposal under 12A was accepted and admitting section 7 application was to be set aside - **Sandeep Gupta v. JM Financial Asset Reconstruction Company Ltd. - [2024] 158 taxmann.com 623 (NCLAT- New Delhi)**

SECTION 27 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - REPLACEMENT BY COMMITTEE OF CREDITORS

- 5.5 Where CIRP was initiated against CD and one of financial creditors of CD filed an application for removal of RP, since appellant was well aware of date fixed for hearing but could not file reply in time due to his counsel's error, NCLT's ex-parte removal order of RP was not to be interfered with - ***Srigopal Choudhary v. SREI Equipment Finance Ltd.*** - [2024] 158 *taxmann.com* 258 (NCLAT- New Delhi)

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY RESOLUTION PLAN - PERSONS NOT ELIGIBLE TO BE

- 5.6 Mere fact that SRA was a promoter and director of corporate debtor would not make him ineligible to submit a resolution plan under section 29A - ***Vishram Narayan Panchpor (Resolution Professional of Blue Frog Media (P.) Ltd.) v. Committee of Creditors (Blue Frog Media Pvt. Ltd.)*** - [2024] 158 *taxmann.com* 625 (NCLAT- New Delhi)

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

- 5.7 Where appellant, who were suspended directors of CD claim that classification made in resolution plan regarding payment to employees of corporate debtor was discriminatory and violative, since no claims from workmen were received by RP and liquidation value for payment to employees was 'NIL', thus, they were not entitled to any more payment as proposed under section 30 (2)(b) - ***Mehul Parekh v. Unimark Remedies Represented by Successful Resolution*** - [2024] 158 *taxmann.com* 182 (NCLAT- New Delhi)

- 5.8 Where documents submitted by appellant to prove financial debt, did not indicate that transactions were covered under section 5(8), since appellants failed to provide relevant documents before RP to substantiate their claim, thus, no error was committed by RP in not admitting said claim - ***D. S. Kulkarni & Associates v. Manoj Kumar Aggarwal*** - [2024] 158 *taxmann.com* 452 (NCLAT- New Delhi)

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

- 5.9 Where resolution plan submitted by SRA was consciously dealt with securities and personal guarantees given to financial creditors including dissenting financial creditors and said clauses of resolution plan did not contravene section 30(2) as well as CIRP Regulations, 2016, therefore impugned order

passed by NCLT that resolution plan was contrary to provisions of section 30(2) was unsustainable and deserved to be set-aside - ***Puro Naturals JV v. Warana Sahakari Bank*** - [2024] 158 *taxmann.com* 570 (NCLAT- New Delhi)

SECTION 35 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - POWERS AND DUTIES OF

- 5.10 Where members of instant Bench were equally divided on material issue of forfeited sale part consideration amount, thus, matter was to be placed before third judge for his opinion - ***Shri Karshni Alloys (P.) Ltd. v. Ramakrishnan Sadasivan Liquidator of Surana Industries Ltd.*** - [2024] 158 *taxmann.com* 237 (NCLAT- New Delhi)

SECTION 43 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - PREFERENTIAL TRANSACTIONS AND RELEVANT TIME

- 5.11 Where after approval of a resolution plan, NCLT had authority to issue any direction on how avoidance application should be pursued and, therefore, impugned order passed by NCLT in assigning CoC to pursue avoidance applications under sections 43, 45, 49 & 66 was justified and there was no need for any interference - ***Mehul Parekh v. Unimark Remedies Represented by Successful Resolution*** - [2024] 158 *taxmann.com* 182 (NCLAT- New Delhi)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

- 5.12 Where appellant failed to provide a valid explanation for delay in filing appeal within prescribed period of 30 days from pronouncement of Order dated 31-3-2023, in absence of any averment made in application for condonation of delay in regard to sufficient cause, there was no reason to condone delay and thus, application was to be dismissed - ***DS Kulkarni & Associates v. Manoj Kumar Aggarwal*** - [2024] 158 *taxmann.com* 540 (NCLAT- New Delhi)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 5.13 Where OTS letters and restructuring proposals dated 24-8-2020 and 11-11-2022 clearly acknowledged admission of debt and thereby constitute acknowledgement under section 18 of Limitation Act, thus, section 7 application filed on 24-1-2023 was well within limitation period - ***Narendrabhai v. PNB Housing Finance Ltd.*** - [2024] 158 *taxmann.com* 401 (NCLAT- New Delhi)

Audit Trail and Edit Log



CA. Sandip Dey

Any Company that uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording 'audit trail' for each and every transaction, creating an "edit log" of each change made in the books of account along with the date of change and the person who made such change and ensuring that the audit trail cannot be disabled.

