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Total no. of page: 96

.... From the Desk of Editors



Respected Seniors and my Dear Friends,

I hope when you will be receiving this issue many of us will be busy in replying show cause issued at assessment stage, attending personal hearing through video conferencing either before the Assessing Officer or before the First Appellate Authority in between day to day regular professional matters. Very soon the financial year end is approaching the we all professionals will be much busy into bank audit assignments, statutory audits, tax audits, annual returns and life keeps on going.

The Finance Bill, 2024, has nothing much time and also received the assent of the President, Droupadi Murmu, on 15th February 2024. One remarkable announcement was done by Hon'ble Finance Minister regarding waiver of tax demand outstanding as of Jan 31, 2024 with a cap of Rs. 1 lakh per assessee and CBDT has also releases order to that effect being - Order F.NO. 375/02/2023, Dated 13-02-2024

Recently in the matter of **Principal Commissioner of Income-tax v. Smt. G. Lakshmi Aruna** - [2024] 159 taxmann.com 183 (SC) in relation to section 153C of the Act Hon'ble Apex Court has dismissed the SLP against impugned order of High Court stating that recording of satisfaction note is pre-requisite and same must be prepared by Assessing Officer before he transmits record to other Assessing Officer who has jurisdiction over such other person under section 153C.

In last issue of the e journal we have discussed development in other High Courts in relation to second round of the litigation on section 148 of the Income Tax Act and this time The judgment in the same line in favour of the assessee is added by Hon'ble Calcutta High Court too in the matter of (M/s. Arati Marketing Pvt. Ltd. Vs. Union of India & Ors.) (WPO No. 2747 of 2022) and following the same in the matter of SS Commotrade Pvt. Ltd. Vs. Income Tax Officer Ward No. 13(1), Kolkata & Ors.(WPA 19111 OF 2022). So with so many of High Courts having the same view and Revenue has already approached the Hon'ble Apex Court I understand it is the Hon'ble Supreme Court who will put the rest to the controversy for once and all.

The gross GST revenue collected in the month of January, 2024 is Rs. 1,72,129 crores, which once again shows a 10.4% Year-o-Year (Y-o-Y) growth over the revenue of Rs.155,922 crores collected in January 2023. With this the story of New Bharat, Developed Bharat and Atmanirbhar Bharat keep continuing.

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.

This month of February was very important and in that sense it's a matter of great pride and happiness that our own members **CA. Ranjeet Kumar Agarwal** has been elected as President of The Institute of Chartered Accountants of India (ICAI) and at the same time **CA. Sanjib Sanghi** has been elected as Chairman, EIRC of ICAI. The Journal sub Committee and entire DTPA Team wish both of them a historical tenure and offer heartiest Congratulations.

Before, departing I must congratulate the GST & Indirect Taxes Sub Committee headed by its Chairman CA D.S. Agarwala, Co-Chairman CA Arup Dasgupta and Advisor CA Vikash Parakh, who has taken the knowledge sharing to a new height at the platform of DTPA by successfully organizing GST Training Program between 21st – 29th February 2024 with intelligent minds throughout the country.

We are once again extending our regards for 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 a Very Happy Holi and good wishes for Bank Audit Assignments ahead. Jai Hind!! Jai DTPA!!

With Best Regards

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

Sujit Sultania
Co-Chairman
Journal Sub-Committee, DTPA



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....From the desk of President

Dear esteemed members of DTPA,

At the outset I am happy to share that we have had a wonderful month at DTPA during February, not only have we had some wonderful sessions which helped the members in enhancing their knowledge, we could also successfully complete two signature events of DTPA.

We started the month with the felicitation of Advocate Narayan Prasad Jain on his election as the National President of AIFTP. This was attended by many members and was etched in our memory as a moment to rejoice as Advocate Narayan Prasad Jain was the Past President of DTPA.

After the above on 6th February, Advocate S.M. Surana enlightened all of us as to how the provisions of Section 263 of Income Tax Act, 1961 can be put to use by the assesseees.

As DTPA is known for sharing knowledge on regular basis, we took up the issue of the recent amendment in section 43B (h) of Income Tax Act, 1961 relating to the payment to the MSME's on 9th February 2024. CA Bishnu Basia shared his insights and also replied to the numerous queries raised by the members, which helped the members to appreciate and understand the do's and don'ts in this regard.

You will be happy to know that after the successful launch of the comprehensive course on GST last year, this year also we have been successful in organizing the seven days comprehensive GST course once again during the end of February. This time we had more than 70 Participants and participants from across seven states in India which shows the faith reposed by participants from outside Kolkata on your organization. We have got wonderful feedback for the arrangement, speakers and also the complimentary book provided by us which helped many members to start their journey in GST.

Another important journey that we marched forward towards is Accountech 3.0, which was attended again by more than 165 delegates. The prolific speakers shared their huge experience and also practical suggestions as to how professionals can take advantage of technology to make their practice more simpler and effective.

I am also really very happy to share that our life member CA Ranjeet Kumar Agarwal has taken on the responsibility of President of ICAI for the year 24-25. It was indeed a huge moment of joy for all of us at DTPA when we attended the Felicitation of President, ICAI and Vice-President ICAI on 24th February at P C Chandra Gardens where we could hear President, ICAI give us his vision for the Institute in the years to come.

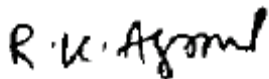
As we approach towards the end of the financial year it is again a time for professionals to be busy in helping the clients with the year end reconciliations and reviews. As we know that the cost of non-compliance is quite high, let us all endeavor together to spread the word as to how better compliance would lead to better brand image and profitability for the business. As a positive step towards this we would encourage our young professionals to share their doubts if any in the different whatsapp groups or by sending a mail to DTPAKolkata@gmail.com, so that doubts if any can be quickly resolved.

While we are planning different sessions for the benefit of members in Practice as well as Industry, we would be highly obliged if you could join hands with us in planning for important topics which bring value and growth to all our members. You can always reach out to me with your suggestions.

While we are having many dialogues with our friends and colleagues for becoming members of DTPA, can we also start sharing the activities of DTPA with the members known to us so that they can also take advantage of these knowledge enhancing sessions.

Thanking you,

Yours truly



CA Rajesh Agrawal

President

08th March, 2024

Live Interaction Session on Budget at DTPA Conference Hall on 1st February 2024



Felicitation of Adv. Narayan Prasad Jain at DTPA Conference Hall On 2nd February 2024



Study Circle Meet – Notice U/S 263 at DTPA Conference Hall on 6th February 2024



Study Circle Meet – Delayed Payment recovery to MSMEs At DTPA Conference Hall on 9th February 2024



Felicitation of CA. Ranjeet Kumar Agarwal, President and CA. Charanjot Singh Nanda, Vice President of ICAI by Team DTPA on 12th February 2024





ज्ञानं एक्यं च न्यायार्थम्
Estd. 1982

Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

Congratulations!



CA Ranjeet Kumar Agarwal

on being elected as

President of ICAI 2024-25

Team DTPA

Vasant Panchami Celebrations on 14th February 2024



SC meeting on Reopening and Revisions of Assessments – Recent Developments at DTPA Conference Hall on 16th February 2024



Glimpses of 7 days GST training program held at DTPA Conference Hall from 21st – 29th February 2024









Felicitation of President and Vice-President of ICAI by Team DTPA at P.C. Chandra Gardens on 24th February 2024



Felicitation of Chairman of EIRC of ICAI by Team DTPA at Hotel Lalit Great Eastern on 23rd February 2024



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



Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

***Block your
Calendar***



**Annual Conference 2024,
Taj Bengal**

CA Rajesh Kr Agrawal
President

CA Narendra Kr Goyal
Chairman

CA D S Agarwala
Co-Chairman

CA Mahendra K Agarwal
Gen. Secretary

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



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Estd. 1982

DTPA Chartered Accountants' Study Circle - EIRC

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

Email :- dtpakolkata@gmail.com



CA Nitesh More

Topic:

Audit Trail



CA Suyash Tulsyan

Topic:

**Tally- Audit trail
review &
Recent updates**



**22 MARCH 2024
FRIDAY**



**TIME
03:00PM - 06:00 PM**



**DTPA
Conference Hall**

PARTICIPATION CHARGES:

RS. 200/-

" 3 CPE HOURS* "

**CA D S Agarwala
Convenor**

**CA Manjulata Shukla
Deputy Convenor**

*pending approval

Compliance Calendar for March, 2024

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

Compliance Calendar for April, 2024

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

Feedback and suggestions are Invited:

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

Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Rajesh Kr. Agrawal

President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

- | | |
|---------------------------|---|
| ● Direct Taxes | <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 dtpaejournal@gmail.com**
- Please note that Journal Committee has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal.

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

Thanks and Regards,

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DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 CBDT introduces 'On-screen functionality' to reconcile mismatch between third-party information & ITR - **Press Release, Dated 26-02-2024**

Editorial Note : The IT Department has spotted mismatches in interest and dividend income data from third parties versus taxpayers' filed returns. An on-screen functionality has been made available in the Compliance portal to reconcile the mismatch. The on-screen functionality is self-contained and will allow the taxpayers to reconcile the mismatch on the portal itself by furnishing their response.

- 1.2 CBDT notifies 'Panjab University, Chandigarh' for the purpose of sec. 35 relief - **Notification No. S. O. 859(E), Dated 26-02-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Panjab University, Chandigarh' for the purpose section 35(1)(ii) of the Income-tax Act, 1961.

- 1.3 Income Tax Dept. conducts search operations in Chhattisgarh on Politically Exposed Person - **Press Release, Dated 09-02-2024**

Editorial Note : The Income-tax Department initiated search and seizure operations in the case of a Politically Exposed Person (PEP), his close associates and few Government officials on 31/01/2024. The search operation has resulted in seizure of unaccounted cash and jewellery exceeding Rs. 2.50 crore.

- 1.4 Govt. notifies 'Exchange of Information with respect to taxes' agreement with Samoa - **Notification No. S.O. 566(E), Dated 07-02-2024**

Editorial Note : The Ministry of Finance has notified the agreement for the Exchange of Information with respect to taxes with the Government of Samoa. The agreement was signed at Apia, Samoa on 12th day of March, 2020.

- 1.5 CBDT notifies ITR-2 & ITR-3 for AY 2024-25; Individuals/HUFs subject to tax audit can verify ITR using EVC - **Notification No. G.S.R. 83(E), Dated 31-01-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified Income-tax Return Form 2 and 3 for the Assessment Year 2024-25. Rule 12 has been amended to allow individuals and HUF, who are liable to tax audit under section 44AB, to verify return of income through electronic verification code.

- 1.6 CBDT issues corrigendum to new ITR-2, ITR-3 and ITR-5 to correct minor mistakes - **Notification G.S.R. No. 120(E), Dated 21-02-2024**

Editorial Note : The CBDT has issued corrigendum to its Notification G.S.R. 83(E), dated 31-01-2024 issued to notify new ITR-2, ITR-3 and ITR-5 applicable for the Assessment Year 2024-25. The corrigendum is issued to correct minor errors/omissions in the ITR forms.

- 1.7 CBDT releases order to waive off tax demand outstanding as of Jan 31, 2024; capped at Rs. 1 lakh per assessee - **Order F.NO. 375/02/2023, Dated 13-02-2024**

Editorial Note : Consequent to the finance minister's budget speech, the Central Board of Direct Taxes (CBDT) released an order to remit and extinguish the tax demands under the Income-tax Act, Wealth Tax Act, or Gift Act. The tax demand shall be waived off subject to maximum ceiling of Rs. 1 lakh for any specific taxpayer.

- 1.8 CBDT notifies 16 CIT(A) units in Guwahati, Kochi, Bhubaneshwar and Nagpur - **Notification No. S.O. 539(E), Dated 06-02-2024**

Editorial Note : The CBDT has appointed 16 Commissioners of Income-tax (Appeals) in Guwahati, Kochi, Bhubaneshwar, and Nagpur.

- 1.9 CBDT further extends time limit to process refund claimed ITRs up to AYs 2020-21 till April 30, 2024 - **Order F. No.225/132/2023/ITA-II, Dated 31-01-2024**

Editorial Note : The CBDT vide its order under section 119, dated 16.10.2023 and 01.12.2023, directed that all validly filed returns up to **Assessment Year 2020-21** bearing refund claims, which could be processed by 31-01-2024. The matter has been re-considered by the board, and it has been decided to extend the time further till 30.04.2024 in respect of returns of income validly filed electronically up to AY 2020-21

- 1.10 Net direct tax collection up to 01-02-2024 stands at Rs. 15.60 lakh crore, up by 20.25% from last year: CBDT - **Press Release, Dated 11-02-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has released provisional figures for Direct Tax collections. Direct Tax collection, net of refunds, stands at Rs. 15.60 lakh crore, which is 20.25 % higher than the net collections for the corresponding period of last year. This collection is 80.23% of the total Revised Estimates of Direct Taxes for FY 2023-24.

2. SUPREME COURT

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

- 2.1 **Subsidy** : Sales tax subsidy received by assessee-company would be treated as a capital receipt and not revenue receipt - **Principal Commissioner of Income-tax v. Sunbeam Auto (P.) Ltd.** - [2024] 159 taxmann.com 152 (SC)

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

- 2.2 **Royalty** : Where assessee, a US based company earned revenue from **software** sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation - **Commissioner of Income-tax v. Microsoft Regional Sales (P.) Ltd.** - [2024] 159 taxmann.com 471 (SC)

- 2.3 **Capital gains - Shares/units, transfer of** : SLP granted against order of High Court that where assessee-company, incorporated in **Singapore**, claimed benefit under article 13 of DTAA between India and Singapore in respect of capital gains arising on sale of shares of an Indian company since IRAS Singapore had granted assessee, a valid tax residency certificate (TRC) evidencing that it was a tax resident of Singapore and thereby eligible to claim tax treaty benefits between India and Singapore, revenue could not go behind such TRC as same was sufficient evidence to claim treaty eligibility, residence status, legal ownership and therefore, impugned reopening of assessment to determine issue of residence status was liable to be quashed - **Assistant Commissioner of Income-tax v. Blackstone Capital Partners (Singapore) VI FDI Three (P.) Ltd.** - [2024] 159 taxmann.com 389 (SC)

SECTION 21A OF THE CHARTERED ACCOUNTANTS ACT, 1949 - BOARD OF DISCIPLINE

- 2.4 Rule 9(3)(b) of (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 allowing Chartered Accountants' Board to refer misconduct matters to Disciplinary Committee related to furthering purposes of Act in ensuring that a genuine complaint of professional misconduct against member was not wrongly thrown out at very threshold, therefore, impugned rule fell within scope of general delegation of power under section 29A(1) - **Naresh Chandra Agrawal v. Institute of Chartered Accountants of India** - [2024] 159 taxmann.com 273 (SC)

SECTION 35ABB OF THE INCOME-TAX ACT, 1961 - TELECOMMUNICATION LICENCE

- 2.5 **Licence fee** : Review Petition dismissed against order of Supreme Court that where assessee engaged in business of telecommunication services, paid license fees to Department of Telecommunications (DoT) under

New Telecom Policy, 1999 which was non-transferable and non-assignable and furthermore said payment was intrinsic to existence of licence as well as trade itself, entry fee as well as variable annual licence fee paid would be capital in nature and was to be amortised in accordance with section 35ABB - **Bharti Hexacom Ltd. v. Commissioner of Income-tax** - [2024] 159 taxmann.com 357 (SC)

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

- 2.6 **Donations** : SLP granted against order of High Court that where assessee company, a State Government undertaking, incurred expenses towards contribution/donation made to educational institutions, trust, local bodies for discharging its corporate social responsibility, same was to be allowed as deduction under section 37(1) - **Principal Commissioner of Income-tax v. Gujarat Narmada Valley Fertilizers & Chemicals Ltd.** - [2024] 159 taxmann.com 66 (SC)

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

- 2.7 **Share application money** : SLP dismissed against order of High Court that where during assessment proceedings assessee had disclosed all relevant information regarding companies from which it had received share application money and Assessing Officer had not doubted such transaction, mere statement of an entry operator that companies in question were 'paper companies', by itself was insufficient to reopen assessment, unless Assessing Officer had further information that those companies were non-existent after making further inquiries into matter - **Assistant Commissioner of Income-tax v. Sabh Infrastructure Ltd.** - [2024] 159 taxmann.com 184 (SC)

- 2.8 **Gift** : SLP dismissed against impugned order of High Court that where assessee explained source of loan taken from his minor sons being amount gifted to them by their uncle, since assessee's brother categorically denied making any gift, amount in question was rightly added to assessee's taxable income - **Virendra Behari Aggarwal v. Commissioner of Income-tax** - [2024] 159 taxmann.com 28 (SC)

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

- 2.9 SLP granted against order of High Court that where issue regarding set-off of long term capital loss against long term capital gain of current year, was considered and deliberated in course of original assessment proceedings by Assessing Officer and no new tangible material was available with Assessing Officer that could justify reopening of assessment, it could be said that reopening was on account of mere change of opinion and was to be quashed - **Assistant Commissioner of Income-tax v. Noshir Darabshaw Talati** - [2024] 159 taxmann.com 390 (SC)

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

2.10 SLP dismissed against order of High Court that where Commissioner had not recorded any reason for assessee-trust's failure to meet conditions outlined in clauses (i) to (v) of section 80G(5), and no objection was raised regarding genuineness of activities of trust, denial of approval under section 80G solely due to lack of significant charitable activity as per its objects would be unjustifiable - **Commissioner of Income-tax (Exemptions) v. Gangadeen Niranjana Lal Data Charitable Trust** - [2024] 159 taxmann.com 208 (SC)

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

2.11 Draft assessment order : Notice issued in SLP against order of High Court that where at stage of passing draft order, ACIT had assessed tax, passed a final order and also issued a demand notice, procedure followed by ACIT was contrary to law and said mistake could not be cured under section 292B - **Commissioner of Income-Tax v. Cisco Systems Services BV, India Branch** - [2024] 159 taxmann.com 67 (SC)

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

2.12 Illustration : Notice issued in SLP against order of High Court that where Assessing Officer issued notice under section 148 beyond period of four years from end of assessment year and satisfaction under section 151 was accorded by Joint Commissioner, since in view of section 151(1) prior to its amendment it was only Principal Chief Commissioner or Chief Commissioner who could have accorded approval, impugned notice issued under section 148 on basis of satisfaction recorded by Joint Commissioner was without jurisdiction and deserved to be set aside - **Income Tax Officer v. Pinki Rajesh Modi** - [2024] 159 taxmann.com 65 (SC)

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

2.13 Satisfaction note : SLP dismissed against impugned order of High Court that recording of satisfaction note is pre-requisite and same must be prepared by Assessing Officer before he transmits record to other Assessing Officer who has jurisdiction over such other person under section 153C - **Principal Commissioner of Income-tax v. Smt. G. Lakshmi Aruna** - [2024] 159 taxmann.com 183 (SC)

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

2.14 Where High Court admitted an appeal filed by revenue against order of Tribunal on issue relating to levy of interest but upon final hearing, it simply dismissed appeal, stating that no substantial question of law arose from Tribunal's judgment, order of High Court would be

set aside and remanded back for fresh decision - **Commissioner of Income-tax v. I.T.C. LTD.** - [2024] 159 taxmann.com 117 (SC)

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

2.15 Condonation of delay : SLP dismissed against order of High Court that where revenue filed appeal after a delay of 4 years and 100 days against order of Tribunal, however, it failed to give any adequate or sufficient reasons to explain delay, appeal was to be dismissed as time barred - **Commissioner of Income-tax (IT)-1 v. Bharti Airtel Ltd.** - [2024] 159 taxmann.com 316 (SC)

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

2.16 Wrong claim, effect of : SLP dismissed against order of High Court that where issue whether amount of grant-in-aid was capital receipt or a revenue receipt was a debatable issue, penalty under section 271(1)(c) could not be imposed - **Commissioner of Income-tax, IT v. Gurdaspur Cooperative Sugar Mills (P.) Ltd.** - [2024] 159 taxmann.com 7 (SC)

SECTION 275 OF THE INCOME-TAX ACT, 1961 - PENALTY - BAR OF LIMITATION FOR IMPOSITION

2.17 Illustrations : SLP dismissed against order of High Court that where there was delay of ten years in issuing show cause notice (SCN) under section 274 for initiating penalty proceedings under section 271C, since no reasonable explanation was furnished for such delay, penalty proceeding would be barred by limitation as per provision of section 275(1)(c) and liable to be quashed - **Joint Commissioner of Income-tax, Range-74 v. Clix Capital Services (P.) Ltd.** - [2024] 159 taxmann.com 600 (SC)

3. HIGH COURT

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

- 3.1 **Agricultural land** : Where assessee claimed that parcel of land sold was agricultural land and AO rejected said claim, thereafter, Tribunal remanded matter for de novo consideration on ground that assessee had submitted certain documentary evidences which demonstrated that lands sold were in nature of agricultural land, in instant case matter was restored to AO only to examine evidence filed by assessee and conduct enquiry with concerned authorities of Government to find out true nature and character of land sold and only if, AO came to a conclusion on basis of material brought on record that lands sold by assessee were not in nature of agricultural land, then only he could conclude that land would come within purview of 'capital asset' as defined under section 2(14) - **Ashok Chaganlal Thakkar v. National Faceless Assessment Centre** - [2024] 159 taxmann.com 559 (Bombay)

