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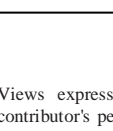
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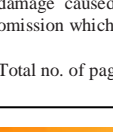
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Total no. of page: 111

.... From the Desk of Editors



"Talk to yourself once in a day, otherwise you may miss meeting an intelligent person in this world."



— Swami Vivekananda

Respected Seniors and my Dear Friends,

Wish you all a very Happy New Year 2024!!

We hope this New Year has touched each one of you with new energy, new hopes and no doubt new plans for personal and professional space. As far as knowledge sharing through DTPA e-Journal is concerned I believe you must like the detailed and varied content in each issue. We all will be connected with each other in as like in last year in the New Year too with the same excitement and zeal.

Recently in the matter of Deputy Commissioner of Income-tax, Circle 3(3)(1) v. Third ware Solution Ltd. - [2023] 157 taxmann.com 630 (SC) as a matter of facts Assessing Officer issued notice under section 148 beyond period of four years from end of asst. year and satisfaction under section 151 had been issued by Joint Commissioner, as satisfaction should have been of either Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with section 151(1), therefore impugned notice was held without jurisdiction.

The controversies and section 148 of the Income Tax Act be it in its old provisions till 31st March, 2021 of in its new amended avatar applicable from 1.4.2021 has very close connection. The earlier section 148 (before amendment) was already having good number of litigations on many technical issues and the new 148 (after amendment) is also not an exception. The Hon'ble Supreme Court has given a second inning to the proceedings of section 148 the Act and during the said second inning also there are many new technical issues which I understand will go a long way and needs intervention of the CBDT and the authorities in-charge in order to minimize the litigations.

The notification of state Goods and Services Tax Appellate Tribunal (GSTAT) were already done in the month of Sept, 2023 and recently Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi was also notified. Hopefully, functioning of the Tribunal will also start at an early date and justice will be dispensed to the assessee.

Inside this e-Journal you will find details about study programs and fellowship in upcoming months planed by DTPA. We welcome each one of your most personally to join us in fellowship cum study programs of DTPA. We are thankful to each one of our readers for regularly sending us response on the e-Journal, it is we members who are keeping the spirit high making proud as always.

Wish you all heartiest Greetings for Swami Vivekananda Birthday, Makar Sankranti, Netaji Birthday and **75th Republic Day**. Jai Hind!! Jai DTPA!!

With Best Regards

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

Sujit Sultania
 Co-Chairman
 Journal Sub-Committee, DTPA



....From the desk of President

Dear Esteemed Members of DTPA,

As we stand on the threshold of a brand new year, it is with great pleasure and anticipation that I extend my warmest greetings to each and every one of you. The words of Albert Einstein serve as a poignant reminder as we embark on the journey of 2024: "Learn from yesterday, live for today, hope for tomorrow."

Reflecting on the accomplishments and challenges of the past year at DTPA which provides us with invaluable insights, we are sure that it can guide us toward even greater achievements in the days ahead. The successes we have celebrated-through the number of seminars, webinars, long duration courses in direct tax, indirect tax, corporate law and the annual conference has helped us to learn lessons collectively and contribute to the foundation upon which we can build a stronger, more resilient DTPA.

In the month of December, we organized a study circle meeting on **Precautions in audit in light of recent NFRA orders, actions to safeguard client data in a CA firm, Code of Ethics, Standards of Auditing and a group discussion on GST Annual Returns**. All the study circle meetings received a huge response from members as well as non-members as they were topics of current interest and as per the feedback received from the attendees, all the speakers added a huge value to the participants in terms of understanding of the subject – whether it is areas of importance under audit or the significance of IT security of the client data handled by professionals or about the code of ethics to be followed by members or standards to be kept in mind. The group discussion on the GST annual returns also brought out many facets which helped the members to clarify their doubts.

In terms of fellowship, DTPA organized a picnic on 25th December which was attended by the members as well as their family members. The Picnic was filled with fun, bonding, games as well as wonderful food which was thoroughly enjoyed by everyone.

We had another reason to celebrate at the end of December which was winning of the **CA Big Bash** tournament where DTPA cricket team had to play with 5 other teams. It was a momentous victory as your esteemed organisation won the final by playing really well with BBD Bag Professional Association. This has once again proved that DTPA is keen in contributing to overall development of its members apart from intense knowledge sharing.

As we delve into 2024, let us be proactive in identifying areas for enhancement and growth within our esteemed organization. DTPA has consistently exemplified dedication, professionalism, and excellence. It is through the combined efforts of our dynamic members that we have achieved significant milestones. Here I would like to request all our members to come forward with their suggestions and advices as to how we can make 2024 a year of great achievement for DTPA as well as for all its members.

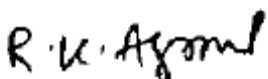
We would start the year with a significant group Discussion on a topic of high importance as far as income tax is concerned.

In the second week of January we are also embarking on our much awaited Residential Conclave at Puri for which we have got overwhelming response from all our members, because of which we had to close the registration much before the Residential Conclave. As this provides a huge opportunity for learning in depth together with strong bonding between the members, we have planned the Residential Conclave with the combination of both study and fun. We look forward to whole hearted contribution from all participants.

May this new year bring us closer as a community, fostering collaboration, understanding, and mutual support. With the lessons of yesterday, the opportunities of today, and the hope for a brighter tomorrow, I am confident that 2024 will be a year of remarkable achievements for DTPA.

Wishing you all a prosperous and fulfilling New Year.

With best wishes,



CA Rajesh Agrawal

President

08th January, 2024

Study Circle Meeting on 'Precautions in Audit in light of recent NFRA orders' at DTPA Conference Hall on 5th December 2023



**Felicitation of CCIT-3, Income Tax Kolkata,
Sri Ashok Kr. Saroha by DTPA Team at Aayakar Bhawan
On 11th December 2023**



Group Discussion meeting on 'All About GST Annual Returns (GSTR 9 & 9C) with Case Studies on 13th December 2023



Study Circle Meet – Actions to Safeguard Client Data in a CA Firm on 21st December 2023



Cricket match with 6 Team of CPE Study Circle of EIRC of ICAI on 24th December 2023



Glimpses of DTPA Annual Picnic on 25th December 2023



DTPA SC meeting on Code of Ethics & Standards of Auditing Practical Aspects at DTPA Conference Hall on 28th December 2023



**Forthcoming Programs of
Direct Taxes Professionals' Association**



DIRECT TAXES PROFESSIONALS' ASSOCIATION

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

Email :- dtpakolkata@gmail.com

Web :- www.dtpa.org

*The Chariot,
Puri*

Residential Conclave '24

2 Nights 3 Days

12th - 14th Jan, 24



CA BHUPENDRA SHAH

MUMBAI
SPEAKER

INCOME TAX



MR. AJAY BAGGA

MUMBAI
SPEAKER

ART OF INVESTING

CA Rajesh Kr Agrawal
President

CA Vikash Parakh
Chairman

CA N K Goyal
Advisor

CA Mahendra K Agarwal
Gen. Secretary

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



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Estd. 1982

DTPA CA CPE Study Circle of EIRC of ICAI

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

Email :- dtpacasc@gmail.com

STUDY CIRCLE MEETING



CA Mohit Bhuteria
Speaker

TOPIC:

**CORPORATE
RESTRUCTURING-CASE
STUDIES**



CA Mayur Agarwal
Speaker

TOPIC:

**RECENT CHANGES IN
COS & LLP ACT
INCLUDING SBO &
DEMAT**

16th Jan, 2024, Tuesday

Venue : DTPA Conference Hall

Time : 3 PM to 6 PM

“3 CPE Hours”

Participation Charges - Rs. 200/-

CA D S Agarwala
Convenor

CA Manjulata Shukla
Deputy Convenor



ज्ञानं एक्यं च न्यायार्थम्
Estd. 1982

DTPA CA CPE Study Circle of EIRC of ICAI

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

Email :- dtpacasc@gmail.com

STUDY CIRCLE MEETING ON

Recording, Retraction and
Cross Examination of
Statement with practical
aspect.

TUESDAY

03:00PM - 06:00 pm

30 January 2024

VENUE:

DTPA CONFERENCE HALL

“3 CPE HOURS”

Participation Charges:

Rs. 200/-



SPEAKER

Dr Adv Paras Kochar

**CA D S Agarwala
Convenor**

**CA Manjulata Shukla
Deputy Convenor**

Compliance Calendar for January, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th January, 2024	Dec-23	Deposit of Tax deducted/collected for the month of December, 2023.	
	07th January, 2024	Dec-23	Due date for deposit of TDS for the period October 2023 to December 2023 when Assessing Officer has permitted quarterly deposit of TDS under 192, 194A, 194D or 194H	
	14th January, 2024	Nov-23	Due date for issue of TDS Certificate for tax deducted under Section 194-IA, Section 194-IB, Section 194M in the month of November, 2023	
	15th January, 2024	Dec-23	Quarterly statement of TCS for the quarter ending December 31, 2023	
	15th January, 2024	Dec-23	Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2023	
	15th January, 2024	Dec-23	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December, 2023	
	30th January, 2024	Dec-23	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of December, 2023	
	30th January, 2024	Dec-23	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of December, 2023	
	31st January, 2024	Dec-23	Quarterly statement of TDS for the quarter ending December 31, 2023	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th January, 2024	Dec-23	GSTR-7 (MONTHLY)	Summary of Tax Deducted at Source (TDS) and Deposited under GST Laws
	10th January, 2024	Dec-23	GSTR-8 (MONTHLY)	Summary of Tax Collected at Source (TCS) and Deposited by e-commerce operators under GST Laws
	11th January, 2024	Dec-23	GSTR-1	GSTR 1 to be filed by Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return
	13th January, 2024	Dec-23	GSTR-1 (QRMP)	GST return for the taxpayers who opted for QRMP scheme (Optional)
	18th January, 2024	Oct'23 – Dec'23	CMP-08 (Quarterly)	Quarterly Challan-Cum-Statement to be furnished by Composition taxpayers
	20th January, 2024	Dec-23	GSTR-3B	The statutory due date for GSTR-3B having an Annual Turnover of more than 5 Crores
	28th January, 2024	Dec-23	GSTR-11	Statement of inward supplies by persons having Unique Identification Number (UIN) for claiming a GST refund
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	10th January, 2024	Dec-23	Professional Tax (PT) on salaries for the month of December, 2023	
	15th January, 2024	Dec-23	Provident Fund (PF) & ESI Returns and Payment for December, 2023	

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 dtpaejournal@gmail.com from you will guide us to move further and motivate in touching new heights in professional excellence.

Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Rajesh Kr. Agrawal

President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

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

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

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

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

Thanks and Regards,

CA. Rajesh Kr. Agrawal

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2. SUPREME COURT

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

2.1 Royalties/Fee for technical services - Software : Review petition dismissed against Supreme Court's order dismissing SLP against order of High Court holding that where assessee-company based in China sold telecom equipments i.e. mobile handsets, to various customers in India, since supply of software embedded in supply of telecom equipment resulting in sale of copyrighted article, said transaction was to be treated in nature of supply of articles or goods and thus, payment made towards supply of software was not tax - **Commissioner of Income-tax, (IT)-2 v. ZTE Corporation - [2023] 157 taxmann.com 201 (SC)**

2.2 Royalty/FTS : SLP dismissed on ground of delay against order of High Court that income of assessee a Switzerland based company from supply of CAS and middleware products to Indian customers does not fall under 'royalty' as defined under section 9(1)(vi) and article 12(3) of India-Swiss DTAA and thus, same does not give rise to any income taxable in India - **Commissioner of Income-tax (IT)-2 v. Nagravisio S. A. - [2023] 157 taxmann.com 458 (SC)**

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

2.3 Scope of provision : SLP dismissed against impugned order of High Court that where shares were held by assessee, housing finance company, as stock-in-trade, dividend earned on said shares would not attract section 14A - **Principal Commissioner of Income-tax v. PNB Housing Finance Ltd. - [2023] 157 taxmann.com 465 (SC)**

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

2.4 Where assessee purchased turbines in 1998, and claimed 25% WDV-based depreciation but Assessing officer insisted on straight-line depreciation from April 1, 1997 and thereby reduced depreciation amount, since there was no requirement under second proviso to sub-rule (1A) of Rule 5 of Rules that any particular mode of computing claim of depreciation had to be opted for before due date of filing of return, there was no reason to reduce depreciation amount - **Commissioner of Income-tax v. Jindal Steel & Power Ltd. - [2023] 157 taxmann.com 207 (SC)**

SECTION 36(1)(viii) OF THE INCOME-TAX ACT, 1961 - FINANCIAL CORPORATION, RESERVE CREATED BY

2.5 Illustration : SLP dismissed against order of High Court that where assessee-housing finance company computed deduction under section 36(1)(viii) by considering 62 per cent of total interest receipt on

housing loan as interest on long-term housing loan, since said computation was upheld by Commissioner (Appeals) in earlier year, such computation could not be recalculated by Assessing Officer by considering total receipt of business - **Principal Commissioner of Income-tax v. PNB Housing Finance Ltd. - [2023] 157 taxmann.com 465 (SC)**

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

2.6 Where Assessing officer disallowed assessee's claim of expenditure based on statements of 'S' during a search and Tribunal had scrutinized materials on record and thereafter had recorded a finding of fact that there were sufficient evidence to justify payment made by assessee to 'S' a consultant of assessee, and that assessing officer had wholly relied upon statement of 'S' recorded during search operation which was retracted by him within a reasonable period, in those circumstances, there was no admissible material to deny claim of expenditure made by assessee - **Commissioner of Income-tax v. Jindal Steel & Power Ltd. - [2023] 157 taxmann.com 207 (SC)**

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

2.7 Applicability of : SLP was to be dismissed against order of High Court holding that reimbursement of service tax cannot to be included in aggregate of amounts specified in clauses (a) and (b) of section 44BB(2), as it is not an amount received by assessee on account of services provided by them in prospecting, extraction or production of mineral oils - **Commissioner of Income-tax v. Transocean Offshore International Ventures Ltd. - [2023] 157 taxmann.com 203 (SC)**

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

2.8 Shares : SLP granted against order of High Court holding that BIFR cannot sanction any modification to scheme requiring income-tax department to give further tax concessions without department consenting to grant such additional concessions - **Indian Plywood Mfg. Co. (P.) Ltd. v. Principal Director General of Income-tax - [2023] 157 taxmann.com 297 (SC)**

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

2.9 Where assessee, engaged in electricity generation and industrial activities, set up captive power plants due to insufficient supply from State Electricity Board and surplus electricity supplied to Board was priced at Rs. 2.32 per unit, while Board charged industrial consumers Rs. 3.72 per unit, since price at which surplus power supplied by assessee to State Electricity Board was determined entirely by State Electricity Board in terms of statutory regulations and contract, such a price could not be equated with market value as was understood for purpose of section 80IA (8) and on contrary, rate at which State Electricity Board supplied electricity to industrial consumers would have to be taken as

market value for computing deduction under section 80 IA - *Commissioner of Income-tax v. Jindal Steel & Power Ltd.* - [2023] 157 taxmann.com 207 (SC)

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

2.10 Condonation of delay : SLP dismissed as withdrawn against impugned order of High Court that where assessee filed an application seeking rectification of assessment and refund of TDS after about 12 years, with liberty to make a representation to CBDT under section 119 so as to seek adjustment in view of rectification made by Department with regard to PAN number of assessee - *Gee Cee Metals (P.) Ltd. (AOP) v. Principal Commissioner of Income-tax* - [2023] 157 taxmann.com 530 (SC)

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

2.11 Illustration: Notice issued in SLP that where Assessing Officer issued notice under section 148 beyond period of four years from end of asst year and satisfaction under section 151 had been issued by Joint Commissioner, as satisfaction should have been of either Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with section 151(1), impugned notice was without jurisdiction - *Deputy Commissioner of Income-tax, Circle 3(3)(1) v. Thirdware Solution Ltd.* - [2023] 157 taxmann.com 630 (SC)

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

2.12 Recording of satisfaction : SLP dismissed against order of High Court holding that recording of satisfaction note is pre-requisite and same must be prepared by Assessing Officer of searched person before he transmits record to other Assessing Officer who has jurisdiction over such other person under section 153C - *Principal Commissioner of Income-tax, Central Circle v. Gali Janardhana Reddy* - [2023] 157 taxmann.com 392 (SC)

SECTION 234B OF THE INCOME-TAX ACT, 1961 - INTEREST, CHARGEABLE AS

2.13 Review petition dismissed against Supreme Court's order dismissing SLP holding that where assessee was a non-resident company, entire tax was to be deducted at source on payments made by payer to it and thus, it would not be permissible for revenue to charge any interest under section 234B for failure to pay advance tax by assessee - *Commissioner of Income-tax, (IT)-2 v. ZTE Corporation* - [2023] 157 taxmann.com 201 (SC)

3. HIGH COURT

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

3.1 Reassessment : Where Assessing Officer issued a notice under section 148 on ground that assessee, a charitable-cum-religious trust, was indulged in real estate activities, since Assessing Officer failed to provide details uploaded on insight portal along with information gathered from investigation wing and new information uploaded on insight portal, impugned notice under section 148 was to be quashed and set aside - *Chotanagpur Diocesson Trust Asson. v. Union of India* - [2023] 156 taxmann.com 273 (Jharkhand)

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

3.2 Loans to shareholders : Where AO issued a reopening notice on ground that accumulated profits of assessee were less than loan given to director of associate company and, therefore, loan given by assessee was to be taxed as deemed dividend under section 2(22)(e), however, assessee had disclosed all relevant material facts during original assessment, impugned reopening notice was to be set aside - *Cygnat Infotech (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-1(1)(1)* - [2023] 157 taxmann.com 516 (Gujarat)

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

3.3 Sub-clause (xviii) : Amendment to section 2(24) by insertion of sub-clause (xviii) of Finance Act, 2015, is a perfect example of a legislative endeavour to align definition of 'income' with evolving economic landscapes and judicial precedent of it being an inclusive and elastic term and only indicates well established jurisprudential path ensuring that income tax laws remain attuned to economic realities and continue to serve as a vital cog in nation's fiscal machinery and, thus, there is no merit in petition challenging constitutional validity of section 2(24)(xviii) - *Serum Institute of India (P.) Ltd. v. Union of India* - [2023] 157 taxmann.com 107 (Bombay)

SECTION 2(35)(b) OF THE INCOME-TAX ACT, 1961 - COMPANY - PRINCIPAL OFFICER

3.4 Conditions precedent : Where assessee was an independent, non-executive, and nominee director on Board of a company, since it was not case of revenue that notice as contemplated by section 2(35) had been served upon assessee, prosecution proceedings initiated against assessee under sections 276B and 278B were to be quashed and set aside - *Anish Modi v. Union of India* - [2023] 157 taxmann.com 597 (Bombay)

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

3.5 Where assessee's entered into Joint Development Agreement (JDA) with M/s Assetz Whitefield Homes Pvt. Ltd. whereby 70% share was allocated to developer and 30% to owner for

property development and Assessing Officer added capital gains based on JDA in A.Y. 2014-15, since clauses of JDA confirmed that parties have specifically agreed that assessee would continue to own entire JD property until conveyance deed took place and moreover, there was no material on record to show that any conveyance had taken place in A.Y.2014-15, view taken by A.O. was perverse and same had rightly been reversed by lower authorities - **Principal Commissioner of Income-tax, Central Circle v. Sri Sai Lakshmi Industries (P.) Ltd. - [2023] 157 taxmann.com 172 (Karnataka)**

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

3.6 Jewellery : Where AO made addition regarding jewellery found during search conducted upon residential premises of assessee, since jewellery declared/disclosed by joint family of assessee as one unit in its wealth tax return was more than jewellery found during search action, Tribunal rightly deleted impugned addition made by Assessing Officer - **Principal Commissioner of Income-tax (Central)-2 v. Nirmal Kumar Minda - [2023] 157 taxmann.com 642 (Delhi)**

3.7 Jewellery : Where AO made addition regarding paintings and wrist watches found during search conducted upon residential premises of assessee, since revenue had not pointed out any defect in valuation of paintings submitted by assessee, and further, considering substantial withdrawals made by assessee, impugned addition made by AO was to be deleted - **Principal Commissioner of Income-tax (Central)-2 v. Nirmal Kumar Minda - [2023] 157 taxmann.com 642 (Delhi)**

3.8 Agent : Where assessee, a corporation incorporated under Maharashtra Regional and Town Planning Act, 1966, was acting as an agent of State Government and its income was restricted to Rs. 5,00,000 which had been offered to tax and accepted by Assessing Officer, question of any income escaping assessment in case of assessee did not and could not arise; therefore, reassessment notice issued to assessee was to be quashed - **City and Industrial Development Corporation of Maharashtra Ltd. v. Assistant Commissioner of Income-tax, Circle 15(1)(2) - [2023] 157 taxmann.com 603 (Bombay)**

SECTION 5 OF THE INCOME-TAX ACT, 1961 - INCOME - CONCEPT OF REAL INCOME

3.9 Disputed claim : If a dispute is pending before Civil Court, no income can be said to have accrued or arise to an assessee pending adjudication of said dispute for purpose of section 5 - **T.V. Patel (P.) Ltd. v. Deputy Commissioner of Income-tax, Special Range-14 - [2023] 157 taxmann.com 108 (Bombay)**

SECTION 9 OF THE INCOME-TAX ACT, 1961 -

INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

3.10 Business profits - Composite contract : Where assessee had entered into a contract with a company MRVC for supply of equipments and services, offshore as well as onshore, since terms of contract distinctly set out quantum of offshore supplies to be made by assessee to MRVC and also quantum of payment to be received by assessee from MRVC outside India, Tribunal was justified in holding that income arising from offshore supplies was not taxable in India - **Commissioner of Income-tax (International Taxation) v. Iljin Electric Co. Ltd. - [2023] 156 taxmann.com 501 (Bombay)**

3.11 Capital gains : Explanations 6 and 7 to section 9(1)(i) has to be treated retrospectively as it have to be read along with Explanation 5 which concededly operates from 1-4-1962 - **Commissioner of Income-tax (IT)-1 v. Augustus Capital (PTE) Ltd. - [2023] 157 taxmann.com 88 (Delhi)**

3.12 FTS/royalty - Web hosting services : Fee received by assessee, a domain name registrar, for registration of domain names of third parties, i.e., its customers, could not be treated as royalty - **Godaddy.Com LLC v. Assistant Commissioner of Income-tax - [2023] 157 taxmann.com 256 (Delhi)**

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

3.13 Constitutional validity : Explanation after sub-section (1) of section 10AA, inserted by Finance Act, 2017 with prospective effect from 1-4-2018, is constitutionally valid - **IFGL Refractories Ltd. v. Union of India - [2023] 156 taxmann.com 487 (Calcutta)**

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

3.14 Sub-section 5 : Where assessee-society, registered under section 12A, invested a certain sum in a joint stock company which was incorporated by assessee itself and also given its land on lease to said company which was allotted to assessee by Government to fulfil its objectives, since said company started utilizing land for purpose of holding exhibitions of all natures and for other commercial purposes and was earning huge amounts in form of rental, assessee was not entitled to exemption under section 11 in view of violation of section 11(5) - **National Academy of Construction v. Assistant Director of Income-tax (Exemptions) - [2023] 156 taxmann.com 532 (TELANGANA)**

3.15 Form No. 10 : Where Assessing Officer issued a notice under section 148 on ground that assessee society had submitted Form 10 belatedly for accumulation of amount of surplus income, since Form 10 was filed before completion of assessment, benefit of section 11(2) was available to assessee and, thus, impugned reassessment notice deserved to be quashed - **Maa Bhagwati Shiksha Samiti v. Commissioner of Income-tax - [2023] 157 taxmann.com 359 (Allahabad)**

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

- 3.16 Scope of provisions :** 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 - **Centre For Policy Research v. Principal Commissioner of Income-tax (Central)** - [2023] 156 taxmann.com 279 (Delhi)

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

- 3.17 Rule 8D :** Where assessee made investments in mutual funds wherein dividend was automatically reinvested and there were no borrowed funds in books of accounts of assessee, thus, there was no question of using borrowed funds for investments in mutual funds and consequently impugned disallowance under Section 14A was unwarranted - **Principal Commissioner of Income-tax-04 v. Inductis India (P.) Ltd.** - [2023] 157 taxmann.com 87 (Delhi)

- 3.18 Computation of :** Disallowance under section 14A read with rule 8D cannot exceed exempt income - **Principal Commissioner of Income-tax-3 v. Devata Tradelink Ltd.** - [2023] 157 taxmann.com 269 (Delhi)

- 3.19 Rule 8D :** Rule 8D is prospective in nature and it could not be made applicable in respect of assessment years prior to 2007 when this rule was inserted - **Commissioner of Income-tax v. Shriram Chits Tamil Nadu Ltd.** - [2023] 157 taxmann.com 315 (Madras)

SECTION 22 OF THE CHARTERED ACCOUNTANTS ACT, 1949 - PROFESSIONAL OR OTHER MISCONDUCT ASSESSEE

- 3.20** Where chartered accountant in capacity of tax consultant with a society had misappropriated tax amount of society and was held guilty of professional misconduct and assessee had already admitted to his guilt before Appellate Authority, it did not lie in mouth of assessee to challenge order on ground that procedure had not been followed by Committee - **CA Subodh Maheshwari v. Institute of Chartered Accountants of India** - [2023] 157 taxmann.com 672 (Delhi)

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

- 3.21** Where AO issued notice under section 148 beyond four-year limit from relevant assessment year for reasons that assessee-pharmaceutical company claimed expenses on gifts and medicine samples in breach of Indian Medical Council Regulations, 2002, although in

order of assessment, AO had entertained a doubt regarding genuineness of expenses, yet he had disallowed said expenses on an estimate basis and made addition, therefore, it could not be said that assessee had not disclosed relevant material facts during assessment proceedings and therefore, impugned notice as well as order deserved to be quashed - **Abbott India Ltd. v. Assistant Commissioner of Income-tax, Circle 2(1)(1)** - [2023] 157 taxmann.com 423 (Bombay)

- 3.22 Royalty :** Where assessee entered into a license agreement for use of logo with its parent company on payment of royalty wherein assessee was conferred right to use logo with certain restrictions viz., non-transferable and non-exclusive, thus, there was only right to use and not ownership, impugned royalty payment made by assessee was revenue in nature and it fell within general provisions of section 37(1) and not under section 32(1)(ii) - **Commissioner of Income-tax v. Shriram Chits Tamil Nadu Ltd.** - [2023] 157 taxmann.com 315 (Madras)

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

- 3.23 VAT/Services tax :** Where reopening notice was issued on ground that assessee was not including VAT, sales tax and service tax in value of goods and service as income, however, it debited amount of VAT & services tax under head other project expenses, which resulted in concealment of income, since assessee was paying VAT under composition scheme according to which it had to pay VAT/service tax at certain percentage of turnover from its pocket and not collect anything from customer, it had rightly claimed service tax/VAT and, thus, impugned reopening notice was to be quashed - **Nila Infrastructures Ltd. v. Assistant Commissioner of Income-tax** - [2023] 156 taxmann.com 372 (Gujarat)

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

- 3.24 Related party payments :** Where a specific query was raised by Assessing Officer on issue of payment made to related party and verification of fair market value as per provision of section 40A(2)(b) and when answered, Assessing Officer had accepted payments, thus, Assessing Officer having passed an order after carrying out verification, such assessment order could not be held to be erroneous and prejudicial to revenue - **Principal Commissioner of Income-tax v. Kansara Popatlal Tribhuvan Metal (P.) Ltd.** - [2023] 156 taxmann.com 433 (Gujarat)

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

- 3.25 Purchases :** Where payments made by assessee to suppliers for purchase were not made through an account payee cheque drawn on a bank, account payee bank draft or through use of electronic clearing system through a bank account and assessee failed to establish genuineness of transactions, AO was justified in denying deduction for said payment under section 40A(3) - **Rajesh Kumar v.**

Commissioner of Income-tax. - [2023] 157 taxmann.com 311 (Delhi)

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

3.26 Reassessment : Where Assessing Officer initiated reassessment on grounds that assessee had earned interest income and capital gains on certain other investment, however, assessee had not filed its return during year, since reassessment proceeding were based heavily on tax evasion petition filed by a person who was working with revenue in a senior position, however, no opportunity was provided to assessee to rebut material said to be produced by said person or no opportunity was granted to assessee to cross-examine him, impugned reassessment order was bad in law - **Pradyot K. Misra v. Assistant Commissioner of Income-tax - [2023] 157 taxmann.com 253 (Delhi)**

SECTION 54EE OF THE INCOME-TAX ACT, 1961 - CAPITAL GAIN NOT TO BE CHARGED ON INVESTMENT IN UNITS OF A SPECIFIED FUND

3.27 Doctrine of promissory estoppel : Where section 54EE was introduced by Finance Act, 2016 to provide 'Start-up India Action Plan' by giving capital gain exemptions on investment in units of a notified 'fund', however despite creation of 'fund' and insertion of provision for notifying 'fund' for investment, notification specifying 'long term asset' was not issued, directing Government to issue said notification would amount to taking a policy decision which would be impermissible; furthermore assessee couldnot have legitimate expectation for issuing notification and Central Government could not be held to be bound doctrine of promissory estoppel - **Getwell Medicare v. Union of India - [2023] 157 taxmann.com 365 (Kerala)**

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

3.28 Interest : Where assessee, a construction corporation, received grants from State Government for building construction, since assessee was not carrying out construction for purpose of setting up of business or for expansion of a business, therefore, interest income earned from grants made by Government for purpose of construction of buildings for Police Department could only be treated as income from other sources under section 56 - **Bihar Police Building Construction Corporation (P.) Ltd. v. Principal Chief Commissioner of Income-tax - [2023] 157 taxmann.com 495 (Patna)**

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

3.29 Unsecured loan : Where reopening notice was issued on ground that certain amount of unsecured loan was received by assessee in form of accommodation entry, since there was no tangible material so as to come to a

conclusion or reason to believe that income chargeable to tax had escaped assessment, and further, specific query was raised vis-à-vis said unsecured loan during scrutiny assessment which was also answered by assessee, impugned reopening notice issued after four years was to be quashed - **Bhagwati Polyfill (P.) Ltd. v. Assistant Commissioner of Income-tax - [2023] 157 taxmann.com 356 (Gujarat)**

3.30 Additions : Where appeals were pending adjudication with Tribunal, Assessing Officer could not have triggered reassessment proceedings against additions which were subject matter of appeal - **Principal Commissioner of Income-tax, Central-1 v. Gautam Bhalla - [2023] 157 taxmann.com 331 (Delhi)**

3.31 Share dealings : Where Assessing Officer made additions under section 68 based on seized incriminating document and held that assessee received share application moneys and source of same could not be properly explained, since document was a shareholding pattern document **prepared** by way of secretarial compliance report, which was filed along with company's annual return in Form MGT-7 with ROC and was therefore available in public domain, same would not constitute incriminating document to justify reopening of assessment of unabated/completed assessments under section 153A - **Commissioner of Income-tax v. Goldstone Cements Ltd. - [2023] 156 taxmann.com 529 (Gauhati)**

3.32 Opportunity of hearing : Where notices were issued by Assessing Officer only for calling forth certain details/reply from assessee, since **affording** opportunity of personal hearing would come into picture only after receipt of reply/objections from assessee, said notices could not be deemed to be an opportunities of hearing to assessee - **Antony Alphonse Kevin Alphonse v. Income Tax Officer, Non-corporate Ward-4(1) - [2023] 157 taxmann.com 300 (Madras)**

3.33 Investment in shares : Where additions were made to income of assessee as it failed to furnish explanation in regards to investments in share capital of its group companies, however, assessee submitted that it was ready to submit relevant documents to prove that investments in shares of its group companies were out of explained investments, but due to 15 other cases relating to group being listed on date of hearing, it was not able to provide documents, matter was to be remanded back for fresh consideration - **Chandan Credits Ltd. v. Assistant Commissioner of Income-tax, Central Circle-2(3) - [2023] 157 taxmann.com 304 (Madras)**

3.34 Reassessment : Where a mistake had been made in triggering reassessment proceedings against assessee as during financial year under reference, no transactions under section 68 had been carried out by assessee with 'R' and his name was inadvertently mentioned by Investigation Wing in report due to similarity in names, impugned order passed under section 148A(d) and consequential notice issued under section 148 were to be set aside - **Tirupati Trading**

Corporation v. Assistant Commissioner of Income-tax - [2023] 157 taxmann.com 249 (Delhi)

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

3.35 Reassessment : Where a reopening notice under section 148A(b) was issued on ground that assessee had made unexplained investment in agricultural land and vehicle which had escaped assessment, since sufficient material regarding assets in which unexplained investments were alleged to have been made by assessee were not disclosed in notice issued upon assessee, impugned order passed under section 148A(d) and notice issued under section 148 were to be set aside - **Lakhendra Kumar Raushan v. Principal Commissioner of Income-tax - [2023] 157 taxmann.com 248 (Patna)**

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

3.36 General : Where assessee, a non-resident Indian, had given specific explanation of split up of money deposited in his bank account in India and Tribunal had meticulously examined and elaborately discussed documentary record in support of said explanation of money ingress in bank account of assessee, no addition under section 69A was warranted - **Commissioner of Income tax (IT)-1 v. Hersh Washesher Chadha - [2023] 157 taxmann.com 418 (Delhi)**

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

3.37 Bogus bills : Where Assessing Officer issued reopening notice on ground that assessee-company had received bogus bills regarding sub-contract work given to it without doing any actual work from a company engaged in such transactions, since there was no any failure on part of assessee to disclose fully and truly all material facts necessary during original assessment proceedings, impugned reopening after four years was to be quashed - **Nila Infrastructures Ltd. v. Assistant Commissioner of Income-tax - [2023] 156 taxmann.com 372 (Gujarat)**

3.38 Personal hearing : Where Assessing Officer did not grant any oral hearing to assessee before passing impugned order under section 148A(d), said order and further notice under section 148 issued to assessee was to be set aside with liberty to Assessing Officer to pass a fresh order after hearing assessee - **Deepak Modi v. Assistant Commissioner of Income-tax, Circle 46(1) - [2023] 157 taxmann.com 302 (Delhi)**