MCA vide its notification dated 24.03.2021 introduced the concept of audit trails to the Companies (Accounts) Rules, 2014.

Further MCA vide its notification dated 31.03.2022 extended the implementation of audit trail software to the FY starting on or after 1.4.2023.

Who are covered?

1. Any company formed under the Companies Act 2013 or any other previous Company Law.
2. Foreign Companies are also included
3. Section 8 Companies are also included

(LLPs, Firms, Proprietorship & Trusts are not included)

What is an "Audit Trail"?

This is a step by step sequential record which provides evidence of the documented historical transactions to its source.

Audit trail is always "chronological" in nature for the purpose of tracking or tracing the source of any financial record.

Audit trail is helpful to the auditor for tracing any financial transaction

Audit Log: A series of audit logs is collectively called "Audit Trail". Through a thorough checking of audit logs, auditor can track user activities that have happened sequentially. This helps the auditor to check if any security breaches have happened and to ensure with regulatory compliances.

What is “Edit Log”?

Edit log is a ‘view-only’ report that maintains the track of all activities with vouchers and masters - like, creation, alternation deletion etc. To do such activities whether proper controls to restrict the access were present - is the primary task of the auditor here.

What is an Accounting Software?

This is a program driven mechanism that assists bookkeepers to record the financial transactions. These software may vary from company to company based on their nature and sizes.

(Example - Tally, FAST etc)

- Cloud based software are also included.
- Accounting software may be hosted and maintained in India or outside India or may be subscribed to as SaaS (Software as a Service) or outsourced software.
- Excel is not an accounting software
- Manual record keeping / book keeping is excluded from this audit trail & edit log requirements

What is books of account?

Every company shall prepare and keep its books of account and financial statements for every FY which give “true and fair view” of the state of affairs of the company and accounts shall be maintained on accrual basis using double entry system.

Books of account means as defined u/s 2(13) of the Companies Act, 2013 that includes:

- All sums of monies received and expended.
- All sales and purchases of goods and services
- All assets and liabilities
- Recording of all cost records

Management’s Responsibility:

It is the management who is primarily responsible for ensuring selection of the appropriate accounting software for adhering to the applicable laws and regulations. (Including those related to retention of edit logs)

Auditor's Responsibility:

Section 143(3)(j) states that the auditor should report such other matters as prescribed. Rule 11 of the Companies (Audit and Auditors) Rules 2014 specifies such other matters that are to be reported by the auditors.

New rule 11(g) of Companies (Audit and Auditors) Amendment Rules 2021, compels the statutory auditors to report on the use of accounting software by companies for bookkeeping with a feature that records and audit trail. This rule casts an onerous task on the auditors as the scope of reporting under this rule is very wide.

The Implementation Guide on Reporting under Rule 11(g) - issued by the AASB of the ICAI is very helpful to the members. So every member must go through the Guide thoroughly.

The Auditor is required to report under the section "Report on Other Legal and Regulatory Requirements" the following points:

1. Whether the audit trail feature is configurable (i.e if that can be disabled or tampered with)
2. Whether the audit trail feature was enabled / operated throughout the year.
3. Whether all transactions recorded in the software are covered in the audit trail feature.
4. Whether the audit trial feature has been preserved as per statutory requirements for record retention.

(If any one of the above four points are not complied with, the auditor should give a modified report or an adverse report.)

Audit Documentation:

The auditor has to comply with the SA-230 to the extent possible based on his / her professional judgement.

- The auditor must have sufficient and appropriate record for basis of his reporting under rule 11(g)
- The auditor must also have evidence that the audit was planned and performed in accordance with the implementation guide, applicable SAs and legal / regulatory requirements.