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

- 3.2 **Object of general public utility** : Where assessee, charitable society, received grants from donors and TDS was deducted on said grants under sections 194C and 194J, said deduction of TDS would not be determinative factor for denial of benefits to assessee under sections 11 and 12, and receipts could not be treated as income of assessee unless specifically hit by proviso of section 2(15) - **Aroh Foundation v. Commissioner of Income-tax** - [2024] 159 taxmann.com 608 (Delhi)

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

- 3.3 Assessing Officer cannot assume jurisdiction to make an assessment in name of non-existing entity (a dissolved company) - **Jitendra Chandralal Navlani v. Union of India** - [2024] 159 taxmann.com 498 (Bombay)

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

- 3.4 **Interest Income** : Where assessee, a Mauritius based company, was carrying on bona fide banking business in Mauritius, interest earned by it in India on securities, being beneficially owned by it, was exempt under article 11(3)(c) of Indo-Mauritius DTAA - **Commissioner of Income-tax, (IT)-2 v. HSBC Bank (Mauritius) Ltd.** - [2024] 159 taxmann.com 180 (Bombay)
- 3.5 **Royalties/Fees for technical services - Managerial service** : Where assessee, Singapore based company, provided disaster recovery payout services in India, since payout service was integral feature of broadcasting and/or transmission of channels and ,thus, did not involve decision making and that service was

essentially to ensure consistency in broadcasting of channels and, thus, uninterrupted availability thereof ,receipts from same would not be in nature of FTS - **Principal Commissioner of Income-tax, (IT-2) v. Planetcast International (P.)** - [2024] 159 taxmann.com 714 (Delhi)

- 3.6 **Royalties/Fee for technical services - Advisory, consultancy and professional service** : Where assessee, a US based company, entered into an agreement with ICT, an Indian company, for purpose of engaging assessee's independent engineering services with respect to ICT's project for upgrading a road in Bangladesh, since assessee's Indian PE was not involved in road project undertaken by assessee in any manner, assessee's income from said project would not be entitled to TDS and, thus, Assistant Director was to be directed to grant nil rate TDS certificate to assessee under section 197 - **Sheladia Associates Inc. v. Assistant Director of Income-tax** - [2024] 159 taxmann.com 501 (Telangana)

- 3.7 **Non Discrimination - Scope of provision** : Where period in issue was assessment year 2006-07, amendment brought about in section 40(a) by virtue of Financial Act, 2014 would have no relevance, therefore, equal treatment or non-discrimination clause obtaining in articles 24(3) and 26(3) of India-Japan/India-USA DTAA would apply with regard to payment for purchases made by assessee from its group companies and, thus, Tribunal had rightly deleted disallowance made by Assessing Officer on account of non-deduction of tax at source (TAS) under section 40(a)(i) - **Commissioner of Income-tax-II v. Mitsubishi Corporation India (P.) Ltd.** - [2024] 159 taxmann.com 539 (Delhi)

- 3.8 **Permanent Establishment - Fixed PE, Place of business** : Where assessee had made purchases from its Thailand and Singapore based AEs without deducting TAS, since they do not have a PE in India, ad repayments made to them were not chargeable to tax in India and, thus, Tribunal had rightly deleted disallowance made by Assessing Officer on account of non-deduction of tax at source (TAS) under section 40(a)(i) - **Commissioner of Income-tax-II v. Mitsubishi Corporation India (P.) Ltd.** - [2024] 159 taxmann.com 539 (Delhi)

SECTION 10 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 - ASSESSMENT

- 3.9 **LOC** : Where based on search at premises of assessee, NRI, it was alleged that assessee had indulged in evading disclosure of a large amount of undisclosed foreign assets/income in offshore jurisdictions and LOC was issued against assessee, since assessee had not been called for investigation by authorities for two years, and in absence of any material which indicated that assessee was likely to be called for investigation in near future, Look Out Circular (LOC) opened against assessee was to be quashed - **Jayant Nanda v. Union of India** - [2024] 159 taxmann.com 674 (Delhi)

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

3.10 Government employees, in case of : Differentiation made by State between employees of Central and State Governments on one hand and other employees on other in section 10 (10 AA) is neither discriminating nor violative of article 14 of Constitution, therefore, a retired employee of SBI could not claim parity with employees of Central and State Government - *Purnendu Shekhar Sinha v. Union of India* - [2024] 159 taxmann.com 746 (Patna)

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

3.11 Reassessment : Where pursuant to order passed by Commissioner under section 263 in asst. order passed, while computing deduction u/s 10A there was exclusion of expenditure relating to the visits of the company's employees as well as expenses incurred relating to software development services to the clients, re-assessment u/s 147 read with section 148 being merely a product of change in opinion was impermissible in law - *EIT Services India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-11(4)* - [2024] 159 taxmann.com 424 (Karnataka)

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

3.12 General : Where assessee, a public charitable trust, entered into an agreement in 1994 with one Buildforce to sell a property and as per MOU, symbolic possession was given to Buildforce, once legal possession had been handed over by Assessee only in 2008-09 then it be presumed and accepted that said capital asset was held by Assessee trust wholly for charitable purposes till date of its sale and thus, assessee was entitled to claim the benefit and thus, no capital gain was to be assessed in hands of assessee in view of provisions of Section 11(1A) - *Commissioner of Income-tax (Exemption) v. Shree Ram Ashram Trust Nashik* - [2024] 159 taxmann.com 477 (Bombay)

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

3.13 Constitutional validity : Notice was to be issued to Attorney General of India in a writ challenging constitutional validity of section 22 read with sub-section (1) and sub-section (5) of section 23 - *Rabbani S. Khan v. Deputy Commissioner of Income-tax, Circle 41(1)(1)* - [2024] 159 taxmann.com 351 (Bombay)

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

3.14 Eligibility to claim : While approval of indigenous R & D facility may be a precondition for further consideration of a claim for deductions u/s 35(2AB), eligible expenditure incurred in creation of such a facility clearly is not to be restricted to a date anterior to grant of approval under rule 6(5A) - *Nagravision India (P.) Ltd.*

v. Secretary, Department of Scientific And Industrial Research - [2024] 159 taxmann.com 558 (Delhi)

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

3.15 Advertisement expenses : Where assessee, engaged in business of import and trading in foreign made foreign liquors in India, incurred expenditure towards advertisement and sales promotion on direction of a company and such expenditure had also benefited said company, since there was a direct nexus between expenditure incurred and business of assessee, assessee would still be entitled to claim deduction of said expenditure under section 37(1) - *Sun Tan Trading Co. Ltd. v. Deputy Commissioner of Income-tax, Circle 1(3)(1)* - [2024] 159 taxmann.com 217 (Bombay)

3.16 Management fees : Where Assessing Officer disallowed management fees paid by assessee to a concern as being excessive, since Assessing Officer had not brought any evidence on record which had driven him to take an adverse view and onus cast on assessee was in fact discharged, impugned disallowance made by AO was to be deleted - *Principal Commissioner of Income-tax v. Anand Divine Developers (P.) Ltd.* - [2024] 159 taxmann.com 452 (Delhi)

3.17 Compensation : Where to carry out mining operation/business activity, assessee had paid amount in question to land owners for damage caused to surface of land or for infringement of rights of land owner by conducting mining operations and business operations, payments were in nature of incidental expenditure to conduct mining and business operation, thus, impugned expenditure incurred by assessee was revenue in nature - *Commissioner of Income-tax v. Birla Corporation Ltd.* - [2024] 159 taxmann.com 651 (Calcutta)

3.18 Reassessment : Where AO issued a reopening notice on ground that assessee had debited certain expenditures such as such as delayed remittance of employees contribution to EPF on one occasion, consultancy for project, registrar and share transfer agent fees, etc. which were not allowable as per different provisions under Income Tax Act, since there was not even allegation in reasons recorded for reopening that there was any failure on part of assessee to fully and truly disclose all material facts necessary for assessment, impugned reopening notice issued after four years was to be quashed - *Everest Kanto Cylinder Ltd. v. Union of India* - [2024] 159 taxmann.com 51 (Bombay)

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

3.19 Subsidy : Sales tax incentive received by assessee under 1993 Package Scheme of Incentives of Maharashtra Government was a capital receipt - *Commissioner of Income-tax v. Indo Rama Textiles Ltd.* - [2024] 158 taxmann.com 685 (Delhi)

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

3.20 Excise duty : Where assessee transferred excise duty to prepaid account and added same to closing stock of finished products, since assessee had actually paid said amount in relevant assessment year and included in closing stock less excise duty paid, said excise duty was to be allowed as per section 43 - **Johnson and Johnson Ltd. v. Deputy Commissioner of Income-tax, Special Range-23** - [2024] 159 taxmann.com 361 (Bombay)

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

3.21 Illustrations : Payment received for providing various services in connection with mining activity would not be chargeable to tax as "fees for technical services" under Explanation 2 to section 9(1)(vii) but would be more appropriately assessable on under section 44BB - **Commissioner of Income-tax (IT)-3 v. Technip France Sas** - [2024] 159 taxmann.com 427 (Delhi)

SECTION 50 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 - PUNISHMENT FOR FAILURE TO FURNISH IN RETURN OF INCOME, ANY INFORMATION ABOUT AN ASSET (INCLUDING FINANCIAL INTEREST IN ANY ENTITY) LOCATED OUTSIDE INDIA

3.22 Others : Where Deputy Director of Income Tax filed a complaint before Magistrate, Panaji under Section 200 of Cr.P.C. r/w Section 50 of the Black Money Act, 2015 and Magistrate, Panaji, took cognizance of complaint and issued summon to assessee, a resident of Mumbai, since there was no material to show that Magistrate before issuing process, complied with mandatory requirement of sub section (1) of Section 202 of Cr.P.C, such order could not be sustained and matter was remanded for compliance of section 202 - **Gautam Dinesh Radia v. Union of India** - [2024] 159 taxmann.com 676 (Bombay)

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

3.23 Illustrations : Where Assessing Officer issued on assessee-buyer a reopening notice on ground that there was violation of provisions of section 50C in case of property purchased by assessee, since Section 50C applied to seller and not to buyer, reopening notice was to be quashed and set aside - **Aruna Surulkar v. Income Tax Officer, Ward-19(2)(4)** - [2024] 158 taxmann.com 677 (Bombay)

3.24 Where in assessment year 2016-17, department issued a notice for an unregistered property purchase and assessee raised objections in a writ petition, citing section 50C proviso, as no regular return was filed by assessee it would be better for him to file a proper reply to notice under section 148 and Assessing Officer would consider all relevant facts before concluding if any income escaped assessment for said year -

Venkataramachettiar Manoharan v. Income Tax Officer, Non-Corporate Circle-2(1) - [2024] 159 taxmann.com 536 (Madras)

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

3.25 Reassessment : Where assessee during assessment year 2013-14 earned capital gains and claimed exemption under section 54F by depositing same in capital gain deposit account and said claim was allowed by AO, thereafter in assessment year 2015-16, after thorough scrutiny exemption under section 54F was allowed, thus, AO couldnot re-appreciate same facts which were considered during assessment year 2015-16 to reopen assessment and disallow exemption for assessment year 2016- 17 on ground that three years from date of deposit in capital gain deposit scheme would be over on 30-01-2016 which would fall in previous year relevant to assessment year 2016-17 - **Bimalkumar Karshanbhai Tank v. Income-tax Officer, Ward 1(2)(1)** - [2024] 159 taxmann.com 711 (Gujarat)

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

3.26 Reassessment : Where AO issued reopening notice upon assessee on ground that as per information available with department, shares sold by assessee were taxable under provisions of section 56(2)(x)(c) and profit was liable to tax as short term capital gains, since reopening notice merely mentioned that information was received, however, it did not disclose what kind and content of information it was and further assessee had already showed such gains on sale of shares as exempt LTCG in its return, thus, notice was issued based on disclosure in existing return but on incorrect premise of nondisclosure, impugned reopening notice was to be quashed - **Smt. Vasanthi Ramdas Pai v. Income Tax Officer, Ward 1** - [2024] 159 taxmann.com 392 (Karnataka)

3.27 Share premium : Where Assessing Officer issued reopening notice against assessee on ground that it had charged excessive share premium and nature of share application money received was not substantiated, since reasons recorded for reopening did not dispute that during year assessee had issued shares at premium and that Assessing Officer was only questioning excessive share premium but not doubting transaction itself whereby share premium had been received, impugned notice was merely on basis of change of opinion and was to be set aside and quashed - **Godrej Projects Development (P.) Ltd. v. Income Tax Officer, 1(1)(4)** - [2024] 159 taxmann.com 32 (Bombay)

3.28 Share premium : Where High Court directed Assessing Officer to undertake exercise of fact finding by determining fair market value of shares in terms of Explanation to section 56(2)(viib), however AO without complying with directions passed order treating share premium as income from other sources, impugned order of assessment was to be set aside - **Vaani Estates (P.) Ltd. v. Additional / Joint / Deputy / Assistant Commissioner of Income-tax / Income Tax Officer** - [2024] 159 taxmann.com 648 (Madras)

3.29 Share premium : Money received on issue of shares at premium would be on capital account and would not give rise to any income - **Shendra Advisory Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Range 14(3)(2), Mumbai - [2024] 159 taxmann.com 557 (Bombay)**

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

3.30 Non-speaking order : It is mandatory for Assessing Officer to pass speaking order, taking into consideration not only material on record but also the reply filed - **R.k. Buildcreations (P.) Ltd. v. Income Tax Officer, Ward 1(2) - [2024] 159 taxmann.com 475 (Rajasthan)**

3.31 Jewellery : Where assessee received gift of jewellery valued at Rs. 34.68 lacs and out of said jewellery he sold jewellery valued at Rs. 9 lacs, since assessee offered explanation based on documentary evidences and evidences so filed were not found to be in genuine or fake, section 68 could not be invoked to make addition of Rs. 9 lacs in assessee's income - **Sanjay Saha v. Commissioner of Income-tax - [2024] 159 taxmann.com 451 (Calcutta)**

3.32 Jewellery : Where assessee received loan from various creditors who had sold their old jewellery to jewellers and gave loan to assessee out of said sale consideration, and assessee had disclosed name of jewellers to whom jewellery was sold and also established mode of payment through banking channel and further no inquiry was made from jeweller to whom jewellery was sold by creditors, since existence of deposits made to assessee by creditors was not in dispute, impugned addition under section 68 could not be sustained - **Deputy Commissioner of Income-tax. v. Paswara Papers Ltd. - [2024] 159 taxmann.com 604 (Allahabad)**

3.33 Reassessment. Where Assessing Officer reopened assessment of assessee and framed an assessment order under section 143(3) dated 30-3-2015 and thereafter he issued on assessee a notice under section 148 dated 30-3-2018 seeking to reopen aforesaid assessment on account of receiving accommodation entry from a party, since allegation leveled against assessee was similar, both when assessment order dated 30-3-2015 was passed and when notice under section 148 dated 31-3-2018 was issued, it was a clear case of change of opinion and thus invalid - **PMC Fincorp Ltd. v. Assistant Commissioner of Income-tax - [2024] 158 taxmann.com 533 (Delhi)**

3.34 Share premium : Where AO treated entire share premium received by assessee as unexplained cash credit under section 68 on ground that there was violation of provisions of section 78(2) of Companies Act, 1956, since Income-tax Act does not stipulate that non-compliance of any provision of other Act would result in turning a capital receipt into a revenue receipt,

it would not turn share premium amount received into a revenue receipt - **Shendra Advisory Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Range 14(3)(2), Mumbai - [2024] 159 taxmann.com 557 (Bombay)**

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

3.35 Reassessment : Where Assessing Officer reopened assessment on ground that assessee, a holding company, had made excess investment in shares of its subsidiary company and had debited interest on borrowed funds, since by no stretch of imagination, it could be stated that there had been failure on part of assessee to truly and fully disclose material facts, reopening notice issued under section 148 was not justified - **J M Financial Ltd. v. Deputy Commissioner of Income Tax, Circle 4(3)(1) - [2024] 159 taxmann.com 740 (Bombay)**

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

3.36 Writ Jurisdiction : Where there were several disputed question of facts as regards commission paid by assessee to foreign and local agents for procuring buyers and expenditure incurred for purchase of quantum of bullion/jewellery which did not call for adjudication in a summary proceedings under article 226 of Constitution, writ petition filed by petitioner was to be dismissed and petitioner was to be given liberty to file a statutory appeals before Appellate Authority both against impugned assessment order - **Mundhra Exim (P.) Ltd. v. National Faceless Assessment Centre - [2024] 159 taxmann.com 682 (Madras)**

3.37 Bogus purchases : Where Assessing Officer made an addition on account of bogus purchases solely on a statement made by only one party recorded under section 131 without adducing evidence of other necessary parties, Tribunal had was justified in deleting impugned addition - **Principal Commissioner of Income-tax, Central-2 v. Nitin Cylinders Ltd. - [2024] 159 taxmann.com 649 (Bombay)**

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

3.38 Reassessment : Where assessee, engaged in business of port facility, claimed deduction under section 80-IA, during scrutiny AO accepted said claim, thereafter AO issued reopening notice on ground that assessee had received compensation for loss of profit and damages to wharf, since AO had relied on financial statements which mentioned amount received as compensation and other documents furnished by assessee for reason to believe that income had escaped assessment, reopening was based on change of opinion and was to be quashed - **Chennai Container Terminal (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-2(1)(1) - [2024] 158 taxmann.com 680 (Bombay)**

3.39 Revision : Where assessee filed a revision petition raising claim for deduction under section 80-IA which was erroneously not claimed in return of income and Pr. Commissioner refused to entertain assessee's claim for

reason that assessee had decided not to exercise option as provided under sub-Section (2) of claiming deduction under section 80-IA, since Pr. Commissioner was not justified in refusing to entertain assessee's claim on merits, matter was to be remanded to Pr. Commissioner for re-consideration of revision petition filed by assessee on merit - **Tata-AldesaJV v. Union of India** - [2024] 159 taxmann.com 534 (Telangana)

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

3.40 Corporate guarantee : Where assessee had already charged a guarantee commission at 0.5% from associated enterprises, since average rate of corporate guarantee commission has been accepted for several decisions of the Tribunal at 0.5%, upward adjustment made on account of corporate guarantee commission cannot be sustained and, accordingly, same was deleted - **Principal Commissioner of Income-tax 2 v. Karam Chand Thapar & Bros Coal Sales Ltd.** - [2024] 159 taxmann.com 644 (Calcutta)

3.41 AMP expenses : Bright Line Test (BLT) could not be applied for benchmarking AMP expenses - **Principal Commissioner of Income-tax. v. Adidas India Marketing (P.) Ltd.** - [2024] 159 taxmann.com 426 (Delhi)

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

3.42 Methods for determination of - TNM method : Where TPO rejected TNMM to benchmark international transaction of sale of Paclitaxel and Disodium Pamidronate, since assessee had merely relied upon prices prevailing in different markets and regions and had clearly failed to bear in mind factors imbibed in Rule 10B(2) and that TPO had simply used database of export rates maintained by IBIS which did not satisfy stringent conditions of comparability regarding CUP Method, TNMM was to be considered as most appropriate method for determining ALP of said international transaction - **Principal Commissioner of Income-tax-3 v. Fresenius Kabi Oncology Ltd.** - [2024] 159 taxmann.com 680 (Delhi)

3.43 Comparable - Factors to determine - Foreign comparables : Indian Transfer Pricing guidelines issued by Institute of Chartered Accountants of India vide guidance note on report under section 92E by ICAI and transfer pricing guidelines issued by OECD do not prohibit foreign AE to be a tested party, therefore, foreign AE could be taken as a tested party for purpose of establishing ALP of assessee - **Principal Commissioner of Income-tax 1 v. ITC Infotech India Ltd.** - [2024] 159 taxmann.com 323 (Calcutta)

3.44 General : Where TPO passed TP order without considering or appreciating relevant statutory provisions as well as judgment of various High Courts relied upon

by assessee, since said judgments relied upon assessee were rendered prior to impugned order and TPO did not take into account relevant statutory provisions, it would be just and appropriate to remit matter back to TPO for reconsideration afresh in accordance with law - **Wipro Enterprises (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 159 taxmann.com 531 (Karnataka)

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

3.45 Period of limitation : Where TPO passed under section 92CA(3) on 13-2-2023, since order should have been passed on or before 30-9-2021 as per mandatory provisions comprised in section 153, impugned assessment order passed being time barred was liable to be set-aside - **Readers Digest Book & Home Entertainment (India) (P.) Ltd. v. Deputy Commissioner of Income-tax.** - [2024] 159 taxmann.com 287 (Delhi)

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

3.46 Cash donation : Where assessee-trust claimed to have received cash donations in crores from various donors, since donations received in cash had not been deposited by assessee in bank account and letters issued to donors under section 133(6) were returned unserved, Assessing Officer was justified in holding that cash donations were anonymous as contemplated under section 115BBC - **Everest Education Society v. Assistant Commissioner of Income-tax, Exemption** - [2024] 159 taxmann.com 446 (Bombay)