3.39 Loans/Advances : Where AO noted from seized documents obtained from residential premises of finance brokers that there was record which identify assessee as a borrower and assessee's name appeared in several seized documents which showed that cash loan was availed from different lenders, thus, order passed by AO under section 148(d) could not be

said to be a non-speaking order without application of mind - **Shyam Sundar Dhanuka v. Union of India - [2023] 156 taxmann.com 499 (Calcutta)**

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

3.40 Where Assessing Officer in scrutiny assessment, accepted loss return of assessee by making a concluding remark stating that "brought forward loss was not allowed to be carried forward", said concluding remark was rightly expunged by Tribunal as provisions of section 79 does not empower an AO, who exercises jurisdiction qua a particular AY, to place limitations on adjudicatory powers of AO who would be called upon to deal with matter in subsequent years - **Principal Commissioner of Income-tax v. Burda Druck India (P.) Ltd. - [2023] 157 taxmann.com 563 (Delhi)**

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

3.41 Tax holiday : Where denial of deduction to assessee, rendering telecommunication services, under section 80IA by AO was founded on reason that acquisition of two new licenses by assessee had resulted in a new and separate undertaking, since there was no material brought on record by revenue to back its claim that a separate undertaking had been established to provide NLD and ILD services, addition made under Section 80IA was to be deleted - **Principal Commissioner of Income-tax - 7 v. Verizon Communications India (P.) Ltd. - [2023] 157 taxmann.com 176 (Delhi)**

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

3.42 Housing projects : Where assessee, State organization, filed return claiming deduction under section 80IB(10) beyond period of limitation as per section 139(1) on account of delay in audit and Assessing Officer denied deduction on ground of late filing of return, since Commissioner (Appeals) and Tribunal had concurrently held that assessee was entitled to claim specifically computed deductions, assessee should not be burdened with taxes which it was otherwise not liable to pay under law - **Principal Commissioner of Income-tax v. H.P. Housing & Urban Development Authority (HIMUDA) - [2023] 157 taxmann.com 598 (Himachal Pradesh)**

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

3.43 Elimination of double taxation - Eligibility of relief : A notification under section 90(1) would be a mandatory condition to give effect to a DTAA, or any protocol changing its terms or conditions, which would have effect of altering existing provisions of law and furthermore, for a party to claim benefit of a "same treatment" clause, based on entry of DTAA between India and another state which is member of OECD, relevant date would be entering into treaty with India and not a later date, when, after entering into DTAA with India, such

country becomes an OECD member, in terms of India's practice - *Societe De Participations Financieres Et Industrielles Spafi v. Assistant Commissioner of Income-tax* - [2023] 157 taxmann.com 240 (Delhi)

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

- 3.44 AMP expenses** : Excessive AMP expenditure did not fall in category of an international transaction and, therefore, adjustment made qua same was unsustainable in eyes of law - *Principal Commissioner of Income-tax v. Timex Group India Ltd.* - [2023] 157 taxmann.com 528 (Delhi)

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

- 3.45 Advertising, marketing and promotion expenses** : Where assessee incurred AMP expenses in respect of products of AE and TPO made upward adjustment on account of same, in view of fact that assessee had received compensation for AMP expenses incurred by it in terms of higher profitability on products sold and fact that comparables chosen by TPO had a net margin lower than that registered by assessee, no upward adjustment was required to be made - *Principal Commissioner of Income-tax-8 v. Sony India (P.) Ltd.* - [2023] 157 taxmann.com 560 (Delhi)

- 3.46 Adjustments - Interest** : Where assessee-company was a debt free company question of receiving any interest on receivables would not arise and thus, adjustment made by AO on account of interest on outstanding receivables was liable to be deleted - *Principal Commissioner of Income-tax-04 v. Inductis India (P.) Ltd.* - [2023] 157 taxmann.com 87 (Delhi)

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

- 3.47 Filing of Form 10-IC** : Where assessee was not taxed at rate of 22 per cent as provided under section 115BAA on account of fact that it failed to file Form 10-IC, in view of Circular No. 19/2023, dated 23-10-2023, a fresh Form 10-IC having been filed electronically, assessee fulfilled conditions referred to in paragraph 3 of said circular, therefore, a direction was to be issued to CBDT to process assessee's request contained in Form 10-IC - *A. C. Surgipharma (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2023] 157 taxmann.com 360 (Delhi)

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

- 3.48 Computation of book profits** : Where assessee was consistently charging depreciation in its books of account at rates prescribed in Income-tax Rules and accounts of assessee had been prepared and certified as per provisions of Companies Act, 1956 Assessing Officer would not have any jurisdiction under section

115JB to rework net profits of assessee by substituting rates of depreciation prescribed in Schedule XIV to 1956 Act - *Principal Commissioner of Income-tax v. Kansara Popatlal Tribhuvan Metal (P.) Ltd.* - [2023] 156 taxmann.com 433 (Gujarat)

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

- 3.49 Sub-section (2A) and proviso to sub-section (2C)** : Power of extension of time under proviso to section 142(2C) vested in Assessing Officer (which was non-delegable) could not be exercised by Commissioner (Appeals) - *Principal Commissioner of Income-tax, Central-02 v. B.L. Kashyap and Sons Ltd.* - [2023] 157 taxmann.com 559 (Delhi)

SECTION 142(2A) OF THE INCOME-TAX ACT, 1961 - SPECIAL AUDIT

- 3.50 Extention of time for Conduct audit** : Where Commissioner extended time for submitting special audit report based on recommendation of Assessing Officer, since discretionary power to extend time was vested in Assessing Officer (which was non-delegable), it could not have been exercised by Commissioner - *Principal Commissioner of Income-tax, Central v. Soul Space Projects Ltd.* - [2023] 157 taxmann.com 272 (Delhi)

- 3.51 General** : Where competent authority had accorded approval for special audit under section 142(2A) for auditing account of assessee - Jabalpur Development Authority, by taking into account not only response of assessee but also comments of revenue, and due and sufficient opportunity was afforded to assessee before sanction was granted for special audit, there was no illegality in said approval - *Jabalpur Development Authority v. Principal Commissioner of Income-tax* - [2023] 157 taxmann.com 52 (Madhya Pradesh)

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

- 3.52** Where assessee filed objections under section 144C(2) with DRP, along with a copy submitted to Jurisdictional Assessing Officer, however, due to a technical issue, objections were not uploaded on portal and Faceless Assessing Officer, unaware of objections, proceeded to pass assessment order and issued a demand notice, in such circumstances, assessment order was to be quashed and AO was directed to await DRP's directions before passing assessment order, leading to quashing of notice of demand - *Renaissance Global Ltd. v. National Faceless Assessment Centre* - [2023] 157 taxmann.com 621 (Bombay)

- 3.53 Illustrations** : Where Assessing Officer passed assessment order without issuing draft assessment order as prescribed under section 144B, matter was to be remitted back to him to pass fresh order in accordance with law - *Devendran Coal International (P.) Ltd. v. Income-tax Officer (National faceless Assessment Centre), Delhi* - [2023] 157 taxmann.com 310 (Madras)

- 3.54 Opportunity of hearing** : Where assessee replied to notice issued under section 142(1) however AO without taking into

account assessee's reply issued a show cause notice on 9-12-2022, issue of show-cause notice dated 09-12-2022 was failure to adhere to directions contained in Clause N.1.3 of Standard Operating Procedure (SOP) and thus, impugned order was to be quashed - **Indo Laminates (P.) Ltd. v. Assessment Unit, Income-tax Department - [2023] 157 taxmann.com 125 (Delhi)**

3.55 Opportunity of hearing : Where opportunity for personal hearing through video conferencing was denied to assessee during faceless assessment, impugned assessment order was to be set aside and matter was to be remanded to NFAC to pass a fresh order after giving personal hearing to assessee - **Kumarbhai Manharlal Desai v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer - [2023] 156 taxmann.com 276 (Gujarat)**

3.56 Draft assessment order : Where in course of faceless assessment proceedings, assessee had not filed reply to notice issued under section 142(1) or asked for further time or filed objection to draft assessment order, alleged violation of principles of natural justice did not exist and, thus, assessment order could not be set aside - **Eranholi Kandiyl Ebrahim v. Union of India - [2023] 157 taxmann.com 494 (Kerala)**

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

3.57 Passing assessment order : Once the objections have been filed by the assessee against a draft assessment order within the time limit prescribed under Section 144C(2)(b), final assessment order should have been passed by Assessing Officer when DRP issued its directions for framing of assessment even if assessee inadvertently failed to intimate Assessing Officer regarding objections filed before DRP - **Pepsico India Holdings (P.) Ltd. v. Assessment Unit Income-tax Department National Faceless Assessment Centre - [2023] 157 taxmann.com 143 (Delhi)**

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

3.58 Net profit rate : Where assessee had produced all books of account with vouchers and bank statements and Assessing Officer did not give any adverse findings from details called for, cross verifications conducted and books of accounts, Commissioner (Appeals) rightly observed that Assessing Officer had ignored details furnished by assessee when details were available and estimated income at 8 per cent was merely on basis of surmises and conjectures - **Principal Commissioner of Income-tax, Rajkot-1 v. Backbone Projects - [2023] 157 taxmann.com 303 (Gujarat)**

3.59 Closing stock : Where assessee had provided all relevant details and statement of closing stock quantity

by segregating into saleable and unsaleable (expired/leakage) for perusal and had also provided stock statements of various locations whose stocks were physically taken and verified by firms of chartered accountants of those locations wherein they certified in statement itself that stocks had expired, damaged or leakage or unsaleable from total stock, Tribunal in order to prevent revenue leakage was justified in adopting a middle path by restricting addition to 25 per cent on account of undervaluation of closing stock - **Principal Commissioner of Income-tax-1 v. Gujarat Insecticides Ltd. - [2023] 157 taxmann.com 518 (Gujarat)**

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

3.60 General : Act does not contemplate any detailed adjudication on merits of information available with Assessing Officer at stage of passing order under section 148A(d) - **Vivek Saran Agarwal v. Union of India - [2023] 157 taxmann.com 80 (Allahabad)**

3.61 General : Where assessee had been served with notice under section 148A(b) to file a response by 10-4-2023 only on 14-4-2023 and, therefore, there was no way that petitioner could file response by 10-4-2023, assessment order passed by Assessing Officer was to be set-aside - **E.Construct FZ LLC v. Assistant Commissioner of Income-tax - [2023] 157 taxmann.com 357 (Delhi)**

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

3.62 Recording of satisfaction : Notice under section 153C would have to be issued only upon recording of satisfaction at first instance by AO of person searched and thereafter by AO of third party who must record satisfaction that seized material had a bearing on determination of total income, thus AO of third party must apply his mind to materials received and ascertain precisely specific year to which incriminating material relates and thus, notice would have to be issued for all specific years related to which incriminating material was found - **Agni Vishnu Ventures (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 157 taxmann.com 242 (Madras)**

SECTION 163 OF THE INCOME-TAX ACT, 1961 - NON-RESIDENT - AGENT OF

3.63 Revision : Revisional power under section 263 is directed towards assessment order framed against an assessee and, therefore, where principal had ceased to exist, Commissioner could not have exercised revisional power against agent - **Commissioner of Income-tax (IT)-2 v. Cairnhill CIPEF Ltd. - [2023] 157 taxmann.com 673 (Delhi)**

SECTION 176 OF THE INCOME-TAX ACT, 1961 - BUSINESS DISCONTINUED

3.64 Applicability of : Assessment order could not be passed against a struck-off company, as it would be construed as passing of order against a dead person, hence where name

of company had been struck-off, right course available for revenue would be to approach NCLT for revival of company as after revival of company, it would be open for revenue to initiate reassessment proceedings - **Pandian Anbalagan v. Income-tax Officer - [2023] 156 taxmann.com 402 (Madras)**

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

3.65 Scope of provision : Where Assessing Officer passed an order under section 179 on assessee, ex-director of a company, holding him liable for payment of tax due from company, since show cause notice issued to assessee was silent as regards steps taken by Assessing Officer for recovering tax from company, impugned order deserved to be set aside - **Bhailal Babubhai Patel v. Principal Commissioner of Income-tax - [2023] 156 taxmann.com 271 (Gujarat)**

SECTION 194N OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PAYMENT OF CERTAIN AMOUNTS IN CASH

3.66 Co-operative societies : Where assessee co-operative society had not established that it had distributed cash benefits as mandated by State Government to its members as well as non-members in terms of guidelines of Reserve Bank of India, it could not be said that it was acting as business correspondents of the State Government and, thus, it would not be entitled for exemption from deduction of tax under section 194N - **Chennimalai Siragiri Murugan Primary Handloom Weaver's Cooperative Society Ltd. v. Income-tax Officer - [2023] 157 taxmann.com 636 (Madras)**

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

3.67 Stay : Where Assessing Officer holding that funds received by assessee from foreign entities in form of remittances towards services was only a modus operandi to introduce unexplained funds in assessee raised tax demand against assessee, since assessee had not been able to make out a prima facie case in its favour, and further, assessee's plea of financial stringency based on its balance-sheet also inspired no confidence as according to Assessing Officer accounts had not been properly maintained, impugned order dismissing assessee's application for stay of demand during pendency of appeal was to be upheld - **PPK Newsclick Studio (P.) Ltd. v. Principal Chief Commissioner of Income-tax - [2023] 157 taxmann.com 468 (Delhi)**

3.68 Stay : Where assessee filed stay application for waiver of 20 per cent of deposit of demand raised and grant complete stay without any deposit, however, same was rejected by ITO without giving any reason, matter was to be remanded to ITO for fresh consideration of said

application - **Sheetal Nath Colonizers v. Principal Chief Commissioner of Income-tax - [2023] 156 taxmann.com 730 (Madhya Pradesh)**

3.69 Stay of demand : Tribunal is to be directed to lift order of attachment as regards pension amount of petitioner - **G.K. Reddy v. Deputy Commissioner of Income-tax, Corporate Circle-1(1) - [2023] 156 taxmann.com 729 (Madras)**

ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950 - POWER OF HIGH COURTS TO ISSUE CERTAIN WRITS

3.70 Where High Court rejected assessee's plea for a mandamus to halt income tax proceedings, noting prior notices and orders by emphasizing limits of Article 226 on factual matters, and highlighted assessee's duty to respond to notices and appear before officer in assessment matters, since instant case involved appreciation of various disputed facts, prayer for mandamus was rightly rejected - **T.M. Subash Thangam v. Income Tax Officer, Non Corp Ward 17(7) - [2023] 156 taxmann.com 732 (Madras)**

SECTION 234E OF THE INCOME-TAX ACT, 1961 - FEE - FOR DEFAULT IN FURNISHING STATEMENTS

3.71 Writ petition challenging late fee intimations issued in 2013 and 2016 for failure to file TDS statements within prescribed time under section 200(3) was to be dismissed, as section 234E, in effect at time of issuance, imposed a late fee, and subsequent amendment in 2015 was not applicable - **Alampally Pressure Testing Company (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 464 (Kerala)**

3.72 Position prior to 1-6-2015 : Section 234E which provides for late fee is substantive provision and levy is not dependent on section 200A(1)(c) which only prescribes a recovery mechanism, therefore, challenge to order imposing levy of late fee prior to 1-6-2015 was to be rejected - **Conceria International (P.) Ltd. v. Income Tax Officer - [2023] 157 taxmann.com 335 (Madras)**

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

3.73 Equalisation levy : Assessee was entitled to interest on refund of excess amount of equalisation levy paid by it from 1-4-2018 (end of financial year in which excess tax was paid by assessee) upto date of payment of refund to assessee - **Group M Media India (P.) Ltd. v. Deputy Commissioner of Income-tax, (IT) Circle-1(1)(2) - [2023] 157 taxmann.com 487 (Bombay)**

3.74 General : Where pursuant to Vivad Se Vishwas Act, 2020, for settlement of disputes, petitioner received Form No. 5 from revenue indicating that full and final settlement had been done in accordance with Form No. 3, however, no interest was paid for delayed payment of refund, petitioner would be entitled to interest on refund amount for delay beyond period of 90 days from date of refund - **Dwejesh Acharya v. Income Tax Officer, Ward - 6(2) - [2023] 157 taxmann.com 332 (Rajasthan)**

3.75 General : Where assessee was entitled to refund of certain sum as per Form No. 5 issued under DTVSV Act, which should have been paid by 31-7-2021, however, same had been paid only on 26-5-2023, assessee would be entitled to interest on this amount from 1-8-2021 upto 26-5-2023 at rate of 6 per cent per annum which was rate prescribed under section 244A - **UPS Freight Services India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 156 taxmann.com 489 (Bombay)

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

3.76 Opportunity of being heard : Where even after granting two adjournments to give more time to assessee to furnish his submissions, assessee still failed to submit same, impugned order passed by CIT(A) under section 250 could not be said to be in violation of provisions of natural justice; moreover, since alternate remedy to file appeal against impugned order of CIT(A) before Tribunal was available, instant writ against said order was to be dismissed - **C. Prasannakumarann Unnithan v. Commissioner of Income-tax (Appeals)** - [2023] 156 taxmann.com 397 (Kerala)

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

3.77 Ex parte order : Where application filed by assessee to recall Tribunal's order was dismissed on ground of being barred by limitation under section 254(2) as title of application filed by assessee itself disclosed same to be an application under section 254, since assessee had never sought rectification of said order, a mere wrong mention in title of application could not wipe away scope of application under rule 24 of Income-tax (Appellate Tribunal) Rules and thus matter was to be remanded back to Tribunal - **Purnagiri Rice Mill v. Union Of India** - [2023] 156 taxmann.com 435 (Allahabad)

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

3.78 Scope : Where penalty notice issued against assessee was not adverted to any specific limb of section 271(1)(c), thus, Assessing Officer was not clear whether he intended to levy a penalty on assessee for concealment of particulars of his income or furnishing inaccurate particulars, Tribunal was justified in quashing penalty proceedings under section 271(1)(c) initiated against assessee - **Principal Commissioner of Income-tax. (Central-3) v. Shyam Sunder Jindal** - [2023] 156 taxmann.com 625 (Delhi)

3.79 Disallowance of claim, effect of : Where assessee had disclosed all particulars relating to capital gain on sale of shares in return, no penalty could be levied under section 271(1)(c) merely because Assessing Officer treated such capital gain as business income of assessee - **Principal Commissioner of Income-tax v.**

Ankita Deposits & Advances (P.) Ltd. - [2023] 157 taxmann.com 353 (Himachal Pradesh)

3.80 General : Where Assessing Officer initiated penalty proceedings under section 271(1)(c) without specifying as to whether penalty was being levied on account of concealment of income or for reason that assessee had furnished inaccurate particulars, impugned penalty order had rightly been set aside by Tribunal - **Principal Commissioner of Income-tax v. Blackroak Securities (P.) Ltd.** - [2023] 157 taxmann.com 564 (Delhi)

SECTION 281 OF THE INCOME-TAX ACT, 1961 - CERTAIN TRANSFERS TO BE VOID VOID

3.81 Priority of charge : Income tax Act has not provided any 1st charge of its debts, but there is 1st charge over bank's debt under SARFAESI Act and even though it is a statutory duty to attach property by Income Tax Department, as and when bank claims and exercise its 1st charge over property, Income Tax Department is liable to issue no objection certificate and also lift attachment - **City Union Bank Ltd. v. Tax Recovery Officer - 2** - [2023] 157 taxmann.com 233 (Madras)

SECTION 281B OF THE INCOME-TAX ACT, 1961 - PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES

3.82 General : Where impugned attachment order in case of assessee was to remain in operation for a limited period with a validity of six months, writ petitions filed challenging attachment order after six months period had become infructuous and were to be set aside - **Shri Rathna Akshaya Estates (P.) Ltd. v. Principal Director of Income-tax (Investigation)** - [2023] 156 taxmann.com 437 (Madras)

4. TRIBUNAL

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

- 4.1 Agricultural land** : Where though purchaser company bought agricultural land from assessee for bona fide industrial purposes, however, he had obtained certificate for change of land use from agriculture to non-agriculture only after purchase of land from assessee and conveyance deed all along mentioned impugned land of assessee as agricultural land, said land could not be treated as a 'capital asset' in hands of assessee and capital gains earned upon its sale by assessee to company could not be taxed - **Hiten Tulshibhai Engineer v. Income-tax Officer** - [2023] 157 taxmann.com 81 (Ahmedabad - Trib.)
- 4.2 Municipal limits** : Where Assessing Officer observed that assessee had sold immovable property situated at Ahmadabad during relevant year but no return of income had been filed by assessee disclosing any gain and assessee and held that land was situated within 8KM of municipal limits of Ahmadabad and accordingly made addition, Commissioner (Appeals) was justified in holding that distance of land had to be measured from Municipal limits as on date of application of Notification No. SO 9447 dated 6-01-1994 issued by CBDT spelling limits of urbanization - **ITO, Ward-4(2)(1) v. Chandrikaben Piyushkumar Patel** - [2023] 157 taxmann.com 327 (Ahmedabad - Trib.)

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

- 4.3 General public utility** : Where assessee, a charitable company, was engaged in conducting surveys and research into readership of various media and disseminating research to various members and non-members, issue of denial of exemption under section 11 to assessee by invoking proviso to section 2(15) was to be remanded to Assessing Officer for fresh consideration, since Assessing Officer failed to examine as to whether activities of assessee were in nature of trade, commerce or business - **Media Research Users Council v. Assistant Director of Income-tax (Exemption)-1(1)** - [2023] 157 taxmann.com 470 (Mumbai - Trib.)
- 4.4 Object of general public utility** : Where object of assessee-trust was to ameliorate difficulties of small scale industries and micro enterprises in availing credit facilities from financial as well as banking institutions without having collateral security and/or third party guarantee and it was not carrying any trade, commerce or business, mere charging fee for services rendered would not make it non-charitable unless profit motive was established - **Credit Guarantee Fund Trust For Micro and Small Enterprises v. Income Tax Officer, DCIT (E)-1** - [2023] 157 taxmann.com 417 (Mumbai - Trib.)

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

- 4.5 Scope of provisions** : Where assessee-company held a 17.20 per cent share in a group concern and funds were regularly exchanged between assessee and said concern to meet their respective business requirements, with interest charged on these transactions, since payments made were not for anybody's individual benefit but were provided due to business exigencies and funds so provided was for sole benefit of company and not to individual benefit of a shareholder, question of applicability of provisions of section 2(22)(e) did not arise - **G.G. Continental Trades (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2023] 156 taxmann.com 275 (Amritsar - Trib.)
- 4.6 Loans and advances to shareholders** : Where assessee received loan from its group company and AO made additions of deemed dividend in hands of assessee on ground that both companies had a common shareholder having substantial interest, since since assessee was not a shareholder in group company, section 2(22)(e) couldnot be invoked in hands of assessee - **Apeejay (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-8(1)** - [2023] 157 taxmann.com 128 (Kolkata - Trib.)

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

- 4.7 Deemed owner** : Where assessee firm entered into unregistered agreement with 'G' for sale of land who further sold said land to another person and entire sale consideration from ultimate buyer was received by assessee only who after keeping sale consideration amount ought to be received by it from 'G' passed excess amount to 'G', 'G' could not be treated as owner of land on basis of impugned unregistered agreement and, therefore, Assessing Officer was justified in making addition on account of entire sale consideration received from ultimate buyer in hands of assessee - **Income-tax Officer v. Rishi Construction** - [2023] 157 taxmann.com 79 (Indore - Trib.)

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

- 4.8 Principle of mutuality** : Income earned by assessee association from holding exhibitions and organizing seminars which was arising from participation by its members would be exempt on basis of principle of mutuality - **Deputy Commissioner of Income-tax (Exemption) v. Indian Machine Tools Manufacturers' Association** - [2023] 156 taxmann.com 400 (Mumbai - Trib.)
- 4.9 Revision** : Where Pr. Commissioner had initiated revisional proceedings under section 263 after certificate in Form 5 under Direct Tax Vivad Se Vishwas Act was issued to assessee, order passed by Pr. Commissioner under section 263 was to be quashed - **Fakir Chand Agrawal v. Principal Commissioner of Income-tax, Raipur-1** - [2023] 157 taxmann.com 608 (Raipur - Trib.)

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

v. **Assistant Commissioner of Income-tax, International Tax Circle 2(2)(1) - [2023] 157 taxmann.com 675 (Delhi - Trib.)**

4.22 Permanent Establishment - Fixed PE, place of business : Where assessee-company did not have any fixed place of business in form of branch office/project office/ liaison office/godown or warehouse or any other business site in India, profit attribution to assessee was liable to be deleted - **Mosdorfer GMBH v. Assistant Commissioner of Income-tax, International Tax Circle 2(2)(1) - [2023] 157 taxmann.com 675 (Delhi - Trib.)**

4.23 Royalties/fees for technical services - Others : Where assessee, appointed as official sponsor of International Cricket Council (ICC) events, had made payment towards sponsorship of ICC cricket events for right to use and display event marks and use of footages and still photographs for advertising and promotional purpose, said payment was not in nature of royalty as per provisions of section 9(1)(vi) and, therefore, not liable for TDS deduction under section 195(1) - **Indian Oil Corporation Ltd. v. Deputy Director of Income-tax (IT), 3(1) - [2023] 157 taxmann.com 676 (Mumbai - Trib.)**

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

4.24 Government employees : Where assessee joined Department of Telecom which was corporatized by Government of India into BSNL and assessee was permanently absorbed into BSNL and leave at credit of assessee was transferred to BSNL on date of absorption as provided for under sub rule 24(b) of rule 37-A of CCS (Pension) Rules, assessee was eligible for exemption of entire amount of leave encashment (280 days leave earned during period before absorption into BSNL and 20 days of leave during BSNL employment) under section 10(10AA) - **Vijay Pemmaraju v. Income Tax Officer, Ward-2(5) - [2023] 157 taxmann.com 671 (Visakhapatnam - Trib.)**

SECTION 10(15) OF THE INCOME-TAX ACT, 1961 - INTEREST, EXEMPTION TO

4.25 Rectification : Where in appeal, against order under section 154, assessee claimed that interest income earned by it from government companies, which was exempt under section 10 was inadvertently stated as dividend income exempt from tax instead of interest income in return of income, CIT (Appeals) was to be directed to carry out necessary verifications and if claim of assessee was found to be correct, relief was to be allowed to assessee in accordance with law - **Shital Bachubhai Vaidya -Individual v. Assistant Director of Income-tax - [2023] 157 taxmann.com 419 (Ahmedabad - Trib.)**

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

4.26 Approval : Where new institute was not included in list of institutes run by assessee-trust which was granted approval under section 10(23C)(vi), exemption under section 10(23C)(vi) in respect of income of said institute could not have been claimed and allowed by Assessing Officer - **Shri Shamjibhai Harjibhai Talavia Charitable Trust v. Principal Commissioner of Income-tax (Exemption) - [2023] 157 taxmann.com 334 (Rajkot - Trib.)**

4.27 Cancellation of registration : Where consequent to cancellation of registration under section 12AA, Commissioner (Exemptions) held that assessee was no entitled for approval under section 10(23C)(vi), since provisional registration under section 12AA(i)(ac)(vi) and 80G(v)(iv) was granted to assessee by Principal Commissioner pursuant to amendment in law, activities of assessee-society were genuine and approval under section 10(23C)(vi) was to be restored - **Disha Education Society v. Commissioner of Income-tax - [2023] 157 taxmann.com 531 (Raipur - Trib.)**

SECTION 10(23EC) OF THE INCOME-TAX ACT, 1961 - INVESTOR PROTECTION FUND

4.28 Scope of provision : Where assessee, a public charitable trust was registered under section 12A and was also notified for exemption under section 10(23EC), in view of amendment to section 11(7) by Finance Act, 2023, with effect from 1-4-2024, assessee was entitled to exemption under section 10(23EC) for assessment year 2018-19 despite it was registered under section 12A - **Ncdex Investor (Client) Protection Fund Trust v. Commissioner of Income-tax (Exemptions) - [2023] 156 taxmann.com 434 (Mumbai - Trib.)**

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

4.29 Where AO called for all relevant documentary evidence and explanation from assessee in respect of LTCG and STCG on share transaction which were partially complied with but CIT(A) had given relief in respect of this addition by holding that addition was made relying on wrong DMAT account i.e. of HUF of assessee and not of assessee himself, since CIT(A) arrived at this conclusion to grant relief, without conducting any enquiry as per section 250(4), order of CIT(A) was to be set aside and matter would be remanded back to his file for de novo adjudication - **Assistant Commissioner of Income-tax, Circle-3 v. Pannalal Bhansali H.P. Institute of Insurance - [2023] 157 taxmann.com 299 (Gauhati - Trib.)**

4.30 Penny Stock : Where assessee claimed LTCG earned on sale of shares as exempt, since assessee had placed on record copies of contract memos in connection with purchase and sale of shares and no material was brought on record to suggest that assessee was mentioned in list of beneficiaries of any bogus LTCG on sale of shares, and further, purchase of shares was through banking channel, impugned additions, made on account of said LTCG treating same as bogus was unjustified - **Deputy Commissioner of Income-tax v.**

Rajnikant Prabhudas Mandavia - [2023] 157 taxmann.com 316 (Ahmedabad - Trib.)

4.31 Admission of additional evidence : Where Assessing Officer alleging that assessee did not furnish documentary evidence to substantiate earning of exempt income under section 10(38), treated entire consideration received on sale of shares as unexplained income under section 68, since notices for seeking evidences were sent by Assessing Officer to assessee on non-functional e-mail ID, and moreover, assessee had filed all necessary details called for to substantiate its claim of exempt income and also filed petition for filling additional evidence before Commissioner (Appeals) which was rejected, impugned addition upheld by Commissioner (Appeals) was unjustified - **Humuza Consultants v. Commissioner of Income-tax (Appeals) - [2023] 156 taxmann.com 493 (Mumbai - Trib.)**

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

4.32 General : Where assessee-trust was assessed under section 143(3) as AoP and exemption claimed under section 11 was duly denied, since assessee was unable to produce copy of registration under section 12AA which pillar for claiming exemption under sections 11 and 12, orders passed under section 143 and under section 250(6) by revenue authorities need not be interfered with - **Ram Saran Dass Kishorei Lal Charitable Trust v. Joint Commissioner of Income-tax - [2023] 156 taxmann.com 626 (Amritsar - Trib.)**

4.33 Accumulation of income : Where Assessing Officer denied accumulation of income at 15 per cent under section 11 to assessee trust on ground that assessee had benefitted persons specified under section 13(3) by incurring expenditure on celebration of deceased chairperson's birthday, since Commissioner (Appeals) found that no trustee got any specific benefit on incurring a meagre amount on birthday celebration of chairperson and further, activities of assessee trust were in consonance with its object, impugned denial of accumulation of income was unjustified - **Income-tax Officer v. Satyam Educational Trust - [2023] 157 taxmann.com 196 (Surat-Trib.)**

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

4.34 Rectification : Where Assessing Officer rejected claim of assessee under section 12A/12AA for impugned assessment year for reason that assessee inadvertently omitted to show in return that section 12A registration had been obtained by it, since assessee did not seek registration or any fresh claim of benefit of exemption under section 12A/12AA in its rectification application under section 154 instead it made a mere request to rectify inadvertent mistake which had crept in ITR filed by it online, Assessing Officer was not right in denying

benefit of registration under section 12A - **Delhi Policy Group (reg.) v. Income-tax Officer (Exemptions) - [2023] 157 taxmann.com 192 (Delhi - Trib.)**

4.35 Sub-section (2) : Where assessee-society was granted registration under section 12AA on 14-7-2023 and its assessment for relevant assessment year 2016-17 was not pending on said date before Assessing Officer as same had culminated on 12-12-2018 itself, in absence of satisfaction of pre-condition contemplated in 2nd proviso to section 12A(2) and CBDT Circular no. 1/2015, assessee was not entitled to avail benefit of exemption under sections 11 and 12 for relevant assessment year - **Chhattisgarh Rajya Open School Madhyamik Siksha Mandal v. Deputy Commissioner of Income-tax, Exemption - [2023] 157 taxmann.com 197 (Raipur - Trib.)**

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

4.36 Where CIT (Exemption) rejected application of assessee-trust under section 12AA on account of trust's inability to furnish information required under section 12AB(1)(b), since trust pleaded that notices issued by CIT (Exemption) went unanswered due to a lack of knowledge about them through ITBA portal, in said circumstances, trust was directed to once again make an application before CIT [Exemption] for registration within 90 days from date of this order - **Siddhakala Bhakta Mandal v. Commissioner of Income-tax (Exemption) - [2023] 156 taxmann.com 731 (Mumbai - Trib.)**

4.37 Denial of registration : Where assessee-trust was created by Board of company for objects and activities as per Schedule-VII of Companies Act, since assessee had applied funds for charitable activities by providing financial aid to needy and helps public at large and was acting as a charitable institution working for welfare of people from all walks of society and further CIT (Exemption) had neither pointed out any defect in objects of trust nor doubted activities carried out to achieve these objects, application for registration under section 12AA could not be rejected - **Santosh Foundation v. Commissioner of Income-tax (Exemptions) - [2023] 157 taxmann.com 388 (Amritsar - Trib.)**

4.38 Cancellation of registration : Where Commissioner (Exemption) cancelled assessee-trust's registration under section 12AA after receiving information that assessee received bogus donations from entities who provided accommodation entries in garb of donations, since revenue did not raise any dispute with respect to object or activities being carried out by assessee trust and cancellation was solely based on statements recorded under section 133A which were later retracted, assessee's registration was to be restored - **Disha Education Society v. Commissioner of Income-tax - [2023] 157 taxmann.com 531 (Raipur - Trib.)**

4.39 Condonation of delay : Where assessee-trust filed appeal against order of CIT (Exemptions) rejecting application with 840 days delay for grant of registration under section 12AA,

SECTION 28(iv) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME - VALUE OF ANY BENEFIT OR PREREQUISITE, ARISING FROM BUSINESS OR EXERCISE OF PROFESSION

4.50 Waiver of loan : Where loans borrowed by assessee stood waived off, in view of fact that no relief under section 28(iv) was provided in scheme sanctioned by BIFR and waiver was not in nature of cash or money, condition provided under section 28(iv) being satisfied, Assessing Officer had rightly charged to tax under section 28(iv) - **Deputy Commissioner of Income-tax, Central Circle-1 v. Windsor Machines Ltd.** - [2023] 157 taxmann.com 558 (Pune - Trib.)