Preservation of Audit Trails:

The auditor is required to comment on whether the audit trail has been preserved by the company as per statutory requirements for record retention. Section 128(5) of the Act requires the books of accounts to be preserved for 8 years (minimum). Hence, the company is also required to maintain its audit trail for minimum period of 8 years (w.e.f. 1.4.2023)

Audit Approach:

The auditor has to check for every transaction has has been changed / altered / deleted :

- When the change was made
- Who made those changes
- What data was changed

Additional checks:

- Controls to ensure that USER IDs are assigned to each individual and that USER ID is not shared.
- Controls to ensure that the changes to the configurations to the audit trails are authorised and logs of such changes are maintained.
- Controls to ensure that access to the audit trails and backups is disabled or restricted access logs, whenever the audit trails have been accessed, are maintained.
- Controls to ensure that the periodic backups of the audit trails are taken and archived as per statutory requirements. (Section 128 of the Act)

Auditor's wordings in the report:**Unmodified Report:**

“Based on our examination which includes test checks, the company has used an accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has operated throughout the year for all relevant transactions recorded in the software. Further during the course of our audit, we did not come across any instance of audit trail feature being tampered with.

Modified Report:

“Based on our examination which includes test checks, the company has used an accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility except in respect of maintenance of fixed asset (as an example) records wherein the accounting software did not have the audit trails feature enabled throughout the year. Further the audit trail feature has been operating throughout the year for all relevant transactions recorded in the software except for the instances reported above. Further during the course of our audit, we did not come across any instance of audit trail feature being tampered with.

Obtaining written representation from the Management (MRL):

- The auditor shall obtain MRL on the following -
 1. Management's responsibility for establishing and maintaining adequate controls in respect of audit trails.
 2. Management has performed the evaluation and assessment of adequacy & effectiveness of audit trials procedures.
 3. Any deficiencies in the design of the controls for audit trails.
 4. Whether any fraud resulting in material misstatements has been identified while reviewing and testing the samples relating to audit trail facility of the accounting software.
 5. Whether the control deficiencies have been identified and communicate to the audit committee in relation to the audit trail. Whether any deficiency in relation to past engagement has been resolved and if not which deficiencies have not been resolved.

Thank you.

ACCOUNT AND AUDIT UPDATES

1.1 ICAI has prepared Draft Bank Branch Auditors' Panel (MEF) for the year 2023-24

Editorial Note : ICAI hosts the draft panel for bank branch auditors' consisting of Chartered Accountants/firms for 2023-24, prepared according to the RBI Norms dated 6th March 2023 at <https://www.meficai.org>. The members having any grievance may raise the query with details at <https://app.meficai.org/complaints> on this draft panel till Wednesday, 31st January, 2024.

1.2 RBI clarifies on Independence of Auditors Guidelines issued for the Appointment of SCAs/SAs

Editorial Note : The Professional Development Committee of the Institute of Chartered Accountants of India has noted that RBI has clarified that the Concurrent audit assignments would also fall under the framework of Para 6.4 of RBI Circular dated April 27, 2021, in respect of "Guidelines for the Appointment of SCAs and SAs of Commercial Banks (Excluding RRBs), UCBs, and NBFCs (including HFCs), while assessing and establishing the independence of auditors

1.3 Empanelment of Chartered Accountant firms/LLPs for the year 2024-2025

Editorial Note : Online Applications are invited from Chartered Accountant firms/LLPs desiring to be empanelled with the office of the Comptroller and Auditor General of India for the year 2024-2025. The applicant is required to fill the application form from January 5, 2024, to February 15, 2024 and submit hard copies of the acknowledgement letter along with supporting documents by February 28, 2024.

1.4 NFRA releases its 2022-23 annual report, highlighting key achievements and interactions with stakeholders

Editorial Note : NFRA being the India's first independent regulator for auditing and accounting, has released its annual report for the year 2022-2023. This report is divided into 5 chapters which offers a comprehensive overview of NFRA's activities, accomplishments, and engagements, reflecting its commitment to promoting transparency, accountability, and high-quality financial reporting in the corporate sector.