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

3.47 Personal hearing : Where cases of assessee were transferred under section 127 from Dy. Commissioner, Central Circle-22(2) to Dy. Commissioner, Central Circle-2, Faridabad, since objections/reply filed by assessee were not taken into account while passing said order of transfer under section 127, best way forward would be to set aside impugned order with liberty to Assessing Officer to pass a fresh order, albeit, as per law - **Samson Healthcare (P.) Ltd. v. Pr. Commissioner of Income-tax** - [2023] 157 taxmann.com 818 (Delhi)

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

3.48 Recovery of loose sheets of paper : Loose sheets of paper/diaries found during search containing typed entries, not shown to form part of books of account regularly maintained by assessee or his business entities, did not constitute material evidence and thus, impugned notices issued against assessee based on material contained in diaries/loose sheets, were required to be set aside, being void and illegal - **Deputy Commissioner of Income-tax, Circle-1(4) v. Sunil Kumar Sharma** - [2024] 159 taxmann.com 179 (Karnataka)

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

3.49 Limitation period : Where order of assessment was made beyond period of one month from end of month in which directives of DRP were received by Assessing Officer, there had been an abject failure on part of Assessing Officer to comply with mandatory timelines as incorporated in section 144C(13) and, thus, impugned assessment order was to be set aside - **Louis Dreyfus Company India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 13(1) - [2024] 159 taxmann.com 244 (Delhi)**

3.50 Draft assessment order : Where there was no variation in income as returned by assessee, Assessing Officer could not have passed a draft assessment order and made additions to income of assessee - **Commissioner of Income-tax (IT)-3 v. S.A.Chitra Ventures Ltd. - [2024] 159 taxmann.com 643 (Delhi)**

3.51 Scope of provision : Where assessee was seeking quashing of final filing of objections with DRP within 30 days prescribed but Assessing Officer had proceeded to pass assessment order, since assessee had already filed a reference raising its objections to DRP and Section 144C requires AO to pass final order in conformity with view expressed by DRP, order of AO will be set aside - **APM Terminals India (P.) Ltd. v. Assessment Unit, Income Tax Department-NFAC - [2024] 159 taxmann.com 742 (Bombay)**

3.52 Passing assessment order : Where order was passed under section 144C(1) but word "draft assessment" is missing, since any order whatsoever in form, by referring Section 144 (C) (1), should be construed only as a draft assessment order, said order should be considered as a draft assessment order - **Ramco Cements Ltd. v. Income Tax Officer, National Faceless Assessment Centre, Assessment Unit, Income Tax Department, Ministry of Finance - [2024] 159 taxmann.com 572 (Madras)**

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

3.53 Gross profit rate : Where assessee, engaged in trading of various commodities, disclosed gross profit rate of 4.6 per cent, since Tribunal had not recorded any finding so as to disbelieve gross profit rate disclosed by assessee, ad hoc addition of Rs. 4 lacs to gross profit of assessee, deserved to be deleted - **Sanjay Saha v. Commissioner of Income-tax - [2024] 159 taxmann.com 451 (Calcutta)**

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

3.54 Non-speaking order : Where Assessing Officer had passed an reassessment order making an addition to income of petitioner without stating whether it was a case of cash credit, unexplained investments, unexplained money, amount of investment, etc. not fully disclosed in books of account, unexplained expenditure,

etc., impugned order being unreasoned and non-speaking was liable to be quashed - **Pasari Casting and Rolling Mills (P.) Ltd. v. Income-tax Department - [2024] 159 taxmann.com 675 (Jharkhand)**

3.55 Reassessment : Where appeal proceedings were still pending before Tribunal regarding issue in question, notice under section 148 would be hit by bar under third proviso to section 147 which was not permissible in law - **EIT Services India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-11(4) - [2024] 159 taxmann.com 424 (Karnataka)**

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

3.56 Issuance of Notice u/s 148 for reopening of assessment of deceased-assessee would be unenforceable in eyes of law - **Urmila Saxena v. Central Board of Direct Taxes - [2024] 159 taxmann.com 64 (Madhya Pradesh)**

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

3.57 General : Notices issued on or after 1-4-2021 relating to assessment years 2013-14 and 2014-15, under Section 148 (old) by converting/treating the same as under newly inserted Section 148A by Finance Act, 2021 which came into effect from 1-4-2021 and all subsequent proceedings on the basis of aforesaid impugned notices are not sustainable in law, are quashed, as provisions of TOLA applied to pre-amended law as applicable till 31-3-2021 being barred by limitation - **Arati Marketing (P.) Ltd. v. Union of India - [2024] 159 taxmann.com 322 (Calcutta)**

3.58 Speaking order : Where Assessing Officer issued a reopening notice to assessee on ground that income had escaped assessment, however, in impugned reassessment order he did not make any reference to reply and documents filed by assessee along with supplementary/additional reply in response to notice issued under section 148A(b), impugned reassessment order was to be set aside - **Nitin Life Sciences Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 741 (Himachal Pradesh)**

3.59 Writ remedy : Where a notice issued to assessee under section 148 was only a show cause notice for which assessee was having remedy to file reply and raise all objections before Assessing Authority where proceedings were going on, writ petition filed by assessee challenging show cause notice issued by department was to be dismissed - **Mohd. Sajid Bains v. Income Tax Officer, Ward-1 - [2024] 159 taxmann.com 599 (Rajasthan)**

3.60 General : Where revenue authority served on assessee a notice under section 148A claiming escapement of income chargeable to tax and assessee responded to said notice and revenue authority passed an order holding that prima facie, income chargeable escaped within meaning of section 147, since section 148 permits an assessee to raise all issues at time of hearing, revenue shall follow due procedure laid down

in law and ensure that assessee be extended an adequate and reasonable opportunity to contest notice under section 148 - **Popatlal Umedalji Jain v. Income Tax Officer, Ward 1(5) - [2024] 159 taxmann.com 150 (Bombay)**

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

3.61 Reassessment : Where alleged escaped income was less than Rs. 50 lakhs, reopening notice issued on 21-7-2022 upon assessee in respect of assessment year 2016-17 being issued beyond three years was barred by limitation as per section 149 and consequently, reassessment order and demand notice being bad in law were liable to be quashed - **Sevensea Vincom (P.) Ltd. v. Principal Commissioner of Income-tax, Central Circle - [2024] 159 taxmann.com 500 (Jharkhand)**

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

3.62 Specified authority : Where AO issued reopening notice beyond period of four years, approval was required to be taken as per provisions of amended section 151 - **Ravindra Reddy Katamreddy v. Deputy Commissioner of Income-tax /Assistant Commissioner of Income-tax, Circle - [2024] 159 taxmann.com 5 (Bombay)**

3.63 Principal Chief Commissioner : Where more than three years had expired from end of assessment year 2018-19, sanctioning authority under section 151(2) should have been Principal Chief Commissioner of Income-tax and not Principal Commissioner and, thus, order under section 148A(d) and notice under section 148 issued on basis of approval granted by Principal Commissioner were to be quashed and set aside - **Holiday Developers (P.) Ltd. v. Income Tax Officer, Ward 5(1)(1) - [2024] 159 taxmann.com 178 (Bombay)**

SECTION 153 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - TIME-LIMIT FOR COMPLETION OF ASSESSMENT

3.64 Scope of provision : Where Tribunal vide order dated 20-2-2015, deleted additions made by Assessing Officer and partially remanded matter to file of AO to consider related issues afresh and AO on 27-12-2016 drew up a draft assessment order and a final assessment order came to be framed on 31-10-2017, since Assessing Officer had full knowledge of order of Tribunal and pursuant to such knowledge, he framed appeal effect order dated 12.03.2015, remaining effect should also have been given on or before 31.03.2016 and, thus, draft orders and final assessment orders were, therefore, barred by limitation - **Commissioner of Income-tax, IT-3 v. Qualcomm Incorporated - [2024] 159 taxmann.com 717 (Delhi)**

3.65 Effect of appellate orders : Where pursuant to order of ITAT, TPO passed order, however, Assessing Officer failed to pass any order to give effect to directions of TPO, Assessing Officer was to be directed to pass appeal effect order in accordance with law within eight weeks - **Aircom International India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 148 (Delhi)**

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

3.66 Where on account of an inactive e-mail id, assessee couldn't respond to reassessment notice which led to passing of an ex parte proceeding, since assessee was not provided sufficient and reasonable opportunity to contest proceedings by filing his reply documents, impugned notice and related orders violated principles of natural justice and deserved to be quashed - **Bellamane Narayan Shridhar v. Assessment Unit Income-tax Department National Faceless Assessment Centre - [2024] 159 taxmann.com 647 (Karnataka)**

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

3.67 Revised return after amalgamation : Where assessee-company while seeking approval for scheme of amalgamation was constrained to file standalone return of income for relevant assessment year 2021-22, since NCLT sanctioned scheme of amalgamation on 18-4-2022 and it was made effective from 1-4-2020, assessee's consolidated return of income filed by relying on section 170A, after its amalgamation, should have been basis for assessment for relevant assessment year - **Pallava Textiles (P.) Ltd. v. Assessment Unit Income Tax Department - [2024] 159 taxmann.com 246 (Madras)**

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

3.68 Delhi HC : Builder/Developer is liable to deduct TDS u/s 194C on EDC payments to HUDA - **Puri Constructions (P.) Ltd. v. Additional Commissioner of Income-tax - [2024] 159 taxmann.com 444 (Delhi)**

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

3.69 Pre-deposit of tax : Where Assessing Officer while considering request of assessee for waiver of pre-deposit of 20 per cent of assessed tax liability under section 220(6) had granted installment facility to assessee, and further, record of case would clearly demonstrate that assessee had not submitted his genuine hardship at time of filing of application under section 220(6) before lower authorities, there was no irregularity or illegality committed by revenue authorities in rejecting request of assessee - **Shyam Oil Extractions (P.) Ltd. v. Principal Commissioner of Income-tax. - [2024] 159 taxmann.com 555 (Chhattisgarh)**

3.70 Where assessee had filed an appeal along with a stay petition against a recovery order, it was incumbent upon Judge to protect assessee from recovery proceedings until appeal or stay petition was resolved - **Chalakkal Antony Jose Valloor v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income Tax Officer - [2024] 159 taxmann.com 494 (Kerala)**

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

3.71 Excess tax deduction at source : Where assessee-company, as per agreement with Dart USA agreed to be pay mold lease rent on basis of actual production days which was later enhanced and assessee while anticipating tax liability had made a deduction of TDS on higher side and deposited same, but subsequently, increase in mold lease rent did not happen, since no income had accrued to Dart USA qua excess TDS paid by assessee, Commissioner was to be directed to issue a refund of excess TDS with interest - **Tupperware India (P.) Ltd v. Commissioner of Income-tax, (IT) - [2024] 159 taxmann.com 532 (Delhi)**

SECTION 245D OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - PROCEDURE OF

3.72 Report of Commissioner : Where rule 9 report of Principal Commissioner reached Settlement Commission after expiry of 30 days, application was to be proceeded with in absence of said report, however, since department was represented and heard and existence of Rule 9 report was also before Commission, there was no reason to interfere with order of Settlement Commission on ground of absence of reasonable opportunity of hearing - **Principal Commissioner of Income-tax v. Union of India - [2024] 159 taxmann.com 537 (Patna)**

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

3.73 Condonation of delay: Where revenue against common order of Tribunal dated 15-3-2019 filed original appeals before High Court on 9-2-2021 after expiry of limitation period and High Court vide order dated 12-2-2021 after expiry of limitation period allowed revenue to withdraw appeals with liberty to file fresh appeals after removal of defects and revenue thereafter filed fresh appeals on 20-5-2022, since revenue in name of sufficient cause to explain delay in filing earlier appeals and instant appeals had presented merely a chronology of dates and stages, there was no occasion to condone delay in re-filing appeals - **Principal Commissioner of Income-tax (Central)-2 v. Versatile Polytech (P.) Ltd. - [2024] 158 taxmann.com 534 (Delhi)**

SECTION 271D OF THE INCOME-TAX ACT, 1961 - PENALTY - FOR FAILURE TO COMPLY WITH SECTION 269SS

3.74 Period of limitation : Where Assessing Officer passed assessment order on 31-12-2010 and initiated penalty

proceedings under sections 271D, 271E and 271AAA against assessee and Assistant Commissioner issued on assessee notice under section 274 on 13-6-2011 and passed penalty order on 30-12-2011, in view of judicial precedent on subject that once revenue decided to trigger penalty proceedings against assessee, it could not extend period of limitation as prescribed under section 275(1)(c) by deciding at its whim when penalty notice was to be issued, impugned penalty order was barred by limitation - **Principal Commissioner of Income-tax v. Thapar Homes Ltd. - [2024] 159 taxmann.com 450 (Delhi)**

SECTION 276B OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - FAILURE TO PAY TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES/DISTRIBUTED INCOME TO UNIT HOLDERS ETC.

3.75 Principal officer : Merely because a person holds an office in a corporate entity, it would not be sufficient to place that individual in clause (b) of section 2(35); he must be connected with management and administration of company - **Varun Sood v. Assistant Commissioner of Income-tax, Circle-74(1) - [2024] 159 taxmann.com 606 (Delhi)**

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

3.76 Wilful attempt to evade payment of tax : Where assessee had deposited tax due as declared in return along with interest within five days of service of show cause notice and it was neither a case of under reporting of income nor that of showing diminished tax liability, prosecution for alleged offence punishable under section 276C(2) was to be quashed - **Unique Trading Co. v. Income Tax Officer-18(3)(5) - [2024] 159 taxmann.com 216 (Bombay)**

3.77 Moratorium : Where assessee-company had gone into hands of new management pursuant to order passed by NCLT and, thus, new management took over assessee company with clean slate, continuation of criminal proceedings as against assessee could no longer subsist - **Vasan Healthcare (P.) Ltd. v. Deputy Director of Income Tax (Investigation) - [2024] 159 taxmann.com 135 (Madras)**

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

3.78 Section 279 does not prescribe a period of limitation with regard to compounding of offences and therefore, an assessee may file a compounding application at any time when proceedings are pending before Magistrate - **Photon Kathaas Production (P.) Ltd. v. Director General of Income-tax (Investigation) - [2024] 159 taxmann.com 119 (Madras)**

4. TRIBUNAL

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

- 4.1 Agricultural land** : Where during year assessee had sold an urban agricultural land, since assessee had itself accepted during proceedings under section 263 that impugned land was a capital asset, sale consideration of said land was exigible to capital gains tax as per relevant provisions of Act - **Dharam Pal Saini v. Principal Commissioner of Income-tax.** - [2024] 159 taxmann.com 285 (Delhi - Trib.)

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

- 4.2 Common shareholder** : Where assessee received loan from a company and said company and assessee had common shareholder **who** was in a position to control affairs of both lender company and receiver concern, deeming provisions of section 2(22)(e) would be attracted in hands of common shareholder and not assessee-concern - **Apeejay Surrendra Management Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-8(1)** - [2024] 159 taxmann.com 609 (Kolkata - Trib.)

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

- 4.3 Shares** : Where assessee entered into a share purchase agreement with a company for sale of shares and date of agreement was 20-4-2006 and date of actual transfer of shares was 30-6-2006, since as per share purchase agreement, date of contract of sale was 20-4-2006 and it was a conditional **sale** and only upon fulfilment of conditions, date of contract of sale was to be crystallized, date of agreement could not be date of sale and, thus, shares were to be treated as long-term capital asset liable to long-term capital gains - **Citicorp International Finance Corporation v. Addl. DIT (International Taxation), Range-1, Mumbai** - [2024] 159 taxmann.com 574 (Mumbai - Trib.)

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

- 4.4** Where assessee entered into a Joint Development Agreement and a General Power of Attorney with M/s. Plasma **Developers** Ltd and as per those agreements assessee transferred 62% of land in exchange for 38% of developed area to be constructed over time, resulting in an envisaged built-up area of 75,818 sq.ft , transaction between assessee and Plasma Developers Ltd, constituted a transfer u/s. 2(47)(vi) , liable to capital gain - **K.P. Muhammed Aliv.Income Tax Officer, IT** - [2024] 159 taxmann.com 11 (Cochin - Trib.)

- 4.5 Immovable property** : Where assessee-individual executed a registered sale-deed in favour of his 3 brothers as seller in his individual name and individual

PAN and had received a hefty consideration for transfer of his right in a property, capital gain earned by assessee on said sale was taxable - **Om Prakash Sharma v. Income-tax Officer, 3(4)** - [2024] 159 taxmann.com 605 (Indore - Trib.)

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

- 4.6 Revision** : Where case of assessee was selected for limited scrutiny assessment on sole issue of business expenses, Principal Commissioner could examine only that issue by invoking revision under section 263 which was before Assessing Officer during course of scrutiny assessment and not other issues regarding contractual income and professional charges received by assessee which had not been subject matter of assessment in a limited scrutiny assessment - **Mind Sports League (P.) Ltd. v. Principal Commissioner of Income-tax** - [2023] 157 taxmann.com 815 (Kolkata - Trib.)

- 4.7 Compensation** : Where assessee received compensation from builder for alternate accommodation on account of vacating flat for redevelopment, since even though assessee had not utilized rent received for his accommodation, he had faced hardship by vacating flat for redevelopment, said receipt of compensation for hardship was in nature of capital receipt - **Ajay Parasmal Kothari v. Income-tax Officer-30(1)(1), Mumbai** - [2024] 159 taxmann.com 570 (Mumbai - Trib.)

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

- 4.8 Deemed dividend** : Where assessee received loan from a company and said company and assessee had common shareholder who was in a position to control affairs of both lender company and receiver concern, income would be deemed to have accrued in hands of beneficial shareholder and not in hands of assessee-concern - **Apeejay Surrendra Management Services (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-8(1)** - [2024] 159 taxmann.com 609 (Kolkata - Trib.)

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

- 4.9 Royalty/Fee for technical services - General** : Where Assessing Officer had already passed final assessment order on 15-4-2021, i.e., prior to issuance of directions by DRP under section 144C (5) on 29-11-2021, final assessment order dated 27-12-2021 passed under section 143(3) read with 144C(13) pursuant to directions issued by DRP under section 144C(5) was liable to be set aside - **Cadmatic O Y v. Assistant Commissioner of Income-tax, (IT), Circle-2(1)(1)** - [2024] 159 taxmann.com 320 (Mumbai - Trib.)

- 4.10 Business profits - Business connection** : Where assessee, tax residents of UK and USA, received fees towards rendering certain services to RIL for its plants situated in Jamnagar SEZ and DRP directed AO to first treat receipts as business income attributable to PE and tax accordingly in terms with articles 6 and 7 of tax treaties and

secondly treat receipts as FTS/FIS to add it as business income on protective basis in terms of section 44DA, however, AO had added receipts as FTS/FIS on substantive basis without implementing specific directions of DRP, therefore, impugned assessment orders were wholly void-ab-initio and liable to be quashed - **Bechtel Ltd. v. Assistant Commissioner of Income-tax, Circle 1(1)(2), (IT) - [2024] 159 taxmann.com 319 (Delhi - Trib.)**

4.11 DTAA does not get triggered at all when a domestic company pays DDT under section 115-O; where contracting states to a tax treaty intend to extend treaty protection to domestic company paying dividend distribution tax, only then, domestic company can claim benefit of DTAA, if any - **Schaeffler India Ltd. v. Assistant Commissioner of Income-tax, Circle-1(2) - [2024] 159 taxmann.com 250 (Ahmedabad - Trib.)**

4.12 Royalties /Fees for technical services/ logistic services : Amount received by assessee, a US company from freight/logistic support services cannot be treated as FTS/FIS either under Act or under India-USA DTAA - **Expeditors International of Washington Inc. v. Assistant Commissioner of Income-tax, Circle-1(2)(2), IT - [2024] 159 taxmann.com 745 (Delhi)**

4.13 Royalty/Fee for technical services - Lease line charges : Amount received towards reimbursement of global account management charges is not in nature of FTS/FIS - **Expeditors International of Washington Inc. v. Assistant Commissioner of Income-tax, Circle-1(2)(2), IT - [2024] 159 taxmann.com 745 (Delhi - Trib.)**

4.14 Royalty/Fee for technical services - Lease line charges : Amount received by assessee, a non-resident company, for reimbursement of lease line charges for services rendered outside India could not be treated as royalty under Act as well as India-USA DTAA - **Expeditors International of Washington Inc. v. Assistant Commissioner of Income-tax, Circle-1(2)(2), IT - [2024] 159 taxmann.com 745 (Delhi - Trib.)**

4.15 Royalties/fees for technical services -Others : Channel placement fees was not royalty in terms of Explanation 2 to section 9(1)(vi) - **9x Media (P.) Ltd. v. Assistant Commissioner of Income-tax, 16(1) - [2024] 158 taxmann.com 681 (Mumbai - Trib.)**

4.16 Permanent establishment DAPE : Where DRP erred in not dealing with issue of assessee company having a DAPE in India on merits and erroneously directed Assessing Officer for verifying if issue of DAPE was decided in favour of assessee by Tribunal in earlier years, order of DRP was to be set aside and matter was to be remanded for fresh consideration - **Automation Anywhere Inc. v. Deputy Commissioner of Income-tax, Circle IT-1(1)(1) - [2024] 159 taxmann.com 679 (Delhi - Trib.)**