4.51 Waiver of loan : Where assessee borrowed money through external commercial borrowing by issuing floating rate notes (FRNs) to lender and later, on basis of agreement between assessee and holder of FRNs a negotiated settlement led to assessee paying less than actual due amount, since floating rate notes were cash receipts, they were not taxable under sections 28(iv) and 41(1) - **Joint Commissioner of Income-tax (OSD) v. Runwal Realtors (P.) Ltd.** - [2023] 156 taxmann.com 404 (Pune - Trib.)

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

4.52 Software : Where Assessing Officer treated CISCO IP Phones as part of plant and machinery and did not allow depreciation at rate of 60 per cent applicable for computers claimed by assessee, since Assessing Officer was required to examine each item in detail as regards its functional dependency on computer and its independent existence, issue was to be set aside to file of Assessing Officer for re-adjudication in accordance with law - **CAE Simulation Training (P.) Ltd. v. Deputy Commissioner of Income-tax.** - [2023] 156 taxmann.com 492 (Delhi - Trib.)

4.53 Revision : Where Commissioner revised assessment order on ground that as proviso to Sec 32(1)(ii) was applicable only from AY 2016-17, claim for additional depreciation made by assessee was required to be withdrawn, since similar depreciation for assessment year 2011-12 was allowed by High Court in other case, assessment order could not be termed as erroneous and prejudicial to interest of revenue - **Trimex Sands (P.) Ltd. v. Principal Commissioner of Income-tax, Chennai-3** - [2023] 157 taxmann.com 105 (Chennai - Trib.)

4.54 Expenditure on lease hold land : Where assessee was allotted land on leasehold basis, since recognition of right to use lease hold land as intangible asset as per statement of account was not disputed by revenue, claim of depreciation was correctly made by assessee - **Adani Ports & Special Economic Zone Ltd. v. Joint Commissioner of Income-tax (OSD)** - [2023] 157 taxmann.com 106 (Ahmedabad - Trib.)

4.55 Set off of : Unabsorbed depreciation pertaining to assessment year 1997-98 could be allowed to be carried forward and set off after a period of eight years without any limit whatsoever in accordance with section 32(2) as amended by Finance Act, 2001 - **Deputy Commissioner of Income-tax, Central Circle-1 v. Windsor Machines Ltd.** - [2023] 157 taxmann.com 558 (Pune - Trib.)

SECTION 32AC OF THE INCOME-TAX ACT, 1961 - INVESTMENT IN NEW PLANT OR MACHINERY

4.56 Revision : Where assessee-company was granted exemption under section 32AC and Commissioner revised said order on ground that assessee was only extracting / separating minerals, it did not manufacture any item and thus did not fit into definition of manufacturing and thus investment allowance was required to be withdrawn, since extraction of minerals from beach sand involve change in non-living physical object / article into a new and distinct object / article having different name and use, activities carried out by assessee amounted to manufacture and claim was in order and thus revision was not justified - **Trimex Sands (P.) Ltd. v. Principal Commissioner of Income-tax, Chennai-3** - [2023] 157 taxmann.com 105 (Chennai - Trib.)

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

4.57 Donation : Where assessee made donation to an institute in financial year 2014-15, however, said institute was not approved for receiving donations under section 35(1)(ii) during impugned year i.e. 2015-16, impugned claim of assessee for weighted deduction was patently incorrect and, thus, order of Assessing Officer allowing said claim was erroneous - **Joshi Technologies International Inc v. Commissioner of Income-tax (IT & TP)** - [2023] 157 taxmann.com 275 (Ahmedabad - Trib.)

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

4.58 Interest free advances : Where assessee-company had sufficient own funds for giving interest-free deposit, no disallowance of interest under section 36(1)(iii) could be made - **PNP Maritime Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-3(2)(2)** - [2023] 157 taxmann.com 517 (Mumbai - Trib.)

4.59 Illustrations : Disallowance of interest on loan which was not received by assessee was to be deleted - **Sunil & Co. v. Assistant Commissioner of Income-tax, Circle-1** - [2023] 157 taxmann.com 490 (Jodhpur - Trib.)

4.60 Condition precedent : Where interest free funds were available with assessee far in excess of investment made in capital work in progress, disallowance made by Assessing Officer under section 36(1)(iii) was rightly deleted by Commissioner (Appeals) - **Deputy Commissioner of Income-tax, Circle-2(1)(1) v. IRM Offshore & Marine Engineers (P.) Ltd.** - [2023] 157 taxmann.com 171 (Ahmedabad - ITAT)

4.61 Condition precedent : Where advances were made by assessee from own interest free funds, disallowance made by Assessing Officer on account of interest on borrowed funds under section 36(1)(iii) was rightly deleted by Commissioner (Appeals) - **Deputy Commissioner of Income-tax, Circle-2(1)(1) v. IRM Offshore & Marine Engineers (P.) Ltd. - [2023] 157 taxmann.com 171 (Ahmedabad - ITAT)**

4.62 Interest free advances : Where assessee-company had sufficient own funds for giving interest-free loans/advances, no disallowance of interest under section 36(1)(iii) could be made - **Assistant Commissioner of Income-tax, Central Circle-3, Vadodara v. Jewel Consumer Care (P.) Ltd. - [2023] 157 taxmann.com 643 (Ahmedabad - Trib.)**

4.63 Interest free loans : Where Assessing Officer disallowed interest expenses proportionality on ground that assessee had advanced interest free funds to its group concern, since interest free funds available with assessee far exceeded loans and advances adduced by it, impugned disallowance was not justified - **Deputy Commissioner of Income-tax v. Agni Estates & Foundations (P.) Ltd. - [2023] 157 taxmann.com 317 (Chennai - Trib.)**

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

4.64 Guarantee provision : Provision made for guarantee claims would be entitled to deduction - **Credit Guarantee Fund Trust For Micro and Small Enterprises v. Income Tax Officer, DCIT (E)-1 - [2023] 157 taxmann.com 417 (Mumbai - Trib.)**

4.65 Revision : Where AO framed reassessment under section 147 in case of assessee accepting returned income after being satisfied with explanation given by assessee, Pr. Commissioner in exercise of power under section 263 could not find fault with reassessment order under section 143 read with section 147 passed by Assessing Officer and direct Assessing Officer to carry out further enquiry on materials or judgments of High Court which were not part of assessment records - **Daffodills Pharmaceuticals Ltd. v. Principal Commissioner of Income-tax. - [2023] 157 taxmann.com 195 (Delhi - Trib.)**

4.66 Warranty expenses : Where Assessing Officer made an addition on account of warranty expenses, in view of facts that assessee's claim of provision for warranty expenses had also been allowed in earlier assessment years and assessee had suo moto offered unutilized portion of provision for warranty expenses to tax in its return of income at end of fifth year, Commissioner (Appeals) had rightly deleted impugned addition - **Deputy Commissioner of Income-tax, Circle-2(1)(1) v. IRM Offshore & Marine Engineers (P.) Ltd. - [2023] 157 taxmann.com 171 (Ahmedabad - ITAT)**

4.67 Explanation 1 to section 37 : Where assessee entered into an agreement with JK Tyre for carrying out manufacturing activity of JK Tyres on job work basis but it failed to produce end product qualitatively according to parameters of JK Tyres and had to pay a certain sum to JK Tyres and and claimed it as revenue expenditure, since expenditure was not incurred for any infringement of law and rather, it was a by-product of commercial activity, said expenditure was not hit by Explanation 1 and section 37 - **Farseen Rubber Industries Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 619 (Kolkata - Trib.)**

4.68 Limited return on share capital : Limited return on share capital is nothing but maximum dividend payable/paid to members of producer company as authorised by articles of association and hence, it cannot be considered as an expenditure and claimed as expenditure - **Assistant Commissioner of Income-tax, Central Circle-2 v. Sri Vijaya Visakha Milk Producers Company Ltd. - [2023] 157 taxmann.com 389 (Visakhapatnam - Trib.)**

4.69 Gifts : Where assessee milk producer company incurred expenditure on purchase of gifts and distributed same at time of annual general meeting to milk producers who were also members of assessee and said expenditure was incurred to retain milk producers, same was to be allowed as business promotion expenditure under section 37(1) - **Assistant Commissioner of Income-tax, Central Circle-2 v. Sri Vijaya Visakha Milk Producers Company Ltd. - [2023] 157 taxmann.com 389 (Visakhapatnam - Trib.)**

4.70 Commission: Allowability or not of assessee's claim for deduction of commission expenses paid by assessee to its agents form marketing activities has to be tested as per mandate of section 37 and not on touchtone of satisfaction of benefit test - **Porwal Industries v. Income tax Officer-3(3) - [2023] 157 taxmann.com 637 (Raipur - Trib.)**

4.71 Sponsorship expenses : Where Assessing Officer partly disallowed sponsorship fees paid by assessee to a college for use of logo of assessee by college on all its promotional campaigns in any form of advertisement stating that there was no proof that expenditure incurred by college was wholly spent for purpose of assessee's business, since assessee had furnished details of actual expenditure incurred by college on business promotional activities, impugned disallowance was not justified - **Deputy Commissioner of Income-tax v. Agni Estates & Foundations (P.) Ltd. - [2023] 157 taxmann.com 317 (Chennai - Trib.)**

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

4.72 Book profit : Interest earned from deposit of funds linked to any business activity would be 'income from business and profession' and not 'income from other sources' and thus such interest income could not notionally be excluded while determining allowable deduction of remuneration to partners under section 40(b)(v) - **Feelings v. Principal Commissioner of Income-tax - [2023] 157 taxmann.com 247 (Panaji - Trib.)**

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

- 4.73 Scope of provision :** Where assessee paid interest at rate of 18 per cent to a related party covered under section 40A(2)(b) on unsecured loan and Assessing Officer disallowed interest paid in excess of 12 per cent, since Assessing Officer while partly disallowing interest had not followed provisions of section 40A(2)(a), part disallowance of interest deserved to be deleted - **Genxt Mobile LLP v. Assistant Commissioner of Income-tax - [2023] 156 taxmann.com 490 (Mumbai - Trib.)**

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

- 4.74 Scope of provision :** Where assessee had not claimed alleged cash payment made by it as expenses, such payment could not be disallowed under section 40A(3) - **Deputy Commissioner of Income-tax v. Sarthi Constry Construction - [2023] 157 taxmann.com 250 (Agra - Trib.)**

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

- 4.75 Unpaid loan :** Where assessee took unsecured loan which remained unpaid for a long time, since loan was never claimed as trading liability, Assessing Officer was not justified to invoke provisions of section 41(1) for adding outstanding loan amount to income of assessee, however, only interest amount paid on such loan which was claimed as expenditure in one year was liable to be added to income of assessee - **Shimmer Textiles (P.) Ltd. v. Income-tax Officer - [2023] 156 taxmann.com 624 (Kolkata - Trib.)**

SECTION 43B OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CERTAIN DEDUCTIONS TO BE ALLOWED ONLY ON ACTUAL PAYMENT - ASSESSMENT YEAR 2013-14

- 4.76 Service tax :** Where service tax payable was not debited to profit and loss account as an expenditure nor any deduction was claimed by assessee in respect of said amount, impugned disallowance under section 43B was not sustainable - **Deputy Commissioner of Income-tax v. Sandeep Surendran Nair - [2023] 157 taxmann.com 251 (Raipur - Trib.)**

SECTION 48 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAIN - CHARGEABLE AS

- 4.77 Shares :** Interest paid on borrowing for acquisition of capital asset is entitled for deduction under section 48 - **Dosch Pharmaceuticals (P.) Ltd. v. Deputy Commissioner of Income-tax-9 (3)(1) - [2023] 156 taxmann.com 728 (Mumbai - Trib.)**

- 4.78 Cost of improvement :** Where assessee claimed indexation cost of improvement in respect of flat sold by

him, however, he failed to file necessary documentary evidence for claiming said cost of improvement, Assessing Officer rightly disallowed assessee's claim of cost of improvement - **Arun Tulshidas Kharat v. Deputy Commissioner of Income-tax, Circle-7 - [2023] 157 taxmann.com 496 (Pune - Trib.)**

- 4.79 Cost of improvement :** Where assessee sold its land and made payment of certain sum to various persons who were claiming rights over said land out of his bank account for removal of encumbrances on land, since said cost was incurred prior to year of sale and was duly accounted for in books of account of assessee, same was to be allowed as deduction while computing capital gain on sale of land - **Sanmati Realtors (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-22(1) - [2023] 157 taxmann.com 390 (Delhi - Trib.)**

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

- 4.80** Where sale consideration received by assessee on transfer of capital asset was equal to circle rate, reference made to Valuation Officer to find out fair market value of property was not justified - **Akash Garg v. Deputy Commissioner of Income-tax, Circle (IT) 1(3)(1) - [2023] 157 taxmann.com 267 (Delhi - Trib.)**

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

- 4.81 Condition precedent :** Where assessee had sold an immovable property and purchased a residential unit/flat from a builder by making payment in instalments and possession of flat was received within 3 years from sale of property, agreement for sale of flat by builder to assessee could be construed as agreement of construction and date of grant of possession could be construed as completion of construction, therefore, assessee was to be granted exemption under section 54 - **Smt. Anjali Bhadoo v. Income-tax Officer - [2023] 157 taxmann.com 191 (Delhi - Trib.)**

- 4.82** Where capital gain was invested in purchase/construction of residential house within time limit prescribed under section 54(1), assessment order allowing assessee's claim under section 54 could not be treated as erroneous and prejudicial to interest of revenue only because capital gain was not deposited in capital gain account scheme - **Sarita Gupta v. Principal Commissioner of Income-tax - [2023] 157 taxmann.com 208 (Delhi - Trib.)**

SECTION 54E OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - NOT TO BE CHARGED IN CERTAIN CASES

- 4.83 Reassessment :** Where Assessing Officer issued on assessee a notice under section 148 seeking to reopen assessment framed under section 143(3) for reasons that assessee availed benefit under section 54E without disclosing fully and truly all material facts, since issue of reopening had arisen out of annotated report of Dy. Commissioner, which was not a mere internal document but formed basis for reopening, it was case of change of opinion and thus

reassessment order was to be quashed - **Income-tax Officer v. Sant Singh** - [2023] 156 taxmann.com 495 (Delhi - Trib.)

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

- 4.84 Share premium** : Where assessee issued shares and received premium and Assessing Officer held that whole of premium was based on incorrect report and added it to assessee's income under section 56(2)(viib), since Tribunal in case of associate company of assessee held that addition made by Assessing Officer on account of alleged premium was not justified, issue was to be remitted to Assessing Officer to examine afresh - **Clearmedi Healthcare (P.) Ltd. v. ACIT** - [2023] 156 taxmann.com 278 (Delhi - Trib.)
- 4.85 Buy back of own shares** : Where assessee-company had bought back its own shares under buy back scheme; provision of section 56(2)(x) and consequentially rule 11UA would be inapplicable - **Deputy Commissioner of Income-tax v. Globe Capital Market Ltd.** - [2023] 156 taxmann.com 620 (Delhi - Trib.)
- 4.86 Reference for valuation of land** : Where assessee purchased a land and had disputed stamp value of land before Collector of Stamp who had reduced same to some extent and assessee had accepted said value by paying stamp duty on that value, as per mandate laid down under section 50C(2)(b), assessee was precluded from seeking any further reference by Assessing Officer for valuation of said land by valuation cell, and therefore, Assessing Officer was justified in taxing difference between stamp duty value and sale consideration shown by assessee to its income - **Moti Lal Kataria v. Income-tax Officer** - [2023] 157 taxmann.com 314 (Raipur - Trib.)
- 4.87 Share premium** : Where assessee-company issued shares at a premium which was determined by auditor on basis of DCF method, since share premium charged by assessee was lower than fair market value of shares determined by auditor, section 56(2)(viib) was not applicable to case of assessee as said section only brings to tax consideration in excess of fair market value - **PNP Maritime Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-3(2)(2)** - [2023] 157 taxmann.com 517 (Mumbai - Trib.)
- 4.88 Interest on enhanced compensation** : Where there were seven other beneficiaries to interest income on enhanced compensation against a property received by assessee and assessee had disbursed respective shares to other beneficiaries, however, same fact was not disclosed before lower authorities, matter was to be remanded back to Assessing Officer to compute only 1/7th portion of total interest income and TDS credit thereon in hands of assessee - **Rajaram Ganapati Bhat**

v. Income-tax Officer - [2023] 156 taxmann.com 494 (Bangalore - Trib.)

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

- 4.89 Bogus sales**: Where addition was made to income of assessee on basis of report of Investigation Wing under section 68 but no part of said report could brought anything against assessee, impugned addition was to be deleted - **Durga Devi Bagree v. Income Tax Officer-4(4)** - [2023] 157 taxmann.com 607 (Raipur - Trib.)
- 4.90** Where Assessing Officer made addition on account of increase in capital account but Commissioner(Appeals) deleted said addition by accepting new evidence furnished by assessee about personal loans from two companies in prior years, since CIT(A) had not conducted any enquiry himself or caused to conduct an enquiry for examination of these transactions so as to ascertain whether those transactions had been adequately subjected to taxation under relevant provisions of Act, matter would be remanded back for fresh consideration - **Assistant Commissioner of Income-tax, Circle-3 v. Pannalal Bhansali H.P. Institute of Insurance** - [2023] 157 taxmann.com 299 (Gauhati - Trib.)
- 4.91 Demonetisation deposit** : Where assessee-company had made cash sales recovery of certain amount during demonetization period, since cash deposits made by assessee were duly sourced by cash sales and recovery of trade debts from sundry debtors in cash, and hence, source of cash deposits were properly explained by assessee, impugned addition made under section 68 was unjustified - **J. R. Rice India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle - 13(1)** - [2023] 157 taxmann.com 337 (Delhi - Trib.)
- 4.92 Share transactions** : Where transactions between assessee and paper companies were suspicious sale transactions in shares, long-term capital gains (LTCG) as claimed by assessee was not allowable under section 10(38) - **Archana Rajendra Malu v. Income Tax Officer, Ward - 4** - [2023] 157 taxmann.com 354 (Pune - Trib.)
- 4.93 Share application money** : Where assessee had issued equity share to certain persons and out of 21 persons, only four persons had filed their balance sheets, which showed that huge amount of unsecured loans was availed by them and investments in share capital of assessee-company were made out of borrowed funds but A.O had accepted said share capital investment, enquiry made by Assessing Officer was not adequate and accordingly, order passed by Assessing Officer was erroneous and prejudicial to interests of revenue - **Lado Ceramic (P.) Ltd. v. Principal Commissioner of Income-tax** - [2023] 157 taxmann.com 194 (Rajkot - Trib.)
- 4.94 Demonetization deposits** : Where assessee during demonetization deposited substantial amount of cash in banks and claimed that source for cash deposits was out of advance received from customers which were subsequently converted into sales of jewellery, since said trade advances were subsequently converted into sales by issuing sale bills,

then, said trade advance could not be examined in light of provisions of section 68; furthermore assessee had furnished name and address of customers from whom it has received cash for sale of jewellery, assessee had satisfactorily discharged onus cast upon to furnish name and address of persons - **Income Tax Officer, Corporate Ward-2 v. Sahana Jewellery-Exports (P.) Ltd.** - [2023] 157 taxmann.com 680 (Chennai - Trib.)

4.95 Share application money : Where assessee-company had failed to substantiate identity and creditworthiness of share applicant/subscriber companies, and genuineness of transactions of receipt of share application money from them, Assessing Officer was justified in making an addition under section 68 for share capital/premium received by assessee company - **Purvi Finvest Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1), Bilaspur** - [2023] 157 taxmann.com 638 (Raipur - Trib.)

4.96 Bank deposit : No addition could be made under section 68 treating cash deposit in bank account as unexplained cash credit on basis of entries in bank statement/pass book of assessee since a bank pass book or bank statement could not be considered to be a 'book' maintained by assessee for section 68 - **Kuldeep Jivan Mahan v. Income Tax Officer, 3(1)** - [2023] 157 taxmann.com 532 (Raipur - Trib.)

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

4.97 Purchases : Where Assessing Officer had made an addition under section 69 in respect of purchases made by assessee being non-genuine, in view of fact that parties in question had not filed return of income and assessee being failed to prove genuineness of transaction with said two parties, impugned order passed by Assessing Officer was to be upheld - **Assistant Commissioner of Income-tax, Circle - 1 v. Meerut Roller Flour Mills (P.) Ltd.** - [2023] 157 taxmann.com 463 (Delhi - Trib.)

4.98 Undervaluation of stock: Where Assessing Officer made an addition under section 69C merely on basis of statement recorded during survey under section 131(1A) by Director of assessee-company making disclosure, since no other incriminating material was found during survey impugned addition was to be deleted - **Assistant Commissioner of Income-tax, Central Circle-3, Vadodara v. Jewel Consumer Care (P.) Ltd.** - [2023] 157 taxmann.com 643 (Ahmedabad - Trib.)

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

4.99 Jewellery : Where AO made addition under section 69A with respect to jewellery found during search on ground that same was relatable to assessee's sister-in-laws, since assessee and her family members were high net worth individuals and considering their high status, holding such jewellery found in custody of members of

their families couldnot be seen to be abnormal and consequently unexplained - **Kirti Singh v. Assistant Commissioner of Income-tax, Central Circle-II** - [2023] 157 taxmann.com 298 (Delhi - Trib.)

4.100 Where assessee-firm admitted to having received certain amounts in cash, during course of survey proceedings under section 133 and admittedly certain diary noting was found and further working partner of assessee-firm admitted to certain undisclosed income in cash outside books of accounts therefore, case of assessee fell within purview of provisions of section 69A read with section 115BBE and therefore, CIT rightly invoked section 263, for taxing said undisclosed income at a higher rate as provided under section 115BBE - **Shiv Shakti Enterprise v. Principal Commissioner of Income-tax, Vadodara** - [2023] 157 taxmann.com 492 (Ahmedabad - Trib.)

4.101 General : Where during survey, assessee-firm had disclosed excess stock of gold, bullion and jewellery, since assessee had disclosed investment made by way of purchases for excess stock not only in its business books of accounts but also in VAT return filed to VAT authorities and, therefore, undoubtedly assessee had demonstrated excess stock as relating to its business, Assessing Officer was not justified in treating entire surrendered income as unexplained investment and expenditure and making additions under sections 69A and 69C and, thus, impugned addition made by Assessing Officer was to be deleted - **Income Tax Officer, Ward-2 v. Riddhi Siddhi Jewellers** - [2023] 157 taxmann.com 467 (Rajkot - Trib.)

4.102 Illustrations : Where pursuant to survey AO made addition to income of assessee on account of certain unexplained money stating that same was not shown in regular books, since assessee had offered additional income, working of which was done on basis of peak level of income worked out from all seized material and amount of addition made by Assessing Officer was covered by this amount of income surrendered by assessee, impugned addition made by Assessing Officer was to be deleted - **Deputy Commissioner of Income-tax v. Sarthi Construction** - [2023] 157 taxmann.com 250 (Agra - Trib.)

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

4.103 Excess stock : Where Assessing Officer made addition on account of excess stock found during survey conducted upon assessee, since such excess stock pertained to business carried out by assessee and was surrendered as its business income during survey as accepted by Assessing Officer, same could not be added to assessee's income under section 69B - **Bunty Kumar v. ACIT/Deputy Commissioner of Income-tax** - [2023] 157 taxmann.com 245 (Amritsar - Trib.)

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

4.104 Sale transaction : Where assessee had made cash payments to D for purchase of cows for his farm, in view of

facts that assessee had explained that cash was actually given and received back from D thrice, final time through R who was relative (spouse of sister in law) of assessee and it had no business transactions with R and D had also confirmed transactions, addition made by Assessing Officer and sustained by Commissioner (Appeals) was to be deleted - **Chandra Pal v. Assistant Commissioner of Income-tax, Central Circle-11** - [2023] 157 taxmann.com 606 (Delhi - Trib.)

4.105 Illustrations : Where Commissioner (Appeals) computed addition on account of unexplained expenses and unexplained receipt pertaining to year under consideration on pro rata basis as against higher amount added by Assessing Officer, since Commissioner (Appeals) had given a detailed basis for partially allowing appeal of assessee and revenue had not pointed out to any specific infirmity/factual inaccuracy in observations made by Commissioner (Appeals), there was no infirmity in order of Commissioner (Appeals) - **Deputy Commissioner of Income-tax v. Rajnikant Prabhudas Mandavia** - [2023] 157 taxmann.com 316 (Ahmedabad - Trib.)

SECTION 73 OF THE INCOME-TAX ACT, 1961 - LOSSES - IN SPECULATION BUSINESS

4.106 Where AO disallowed losses on commodity derivatives and Futures & Options trading and CIT(A) upheld same by criticizing casual approach of assessee for providing only sample copies of contract notes, without comprehensive details on trading, including booking and settlement prices, computation, and commodity transaction tax and documents submitted were deemed insufficient to support loss claim, in such circumstances, matter would be remanded back to CIT(A) for de novo adjudication - **Assistant Commissioner of Income-tax, Circle-3 v. Pannalal Bhansali H.P. Institute of Insurance** - [2023] 157 taxmann.com 299 (Gauhati - Trib.)

SECTION 73A OF THE INCOME-TAX ACT, 1961 - LOSSES - CARRY FORWARD AND SET OFF OF LOSSES OF SPECIFIED BUSINESS

4.107 Belated return : It is for AO examining return of income for subsequent year where assessee seeks set off of brought forward losses to take into consideration whether return of income for year of incurrance of losses of specified business has been filed within prescribed due date or not and then, take appropriate action as per law - **International Fresh Farm Products (India) Ltd. v. Income Tax Officer, Ward 2(1)** - [2023] 157 taxmann.com 127 (Chandigarh - Trib.)

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

4.108 General : Where assessee devised a means by way of converting limited company into an LLP and transferred her agricultural land to such LLP towards her capital contribution at a value less than cost of acquisition by

her, capital losses incurred by assessee were to be held as only notional and introduced artificially, and, thus, claim of set-off of capital loss against gain was to be rejected - **Asha Nimmagadda v. Assistant Commissioner of Income-tax** - [2023] 157 taxmann.com 78 (Hyderabad - Trib.)

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

4.109 Denial of approval : Where assessee-trust had obtained registration under section 12AB and filed application for approval under section 80G in Form No. 10AB and on obtaining provisional approval under section 80G(5) it filed application under Form 10AD for seeking final approval and Commissioner (Exemption) had not examined other requisite condition for approval of fund under section 80G and dismissed application in limine, application of assessee was to be restored back to file of Commissioner (Exemption) to examine other required condition and pass order in accordance with law - **Navsari Surat Aththavisi Modh Chaturvedi Brahmin Ghyati Samast v. Commissioner of Income-tax (Exemption)** - [2023] 157 taxmann.com 358 (Surat-Trib.)

4.110 Approval of application : Where CIT (Exemption) rejected application filed by assessee-trust for approval under section 80G on ground that assessee had obtained approval under section 10(23C)(vi) from Pr. CIT with only one object 'education', however, assessee, while applying for approval under section 80G, had added two more objects such as relief to poor and medical relief without any verification or mention in trust deed, since assessee had amended its objects and retained only one object namely 'education' and in application by inadvertent error, it was mentioned all three objects of trust deed, matter was to be re-manded back for fresh adjudication - **Thirumurugan Kalvi Arakkattalai v. Commissioner of Income-tax, (Exemption)** - [2023] 157 taxmann.com 336 (Chennai - Trib.)

4.111 CSR expenditure : Where Assessing Officer allowed deduction under section 80G and Pr. Commissioner initiating revision proceedings held that claim had been made by assessee in respect of expenses incurred on Corporate Social Responsibility (CSR) which was not allowable under section 37(1); in view of Tribunal' decision in case of Allegis Services (India) Pvt Ltd v. ACIT (ITA No. 1693/Bang/2019)(Bang.)(Trib.) holding that disallowance of CSR expenses is required to be made under section 37(1) but there is no statutory bar in claiming deduction under section 80G if said expenses are otherwise allowable as deduction under section 80G, view taken by Pr. Commissioner being a debatable one, meaning thereby, action of Assessing Officer in allowing deduction under section 80G would result in a possible view, impugned order of Pr. Commissioner was to be set aside - **FDC Ltd. v. Principal Commissioner of Income-tax** - [2023] 157 taxmann.com 387 (Mumbai - Trib.)

4.112 CSR : Explanation 2 to section 37(1) which denies deduction for CSR expenses by way of business expenditure is applicable only to extent of computing 'business income' under Chapter IV-D and; here would be no bar for assessee

to claim benefit under section 80G, falling in Chapter VIA - *Societe Generale Securities India (P.) Ltd. v. Principal Commissioner of Income-tax - [2023] 157 taxmann.com 533 (Mumbai - Trib.)*

SECTION 80JJAA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - IN RESPECT OF EMPLOYMENT OF NEW WORKMEN

4.113 Revision : Where there was proper verification and application of mind by Assessing Officer while framing assessment under section 143(3) and Tribunal found no flaws in submissions made by assessee in response to notice under section 263 and observed that report in Form 10DA for claiming deduction under section 80JJAA was duly filed without specific defects highlighted by Principal Commissioner, impugned revision order would not be sustainable - *GMM Pfadler Ltd. v. Principal Commissioner of Income-tax-1 - [2023] 157 taxmann.com 268 (Ahmedabad - ITAT)*

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

4.114 Rental income: Income derived by assessee, a resident of India, from property in Australia was liable to be taxed in India - *Smt. Irvind Gujral v. Income tax Officer, Ward-1(3), Jaipur - [2023] 157 taxmann.com 639 (Jaipur - Trib.)*

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

4.115 Issue of Non Convertible Cumulative Redeemable Preference Shares to AE is an international transaction u/s 92B in the nature of capital financing - *Thomas Cook (India) Ltd. v. Additional/Joint/Deputy/Asstt., CIT National e-Assessment Centre Delhi - [2023] 157 taxmann.com 177 (Mumbai - Trib.)*

4.116 Corporate guarantee : Counter guarantee provided by assessee to its AE would be an *international* transaction under section 92B and ALP was to be calculated at 0.5 per cent of guarantee - *Kansai Nerolac Paints Ltd. v. Addl. Commissioner of Income-tax, Range 6(2) - [2023] 157 taxmann.com 471 (Mumbai - Trib.)*

4.117 Corporate guarantee : Where assessee provided corporate guarantee to its AE, since assessee borrowed loan from bank at an effective rate of interest at 4.06 per cent per annum whereas AE had borrowed loan at rate of 4.92 per cent per annum despite corporate guarantee furnished by assessee, applying interest saving approach as *assessee* had not obtained any saving of interest/bank charges it would not be justifiable to make any addition on account of furnishing corporate guarantee to AE - *Adani Ports & Special Economic Zone Ltd. v. Joint Commissioner of Income-tax (OSD) - [2023] 157 taxmann.com 106 (Ahmedabad - Trib.)*

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

4.118 Comparability factors - General : Tested party should be least complex entity for which reliable data is available - *Schneider Electric Infrastructure Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 405 (Ahmedabad - Trib.)*

4.119 Comparability factors - General : As risk involved under contract manufacturing is less and whereas greater risk is attached under licence manufacturing, profit margin of contract manufacturing segment cannot be compared with license manufacturing - *Schneider Electric Infrastructure Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 405 (Ahmedabad - Trib.)*

4.120 Benefit from transaction/Allowability of expenditure : Where assessee-company had made payment for services rendered in relation to data management and other related services to its AE and relevant evidences, namely, invoices, agreements along with details of cost allocation were available on record, it could not be said that services had not been provided to assessee and, hence, no adjustment was called for - *Schneider Electric Infrastructure Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 405 (Ahmedabad - Trib.)*

4.121 Transactions with AE alone are covered : Transfer pricing adjustments should be with respect to international transactions with AE - *Schneider Electric Infrastructure Ltd. v. Deputy Commissioner of Income-tax - [2023] 156 taxmann.com 405 (Ahmedabad - Trib.)*

4.122 Adjustments - Corporate guarantee : Where corporate guarantee had been *extended* by assessee on behalf of its AEs without charging fee, adjustment in respect of corporate guarantee provided to AEs to be determined at rate of 0.5 per cent - *Havells India Ltd. v. Deputy Commissioner of Income-tax, (LTU) - [2023] 156 taxmann.com 486 (Delhi - Trib.)*

4.123 Adjustments-MAP : Where assessee entered into international transactions and AE of assessee in USA filed an application under mutual agreement procedure (MAP) with competent authority of US under article 27 of India US-DTAA and settlement had been arrived at between *competent* authority of India with respect to adjustment on account of transfer pricing issues related to US transaction, TPO was to be directed to adopt same approach for non US transactions as adopted in MAP for US transactions and accordingly, determine TP adjustment - *Hewitt Associates (India) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-10(1) - [2023] 157 taxmann.com 599 (Delhi - Trib.)*

4.124 Adjustments - Benefit from transactions/Allowability of expenditure : Where intra- group services received by assessee-company was supported by the proper agreement, substantial evidences with respect to services rendered by the Associated Enterprises and also demonstrated the

benefits received therefrom, AO was not justified in determining of said service at nil - **Pall India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 10(2) - [2023] 157 taxmann.com 238 (Mumbai - Trib.)**

4.125 Transaction with AE alone are covered : Transfer Pricing Officer should restrict addition/TP adjustment only to International transactions - **Pall India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 10(2) - [2023] 157 taxmann.com 238 (Mumbai - Trib.)**