Sustainable Finance: Investing in Our Collective Future



CA. Sanjib Sanghi

“Investing in sustainable finance is not just about returns; it's about securing a better future for generations to come.”



Sustainable Finance refers to Investment and Banking Practices or collectively Financial Practices that Integrate Environmental, Social, and Governance (ESG) criteria into financial decisions. The goal is to mobilize capital towards more sustainable businesses and projects while managing risks posed by issues like climate change.

In the recent years, Sustainable Finance has seen remarkable growth, driven by increasing recognition of global challenges like resource scarcity, pollution, and inequality. There is also greater awareness of the exposure of mainstream financial assets to sustainability-related risks - risks that can impact returns. The COVID-19 pandemic has further revealed vulnerabilities in social and economic systems of the entire world as a whole.

Financial Institutions are responding through various commitments and initiatives. These include increased lending and investment in areas like renewable energy, as well as enhanced risk analysis methodologies that incorporate climate change and other ESG risk factors. Many major investment firms are providing more sustainable investment products for clients looking to put their money to work for both societal good and financial return. **For an example**, did you notice that government of every nation allow subsidies and come up with schemes to promote the production of Electric Cars?



Policy and regulation also aim to scale Sustainable Finance. Governments are providing incentives, guidelines and rules to direct capital towards sustainable development. Regulators are also demanding improved climate risk disclosures so investors can make informed decisions.

While there is a significant progress, the Financial Sector has a long way to go to fully align with Global Sustainability Needs. The UN estimates that achieving its Sustainable

Development Goals will require \$5-7 trillion as an annual investment. This presents a powerful opportunity to transform finance. As the face of substantial capital, banks and investors are into developing innovative financing mechanisms for sectors like clean energy infrastructure in emerging markets. The potential for returns through new Technologies and Business Models is vast.

The Global Financial System manages hundreds of trillions in assets - representing tremendous influence over societal outcomes. Sustainable Finance channels this influence towards the Environmental Stability, Social Equity and Economic Prosperity needed today while preserving these possibilities for generations to come. Though the road will not always be smooth, by aligning investment decisions with sustainability, finance can nurture lasting well-being on a healthy planet.

Sustainable Finance with India



Coming to India, the first weeks of 2023 opened with a flurry of sustainable finance announcements. The year's budget identified green growth as a priority, with spending earmarked for hydrogen power, energy storage and renewables, and for making agriculture more nature-friendly. The government also issued its first green sovereign bond, raising \$1 billion at a lower cost of capital than conventional debt. The Reserve Bank of India, announced that it will be issuing new guidelines on climate stress testing, climate disclosure and green deposits at banks. In the capital markets SEBI, has been pursuing green bonds and corporate disclosure for quite a while. It has now updated its approach and released new frameworks for blue (ocean) and yellow (solar) bonds, as well as its own 'dos and don'ts' to prevent greenwashing.

Interim budget 2024, unveils plans for the launch of the **Blue Economy 2.0**, which is aimed at promoting climate-resilient activities & sustainable development in coastal areas. This will focus on the expansion of coastal aquaculture & mariculture which plays a vital role in meeting the growing demand for seafood while reducing pressure on wild fish stock.

Considering Technology in Sustainable Finance, Fintech innovations, blockchain, and data analytics play a pivotal role in assessing and monitoring ESG criteria. These technological advancements empower investors to make data-driven decisions aligned with sustainability goals. Single-Click access to data and information about ESG compliances collectively is a smart move towards the management and analysis of progress.



Sustainable Finance for Chartered Accountants

Investing in businesses and projects with sustainable ESG practices is already on the rise, as in the demand for finance professionals with expertise in the niche yet rapidly growing fields. When we see the recent reports stating that its already one of Asia's most demanding fields.