4.17 Permanent establishment - Fixed PE, Place of Business : Where assessee, US based company, had entered into Participating Carrier Distribution and services agreements with various airlines in India for facilitating booking of tickets and providing related services through computer reservation system (CRS) and subscriber agreements with global travel agencies to grant access to CRS, since assessee did not have any office or employee in India and was not responsible for providing of any computer, printers, communication lines etc. to travel agents in India, thus, it could not be held there was fixed place PE of assessee in India - **Sabre GLBL Inc. v. Assistant Commissioner of Income-tax, Circle-3(1)(2) - [2024] 159 taxmann.com 678 (Delhi - Trib.)**

4.18 Permanent Establishment - DAPE : Where there was no entity which was habitually procuring contracts for assessee or to bind assessee for contracts to be entered by that entity independently, thus, it could not be held that assessee had DAPE in India - **Sabre GLBL Inc. v. Assistant Commissioner of Income-tax, Circle-3(1)(2) - [2024] 159 taxmann.com 678 (Delhi - Trib.)**

4.19 Income from employment - Others : Where assessee, a non-resident, had rendered services outside India and assessee neither had any rest period nor leave period which was preceded and succeeded by services rendered outside India, salary received by assessee from an Indian company could not be taxed in India - **Vishal Gulati v. Assistant Commissioner of Income-tax, IT, Circle-1(3)(1) - [2024] 159 taxmann.com 713 (Delhi - Trib.)**

4.20 Income from employment - Others : Where assessee was residing and exercising employment in Ireland under complete control of BA PLC, Ireland for impugned assessment year and services were rendered in Ireland, and salary was also borne by BA PLC, Ireland, salary of assessee though derived from BA PLC, India on behalf of BA PLC, Ireland could not be said to be deemed to accrue or arise in India and was duly exempt from tax in India - **Anjali Puri v. Deputy Commissioner of Income-tax, (IT)-2(2)(2) - [2024] 159 taxmann.com 603 (Delhi - Trib.)**

4.21 Interest : Where interest on income tax refund was not effectively connected with PE either on basis of asset-test or activity-test, it was to be taxed under Article 12 of India-France DTAA - **Corning SAS India v. Deputy/Assistant Commissioner of Income-tax, (IT) - [2024] 159 taxmann.com 359 (Delhi - Trib.)**

4.22 Dividend - Rate of tax : As there was no specific notification for applicability of MFN benefits into India Netherlands DTAA, 10 per cent taxation rate would be applicable in respect of dividend received by assessee, foreign company from Indian company - **Huhtavefa B.V. v. Assistant Commissioner of Income-tax, (IT) 2(1)(1) - [2024] 159 taxmann.com 646 (Delhi - Trib.)**

4.23 Royalties/Fee for technical services - Make available : Where assessee had made payments to residents of USA, UK, Australia, Canada and Singapore towards repair and maintenance of helicopter parts, since in course of rendition

of service no technical knowledge, know-how, skill, etc. had been made available to assessee by service provider, said payments made to non-residents could not be treated as FTS/FIS chargeable to tax in India and, thus, assessee was not required to deduct tax at source under section 195 - **Global Vectra Helicorp Ltd. v. Deputy Commissioner of Income-tax, Circle-10(1) - [2024] 159 taxmann.com 282 (Delhi - Trib.)**

4.24 Permanent establishment - Fixed place of business :

Where assessee had made payments to residents of UAE towards repair and maintenance of helicopter parts, since none of entities had any PE in India, payments made to them could not be taxed in India as business profits and even, could not be taxed as other income in India since as per article 22 of India-UAE treaty, other income could only be taxed in country of residence i.e. UAE and, thus, said payments were not taxable in India as per treaty provisions, hence, there was no requirement for deduction of tax at source on payments made - **Global Vectra Helicorp Ltd. v. Deputy Commissioner of Income-tax, Circle-10(1) - [2024] 159 taxmann.com 282 (Delhi - Trib.)**

4.25 Royalties/fees for technical services - Repair and maintenance service :

Where assessee had made payments towards repair and maintenance of helicopter parts to residents of Netherlands, Spain and France, since entire repair and maintenance of helicopter parts was carried out outside India and nothing was done in India, payments made to non-residents were not chargeable to tax in India and, therefore, there was no obligation on assessee to withhold tax under section 195 - **Global Vectra Helicorp Ltd. v. Deputy Commissioner of Income-tax, Circle-10(1) - [2024] 159 taxmann.com 282 (Delhi - Trib.)**

4.26 Irrecoverable advances :

Advances given earlier by assessee in normal course of its business which had become irrecoverable owing to non-fulfilment of certain conditions would represent business loss and, thus, was to be allowed as deduction under section 37 - **Global Vectra Helicorp Ltd. v. Deputy Commissioner of Income-tax, Circle-10(1) - [2024] 159 taxmann.com 282 (Delhi - Trib.)**

4.27 Royalties or Fees For Technical Services - Make available :

Where services provided by group entities or holding companies to its subsidiaries as day to day management and support services to run their business did not make available technical knowledge, skill or experience, they would not be regarded as fees for technical services - **Swiss Re Asia (P.) Ltd. v. Deputy Commissioner of Income-tax (IT), Circle-4(2)(2) - [2024] 159 taxmann.com 34 (Mumbai - Trib.)**

4.28 Royalties / Fee for technical services - Telecom and transmission services :

Payment made by assessee (a Sri Lankan company) towards interconnect usage charges to a foreign telecom operator could not be brought to tax in India as 'royalty' under section 9(1)(vi) -

Dialog Axiata PLC v. Deputy Commissioner of Income-tax, (IT) 2(1)(1) - [2024] 159 taxmann.com 6 (Mumbai - Trib.)

4.29 Interest- Others :

Where during year assessee had made remittance to a foreign company of amounts invested in earlier years and hence, no taxability arose during year, notice issued under section 148 treating said remittance as unexplained investment, was to be declared as void ab initio - **BCP V Singapore FVCI (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle 1(1)(2) - [2024] 159 taxmann.com 63 (Delhi - Trib.)**

4.30 Royalties/Fee for technical services - Marketing services :

Payment received by assessee, a US based company, from its Indian customers on account of Centralized Services was not fee for technical services (FTS) either under article 12(4)(a) or 12(4)(b) of India-US DTAA - **Assistant Commissioner of Income-tax, Circle-3(1)(2), (IT) v. Sheraton Overseas Management Corporation - [2024] 159 taxmann.com 482 (Delhi - Trib.)**

4.31 Permanent Establishment - Fixed PE, Place of business :

Where Assessing Officer relied upon finding of his predecessor to hold that assessee had a Permanent Establishment (PE) in India, since Tribunal for said Assessment Year held that AIFACS building, which earlier constituted fixed place PE of assessee in India, was vacated and annual statement for financial year 2017-18, clearly indicated that no activity was undertaken by the liaison office and Management did not intend to continue liaison office and, thus, reasons for which departmental authorities as well as the Tribunal and High Court held existence of PE in earlier years, no longer existed in impugned assessment year, assessee had no PE in India in the year under consideration - **GE Energy Parts Inc. v. Assistant Commissioner of Income-tax, International Taxation Circle-1(3)(1), New Delhi - [2024] 159 taxmann.com 573 (Delhi - Trib.)**

4.32 Royalty /Fees for technical services- Business support services :

Where assessee, a company incorporated in Thailand, had rendered business support services to its Indian group entities and AO held same to be taxable as FTS, in absence of Fee for Technical Services (FTS) clause in India-Thailand DTAA, such receipts could not be brought to tax in India - **Solvay Asia Pacific (P.) Ltd. v. Deputy Commissioner of Income-tax. (IT), Circle-3(1)(2) - [2024] 159 taxmann.com 90 (Delhi - Trib.)**

4.33 Royalties or fees for technical services- Management services :

Where assessee, a Singaporean company, had received amount from Indian subsidiary on account of rendition of management service and Assessing Officer held that said amount was taxable as FTS in terms of section 9(1)(vii) and, thus, made addition to total income of assessee, since Assessing Officer had failed to demonstrate that make available condition enshrined in Article 12(4)(b) of India-Singapore DTAA was satisfied, impugned addition was to be deleted - **Tagit (P.) Ltd. v. Deputy Commissioner of Income-tax, Corporate Circle-3(1) - [2024] 159 taxmann.com 93 (Delhi - Trib.)**

4.43 Conditions precedent : Where denied exemption under section 11 to assessee-trust on ground that assessee had collected capitation fees, since there was no evidence to show that either trust or trustees had collected capitation fees, there was no violation as per section 13 and exemption under section 11 could not be denied - **Padmashree Dr. D.Y. Patil University v. Deputy Commissioner of Income-tax, Central Circle 7(1) - [2024] 159 taxmann.com 353 (Mumbai - Trib.)**

4.44 Where upon denial of exemption under section 11, assessee-trust sought deduction under section 10(23C)(iiiad) due to low turnover and educational engagement which was rejected by Commissioner(Appeals), since assessee requested another opportunity to provide relevant documents proving genuine engagement in educational activities, matter would be remanded to CIT(A) for fresh adjudication - **Vidya Sagar Education Trust v. Income Tax Officer, Ward-4(2)(5) - [2024] 159 taxmann.com 149 (Ahmedabad - Trib.)**

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

4.45 Corpus donation : Where assessee-trust had received corpus donation in form of development fees for some parents of students, since parents nowhere stated that assessee trust had put a condition of giving donation for admission of their wards, corpus donations received in form of development fees and also other corpus donations would be eligible for exemption under section 11 - **Padmashree Dr. D.Y. Patil University v. Deputy Commissioner of Income-tax, Central Circle 7(1) - [2024] 159 taxmann.com 353 (Mumbai - Trib.)**

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

4.46 Registration application of assessee-trust could not be rejected under section 12A(1)(ac)(iii) on mere mismatch of name especially when steps had been taken by assessee to update correct name in PAN database - **Surat Halai Memon Jamat v. Commissioner of Income-tax, (Exemption) - [2024] 159 taxmann.com 281 (Surat-Trib.)**

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

4.47 Cancellation of registration : Where assessee filed Form No.10AB seeking registration u/s.12A(1)(ac)(iii) and CIT(Exemption) issued hearing notices on 27-5-2023 and 06-6-2023 to assessee seeking details and recorded that as assessee failed to comply with notices sent said application could not be processed as per provisions of section 12AB, since there was no evidence that said notices were issued on registered e-mail id of assessee order of CIT (Exemption) was set aside and matter was remanded back to his file for fresh

adjudication - **Adaikathal Nallathankgal Padaippu Veedu v. Income tax Officer, Exemptions Ward - [2024] 159 taxmann.com 465 (Chennai - Trib.)**

4.48 Where CIT(E) rejected registration application of assessee-university on basis of deficiencies highlighted by CAG and in audit reports, though valid concerns were noted, impact of those deficiencies on university's objectives was not clearly established and therefore, case would be remanded to CIT(E) for reconsideration - **Guru Ghasidas Vishwavidyalaya v. Commissioner of Income-tax - [2024] 159 taxmann.com 716 (Raipur - Trib.)**

4.49 Cancellation of registration : Where CIT(Exemption) rejected assessee's application for registration u/s.12A(1)(ac)(ii) treating it as infructuous and non-maintainable on ground that assessee ought to have applied u/s.12A(1)(ac)(iii) instead of 12A(1)(ac)(ii) , since assessee had simpliciter made a technical mistake in applying u/s.12A(1)(ac)(ii) instead of 12A(1)(ac)(iii) and even now assessee had filed fresh Form No.10AB seeking registration u/s.12A(1)(ac)(iii) ,order of CIT(Exemption) was set aside and matter was remanded back to his file for fresh adjudication - **Sri Jeyamkonda Choleeswara Soundaranayaki Amman Kumbhabisheka Malar Kuzhu v. Income Tax Officer, Exemptions Ward - [2024] 159 taxmann.com 502 (Chennai - Trib.)**

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

4.50 Where AO had shown dissatisfaction over suo-moto disallowance made by assessee in comparison to amount of exempt income and amount of investment made by assessee company to earn exempt income, in such circumstances, matter would be restored to file of Assessing Officer for deciding de novo after verification of basis of allocation of expenses under different heads from relevant material to be furnished by assessee - **National Stock Exchange of India Ltd. v. Deputy Commissioner of Income-tax, Circle 7(1)(1) - [2024] 159 taxmann.com 472 (Mumbai - Trib.)**

4.51 Rule 8D : Where Assessing Officer made disallowance under section 14A by invoking Rule 8D, since Rule 8D was not applicable for assessment year 2007-08, disallowance under section 14A was to be restricted to 5 per cent of exempt income - **Tata International Ltd. v. Additional Commissioner Income-tax - [2023] 157 taxmann.com 901 (Mumbai - Trib.)**

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

4.52 Powers of enhancement of Commissioner (Appeals) : Where expenditure incurred by company in which assessee was director was added as unexplained expenditure in hands of assessee under section 69C by AO and further CIT(Appeals) treated very same sum as perquisite in hands of assessee on premise that said expenditure was incurred by company on behalf of its director under section 17(2), since CIT (Appeals) had not given enhancement notice to assessee

proposing to shift addition from unexplained expenditure under section 69C to perquisite under section 17(2), thereby violating requirements of provisions of section 251(2), impugned addition made to income of assessee was to be deleted - **Mandeep Singh Anand v. ACIT - [2024] 159 taxmann.com 1225 (Delhi - Trib.)**

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

4.53 Revision : Where AO after calling for details and evidences from assessee had taken a plausible view by accepting explanation of assessee that loss debited to profit and loss account was not related to penny stock but was normal business loss related to real estate business of assessee which was eligible for being carried forward and set off against profits of subsequent years, impugned revision under section 263 was unjustified - **Konsortia Construction Company (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] 157 taxmann.com 811 (Kolkata - Trib.)**

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

4.54 Non-renewal of contract : Non renewal of contract does not mean termination and, therefore, compensation received by assessee-employee on non renewal of contract with employer was by way of mutual agreement and, thus, same was not taxable under section 28(ii) - **Ms. Padma Rao v. Commissioner of Income-tax, Ward-61(1) - [2024] 159 taxmann.com 30 (Delhi - Trib.)**

SECTION 28(iii) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME - TRADE/PROFESSIONAL ASSOCIATION

4.55 Where assessee an association headquartered in Switzerland, comprising Chartered Accountant firms from various corners of globe received subscription fees, technical subscription fees, and other recoveries from its member firms in India, since association operated for member convenience without a profit motive therefore, payments made to association by Indian entities would be exempt from taxation having been covered by principle of mutuality - **Deputy Commissioner of Income-tax, Circle-1(2)(2), (IT) v. Deloitte Touche Tohmastu - [2024] 159 taxmann.com 91 (Delhi - Trib.)**

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

4.56 PF/ESI : Where AO disallowed assessee's claim of deduction in respect of employees share of contribution to PF and ESIC on ground that said contribution was not deposited on or before due date as specified under respective Acts, since assessee-company deposited employee's share of contribution within five days grace period as allowed vide manual of accounting procedure and on perusal of communication from EPFO it was noted that grace period was allowed during era when

wages corresponding dues under EPF schemes were calculated manually, no disallowance of such payment could be made - **Strides Pharma Science Ltd. v. Deputy Commissioner of Income-tax, Circle-15(3)(2) - [2024] 159 taxmann.com 33 (Mumbai - Trib.)**

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

4.57 PF/ESI : Where claim for deduction of delayed deposit of employees share of contributions towards labour welfare funds was made within "due date" prescribed under sub-section (1) of section 139 for filing of assessee's return of income, was at stage of filing of return of income/revised return of income by assessee-company a possible and plausible view, same would not attract penalty under section 271(1)(c) - **Deputy Commissioner of Income-tax, Circle-1(1) v. Chhattisgarh State Power Transmission Co. Ltd. - [2024] 159 taxmann.com 10 (Raipur - Trib.)**

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

4.58 Construction cost : Where assessee incurred construction cost of concrete bridge on culvert in front of his shop, since said bridge was essential to provide improved accessibility to shop to facilitate greater footfall and capital value addition in turn, said expenditure was capital in nature and would not become revenue expenditure merely for reason that it was incurred in connection with cost of improvement to promotion of business activities which ultimately resulted in efficiently carrying on day-to-day business - **Joginder Singh v. ACIT/DCIT, Central Circle - [2024] 159 taxmann.com 425 (Amritsar - Trib.)**

4.59 ESOP Expenses : Where assessee claimed deduction of expenses related to Employee Stock Options (ESOP) aggregating certain amount, since claim of deduction of ESOP expenditure was made by assessee in revised return filed which was well within time limit prescribed under section 139(5), assessee's claim of deduction was to be allowed - **Fortune Park Hotels Ltd. v. ACIT - [2024] 159 taxmann.com 1217 (Delhi - Trib.)**

4.60 Statutory contribution made by assessee-stock exchange towards Core Settlement Guarantee Fund (Core SGF) would be treated as an allowable expenditure under section 37(1) as same had been incurred exclusively in course of carrying on its business - **National Stock Exchange of India Ltd. v. Deputy Commissioner of Income-tax, Circle 7(1)(1) - [2024] 159 taxmann.com 472 (Mumbai - Trib.)**

4.61 Where assessee-company claimed deduction towards lease premium amortized on lease hold land, since Tribunal in assessee's own case on a similar issue for other assessment year had remanded matter for reconsideration, following said decision of Tribunal, this issue would also be restored to file of AO for deciding afresh - **National Stock Exchange of India Ltd. v. Deputy Commissioner of Income-tax, Circle 7(1)(1) - [2024] 159 taxmann.com 472 (Mumbai - Trib.)**

4.62 Where assessee received maintenance charges from tenants, claiming it was reimbursement for expenses incurred, particularly for security services which was considered as income from house property by AO, since in assessee's own case for A.Y. 2005-06 Tribunal had restored said matter back for reconsideration, in view of said facts, this issue would also be restored to file of CIT(A) for fresh decision - **National Stock Exchange of India Ltd. v. Deputy Commissioner of Income-tax, Circle 7(1)(1) - [2024] 159 taxmann.com 472 (Mumbai - Trib.)**

4.63 Speed money / illegal money / gratification : Expenditure in nature of gratification paid by assessee engaged in construction business to ministers/officials being illegal gratification to various persons (Minister, Commissioner, Urban Secretary, Mayor etc.) for grant of contract had rightly been disallowed - **Nagarjuna Construction Company Ltd. (NCCL) v. Deputy Commissioner of Income-tax, Central Circle 1(1) - [2024] 159 taxmann.com 538 (Hyderabad - Trib.)**

SECTION 44BBA OF THE INCOME-TAX ACT, 1961 - NON-RESIDENTS, INCOME OF FROM OPERATION OF AIRCRAFT

4.64 Service tax : Only such amounts which are paid or payable for the service provided by the assessee can form part of the gross receipts for the purpose of computation of gross total income u/s. 44BBA(1) - **Cathay Pacific Airways Ltd. v. Assistant Commissioner of Income-tax (IT), Circle-1(1) - [2024] 159 taxmann.com 92 (Kolkata - Trib.)**

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

4.65 Where assessee expired when assessment order was being framed and in absence of any specific statutory provision under Income-tax law which requires legal heirs to intimate Department about death of assessee, assessment order could not be held to be valid only for reason that legal heirs of deceased assessee had not informed about death of assessee, and thus, said assessment order could not be revised by taking recourse to 263 proceedings - **Smt. Bhavnaben K. Punjani v. Principal Commissioner of Income-tax-2 - [2024] 159 taxmann.com 650 (Rajkot - Trib.)**

4.66 Family arrangement : Where assessee along with other coparceners succeeded to property on demise of his father on 22-3-1995 and subsequently a suit for partition was filed and a compromise decree was arrived on 21-4-2015, since assessee must be deemed to have acquired property under such decree on devolution of same from father, but not through other coparceners, assessee was entitled to offer entire capital gains arising in respect of property on 21-1-2016 as long-term capital gains - **Bharat Kumar Ramani v. Income-tax Officer - [2024] 158 taxmann.com 532 (Hyderabad - Trib.)**

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

4.67 Sub-section (iv) : Where Assessing Officer had carried out adequate enquiries in original assessment proceedings and had accepted contentions of assessee by allowing claim of loss incurred by assessee on sale of shares of its subsidiary and thus, passed a well reasoned order, revision proceedings under section 263 could not be invoked - **Grasim Industries Ltd. v. Principal Commissioner of Income-tax, Central (1) - [2024] 158 taxmann.com 686 (Mumbai - Trib.)**

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

4.68 Cost of improvement : Where assessee sold his shop and claimed construction cost of concrete bridge on culvert in front of his shop as cost of improvement while computing LTCG, since said bridge was constructed so that customers could have direct access to shop in order to increase business turn over, cost incurred was to be allowed as cost of improvement - **Joginder Singh v. ACIT/DCIT, Central Circle - [2024] 159 taxmann.com 425 (Amritsar - Trib.)**

4.69 Illustrations : Where assessee availed benefit of both forex fluctuation and cost inflation index while computing capital loss, since assessee had not invested in foreign currency but in INR, cost inflation index was to be computed with reference to assets purchased in Indian currency and could not be applied on foreign currency - **ICICI Bank Ltd. v. Deputy Commissioner of Income-tax. - [2024] 159 taxmann.com 747 (Mumbai - Trib.)**