4.126 Adjustments - Interest : Where assessee had given loans to its AE at Singapore but had not charged any interest on amounts advanced to its AEs, Commissioner (Appeals) was justified in determining average rate of interest after considering average three months LIBOR which worked out at 2.25 per cent as against 5.743 per cent adopted by Assessing Officer - **Deputy Commissioner of Income-tax v. Adani Power Ltd. - [2023] 156 taxmann.com 274 (Ahmedabad - Trib.)**

4.127 Adjustment- Interest : Where assessee, a Japanese company, had advanced a loan to Indian company and received interest at rate of 10.50% and TPO proposed arm's-length price of interest at rate of 14.05% and proposed an upward adjustment, since for determination of Arm's length price of interest received, it is necessary to determine credit rating of borrower and thereafter external comparables for benchmarking can be searched on publicly available financial databases, by applying appropriate filters to find comparable loan transactions with same characteristics and such Interest rate is further required to be adjusted to meet economic conditions, but assessee or TPO had not looked in to these basic aspects, issue was to be remitted back - **Nipro Corporation v. Deputy Commissioner of Income tax. (IT), Circle 3(3)(1) - [2023] 157 taxmann.com 469 (Mumbai - Trib.)**

4.128 Adjustment - Interest : Where there was delay receipt of receivables from AE, same would amount to granting of loan to an AE so as to enjoy funds, which AE would otherwise had to repay and that interest need to be charged based LIBOR rates as rate prevailing in country where loan was received/consumed by AE - **Kansai Nerolac Paints Ltd. v. Addl. Commissioner of Income-tax, Range 6(2) - [2023] 157 taxmann.com 471 (Mumbai - Trib.)**

4.129 Methods for determination of - CUP method : Where TPO selected CUP as MAM to benchmark assessee's sale to its AE and made direct comparison without making any adjustments to domestic price charged for similar product in a non-AE transaction, considering fact that geographical location would have an impact on pricing, bench marking done by TPO was not tenable - **Kansai Nerolac Paints Ltd. v. Addl. Commissioner of Income-tax, Range 6(2) - [2023] 157 taxmann.com 471 (Mumbai - Trib.)**

4.130 Methods for determination of - General : Where TPO determined ALP of intra-group services being availed by assessee from its AEs on an ad-hoc basis, since all requirements to satisfy requisite tests had been elaborately demonstrated including allocation of cost and there was no shortcoming or defect in such allocations, there was no reason to reject benchmarking analysis done by assessee and matter was to be restored to file of TPO - **CLSA India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 4(1)(1) - [2023] 157 taxmann.com 498 (Mumbai - Trib.)**

4.131 Adjustment- Interest : Where assessee-company had advanced a certain sum to its joint venture enterprise in which it was having 50 per cent share but did not charge any interest but TPO held that no independent party would have given such advance to any third party and therefore, interest was required to be charged, since advances were more in nature of capital contribution, TP adjustment made by TPO was to be deleted - **KEC International Ltd. v. Deputy Commissioner of Income-tax, Circle 5(2)(1) - [2023] 157 taxmann.com 274 (Mumbai - Trib.)**

4.132 Methods for determination of - CUP method : Where assessee rendered broking services both to AEs and non-AEs in different geographical locations and CUP method was selected as MAM, both overseas and domestic clients were to be considered while applying CUP method - **Morgan Stanley India Company (P.) Ltd. v. Income Tax Officer, National e-Assessment Centre - [2023] 157 taxmann.com 394 (Mumbai - Trib.)**

4.133 Adjustment - Marketing expenses : Where assessee rendered broking services both to AEs and non-AEs in different geographical locations and CUP method was selected as MAM, there was functional differences in services provided by assessee to AEs and non-AEs, TPO was to be directed to make 40 per cent adjustment with respect to marketing cost and research cost to assessee while determining arm's length of international transactions - **Morgan Stanley India Company (P.) Ltd. v. Income Tax Officer, National e-Assessment Centre - [2023] 157 taxmann.com 394 (Mumbai - Trib.)**

4.134 Adjustments - Interest : Where assessee had issued non-convertible debentures (NCDs) to its associated enterprise (AE) and TPO selected comparables having secured debentures and/or not in solar power sector, since assessee had issued NCDs as unsecured and had agreed rate of interest of 13 per cent, it was to be held that rate of interest charged by assessee company was at arm's length - **Arkha Solar Power (P.) Ltd. v. Deputy Commissioner of Income-tax-1 - [2023] 157 taxmann.com 635 (Visakhapatnam - Trib.)**

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

4.135 Scope of provisions : Where TPO had passed order without taking any cognizance of making any inquiries with respect to transaction of export and import, therefore, such an order was erroneous and prejudicial to interest of revenue, therefore,

order passed by Commissioner (TP) for revision of transfer pricing assessment order did not suffer from any infirmity - **Zenzi Pharmaceutical Industries (P.) Ltd. v. Commissioner of Income-tax (Transfer Pricing) - 4 - [2023] 157 taxmann.com 210 (Mumbai - Trib.)**

SECTION 119 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES

4.136 Communication of assessment order : Where Assessing Officer's order showed that in body of order, no DIN number was mentioned nor there was any reason of not mentioning DIN number, Assessing Officer's order would be invalid and shall be deemed to have never been passed; subsequent separate communication of DIN would be a superfluous exercise - **Harjeet Singh v. Assistant Commissioner of Income-tax, Central Circle 31 - [2023] 157 taxmann.com 270 (Delhi - Trib.)**

SECTION 135A OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - ASSESSMENT IN CASE OF

4.137 Opportunity of hearing : Where assessee was deprived of information/evidence which was considered by revenue while passing assessment order which was in violation of principle of natural justice, matter was to be remanded back to Assessing Officer to allow assessee to cross examine witnesses whose statements were recorded and also give opportunity to assessee to revert and meet reports and other evidences collected by Assessing Officer and used against assessee in assessment proceedings but were supplied only after assessment was completed - **Deputy Commissioner of Income-tax, 3(1) v. Arvind Joshi - [2023] 157 taxmann.com 174 (Indore - Trib.)**

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

4.138 Order without DIN : Assessment order passed by Assessing Officer without obtaining Document Identification Number (DIN) is invalid - **Bangalore Narayan Das v. Income Tax Officer, Ward (IT)-1(1) - [2023] 157 taxmann.com 605 (Bangalore - Trib.)**

4.139 Jurisdiction : Where Assessing Officer passed an assessment order under section 143(3) without issuing notice under section 143(2) only in pursuance with notice issued by another Assessing Officer under section 143(2), who had no jurisdiction over assessee at relevant time, such assessment order was liable to be quashed - **Bangalore Narayan Das v. Income Tax Officer, Ward (IT)-1(1) - [2023] 157 taxmann.com 605 (Bangalore - Trib.)**

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

4.140 Passing assessment order : Where TPO determined ALP of royalty and adjustment was made in hands of assessee but draft assessment order was passed coupled with Notice of demand u/s 156 and followed by notice under section 274 read with section 271(1)(c) and both Notice of demand and penalty proceedings were further followed by subsequent communication, it would make draft order as final and, thus, the draft assessment order was invalid - **Panasonic Life Solutions India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle 7(2) - [2023] 157 taxmann.com 534 (Mumbai - Trib.)**

4.141 Passing of assessment order : Final assessment order passed by the Assessing Officer in the case of the assessee a foreign company without issuing a draft assessment order as mandated under section 144C was null and void and unsustainable in law - **Polisetty Somasundaram Global Ltd. v. Deputy Commissioner of Income-tax, Central Circle-1 - [2023] 157 taxmann.com 670 (Visakhapatnam - Trib.)**

SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - ESTIMATION OF INCOME (NET PROFIT RATE)

4.142 Where assessee had produced all books of account with bills, vouchers, confirmations etc. and AO rejected books of account of assessee relying upon proceedings before Settlement Commission for preceding assessment years and had not brought on record any irregularity or defects in books, bills and vouchers etc., addition made by Assessing Officer estimating net profit rate at rate of 10 per cent of gross contract receipts was rightly deleted by Commissioner (Appeals) - **Deputy Commissioner of Income-tax, (Central)-2, Raipur (CG) v. Sunil Kumar Agrawal - [2023] 157 taxmann.com 641 (Raipur - Trib.)**

4.143 Net profit rate : Where assessee explained reasons for fall in net profit and no anomaly in accounts were found by Assessing Officer, rejection of books of accounts of assessee merely making a general statement that some vouchers were unsupported or there were expenses incurred in cash by assessee was unjustified - **Assistant Commissioner of Income-tax, Central Circle-3, Vadodara v. Jewel Consumer Care (P.) Ltd. - [2023] 157 taxmann.com 643 (Ahmedabad - Trib.)**

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

4.144 DIN : Where approval granted under section 153D by Additional Commissioner to draft assessment order was without issuance of DIN, final assessment order passed under section 153A on basis of such invalid and non-est approval under section 153D was without sanction of law and was to be quashed - **Finesse International Design (P.) Ltd. v. Deputy Commissioner of Income-tax, CC-14 - [2023] 157 taxmann.com 271 (Delhi - Trib.)**

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

4.145 DIN : Where assessment order passed by Assessing Officer under section 254/153C/144 did not bear DIN and there was no material on record mentioning reason for non-issuance of DIN, said order was invalid and deserved to be quashed - **Sad Bhawna v. Deputy Commissioner of Income-tax** - [2023] 157 taxmann.com 565 (Delhi - Trib.)

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

4.146 Damage charges : Where assessee, an Indian company, made remittance to company T, Marshall Island based company, towards damage charges for physical damage sustained by vessels, assessee acted as agent on behalf of non-resident ship owner or character and stepped into shoes of principal, also it was noted from settlement deed it that payments were reimbursements in nature and other damages raised were capital in nature, same could not be considered as income to ship owner within scope of section 5(2) and thus, provisions of section 172 would apply - **Deputy Commissioner of Income-tax (International Taxation) v. Nirma Ltd.** - [2023] 157 taxmann.com 124 (Ahmedabad - Trib.)

SECTION 194LBC OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - INCOME BY WAY OF INTEREST ON SECURITIES, ETC.

4.147 Excess Interest Spread : Where assessee, a securitisation trust, was created to secure pool of loan receivables from AMPL, originator/seller, since EIS paid by assessee to originator was residual amount that flowed to originator and was not pursuant to any investment in securitization trust or return of investment so made, also originator had not subscribed in PTCs, but MRR was maintained via cash collateral and in form of collateralizing of excess receivables, then condition provided in Section 194LBC was not fulfilled and therefore, there couldnot be any obligation to deduct tax - **Vivriti Cibus 013 2017 v. Income Tax Officer, (TDS)-2(3)(3)** - [2023] 157 taxmann.com 273 (Mumbai - Trib.)

SECTION 194N OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - CASH PAYMENTS

4.148 Scope of provision : Where assessee-bank, as per scheme of State Government of Tamil Nadu, transferred Government's funds to current account of various co-operative societies maintained with it, who, in turn, had withdrawn amount in cash and distributed cash to ration card holders and lower authorities held that assessee was obliged to deduct tax at source under section 194N, matter was to be restored to Commissioner (Appeals) for adjudication de novo in light of outcome of disposal of representation made by State Government before CBDT seeking exemption for all those primary Co-operative Credit Societies functioning in State from purview of section 194N - **Dharmapuri District Central Co-operative Bank Ltd. v. Deputy Commissioner of**

Income-tax TDS - [2023] 157 taxmann.com 313 (Chennai - Trib.)

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

4.149 Commission : Where Assessing Officer had made an addition on account of foreign commission expenses incurred by assessee and since assessee had submitted certain documents to substantiate nature of expenses before this Tribunal for first time, in interest of justice, issue was to be restored to Assessing Officer for denovo consideration - **Deputy Commissioner of Income-tax, Circle-2(1)(1) v. IRM Offshore & Marine Engineers (P.) Ltd.** - [2023] 157 taxmann.com 171 (Ahmedabad - ITAT)

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

4.150 Where Assessing Officer granted short TDS credit to assessee without conducting necessary enquiry, this issue was to be restored to file of AO with direction to grant TDS credit, in accordance with law, after conducting necessary verification - **Partners Medical International Inc. v. Deputy Commissioner of Income-tax, International Taxation, Circle-3(3)(2)** - [2023] 157 taxmann.com 141 (Mumbai - Trib.)

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

4.151 Where in assessment year 2012-13 assessee faced proceedings under section 206C(6A) and 206C(7) which led to issuance of show cause notice on 27-06-2017 and passing of order on 26-07-2017, since **assessment** year involved in this case was 2012-13, four years period ended on 31-03-2016, and therefore, order passed by A.O on 26-7-2017 being beyond 4 years period was barred by limitation - **Nisarahmed Abdulsattar Shaikh v. Income Tax Officer, TDS-2** - [2023] 157 taxmann.com 415 (Ahmedabad - ITAT)

4.152 Applicability of : 'Minor Forest Products' are not liable for collection of tax at **source** under section 206C(1) - **Bheru Lal Garg v. Income Tax Officer, (TDS)** - [2023] 157 taxmann.com 602 (Jodhpur - Trib.)

SECTION 234A OF THE INCOME-TAX ACT, 1961 - INTEREST, CHARGEABLE AS

4.153 Where issue relating to levy of interest under section 234A would be remanded back to file of AO for de novo adjudication after necessary **examination** of fact as to whether return of income was filed by assessee within prescribed time under Act - **Partners Medical International Inc. v. Deputy Commissioner of Income-tax, International Taxation, Circle-3(3)(2)** - [2023] 157 taxmann.com 141 (Mumbai - Trib.)

SECTION 234B OF THE INCOME-TAX ACT, 1961 - INTEREST, CHARGEABLE AS

WHETHER RIGOURS OF THE PROVISIONS OF SECTION 56(2)(x) AND SECTION 50C ARE APPLICABLE ON TRANSFER OF LEASE HOLD RIGHTS IN LAND OR BUILDINGS?

Adv. Subash Agarwal

1. To test the above hypothesis, it is imperative to examine the provision of section 56(2)(x) and section 50C. The former provision (applicable to buyers of immovable property and specified property and recipients of gifts) provides that following items shall be taxed in hands of any person which is received from any other person or persons on or after 01.04.2017 during any previous year-

(a) Any sum of money exceeding Rs. 50,000 in aggregate without consideration.

(b) Any immovable property received without consideration, if the stamp duty value of such property exceed Rs.50,000.

(c) Any immovable property received for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50,000/-.

(The Finance Act, 2018 has amended section 56(2)(x) from the AY 2019-20 so as to provide that any immovable property received for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher than the following amount namely:-

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to five per cent [Raised to Ten per cent from the assessment year 2021-22] of the consideration.)

(d) Any property other than immovable property (list of such property is specified in the provision- hereinafter referred to as the specified property) received without consideration, if the aggregate fair market value of such property exceeds Rs. 50,000/-

(e) Any property other than immovable property (specified property) received for a consideration where such consideration is less than the aggregate fair market value of such property by an amount exceeding Rs. 50,000.

For the purpose of this provision, property/ specified property means the following capital assets of the assessee, namely:

- (i) immovable property being land or building or both;
- (ii) shares and securities;
- (iii) jewellery;
- (iv) archaeological collection;
- (v) drawings;
- (vi) paintings;
- (vii) sculptures; or
- (viii) any work of art.
- (ix) bullion

2. It is pertinent to note that the above meaning is exhaustive therefore any other property of any kind shall not be covered by this deeming provision. As far as immovable property is concerned, the value of land and building only shall be included as immovable property. Any other asset like plant and machinery, fixtures, vehicles, tractors, bushes, trees etc will not be covered as they are not covered in the list appended to the provision.

3. Sec 50C – a pari materia provision applicable to the sellers of property

According to the above provision, where the full value of consideration shown to have been received or accruing on the transfer of an asset, being land or building of both, is less than the value adopted or assessed or assessable by stamp valuation authority, the value so adopted etc. shall, for the purposes of sec. 48, be deemed to be full value of consideration received or accruing as a result of such transfer. This section has been inserted by the Finance Act 2002 w.e.f. 01-04-2003 with a view to substitute the declared full value of consideration in respect of land or building or both transferred by the assessee with the value adopted or assessed or assessable by stamp valuation authority. From the language of the provision, it is apparent that the value of land or

building or both adopted or assessed or assessable by the stamp valuation authority shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such a transfer.

4. Both the provisions are deeming fiction- their scope cannot extend beyond the purpose for which they were enacted

Two things are noticeable from these provisions. Firstly, they are deeming provision and secondly, they extend only to immovable property being land or building or both or specified assets. As far as purchase and sale of immovable property is concerned the deeming provision has been incorporated in both the provisions to substitute the value adopted or assessed or assessable by stamp valuation authority in place of consideration received or accruing/paid, in case the latter is lower than the former. It is further relevant to note that the mandate of sec. 50C and sec 56(2)(x) extend only to a capital asset/property which is "land or building or both". It, therefore, follows that only if a capital asset/property being land or building or both is transferred and the consideration received or accruing/paid as a result of such transfer is less than the value adopted or assessed or assessable by the stamp valuation authority, the deeming fiction under both the provisions is activated to substitute such adopted or assessed or assessable value as full value of consideration received or accruing/paid. It is a settled legal proposition that a deeming provision cannot be extended beyond the purpose for which it is enacted. The Hon'ble Apex Court in CIT v. Amarchand N. Shroff [1963] 48 ITR 59 and CIT v. Mother India Refrigeration Industries (P.) Ltd. 155 ITR 711 has considered the scope of a deeming provision and has held that it cannot be extended beyond the object for which it is enacted. In the later case, Apex court has held that legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond their legitimate field. In CIT v. ACE Builders (P.) Ltd. [2006] 281 ITR 210 (Bom.), the Hon'ble Bombay High Court considered the facts of a case in which the assessee was a partner in a firm which was dissolved in the year 1984 and the assessee was allotted a flat towards the credit in the capital asset with the firm. The assessee

showed the flat as capital asset in its books of account and depreciation was claimed and allowed from year to year. In the previous year relevant 12/5/23, 10:38 AM 3/4 to asst. year 1992-93, the assessee sold the flat and invested the net sale proceeds in a scheme eligible u/s.54E of the Act and accordingly declared Nil income under the head 'Capital gains'. The AO formed the view that since the block of building ceased to exist on account of sale of flat during the year, the written down value of the flat was liable to be taken as cost of acquisition u/s.54E of the Act. He further held that since the assessee had availed depreciation on such asset, which was otherwise a long-term capital asset, the deeming provision u/s.50 would apply and it would be treated as capital gain on the sale of short-term capital asset and hence no benefit u/s.54E could be allowed. When the matter came up before the Hon'ble Bombay High Court, the court observed that sub-sections (1) and (2) of sec. 50 contained a deeming provision and such fiction was restricted only to the mode of computation of capital gain contained in sections 48 and 49 and hence it did not apply to other provisions. The assessee was held to be eligible for exemption u/s.54E in respect of capital gain arising out of the capital asset on which depreciation was allowed.

In the circumstances, since it cannot be said that holding of ownership in land or building is same as holding of leasehold right in the said assets and since the statute has used the term land or building or both in both the provisions of the Act, the rigour of law shall not apply where an assessee purchases or sales leasehold right in the said assets.

5. Leasehold rights- court decisions

It has been observed hereinabove that if the capital asset/property under transfer/sale cannot be described as 'land or building or both', then sec. 50C/sec 56(2)(x) would cease to apply.

There are number of court judgements on this issue taking the above view. In Atul G. Puranik Vs ITO [2011] 11 taxmann.com 92/132 ITD 499 (Mum.) , a case before the Hon'ble Mumbai Tribunal, the assessee was allotted lease right in the Plot for a period of sixty years, which right was further assigned to M/s. Pathik Construction in the year in question. Hon'ble Tribunal observed that it is axiomatic that the lease right in a plot of

land are neither 'land or building or both' as such nor can be included within the scope of 'land or building or both'. The distinction between a capital asset being 'land or building or both' and any 'right in land or building or both' is well recognized under the I.T. Act. Sec. 54D deals with certain cases in which capital gain on compulsory acquisition of land and building is charged. Sub-sec.(1) of sec. 54D opens with : "Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking.....". It is palpable from sec. 54D that 'land or building' is distinct from 'any right in land or building'. Hon'ble Tribunal went on to observe that considering the fact that section 50C is a deeming provision and that the fiction created in this section cannot be extended to any asset other than those specifically provided therein. As sec. 50C applies only to a capital asset, being land or building or both, it cannot be made applicable to lease rights in a land. As the assessee transferred lease right for sixty years in the Plot and not land itself, the provisions of sec.50C cannot be invoked.

5.1 More decisions on this important issue are discussed herein below.

1. ITAT, PUNE BENCH

2022 (9) TMI 919 - ITAT PUNE

MRS. BHAVANA SHASHIKANT GHONE VERSUS ITO, WARD 12 (2), PUNE

ITA No.839/PUN/2018

Dated: - 20-6-2022

Pune ITAT Order on Section 56(2)(vii)(b) [a pari materia provision applicable upto 01.04.2017] - Leasehold Rights:-

Background: Assessee's appeal pertains to A.Y. 2014-15 against CIT(A) Pune's order.

Main contention: Challenge to the addition of Rs.67,61,000 under section 56(2)(vii)(b) related to the acquisition of leasehold rights for an industrial plot (plot no. J326 in MIDC industrial area).

Factual Matrix:

Vendor, M/s. General Pharmaceuticals Pvt. Ltd., acquired leasehold rights for the industrial plot through agreements in 1984 and 1986.

Vendor executed a similar lease deed in favor of the assessee on 04.08.2014.

The impugned addition was based on the assessee's acquisition of these leasehold rights.

Key Legal Question: Do leasehold rights fall within the statutory definition of "any immovable property" as outlined in section 56(2)(vii)(b)? Specifically, are they considered "land or building or both"?

Legal Analysis: Reference was made to section 50C(1) of the Income Tax Act, which employs an identical expression.

Various judicial precedents were relied upon viz., CIT Vs. Greenfield Hotels and Estates Pvt. Ltd. 77 Taxmann.com 308 (Bom), KancastPvt. Ltd. 55 taxmann.com 171 (Pune ITAT), and GVK Industries Ltd. (2011) 10 taxmann.com 3(SC).

Tribunal adopted the reasoning from these precedents to assert that the leasehold rights in question do not meet the specified criteria.

Conclusion: The Tribunal concluded that the lower authorities made an error in both law and facts by invoking section 56(2)(vii)(b) for the addition related to the acquisition of leasehold rights.

Emphasis was laid on the consistent interpretation across cases that leasehold rights are not encompassed by the definition of "any immovable property" under the specified categories.

Consequently, the impugned addition of Rs.67,61,000 was deleted.

Order Outcome: The appeal of the assessee was allowed.

2. BOMBAY HIGH COURT

CIT V/s M/S. GREENFIELD HOTELS & ESTATES PVT. LTD.

[2016] 389 ITR 68 (Bom)

Dated: - 24-10-2016

Facts: This case involved an appeal under Section 260A of the Income Tax Act, 1961 for the Assessment Year 2007-08.

The primary issue was the application of Section 50C of the Act to the transfer of leasehold rights in land and buildings.

Views/Contentions: The Revenue presented a question of law challenging the justification of upholding the CIT(A)'s order, which deleted the addition on account of Long Term Capital Gain. The grounds for deletion were that Section 50C do not apply to the transfer of leasehold property.

The Tribunal's decision followed a precedent set in the case of Atul G. Puranik vs. ITO, where it was held that Section 50C does not apply to the computation of capital gains arising from the transfer of leasehold rights.

The Tribunal's order in the Atul Puranik case was cited as a precedent, emphasizing that Section 50C does not apply to the transfer of leasehold rights.

The crucial point was made that the Revenue did not appeal against the Atul Puranik decision, implying tacit acceptance of the decision.

Reference was made to the principle established by the Apex Court in UOI vs. Satish P. Shah (2001) 249 ITR 221 (SC) , which holds that when the Revenue accepts a decision on an issue of law and refrains from challenging it in appeal, any subsequent decision following the earlier one cannot be contested.

The court noted that the Revenue did not present any distinguishing features in facts or law in the current appeal compared to the Atul Puranik case.

Consequently, the court concluded that the question framed by the Revenue did not give rise to any substantial question of law.

3. ITAT PUNE

2015 (4) TMI 588 - ITAT PUNE

KANCAST PVT. LTD. V/s ITO, WARD 9(3), PUNE.

ITA No.1265/PN/2011

Dated: - 19-1-2015

Background and Grounds of Appeal:

The appeal was against the CIT (Appeals) order dated 21.07.2011, arising from the AO's order dated 31.12.2008 for the assessment year 2006-07.

Grounds of Appeal included issues related to the computation of long-term capital gains, disallowance of losses on the sale of dies, and computation of short-term capital gains on the sale of depreciable assets.

Section 50C Applicability:

The AO applied Section 50C to tax the consideration for transfer of leasehold rights at ₹4,89,89,000, contrary to the declared deed value of ₹2,35,04,000.

The ITAT clarified that Section 50C is specific to capital assets, being land or building. It does not encompass leasehold rights.

The order sets aside the CIT(A)'s decision and directs the AO to compute capital gains based on the declared consideration of ₹2,35,04,000.

4. ITAT KOLKATA

2020 (1) TMI 726 - ITAT KOLKATA

RITZ SUPPLIERS PVT. LTD. VERSUS ITO, WARD-12 (3) , KOLKATA.

I.T.A. No. 1945/Kol/2019

Dated: - 17-1-2020

purpose.

The deeming fiction in Section 50C applies only to the specified assets, namely 'land or building or both.'

Conclusion and Order: The ITAT concluded that Section 50C is not applicable to the transfer of leasehold rights for 99 years.

The full value of consideration was determined based on the actual amount received by the assessee, which was ₹1,25,92,000.

The AO was directed to recompute the capital gains/loss in accordance with the actual consideration.

The impugned order of the CIT(A) was set aside.

The appeal of the assessee was allowed.

5. ITAT, BANGALORE

[2021] 124 taxmann.com 74 (Bangalore - Trib.)

Smt. Sowmya Sathyanv. ITO, Ward-1(4), Mysuru

A.Y- 2014-15

Decision Dated: NOVEMBER 2, 2020

The (ITAT) considered an appeal related to the assessment year 2014-15 involving the sale of Transferable Development Rights (TDR) by the assessee. The Assessing Officer applied the provisions of section 50C, read with section 56, of the Act.

Facts of the Case: The assessee, an individual, had invested Rs. 1.32 crores in the purchase of Transferable Development Rights (TDR) during the relevant financial year.

The Government of Karnataka (BBMP) acquired land, and the TDR owner sold a portion of the TDR to the assessee for a consideration of Rs. 1.14 crores.

The Assessing Officer, invoking section 50C treated the differential amount of Rs.

4.02 crores as deemed consideration taxable under section 56(2)(vii)(b) as income from other sources.

Grounds of Appeal:

Contesting the application of section 56(2)(vii)(b) on the erroneous basis that TDR is "immovable property."

Arguing that TDR does not fall under the definition of "immovable property" as per the Act.

Emphasizing that TDR was a business asset and not a capital asset, and therefore, section 56(2)(vii)(b) did not apply.

Challenging the adoption of stamp value for TDR under the provisions of section 50C.

Proceedings Before the CIT(A): The CIT (Appeals) upheld the addition on the reasoning that TDRs could be considered capital assets under section 50C. The CIT(A) dismissed the argument that TDR was not a capital asset because it was shown as part of stock in trade in the balance sheet.

Arguments Before the ITAT: The appellant argued that TDR does not fit in the definition of "immovable property" under section 56(2)(vii)(b).

Section 50C, applicable to the transfer of "land or building or both," was deemed inapplicable to the transfer of TDRs.

The appellant contended that TDR was a business asset, and section 56(2)(vii)(b) did not apply to income from business.

The appellant cited various case laws supporting the distinction between land/building and rights attached to them, such as leasehold rights.

ITAT's Decision and Analysis: The ITAT emphasized a strict interpretation of deeming provisions and noted that section 50C specifically referred to the transfer of "land or building or both."

It concluded that since the assessee transferred development rights in the land and not the land itself, section 50C was wrongly applied.

The ITAT allowed the appeal, stating that there was no provision in the statute permitting the Assessing Officer to substitute any other value for the consideration received by the assessee while computing capital gains.

In short, the ITAT ruled in favor of the assessee, rejecting the application of section 50C to the sale of Transferable Development Rights and, consequently, allowed the appeal.

6. ITAT DELHI

[2021] 123 taxmann.com 213 (Delhi - Trib.)

Noida Cyber Park (P.) Ltd.v. ITO, Ward-18(4), New Delhi

A.Y- 2015-16

OCTOBER 12, 2020

Introduction: The appeal pertained to the assessment year 2015-16, wherein the assessee contested the invoking of section 50C of the Income-tax Act, 1961, concerning the computation of full value consideration for capital gains.

Background and Grounds of Appeal: The assessee filed an appeal against the CIT(A)'s order, challenging the assessment under section 143(3). The primary grievance was against the invocation of section 50C, arguing that it should not apply to the transfer of leasehold rights. The assessee raised multiple grounds, contesting the legality and jurisdiction of the assessment order.

Factual Overview: The dispute arose from the sale of a portion of the assessee's building in the Logix Cyber Park located at Noida. The Stamp Valuation Authority assessed the property's value for stamp duty at Rs. 399,97,79,799, while the sale consideration was declared as Rs. 159,20,50,116. The Assessing Officer applied section 50C, deeming the stamp duty value as the full value of consideration

resulting in an addition of Rs. 240,91,67,743 to the returned income.

Proceedings and CIT(A)'s Decision: The assessee contested the action before the CIT(A), presenting objections and evidence, including a valuation report from a Registered Valuer. The Departmental Valuation Officer (DVO) submitted a report valuing the property at Rs. 193,56,67,000. The CIT(A) dismissed the appeal, relying on the DVO's report, leading to the assessee's further appeal to the ITAT.

ITAT's Decision and Legal Interpretation: The ITAT delved into the core issue of whether section 50C, which covers "land or building or both," is applicable to the transfer of leasehold rights. The assessee contended that the term "land or building or both" does not encompass leasehold rights. The ITAT concurred with this interpretation, emphasizing the specific wording of the section.

The ITAT pointed out that the phraseology in section 50C(1) covers 'land or building or both' and does not explicitly refer to "any right in land or building." This distinction was critical in their decision.

The ITAT cited various legal precedents supporting the assessee's position, including the judgment of the Hon'ble Supreme Court in GVK Industries Ltd. (2011) 332 ITR 130 (SC) wherein SC has laid down an important proposition of law holding that express use of one expression excludes the other.

Conclusion and Order: Based on the interpretation of the relevant sections and supported by legal precedents, the ITAT concluded that section 50C does not apply to the transfer of leasehold rights in the present case. Therefore, it set aside the CIT(A)'s order and directed the Assessing Officer to delete the addition made under section 50C.

From the above discussion, It is apparent that department cannot apply for provision of Sec. 56(2)(x) and Sec 50C (buyer and seller respectively) insofar as transfer of leasehold rights in land and buildings is concerned.

GST & INDIRECT TAXES

1. STATUTORY UPDATES

- 1.1 Date extended for reporting opening balance for ITC reversal: GSTN Advisory

Editorial Note : The GSTN has issued an update to inform that opportunity to declare opening balance for ITC reversal in the statement has been extended till 31st January, 2024. Notably, in order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement was introduced on the GST portal.

- 1.2 CBIC extends time limit for passing order u/s 73 for FY 2018-19 & 2019-20: Notification - **Notification No. 56/2023- Central Tax, Dated 28-12-2023**

Editorial Note : The CBIC has issued notification to extend time limit for passing order under Section 73 for FY 2018-19 & 2019-20 till 30.04.2024 and 31.08.2024 respectively.

- 1.3 CBIC issues instructions on applicability of SC decision in case of Northern Operating Systems under GST - **Instruction No. 05/2023-GST, Dated 13-12-2023**

Editorial Note : The CBIC has issued instruction to clarify that there may be multiple types of arrangements in relation to secondment of employees of overseas group company in the Indian entity. Therefore, the decision of the Hon'ble Supreme Court in the NOS judgment should not be applied mechanically in all the cases.

- 1.4 CBIC issues directions to upload summary of notices and orders electronically on the portal: **Instruction - Instruction No. 04/2023-GST, Dated 23-11-2023**

Editorial Note : The CBIC has issued directions to ensure that summary of the notices shall be served electronically on the portal in FORM GST DRC-01. Also, summary of the order shall be uploaded electronically on the portal in FORM GST DRC-07.

- 1.5 Due date for filing GSTR-3B for November, 2023 extended for several districts of **Tamil Nadu - Notification No. 55/2023, Dated 20-12-2023**

Editorial Note : The CBIC has issued a notification to extend the due date for furnishing the return in FORM GSTR-3B for the month of November, 2023 till 27th December, 2023, for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu.