As the world grapples with environmental and social challenges, sustainable finance has emerged as a crucial area that demands attention. Chartered Accountants (CAs) are well-positioned to play a pivotal role in this field, leveraging their financial expertise and ethical responsibility to contribute to a sustainable future. The role of CAs in this landscape could be:

- 1. ESG Reporting, Assurance and Advisory:** CAs can play a critical role in ensuring transparency and accountability in ESG reporting. With a strong foundation in financial reporting and auditing, CAs can help businesses develop comprehensive ESG reports, providing stakeholders with a clear understanding of the organization's environmental and social impact. Assurance services in this area can enhance credibility and trust.
- 2. Assist in Green Financing:** The rise of sustainable finance has given birth to various green financing mechanisms. CAs can assist businesses in navigating this landscape by providing expertise in areas such as green bonds, carbon credits, and sustainable investment funds. By understanding the financial intricacies of these instruments, CAs can help their clients make informed decisions that align with sustainability goals.
- 3. Compliance and Regulatory Expertise:** The regulatory landscape for sustainable finance is continually evolving. CAs can stay abreast of these changes and guide organizations in ensuring compliance with relevant laws and standards. By helping businesses navigate the regulatory environment, CAs can mitigate risks and contribute to the development of a robust and responsible financial sector.

Thus, it can be summed up that, acceptance and employment of Sustainable Finance is the key to a brighter and innovative future of the Nation and the world as a whole. Only through Sustainable Finance, the natural resources and climate can be preserved and which would help us to sustain our planet and the human race.

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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APPLICATION FOR MEMBERSHIP

2 Pcs.
Pass Port
Colour
Photographs

To
The Hony' Secretary,
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place, Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.

I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

1. Name in Full (Mr. / Mrs. / Miss) : _____
(BLOCK LETTERS)
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Quali fications _____
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
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Area of Professional Interest (Pls. specify) : Indian Income Tax International Tax

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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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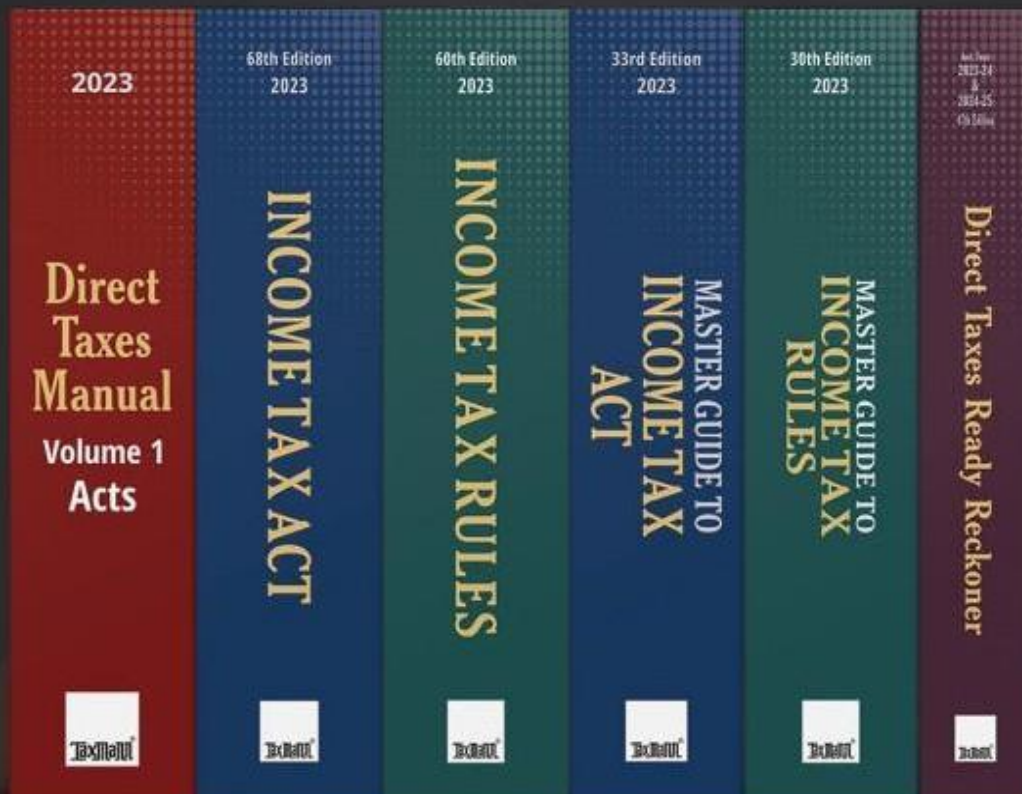
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