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

4.70 Construction : Where assessee claimed deduction under section 54F for expenditure incurred on construction of residential building, since two of parties from whom assessee purchased material had denied to have made any such transaction with assessee and inspector deputed by Assessing Officer on enquiry found that bills drawn were not genuine, thus, assessee could not prove genuineness of expenses incurred for construction of residential building, Assessing Officer was justified in disallowing abovesaid claim made by assessee - **Ramkrishna Ghosh v. ITO - [2023] 157 taxmann.com 821 (Kolkata - Trib.)**

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

4.71 Bonus shares : Bonus shares are issued only out of capitalization of existing reserves in company and overall wealth of a shareholder post bonus or pre bonus remains same; therefore, provisions of section 56(2)(vii)(c) are not attracted for taxing bonus shares as income from other sources - **Deputy Commissioner of Income-tax, Circle-16(1) v. Kul Prakash Chandho - [2024] 158 taxmann.com 676 (Delhi - Trib.)**

during demonetization period, not every deposit during demonetization period would fall under category of unaccounted cash, however, burden was on assessee to establish genuineness of deposit in order to fall outside scope of unaccounted cash, therefore, matter was to be remanded back and assessee was to be directed to establish all relevant details to substantiate its claim and Assessing Officer should verify all details/evidences filed by assessee before making addition - **Huvinabhavi Siddhalingappa v. Commissioner of Income-tax, NFAC, New Delhi - [2023] 157 taxmann.com 824 (Bangalore - Trib.)**

4.82 Share application money : Where assessee-company received share application money from a director, since assessee had adduced several evidences to discharge its initial onus to prove identity, creditworthiness and genuineness of transaction of share application money which Assessing Officer had not considered, impugned addition under section 68 made on account of said share application money was rightly deleted by Commissioner (Appeals) - **Income Tax Officer v. VS Broadcasting (P.) Ltd. - [2023] 157 taxmann.com 822 (Delhi - Trib.)**

4.83 Bogus LTCG on sale of shares : Where assessee claimed exemption under section 10(38) on account of LTCG arose on sale of shares of a company, since there was no discrepancies in documents filed by assessee claiming deductions under section 10(38) and Revenue had not brought on record any materials linking assessee in any dubious transactions relating to entry, price rigging or exit providers, impugned addition made by Assessing Officer under section 68 treating such LTCG as bogus was to be deleted - **Farzad Sheriar Jehani v. Income Tax Officer, 17(1)(4) - [2024] 159 taxmann.com 9 (Mumbai - Trib.)**

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

4.84 Cash deposit : Where assessee was having sufficient cash balance for making deposits in his bank account as demonstrated by cash book, addition made by Assessing Officer on account of unexplained cash deposits under section 69 was to be deleted - **Om Prakash Sharma v. Income-tax Officer, 3(4) - [2024] 159 taxmann.com 605 (Indore - Trib.)**

4.85 Stock : Where assessee surrendered certain amount on account of excess stock during survey proceedings, since there was clear nexus of stock physically found with stock in which assessee regularly dealt in and recorded in books of account, difference in stock should be treated as business income and thus, income surrendered could not be brought to tax under deeming provisions of section 69 and same had to be assessed to tax under head business income - **Tarlochan Singh v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1252 (Chandigarh - Trib.)**

4.86 Reasons to believe : Where assessee purchased a residential property and as per registered sale deed said property was purchased for Rs 12 lakhs, AO issued reopening notice on observation that in agreement to sell dated 12-2-2012 assessee had agreed to pay Rs 34.71 lakhs for purchase of property, since existence of agreement to sell was not disputes, since AO had 'prima facie belief' that income had escaped assessment, same would be enough at stage of reopening - **Smt. Geeta Devi Sharma v. Income Tax Officer, ward 6(4) - [2024] 159 taxmann.com 483 (Jaipur - Trib.)**

4.87 Additional evidence : Where Commissioner (Appeals) did not admit additional evidences which were in shape of affidavits of cash creditors who provided financial help to assessee and of witnesses to sale transaction, since Commissioner(Appeals) himself commented on merit of said evidences and said evidences went to root of controversy in hand, denial to admit evidences was not justified - **Smt. Geeta Devi Sharma v. Income Tax Officer, ward 6(4) - [2024] 159 taxmann.com 483 (Jaipur - Trib.)**

4.88 Reassessment : Where AO made additions on account of undisclosed income on ground that assessee actually purchased property for Rs 34.71 lakhs as per agreement to sale instead of Rs 12 lakhs as per registered sale deed, since agreement was merely a photocopy not original agreement and seller had admitted to selling property for Rs 12 lakhs as actual sale consideration, furthermore assessee claimed receipt of financial assistance for which cheque numbers with bank details were duly mentioned, additions made on account of undisclosed income were to be deleted - **Smt. Geeta Devi Sharma v. Income Tax Officer, ward 6(4) - [2024] 159 taxmann.com 483 (Jaipur - Trib.)**

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

4.89 General : Where during survey, assessee had declared that entire amount of excess cash found from business premises was generated from undisclosed sale of medicine and revenue was unable to show any other sources related to excess cash, source of excess cash was from business and, thus, application of section 115BBE on amount of excess cash found during survey was bad in law - **Tejpal Singh v. Assistant/Deputy Commissioner of Income-tax, Central Circle - [2024] 158 taxmann.com 679 (Amritsar - Trib.)**

4.90 Where during demonetization period, assessee-society deposited certain sum in its bank account, since assessee didn't respond adequately to several notices issued by AO and neither placed any material/evidence on record to substantiate sources of credit in its bank account, said cash deposit was rightly treated as unexplained income under section 69A - **Adim Jati Seva Sahkari Samiti Maryadit v. Income Tax Officer-2 - [2024] 159 taxmann.com 8 (Raipur - Trib.)**

4.91 Cash in hand : Where Assessing Officer treated closing balance of cash in hand as cash credit under section 68 however as per assessee cash in hand in books was only Rs.

4 000 and rest was available in accounts since Assessing Officer made incorrect assumption that abovementioned cash in hand was not shown in ITR said addition was unjustified - **Swapan Chandra Mandal v. Income-tax Officer** - [2024] 159 taxmann.com 1251 (Kolkata - Trib.)

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

4.92 Building : Where during course of survey assessee surrendered certain amount on account of addition made to factory building, since source of investment in said building was stated to be out of business income which was duly honoured by assessee while filing return of income wherein amount was offered to tax under head "business income" and tax was paid on same at normal rate, provisions of section 69B read with section 115BBE could not be invoked so as to make addition on account of said surrendered amount treating it as unexplained investment - **DDK Spinning Mills v. Deputy Commissioner of Income-tax** - [2023] 157 taxmann.com 817 (Chandigarh - Trib.)

4.93 Excess stock : Where AO treated amount surrendered by assessee during course of survey as excess stock under section 69B, since income surrendered by assessee was from business operations, same could not be brought to tax under deeming provisions of section 69B read with section 11BBE - **Montu Shallu Knitweaves v. Deputy Commissioner of Income-tax, Central Circle-3** - [2024] 159 taxmann.com 677 (Chandigarh - Trib.)

4.94 Unrecorded sales : Where during search at residential premises of director of assessee-company, AO found that assessee had made out of books sales and added entire undisclosed sales to income of assessee, however, Commissioner (Appeals) restricted same to profit element embedded therein estimated at rate of 8 per cent of sales, since revenue had not given any basis to justify applying higher rate of net profit at 12.5 per cent instead of 8 percent, addition restricted by Commissioner (Appeals) to 8 per cent of sales was to be upheld - **ACIT v. Conor Granito (P.) Ltd.** - [2024] 159 taxmann.com 1209 (Rajkot - Trib.)

4.95 Unrecorded sales : Where Commissioner (Appeals) failed to give benefit of income surrendered by assessee voluntarily against addition confirmed by him on account of unaccounted sales, Assessing Officer was to be directed to grant assessee benefit of income surrendered by assessee against addition confirmed by Commissioner (Appeals) - **ACIT v. Conor Granito (P.) Ltd.** - [2024] 159 taxmann.com 1209 (Rajkot - Trib.)

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

4.96 Contract receipts : Where assessee earned a huge profit of more than 92 per cent of total project cost from Government contracts which was unimaginable and

beyond preponderance of human probability, matter was to be remanded back for fresh examination of details of work contracts awarded and payment received from Government which were relatable to various stages of work contract - **Deputy Commissioner of Income-tax, Central Circle-3(1) v. LEPL Projects Ltd.** - [2024] 159 taxmann.com 709 (Hyderabad - Trib.)

4.97 Bank account : Where Assessing Officer treated debit balance from bank account as unexplained income of assessee under section 69C since he was unable to lay his hands on any of details that such payments were not in connection with business of assessee said addition was unjustified - **Swapan Chandra Mandal v. Income-tax Officer** - [2024] 159 taxmann.com 1251 (Kolkata - Trib.)

4.98 Applicability of : Where expenditure incurred by company in which assessee was director was reflected in books of company and was sourced out of regular banking channels from funds of said company, said amount could not be added as unexplained expenditure in hands of assessee under section 69C - **Mandeep Singh Anand v. ACIT** - [2024] 159 taxmann.com 1225 (Delhi - Trib.)

SECTION 80G OF THE INCOME-TAX ACT, 1961 - DONATION - DEDUCTION IN RESPECT OF

4.99 Approval of donations : Where assessee-trust which was set up in year 1953 and obtained registration under section 12A in year 1977 for first time, obtained provisional approval under section 80G(5) on 16-12-2022 and immediately applied for regular approval on 2-2-2023, since assessee-trust was an old charitable institution which had been enjoying registration under section 12A, it was not required to file application for regular approval within six months of commencement of its activities and thus, impugned order rejecting application for regular approval was to be set aside - **Shree Navsari Modh Vanik Panch v. Commissioner of Income-tax (Exemptions)** - [2024] 159 taxmann.com 1249 (Surat-Trib.)

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

4.100 Interest earned by assessee-co-operative credit society from co-operative bank is eligible for deduction under section 80P(2)(d) - **Sardar Patel Co-Operative Credit Society Ltd. v. Deputy Commissioner of Income-tax, Circle-2(3)** - [2024] 159 taxmann.com 349 (Surat-Trib.)

4.101 Sub-section (2)(d) : Where assessee claimed deduction under section 80P(2)(d) only on interest and dividend income from co-operative societies and co-operative bank and never claimed deduction under section 80P(2)(d) on nationalized bank interest income, Assessing Officer was not justified in making addition on account of nationalized bank interest income to total income of assessee - **Sardar Patel Co-Operative Credit Society Ltd. v. Deputy Commissioner of Income-tax, Circle-2(3)** - [2024] 159 taxmann.com 348 (Surat-Trib.)

4.102 Interest on deposits : Where assessee-co-operative society made investment in fixed deposits with a bank out of statutory

compulsion and interest income received on same was part of operating income, said interest income earned on said fixed deposits was to be assessed as "income from business" entailing benefit of deduction under section 80P(2)(a)(i) - **Moodbidri Co-operative Service Bank Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1233 (Bangalore - Trib.)**

4.103 Interest from co-operative banks : Co-operative banks are co-operative societies, and, therefore, interest income earned by a co-operative society from fixed deposits with such co-operative bank would be entitled for claim of deduction under section 80P(2)(d) - **Assistant Commissioner of Income-tax, Circle-1(1)(1) v. Shree Aradhna Urban Co-Op Credit Society Ltd. - [2024] 159 taxmann.com 350 (Surat-Trib.)**

4.104 Revision : Where Assessing Officer had made due enquiries with respect to details of interest received from co-operative banks by assessee on which deduction under section 80P was claimed during course of assessment proceedings and had taken a view, which was a legally possible view, Principal Commissioner could not have resorted to section 263 proceedings only to supplant his own view with view taken by Assessing Officer - **Kutch District Co-Op. Milk Producers' Union Ltd. v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 347 (Rajkot - Trib.)**

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

4.105 Taxes covered : Where AO had charged tax @15% plus surcharge and cess on assessed income in computation sheet as against computing tax at 10% as held in assessment order as per Article 13 of DTAA of India-Netherlands, issue be set aside to file of AO for verification and decide same in accordance with law - **Huhtavefa B.V. v. Assistant Commissioner of Income-tax, (IT) 2(1)(1) - [2024] 159 taxmann.com 646 (Delhi - Trib.)**

SECTION 92B OF THE INCOME-TAX ACT, 1961 READ WITH THE INCOME-TAX RULES 1962 - TRANSFER PRICING - INTERNATIONAL TRANSACTION MEANING OF

4.106 Letter of Comfort : Letter of Comfort (LoC) issued by assessee to banker of its associated enterprise does not constitute an international transaction - **Tata International Ltd. v. Additional Commissioner Income-tax - [2023] 157 taxmann.com 901 (Mumbai - Trib.)**

4.107 Scheme of amalgamation : Where assessee-company made payment of merger consideration to its parent holding company, DIHBV in form of equity shares, CCDs and cash, in view of fact that pursuant to merger merely an investment holding company was transferred without any erosion in function, asset, and risk profile of

parent holding company requiring additional compensation apart from issuance of shares of assessee, shares of assessee now held by DIHBV would represent fair value of aforesaid merger transaction and TPO rightly disallowed interest paid on CCDs and treated payment of cash as a deemed loan - **Dimexon Diamonds Ltd. v. Assistant Commissioner of Income-tax, Central Circle 1(4) - [2024] 159 taxmann.com 118 (Mumbai - Trib.)**

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

4.108 Adjustments - Export/domestic sale : Where despite clear directions of Tribunal, Assessing Officer had failed to act on same and assessee having submitted all plausible evidences with respect to its claim of error in TP report which was not examined by Assessing Officer, TP adjustment made by Assessing Officer on account of sales to AE's was to be deleted - **Atul Ltd. v. Deputy Commissioner of Income-tax (OSD) Range-1 - [2024] 159 taxmann.com 251 (Ahmedabad - Trib.)**

4.109 Adjustment - Commission : Where no commission was earned by assessee and entry in books of AE of assessee only pertained to reversal of commission income booked by it in earlier years as earned from assessee, addition made by TPO on account of commission paid to AE was rightly deleted by Commissioner (Appeals) - **Atul Ltd. v. Deputy Commissioner of Income-tax (OSD) Range-1 - [2024] 159 taxmann.com 251 (Ahmedabad - Trib.)**

4.110 Adjustments - Discounts : Where assessee had demonstrated its commercial policy with regard to quantity discount to be given to both its AE and non-AE by submitting data in this regard and Assessing Officer had accepted quantity discount given by assessee in all except four cases on basis of existing instances of commercial policy in this regard of the assessee, claim of assessee of having paid quantity discount was proved to be at ALP and, thus, Commissioner (Appeals) was justified in deleting adjustment made by TPO on account of quantity discount - **Atul Ltd. v. Deputy Commissioner of Income-tax (OSD) Range-1 - [2024] 159 taxmann.com 251 (Ahmedabad - Trib.)**

4.111 Adjustment - Aggregation of transactions : No separate adjustment is required for payment of royalty if TNMM approach has been adopted at entity level - **Toyota Kirloskar Motor (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-7(1)(1) - [2024] 159 taxmann.com 318 (Bangalore)**

4.112 Comparability factors - Others : Where TPO rejected comparables selected by assessee on ground that search process adopted by assessee was not in conformity with TP regulations as choice of filters were inappropriate and selected new comparables and made addition, since DRP upheld comparables selected by TPO by giving detailed reasons, issue of selection of comparables should not be interfered with - **Teejay India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-5(1) - [2024] 159 taxmann.com 607 (Visakhapatnam - Trib.)**

- 4.113 Adjustments -Interest** : Outstanding receivables is included under definition of international transaction consequent to amendments made by Finance Act, 2012 with effect from 1-4-2002 - **Teejay India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-5(1) - [2024] 159 taxmann.com 607 (Visakhapatnam - Trib.)**
- 4.114 Comparables** : Where Assessing Officer computed arithmetic mean of comparables selected by TPO for determining ALP of international transactions of assessee and made addition to assessee's income, since no inquiry had been carried out by Commissioner (Appeals) and he had simply issued directions to Assessing Officer for computing arithmetic mean of comparables with margin of tested parties, matter was to be remanded back for deciding afresh - **Assistant Commissioner of Income-tax-1(1)(1) v. AJE India (P.) Ltd. - [2024] 159 taxmann.com 215 (Mumbai - Trib.)**
- 4.115 Comparables and adjustments/Adjustment - Capacity utilisation** : Where TPO had not agreed with assessee for making economic adjustment on account of excess depreciation, foreign exchange fluctuation and underutilized capacity, matter was to be remanded back to Assessing Officer for fresh consideration, considering economic adjustments and correct computation provided by assessee - **Schott Glass India (P.) Ltd. v. Income Tax Officer - [2024] 159 taxmann.com 396 (Mumbai - Trib.)**
- 4.116 Tonnage Tax Company** : Provisions of transfer pricing regulations are not applicable to assessee to extent of operation carried by assessee through qualifying ships which is covered by Tonnage Tax Scheme - **Assistant Commissioner of Income-tax, Circle 5(1)(1) v. Essar Shipping Ltd. - [2024] 159 taxmann.com 391 (Mumbai - Trib.)**
- 4.117 Adjustments - Interest** : Where advances were given by assessee to its overseas AEs and no interest was charged contending that they were quasi capital in nature, since there was nothing on record to suggest that at time of advancement of such loan to AEs nature of such advances was quasi capital, Assessing Officer was justified in making TP adjustment on account of interest on loans and advances - **Intas Pharmaceuticals Ltd. v. Assistant Commissioner of Income-tax, Circle-2(1)(1) - [2024] 159 taxmann.com 429 (Ahmedabad - Trib.)**
- 4.118 Adjustment - Guarantee commission** : Transaction of furnishing corporate guarantee to overseas AEs constitutes an international transaction and charging of corporate guarantee fee at rate of 0.8 per cent should be considered at arm's length - **Intas Pharmaceuticals Ltd. v. Assistant Commissioner of Income-tax, Circle-2(1)(1) - [2024] 159 taxmann.com 429 (Ahmedabad - Trib.)**
- 4.119 Transactions with AE alone are covered** : ALP adjustment should be restricted only to AEs transactions and not to all transaction - - **Yokogawa India Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 428 (Bangalore - Trib.)**
- 4.120 Comparability factors - Loss making company** : If a comparable company is persistent loss making company for all the three years, then it should not be considered as a comparable company - - **Yokogawa India Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 428 (Bangalore - Trib.)**
- 4.121 Comparables, functional similarity - Traders** : Where assessee was engaged in trading of finished products in nature of transmitters, recorders, flow meters, etc. from its AEs for resale to unrelated parties, a company was engaged in trading of electronic security products was functionally comparable to assessee - **Yokogawa India Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 428 (Bangalore - Trib.)**
- 4.122 Adjustment - Commission** : Where assessee, a trader had earned commission, since assessee could not show nature of services rendered by it for sales from AE to third party customers, commission received by assessee could not be considered as part of trading segment - **Yokogawa India Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 428 (Bangalore - Trib.)**
- 4.123 Adjustments - AMP expenses** : Expenditure incurred by assessee towards global sales and marketing activity should be treated as operating cost and has to be allotted in ratio of turnover of other international transaction for determining ALP under TNMM analysis - **Yokogawa India Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 428 (Bangalore - Trib.)**
- 4.124 Adjustments - Imports** : Where assessee, engaged in generation of power, sold power to its steel division and associate enterprises at much higher rate as compared to rate at which it sold surplus power to State Electricity Board, market value of power supplied to steel division should be computed considering rate of power to a consumer in open market and it should not be compared with rate of power when it was sold to a supplier - **Deputy Commissioner of Income-tax, 1(1) v. Mahendra Sponge and Power (P.) Ltd. - [2024] 159 taxmann.com 147 (Raipur - Trib.)**
- 4.125 Adjustments- Operating profit/cost, computation of** : Where assessee claimed foreign exchange loss on account of delayed realization of foreign currency receivables as non-operative cost during relevant year, however, in earlier and subsequent years had treated same as operative in nature, since there was no plausible reason given by assessee for this deviation during year nor did TPO deal with same, TPO was to be directed to compute ALP of international transaction of foreign exchange loss by carrying out benchmarking of same afresh - **Corteva Agriscience Services India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-1(1) - [2024] 159 taxmann.com 151 (Hyderabad - Trib.)**

4.126 Adjustments - Interest : Where assessee - company entered into a scheme of amalgamation with its holding company, DIHPL which in turn was a wholly-owned subsidiary of DIHBV, ultimate parent company based in Netherlands, since business restructuring was an organisational change amongst entities of DIHBV, DIHPL, and assessee, inter-alia, to maintain a simple corporate structure and eliminate duplicate corporate procedures, aforesaid transaction between assessee and DIHBV would squarely fall within ambit of "international transaction" as defined in section 92B - **Dimexon Diamonds Ltd. v. Assistant Commissioner of Income-tax, Central Circle 1(4) - [2024] 159 taxmann.com 118 (Mumbai - Trib.)**

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

4.127 Revision : Where Assessing Officer had completed assessment giving a go bye to mandatory provisions of section 92CA and CBDT Instruction No. 3 of 2016, such an assessment order definitely fell within meaning of erroneous and prejudicial to interest of revenue as envisaged under section 263 - **JP Morgan Chase Bank N.A v. Commissioner of Income-tax (IT) - [2024] 159 taxmann.com 209 (Mumbai - Trib.)**