2. SUPREME COURT

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

- 2.1 SLP dismissed due to demand being on lower side against High Court ruling that where revenue reversed input tax credit alleging non-reflection of supplier's invoices in GSTR 2A, since assessee had complied with section 16(2) and payment was made via valid tax invoice and show cause notice found fault with assessee's GSTR 1 only and not with possession or receipt of tax invoice, order reversing ITC was to be set aside as action against supplier was essential before seeking reversal from assessee - **Assistant Commissioner of State Tax v. Suncraft Energy P. Ltd. - [2023] 157 taxmann.com 352 (SC)**

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

- 2.2 SLP dismissed against High Court order holding that demand of GST based on mis-reading of figures should be set aside - **Commissioner of Commercial Tax v. Vriddhi Infratech India (P.) Ltd. - [2023] 157 taxmann.com 279 (SC)**

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

- 2.3 Certain portion of HC judgment in Flipkart Internet (P.) Ltd. v. State of Bihar [2023] 157 taxmann.com 135 (Patna) was stayed pending disposal of SLP before SC - **Flipkart Internet (P.) Ltd. v. State of Bihar - [2023] 157 taxmann.com 166 (SC)**

- 2.4 Where writ proceedings initiated by assessee against adjudication order were dismissed, Apex Court allowed assessee to avail alternate statutory appeal remedy by condoning limitation angle - **Kohinoor Floors (P.) Ltd. v. State Tax Officer - [2023] 157 taxmann.com 349 (SC)**

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

- 2.5 Goods owned by purchaser cannot be confiscated on account of absence of consignor at given address without giving purchaser opportunity to establish bona fide purchase - **Deputy Assistant Commissioner-1 (ST) v. Arhaan Ferrous and Non Ferrous Solutions (P.) Ltd. - [2023] 157 taxmann.com 649 (SC)**

3. HIGH COURT

SECTION CLASSIFICATION OF SERVICES

- 3.1 Tea storage and warehousing :** Where after conducting standard processing, client procured in bulk 'tea' of various qualities and stored them in petitioner's warehouse, petitioner would be **entitled** to exemption as petitioner had provided services of warehousing of agricultural produce - **Nutan Warehousing Company (P.) Ltd. v. Commissioner, Central Tax - [2023] 157 taxmann.com 260 (Bombay)**

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

- 3.2** Where petitioner, engaged in maintenance of street lights, paid GST on services rendered by it and claimed reimbursement of same from MCD, since there was a long gap concerning reimbursement of tax paid by petitioner, MCD was directed to reimburse amount paid by petitioner along with interest at rate of 9 per cent - **BSES Rajdhani Power Ltd. v. North Delhi Municipal Corporation - [2023] 157 taxmann.com 291 (Delhi)**

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

- 3.3** Where Circular No. 34/8/2018-GST, dated 1-3-2018, which clarified that charges collected by distribution utilities on account of application fee, rental charges, testing fee, etc., were chargeable to GST, was set aside as such services were bundled supplies and formed an integral part of supplies of distribution of electricity and were not chargeable to GST, any GST collected by distribution utility was to be refunded to customers from whom said GST had been collected - **BSES Rajdhani Power Ltd. v. Union of India - [2023] 157 taxmann.com 481 (Delhi)**
- 3.4** Salaries paid to employees, even though seconded by foreign affiliate could not be considered prima facie as payment for manpower services; High Court granted stay - **Metal One Corporation India (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 689 (Delhi)**

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

- 3.5** Where assessee sought refund on account implementation of GST leading to enhanced tax liability as contract entered before GST regime provides that taxes was to be borne by assessee, since implementation of GST merely subsumed indirect taxes payable by a supplier for entire service chain and has not introduced any additional set of taxes, petition was dismissed and refund was denied - **Kayal Construction v. State of West Bengal - [2023] 157 taxmann.com 229 (Calcutta)**

SECTION 11 OF THE CENTRAL GOODS AND

SERVICES TAX ACT, 2017 - LEVY AND COLLECTION OF TAX - EXEMPTION - POWER TO GRANT

- 3.6** Incentive under industrial promotion scheme could not be denied merely because commercial production was started before approval by competent authority - **Ace Infra and Security (P.) Ltd. v. State of Bihar - [2023] 157 taxmann.com 214 (Patna)**

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

- 3.7** Notice was to be issued to Attorney General in writ petition seeking striking down of section 15(5) as unconstitutional in view of fact that similar issue had been admitted by High Court in case of Delta Corp Limited v. Union of India, [2023] 131 taxmann.com 83 (Goa) - **Playerzpot Media (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 342 (Bombay)**

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

- 3.8** Prescription of conditions could not be considered discriminatory to contravene Article 14 of Constitution; Impugned provisions viz. section 16(2)(c) of CGST Act, 2017 or rule 36(4) of CGST Rules, 2017 do not satisfy test of manifest arbitrariness, therefore, challenge to constitutional validity of impugned provisions must fail - **Nahasshukoor v. Assistant Commissioner - [2023] 157 taxmann.com 648 (Kerala)**
- 3.9** Appellant having not produced tax invoice issued by supplying dealer, failed to prove that they were entitled to benefit of input tax credit - **Nahasshukoor v. Assistant Commissioner - [2023] 157 taxmann.com 648 (Kerala)**
- 3.10** Court must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly unconstitutional - **Nahasshukoor v. Assistant Commissioner - [2023] 157 taxmann.com 648 (Kerala)**
- 3.11** Where petitioner availed input tax credit on purchases from a company which was found non-existent and also petitioner failed to discharge its onus to prove and establish beyond doubt actual transaction, actual physical movement of goods as well as genuineness of transactions and therefore order imposing tax and penalty along with interest upon petitioner was not to be interfered - **Shiv Trading v. State of U.P. - [2023] 156 taxmann.com 715 (Allahabad)**
- 3.12** Assessee sought rectification of mistake in Form GSTR-3B by accounting input tax credit as IGST instead of SGST and CGST credit and also to refund IGST ITC and thereafter, adjust same towards SGST and CGST liability; Revenue authorities should consider instant representation as a rectification application filed by assessee and should pass necessary orders - **Chukkath Krishnan Praveen v. State of Kerala - [2023] 157 taxmann.com 257 (Kerala)**

authorities in support of its application for revocation of cancellation of GST registration - **Sai Aluminium Eximv. Principal Commissioner of Goods & Service Tax** - [2023] 157 taxmann.com 150 (Delhi)

- 3.25** Where there were fundamental defects in procedure adopted by revenue while passing order of cancelling assessee's registration, therefore assessee was directed to treat impugned order to be show cause notice and file reply thereto and subject to such compliance revenue might fix a proper date for hearing and pass a reasoned and speaking order - **Vimal Kumar v. Union of India** - [2023] 157 taxmann.com 372 (Allahabad)
- 3.26** Where proper officer issued show cause notice and canceled registration of assessee from retrospective date even during period when assessee had filed returns, such order to extent of cancellation of registration from retrospective date was to be set aside and GST registration was to stand canceled from date of issuance of show cause notice - **Sanchit Jain v. Avato Ward -46 State Goods & Services Tax** - [2023] 157 taxmann.com 570 (Delhi)
- 3.27** Since show cause notice issued to assessee seeking to cancel registration was cryptic and order of cancellation also was bad, same were to be quashed and set aside solely on ground of violation of principles of natural justice - **Umiya Industries v. Superintendent of Goods and Services Tax** - [2023] 157 taxmann.com 110 (Gujarat)
- 3.28** Order cancelling petitioner's GST registration was well reasoned as there had been no contravention of any law nor any procedural impropriety which warrants any interference, writ petition was to be dismissed - **Shankar Ekka v. Assistant Commissioner of State Tax** - [2023] 156 taxmann.com 716 (Calcutta)
- 3.29** Where revenue was informed of demise of tax payer and stoppage of business, question of filing returns after demise did not strictly arise and registration of deceased tax payer was to be cancelled from date of application filed by petitioner - **Rajni Mittal v. Avato Ward-71 State Goods & Services Tax** - [2023] 156 taxmann.com 719 (Delhi)
- 3.30** Where registration of petitioner was canceled while proceedings were still pending before DGGI and no findings had been rendered by DGGI holding petitioner guilty of infraction of any provisions, registration of petitioner was to be restored as cancellation ought to be as a last resort and where material would demonstrate that a fraud had been practiced with intention of causing loss to State - **Hero Wiretex Ltd. v. Union of India** - [2023] 157 taxmann.com 646 (Andhra Pradesh)
- 3.31** Order passed without offering personal hearing and without setting out any ground for cancelling GST

registration was not sustainable; High Court directs restoration - **Att Sys India (P.) Ltd. Estex Tele (P.) Ltd. Consortium v. Commissioner Goods & Services Tax** - [2023] 157 taxmann.com 292 (Delhi)

- 3.32** Where petitioner/assessee had closed down its business and sought cancellation of its GST registration, respondent authorities were to be directed to take steps for cancellation of petitioner's GST registration in terms of its application - **Delhi Metal Company v. Principal Commissioner of Goods and Service Tax** - [2023] 157 taxmann.com 290 (Delhi)
- 3.33** Where registration was cancelled with retrospective effect also for period during which assessee had filed returns, registration should be cancelled from date of business closure as a result of sealing drive by municipality - **R. K. Metal Industries v. Commissioner of GST** - [2023] 157 taxmann.com 401 (Delhi)
- 3.34** Where registration was cancelled for obtaining it by means of fraud, etc. and though assessee did not receive SCN, order of cancellation referred that assessee had replied to SCN and furthermore, no reason was given for registration cancellation, impugned order was to be set aside - **Ahmed Enterprises v. Union of India** - [2023] 157 taxmann.com 402 (Bombay)
- 3.35** Where SCN and order was issued cancelling assessee's GST registration and did not specify any reasons for doing so, same were to be set aside and revenue was directed to restore petitioner's GST registration - **SK Enterprises v. Principal Commissioner of Goods & Services Tax** - [2023] 157 taxmann.com 537 (Delhi)

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

- 3.36** Where assessee filed application for change of address and had furnished documents regarding same, its application for revocation of cancellation could not be delayed by department seeking reconciliation of discrepancy in ITC claim - **Cuthbert Winner LLP v. Assistant Commissioner of CGST** - [2023] 157 taxmann.com 505 (Delhi)

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

- 3.37** Where invoices submitted by assessee did not appear in its buyer's Form GSTR-2B and instead inadvertently appeared Form GSTR-2B of third party vendor of its buyer, and buyer was unable to claim ITC for such invoices, assessee's request to amend/rectify Form GSTR-1 could not be rejected as errors of assessee were inadvertent and bonafide and there was not an iota of an illegal gain being derived by assessee - **Star Engineers (I) (P.) Ltd. v. Union of India** - [2023] 157 taxmann.com 285 (Bombay)

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

- 3.38** Application for refund of unutilized input tax credit in respect of zero rated supplies could not be rejected as deficient if it was complete in terms of rule 89(2) of CGST Rules, 2017 - **AB Enterprises v. Commissioner of Delhi Goods and Services Tax - [2023] 157 taxmann.com 218 (Delhi)**
- 3.39** Since tax penalty and fine quantified in GST for release of vehicle detained, could not be collected twice over, revenue was required to refund same, thus petitioner was required to file refund application and revenue was directed to process said application within four weeks - **Nitin v. Union of India - [2023] 157 taxmann.com 543 (Delhi)**
- 3.40** Where petitioner had paid Cess under incorrect head through GSTR-3B and was issued notice by revenue to file KFC-A returns and remit Cess dues in correct head, as an interim measure, revenue was to be directed to refund amount of flood Cess paid by petitioner for August, 2019 to July, 2021 period under GSTR-3B on proper application - **Kannan Paint & Radhas Hardware v. Deputy Commissioner of State Tax SGST - [2023] 157 taxmann.com 652 (Kerala)**
- 3.41** Refund of accumulated ITC due to inverted tax structure is admissible when principal input and output may attract same rate of tax but other inputs attract different rate of tax - **Indian Oil Corporation Ltd. v. Commissioner of Central Goods & Services Tax - [2023] 157 taxmann.com 431 (Delhi)**
- 3.42** CBIC Circular No. 135 on refund of accumulated ITC is not applicable where refund of ITC sought on account of tax rate on certain inputs is higher than tax rate on output supply even if tax rate on main input and output is same - **Indian Oil Corporation Ltd. v. Commissioner of Central Goods & Services Tax - [2023] 157 taxmann.com 431 (Delhi)**
- SECTION 54 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REFUND - TAX, REFUND OF**
- 3.43** Where refund application of input tax credit on account of export of services was rejected by authorities only by relying on rule 89 of CGST Rules, 2017 which was not part of SCN and also relevant documents were not considered, impugned order was to be set aside and matter was to be remanded back to authorities for fresh adjudication - **Sweta Distributors (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 288 (Bombay)**
- 3.44** Where petitioner had filed refund application under section 54(3) for period from 1-4-2018 to 31-7-2019, since credit was already available for prior period i.e., financial year 2017-18, in assessee's electronic ledger in form of a running account, it was permissible for petitioner to club ITC of both periods as per rule 89(4) - **Sine Automation and Integration (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 259 (Bombay)**

- 3.45** Where interest on refund of input tax credit in respect of goods exported by assessee was denied, as per section 56, a taxpayer would be entitled to interest from date immediately after expiry of sixty days from receipt of first application under section 54(1), which is accompanied by documents as specified under section 54(4) read with rule 89, therefore, order denying interest on refund of ITC was to be set aside and revenue was directed to process assessee's application for refund - **Bansal International v. Commissioner of DGST - [2023] 157 taxmann.com 397 (Delhi)**
- 3.46** Assessee had paid double IGST on ocean freight charges alone and in view of Union of India v. Mohit Minerals (P.) Ltd. [2023] 138 taxmann.com 331 (SC), no IGST could be collected on ocean freight charges from importers, therefore, impugned adjudication order imposing IGST on ocean freight charges was to be set aside - **ARS Energy (P.) Ltd. v. Additional Commissioner (Appeals) - [2023] 157 taxmann.com 610 (Madras)**

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

- 3.47** Where GST registration of assessee was canceled and assessee could not restore registration due to COVID outbreak, best judgment assessment orders passed by respondent authority by attaching petitioner's bank account was to be set aside as assessee filed returns for relevant years subsequent to restoration of GST registration - **Anand Cini Services (P.) Ltd. v. State Tax Officer (ST) - [2023] 157 taxmann.com 504 (Madras)**

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

- 3.48** Where a notice for audit was uploaded on 14-9-2023 to which assessee had replied on 28-9-2023, however without considering response of assessee audit was finalized on 29-9-2023, since there was no clear 15 working days between date of receipt of notice i.e. 14-9-2023 and date of finalization of audit i.e. 29-9-2023, audit report was finalized during statutory notice period and same was to be set aside - **Vardhaman Gold v. State of A.P. - [2023] 157 taxmann.com 617 (Andhra Pradesh)**

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

- 3.49** Where assessee was accused of offenses involving fake firms and paper transactions, had been in custody for over a year and faced slow trial, bail was to be granted due to prolonged detention and trial delay - **Amit Kaushik v. State of Haryana - [2023] 157 taxmann.com 433 (Punjab & Haryana)**
- 3.50** It is only after reasons are provided to Joint Commissioner that he can authorize in writing any search and seizure to be carried out; where said procedure had not been followed, entire authorization was vitiated and liable to be quashed -

Gaurav Saurav Traders and Contractors v. State of U.P. - [2023] 157 taxmann.com 432 (Allahabad)

3.51 In view of judicial precedents revenue was directed to refund money which was seized from petitioners residential premises with interest within one week - **Gunjan Bindal v. Commissioner of CGST - [2023] 156 taxmann.com 721 (Delhi)**

3.52 Silver was seized as unaccounted wealth in search and seizure operations conducted in premises of assessee in respect of alleged clandestine removal of packing materials supplied by assessee, power under section 67(2) of CGST Act, did not extend to seize valuable articles, silver seized was to be released to petitioner - **Narendra Polypack Industries v. Additional Director General, Directorate General of GST Intelligence - [2023] 156 taxmann.com 722 (Delhi)**

3.53 Where none of grounds as set out in authorization for search were borne out from information or material on record of respondent authority, such authorization was patently erroneous - **Bhagat Ram Om Prakash Agro (P.) Ltd. v. Commissioner Central Tax GST - [2023] 157 taxmann.com 258 (Delhi)**

3.54 Where during search at assessee's business premises it was alleged that assessee had wrongfully availed ITC from suppliers whose registrations were canceled retrospectively, proper officer has issued authorization in Form INS-01 setting out all reasons as stated in section 67(1)(a) and cancellation of registration of suppliers with retrospective effect does have a rational nexus with reason to believe that ITC in respect of supplies from such suppliers may not be available, therefore, contention of assessee that search conducted at its premises was illegal as authorization for search was imprecise and vague, was not acceptable - **Lovelesh Singhal v. Commissioner, Delhi Goods and Services-tax - [2023] 157 taxmann.com 611 (Delhi)**

3.55 Where assessee was coerced to make deposit of tax by debiting electronic cash ledger (ECL), since there was no determination of assessee's liability to pay tax and search/inspection operations way beyond normal business hours, it was clear that tax deposited by assessee could not be considered as voluntary and within scheme of Section 73(5) and therefore revenue was directed to reverse ITC deposited by petitioner and forthwith credit same in his ECL - **Lovelesh Singhal v. Commissioner, Delhi Goods and Services-tax - [2023] 157 taxmann.com 611 (Delhi)**

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

3.56 An order granting or denying bail can never be looked upon as sufficient material for passing a Judgment of either conviction or acquittal; Additional Chief Metropolitan Magistrate [E.O.I] should overlook any

observations made by Principal Sessions Judge while granting bail - **Senior Intelligence Officer DGGI v. Narendra Rathi - [2023] 157 taxmann.com 507 (Madras)**

3.57 Where on search, it was found that assessee had suppressed huge turnover and after search was conducted, software used at his business premises was changed immediately and Accountant of firm was also dismissed from service, department had correctly suspected that accused was tampering with evidence and influencing witnesses; in view of fact that investigation was going on, bail could not be granted - **Badha Ram v. Intelligence Officer - [2023] 157 taxmann.com 477 (Kerala)**

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

3.58 Application under Section 438 of Cr.P.C. could not be entertained at a stage when only a summon has been issued under Section 70 of CGST Act, 2017 - **Suchismita Mohanty v. State of Odisha - [2023] 157 taxmann.com 684 (Orissa)**

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

3.59 Where notice was issued directing assessee to pay interest on non-payment of GST in time within 2 days, since time period of 2 days was not sufficient to make payment of demanded amount, 3 months period was granted to assessee to pay said interest - **Everyday Banking Solutions v. Assistant Commissioner (ST) - [2023] 157 taxmann.com 151 (Madras)**

3.60 Where Form GST ASMT-10 was not issued to assessee, act of issuance of impugned demand-cum-show cause notice under section 73(1) by Proper Officer was without compliance of mandatory conditions precedent and, therefore, operation of impugned demand-cum-show cause notice was to be stayed - **Pepsico India Holdings (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 428 (Gauhati)**

3.61 Where in response to SCN issued for raising demand, assessee intended that a personal hearing be granted to it, merely because assessee did not appear on stipulated date, it should not have been presumed that assessee was not interested for hearing; in absence of consideration of reply already filed by assessee, impugned order was to be quashed and set aside - **Cart2India Online Retail (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 212 (Bombay)**

3.62 Where SCN was issued, assessee must be given reasonable opportunity to be heard, which shall include assessee with enough time to respond to allegations against it - **Raymond Ltd. v. Union of India - [2023] 157 taxmann.com 654 (Madhya Pradesh)**

3.63 If SCN lacked material particulars, it shall be invalid as assessee would not be able to respond effectively to allegations against him if assessee did not have enough

information - **Raymond Ltd. v. Union of India** - [2023] 157 taxmann.com 654 (Madhya Pradesh)

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

- 3.64** Where assessee had received show cause notice from revenue alleging that they had engaged in fraudulent activities, but their registration had been cancelled before adjudication of show cause notice, revenue were to be directed to conclude adjudication of show cause notice expeditiously - **Golden Timber Industries v. Additional Director Directorate General of GST Intelligence** - [2023] 157 taxmann.com 227 (Kerala)
- 3.65** Under section 75(4), it is mandatory for Revenue authorities to give a personal hearing to assessee if an adverse order is contemplated to be passed against him; where in facts of case, a personal hearing was not given to assessee, in spite of an adverse order having been passed, matter was to be readjudicated - **Hydro Pneumatic Accessories India (P.) Ltd. v. Assistant Commissioner of State Tax** - [2023] 157 taxmann.com 232 (Bombay)
- 3.66** Where issue was whether payment of royalty is liable to GST, demand for GST and payment of royalty was to be stayed and no coercive action was to be taken against petitioner - **Uma Shankar Singh v. Commissioner (Appeal) Customs Central Goods and Services Tax and Central Excise CGST** - [2023] 157 taxmann.com 115 (Allahabad)
- 3.67** Writ petition was to be disposed of directing assessee to deposit arrears of tax in six equal monthly instalments, first should be paid on or before 10-11-2023 and other should be paid on or before 10th of every subsequent five months - **Thomas K. Jv. State tax officer/Assistant Commissioner** - [2023] 157 taxmann.com 114 (Kerala)
- 3.68** Where assessee had replied to pre-show cause notice, however Authority had not dealt with contentions placed by assessee in said reply, subsequent show cause notice issued under section 73(1) without due application of mind, without considering reply to pre-show cause notice and without conducting any inquiry or investigation was to be set aside - **Diamond Beverages (P.) Ltd. v. Assistant Commissioner of CGST & CX** - [2023] 157 taxmann.com 479 (Calcutta)
- 3.69** Where an order was passed against assessee imposing penalty under section 73(11) and show cause notice issued mentioned possible penalty under section 73(9), merely because SCN issued did not refer to a particular statutory provision, assessee could not be said to have been prejudiced when facts leading to

invocation of statutory provision concerned were admitted, accordingly, petition was to be dismissed - **Global Plasto Wares v. Assistant State tax Officer** - [2023] 157 taxmann.com 184 (Kerala)

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

- 3.70** Where there was an apparent mismatch between FORM GSTR-7 and FORM GSTR-3B filed by assessee and plea of having missed pre-show cause notice was also baseless, writ petition was to be disposed of in favour of respondent - **Goutam Bhowmik v. State of West Bengal** - [2023] 157 taxmann.com 130 (Calcutta)
- 3.71** Where show cause notice was issued upon assessee after an independent investigation and recitals therein indicated materials which gave rise to a reasonable belief in mind of respondent no. 1 with regard to short payment of service tax and other dues, no case of patent lack of jurisdiction or legal bar to issuance of show cause notice cum demand notice had been made out - **KMBD Architect & Engineers Consortium (P.) Ltd. v. Assistant Commissioner, CGST & Central Excise** - [2023] 157 taxmann.com 430 (Calcutta)
- 3.72** Demand cum show cause notice dated 19-8-2020 for recovery of short deposit of Service Tax for financial years 2014-15, 2015-16 and 2017-18 shall be deemed to have been instituted and continued under repealed law in view of saving provision of section 174(2) of GST Act and could not be pre-empted with reference to time frame under section 74(10) of GST Act - **KMBD Architect & Engineers Consortium (P.) Ltd. v. Assistant Commissioner, CGST & Central Excise** - [2023] 157 taxmann.com 430 (Calcutta)
- 3.73** Where corrigendum was only purported to correct quantification of tax recoverable and did not alter basis for demand raised, specific approval of Monitoring Committee shall not be required - **Bedi & Bedi Associates v. Commissioner of CGST, Delhi Audit-1** - [2023] 157 taxmann.com 113 (Delhi)
- 3.74** Where revenue disallowed ITC availed by assessee, along with interest and penalty, on basis of allegation that assessee had indulged in circular trading without movement of goods with intention to avail irregular ITC; writ petition was to be dismissed because assessee had efficacious appeal remedy available to them - **M&Arun Tex v. State Tax Officer** - [2023] 157 taxmann.com 566 (Madras)
- 3.75** Where impugned order passed on account of differences between GSTR-1 and GSTR-3B and assessee requested for rectification of uploading mistakes in GSTR-3B, since issue related to disputed question of facts, Court could not be expected to decide it and hence petition was dismissed giving liberty to assessee to approach appellate authority - **Brothers Trade Links v. State Tax Officer** - [2023] 157 taxmann.com 131 (Kerala)

3.76 Where assessee had challenged validity of notices alleging improper service and no personal hearing, instant High Court upheld notices as they were duly served through GST Online portal and taxpayer had contemporaneous knowledge of same and also considering assessee's failure to submit representation, accordingly was to be dismissed - **Piku Saha v. State of West Bengal** - [2023] 157 taxmann.com 133 (Calcutta)

3.77 Where request was made by assessee seeking 30 days time for making submissions and for personal hearing but without replying to assessee's request for adjournment adjudication order was passed, principles of natural justice was violated; matter was to be readjudicated - **Nemi Pharma Chem v. Additional Commissioner of CGST & CX** - [2023] 157 taxmann.com 478 (Bombay)

3.78 Any notice issued under section 74 of CGST Act is required to be accompanied with a summary thereof electronically in FORM GST DRC-01 and FORM GST DRC-02 - **Sulender Shah v. Additional Commissioner/Joint Commissioner CGST** - [2023] 157 taxmann.com 344 (Delhi)

3.79 Where assessee received annuity from NHAI and alleged that demand for GST on annuity received by assessee was made in violation of exemption granted under various notifications, assessee was to be directed to first pursue and participate in said proceeding and writ petition at instant stage being premature could not be entertained - **Jorabat Shillong Expressway Ltd. v. Union of India** - [2023] 157 taxmann.com 287 (Meghalaya)

3.80 Where assessee was unable to make payment of GST due to technical glitches, and time period of 2 days was not sufficient to make payment of demanded amount by assessee, therefore, assessee was granted 3 months period for payment of balance amount demanded by department towards interest - **Everyday Banking Solutions v. Assistant Commissioner (ST)(FAC)** - [2023] 157 taxmann.com 398 (Madras)

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

3.81 Opportunity of hearing is required to be given, even in those cases where no request is made by assessee but adverse decision is contemplated against him - **Technosys Security System (P.) Ltd. v. Commissioner, Commercial Taxes** - [2023] 157 taxmann.com 145 (Madhya Pradesh)

3.82 Revenue was bound to afford opportunity of personal hearing to assessee before passing adverse assessment order, even if assessee did not request for it, as principle of natural justice mandates that assessee be given opportunity to be heard before adverse order is passed against him - **Jps Buildtech**

(P.) Ltd. v. State of U.P. - [2023] 156 taxmann.com 718 (Allahabad)

3.83 Where statements of transporters were recorded during enquiry, same needed to be provided to assessee so that assessee could take appropriate plea before adjudication of show cause notice - **SPCX (P.) Ltd. v. State of Maharashtra** - [2023] 157 taxmann.com 506 (Bombay)

3.84 Where respondent authority passed an ex parte order without granting an opportunity of personal hearing to assessee, since assessee had not waived its right of a personal hearing, impugned order was to be set aside and matter was to be remanded for passing a fresh order - **Kuehne Nagel (P.) Ltd. v. State of Maharashtra** - [2023] 157 taxmann.com 366 (Bombay)

SECTION 78 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - INITIATION OF RECOVERY PROCEEDINGS

3.85 Where assessee had challenged impugned order and contended that he had never received show cause notice and made rectification application that was ignored, revenue authority was directed to dispose of assessee's rectification application and until then recovery proceedings were to stay - **SYA Homes v. Assistant Commissioner (ST)(FAC)** - [2023] 157 taxmann.com 473 (Madras)

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

3.86 Where orders which provisionally attached assessee's bank accounts were no longer operative, High Court directed concerned banks not to interdict operation of aforesaid bank accounts on basis of those orders - **Vaidhe Stainless Steel v. Union of India** - [2023] 157 taxmann.com 263 (Delhi)

3.87 Petitioner challenging territorial jurisdiction of order of provisional attachment of their bank account by revenue under section 83 was not sustainable, as part of cause of action arose within the jurisdiction of High Court and said order was not liable to be interfered, thus writ petition was to be dismissed - **Arramva Corporation v. Additional Director General** - [2023] 157 taxmann.com 614 (Calcutta)

3.88 Where assessee had previously challenged provisional attachment orders and settled with revenue by securing his claim, and subsequent provisional attachment order was challenged before final orders were passed on show cause notice; status quo regarding attached funds would continue until final orders were to be issued - **ByteDance (India) Technology (P.) Ltd. v. Union of India** - [2023] 157 taxmann.com 655 (Bombay)

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

3.89 Where 10 per cent pre-deposit required for filing appeal was made from ECRL instead of ECL, pending Supreme Court

decision on issues in another case, appeal was to be considered on merits without insisting payment from ECL - **Friends Mobile v. State of Bihar - [2023] 157 taxmann.com 213 (Patna)**

- 3.90** Pre-deposit (10 percent) is not a part of tax liability; pre-deposit, can only be covered by expression "any other amount" occurring in section 49(3) of GST Act; hence, pre-deposit (10 percent) for maintaining appeal under section 107(6)(b) of CGST/BGST Act can be done by utilizing amounts in ECL only, as per section 49 amount in Electronic Credit Ledger (ECRL) cannot be utilized for purposes of paying pre-deposit (10 percent) under section 107(6) of CGST Act, 2017 as said amount is neither an output tax under BGST/SGST Act, nor said amount is due under Integrated Goods and Services Tax Act, 2017 - **Flipkart Internet (P.) Ltd. v. State of Bihar - [2023] 157 taxmann.com 135 (Patna)**
- 3.91** Writ petition filed by assessee deserved to be allowed as assessee had sufficiently explained reasons for delay in filing appeal; assessee would be at liberty to file an appeal before competent authority - **Marudhar Medical Store v. Assistant Commissioner - [2023] 157 taxmann.com 369 (Rajasthan)**
- 3.92** Where taxable persons could not file appeal within time stipulated, by Notification No. 53/2023-CT, dated 2-11-2023, time was granted to file an appeal against order in Form GSTAPL-01 in accordance with section 107(1) on or before 31-1-2024 - **Golcha Garments v. Joint Commissioner of GST & Central Excise (Appeals) - [2023] 157 taxmann.com 228 (Madras)**
- 3.93** Where appeal of assessee was rejected by Appellate Authority on ground of delay, since petitioner could very well avail Amnesty Scheme even after rejection of appeal on aspect of delay, thus petitioner was to be directed to avail Amnesty scheme in terms of Notification No.53/2023-Central Tax dated 2-11-2023 and respondent authority was to be directed to consider same in accordance with law - **Cholaa Tapes v. Deputy Commissioner of GST & Central Excise - [2023] 157 taxmann.com 480 (Madras)**
- 3.94** Where revenue authority passed impugned order after due consideration of evidence, compliance with procedures, and providing assessed party with an opportunity to respond, High Court in its writ jurisdiction refrained from interfering with order's merits emphasizing availability of alternate remedies like filing a statutory appeal - **Kumaran K.V. v. State Tax Officer (Intelligence) - [2023] 157 taxmann.com 541 (Kerala)**
- 3.95** Benefit of amnesty provided under Notification No. 53/2023-Central Tax would be available in case of appeal filed against order passed at least three months prior to date of issuance i.e. 2-11-2023; fixing cut-off date of 31-3-2023 by notification was not proper –

Nexus Motors (P.) Ltd. v. State of Bihar - [2023] 157 taxmann.com 538 (Patna)

- 3.96** Where appellate authority numbered appeal without issuing defect memo to assessee and assessee was not given an opportunity to explain how appeal was maintainable, therefore, appellate order was not valid and it was directed to be set aside and case was remitted back to appellate authority - **Medpro Healthcare Services (P.) Ltd. v. Commissioner of GST and Central Excise (Appeals-I) - [2023] 157 taxmann.com 338 (Madras)**
- 3.97** Where Appellate Authority dismissed appeal filed by assessee against order of revisional authority for non-prosecution merely for reason of absence of assessee or his authorized representative, said order passed by Appellate Authority was to be set aside and matter was to be remanded back for decision on merits - **Nav Nirman Construction v. Union of India - [2023] 157 taxmann.com 343 (Patna)**

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

- 3.98** Where assessee wished to appeal before Appellate Tribunal but it was not yet constituted, subject to deposit of 20 per cent of disputed tax in addition to earlier deposit of 10 per cent of disputed tax amount before assessing authority, balance amount would remain stayed till decision of instant writ petition; by imposing a demand of 50 per cent, assessee would be penalized for no fault of theirs - **Shree Agrawal Enterprises v. State of U.P. - [2023] 157 taxmann.com 368 (Allahabad)**
- 3.99** Where Appellate Tribunal was not yet constituted and, hence, writ petition was filed against order passed by Divisional Authority; assessee was to be **directed** to take recourse to Appellate Tribunal obviating issue of limitation - **Bhattad Industries (P.) Ltd. v. State of Maharashtra - [2023] 157 taxmann.com 536 (Bombay)**

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

- 3.100** Where proceedings **under** Section 129 of GST Act were initiated against assessee revenue authorities should have proceeded under Section 122 of GST Act as it deals with penalties for certain offenses, including non-production of documents, furthermore it does not have tax element and is applicable in cases of mere non-compliance - **Prestress Steel LLP v. Commissioner, Uttarakhand State GST - [2023] 157 taxmann.com 112 (Uttarakhand)**

SECTIONS 125 OF THE CENTRAL GOODS AND SERVICES TAX, ACT, 2017 - PENALTY - GENERAL PENALTY

- 3.101** Where petitioner complied with terms of show cause notice by furnishing returns in time provided, there was no lawful justification to impose penalty under section 125 returning finding that reply to show cause notice was not tendered,

thus, order imposing penalty was to be set aside - **Rathore Building Material v. Commissioner of State tax - [2023] 157 taxmann.com 341 (Allahabad)**

SECTION 126 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PENALTY - PENALTY, GENERAL DISCIPLINES

- 3.102** Penalties was imposed on assessee for non-availability of delivery challans were disproportionate and could be rectified as error, further, there was no evasion of tax or intention to evade tax, as all information was with GST authorities and tax was properly paid - **Prestress Steel LLP v. Commissioner, Uttarakhand State GST - [2023] 157 taxmann.com 112 (Uttarakhand)**