4.128 Adjustments - Guarantee commission : Where assessee was co-guarantor, TP adjustment as regards its share of guarantee commission would be at rate of 0.25 per cent i.e. half of 0.5 per cent - **Assistant Commissioner of Income-tax, Circle 5(1)(1) v. Essar Shipping Ltd. - [2024] 159 taxmann.com 391 (Mumbai - Trib.)**

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

4.129 Filing of Form 10-IC : Where assessee was denied claim of reduced tax rate under section 115BAA due to non submission of Form 10-IC, since delay in filing said Form had been condoned by Pr. Commissioner subsequently, assessee deserved benefit of reduced rate of taxation - **KHR Hospitality India Ltd. v. Commissioner of Income-tax (Appeals) - [2023] 157 taxmann.com 810 (Kolkata - Trib.)**

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

4.130 Revision : Where assessee, a medical practitioner, voluntarily surrendered certain amount during survey as his unaccounted professional receipts and taxed said receipts at normal rate, since assessee had no other source of income, other than business income and AO had conducted inquiry and perused details submitted, and taken a decision to accept explanation provided by assessee after proper application of mind, provision of section 115BBE could not be invoked to tax income as deemed income - **Parshottambhai Maganlal Ramotia v. Pr. CIT - [2023] 157 taxmann.com 5148 (Rajkot)**

SECTION 115QA OF THE INCOME-TAX ACT, 1961 - TAX ON DISTRIBUTED INCOME TO SHAREHOLDERS

4.131 General : Where assessee-company paid consideration for purchase of its own shares from its shareholders in accordance with scheme sanctioned by High Court, since assessee had carried out capital reduction under provisions of section 100-104 of Companies Act and same had been completed on 31-5-2016 i.e. prior to 1-6-2016, capital reduction carried out by assessee would not be covered in definition of buyback as per explanation (i) to section 115QA and tax on distributed income to shareholders was not payable by assessee-company - **Assistant Commissioner of Income-tax, 1(2)(1) v. Meriton Infotech (P.) Ltd. - [2024] 159 taxmann.com 181 (Mumbai - Trib.)**

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

4.132 Where AO denied exemption under section 11 to assessee-trust on ground that assessee had collected capitation fees though various employees for giving admission to students in various courses conducted by it, since said conclusion was reached based on information seized from various employees of assessee-trust from their residences and AO could not find any credible material from assessee trust to corroborate information/document seized from employees, additions made towards capitation fees were to be deleted - **Padmashree Dr. D.Y. Patil University v. Deputy Commissioner of Income-tax, Central Circle 7(1) - [2024] 159 taxmann.com 353 (Mumbai - Trib.)**

SECTION 142 OF THE INCOME-TAX ACT, 1961 - SPECIAL AUDIT

4.133 DVO report : Report of DVO being prepared, completed and furnished by DVO to department beyond stipulated time provided in section 142A(vi) was against mandate of law and literal interpretation of provisions of section 142A and, therefore revisionary proceedings initiated under section 263 based such report were illegal/bad in law and consequently unsustainable - **Shree Krishna Colonisers v. Principal Commissioner of Income-tax - [2024] 159 taxmann.com 247 (Raipur - Trib.)**

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

4.134 Order without DIN : CBDT Circular lays down what shall be format of any such 'communication' and also provides that if 'communication' is not in that format same will be considered as not issued at all, then it is not a mere technical flaw liable to be corrected but it vitiates communication, thus, in instant case order passed under section 143(3) without DIN would be deemed to have never been issued as per CBDT - **Deepak Kumar v. Deputy Commissioner of Income-tax, Central Circle - [2024] 159 taxmann.com 358 (Delhi - Trib.)**

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

- 4.135 Revision** : Where once record are transferred to jurisdictional Assessing Officer on completion of assessment, jurisdictional Principal Commissioner assumes jurisdiction, therefore can exercise power under section 263 over order passed by faceless assessment unit - **RDC Ventures v. Principal Commissioner of Income-tax-27** - [2024] 159 taxmann.com 395 (Mumbai - Trib.)

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

- 4.136 Passing assessment order without DIN** : Order passed by DRP without bearing Document Identification Number (DIN) which was mandated by CBDT vide Circular No. 19/2019, dated 14-8-2019 was not sustainable in law and, consequently, assessment order passed by Assessing Officer in pursuance to DRP's order was also not sustainable in law and liable to be set-aside - **Tableau International, Unlimited Company v. Deputy Commissioner of Income-tax, Circle 3(1)(1), (IT)** - [2024] 159 taxmann.com 243 (Delhi - Trib.)
- 4.137 Passing of assessment order** : Passing of draft assessment order as prescribed under section 144C(1) is mandatory - **Welspun Global Brands Ltd. v. Deputy Commissioner of Income-tax-8(3)(2)** - [2024] 159 taxmann.com 286 (Mumbai - Trib.)

**SECTION 145 OF THE INCOME-TAX ACT, 1961 -
METHOD OF ACCOUNTING - REJECTION OF
ACCOUNTS**

- 4.138 Illustrations** : Where AO rejected books of accounts on ground that assessee had collected capitation fees though various employees for giving admission to students in various courses conducted by it and said collection had not been accounted in books, since there was no evidence that assessee had collected **capitation** fees, rejection of books was not justified - **Padmashree Dr. D.Y. Patil University v. Deputy Commissioner of Income-tax, Central Circle 7(1)** - [2024] 159 taxmann.com 353 (Mumbai - Trib.)

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

- 4.139 Incriminating material** : Where addition made by Assessing Officer under section 68 during reassessment proceedings was not based on any incriminating material during search and seizure action, same was to be deleted - **Ashish Jain v. Deputy Commissioner of Income-tax, Central Circle-III** - [2024] 159 taxmann.com 466 (Chandigarh - Trib.)

- 4.140 Document Identification Number (DIN)** : For purpose of section 153A/143(3), assessment can be said to be 'made' only when DIN is quoted on order before it is signed - **Abhimanyu Chaturvedi v. Deputy Commissioner of Income-tax** - [2024] 159 taxmann.com 445 (Delhi - Trib.)

- 4.141 Non-service of order** : Service of incomplete assessment order on ITBA may be a case of non-service of order; assessment order does not become void for that reason - **Abhimanyu Chaturvedi v. Deputy Commissioner of Income-tax** - [2024] 159 taxmann.com 445 (Delhi - Trib.)

**SECTION 192 OF THE INCOME-TAX ACT, 1961 -
DEDUCTION OF TAX AT SOURCE - SALARY**

- 4.142** Where assessee **being** managing director and chief executive officer of company himself did not deduct TDS on salary paid/payable to himself for working as MD and CEO of company, he could not be allowed to take benefit of his own wrong and, thus, was not entitled to any claim of set off of TDS which was never deposited by company - **Anirudh Bhuwarka v. Deputy Commissioner of Income-tax** - [2023] 157 taxmann.com 732 (Kolkata - Trib.)

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

- 4.143 Minimum guarantee payments to hotels** : Where assessee entered into merchant agreement with various hotels for facilitating reservation/booking of hotel rooms through platform of assessee, however, assessee was merely compensating shortfall pursuant to agreement and no work had been carried out, therefore, assessee would not be liable for TDS under section 194C on minimum guarantee payments made to hotels - **Oravel Stays (P.) Ltd. v. Assistant Commissioner of Income-tax, Special Range-7** - [2024] 159 taxmann.com 423 (Delhi - Trib.)

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

- 4.144** Where assessee made payments to certain US concern without deducting tax at source under section 195 but subsequently, a certificate was issued under section 195(3) exempting said concern from TDS, in such circumstances, Assessing Officer was directed to cause verification of certificate issued under section 195(3) and if it was found to be genuine, entire remittances that were made to said concern would be non-taxable so far as TDS was concerned - **FSL Projects Ltd. v. Deputy Commissioner of Income-tax, Circle-14(3)** - [2024] 159 taxmann.com 496 (Hyderabad - Trib.)

**SECTION 246A OF INCOME-TAX ACT, 1961 -
COMMISSIONER (APPEALS) - APPEALABLE ORDERS**

- 4.145 Penalty** : Order imposing penalty under section 270A by Assessing Officer is appealable before Commissioner (Appeals) - **South Eastern Coalfields Ltd. v. Assistant Commissioner of Income-tax** - [2023] 157 taxmann.com 820 (Raipur - Trib.)

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

4.146 Power to condone delay : Where assessee filed an appeal before Tribunal along with application for condonation of delay of 7 years and 104 days in filing said appeal claiming that delay had occurred due to lapse on part of counsel , since assessee had also contributed to a large extent in process of delay as assessee had filed appeals of other two years and even at that stage, had not taken care to enquire and see status of present appeals ,assessee did not deserve any sympathy and ,consequently, assessee's condonation prayer was rejected and these appeals were dismissed as being time-barred - **C.I. Builders (P.) Ltd. v. ACIT-1(2)/DCIT-1(1), Bhopal - [2024] 159 taxmann.com 554 (Indore - Trib.)**

4.147 Tribunal cannot be taken as a forum for an appellant who, as per his volition, had either adopted an evasive or lackadaisical approach before lower authorities and not participated in assessment or appellate proceedings to come up with its case for first time before Tribunal and, as a matter of right seek restoring of order to file of lower authorities for fresh adjudication - **Adim Jati Seva Sahkari Samiti Maryadit v. Income Tax Officer-2 - [2024] 159 taxmann.com 8 (Raipur - Trib.)**

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

4.148 Reply of assessee : Where Assessing Officer issued a show cause notice under section 270A for not reporting income received by assessee from a company and interest from bank and assessee filed a reply which was not accepted by Assessing Officer, since Assessing Officer had not recorded what reply was furnished by assessee against said notice and why it was not acceptable, impugned penalty levied under section 270A towards mis-reporting of income at 200 per cent of tax payable without any reason for levying penalty at such percentage could not survive - **Chitra Ramanathan v. Income-tax Officer - [2023] 157 taxmann.com 823 (Chennai - Trib.)**

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

4.149 Where assessee-company had failed to come forth with any explanation as regards its claim of inflated expenses in its revised return of income, which claim of it was not borne out from its final audited financials, penalty imposed by Assessing Officer under section 271(1)(c) to extent it pertained to variance in "book profit" under MAT provisions arising on account of claim of deduction of false/inflated expenses in revised return of income by assessee-company was justified - **Deputy Commissioner of Income-tax, Circle-1(1) v. Chhattisgarh State Power Transmission Co. Ltd. - [2024] 159 taxmann.com 10 (Raipur - Trib.)**

**SECTION 271B OF THE INCOME-TAX ACT, 1961 -
PENALTY - FOR FAILURE TO GET ACCOUNTS AUDITED
UNDER SECTION 44AB**

4.150 Mistake : Where assessee company at time of filing e-return had wrongly answered a question regarding whether it was liable for audit under section 44AB as 'No', however, assessee had duly obtained audit report as required under section 44AB and e-filed its return well within due date, penalty under section 271B would not be leviable - **Paras Mal Sethia v. Income-tax Officer - [2024] 159 taxmann.com 1239 (Jodhpur - Trib.)**

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

4.151 Pendency of assessment : Penalty proceedings under section 271E can be initiated while Assessing Officer is in seisen of assessment proceedings of relevant assessment year in which default had occurred and not afterwards - **Pawan Kumar v. Joint Commissioner of Income-tax - [2023] 157 taxmann.com 813 (Delhi - Trib.)**

GST & INDIRECT TAXES

1. STATUTORY UPDATES

1.1 "Public Tech Platform for Frictionless Credit" notified as system for information sharing by common portal: Notification - **Notification No. 06/2024 –Central Tax, Dated 22-02-2024**

Editorial Note : The CBIC has issued notification to notify "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the CGST Act, 2017.

1.2 Changes proposed under GST in the Finance Bill 2024

Editorial Note : Finance Minister Nirmala Sitharaman presented the Interim Budget for 2024-25 in the Parliament on February 01, 2024. The emphasis of the 2024 Interim Budget was on empowering youth and women, developing infrastructure, supporting agriculture, promoting green growth, and enhancing the railway sector.

1.3 Rs. 1,72,129 crores gross GST revenue collected during January 2024: Press Release

Editorial Note : The gross GST revenue collected in the month of January, 2024 is Rs. 1,72,129 crores, which shows a 10.4% Year-o-Year (Y-oY) growth over the revenue of Rs.155,922 crores collected in January 2023.

1.4 Caution against fraudsters sending fake and fraudulent Summons for GST violations: Press Release

Editorial Note : The CBIC has recently noticed that some individuals with fraudulent intent are creating and sending fake summons to the taxpayers who may or may not be under investigation by the DGGI. For the awareness of the taxpayers, it is reminded that taxpayers can verify the genuineness of any communication from Department by using the 'VERIFY CBIC-DIN' window.

1.5 GSTN issued advisory on enhanced e-Invoicing initiatives & launch of enhanced e-Invoice portal

Editorial Note : The GSTN has issued an update to announce the launch of the revamped e-invoice master information portal <https://einvoice.gst.gov.in>. This enhancement is part of ongoing effort to further improve taxpayer services.

2. SUPREME COURT

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

2.1 Arrest under GST - Apex Court issues notice on requirement of issuing prior notice to accused before arresting him - **Directorate General GST Intelligence v. Sidhant Gupta - [2024] 159 taxmann.com 199 (SC)**

3. HIGH COURT

CLASSIFICATION OF GOODS

3.1 Animal feeds Bio pro-enhac : Where assessee claimed exemption on sale of product named "Bio pro-enhac" under HSN 2309, and impugned order was passed stating that Bio pro-enhac is classified under HSN 2936 and taxable at rate of 18%, since fact that supplements and additives of shrimp feed will fall under category of shrimp feed was not analysed, impugned order was set aside to such extent and matter was remitted back - **B.M.R. Industries (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 73 (Andhra Pradesh)**

3.2 Animal feeds : Where assessee claimed exemption on sale of product named "Minwa and Minwa Plus" under HSN 2309, and impugned order was passed stating that Minwa and Minwa plus is classified under HSN 2931 and taxable at rate of 18%, since products' main purpose is not to act either as a shrimp food or a food supplement or additive, but its main purpose is to maintain PH level in shrimp pond, it was held that said product does not fall within ambit of HSN code 2309 - **B.M.R. Industries (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 73 (Andhra Pradesh)**

SECTION 1 OF THE GOA RURAL IMPROVEMENT AND WELFARE CESS ACT, 2000 - SHORT TITLE, EXTENT AND COMMENCEMENT

3.3 Goa Cess Act is intra vires Articles 14, 301, 303 read with Article 304 of Constitution of India; also it is legal and valid being in no manner subsumed by GST Laws - **Sesa Sterlite Ltd. v. State of Goa - [2024] 159 taxmann.com 18 (Bombay)**

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

3.4 Where assessee challenges validity of Circular No.3/3/2017-GST dated 05.07.2017, Circular No.31/05/2018- GST and Circular No.169/01/2022-GST on ground that CBIC had no power to issue same and based thereon to confer any power of assignment of functions of 'proper officer' upon Central Tax Officers for issuing an audit report under section 65(6) or show cause notice under section 73 or 74, no case was made out to strike down impugned circulars as Section 3 r/w Section 5 of CGST Act and Section 3 of IGST Act, empowers Government, by notification, to appoint certain classes of officers for purposes of CGST Act - **Fomento Resorts & Hotels Ltd. v. Union of India - [2024] 159 taxmann.com 577 (Bombay)**

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

3.5 Where for same period orders were issued by authorities under CGST Act and SGST Act, under section 73, for same allegation, two parallel proceedings in respect of same period not permissible as per section 6(2) of CGST/SGST Act, order passed by authority under CGST Act was to remain suspended till returnable date - **Subhash Agarwalla v. State of Assam - [2024] 159 taxmann.com 723 (Gauhati)**

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

3.6 Transfer of development rights of land by land owners to real estate developer by way of a Joint Development Agreement (JDA) should be treated as sale of land by land owners and, hence, execution of said agreement should not be subjected to levy of GST - **Prahitha Construction (P.) Ltd. v. Union of India - [2024] 159 taxmann.com 437 (Telangana)**

3.7 Where show cause notice was issued to assessee and subsequently impugned assessment order was passed recording finding that tax payer did not clarify category of director and if such director was paid salary, since in reply to SCN, assessee had categorically stated that remuneration was paid to managing director of company, conclusion arrived at in impugned order was not sustainable and same was to be set aside - **SIP Academy India (P.) Ltd. v. State Tax Officer - [2024] 159 taxmann.com 378 (Madras)**

3.8 Since it is clear from circular No. 196/08/2023-GST that mere holding of shares by holding company in a subsidiary company cannot be treated as supply of service, order issued by revenue against assessee, a subsidiary of M/s. Yonex, Japan which proceeds on basis that said holding of shares amounts to "supply of service" was clearly illegal, arbitrary and without jurisdiction and thus same was to be quashed - **Yonex India (P.) Ltd. v. Union of India - [2024] 159 taxmann.com 71 (Karnataka)**

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

3.9 Where an impugned order was passed imposing tax for amount involved related to a contract allotted in pre-GST regime and executed in post GST regime, since, GST Act is a complete code in itself and payment of tax is not subject to realization of tax, assessee's submission that no liability arise as concerned government department didn't pay tax amount was rejected and accordingly petition was dismissed - **Dipak Sarkar v. State of West Bengal - [2024] 159 taxmann.com 291 (Calcutta)**

3.10 Where assessee had sought relief for neutralizing impact of unforeseen additional tax burdens on government contracts since introduction of GST in July 2017 for ongoing contracts awarded before that date, instant writ petition was to be disposed of by giving liberty to assessee to file appropriate representations in aforesaid regard before concerned authority - **Sonex Engineers Co-operative Society Ltd. v. State of West Bengal - [2024] 159 taxmann.com 220 (Calcutta)**

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

- 3.11** Where in impugned order tax, penalty and interest was imposed on basis of total expenditure incurred towards advertisement/promotion by drawing figures provided in respective financial statement, same was without application of mind, thus impugned assessment order was to be set aside and matter was to be remanded for reconsideration - *SIP Academy India (P.) Ltd. v. State Tax Officer* - [2024] 159 taxmann.com 378 (Madras)
- 3.12** Where a show cause notice was issued to assessee engaged in providing training or coaching in relation to art and culture, and in spite of assessee's replies to such effect, Assessing Officer recorded conclusion that assessee was engaged in sale of painting and art works, impugned assessment order was to be set aside and matter was to be remanded for reconsideration by assessing officer - *SIP Academy India (P.) Ltd. v. State Tax Officer* - [2024] 159 taxmann.com 378 (Madras)
- 3.13** Where concession agreements were executed between assessee and Ministry of Road Transport and Highways [MoRTH] for execution of work project, annuity as provided in concession agreement is payable during concession period, assessee contends that annuity paid to them is exempt from GST based on a Notification No. 32/2017- Central Tax (Rate), said matter requires further examination, issues notice, returnable and as an interim relief, demand-cum-Show Cause Notice should be kept in abeyance until returnable date - *Dhola Infra Projects Ltd. v. Union of India* - [2024] 159 taxmann.com 363 (Gauhati)

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

- 3.14** Where assessee was engaged in retail sale, discount offered by supplier/manufacturer to assessee could impact only transaction value of supplier and a further sale of goods by assessee at a discounted price could not form part of "transaction value" of assessee, unless such discount was on account of subsidy, thus order passed by authority demanding tax on discount was to be set aside - *Supreme Paradise v. Assistant Commissioner* - [2024] 159 taxmann.com 143 (Madras)

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

- 3.15** Where order was passed reversing ITC availed by assessee due to cancellation of registration of one of its supplier, since assessee had produced all relevant materials to establish that purchases were genuine and same were not considered by department, order

passed by department was to be set aside and matter was to be remanded for reconsideration - *TVL.Cleon Optobiz (P.) Ltd. v. Assistant Commissioner (ST)* - [2024] 158 taxmann.com 691 (Madras)

- 3.16** Assessee claims eligibility for Input Tax Credit (ITC) and states that GSTR-9 (annual) returns were filed duly reflecting ITC claims of assessee, rejection of said ITC claims based solely on non-declaration in GSTR-3B without considering GSTR-9 and GSTR 2A returns was deemed invalid, therefore order rejecting said claim was quashed, and matter was remanded back - *Sri Shanmuga Hardwares Electricals v. State Tax Officer* - [2024] 159 taxmann.com 756 (Madras)
- 3.17** Where Input Tax Credit (ITC) availed of by assessee was reversed on ground that GST registration of relevant supplier was cancelled with retrospective effect, documents submitted by assessee in respect of transaction between assessee and its supplier were disregarded, therefore impugned assessment order was unsustainable and same was to be quashed and set aside - *Engineering Tools Corporation v. Assistant Commissioner (ST)* - [2024] 159 taxmann.com 576 (Madras)
- 3.18** Where assessee failed to provide relevant purchase/receipt documents despite opportunities High Court declined intervention, recognizing assessee's obligation to prove genuineness of purchases and availability of alternate statutory remedies, directing assessee to pursue statutory appeals for challenging orders - *Metal Trade Incorporation v. Assistant Commissioner (ST)(FAC)* - [2024] 159 taxmann.com 612 (Madras)
- 3.19** Where petitioner-assessee did not produce credible documents in respect of inward supplies from four suppliers, GSTIN of tax payer and seal of supplier not present in invoices, input tax credit taken not supported with cogent and technical evidence, assessee failed to discharge burden under section 155 of CGST Act, input tax credit claim was to be disallowed - *Karumpelil Medicals v. Assistant Commissioner* - [2024] 159 taxmann.com 191 (Kerala)

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

- 3.20** Where competent Authority had blocked input tax credit of assessee, and just within nine days of making representation before authority concerned, assessee rushed to High Court, writ petition of assessee was to be disposed of by directing Authority to consider representation of assessee and pass a reasoned order - *Mujibar Mollah v. Deputy Commissioner of State Tax (GST)* - [2024] 159 taxmann.com 40 (Calcutta)

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

- 3.21** Where petitioner's bid, for settlement of a market, was rejected by respondent-authority for not enclosing GST

clearance certificate, tender document provided that GST clearance certificate to be annexed to bid documents, if necessary, petitioner's annual aggregate turnover in a financial year not above Rs. 20,00,000, reason for disqualifying petitioner's bid was not to be sustained - **Nazimuddin Ahmed v. Principal Secretary** - [2024] 159 taxmann.com 193 (Gauhati)

RULE 23 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - REVOCATION OF CANCELLATION OF REGISTRATION

- 3.22** Where department agreed that as long as delay in filing revocation application for cancellation of registration was condoned and petitioner complies with all requirements of paying taxes, interest, late fee, penalty, etc. due, 3B Return Form filed by petitioner would be accepted, delay in petitioner's invoking proviso to Rule 23 of OGST Rules was to be condoned - **Badajena Iron & Steel Industries (P.) Ltd. v. CT & GST Officer** - [2024] 159 taxmann.com 35 (Orissa)

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

- 3.23** Where show cause notice was issued to assessee for non-filing of return, however same was not received by assessee and reply to same could not be submitted, order passed by competent authority canceling registration of assessee was to be set aside and assessee was to be permitted to submit reply to show cause notice - **Dharmadutt Brick Field v. State of U.P.** - [2024] 159 taxmann.com 202 (Allahabad)
- 3.24** Where show cause notice and order for cancellation of GST registration lacked clarity and reasons, and assessee was unable to file returns due to personal circumstances, order cancelling registration with retrospective effect was to be set aside and instant petition was to be allowed - **Shree Balaji Transport v. Commissioner of Central Tax, Appeals-I** - [2024] 159 taxmann.com 41 (Delhi)
- 3.25** Where only one week time was provided to assessee to file reply of show cause notice issued by department, which on account of exigency, could not be filed, assessee was to be permitted to file a response within one week and on such reply being filed, respondent authorities were to dispose off show cause notice within two weeks by providing opportunity of personal hearing to assessee - **Ms Maa Kamakhya v. Sales Tax Officer, Class 11 AVAT Ward 12 Zone 2** - [2024] 159 taxmann.com 15 (Delhi)
- 3.26** Where assessee challenged show cause notice (SCN) issued by competent authority on ground that SCN was bereft of any details and no details were provided to assessee, Authority was to be directed to furnish entire material in support of SCN and assessee was granted liberty to file a detailed response thereto, and authorities were to dispose of SCN after giving

opportunity of personal hearing to assessee - **Nirmal Metal v. Union of India** - [2024] 159 taxmann.com 39 (Delhi)

- 3.27** Registration cannot be cancelled with retrospective effect mechanically; it can be cancelled only if proper officer deems it fit to do so - **Aryan Timber Store v. Sales Tax Officer** - [2024] 158 taxmann.com 661 (Delhi)
- 3.28** Where order of cancellation of registration of assessee's firm was passed without any recorded reason, it failed to satisfy test of judicial order and violated Article 14 of Constitution of India - **Khandelwal Brothers v. State of U.P.** - [2024] 159 taxmann.com 544 (Allahabad)
- 3.29** Where CGST Authorities had canceled registration of assessee on ground that it had made invoices without supply of goods or services but SCN did not provide any details of alleged invoices or bills and no enquiry was conducted in this regard, impugned order was to be set aside and CGST Authorities were to be directed to adjudicate SCN afresh - **NP Trading Co. v. Commissioner of GST** - [2024] 159 taxmann.com 417 (Delhi)
- 3.30** Where application of assessee seeking cancellation of registration was rejected and further registration of assessee was canceled retrospectively, since assessee was not put to notice that cancellation was liable to be canceled retrospectively, order canceling registration was to be modified to extent that same shall operate from date on which assessee discontinued his business - **Deepak Trading Co. v. Government of NCT of Delhi** - [2024] 159 taxmann.com 416 (Delhi)
- 3.31** Where respondent-department failed to restore petitioner-assessee's cancelled registration on ground that petitioner-assessee's Electronic Credit Ledger did not possess sufficient amount to cover entire tax liability, therefore, respondent-department was directed to restore registration of petitioner-assessee on deposit of aforesaid requisite amount; Writ petition was disposed of - **Solanki Enterprises v. Commissioner of CGST** - [2024] 159 taxmann.com 755 (Delhi)
- 3.32** Where order for cancellation of registration had been passed without application of mind and reasons were not ascribed to take such a harsh action of cancellation of registration, such order was to be set aside and Adjudicating Authority was to be directed to proceed de novo and pass fresh order after granting opportunity of hearing to assessee - **MS Gupta Khad Bhandar v. Commissioner State Tax Bulandshahr** - [2024] 159 taxmann.com 457 (Allahabad)
- 3.33** Where assessee's registration cancelled, show cause notice never served upon assessee nor assessee submitted any reply to notice, as had been contended by authority in impugned order, order did not make a reference of contents of reply submitted by assessee, did not disclose grounds on which authorities were compelled to issue cancellation of registration, impugned order was to be set aside - **JMCL Frames v. Superintendent of Central Tax** - [2024] 159 taxmann.com 688 (Telangana)

- 3.34** Where assessee's registration was cancelled stating in first line that a reply was filed by assessee whereas reasons for cancelling registration was "response not received", order being non-reasoned was to be set aside - ***Iron Style v. Additional Commissioner (Appeals)*** - [2024] 159 taxmann.com 687 (Allahabad)
- 3.35** Where assessee had closed down its business and applied for cancellation of registration but Competent Authority rejected said application and issued show cause notice for cancellation of GST registration on ground that assessee had failed to furnish GST returns, Competent Authority was to be directed to cancel GST registration with effect from date on which assessee had made application for cancellation of registration - ***Sri Krishan Traders v. Principal Commissioner of Goods and Service Tax*** - [2024] 159 taxmann.com 380 (Delhi)
- 3.36** Where order of cancellation of registration of assessee's firm was passed without any adequate reasons, it failed to meet standards of judicial order and violated Article 14 of Constitution of India - ***Sachin Kaushal v. State of U.P.*** - [2024] 159 taxmann.com 658 (Allahabad)
- 3.37** Where on application filed by assessee registration was canceled, and subsequently demand notices were issued and an assessment order was passed, since impugned assessment order was passed without providing a reasonable opportunity to assessee, same was to be quashed and matter was to be remanded for reconsideration - ***A. John Peter v. State Tax Officer*** - [2024] 159 taxmann.com 339 (Madras)
- 3.38** Where appeal filed against order of cancellation of GST was rejected on ground of limitation, since, relaxation in time limit to file appeal was given during Covid-19 pandemic, such limit should be considered in period of limitation and accordingly petition filed by assessee was allowed and department was directed to restore GST registration of assessee - ***Smt Ready Mix Concrete v. Additional Commissioner*** - [2024] 159 taxmann.com 223 (Madras)
- 3.39** Where appeal filed by assessee against order of cancellation of registration was dismissed on ground of limitation, appellate authority had dismissed appeal of assessee, revenue would not be able to exercise revisional power under section 108, therefore, impugned orders passed by Appellate Authority as well as order of cancellation of registration were to be quashed and set aside and matter was remanded back - ***Shree Ganesh Allied Services (P.) Ltd. v. Union of India*** - [2024] 159 taxmann.com 366 (Gujarat)
- 3.40** Since order cancelling assessee's GST registration had resulted in great prejudice to assessee without assessee being provided a reasonable opportunity to respond, same was to be quashed and revenue was directed to restore assessee's GST registration - ***V.Sasikumar v. GST Superintendent*** - [2024] 159 taxmann.com 438 (Madras)
- 3.41** Where show cause notice was issued to petitioner for cancellation of registration, did not contain detailed reasons for issuance of show cause notices except one line reason, authorities submitted henceforth SOP issued for cancellation of GST registration based on decision of Aggrawal Dyeing & Printing, where by detailed show-cause notice be issued after following procedure of SOP, writ petition was to be disposed off - ***Jain Enterprise v. State of Gujarat*** - [2024] 159 taxmann.com 435 (Gujarat)
- 3.42** Where an order was passed cancelling GST registration of assessee as discrepancies were noted during physical verification of principal place of business, since, civil consequences of cancellation, apparently out-weigh manner in which department proceeded in dealing with case regarding physical verification, impugned order was quashed and registration of assessee was restored - ***Gupta Enterprises v. State of Punjab*** - [2024] 159 taxmann.com 403 (Punjab & Haryana)
- 3.43** Where assessee's proprietor passed away and it did not file any GST returns after April, 2021 on account of his passing away, retrospective cancellation of registration from 1-7-2017 was not warranted as there was nothing on record to show that deceased was not making requisite compliances and registration was to be canceled from date of demise of proprietor - ***R. Trading Co. v. Commissioner of Delhi Goods and Services Tax*** - [2024] 159 taxmann.com 267 (Delhi)
- 3.44** Where Competent Authority had cancelled registration of assessee on ground that assessee had not filed returns for a continuous period of six months, since assessee did not have any case that it had in fact filed a return in continuous period of six months, writ petition filed by assessee against cancellation order was to be dismissed - ***Gopal Enterprises v. Union of India*** - [2024] 158 taxmann.com 706 (Patna)
- 3.45** Where Competent Authority had cancelled GST registration of assessee on ground that assessee firm was non-existent at subject address, since reply filed by assessee was not commensurate with reasons mentioned in SCN, an opportunity was to be granted to assessee to file a detailed response to SCN and authority was to re-adjudicate same - ***Maa Jhandewali Traders v. Principal Commissioner of GST, North Delhi*** - [2024] 158 taxmann.com 707 (Delhi)
- 3.46** Registration cannot be cancelled with retrospective effect mechanically and it can be cancelled only if proper officer deems it fit to do so; Order of cancellation of registration was to be modified to extent that same would operate with effect from date of assessee's application for cancellation of registration - ***Green Work Metal v. Principal Commissioner of GST*** - [2024] 159 taxmann.com 578 (Delhi)

- 3.47 Where assessee's registration was canceled for non-commencement of business and failure to respond to show cause notice, since assessee had been able to demonstrate that managing director of assessee was seriously ill during period in question and on said account could not submit reply to show cause notice, Competent Authority was to be directed to restore GST registration of assessee as assessee had already deposited tax along with late fee and interest - **Engineered And Innovative (P.) Ltd. v. State of U.P.** - [2024] 159 taxmann.com 310 (Allahabad)
- 3.48 Where petitioner-assessee's registration was cancelled without hearing petitioner and petitioner-assessee had handed over documents to his accountant, due to accountant's ill-health, returns could not be filed in time, therefore, following Suguna Cutpiece Vs. Appellate Deputy Commissioner (ST) (GST) and others, writ petition was allowed; order of cancellation of registration was set aside - **Sri Ganesh Constructions v. Assistant Commissioner (ST)** - [2024] 159 taxmann.com 159 (Madras)
- 3.49 Where assessee was issued a show cause notice for failure to furnish returns for continuous period of six months, and subsequently, registration was cancelled retrospectively from July 2, 2017, as per section 29(2) merely, because a taxpayer has not filed returns for some period does not mean that taxpayer's registration is required to be cancelled with retrospective date also covering period when returns were filed, therefore order of cancellation was to be modified to extent that same shall operate with effect from 03.02.2023 i.e., date when GST registration was suspended by show cause notice - **Deepali Kapoor v. Avato Ward-63, State Goods & Services Tax** - [2024] 159 taxmann.com 157 (Delhi)
- 3.50 Delay in filing application for revocation of cancellation of registration was to be condoned on payment of tax and dues by petitioner-assessee and respondent-department would open portal to enable petitioner-assessee to file GST return - **Biplab Kumar Patra v. Additional State Tax Officer** - [2024] 159 taxmann.com 123 (Orissa)
- 3.51 Where show cause notice stated, petitioner failed to furnish returns for a continuous period of six months, no particulars or details had been mentioned, extracted reason in a standard format, did not mention quantum of returns, order also did not state any reasons for cancellation of registration retrospectively, impugned show cause notice and impugned order were to be set aside - **Pankaj Plastic v. Commissioner of Delhi Goods & Service tax** - [2024] 159 taxmann.com 261 (Delhi)
- 3.52 Where impugned order did not state any reasons for cancellation of registration retrospectively, registration could not be cancelled mechanically, merely because a taxpayer had not filed returns for some period did not

mean taxpayer's registration was required to be cancelled with retrospective date - **Pankaj Plastic v. Commissioner of Delhi Goods & Service tax** - [2024] 159 taxmann.com 261 (Delhi)

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

- 3.53 Where assessee filed writ petition seeking direction to GST Authorities to accept its Form GSTR-3B return, delay in filing said return was to be condoned and GST Authorities were to be directed to accept Form GSTR-3B return of assessee subject to compliance with all requirements of paying taxes, interest, late fee, penalty etc. - **Bhagabati Prasad Kar v. Superintendent, CGST & Central Excise** - [2024] 158 taxmann.com 694 (Orissa)
- 3.54 Petitioner's application for revocation of registration was rejected as delayed, revenue stated provided petitioner complies with requirements of paying due taxes, interest, late fee, penalty, etc., petitioner's 3B Return would be accepted, accordingly, delay in petitioner's invoking proviso to Rule 23 of OGST Rules was to be condoned - **Kumarmunda Large sized Multipurpose Cooperative Society Ltd. v. Commissioner, CGST & Central Excise & Customs** - [2024] 159 taxmann.com 580 (Orissa)
- 3.55 Where assessee could not file Form GSTR-3B within prescribed period, since delay in filing revocation application was condoned, application for revocation of cancellation of registration was to be considered on assessee depositing all taxes, interest, late fee, penalty etc. due and complying with other formalities - **Imber Healthcare (OPC) (P.) Ltd. v. Additional Commissioner, GST (Appeals)** - [2024] 159 taxmann.com 111 (Orissa)
- 3.56 Where assessee's GST registration was cancelled due to non-filing of returns, High Court ordered restoration of registration as non-filing was unintentional and due to a bona fide reason, such as illness of managing partner responsible for filing returns - **Mohana Blue Metal v. Assistant Commissioner** - [2024] 159 taxmann.com 121 (Madras)
- 3.57 Petitioner's application for revocation of registration was rejected as delayed, revenue stated provided petitioner complies with requirements of paying due taxes, interest, late fee, penalty, etc., petitioner's 3B Return would be accepted, accordingly, delay in petitioner's invoking proviso to Rule 23 of OGST Rules was to be condoned - **Bijaya Kumar Singha v. State Tax Officer, CT & GST** - [2024] 159 taxmann.com 399 (Orissa)
- 3.58 Where petitioner's application for revocation of cancellation of registration, for not filing returns for continuous six months, was rejected, without giving opportunity to explain, impugned order was to be set aside and registration was to be restored to undertake filing of returns for future period, after returns already filed i.e., March, 2023 - **Red Fox Events & Entertainment v. Union of India** - [2024] 159 taxmann.com 161 (Bombay)

3.59 Petitioner's application for revocation of registration was rejected as it was delayed, revenue stated provided petitioner complies with requirements of paying due taxes, interest, late fee, penalty, etc., petitioner's 3B Return would be accepted, accordingly, delay in petitioner's invoking proviso to Rule 23 of OGST Rules was to be condoned - **Tanujarani Khuntia v. Additional State Tax Officer, CT & GST - [2024] 159 taxmann.com 256 (Orissa)**

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

3.60 Where a clerical error in GSTR-1 return resulted in denial of Input Tax Credit to recipient-respondent without revenue loss, High Court permitted assessee to rectify error to ensure fairness, prioritizing legitimate claims over technicalities in genuine error cases - **NRB Bearings Ltd. v. Commissioner of State Tax - [2024] 159 taxmann.com 656 (Bombay)**

3.61 Where assessee made an inadvertent error in submitting GST number of Mahindra & Mahindra (Rajasthan) in its form GSTR-1 instead of correct GST number of Mahindra & Mahindra (Orissa), said dispute was not a case where any loss of revenue would be caused to government as already tax had been paid, therefore reification was to be permitted to assessee - **Railroad Logistics (India) (P.) Ltd. v. Union of India - [2024] 159 taxmann.com 69 (Bombay)**

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

3.62 Where assessee had applied for ITC reversal in 24 equal instalments but no final decision was communicated to it and, thereafter, an order was passed demanding interest without considering its application, Appellate Authority was to be directed to decide application of assessee seeking payment in installments and order demanding interest was to be set aside - **Sandeepg Real Estate Ltd. v. State of West Bengal - [2024] 158 taxmann.com 692 (Calcutta)**

3.63 Where assessee was issued notice pursuant to original notice indicating grounds and calculation, on which demand was raised under section 50 of CGST Act, however during pendency of petition, amendments were made to Section 50 through Finance Act, 2019 and Finance Act, 2021, therefore in view of said amendments and facts of case writ petition was to be disposed of directing assessee to approach revenue indicating payable amount and seeking re-determination of demand - **Swift Motors v. Superintendent Central Goods & Service tax - [2024] 159 taxmann.com 70 (Rajasthan)**

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

3.64 Where filing of refund application by online method was permissible under relevant circulars of revenue and assessee filed application for refund under section 54(3) but relevant documents were submitted subsequently; application could not have been held to be barred by limitation - **Trafigura Global Services (P.) Ltd. v. Principal Commissioner of CGST & Central Excise - [2024] 159 taxmann.com 296 (Bombay)**

3.65 Where assessee deposited a sum of Rs.57,98,945/- towards tax demand under GST regime under protest and refund claim of said amount deposited in protest was rejected on ground that application was filed under category "Any Others, refund claim could not be rejected merely on ground that such refund claim does not fall within specific categories, since order rejecting refund claim was issued without providing adequate reasons for rejection of refund claim, same was to be quashed and matter was remanded for reconsideration - **Engineers India Ltd. v. Assistant Commissioner (Central Tax) - [2024] 159 taxmann.com 364 (Madras)**

3.66 Where show cause notice issued by respondent-department to petitioner-assessee alleging wrong availment of IGST Refund lacked basis of issuance, therefore, writ petition was disposed of by directing petitioner-assessee to file a request detailing documents that were required by petitioner-assessee for purposes of filing a proper reply to show cause notices - **Pooppally Coir Mills v. State Tax Officer - [2024] 159 taxmann.com 370 (Kerala)**

3.67 Where assessee made zero rated supply of goods and sought refund of unutilized accumulated ITC but shipping details could not be uploaded in Form GSTR-1 at time of claiming refund, Competent Authority was to be directed to take into consideration hardcopy of shipping bills submitted by assessee for consideration of its prayer for refund of unutilized accumulated ITC - **Sunil Kumar Poddar v. Additional Commissioner (Appeal) - [2024] 159 taxmann.com 54 (Calcutta)**

3.68 Where assessee being a person with disability intended to purchase a four-wheeler with specific concession of GST as provided in 2018 policy but Competent Authority returned its application on ground that policy had been revised and directed assessee to reapply under revised policy, since assessee had made application when 2018 policy was in force, same was liable to be considered under 2018 policy - **Arun Goel v. Union of India - [2024] 159 taxmann.com 454 (Delhi)**

3.69 Where petitioner operates Duty Free Shop at international airport, situated outside India's customs frontiers, rendering supply of goods to passengers is exempt from GST, but petitioner remained obligated to pay GST on input services, allowing for subsequent claiming of Input Tax Credit and refunds, with contractual obligations under Concession Agreement taking precedence over ITC and refund claims - **Fleming Duty Free Shop (P.) Ltd. v. Union of India - [2024] 159 taxmann.com 653 (Punjab & Haryana)**

3.70 Assessee would be liable for refund of amount paid as tax, interest and penalty which was paid on assurance that department would release seized currency; therefore, assessee was allowed to file an application for refund of aforesaid amount - **Goyal Metal Udyog v. Commissioner of Central Goods & Services Tax - [2024] 159 taxmann.com 36 (Delhi)**

3.71 Where assessee's application for refund of excess tax paid was rejected on ground of limitation, there was no ground to entertain instant writ petition, which had been filed seeking for a direction to consider said refund rejection order afresh, therefore instant writ petition was to be dismissed as it lacks merit - **Biju K.P. v. Assistant Commissioner - [2024] 159 taxmann.com 156 (Kerala)**

3.72 Where ITC of assessee was blocked pursuant to an inspection of its supplier's premises, in order to establish that transactions with assessee's suppliers were genuine, assessee was under an obligation to produce documents to establish purchase and receipt of relevant goods, instant writ petition was to be disposed of by directing revenue to consider assessee's request to release blocked ITC in Electronic Credit ledger - **T.T. Energies v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 255 (Madras)**