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

- 3.103** Where goods and conveyance in transit was detained without considering contention of appellant that vehicle suffered mechanical failure and, hence, driver transported goods in a new vehicle along with unexpired e-way bill without informing appellant, impugned orders were to be set aside being violative of principles of natural justice - **Asian Switchgear (P.) Ltd. v. State Tax Officer - [2023] 157 taxmann.com 90 (Calcutta)**
- 3.104** Where e-way bill was not in force during the period from 1-2-2018 to 31-3-2018, order imposing penalty for transporting without e-way bill during this period was not sustainable - **Godrej Consumer Product Ltd. v. State of U.P - [2023] 157 taxmann.com 132 (Allahabad)**
- 3.105** Where goods of assessee were detained on ground that both consignor and consignee were declared as non-existent, however, goods were found with proper tax invoice and E-way bill belonging to assessee, in such a case, assessee would be deemed to be owner of goods and, thus, goods would have to be released in terms of section 129(1)(a) - **Halder Enterprises v. State of U.P. - [2023] 157 taxmann.com 231 (Allahabad)**
- 3.106** Where vehicle was seized along with goods of assessee and tax and penalty was imposed, fact that petitioner had voluntarily agreed in writing to pay tax and penalty, clearly indicated that person in charge of goods was not having a valid delivery challan when goods were intercepted, therefore writ petition of petitioner challenging imposition of tax and penalty was to be dismissed - **K. Anil Jewellers v. UT of J&K - [2023] 157 taxmann.com 502 (Jammu & Kashmir and Ladakh)**
- 3.107** Where assessee had adequate statutory remedies available by filing appropriate objections to Show Cause Notice issued by department, therefore, writ petition was to be disposed of and assessee were

directed to take recourse to another remedies. - **Trimurti Fragrances (P.) Ltd. v. Directorate General of Goods & Services Tax - [2023] 157 taxmann.com 396 (Allahabad)**

- 3.108** Where penalty and fine on account of detention of vehicle had been deposited in GST registration of P1 whereas P2 claimed to be owner and conveyance was not released, said amount was to be refunded to P1 and thereafter if said amount was deposited by P2, goods and vehicle were to be released - **Sonu v. Financial Commissioner (Taxation) - [2023] 157 taxmann.com 616 (Punjab & Haryana)**

- 3.109** Where goods of petitioner were detained in transit and a SCN was issued on ground that purchases had been made from a firm which had not shown any purchase, since petitioner had an alternative remedy to put forth his case, writ petition was to be disposed of by granting liberty to petitioner to avail alternative remedy - **Aman Kumar Rathaur v. State of Punjab - [2023] 157 taxmann.com 573 (Punjab & Haryana)**

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

- 3.110** Where goods and conveyance were intercepted by authorities and SCN was issued; genuineness of facts and transit required further verification, writ petition against SCN issued was to be disposed of with liberty to assessee to file his response to said notice - **Aar Dee Enterprises v. State of Punjab - [2023] 157 taxmann.com 612 (Punjab & Haryana)**

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

- 3.111** Where applicant was arrested without assigning any reasons and offence to believe nor any satisfaction too justified his arrest as provided in Act, in view of judicial precedents without expressing opinion on merits bail was to be granted to applicant - **Prateek Mittal v. Union of India - [2023] 157 taxmann.com 149 (Allahabad)**

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

- 3.112** Where petitioner, a cinema operator, was issued notice by Directorate General of Anti-Profitteering on ground that it had not passed on benefit of **reduction** of entertainment tax to end consumer, however, petitioner contended that reduction of prices could only be made in respect of sale of goods and not in case of services and, therefore, it was difficult to pass on commensurate reduction of price of tickets, petitioner was directed to submit its detailed reply to said notice - **Vishwanath Cinema Hall v. Union of India - [2023] 157 taxmann.com 286 (TELANGANA)**

4. AAAR

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

- 4.1 Supply of coaching service by applicant along with supply of goods/printed material/test papers, uniform, bags and other goods to their students is composite supply and their principal supply is coaching services - **Resonance Edventures Ltd., In re - [2023] 157 taxmann.com 211 (AAAR-RAJASTHAN)**

SECTION 2(69) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - LOCAL AUTHORITY

- 4.2 Appellant, receiving funds from Ahmadabad Municipal Corporation for running and operating buses under Bus Rapid Transport System is not a local authority and, thus, are not entitled to claim GST exemption on security services received by it from any person other than body corporate under reverse charge mechanism and also appellant is not required to be registered as deductor under GST - **Ahmedabad Janmarg Ltd., In re - [2023] 157 taxmann.com 613 (AAAR-GUJARAT)**

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

- 4.3 Supply of food to employees and contract workers is a supply under provisions of section 7 of CGST Act and Himachal Pradesh Factories Rules, 1950 and accordingly, it is leviable to GST - **Federal -Mogul Anand Bearings India Ltd., In re - [2023] 157 taxmann.com 540 (AAAR - Himachal Pradesh)**

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

- 4.4 Input Tax Credit will not be available to employer on GST charged by canteen service provider -**Federal - Mogul Anand Bearings India Ltd., In re - [2023] 157 taxmann.com 540 (AAAR - Himachal Pradesh)**

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

- 4.5 Tax paid by on procurement and installation solar panels are not eligible for ITC as same are used exclusively for supply of exempted goods(electricity) in view of section 17(2) - **VBC Associates, In re - [2023] 157 taxmann.com 653 (AAAR - TAMILNADU)**

5. AAR

CLASSIFICATION OF SERVICES

- 5.1 **Hostel accommodation** : Services by way of providing hostel accommodation supplied by applicant are not eligible for exemption under Entry 12 of Exemption Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 - **Lavender Residency, In re - [2023] 157 taxmann.com 367 (AAR - TAMILNADU)**

- 5.2 **Hostel accommodation** : Supply of services by way of providing hostel accommodation falls under Heading No. 9963 and is taxable at 18 per cent - **Lavender Residency, In re - [2023] 157 taxmann.com 367 (AAR - TAMILNADU)**

SECTION 2(13) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - INTERMEDIARY

- 5.3 Assessee, installing/upgrading machines, training customers of a foreign company in India during warranty period of machineries or under separate service agreement with foreign company; paid hourly rate for travelling, regular work or overtime hours and time spent for each of activities - Assessee is supplying more than two services naturally bundled and in conjunction with each other in ordinary course of business. supply is a principal supply. Composite customers in India are inseparable from foreign buyer of assessee's supply. Hence, assessee's supplies are composite service to recipient in India - **Stove Industries Ltd., In re - [2023] 157 taxmann.com 99 (AAR - GUJARAT)**

- 5.4 An Indian company, as holding company of a foreign company, (a) installing/upgrading and providing training on machines supplied by foreign company to their Indian customers; (b) provided services purely on behalf of and as per instruction of foreign company; and (c) purchased parts/consumables of machine only from foreign company. In such case, Indian holding company is facilitating and arranging services on behalf of its foreign company to latter's customer in India. This is within definition of "intermediary" in Section 2(13) of Integrated Goods and Services Tax Act 2017. For Indian holding company, place of supply under Section 13(8) of IGST is location of supplier of services. Payment for service received in Euro. In such case, there is no export of services as assessee did not satisfy second, third and fifth conditions of Section 2(6) of IGST Act, 2017 - **Stove Industries Ltd., In re - [2023] 157 taxmann.com 99 (AAR - GUJARAT)**

- 5.5 Under definition of "intermediary" Section 2(13) of Integrated Goods and Services Tax Act 2017, while an agent includes a broker, every broker is not an agent. A broker is a middleman whose only facilitates whereas an agent acts on behalf of principal. "Broker" and "agent" are fundamentally different, and they neither form any category/class nor substitutes for each other.

- 5.6 Hence, ejusdem generis is not applicable and "any other person" cannot draw its colour from preceding words and

also includes persons who are not necessarily similar to "broker" or "agent". "Other" in "any other person" is used as an adjective to person and it excludes other persons who are preceding it viz. broker or an agent - **Stove Industries Ltd., In re - [2023] 157 taxmann.com 99 (AAR - GUJARAT)**

5.7 Definition of "intermediary services" in post-GST regime is not different from pre-GST regime. "Such goods or services" in GST regime implies that person should not be supplying on his risk and reward entirely, goods or services whose supply he is arranging or facilitating - **Stove Industries Ltd., In re - [2023] 157 taxmann.com 99 (AAR - GUJARAT)**

5.8 In definition of "intermediary" in Section 2(13) of Integrated Goods and Services Tax Act 2017 there is no qualification other than arranging or facilitating supply of goods or services. It is immaterial that (i) consideration may be based on number of hour's spent or any other method nature of supply, (ii) person supplying service receives consideration other than as commission or brokerage (iii) assessee did not negotiate on behalf of principal."Arranging" or "facilitation" in definition covers a wide range of activities. Any person, by whatever name called, if he is arranging or facilitating supply of goods or services or both or securities between two or more persons, would be an "intermediary". It gives rise to two supplies (i) supply between principal and third party (ii) supply by intermediary to principal for a commission/fee. There is nothing in definition about "nature and type" of consideration to be received by person who is acting on behalf of principal to qualify as intermediary. Type of consideration received is not a condition that could exclude one from definition of "intermediary" - **Stove Industries Ltd., In re - [2023] 157 taxmann.com 99 (AAR - GUJARAT)**

5.9 Under ejusdem generis rule of interpretation of statutes, general words following enumeration of particular cases of things, will be constructed as applying to things of same general class as those enumerated - **Stove Industries Ltd., In re - [2023] 157 taxmann.com 99 (AAR - GUJARAT)**

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

5.10 Activity of supply of in-house food to inmates of hostel amounts to providing services in a composite manner; hostel accommodation services provided by applicant being principal supply and taxable at 18 per cent, composite supply of providing food in house by them would also be taxable at same rate - **Lavender Residency, In re - [2023] 157 taxmann.com 367 (AAR - TAMILNADU)**

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

5.11 Service of job work of converting raw material inputs owned by others for client registered with GST, during job work ownership of goods remaining with client, falls within entry Sl. No. 26(id) of Notification No. 11/2017-Central Tax(Rate), dated 28-6-2017 as amended vide Notification No. 20/2017-Central Tax(Rate), dated 30-9-2019 and classified under SAC 9988 attracting GST at 12 per cent - **Shree Avani Pharma, In re - [2023] 157 taxmann.com 339 (AAR - GUJARAT)**

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

5.12 Definition of "recipient" in Section 2(93) of CGST Act, 2017 is exhaustive. It is impossible to separate person to whom supply is made and one liable to pay consideration - **Stove Industries Ltd., In re - [2023] 157 taxmann.com 99 (AAR - GUJARAT)**

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

5.13 Amount deposited by applicant in escrow account pending outcome of further challenge against arbitral award or dissatisfaction against DAB decision shall not be liable to GST under provisions of CGST Act, 2017 - **Dedicated Freight Corridor Corporation of India Ltd., In re - [2023] 157 taxmann.com 216 (AAR - GUJARAT)**

5.14 Where applicant distributed in India foreign made software, sub-licensing of foreign software by applicant to end-users in India would squarely fall under 'supply of goods' liable to GST on actual transaction value - **Aveva Software (P.) Ltd., In re - [2023] 157 taxmann.com 178 (AAR - TAMILNADU)**

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

5.15 Since assessee provides a number of services in a composite manner, hostel accommodation services provided by applicant-assessee, being principal supply, which is taxable at 18%, will be tax rate for composite supply provided by them - **2 Win Residency Ladies Hospital, In re - [2023] 157 taxmann.com 399 (AAR - TAMILNADU)**

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

5.16 Bio-fertilizers attract GST of 18 per cent as they are covered under residuary entry at Sl. No 453 of Schedule III of Notification No. 1/2017-Central Tax (Rate) - **Avinja Biotechnologies (P.) Ltd., In re - [2023] 157 taxmann.com 147 (AAR- TELANGANA)**

5.17 Immunity boosters attract 18 per cent GST as the description of the product does not indicate any cure to attract lower rate of tax - **Avinja Biotechnologies (P.) Ltd., In re - [2023] 157 taxmann.com 147 (AAR- TELANGANA)**

5.18 Where contractor supplies works contract services and procures works contract services, there are two distinct and

separate taxable events under CGST Act - **Immense Construction Company, In re - [2023] 156 taxmann.com 720 (AAR- TELANGANA)**

5.19 Supply of hostel accommodation services are classified under tariff heading 9963 and same is taxable at 9% CGST and 9% SGST under Serial No. 7(vi) of Notification No. 11/2017, Central Tax (Rate), dated 28-06-2017, as amended vide Notification No. 20/2019 Central Tax (Rate) dated 30-09-2019 - **2 Win Residency Ladies Hospital, In re - [2023] 157 taxmann.com 399 (AAR - TAMILNADU)**

5.20 Where assessee has not been conferred with any power to control or manage municipal or local fund as per Section 2(69) and it is not a local authority, therefore, services of applicant provided for Tirunelveli Smart City Limited, are covered under Serial No. 3 (xii) of Notification No.11/2017 C.T (Rate) dated 28-06-2017 and attract CGST of 9% and SGST at 9% with effect from 01-01-2022 - **Sri Naachimaar Engineering Constructions, In re - [2023] 157 taxmann.com 111 (AAR - TAMILNADU)**

5.21 Where applicant-assessee is a special purpose vehicle constituted to do all acts and deeds for implementation of mission as per smart city mission, therefore, as per Para 4 (ix) of Notification No. 11/2017 C.T (Rate) dated 28-06-2017, as amended vide Notification No. 31/2017 CT (Rate), dated 13-10-2017, Tirunelveli Smart City Limited falls under definition of Governmental Authority - **Sri Naachimaar Engineering Constructions, In re - [2023] 157 taxmann.com 111 (AAR - TAMILNADU)**

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

5.22 Applicant being merely a subsidiary canteen of Central Police Force Canteen System formed in terms of permission granted by Central Government Ministry of Home Affairs which is engaged in business of supply of subsidized goods to serving and retired police personnel of State Police Organisations; applicant is neither exempted from levy of CGST or SGST on goods sold by it to authorised customer; nor eligible to claim refund of CGST and SGST paid by them on goods purchased till date - **Central Police Canteen., In re - [2023] 157 taxmann.com 230 (AAR - KARNATAKA)**

5.23 Where exemption is granted to a contractor supplying works contract services, it does not apply to his procurement of works contract services, and if exemption is granted to works contractor supplying works contract services to government or local bodies under CGST Act, it could not be extended to taxable person who provides services to such works contractor - **Immense Construction Company, In re - [2023] 156 taxmann.com 720 (AAR- TELANGANA)**

5.24 Where hostel accommodation is not equivalent to residential accommodation and assessee provide hostel services to college female students, therefore, assessee would not be eligible for exemption under Entry 12 of Exemption Notification No. 12/2017-CT(Rate) dated 28-06-2017 and under identical Notification under TNGST Act, 2017, and also under Entry 13 of Exemption Notification No.09/2017-IT(Rate) dated 28-06-2017, as amended - **2 Win Residency Ladies Hospital, In re - [2023] 157 taxmann.com 399 (AAR - TAMILNADU)**

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

5.25 Where applicant distributed in India foreign made software, amount received from foreign base Central Hub in form of Market support fees, will form part of value of supply - **Aveva Software (P.) Ltd., In re - [2023] 157 taxmann.com 178 (AAR - TAMILNADU)**

5.26 Where applicant distributed in India foreign made software, taxable value for Operating Fees paid by applicant to foreign based Central Hub pursuant to arrangement shall be determined as per rule 28 of Tax Valuation Rules prescribed in CGST Rules, 2017 - **Aveva Software (P.) Ltd., In re - [2023] 157 taxmann.com 178 (AAR - TAMILNADU)**

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

5.27 No ruling is issued, as question put forth by assessee does not fall under scope of Section 97(2) - **2 Win Residency Ladies Hospital, In re - [2023] 157 taxmann.com 399 (AAR - TAMILNADU)**

5.28 Where assessee requested for withdrawal of application for advance ruling which was filed to determine rate of tax applicable on composite supply of works contract to Tamil Nadu Urban Habitat Development Board, therefore, no ruling is given - **Sri Naachimaar Engineering Constructions, In re - [2023] 157 taxmann.com 111 (AAR - TAMILNADU)**

6. CCI

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

6.1 Where assessee had contended that it had passed benefit of additional ITC to customers/home buyers in compliance of section 171 by way of reduction in price via issuance of tax credit note and same was duly intimated to customers vide e-mail, same should be verified by DGAP by contacting home buyers by seeking their replies regarding receipt of benefit of ITC - **Sandeep Bansal v. Ireo Grace Realtech (P.) Ltd. - [2023] 157 taxmann.com 609 (CCI)**

5 Landmark Judgements in GST during 2023

CA Swapnil Jain

Citation: Star Engineers (I) Pvt. Ltd vs Union of India Writ Petition No.15368 Of 2023 pronounced on 14.12.2023 by Bombay HC

Facts of the case:

- The petitioner is engaged in designing, developing, manufacturing, and supplying a wide range of electronic components to Bajaj Auto Limited (BAL) on varying delivery terms as specified in the purchase orders received from BAL.
- During FY 21-22, the petitioner had carried out delivery of the goods to several third-party vendors and simultaneously invoices were generated “Bill-to-Ship-to-Model” in line with the instructions received from BAL.
- The e-invoices were correctly in favor of BAL, however, at the time of filing of Form GSTR-1 for the period July 2021, November 2021 and January 2022, inadvertently GSTIN of third parties to whom shipment was delivered, was reported instead of declaring GSTIN of BAL.
- The above mistake came to the attention of the petitioner in the month of November 2022 when the time limit as per Section 37 had been elapsed.

Principles laid down by the Court:

- The proviso to Section 37(3) & 39(9), which sets out a cap on the time period of rectification in the returns furnished by the taxpayer, should not be read so as to defeat the intention of the legislature.
- In the category of cases when there is a bonafide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue whatsoever in permitting the correction of such mistake, such correction should be allowed.
- Any contrary interpretation would lead to absurdity and / or bring a regime that GST returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to the GST regime, wherein every aspect of the returns has a cascading effect.
- This necessarily would mean, that a bonafide, inadvertent error in furnishing details in a GST return needs to be recognized, and permitted to be corrected by the department, when in such cases the department is aware that there is no loss of revenue to the Government.

Order:

- The petitioner was permitted to amend / rectify the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means

Comments:

- Errors in filing GSTR 1 during the initial phases of the GST regime has been a common phenomenon especially in Bill to Ship to transactions whereby the supplier has mentioned the GSTIN of the ship to party in GSTR 1 instead of GSTIN of bill to party thereby denying ITC to the ship to party.
- This judgement shall be a useful ground of defense in such cases.

Citation: Sumit Enterprises Vs State of U.P. Writ Petition No.167 of 2023, pronounced on 09.10.2023 by Allahabad HC

Facts of the case:

- The petitioner is a bonafide firm doing its business in accordance with law and had by mistake availed ITC but the same was not utilized. As the mistake was bonafide, the petitioner filed corrected return in the month of July,2019.
- A notice was served u/s 74 of the CGST Act on 25.06.2021 wherein a proposed liability of Rs.1,48,160/-was sought to be levied and collected from the petitioner.
- In the SCN served, the date by which the reply was to be submitted was mentioned as 26.07.2021, however, date of personal hearing, time of personal hearing and venue of personal hearing were not indicated and simply the word "NA" was transcribed.
- Two notices were sent to the petitioner thereafter on 17.09.2021 and 13.12.2021 which were named as reminder notices.
- Even in the reminder notice sent to the petitioner, in the column of date of personal hearing, time of personal hearing and venue of personal hearing, "NA" was transcribed.
- As the petitioner did not file a reply, an order came to be passed on 15.03.2022 without providing an opportunity of hearing in terms of the mandate of section 75(4) of the GST Act.

Principles laid down by the Court:

- Section 75(4) of the GST Act mandates the granting of an opportunity of hearing where an adverse decision is contemplated against a person.
- Where in notice issued under Section 74, date by which reply was to be submitted was mentioned, but date, time and venue of personal hearing were not indicated and simply word 'NA' was transcribed and even in reminder notice, in column of date, time and

venue of personal hearing, 'NA' was transcribed, consequent order passed would be violative of principle of natural justice.

- Considering the fact that the original order is contrary to the mandate of section 75(4) of GST Act and is also violative of principles of natural justice, the order dated 15.03.2022 is liable to be quashed and is accordingly quashed.

Order:

- The original order, being violative of principles of natural justice, was quashed.

Comments:

- It is a common practice by the department officials to issue SCNs without mentioning the details of personal hearing to be conducted. This decision would aid such taxpayers to challenge the validity of the notices issued without having the details of personal hearing.

Citation: Raj Enterprises Vs Superintendent Range 25 GST Division, Writ Petition No.15777 of 2023, pronounced on 20.12.2023 by Delhi HC

Facts of the case:

- The petitioner was, inter alia, engaged in the business of trading magnetic and optical readers as well as other appliances and ancillary products. He had stopped carrying on its business and therefore made an application on 19.10.2021 for cancellation of its GST registration. Apparently, certain queries were raised online from the petitioner, which remained unanswered. Accordingly, on 30.11.2021, the respondent rejected the petitioner's application for cancellation of its GST registration.
- Thereafter, on 01.12.2021, the petitioner once again applied for cancellation of its GST registration with effect from 15.11.2021. Thehad filed its returns till 31.12.2021.
- The petitioner's application for GST registration was rejected once again. However, the respondent issued a show cause notice dated 10.08.2022 proposing to cancel the petitioner's GST registration on the ground that the petitioner had not filed its returnfor a continuous period of six months. The petitioner's GST registration was also suspended with effect from 10.08.2022.
- The petitioner did not respond to the SCN and on 27.09.2022, the respondent passed an order cancelling the petitioner's GST registration with effect from 19.10.2020 i.e. from retrospective date.

Principles laid down by the Court:

- There is no cavil that in terms of Section 29(2)(c) of the CGST Act, the proper officer may cancel the GST registration from any date including with retrospective effect.

However, the said cancellation with retrospective effect cannot be arbitrary and whimsical. It must be predicated on objective criteria.

- Non filing of returns for a continuous period of six months would not be sufficient ground to cancel the petitioner's registration even for the period during which the petitioner had filed its returns.
- Non-filing of returns for a period of six months or more cannot lead to the conclusion that the petitioner's GST registration is required to be cancelled even for the period while it was carrying on its business and duly filing its returns.
- The Court also took note of the fact that the SCN did not indicate that the petitioner's GST registration was proposed to be cancelled with retrospective effect. Thus, the petitioner had no effective opportunity to contest the retrospective cancellation of its GST registration.

Order:

- The Court held that the order of cancellation shall take effect from 31.12.2021 which is till the date the petitioner has filed its returns. There shall not be any retrospective cancellation of the petitioner's GST Registration merely due to non-filing of return for 6 months.

Comments:

- It is a common practice by the department officials to retrospectively cancel the GST registration for non-filing of returns for a period of six months. This decision would aid such taxpayers to challenge the validity of the notices issued.

Citation: LGW Industries Ltd Vs. Assistant Commissioner, Salt Lake Charge, Mat No. 211 Of 2023, pronounced on 15.3.2023 by Calcutta HC

Facts of the case:

- The petitioner had received a SCN from Assistant Commissioner, Salt Lake Charge and on the very same issue, a SCN had already been issued by the Assistant Commissioner, State Tax, Bureau of Investigation, South Bengal (HQ).

Principles laid down by the Court:

- If the subject issue is one and the same or if the subject is inter-related, it is always better that one authority adjudicates the matter. By directing the assessee to face multiple authorities may result in conflicting decisions. Therefore, not only in the interest of the assessee but in the interest of the revenue also, one authority should take the decision.

- The Bureau of Investigation, South Bengal is a centralised agency and if that agency has already taken up the matter for consideration and the concerned Assistant Commissioner has issued notice, it is but appropriate that issues be considered by the said authority including the issue, which has been raised by the respondent in the show cause notice.

Order:

- The Court disposed the appeal as well as the writ petition by directing the respondent to place the entire file pertaining to the SCN issued by them to the Special Commissioner, State Tax, Bureau of Investigation, South Bengal, who shall in turn direct the said show cause notice and file be placed before the Assistant Commissioner, State Tax, Bureau of Investigation, South Bengal (HQ) and to adjudicate the show cause notice along with the proceedings already initiated pursuant to the earlier notice.

Comments:

- A welcome judgment which shall be helpful in instances where SCN are issued by two authorities on the same/interrelatedsubject issue. In such instances, one authority should adjudicate matters in the interest of the assessee as well as revenue.

Citation:Hindustan Herbal CosmeticsVersusState of U.P.,WP 1400 of 2019, pronounced on 02.01.2024 by Allahabad HC

Facts of the case:

- The petitioner is a duly registered dealer under the GST Act and is a seller of cosmetics.
- The petitioner was supplying cosmetics to another registered dealer, namely, M/s Shree Sai Infotech in Jharkhand and the transaction was duly covered by a tax invoice, a bilty and e-way bill
- The consignment of goods was sent by the petitioner in Vehicle No. DL1 AA 5332. When the vehicle was in transit, the same was intercepted by GST authorities.
- The seizure order was passed on the grounds that the vehicle number in Part-B of the e-way bill was incorrect as the e-way bill showed the vehicle bearing No. DL1 AA 3552 instead of DL1 AA 5332. There was a difference of three digits instead of two digits as permitted by the Government circular.
- Apart from the above factual position, there was no other infraction on the part of the petitioner.
- Furthermore, the authorities have imposed a penalty only on the grounds that the

vehicle number was not mentioned correctly. There is no allegation of any attempt by the petitioner for evasion of tax as the e-way bill, bilty and the tax invoice were matching, and the consignee was also a registered dealer.

Principles laid down by the Court:

- The presence of mens rea for evasion of tax is a sine qua non for imposition of penalty.
- A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty.
- In certain cases where lapses by the dealers are major, it may be deemed that there is an intention to evade tax but not so in every case. Typically, when the error is a minor error of the nature found in this particular case.

Order:

- The Court held that the penalty under section 129 of the Act is without jurisdiction and illegal in law.

Comments:

- A welcome judgment which shall be helpful in cases of inadvertent error made by the taxpayers while generating e-way bill with no malafide intention.

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1** SEBI notifies the revised framework for computation of Net Distributable Cash Flow by REITs and INVITs - **Circular No. SEBI/HO/DDHS/DDHS-PoD/P/CIR/2023/184 & 185, Dated 06-12-2023**

Editorial Note : In order to promote ease of doing business, the SEBI has decided to standardize the framework for calculation of available Net Distributable Cash Flows (NDCF). Accordingly, the revised framework for computation of NDCF by REITs, INVITs, and its Holdcos/SPVs shall be as per the computation formula provided in the circulars. Further, any restricted cash should not be considered for NDCF computation by the SPV, REITs or InvITs. The revised framework shall be applicable from 01.04.2024.

- 1.2** Empowering Social Impact: Key Highlights of SEBI's SSE Framework and Guidelines for NPO Fundraising

Editorial Note : Earlier, in a notification dated 21.12.2023, SEBI officially implemented amendments to the ICDR Regulations and LODR Regulations. Subsequently, through circular SEBI/HO/CFD/PoD-1/P/CIR/2023/196 dated December 28, 2023, SEBI has now officially notified the framework for the Social Stock Exchange (SSE). Framework prescribes about registration requirements for Not-for-Profit Organizations in the SSE Framework, Social Impact Assessment, Elements of the Fundraising Document, etc.

- 1.3** SEBI tweaks the framework for Social Stock Exchanges - **Circular No. SEBI/HO/CFD/POD-1/P/CIR/2023/196, Dated 28-12-2023**

Editorial Note : SEBI has made modifications to the framework of the Social Stock Exchange (SSE) based on feedback from public consultation and amendments to existing regulations. Key Changes have been made in 'Not for Profit (NPO) Registration Requirements', Enhanced details regarding past social impact for NPOs seeking funds on SSE, focusing on key metrics, beneficiaries, cost per beneficiary, and administrative overheads, prescribed New Procedures for Zero Coupon Zero Principal Instruments.

- 1.4** SEBI modifies norms w.r.t offerings of products/services/securities on Online Bond Platform by OBPs - **Circular No. SEBI/HO/DDHS/POD1/P/CIR/2023/194, Dated 28-12-2023**

Editorial Note : SEBI has modified the registration and regulatory framework for Online Bond Platform Providers (OBPPs). As per the amended norms an OBPP can offer products or securities or services that are regulated by a financial sector regulator viz. SEBI, RBI, IRDAI or PFRDA. Further, an OBP offering different securities shall comply with all the applicable

laws and regulations of the respective financial sector regulators. The circular shall be effective immediately.

- 1.5** SEBI allows TMs to settle client accounts on Fridays and/or Saturdays, offering flexibility and easing operations - **Circular No. SEBI/HO/MIRSD/MIRSD-POD1/P/CIR/2023/197, Dated 28-12-2023**

Editorial Note : SEBI has decided to accept the recommendation of the Broker's Industry Standards Forum (ISF) to settle the running account of clients on Friday and/or Saturday, which streamlines the process of settlement and ensures ease of doing business for various stakeholders viz. stock brokers and banks, while at the same time safeguarding the interests of the investors by ensuring error-free settlement. Accordingly SEBI has made key changes in the Master Circular Dated May 17, 2023.

- 1.6** SEBI extends the timeline for nomination in demat accounts and mutual funds to 30th June, 2024 - **Circular No. SEBI/HO/MIRSD/POD-1/P/CIR/2023/193, Dated 27-12-2023**

Editorial Note : Earlier, the SEBI had extended the deadline for submitting the 'choice of nomination' for demat accounts and mutual fund folios to December 31, 2023. However, in response to representations from market participants and in an effort to enhance compliance ease and investor convenience, the deadline for submitting the 'choice of nomination' for demat accounts and mutual fund folios has been further extended to June 30, 2024.

- 1.7** SEBI proposes optional T+0 and Instant Settlement of Trades alongside T+1 in Indian Securities Markets

Editorial Note : SEBI has released the Consultation Papers on Introduction of optional T+0 and optional Instant Settlement of Trades in addition to T+1 Settlement Cycle in Indian Securities Markets. An instant settlement mechanism will enable instant receipt of funds and securities, vis-a-vis existing pay-out on T+1 day. Also, it will eliminate the risk of settlement shortages, since both funds and securities will be required to be available before placing the order. SEBI solicits public comments by 12.01.2024.

- 1.8** SEBI issues consultation paper on review of provisions of NCS Regulations and LODR Regulations for EODB

Editorial Note : Pursuant to the Budget Announcement in the Union Budget for FY 2023-24, requesting suggestions to promote ease of doing business for listed debt issuers and review applicability of certain provisions. It has been proposed that issuers that have listed outstanding NCDs on the date of issue document or issue opening date, insert a QR code, the scanning of which opens a web-link for the Audited Financials for last 3 FYs. Various other proposals were notified.

- 1.9** Govt. amends Advocates Act, 1961; introduces power to frame and publish lists of touts

Editorial Note : The Central Govt. has notified Advocates (Amendment) Act, 2023. A new section 45A i.e., power to frame and publish lists of touts, has been introduced. Now, every High Court, District Judge, Sessions Judge, District Magistrate, and every Revenue-officer, not being below the rank of a Collector may frame and publish lists of persons proved to their or his satisfaction, or to the satisfaction of any subordinate Court by evidence of general repute, habitually to act as touts.

- 1.10** SEBI issues consultation paper is to seek comments on framework for issuance of subordinate units by REITs and InvITs

Editorial Note : The Board has notified the consultation paper to seek comments from the public on the framework for issuance of subordinate units by REITs and InvITs to sponsor(s), their associates and sponsor group and framework for Unit Based Benefits for the employees of the Manager of REIT and Investment Manager of InvIT. Now, Subordinate units can be issued only to the sponsor(s), its associates and sponsor group Also, subordinate units shall carry only inferior voting or any other inferior rights.

- 1.11** SEBI revises framework requiring Stock Brokers/Clearing Members to upstream clients' funds to Clearing Corporations - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/187, Dated 12-12-2023**

Editorial Note : Earlier, the SEBI has issued framework requiring Stock Brokers (SBs) / Clearing Members (CMs) to upstream (i.e. placed with) clients' funds to Clearing Corporations (CCs). Later, representations have been received citing difficulties in implementation. Now, SEBI has issued revised framework for the same. The bank instruments provided by clients as collateral cannot be upstreamed to CCs, and they shall be ineligible to be accepted as collateral in any segment of securities market.

- 1.12** Govt. introduces revised bills in Lok Sabha to replace IPC, CrPC & Indian Evidence Act

Editorial Note : The Govt. introduced the revised bills in the Lok Sabha on 12.12.2023 to repeal and replace the earlier issued bills. The following Bills "The Bharatiya Nyaya (Second) Sanhita, 2023, The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, and The Bharatiya Sakshya (Second) Bill, 2023 are introduced incorporating certain revisions as suggested by the Parliamentary Standing Committee. Home Minister states that the most changes are grammatical in nature.

- 1.13** SEBI outlines procedures for demat/crediting of units by AIFs when investors haven't provided demat account

- details - **Circular No. SEBI/HO/AFD/PoD1/CIR/2023/186, Dated 11-12-2023**

Editorial Note : In June 2023, SEBI mandated AIFs to dematerialize units within a specified timeframe. SEBI has now provided guidelines for dematerializing/crediting units in cases where investors haven't provided demat account details. As per the said circular the AIF managers shall continue to reach out to existing investors to obtain demat account information. Additionally, provisions for a separate demat account named "Aggregate Escrow Demat Account" have also been introduced.

- 1.14** AIF regulations allow Category III AIFs to invest unutilised funds and divestment proceeds in specific liquid assets - **Notification No. SEBI/HO/AFD/PoD/OW/2023/38073, Dated 13-09-2023**

Editorial Note : An informal guidance sought from SEBI as to whether a Cat III AIF can invest in Mutual Funds permanently as a part of the multi-asset portfolio. SEBI clarified that Category III AIFs cannot permanently invest in Mutual Funds as part of a multi-asset portfolio. However, the uninvested portion and divestment proceeds can be temporarily invested in liquid assets like mutual funds, bank deposits, or high-quality instruments until the deployment of funds.

- 1.15** Financial Market Infrastructures must periodically self-assess against PFMIIs and disclose results on their websites - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/190, Dated 19-12-2023**

Editorial Note : Earlier, the issue of assessment of Principles of Financial Market Infrastructures (PFMIIs) by SEBI regulated FMIIs was deliberated in Secondary Market Advisory Committee of SEBI (SMAC). Based on the recommendations, SEBI has decided that FMIIs shall carry out self-assessment on a periodic basis against the PFMIIs and disclose the same on their websites. For this purpose, the 24 principles for FMIIs have been classified as "quantitative" and "qualitative".

- 1.16** SEBI amends guidelines for online resolution of disputes in the Indian securities market - **Circular No. SEBI/HO/OIAE/OIAE_IAD-3/P/CIR/2023/191, Dated 20-12-2023**

Editorial Note : Earlier, the SEBI vide circular dated August 11, 2023 had consolidated the norms relating to the guidelines for online resolution of disputes in the Indian securities market. Pursuant to feedback received for providing clarity on certain aspects, the SEBI has notified various additions and amendments. After para 3(b), it has been added that the seat and venue of mediation, conciliation and/or arbitration shall be in India and can be conducted online. Further, various other changes were notified.

2. SUPREME COURT

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

- 2.1 Referral Court is to only look at the existence of an arbitration agreement and not whether arbitration agreement/instrument is duly stamped - *Interplay, In re* - [2023] 157 taxmann.com 328 (SC)

SECTION 72 OF THE COMPANIES ACT, 2013 - TRANSFER OF SHARES - POWER TO NOMINATE

- 2.2 A nomination by a shareholder u/s 109A of CA, 1956, is not a 'statutory testament' that overrides testamentary/intestate succession - *Shakti Yezdani v. Jayanand Jayant Salgaonkar* - [2023] 157 taxmann.com 364 (SC)

ARTICLE 370 OF THE CONSTITUTION OF INDIA, 1950 - TEMPORARY PROVISIONS WITH RESPECT TO STATE OF JAMMU AND KASHMIR

- 2.3 SC upholds President's power to abrogate Article 370 without recommendations of J&K Constituent Assembly - *Article 370 Of The Constitution, In re* - [2023] 157 taxmann.com 199 (SC)

3. NCLT

SECTION 56 OF THE COMPANIES ACT, 2013 - SECURITIES - TRANSFER AND TRANSMISSION OF

- 3.1 Where petitioners agreed to transfer 100 per cent shareholding in respondent No. 1 to respondent Nos. 2 to 3, however, there was no valid transfer as no signed, stamped and duly executed transfer forms had been submitted, alleged transfer of shareholding of petitioners was to be declared illegal, null and void and petitioner would continue to be 100 per cent shareholder of respondent No. 1 company - *Mukesh Jain v. Vivid Solutions (P.) Ltd.* - [2022] 134 taxmann.com 383 (NCLT - Mum.)

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

Where director of company i.e. R2 sold company's property and directed buyers of subject property to transfer sale proceed to his personal account as he had paid for various company expenses, process adopted to recover money from company was not legal and thus, R2 was directed to bring back sale proceeds of company's properties into company's account within period of one month - *Gundapuneni Ranga Rao v. Vijayasri Polymers (P.) Ltd.* - [2023] 157 taxmann.com 103 (NCLT - Hyd.)

4. HIGH COURT

SECTION 6 OF THE HINDU SUCCESSION ACT, 1956 - DEVOLUTION OF INTEREST IN COPARCENARY PROPERTY

- 4.1 Daughter can be karta of HUF since recognition of daughter as coparcener by section 6 of Hindu Succession Act encompasses all incidents of a Coparcener including right to become karta of HUF - *Manu Gupta v. Sujata Sharma* - [2023] 157 taxmann.com 234 (Delhi)

SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - INTERIM MEASURES, ETC., BY COURT

- 4.2 Where construction company mortgaged its flats to a creditor against a loan, and for defaults of said company High Court restrained selling of its flats, since, interim measures of protection was to be granted to a party on an apprehension that subject matter of dispute in arbitration may be disposed of even before arbitration commence, creditor was entitled to an order of injunction restraining said company from dealing with any further or creating any interest over flats - *SREI Equipment Finance Ltd. v. Avarsekar Realty (P.) Ltd.* - [2023] 157 taxmann.com 556 (Calcutta)

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

- 4.3 Delhi HC applies forum conveniens to decline to admit writ petition against settlement orders passed by SEBI - *Bharat Nidhi Ltd. v. Securities and Exchange Board of India* - [2023] 157 taxmann.com 633 (Delhi)

SECTION 13 OF THE COMMERCIAL COURTS ACT, 2015 - APPEALS FROM DECREES OF COMMERCIAL COURTS AND COMMERCIAL DIVISIONS

- 4.4 An appeal under section 13(1A) of Commercial Courts Act, 2015 would lie only against judgment and orders which are enumerated or enlisted under Order XLIII of CPC; an order rejecting an application moved under Order VII Rule 10 or Order VII Rule 11(d) of CPC is not enumerated or enlisted in Order XLIII of CPC and, hence, such an order is not appealable - *Bank of India v. Maruti Civil Works* - [2023] 157 taxmann.com 524 (Bombay)

REGULATION 29 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018 - CONFIDENTIALITY OF INFORMATION

- 4.5 Where SEBI omitted to provide relevant documents to petitioner as ordered by High Court which attained finality by Supreme Court, since SEBI is required to holistically consider order of High Court which has attained finality as such order considers substantive rights of petitioners / shareholders of company 'B', reliefs

prayed by petitioner in instant writ petition were to be kept open to be agitated by petitioners in context of decision of SEBI - *Ashok Dayabhai Shah v. Securities and Exchange Board of India* - [2023] 157 *taxmann.com* 85 (Bombay)

SECTION 212 OF THE COMPANIES ACT, 2013 - SERIOUS FRAUD INVESTIGATION OFFICE - INVESTIGATION BY

- 4.6 Where RoC recommended an investigation into company 'R' of 'A' group under section 235 of Companies Act, 1956 and subsequently, SFIO under section 212 of Companies Act, 2013 initiated proceedings against petitioner / other 'A' group companies, since investigation was against 'R' which would alone fall within safe harbour as constructed in terms of section 212 as provided by High Court vide order, benefit of such order could not possibly be countenanced as extending to other writ petitioners - *Alchemist Healthcare Ltd. v. Union of India* - [2023] 157 *taxmann.com* 173 (Delhi)

SECTION 226 OF THE COMPANIES ACT, 2013 - VOLUNTARY WINDING UP OF COMPANY, ETC., NOT TO STOP INVESTIGATION PROCEEDINGS

- 4.7 In case of a company in liquidation, investigation under Chapter XIV of the Companies Act, 2013 may not be initiated - *Reserve Bank of India v. Kubar Mutal Benefits Ltd.* - [2023] 157 *taxmann.com* 677 (Allahabad)

SECTION 232 OF THE COMPANIES ACT, 2013 - AMALGAMATION

- 4.8 Order of NCLT sanctioning amalgamation is to be stamped within 30 days u/s 17 of Stamp Act even if order itself allows 60 days time - *Vodafone Idea Telecom Infrastructure Ltd. v. Chief Controlling Revenue Authority* - [2023] 157 *taxmann.com* 576 (Gujarat)

SECTION 434 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - TRANSFER OF CERTAIN PENDING PROCEEDINGS

- 4.9 Where order for winding up proceeding in instant case had been pending for years and there was no credible hope of revival of company-in-liquidation and it would suit interest of all stakeholders and of public if its liquidation was speedily carried out, Single Judge ought not to have passed impugned relegating matter to tribunal - *Fortune Furnitech (P.) Ltd. v. Tapas Chakrabarty* - [2023] 157 *taxmann.com* 426 (Calcutta)

5. NCLAT

SECTION 62 OF THE COMPANIES ACT, 2013 - SHARE CAPITAL - FURTHER ISSUE OF

- 5.1 Where 'private placement by preferential shares allotment had attained finality but 'procedure' to be adopted in said allotment has not been specifically stated by NCLT, it was imperative that procedural requirements under section 62(1)(c) read with relevant Rules under this [Provision, be complied with - *Vijaya Hospitality and Resorts Ltd. v. Tony P. A.* - [2023] 156 *taxmann.com* 503 (NCLAT - Chennai)

SECTION 242 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - POWERS OF TRIBUNAL

- 5.2 Where appellant company filed an application before NCLT seeking a direction to all disputes against it to arbitration, since reliefs prayed for by appellant included a finding of oppression and mismanagement, which could only be granted by a Court/Tribunal of competent jurisdiction i.e. NCLT/NCLAT under section 242, there was no illegality in order passed by NCLT dismissing such application - *Indus Motor Company (P.) Ltd. v. T.P. Anilkumar* - [2023] 156 *taxmann.com* 683 (NCLAT- New Delhi)

SECTION 252 OF THE COMPANIES ACT, 2013 - REMOVAL OF NAME FROM REGISTER - APPEAL TO TRIBUNAL

- 5.3 Where petition seeking restoration of name of company was allowed by NCLT vide impugned order with imposition of cost of Rs. 5 lakhs, in absence of exact date of striking off, impugned order was vague on said issue and also since no plausible reason was given for imposing cost, impugned order was to be set aside - *Vbuiltfine Properties (P.) Ltd. v. Registrar of Companies* - [2023] 156 *taxmann.com* 629 (NCLAT- New Delhi)

SECTION 421 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - APPEAL FROM ORDERS OF

- 5.4 Words 'any person aggrieved' by order of NCLT occurring in section 421(1) meant only a person who had suffered a legal grievance, since in instant case, Central Government / Union of India was aggrieved of an order passed by NCLT, RoC was not a proper and competent person to prefer an appeal with grievance that said order was passed without hearing Central Government - *Registrar of Companies v. Bhagyodayam Company* - [2023] 157 *taxmann.com* 355 (NCLAT - Chennai)

COMPETITION LAW

1. STATUTORY UPDATES

- 1.1 CCI invites feedback on Draft Competition Commission of India (Calculation of Turnover or Income) Regulations, 2023 - **Press Release Dated 22-12-2023**

Editorial Note : The Competition Commission of India (CCI) seeks comments on the draft of CCI (Determination of Turnover or Income) Regulations, 2023. The Competition (Amendment) Act, 2023, amended Section 27, 48 and Section 64 of the Act, consequent to which the CCI is required to frame regulations regarding the manner of determining turnover or income u/s 27 and the manner of determining income u/s 48. CCI invites stakeholders to submit written comments from 22.12.2023 to 12.01.2024.

- 1.2 Accreditation Agencies, which are also KRAs, can now access KYC docs of applicants available with them: SEBI - **Circular No. SEBI/HO/AFD/PoD1/CIR/2023/189, Dated 18-12-2023**

Editorial Note : Earlier, SEBI vide circular dated 26.08.2021 issued framework for accreditation of investors by Accreditation Agencies. Now, the SEBI has decided to simplify the requirements for grant of accreditation to investors. Accreditation Agencies, which are also KYC Registration Agencies (KRAs), may access Know Your Customer (KYC) documents of applicants available with them in capacity of KRA and may also access the same from the database of other KRAs, for the purpose of accreditation.

2. HIGH COURT

SECTION 36 OF THE COMPETITION ACT, 2002 - POWER OF COMMISSION TO REGULATE ITS OWN PROCEDURE

- 2.1 HC declines to quash CCI's order impleading Builder's Association of India in suo motu probe of allegations against Grey Cement Manufacturers - **Ultratech Cement Ltd. v. Competition Commission of India - [2023] 157 taxmann.com 472 (Delhi)**

3. CCI

SECTION 3 OF THE COMPETITION ACT, 2002 - PROHIBITION OF AGREEMENT - ANTI- COMPETITIVE AGREEMENTS

- 3.1 Where informant alleged procurer / surveyor alleged favourable treatment being extended by surveyor of India by incorporating certain clauses and specifications in tender for procurement of plotters, since, a procurer is entitled to prescribe technical clauses within tender documentation in accordance with its particular need, informant had neither levelled any allegation under section 4 nor defined any relevant market or averred dominance of surveyor, and thus, no case of contravention of provisions of either section 3 or section 4 was made out - **XYZ v. Surveyor General of India - [2023] 157 taxmann.com 383 (CCI)**

- 3.2 Where dealership agreement provided that dealers shall not sell vehicles outside deistrict/territory allocated, there being no sufficient material for commission to arrive at a finding that opposite party (OP) enforced its territory clause leading to an appreciable adverse effect on competition, no contravention of section 3 was made out against OP and information was to be directed to be closed - **Neha Gupta v. Tata Motors Ltd. - [2023] 157 taxmann.com 126 (CCI)**

SECTION 4 OF THE COMPETITION ACT, 2002 - ABUSE OF DOMINANT POSITION

- 3.3 Dispute related to service between airline pilot and airline company did not raise competition concern - **Deepak Kumar, In re - [2023] 157 taxmann.com 362 (CCI)**
- 3.4 Where informant had Fixed Deposits with OP bank and OP imposed penalty on premature withdrawal of deposits of informant, since informant had not delineated in instant information filed against OP and had not provided any evidence of OP being dominant in market, no case of contravention of provisions of section 4 was made out against OP, and thus, such information was to be closed under section 26 - **A. Ram Babu v. Indian Bank - [2023] 157 taxmann.com 330 (CCI)**
- 3.5 Where it was alleged that opposite party(OP) coerced its dealers to order vehicles according to its whims and fancies being in nature of supplementary obligation imposed on dealers, since emails relied upon by informants were in fact sent by OP for administrative and audit purposes and were in form of risk responsibility letters, also, no such allegation was raised by informants before and it was only upon termination of dealership agreement, such allegation were leveled against OP, there was no case against OP to hold a violation of provision of section 4 - **Neha Gupta v. Tata Motors Ltd. - [2023] 157 taxmann.com 126 (CCI)**

2. SUPREME COURT

SECTION 2(1)(h) OF THE ARBITRATION AND CONCILIATION ACT, 1996 - PARTY

- 2.1 "Group of companies doctrine" applies to arbitration in India & can be invoked to make arbitration agreement binding on non-signatory parties - **Cox and Kings Ltd. v. SAP India (P.) Ltd.** - [2023] 157 taxmann.com 142 (SC)

SECTION 3 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCE OF MONEY-LAUNDERING

- 2.2 SC dismisses appeal of woman involved in PMLA cases related to bribery and fines her for making misleading statements in her appeal - **Saumya Chaurasia v. Directorate of Enforcement** - [2023] 157 taxmann.com 326 (SC)

SECTION 19 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - POWER TO ARREST

- 2.3 An arrestee under PMLA is to be informed of the grounds of his arrest within 24 hours of the arrest - **Ram Kishor Arora v. Directorate of Enforcement** - [2023] 157 taxmann.com 363 (SC)

3. SAFEMA

SECTION 37 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999- POWER OF SEARCH, SEIZURE, ETC.

- 3.1 Where from documents recovered from residence of appellant during search operation conducted by ED it was found that appellant had received Rs. 2.69 crore under instructions of a Dubai resident without any general or special permission of Reserve Bank of India in contravention to provisions of section 3(c) of FEMA and in statement recorded on oath appellant had admitted same, impugned order passed by ED imposing penalty of Rs. 50 lakh on appellant was justified - **K. Mohd. Imran v. Special Director Directorate of Enforcement, Bangalore** - [2023] 156 taxmann.com 535 (SAFEMA - New Delhi)

4. HIGH COURT

SECTION 3 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCE OF MONEY LAUNDERING

- 4.1 Where petitioner was arrested on basis of FIR filed by CBI on ground that petitioner was a key person involved in a conspiracy to give bribe/kickbacks of Rs. 100 crore to AAP and a conspiracy was hatched by petitioner and others to get undue benefits by circumventing provisions of excise policy of GNCTD for year 2021-22, bail application of petitioner, who was arrested for offence under section 3, was to be rejected - **Abhishek Boinpally v. Directorate Of Enforcement** - [2023] 157 taxmann.com 318 (Delhi)

SECTION 13 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - PENALTY

- 4.2 **Imposition of penalty** : Where Special Director of Enforcement had simply re-produced provisions of FEMA to justify imposition of maximum penalty under section 13 without any discussion or justification pertaining to basis for imposing maximum penalty and juxtaposing this with alleged acts attributed to each individual, impugned order passed by Tribunal reducing quantum of penalty was justified - **Special Director v. Jaipur IPL Cricket (P.) Ltd.** - [2023] 157 taxmann.com 283 (Bombay)

SECTION 14 OF THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST ACT, 2002 - CHIEF METROPOLITAN MAGISTRATE OR DISTRICT MAGISTRATE TO ASSIST SECURED CREDITOR IN TAKING POSSESSION OF SECURED ASSET

- 4.3 Where order passed under section 14 had not been put to challenge, it was only subsequent order passed by court below refusing to keep order passed under section 14 in abeyance, in view of fact that taking possession of property by filing an application under section 14 was only a continuation of proceedings under section 13(4) and very enactment provides for an alternative remedy under section 17 for an aggrieved person, thus, instant criminal petition was to be dismissed - **Ranjith Electricals v. Reliance Assets Reconstruction Co. Ltd.** - [2023] 156 taxmann.com 726 (Madras)

SECTION 16 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - APPOINTMENT OF ADJUDICATING AUTHORITY

- 4.4 Writ Petition cant be entertained by HC on grounds of violation of natural justice where SCN was had been served on petitioners as per the Act and the Rules - **Murugappan Alagappan v. Special Director Directorate of Enforcement, Chennai** - [2023] 157 taxmann.com 634 (Madras)

**SECTION 19 OF THE FOREIGN EXCHANGE
MANAGEMENT ACT, 1999 - APPEAL TO
APPELLATE TRIBUNAL**

- 4.5 Where on account of lack of jurisdiction 'petitioner bank by writ petition challenged order passed by ED imposing penalty upon petitioner for alleged violation of FEMA Act, in view of fact that FEMA itself provided for further remedies under section 19 of FEMA before Appellate Tribunal, those appellate remedies could not be bypassed and doors of High Court could not be knocked straightaway and thus, writ petition was to be dismissed - **Indian Overseas Bank v. Special Director of Enforcement Government of India** - [2023] 157 taxmann.com 320 (Madras)

**SECTION 20 OF THE PREVENTION OF MONEY
LAUNDERING ACT, 2002 - RETENTION OF
PROPERTY**

- 4.6 Where initial order of freezing of bank accounts of petitioners was passed by ED did not include subject 5 bank account but ED proceeded to file an application before adjudicating authority requesting for continuation of freezing of bank accounts including said 5 bank accounts, single judge was perfectly justified in directing de-freezing of 5 bank accounts - **Directorate of Enforcement v. Zoramthari** - [2023] 156 taxmann.com 727 (Gauhati)

**SECTION 45 OF THE PREVENTION OF MONEY
LAUNDERING ACT, 2002 - OFFENCES TO BE**
COGNIZABLE AND NON-BAILABLE

- 4.7 Bail is to be denied to PMLA accused where Court is not satisfied that there are reasonable grounds to believe that he is not guilty of such offence - **Sadanand Gangaram Kadam v. Directorate of Enforcement** - [2023] 157 taxmann.com 209 (Bombay)
- 4.8 Where serious and grave allegations had been levelled against applicant for cheating complainants by dishonestly inducing them in getting admission for their wards in Post Graduation Course at Himalayan Institute and Hospital Trust, Jolly Grant, there were no reasonable grounds for believing that applicant was not guilty of offence under sections 3 and 4 of PMLA and, therefore, his bail application was to be rejected - **Sandeep Gupta v. Directorate of Enforcement (PMLA)** - [2023] 157 taxmann.com 525 (Uttarakhand)

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

- 4.9 Where petitioner/complainant had failed to prove that there was any legally enforceable debt in his favour and there was no clarity as to who had filled cheques in question, when were they issued and lastly where were they issued, order passed by Trial Court acquitting accused was well reasoned and balanced as it had carefully taken note of all factors necessary - **C. P. SINGH v. Vinod Prasad** - [2023] 157 taxmann.com 459 (Delhi)

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

1.1 IBBI notifies guidelines providing procedures for preparing panel of IPs to act as IRPs, Liquidators and RPs

Editorial Note : The IBBI has felt a need to prepare the panel of IPs in advance and share with the Adjudicating Authority (AA) to avoid administrative delays in appointment of the IP. These guidelines provide the procedure for preparing panel of IPs to act as IRPs, Liquidators, RPs & Bankruptcy Trustees (BT). The Board will prepare a common Panel of IPs for appointment as IRP, Liquidator, RP and BT and share the same with the AA in accordance with these Guidelines. The Panel will have validity of six months.

1.2 IPs proposed to be appointed as RP shall also provide the particulars of and declaration under IRP PGCD Rules: IBBI - **Circular No. IBBI/II/62/2023, Dated 21-12-2023**

Editorial Note : Section 95 of the IBC, 2013 read with I & B (Application to AA for IRP for Personal Guarantors to CDs) Rules, 2019 allows the creditor to file an application for initiation of IRP of personal guarantors to CDs. In certain cases, the creditor may file the application itself recommending the name of the IP to be appointed as RP. RBI clarified that in such cases, the IP proposed to be appointed as RP shall also provide the particulars of and declaration in Part IV of Form C of the IRP PGCD Rules.

2. SUPREME COURT

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

2.1 Supreme Court upheld NCLAT's order, wherein it was held that NCLT had rightly admitted section 7 application filed against corporate debtor on basis of balance sheet of corporate debtor, which showed that corporate debtor had availed loan facility from financial creditor and there was a financial debt and default - **Vipin Sharma v. Kaliber Associates (P.) Ltd. - [2023] 156 taxmann.com 686 (SC)**

2.2 Where appellant home buyer failed to meet threshold requirement, which was imposed in terms of section 7 for initiation of CIRP, proceedings before NCLT to revive CIRP against corporate debtor could not be restored - **BPTP Spacio Park Serene Flat Allottees Welfare Association (BAWA) v. Sudhanshu Tripathi, Director, BPTP Ltd. - [2023] 156 taxmann.com 537 (SC)**

SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

2.3 In terms of section 29A(1)(c), a time frame, i.e., a period of one year should elapse from date of classification as a non-performing asset (NPA) and cut off date for determining whether resolution applicant was disqualified in terms of section 29A would be date of submission of resolution plan and not date of commencement of CIRP - **Hari Babu Thota, In re - [2023] 157 taxmann.com 165 (SC)**

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

2.4 Where NCLAT upheld NCLT's order, in which NCLT held that resolution plan had been approved and appellant's claim could not survive due to inordinate delay in filing claim, since Commissioner and employees of EPFO were required to take steps to ensure that there was compliance with timelines provided under IBC Code, 2016 and, failure could have legal consequences thus, there was no ground to interfere with impugned order, instant appeal was to be dismissed - **Employees Provident Fund Organization v. Fanendra Harakchand Munot - [2023] 157 taxmann.com 414 (SC)**

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

2.5 Where proceedings had been pending before NCLAT and adjourned to 24-11-2023 with interim order to continue, Supreme Court declined to interfere with, as matter was to be considered by NCLAT on 24-11-2023, and appellant would be at liberty to move NCLAT for modification/vacation of interim order - **UV Asset Reconstruction Co. Ltd. v. Aria Hotels & Consultancy Services (P.) Ltd.** - [2023] 157 *taxmann.com* 57 (SC)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

2.6 Limitation for filing appeal to NCLAT u/s 61 of IBC commences from date of pronouncement of NCLT's order - **Sanjay Pandurang Kalate v. Vistra ITCL (India) Ltd.** - [2023] 157 *taxmann.com* 277 (SC)

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

2.7 Supreme Court upheld NCLAT's order wherein it was held that where financial creditor had accepted due amount with 6 per cent interest per annum but was now demanding interest at rate of 18 per cent, recovery proceedings of this nature do not fall within scope and ambit 5of words 'for any purpose other than resolution' as defined under section 65 and, therefore, order of NCLT admitting CIRP application was to be set aside - **Vinay Yadav v. Anita Jindal** - [2023] 157 *taxmann.com* 157 (SC)

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

2.8 Notice issued in SLP filed by appellant/liquidator against NCLAT holding that liquidator could not bypass a remedy, provided under Benami Act in assailing order passed by Adjudicating Authority before Appellate Tribunal, under Prohibition of Benami Property Transactions Act, 1988 and therefore, impugned order passed by NCLT was free from legal infirmities - **P. Eswaramoorthy v. Deputy Commissioner of Income-tax** - [2023] 157 *taxmann.com* 202 (SC)

3. HIGH COURT

REGULATION 3 OF THE IBBI (GRIEVANCE AND COMPLAINT HANDLING PROCEDURE) REGULATIONS, 2017 - FILING OF GRIEVANCE AND COMPLAINT

3.1 Where complaint filed against IBBI was disposed of by IBBI on ground that petitioners did not adhere to format prescribed by IBBI, petitioners were permitted to file a fresh complaint in format prescribed under IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017 - **Renu Anand v. Insolvency and Bankruptcy Board of India** - [2023] 156 *taxmann.com* 120 (Delhi)

SECTION 3(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CLAIM

3.2 Where during pendency of suit filed by plaintiffs against defendant company, CIRP was initiated against defendant and an approved resolution plan was already in place, in view of fact that assessee had not submitted its claims before IRP, claim of plaintiff was stood extinguished and suit filed by plaintiff was to be dismissed as infructuous - **Sumitra Devi Shah v. Tata Steel Ltd.** - [2023] 157 *taxmann.com* 632 (Calcutta)

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

3.3 Section 14 does not create a bar for finalization of assessment and adjudication proceedings in respect of taxes, thus, subsequent to admission of resolution, there is moratorium for recovery of tax dues but there is no bar for such finalization of assessment and adjudication proceedings - **Platino Classic Motors India (P.) Ltd. v. Deputy Commissioner Of Central Tax And Central Excise** - [2023] 157 *taxmann.com* 276 (Kerala)

3.4 Where Court receiver filed a report seeking physical possession of a flat delivered to Liz Traders as agent of Court receiver and petitioner, suspended director of Liz Traders claimed that Court receiver was prohibited from recovery of property as per section 14, since receiver's agent was merely acting as a custodian of property on behalf of parties, he could not claim himself to be in possession of said property within normal meaning under section 14 and, therefore, could not continue with possession - **Urshila Ajit Kerkar v. Office of the Court Receiver, High Court** - [2023] 157 *taxmann.com* 55 (Bombay)

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

3.5 Where pursuant to initiation of CIRP of corporate debtor RP invited claims from creditors, however, respondent / revenue had not submitted any claim before RP to recover tax claims to be paid by corporate debtor and

meanwhile resolution plan was approved, right of respondent to recover amount due had extinguished - **TUF Metallurgical (P.) Ltd. v. Union of India - [2023] 157 taxmann.com 424 (Delhi)**

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSONS ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

3.6 Where Writ Court directed that no coercive action be taken against appellant-guarantor till next date of hearing, however, said order was subsequently modified granting liberty to bank to take recourse to legal remedies available towards recovery of outstanding loan amounts, accordingly, bank filed an application under section 7 of IBC against appellant for recovery of outstanding amount, there was no disobedience or violation of Courts order by bank and thus, contempt petition was to be dismissed - **ZEE ENTERTAINMENT ENTERPRISES LTD. v. INDUSIND BANK LTD. - [2023] 157 taxmann.com 425 (Delhi)**

SECTION 63 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - CIVIL COURT, NOT TO HAVE JURISDICTION

3.7 Section 60 vests jurisdiction in NCLT to entertain and dispose of any question of law or fact arising out of insolvency resolution and sections 63 and 231 create a bar on jurisdiction of civil court in respect of any matter in which NCLT and NCLAT has jurisdiction, thus, instant suit filed against order of admission of CIRP application by NCLT was to be returned - **Tejinder Pal Setia v. Kone Elevators India (P.) Ltd. - [2023] 157 taxmann.com 361 (Delhi)**

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - WILFUL DEFAULTER

3.8 Where petitioners (directors and guarantors of a borrower-company) were declared as wilful defaulters under RBI Master Circular by order of Defaulters Identification Committee(WDIC) affirmed by Review Committee(RC), since RC's order was signed by different authority than permitted under Circular and at time when WDIC order attained finality, a resolution plan had already been approved by NCLT in respect of borrower-company thus absolving borrower-company itself of default, both orders of RC and WDIC were to be set aside - **Sanjay Prakash Bansal v. Reserve Bank of India - [2023] 157 taxmann.com 526 (Calcutta)**

4. NCLAT

SECTION 2(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

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

4.2 Where RP rejected appellant's claim filed on basis of an agreement executed between parties, since there was no averment in entire agreement that corporate debtor was undertaking to guarantee repayment of secured obligations, thus, RP did not commit any error in refusing appellant's claim, there was no ground to interfere with NCLT's order - **Visra ITCL (India) Ltd. v. Bhruvish Amin Resolution Professional of Radius Infra Holdings (P.) Ltd. - [2023] 157 taxmann.com 456 (NCLAT- New Delhi)**

SECTION 3(11) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEBT

4.3 Where transactions between corporate debtor and financial creditor including agreement, Supplementary Agreement and Binding Term Sheet, clearly indicated that there was a debt, due and payable, and debt was in nature of 'financial debt', since there was also clear acknowledgement of debt and default on part of corporate debtor thus, NCLT had not committed any error in admitting Section 7 application - **Sanjay D. Kakade v. HDFC Ventures Trustee Company Ltd. - [2023] 157 taxmann.com 629 (NCLAT- New Delhi)**

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

4.4 Where appellant being a personal guarantor mortgaged its property in favour of financial creditor for repayment of loan borrowed by corporate debtor as security, since no security interest was created in favour of creditor, appellant did not fall within definition of secured creditor as defined under section 3(30) and consequently, could not be included in list of secured creditors in liquidation process, so as to claim share - **K.V. Jayaprakash v. State Bank of India - [2023] 152 taxmann.com 709 (NCLAT- New Delhi)**

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

- 4.5 Where there were pre-existing disputes between parties in respect of invoices raised by operational creditor against a corporate debtor and e-mails exchanged between two parties clearly showed existence of dispute before section 8 demand notice, application filed under section 9 deserved to be rejected - **Amrop India (P.) Ltd. v. HI-Tech Gears Ltd.** - [2023] 157 taxmann.com 666 (NCLAT- New Delhi)

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBTS

- 4.6 Where financial creditor extended a loan facility to a corporate debtor during a financial crisis, to tide over situation and, loan provided to corporate debtor was duly acknowledged, in audited balance sheet of corporate debtor was a clear cut case of a financial debt under section 5 (8) and, therefore, CIRP petition admitted by NCLT was free from all legal flaws - **Mahmod Alam Khan v. Ahmed Alam Khan** - [2023] 157 taxmann.com 324 (NCLAT - Chennai)

- 4.7 Where appellant and respondent had entered into a particular business arrangement of accomplishing development of subject property in which they had agreed to pool their resources proportionately in an agreed upon ratio of 25:75 and in process share profits, losses and costs associated with it, investment made by appellant on profit/loss sharing basis could not be treated as a financial debt - **Realpro Realty Solutions (P.) Ltd. v. Sanskar Projects and Housing Ltd.** - [2023] 157 taxmann.com 555 (NCLAT- New Delhi)

SECTION 5(10) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INFORMATION MEMORANDUM

- 4.8 Where respondent, a participant in a CoC meeting filed an application seeking direction to RP to provide a copy of information memorandum, since legislature has made a provision for providing a copy of information memorandum to member of CoC and resolution applicants, but not to participant of meeting of CoC, impugned order passed by NCLT holding that there was no prohibition in Code or Regulations for providing information memorandum to respondent as a participant was totally erroneous and unsustainable and was to be set aside - **Vinay Kumar Singhal, Resolution Professional for PG Advertising (P.) Ltd. v. Mahesh Bajaj** - [2023] 157 taxmann.com 164 (NCLAT- New Delhi)

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 4.9 Where operational creditor filed section 9 application against corporate debtor on basis of a barter agreement however, as per said agreement operational creditor was only entitled for allotment of units and non-allotment of units against Barter Component did not make appellant as an operational creditor thus, there was no operational debt due on corporate debtor, NCLT committed an error in admitting section 9 application without advertent to real nature of transaction between parties and impugned was to be set aside - **Real Estate Regulatory Authority v. D.B. Corp. Ltd.** - [2023] 157 taxmann.com 595 (NCLAT- New Delhi)

- 4.10 Where default, arose in relation to supply of Goods, to corporate debtor by appellant led to claim of an operational debt and, for said operational debt, only an application under section 9, would apply and, therefore, application filed under section 7 by appellant was not maintainable and same was to be dismissed - **Madras Chemicals & Polymers v. Vijay Aqua Pipes (P.) Ltd.** - [2023] 157 taxmann.com 241 (NCLAT - Chennai)

SECTION 5(24) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RELATED PARTY, IN RELATION TO A CORPORATE DEBTOR

- 4.11 Where in CoC of corporate debtor appellant was classified as an unrelated financial creditor and assigned 53.87 per cent voting right, however, appellant had substantial rights in operation and management of corporate debtor and was nominee director of corporate debtor, appellant fell within definition of related party under section 5(24) and was not entitled to be a part and parcel of CoC - **P.P. Bafna Ventures (P.) Ltd. v. Punjab National Bank** - [2023] 156 taxmann.com 442 (NCLAT - Chennai)

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

- 4.12 Moratorium imposed either under section 14 or liquidation process under section 33(5) interdicts only proceedings against corporate debtor, and it is not a bar to proceed against third party i.e., appellant who was personal guarantor of corporate debtor for recovery of debt in a different forum i.e., before DRT under SARFAESI Act - **K.V. Jayaprakash v. State Bank of India** - [2023] 152 taxmann.com 709 (NCLAT- New Delhi)
- 4.13 Where during CIRP proceedings, moratorium was declared and appellant invoked its bank guarantee given by bank on behalf of corporate debtor, since bank guarantees are covered under exceptions given in section 14(3)(b) and provisions of moratorium under section 14(1) shall not apply on their encashment, NCLT's order quashing bank guarantee invocation notices by appellant was to be set aside - **National Small Industries Corporation Ltd. (NSIC), Delhi v. Prabhakar Kumar Liquidator of Sh. Ganesh**

Equipment (P.) Ltd. - [2023] 156 taxmann.com 688 (NCLAT- New Delhi)

SECTION 18 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL - DUTIES OF

4.14 Subsidiary company's land cannot be included in resolution plan of holding company during CIRP and, therefore, resolution plan, which contained provisions for transfer of project land which was leased in favour of subsidiary company contrary to terms and conditions of lease deed as well as section 7 of Uttar Pradesh Industrial Area Development Act, 1976 could not be sustained - **Greater Noida Industrial Development Authority (GNIDA) v. Roma Unicon Designex Consortium - [2023] 157 taxmann.com 60 (NCLAT- New Delhi)**

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

4.15 Where resolution applicant filed an application before NCLT alleging that SRA failed to obtain mandatory approval of CCI before CoC approved resolution plan, since approval of plan by CCI is mandatory but approval by CCI prior to approval of CoC is directory, there was no error in NCLT's order rejecting application filed by appellant on ground that successful resolution application (SRA) had failed to obtain mandatory approval of CCI before approval of plan by CoC - **Soneko Marketing (P.) Ltd. v. Girish Sriram Juneja - [2023] 157 taxmann.com 162 (NCLAT- New Delhi)**

4.16 Where appellant Development Authority had leased project land in favour of a subsidiary company of corporate debtor 'ET', appellant lessor was a necessary party and without their participation, land leased out by appellant could not have been made a subject of a resolution plan and, therefore, appellant was required to be made a party to CIRP before approval of any resolution plan dealing with project land - **Greater Noida Industrial Development Authority (GNIDA) v. Roma Unicon Designex Consortium - [2023] 157 taxmann.com 60 (NCLAT- New Delhi)**

SECTION 35 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - POWERS AND DUTIES OF

4.17 Where appellant was part of CoC and participated in liquidation process by filing its claim, which was accepted and, at no point of time, reserve price was challenged by appellant and after conclusion of auction, a challenge on behalf of appellant to reserve price was not to be entertained - **Punjab National Bank (International Ltd.) v. Perfect Day INC. - [2023] 157 taxmann.com 169 (NCLAT- New Delhi)**

4.18 Where liquidator had failed to follow mandatory provision of liquidation process and cancelled sale in favour of successful bidder without granting 90 days and forfeited payment already made by respondent, action of liquidator to forfeit EMD amount was totally unsustainable thus, no error was found in NCLT's order directing liquidator to refund amount of EMD forfeited by him - **Vinod Kumar Kothari v. Sneha Techno Equipments (P.) Ltd. - [2023] 157 taxmann.com 523 (NCLAT- New Delhi)**

SECTION 40 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - CLAIMS

4.19 Where appellant had engaged corporate debtor to perform job work of rice procured by appellant and filed a claim to return its stock of rice from corporate debtor, which went into liquidation but no documentary proof i.e., material receipt notes issued by corporate debtor were available to substantiate claims of appellant, such claim was rightly rejected by NCLT - **Gurudeo Exports Corporation (P.) Ltd. ("GECPL") v. Akash Singhal Liquidator of Amira Pure Foods (P.) Ltd. - [2023] 156 taxmann.com 505 (NCLAT- New Delhi)**

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

4.20 Where financial creditor filed a CIRP application against corporate debtor, wherein appellant stood as a personal guarantor, since no insolvency process was initiated against appellant, application filed by appellant under section 60(5) claiming various reliefs was unrelated to insolvency of corporate debtor was not maintainable - **K.V. Jayaprakash v. State Bank of India - [2023] 152 taxmann.com 709 (NCLAT- New Delhi)**

4.21 Where successful resolution applicant (SRA) filed an application seeking directions to be issued to RP to provide copies of entire forensic audit report on basis of which banks had declared account of corporate debtor as fraudulent, since such vital and material information concerning affairs of corporate debtor would certainly help in implementing resolution plan, application filed by SRA was to be allowed - **Reliance Projects & Property Management Services Ltd. v. Committee of Creditors of Reliance Infratel Ltd. - [2023] 157 taxmann.com 158 (NCLT - Mum.)**

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

4.22 Where appeal had been filed after period of 53 days from date of passing of impugned order and Tribunal can condone delay only up to 15 days beyond prescribed period of 30 days i.e. 30+15 and not a day thereafter which cannot even be condoned by resorting to Article 142 of Constitution of India, appeal against order of NCLT after 53 days was to be dismissed - **V.**

Ganesan Erst. Liquidator of Kamachi Industries Ltd. v. Prudent ARC Ltd. - [2023] 157 taxmann.com 382 (NCLAT - Chennai)

- 4.23 Consequence of a moratorium is that orders passed by RERA cannot not be executed against a corporate debtor however, RERA cannot be aggrieved by declaration of moratorium - **Real Estate Regulatory Authority v. D.B. Corp. Ltd. - [2023] 157 taxmann.com 595 (NCLAT- New Delhi)**

SECTION 177 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM BANKRUPT'S ESTATE - CREDITORS' CLAIMS

- 4.24 Where offer/proposal of corporate debtor to pay certain rate of interest came to an end subsequent to a revocation letter issued by Asset Reconstruction Company (India) Ltd. (ARC), since in instant case, NCLT had not correctly appreciated consequence of revocation letter, determination of rate of interest by NCLT in impugned order was erroneous and thus, impugned order passed by NCLT was to be set aside - **Tulip Star Hotels Ltd. v. Anish Niranjan Nanavaty Resolution Professional of v Hotels Ltd. - [2023] 157 taxmann.com 84 (NCLAT- New Delhi)**

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 4.25 Where date of default was 1-4-1997 and CIRP application was filed by financial creditor on 19-8-2019, however, proceedings were initiated under SICA before BIFR and AAIFR during which remedy for enforcement remained stayed till February 2017, proceedings before SICA were to be seen as date on which fresh cause of action arose and OTS proposals dated 22-11-2008 to 26-8-2019 also extended limitation period and, therefore, CIRP application filed on 19-8-2019 was within limitation period - **D. Srinivasa Rao v. Stressed Assets Stabilisation Fund - [2023] 157 taxmann.com 160 (NCLAT - Chennai)**

5. NCLT

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 5.1 Where a settlement had been arrived between parties and first CIRP petition was withdrawn, however, corporate debtor again failed to make payment, there being no pre-existing dispute between parties, CIRP petition filed by operational creditor under section 9 against corporate debtor was to be admitted - **RBCL Projects (P.) Ltd. v. BPTP Ltd. - [2023] 157 taxmann.com 54 (NCLT - New Delhi)**

SECTION 5(24) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RELATED PARTY, IN RELATION TO A CORPORATE DEBTOR

- 5.2 Where a financial creditor entered into a loan agreement with corporate debtor and appointed one of its division's executive director into board of CD as a nominee director to facilitate and ensure repayment of its dues, since nominee director was appointed for day to day workings and neither he could influence actions of board of financial creditor or CD nor he could influence policy making process of CD, financial creditor was not termed as a related party under section 5(24) - **Sarga Udaipur Hotels and Resorts (P.) Ltd. v. Housing & Urban Development Corporation Ltd. - [2023] 157 taxmann.com 206 (NCLT - Kolkata)**

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

- 5.3 Where applicants-lessors and corporate debtor entered lease agreements for aircrafts and lessors sought repossession of aircrafts upon default of payments by CD, since CD was under CIRP process and moratorium was declared, section 14(1)(d) prevented repossession during the moratorium unless physical possession was disputed and lessors couldn't reclaim the aircrafts as they were vital for the debtor's business continuity and under Resolution Professional's protection - **Go Airlines (India) Ltd., In re - [2023] 157 taxmann.com 667 (NCLT - New Delhi)**

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

- 5.4 Where CoC in their commercial wisdom had approved resolution plan with a majority of 82.48 per cent voting share and application filed by RP seeking approval of resolution plan had been approved, after noting that plan did not contravene section 30 or any other applicable sections of I&B Code and, therefore, applicant had no locus to file instant application, issues raised in instant application did not survive and was liable to be dismissed - **SRF Ltd. v. Birla Tyres Ltd. - [2023] 157 taxmann.com 86 (NCLT - Kolkata)**

"Navigating the Terrain: A Comprehensive Overview of REITs in the Indian Market"

CA Pulkit Vimal Mehta

What is REIT?

Real Estate Investment Trust (REIT) is a specialized investment vehicle that enables investors to pool their funds to invest in a diversified portfolio of real estate assets. Indian REITs primarily focus on commercial real estate, although they can potentially include other types of properties. These trusts provide a structured avenue for investing in real estate markets without the complexities and high capital requirements of direct property ownership. REITs primarily own, operate, or finance income-generating real estate assets. In India, REITs are regulated by the Securities and Exchange Board of India (SEBI) and must adhere to specific guidelines, including mandatory listing on stock exchanges and distribution of most of their income to investors.

REITs in India present a novel and growing opportunity for investors to tap into the lucrative real estate market. REITs in India have gained momentum post-regulatory changes in 2014, offering a structured and transparent vehicle for real estate investments.

Regulatory Framework for REITs in India

The regulatory framework for REITs in India has been established by the SEBI to enhance transparency, increase investor confidence, and encourage the growth of REITs in the Indian market. The key regulations governing REITs in India are outlined in the SEBI (Real Estate Investment Trusts) Regulations, 2014, and subsequent amendments.

Key Aspects of the Regulatory Framework

a. Registration and Compliance:

REITs must be registered with SEBI.

They must comply with the regulations laid down by SEBI, including operational, investment, and disclosure norms.

b. Structure:

REITs in India are set up as a trust under the Indian Trusts Act, 1882.

They must have parties including a Trustee (approved by SEBI), a Sponsor(s), a manager, and a Principal Valuer.

c. Eligibility Criteria:

The sponsor should have a certain minimum net worth of Rs. 100 crores collectively and Rs. 25 crores individually and experience in the real estate market.

The manager is required to have adequate experience in the property market and must meet minimum net worth requirements which is Rs. 10 crores.

d. Investment Conditions:

REITs must primarily invest in and operate income-generating real estate assets.

At least 80% of the value of the REIT assets must be in completed and revenue-generating properties.

REITs are required to distribute at least 90% of their net distributable cash flows to the investors at least twice a year.

e. Borrowing and Leverage:

REITs in India are allowed limited leverage; total borrowing and deferred payments should not exceed 49% of the value of the REIT assets.

f. Listing and Trading:

REITs are mandated to be listed on a recognized stock exchange in India after initial offerings.

The minimum subscription size and trading lot are also specified by SEBI.

g. Transparency and Disclosures:

Regular disclosures on financials, asset performance, valuations, and any other material information must be made to ensure transparency.

Compliance with corporate governance norms is required.

Key Features of REIT

REITs in India, since their introduction, have become an increasingly popular vehicle for real estate investments. They offer a structured and transparent way for investors to access high-value real estate assets. Here are the key features of REITs in India, shaped largely by the regulatory framework set by the Securities and Exchange Board of India (SEBI):

1. Structure and Composition

- a. **Trust-Based Structure:** REITs in India are set up as trusts and are required to be registered with SEBI.
- b. **Key Participants:** A typical REIT structure includes a sponsor, trustee, manager, and principal valuer. The sponsor is usually a real estate developer or owner, the trustee holds the REIT's assets for the benefit of unit holders, the manager undertakes the operational aspects, and the valuer is responsible for periodic valuation of the assets.

2. Asset Portfolio

- a. **Type of Assets:** REITs primarily invest in commercial real estate assets, which are income-generating. This includes office spaces, retail malls, and warehouses.
- b. **Investment Conditions:** At least 80% of the REIT's assets must be invested in completed and revenue-generating properties.
- c. **Diversification:** REITs offer diversification by allowing investments in a variety of real estate assets across different locations and sectors.

3. Regulatory Compliance

- a. **SEBI Guidelines:** REITs in India must adhere to guidelines and regulations issued by SEBI, including compliance related to investment, borrowing, and valuation norms.
- b. **Mandatory Listing:** REITs are required to be listed on stock exchanges, enhancing liquidity, and allowing retail participation.

4. Minimum Investment and Trading

- a. **Minimum Investment Requirement:** The minimum application value for investors in an initial offer and follow-on offers is set at a relatively accessible level, making it easier for retail investors to participate.
- b. **Trading Lots:** The units of REITs are tradable in smaller lots post listing, enhancing liquidity and affordability for smaller investors.

5. Income Distribution

- a. **Dividend Payout:** REITs in India are mandated to distribute at least 90% of their net distributable cash flow to their investors at least twice a year, providing a regular income stream.

6. Leverage Limit

- a. **Borrowing Restrictions:** REITs are allowed to borrow, but the total borrowings and deferred payments cannot exceed 49% of the value of the REIT's assets. This restriction is in place to ensure stability and mitigate high-risk exposure.

7. Transparency and Disclosure

- a. **Regular Disclosures:** There are stringent requirements for disclosure and transparency, including regular reporting of financial results, portfolio performance, and any material changes to the REIT.

8. Taxation

- a. **Tax Efficiency:** The Indian government has made efforts to make REITs tax-efficient vehicles. For instance, there is no Dividend Distribution Tax (DDT) on dividends issued by REITs to their unit holders.

9. Liquidity

- a. **Public Trading:** Units of REITs are traded on stock exchanges, providing liquidity like stocks, which is a significant advantage over direct real estate investments.

Types of REITs in India

The Indian market primarily features two types of REITs:

1. **Commercial REITs:** Focused on commercial properties like offices, business parks, and shopping centres.
2. **Infrastructure Investment Trusts (InvITs):** Targeting infrastructure assets, although these are somewhat distinct from traditional REITs.

Advantages of Investing in Indian REITs

1. **Diversification:** REITs offer a way to diversify investment portfolios beyond traditional stocks and bonds.
2. **Income Generation:** REITs provide a regular income stream through dividends, as they are required to distribute a significant portion of their income.
3. **Professional Management:** REITs are managed by professionals, reducing the burden of managing real estate investments directly.
4. **Liquidity:** Units of publicly traded REITs can be easily bought and sold on the stock exchange.

How to Invest in REITs in India?

Investors can buy units of REITs listed on Indian stock exchanges such as the BSE and NSE, just like purchasing stocks. Investments can be made through a Demat account with a registered broker.

Key Considerations and Risks while Investing in REITs

- 1. Market Fluctuations:** REITs are subject to market risks, and their value can fluctuate based on real estate market dynamics.
- 2. Regulatory Changes:** Any change in regulations affecting the real estate sector can impact REIT performance.
- 3. Interest Rate Sensitivity:** Being leveraged entities, REITs may be sensitive to interest rate changes.
- 4. Property Specific Risks:** The performance can also be impacted by factors specific to the properties owned by the REIT.

Taxation of REITs in India

Dividends received from REITs were tax-exempt for investors until the financial year 2020-21. However, post-April 2020, dividends are taxable in the hands of investors. Capital gains from the sale of REIT units are subject to capital gains tax, with the rate depending on the holding period.

Evaluating REITs for Investment

- 1. Portfolio Quality:** Analyse the quality and location of properties in the REIT's portfolio.
- 2. Occupancy Rates:** Higher occupancy rates often indicate steady rental income.
- 3. Debt Levels:** Evaluate the REIT's leverage as high debt can impact profitability.
- 4. Distribution Yield:** Consider the historical dividend payout and distribution yield.

Who Should Invest in Indian REITs?

Investors looking for a mix of regular income and potential capital appreciation, and those seeking exposure to the real estate sector without the hassles of managing physical properties, may find REITs appealing. However, they are best suited for investors who understand the real estate market dynamics and are comfortable with the associated risks.

Outlook of REITs in India

The outlook of Real Estate Investment Trusts (REITs) in India appears promising, buoyed by a growing economy and an evolving real estate sector. As urbanization accelerates and the demand for commercial and retail spaces rises, REITs are poised to play a pivotal role in meeting these needs. The Indian government's regulatory support, including tax benefits and eased investment norms, has further enhanced the attractiveness of REITs as an investment vehicle. Additionally, the shift towards more organized and transparent real estate dealings, partly driven by landmark reforms such as the Real Estate (Regulation and Development) Act (RERA), bodes well for the trust-based structure of REITs.

The market is also seeing a gradual diversification with potential expansions into non-traditional sectors like warehouses, data centres, and healthcare facilities, broadening the scope for investors. The COVID-19 pandemic has brought about a re-evaluation of workspace dynamics, potentially impacting office-space REITs, but simultaneously opening opportunities in areas like digital infrastructure. As investor awareness grows and the market matures, REITs in India are expected to attract more significant domestic and international investments, contributing to the broader financialization of real estate assets. The blend of steady income streams and long-term capital appreciation potential makes REITs an increasingly appealing component of diversified investment portfolios in India's dynamic economic landscape.

Conclusion

REITs in India offer a compelling investment option within the real estate sector, marked by transparency, professional management, and the potential for both income and capital appreciation. As the market matures, it could provide more diversified opportunities. Investors should conduct thorough research or consult financial advisors to ensure that REIT investments align with their financial goals and risk appetite.

ACCOUNT AND AUDIT UPDATES

1.1 ICAI issues Exposure Draft of Guidance Note on Audit of Banks (2024 Edition)

Editorial Note : The Institute of Chartered Accountants of India invites comments from various stakeholders on the Exposure Draft of the “Guidance Note on Audit of Banks (2024 Edition)”. ICAI publishes every year a revised edition to provide detailed guidance to auditors on statutory audits of banks and bank branches. Comments on the Exposure Draft may be submitted via email at <mailto:asb@icai.in> or by post till 31.12.2023.

1.2 ICAI releases Exposure Draft on Consequential Provisions for non-compliance with CPE hours from 2024 onward

Editorial Note : The statement on Continuing Professional Education requires all members of the ICAI to meet the CPE credit hours requirement(s) as specified by the Council from time to time. Member who fails to complete the

CPE requirement by the end of the calendar year will face the consequential provision for noncompliance of CPE hours as outlined in the exposure draft issued by ICAI which shall be effective from the calendar year 2024.

1.3 IASB issues ED on Financial Instruments with Characteristics of Equity - Proposed amendments to IAS 32, IFRS 7 and IAS 1

Editorial Note : ICAI invites comments from various stakeholders on the Exposure Draft (ED) on Financial Instruments with Characteristics of Equity - Proposed amendments to IAS 32, IFRS 7 and IAS 1 issued by International Accounting Standards Board (IASB). This ED will assist in classifying complex financial instruments that combine some characteristics of both debt—financial liabilities—and ordinary shares—equity instruments. Comments may be submitted via <http://www.icai.org/comments/asb/> before 10.02.2024

Harnessing Google My Business: A Game-Changer for Local Enterprises

CA Sanjib Sanghi



In the era where digital presence is almost non-negotiable, **Google My Business (GMB)** emerges as a critical tool for businesses seeking visibility. It stands as a free and easy-to-use platform designed by Google to help micro and small business owners manage their online presence across the search engine and its growing portfolio, including **maps** and **mobile search**.

Visibility Across the Digital Landscape

When customers search for a service or product, Google My Business ensures that relevant local businesses appear. This is not merely about showing up in search results; it's about showing up with a wealth of information. Business hours, location, contact details, and even photos - GMB allows for a rich snippet of your business to be presented to potential customers at a glance.

Real-Time Updates and Insights

One of the most dynamic features of Google My Business is the ability to post real-time updates. In an ever-evolving business environment, being able to instantly inform customers about the latest offers, events, or changes in service adds a layer of communication that can create a competitive advantage for a business over its competitors. Moreover, GMB provides valuable insights into how customers search for your business and the information offered to them, including data on the number of views your listing had and how customers are interacting with it.

Customer Interaction and Reputation Management

Reviews and ratings are the currency of trust in the digital marketplace. This is evident when you check out a restaurant's reviews before visiting with your family. GMB allows businesses to gather and respond to customer reviews, fostering a transparent dialogue and building reputation. Positive reviews can significantly boost a business's local search ranking, while the ability to respond to reviews signals that the business values customer feedback and is committed to service excellence.






A Tool for Search Engine Optimization (SEO)

Google My Business is also a potent ally for Search Engine Optimization (SEO). A well-optimized GMB listing contributes to a business's overall online presence, improving its ranking in local search results. This is particularly beneficial for small to medium-sized businesses striving to gain an edge in local markets over the evolving competitors.

Integrating AI with Google My Business

Google Business can use AI to help small business owners in a variety of ways, including:

- i. **Marketing and Advertising:** AI can be used to automate and personalize marketing campaigns, target the right audience with the right message, and track the results of campaigns to improve Return on Investments. For example, **Google Ads** can use AI to automatically create and optimize ads, while **Google Analytics** can use AI to track website traffic and user behaviour. 
- ii. **Customer service:** AI can be used to provide 24/7 customer support, answers customer questions, and resolves issues quickly and efficiently. For example, chat bots can be used to answer customer questions and provide product information, while AI-powered sentiment analysis can be used to identify and address customer concerns.
- iii. **Operations and productivity:** AI can be used to automate tasks, such as scheduling appointments, managing inventory, and processing invoices. This can free up small business owners to focus on more strategic work, such as growing their business. For example, AI-powered scheduling tools can automatically schedule appointments based on customer availability and employee availability, while AI-powered inventory management tools can automatically track inventory levels and reorder supplies when necessary. 
- iv. **Sales and lead generation:** AI can be used to identify and qualify leads, personalize sales pitches, and close more deals. For example, AI-powered lead scoring tools can identify leads that are most likely to convert; while AI-powered sales chat bots can engage with leads and answer their questions. 
- v. **Fraud prevention:** AI can be used to identify and prevent fraud, such as credit card fraud and insurance fraud. This can help small businesses protect themselves from financial losses. For example, AI-powered fraud detection systems can identify fraudulent transactions in real time.

In addition to these specific examples, AI can also be used to help small businesses in a variety of other ways, such as:

- i. **Predicting customer behaviour:** AI can be used to analyse customer data to predict future behaviour, such as which products customers are most likely to buy or when they are most likely to churn. This information can be used to improve marketing campaigns, customer service, and product development.
- ii. **Personalizing the customer experience:** AI can be used to personalize the customer experience, such as by recommending products that customers are most likely to be interested in or providing them with special offers. This can help to improve customer satisfaction and loyalty.
- iii. **Identifying new business opportunities:** AI can be used to identify new business opportunities, such as new markets to enter or new products to develop. This can help small businesses to grow their businesses and reach new customers.



Overall, AI has the potential to revolutionize the way that small businesses operate and compete. By using AI to automate tasks, personalize the customer experience, and identify new opportunities, small businesses can improve their efficiency, profitability, and growth.

Recent Innovations of Google My Business

Google has announced new Shopping features that will allow small merchants to **update product imagery using generative AI**, making it easier to **attract** new customers.

Merchants can identify themselves with a new **Small Business attribute** on Search and



Google Maps which can be of immense help for Micro, Small and Medium Enterprises (MSMEs) of India especially when the government is working towards promoting and assisting such small businesses. Products in Search sold by businesses with that attribute will have a “small business” label on them, as will businesses on Maps, said the company.

Google Product Studio

Google Inc. is all set to roll out **Product Studio** - a set of AI tools to help merchants create and manage product imagery - to all Merchant Centre Next users initially in the U.S and then across the world.

Google Product Studio would include experimental AI-powered scene generation feature, which uses a text-to-image generative AI model to help you place products into any creative scene humans dream up. And as we all know; this Image generative tool would be evident to have the traits of Dall-E from OpenAI.



Product Studio shall share a few prompt ideas, including holiday-themed scenes, to spark inspiration.

It will be easy to tweak or reuse prompts that worked well for you in the past. You can also remove distracting backgrounds or improve resolution on your product images in one click.



Thus, it is evident that for businesses today, an online presence is not a luxury but a necessity and if it is backed by AI it would surely be a boon to every small business. Google My Business serves as a **central dashboard** for managing how a business appears on Google i.e. over the Internet, a virtual storefront that is open to the world 24/7. As more customers turn to the internet to find and assess local businesses, GMB has become an indispensable tool for businesses to maximize their online potential, connect with customers, and drive growth. Whether you're a seasoned enterprise or a fledgling startup, tapping into the power of Google My Business could be a pivotal step in your digital strategy.

SWAMIH FUND – A Govt. of India Initiative

CA Aditya Zantye

On November 6, 2019, Finance Minister Smt. Nirmala Sitharaman announced the establishment of the Special Window for Affordable and Mid-Income Housing (SWAMIH). This initiative was a response to the pressing need to address the challenges faced by the real estate sector, particularly in completing stalled housing projects across the country. Recognizing the urgency of the situation, the Union Cabinet approved a proposal to create a Special Window in the form of an Alternative Investment Fund (AIF). This government-backed fund operates as a Category-II AIF (Alternate Investment Fund) debt fund, officially registered with SEBI. The regulatory framework reflects its commitment to transparency and compliance, aligning with SEBI's guidelines for effective governance in the financial sector.

The primary objective of SWAMIH is to provide priority debt financing to ensure the timely completion of stalled housing projects, thereby benefiting both homebuyers and developers. SBICAP Ventures, a subsidiary of the State Bank of India, was entrusted with the crucial role of Investment Manager for this Special Window. This decision was strategic, given SBICAP Ventures' expertise in managing investments and its ability to facilitate the flow of funds to expedite project completion.

By assigning SBICAP Ventures as the Investment Manager, the government aimed to leverage the financial acumen and experience of a reputable institution, ensuring efficient deployment of funds and effective project management. SWAMIH's formation marked a crucial step in revitalizing the real estate sector, instilling confidence among homebuyers and developers alike. The Special Window played a pivotal role in addressing the financial bottlenecks that had hindered the completion of housing projects, contributing significantly to the overall economic recovery and stability in the real estate market.

The SWAMIH Investment Fund attracts investments from a diverse set of stakeholders, including both public and private entities. As outlined:

Government:

The government holds a substantial 50% stake in the fund, showcasing its commitment to supporting the fund's objectives and addressing challenges in the real estate sector.

Life Insurance Corporation (LIC):

LIC, a major player in the Indian insurance sector, invests with a 10% stake in the SWAMIH Investment Fund, contributing to the fund's financial strength.

State Bank of India (SBI):

State Bank of India, one of the largest and most prominent public sector banks in India, also holds a 10% stake in the fund, reflecting its participation in this strategic initiative.

Other Public and Private-Sector Players:

The remaining 30% of the fund is open to public and private-sector players. This category includes various entities such as cash-rich financial institutions, both public and private banks, sovereign wealth funds, domestic pension and provident funds, global pension funds, and other institutional investors.

The involvement of such a diverse range of investors ensures a broad and well-capitalized base for the SWAMIH Investment Fund. This collective effort from both public and private entities aligns with the fund's mission of addressing the challenges faced by stalled housing projects in India, fostering collaboration across different sectors to achieve its objectives.

A Project should satisfy all the following criteria to be eligible for funding :

1. Stalled or likely to be stalled if no funding is made available

A stalled project is characterized by a cessation in implementation or minimal budget allocations over the medium term, rendering it unable to make significant progress. Essentially, it denotes a project that has encountered obstacles or financial constraints hindering its development.

2. Atleast 90% of the available FSI / FAR is being developed as Affordable Housing units or Mid-Income Housing units

Affordable or mid-income housing units, as defined, encompass residential properties with a RERA carpet area not exceeding 200 square meters. The pricing criteria for such units varies based on geographical locations:

- a. In the Mumbai Metropolitan Region, affordable or mid-income housing units should be priced at less than INR 2 crore.*
- b. In the National Capital Region, Chennai, Kolkata, Pune, Hyderabad, Bangalore, and Ahmedabad, the pricing cap is set at less than INR 1.5 crore.*
- c. For the rest of India, affordable or mid-income housing units should be priced at less than INR 1 crore.*

The term "Carpet Area" is defined in alignment with clause (k) of section 2 of RERA, indicating the net usable floor area of an apartment, excluding specific areas like external walls, services shafts, exclusive balcony or verandah, and exclusive open terrace. However, it includes the area covered by internal partition walls within the apartment.

3. Value of sold receivables plus unsold inventory is greater than cost to complete construction and to service the investment by the Fund
This criterion serves as an indicator of the project's overall financial health, ensuring that the generated revenue from sold assets and remaining inventory is sufficient to cover both construction expenses and fund-related obligations.
4. Project has completed at least 30% of the construction and development
5. Requires last mile funding – sufficient to complete construction
6. RERA registered project

Target Corpus and Funding

In the case of the SWAMIH Fund, the initial target corpus was set at INR 12,500 crore. This amount represents the envisioned pool of funds that the fund managers aim to accumulate to fulfill the fund's objectives.

In March 2023, the government made a significant announcement, revealing plans to augment its total investment in the SWAMIH Fund by an additional Rs 50 billion. This decision will bring the overall government commitment to a remarkable Rs 155.3 billion.

With the increased investment, the SWAMIH Fund is now well-equipped to extend its operations and review contracts until December 2024. This extension in the timeline enhances the fund's capacity to fund and oversee a broader range of projects, contributing to the revitalization of the real estate sector by facilitating the completion of more stalled housing ventures. The government's sustained commitment reaffirms its confidence in the fund's effectiveness in addressing crucial issues within the real estate industry.

Green Shoe Option

The green shoe option is an additional provision that allows the fund to offer and issue more units (shares or securities) than initially planned during its fundraising process. In the context of the SWAMIH Fund, there was a green shoe option of an equal amount, INR 12,500 crore. This provision gives the fund flexibility to respond to higher demand from investors and raise additional capital beyond the original target corpus, thereby maximizing its financial capacity to address the challenges faced by stalled housing projects.

In simpler terms, it acts as an over-allotment provision, enabling the fund to meet increased investor interest and potentially surpass the initial fundraising target. It is often employed to ensure that the fund has the financial resources needed to fulfill its objectives effectively, especially considering the dynamic nature of the real estate market and the varying demands for investment in stalled housing projects.

Recent Updates on SWAMIH Fund

The SWAMIH Investment Fund achieved a significant milestone with its first close, securing a substantial capital commitment of INR 10,037.5 crore. This initial success demonstrated the strong support and confidence from investors in the fund's objectives and strategies.

Furthermore, the fund concluded its fundraising efforts with a final close on December 6, 2022, reaching an impressive capital commitment of INR 15,530 crore. This final amount not only surpassed the initial target but also highlighted robust investor interest in contributing to fund's mission of providing priority debt financing for stalled housing projects.

The substantial capital commitments at both first and final closes underscore the fund's ability to attract diverse investors and its pivotal role in addressing challenges within real estate sector, signaling a positive outlook for completion of stalled housing projects in India.

The SWAMIH Investment Fund boasts a robust team comprising over 30 investment professionals, each bringing an average of 15 years of industry experience. This seasoned team positions the fund as one of the largest on the buy side in India, equipped with the expertise and knowledge necessary for successful investment management.

As of September 30, 2023, the fund has already made a significant impact by delivering more than 24,000 homes. This achievement underscores its commitment to addressing the challenges faced by the real estate sector, particularly in completing stalled housing projects. Looking forward, the SWAMIH Fund has ambitious plans, aiming to deliver an additional 20,000 homes each year for the next three years. This target reflects the fund's dedication to making a substantial and sustained contribution to the revitalization of the real estate market in India.

The Fund is poised to be a transformative force in Indian real estate market, primarily focused on completing stalled housing projects. By reviving these projects, it aims to significantly reduce number of unfinished developments, instilling confidence in investors and encouraging participation in new projects. The fund's commitment to delivering a substantial number of homes annually over next three years is anticipated to boost economic growth through job creation, contribute to a more balanced housing supply, and enhance consumer trust by resolving issues for homebuyers. In summary, the SWAMIH Fund's multifaceted future impact encompasses improvements in project completion, investor confidence and overall economic well-being, contributing to the broader transformation of the real estate sector in India.

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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APPLICATION FOR MEMBERSHIP

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The Hony' Secretary,
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place, Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.

I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

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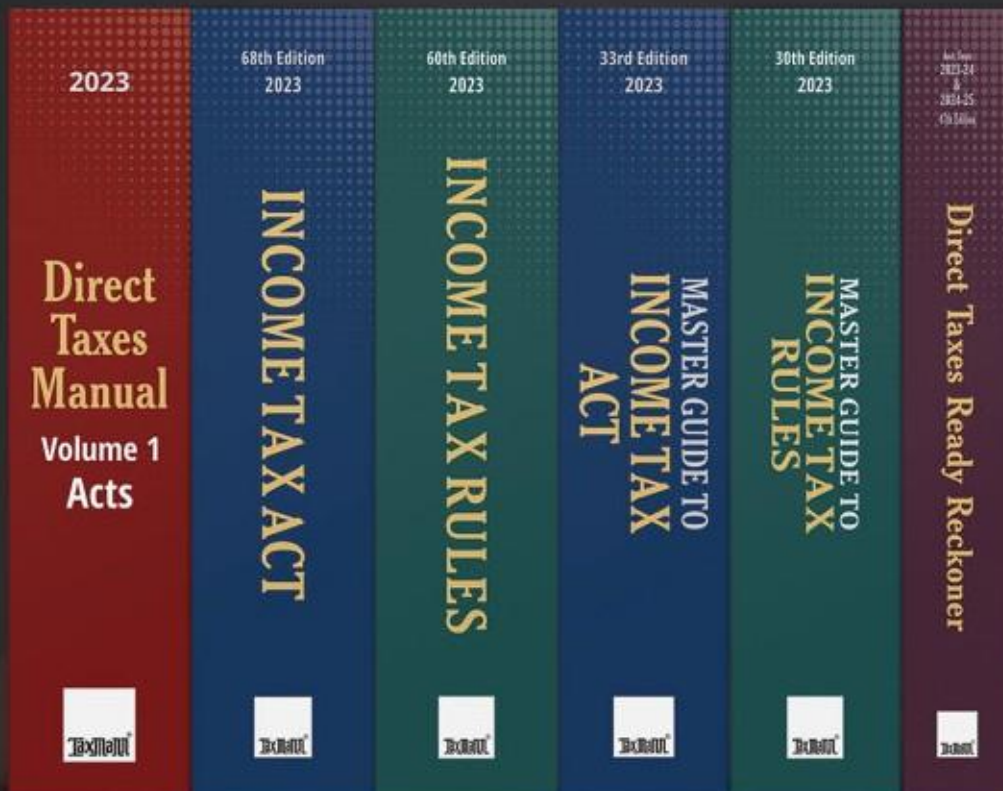
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