3.73 Where adjudicating authority, citing Circular No. 135/05/2020-GST, denied refund of accumulated ITC, asserting it's not applicable when input and output supplies are same, however instant case of assessee did not fall within said circular as rate on inputs was higher than rate of tax on output supplies and act does not restrict refund only in respect of supplies which are different at input and output stage, therefore refund of accumulated input tax credit was admissible - **Malabar Fuel Corporation v. Assistant Commissioner Central Tax & Central Excise - [2024] 159 taxmann.com 219 (Kerala)**

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

3.74 Where assessee received a notice intimating certain discrepancies in returns and submitted a reply to said notice but department had not considered same; department was to be directed to address grievance of assessee and pass appropriate orders on reply of assessee - **EGK Technologies v. Assistant Commissioner of Commercial Taxes - [2024] 159 taxmann.com 17 (Karnataka)**

3.75 Where impugned assessment order was issued without taking into account relevant material placed on record by assessee, impugned order was to be set aside and matter was to be remanded back to Assessing Officer for reconsideration - **A.D. Jeyaveerapandia Nadar & Bros. v. State Tax Officer - [2024] 159 taxmann.com 413 (Madras)**

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

3.76 Where petitioner-assessee filed reply issued to show cause notice in Form DRC-01 along with reply issued to notice dated 26.10.2023 and petitioner had dealt with each alleged defect, further, assessment order was issued without duly taking into consideration replies and documents submitted by petitioner-assessee, therefore, assessment order was set aside and matter was remanded for reconsideration - **TVS Scs Global Freight Solutions Ltd. v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 726 (Madras)**

SECTION 63 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - UNREGISTERED PERSONS

3.77 Where petitioner registered under GST since 1-7-2017, assigned temporary registration by authority with effect from 1-7-2021 and adjudicated under section 74 of GST Act, assessment order under section 63 of GST Act issued for same period and appeal under section 107 against said order rejected, exercise of power under section 63 erroneous, appellate authority was to be directed to decide appeal on merits - **Arupa Nanda Dhal v. Additional Commissioner of State Tax (Appeal) - [2024] 159 taxmann.com 684 (Orissa)**

3.78 Notice under section 63 of GST Act should not only be issued but also served and in absence of such a valid service, assessment under section 63 would be vitiated - **Arupa Nanda Dhal v. Additional Commissioner of State Tax (Appeal) - [2024] 159 taxmann.com 684 (Orissa)**

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

3.79 Where During course of search at business premises of assessee, Indian currency was resumed totaling to Rs 1,90,66,000, term "Things" appearing in section 67 does not include "money" and therefore, that being so, action on part of revenue seizing/resuming cash was illegal and arbitrary, there was no justification for resumption of cash and therefore revenue was directed to forthwith remit proceeds of fixed deposit (along with interest) to bank account of entities/person from whose possession same was resumed during search conducted - **K. M Food Infrastructure (P.) Ltd. v. Director General DGGI Headquarters - [2024] 159 taxmann.com 610 (Delhi)**

3.80 Where assessee was given ample opportunities, including intimation, show cause notice, and offer of personal hearing, but failed to substantiate purchases despite reminders, High Court determined that principles of natural justice were not violated, emphasizing that assessee received adequate notice and opportunities to respond - **Metal Trade Incorporation v. Assistant Commissioner (ST)(FAC) - [2024] 159 taxmann.com 612 (Madras)**

3.81 During search, department does not possess authority to seize currency; hence, currency seized by department during search was required to be released to assessee - **Goyal Metal Udyog v. Commissioner of Central Goods & Services Tax - [2024] 159 taxmann.com 36 (Delhi)**

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

3.82 High Court granted bail subject conditions to applicant alleged as having obtained GST registration using forged documents and evaded payment of GST - **Chandrika Singh v. State of Jharkhand - [2024] 158 taxmann.com 687 (Jharkhand)**

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

3.83 Where petitioner filed writ petition challenging summons issued under section 70; since it had to be disposed of in terms of directions issued in A. Venkatachalam v. Asst. Commissioner; No GST was to be recovered on royalty until decision of Constitution Bench - **K.Elango v. Deputy State Tax Officer, Inspection-3 - [2024] 159 taxmann.com 436 (Madras)**

3.84 Where, after determination of tax liability under section 74((9) of GST Act, tax pertaining to supplies received by assessee from R.J. Trading Co. deposited and proceedings closed, summons thereafter issued under section 70 of GST Act pertaining to same supplies, impugned order under section 74(9), was to be stayed till further order - **Garg Sons Estate Promoters (P.) Ltd. v. Commissioner of State Taxes & Excise - [2024] 159 taxmann.com 720 (Himachal 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

3.85 Where appeal filed against impugned order was rejected being delayed by 84 days, confusion about impugned order passed under TNVAT Act or TNGST Act, amount deposited by petitioner was about 25% of disputed tax, appellate authority was to be directed to receive and dispose of appeal on merits without going into aspect of limitation - **Tvl Chinnamuthu Contractors v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 331 (Madras)**

3.86 Where assessee challenged show cause notice issued by revenue authority for proposing recovery of ineligible input tax credit based on mismatch with GSTR-2A statements, writ petition could not be entertained at show cause notice stage; assessee was directed to file

objections to SCN - **Vaya Life (P.) Ltd. v. Superintendent, Circle-III, Group-IV - [2024] 159 taxmann.com 14 (Madras)**

3.87 Where hearing was fixed prior to reply furnished by assessee and therefore assessee was not provided adequate opportunity to defend show cause notice by way of hearing, order issued under section 73 could not be sustained and matter was liable to be remitted to proper officer for re-adjudication - **GAC Shipping India (P.) Ltd. v. Sales Tax Officer - [2024] 159 taxmann.com 686 (Delhi)**

3.88 Assessee seeking stay submitted that notice issued for FY 2018-19 were time barred as notification issued granting extension in time limit to pass order under section 73 is under challenge before Gujarat High Court, hence a direction was given to continue with proceedings but with restriction to pass final order - **Garg Rice Mills v. State of Punjab - [2024] 159 taxmann.com 98 (Punjab & Haryana)**

3.89 Where Revenue Authority had issued show-cause notice without considering or discussing assessee's detailed reply to pre-show-cause notice, show-cause notice was set aside - **Eden Real Estates (P.) Ltd. v. Senior Joint Commissioner of Revenue - [2024] 159 taxmann.com 540 (Calcutta)**

3.90 Where assessee contested cancellation of their GST registration, Delhi High Court noted deficiencies including lack of a designated officer in show cause notice, absence of reasons in cancellation order, potential unauthorized issuance by officer, and absence of valid signature, directing authorities to address and clarify these issues in scheduled hearing - **Raj Kumar Kukreja v. Principal Commissioner Delhi GST - [2024] 159 taxmann.com 548 (Delhi)**

3.91 Where Proper Officer had issued show cause notice alleging under-declaration of taxes and excess Input Tax Credit claims, and assessee submitted detailed reply, Proper Officer was required to substantiate why reply was unsatisfactory and provide assessee with opportunity to clarify or furnish further documentation before confirming demand - **Paras Enterprises v. Union of India - [2024] 159 taxmann.com 657 (Delhi)**

3.92 Where impugned order was passed against petitioner creating demand based on survey conducted by SIB, appeal filed against impugned order also rejected vide impugned appellate order, as petitioner did not put in appearance before appellate authority, not giving copy of SIB report to petitioner severely prejudiced case of petitioner, proceedings were in gross violation of principles of natural justice, impugned orders were to be set aside - **Origin B.R. Digitalsigns (P.) Ltd. v. State of U.P. - [2024] 159 taxmann.com 617 (Allahabad)**

3.93 Where in spite of request, no personal hearing was provided to assessee and order was issued and there was breach of principles of natural justice, therefore, impugned order was to be quashed and set aside and matter was remanded for reconsideration - **JRK Diagnostic v. Deputy State Tax Officer-I - [2024] 159 taxmann.com 218 (Madras)**

- 3.94** Where order under section 73 was passed and petitioner applied for rectification admitting tax liabilities of CGST and SGST, requested for relief from penalty as 100% penalty was imposed on SGST, since notice was issued under section 73 and not under section 74 of TNGST Act, impugned order was to be quashed as regards imposition of penalty at 100% on SGST dues - **K.S.Janarthanam v. Deputy State Tax Officer - [2024] 159 taxmann.com 329 (Madras)**
- 3.95** Where show notice issued on 24-12-2023 at 20:39, fixing date of hearing as 26-12-2023 at 11:30 AM, 25-12-2023 was gazetted holiday, detailed reply furnished by petitioner giving full disclosures, Proper Officer if of view that reply was incomplete and further details required, same could have been sought from petitioner, no such opportunity given, impugned order and show cause notice were to be set aside - **Federal Bank Ltd. v. Assistant Commissioner DGST - [2024] 159 taxmann.com 652 (Delhi)**
- 3.96** Where Revenue Authority erroneously calculated pre-notice period and denied adequate response opportunity, Impugned order was set aside, remitting matter for reconsideration with proper hearing and document consideration - **Eris Oaknet Healthcare (P.) Ltd. v. Deputy Commissioner of Commercial Taxes - [2024] 159 taxmann.com 292 (Karnataka)**
- 3.97** Where assessee admitted short payment of tax by inadvertance, however Adjudicating Authority and Appellate Authority did not consider GSTR-9C submitted by assessee, Adjudicating Authority was to be directed to revisit issue after taking into consideration GSTR-9C submitted by assessee - **Sanjeevani Gum Udyog v. State of West Bengal - [2024] 158 taxmann.com 710 (Calcutta)**
- 3.98** Where impugned order under section 73 was passed without taking into account reply filed by petitioner, order being cryptic was to be set aside - **Oswal Agencies (P.) Ltd. v. Union of India - [2024] 159 taxmann.com 547 (Delhi)**
- 3.99** Order passed by revenue against assessee under section 73 was to be set aside and matter was remanded back as assessee had not been given opportunity of personal hearing before passing impugned order - **Kabita Rath v. Chief Commissioner, C.T. & G.S.T. - [2024] 159 taxmann.com 101 (Orissa)**
- 3.100** Order in form GST DRC-07 passed by revenue by which demand for excess Input Tax Credit had been raised against assessee, along with interest and penalty was to be set aside as no opportunity of hearing was provided to assessee and decision making process adopted by revenue was vitiated and runs contrary to principles of natural justice and statutory requirements of section 75(4) - **Patanjali Ayurved Limited v. State Of Madhya Pradesh - [2024] 159 taxmann.com 102 (Madhya Pradesh)**
- 3.101** Where petitioner became aware of order in original passed under section 73[1] of Finance Act, 1994 read with section 142[8][a] of CGST Act only when he received a notice to appear for a personal hearing in connection with appeal presented against order-in-original, petitioner's was not furnished with certified copy of order in original after request, respondent, as agreed, was to be directed to supply certified copy of order-in-original to petitioner - **Dibyajit Bora v. Union of India - [2024] 159 taxmann.com 95 (Gauhati)**
- 3.102** Where petitioner's was not aware of order issued under section 73 of CGST Act being not available in "View Order and Notice" section on portal and not communicated by email, instead order and notice uploaded on "Additional Notices and Order Section", petitioner not heard and not given any opportunity to reply to notice, impugned order was to be quashed and set aside - **T S Lines India (P.) Ltd. v. State of Maharashtra - [2024] 159 taxmann.com 407 (Bombay)**
- 3.103** Where two show cause notices reflected identical content except for changes in financial year, tax rate, and turnover amount, subsequent issuance based on same grounds was deemed invalid and quashed in accordance with prior judgment - **Glaxosmithkline Consumer Health Care Ltd. v. Deputy Commissioner (State Tax) - [2024] 159 taxmann.com 367 (Telangana)**
- 3.104** Petitioner was issued show cause notice for ITC availed but disallowed and alleged short declaration of outward supply and excess claim of ITC in Karnataka, petitioner contended that it does not maintain a uniform pricing range across India, that it had filed returns as required declaring sales turnover based on transactional price from customers in Karnataka and none of such customers are related parties, impugned show cause notice under section 73(1) of KGST Act was to be quashed - **Appario Retail (P.) Ltd. v. Deputy Commissioner of Commercial Tax - [2024] 159 taxmann.com 509 (Karnataka)**
- 3.105** Where assessee, government company, benefiting from Section 12AA Income Tax Act, 1956 exemption, confronted show cause notice for alleged GST evasion, High Court, recognizing its potential exemption and government status, deferred judgment to assessing authority, emphasizing right to present arguments and evidence during assessment and directing consideration of all aspects, including exemption notifications, before reaching a final conclusion, mandating fresh notice for personal hearing to ensure fair adjudication - **Kerala Infrastructure and Technology For Education v. Union of India - [2024] 159 taxmann.com 469 (Kerala)**
- 3.106** Where bunching of show cause notices for multiple assessment years under Section 73 of CGST Act had exceeded individual three-year limitation period for each year, High Court held such bunching invalid, directing separate adjudication for each year - **Titan Company Ltd. v.**

Joint Commissioner of GST & Central Excise - [2024] 159 taxmann.com 162 (Madras)

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

- 3.107** Where show cause notice had not yet been adjudicated and there was no material on record showing attempted tax evasion, provisional order attaching all bank accounts of assessee was deemed very harsh, leading to hold such attachment as unsustainable - **Kaleidoscope v. State of West Bengal - [2024] 159 taxmann.com 512 (Calcutta)**
- 3.108** Where assessee was issued show cause notice under section 74(1) of GST Act for wrong availment of ITC followed by impugned orders, business premises of assessee under lock and seal of Bank, GST authority visited assessee's premises with Bank officials to get records, alleged records not found, despite officials of bank being summoned for cross-examination, assessee was not allowed to cross examine them, impugned orders were to be set aside - **B. Sivakumar v. State Officer - [2024] 159 taxmann.com 719 (Madras)**
- 3.109** Where apart from an error with regard to address of consignee in e-way bill there were no other issues with said consignment and imposition of penalty on assessee was only on basis of a technical error with regard to address of consignee that was wrongly written in e-way bill, order imposing penalty on assessee for same was to be set aside - **Spirare Energy (P.) Ltd. v. State of U.P. - [2024] 159 taxmann.com 271 (Allahabad)**
- 3.110** Where Pursuant to audit by audit group, audit report and impugned show cause notice under section 74 of CGST Act issued, show cause notice challenged on grounds, audit report did not record findings of fraud, wilful-misstatement or suppression of fact, audit report indicated tax was not paid or short paid or that ITC was wrongly availed or utilised, obligation imposed by statute satisfied, writ petition was to be dismissed by leaving it open to petitioner to reply to show cause notice - **ABT Ltd. v. Additional Commissioner of GST & Central Excise - [2024] 159 taxmann.com 289 (Madras)**
- 3.111** Where demand orders were passed without issuing show cause notice under Section 74(1) of UP GST Act, they were deemed to be without any legal basis and were liable to be quashed - **Yash Building Material v. State of U.P - [2024] 159 taxmann.com 487 (Allahabad)**
- 3.112** Where show cause notices and assessment orders were posted in 'View Additional Notices' tab on GST portal, earlier uploaded on 'View Notices' tab on portal,

petitioner unaware of proceedings, with a view to provide an opportunity to assessee to contest proceedings, impugned orders were to be quashed - **Murugesan Jayalakshmi v. State Tax Officer - [2024] 159 taxmann.com 545 (Madras)**

- 3.113** Where assessee had not been afforded with an opportunity of personal hearing by Adjudicating Authority before passing order under section 74 imposing tax and penalty, impugned order was to be set aside and Adjudicating Authority was to be directed to grant an opportunity of personal hearing to assessee - **K. J. Enterprises v. State of U.P. - [2024] 159 taxmann.com 56 (Allahabad)**

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

- 3.114** Where assessment order was passed on ground that assessee did not reply to SCN and assessee contended that he was not afforded opportunity of personal hearing; impugned order was to be quashed and matter was to be remanded for reconsideration - **Joshikaa Enterprises v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 187 (Madras)**
- 3.115** Where no opportunity of personal hearing was provided to assessee before passing adverse order against assessee, decision making process adopted by authorities were vitiated and ran contrary to principles of natural justice, thus said proceedings were to be set aside and authorities were to be directed to provide opportunity of personal hearing to assessee - **IJM Concrete Products (P.) Ltd. v. State of M.P. - [2024] 158 taxmann.com 695 (Madhya Pradesh)**
- 3.116** Where petitioner submitted reply making specific request for a personal hearing, order under section 73 was passed foisting a liability, no opportunity of hearing provided as contemplated in section 75(4), respondent authorities were to be directed not to take any coercive action by way of any proceeding against petitioner to recover alleged outstanding dues, till next date of listing - **Shri Rameshwar Traders v. State of Assam - [2024] 159 taxmann.com 405 (Gauhati)**

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

- 3.117** Where proper officer had issued notice for recovery of amounts in terms of clause of Section 79(1) (c)(i) of TNGST Act, he has discretion to extend time for making payment under Section 79(1)(c)(iv) of TNGST Act - **ACP Business Enterprises (P.) Ltd. v. Secretary to Government - [2024] 159 taxmann.com 464 (Madras)**
- 3.118** Where Competent Authority had issued garnishee notice to bank for attachment of tax amount of assessee, if assessee made a representation to Competent Authority explaining cogent reasons for seeking time, same may be considered - **ADHUNIK INFRATECH INDIA (P.) Ltd. v. ASSISTANT COMMISSIONER OF STATE TAX - [2024] 159 taxmann.com 340 (Andhra Pradesh)**

SECTION 80 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - RECOVERY IN INSTALLMENTS

- 3.119** Where order under section 73(9) was passed confirming liability for ineligible ITC and interest, against amount under sl. no.2, petitioner was ready to make payment in instalments under section 80, petitioner had three months time for making payment under section 78, which had not expired, petitioner's application filed manually for instalments, as it was not accepted electronically, was to be accepted - **Penna Cement Industries Ltd. v. State of Andhra Pradesh - [2024] 159 taxmann.com 369 (Andhra Pradesh)**

RULE 86A OF THE CENTRAL GOODS AND SERVICES TAX RULE, 2017 - CONDITIONS OF USE OF AMOUNT AVAILABLE IN ELECTRONIC CREDIT LEDGER

- 3.120** Where ITC of assessee was blocked by issuing a text message without providing any reason, assessee was entitled to unblocking of ITC and respondent authority was to be directed to take necessary action to remove block on ITC in electronic credit ledger of assessee - **Tvl. J.M. Traders v. Deputy Commissioner (ST) - [2024] 159 taxmann.com 458 (Madras)**

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

- 3.121** Where assessee contested cancellation of their GST registration, Delhi High Court noted deficiencies including lack of a designated officer in show cause notice, absence of reasons in cancellation order, potential unauthorized issuance by officer, and absence of valid signature, directing authorities to address and clarify these issues in scheduled hearing - **Raj Kumar Kukreja v. Principal Commissioner Delhi GST - [2024] 159 taxmann.com 548 (Delhi)**

RULE 100 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - ASSESSMENT IN CERTAIN CASES

- 3.122** Where, in impugned assessment order, observation of proper officer was limited to a reversal of alleged excess ITC claim of Rs. 20,04,676 whereas, in abstract of total demand, SGST dues of Rs. 4,09,63,596 were mentioned and in respect of discrepancies 7 to 20, comparing same with article at pages 151 to 153 of typed set, observations were found lifted straight from article, impugned order was to be quashed - **Coromandel Engineering Company Ltd. v. Deputy State Tax Officer (ST) - [2024] 159 taxmann.com 511 (Madras)**

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

- 3.123** Where Central Government had issued a notification extending time for filing appeal against orders passed

under sections 73 or section 74 till 31-1-2024, however did not include orders passed under sections 129 and 130, Central Board of Indirect Taxes, was to be directed to consider adding section 129 and section 130 in said notification at earliest - **Veira Electronics (P.) Ltd. v. State of U.P. - [2024] 159 taxmann.com 37 (Allahabad)**

- 3.124** Where impugned order passed under section 107 of CGST Act read with Rule 108 of CGST Rules directed against order passed under section 73 of CGST/OGST Act, no opportunity of hearing to petitioner, as per authority sufficient opportunity given but petitioner did not appear, considering interest of State for augmentation of revenue, impugned order was to be quashed - **Amit Baran Das v. Commissioner, CT & GST - [2024] 159 taxmann.com 327 (Orissa)**

- 3.125** Where assessee was unable to file appeal against order of assessment due to non-availability of portal, Competent Authority was to be directed to accept appeal if same was filed by assessee through physical mode - **King Confectionary v. State of Madhya Pradesh - [2024] 159 taxmann.com 206 (Madhya Pradesh)**

- 3.126** Where assessee failed to contest tax demand within specified period, and slight delay occurred beyond appellate authority's extension, High Court directed consideration of appeal on its merits upon filing within ten days, with a precondition of remitting 10% of disputed tax demand - **G.V. Construction v. Commissioner of Commercial Taxes - [2024] 159 taxmann.com 542 (Madras)**

- 3.127** Where reasons assigned by assessee for delay in filing appeal was genuine and reasonable, order refusing to entertain appeal on ground of limitation was to be set aside and Appellate Authority was to be directed to take appeal on record and dispose same on merits - **Lansun Logistics v. Commissioner (Appeals-II) - [2024] 159 taxmann.com 113 (Madras)**

- 3.128** Where reasons assigned by petitioner-assessee for delay in filing appeal were reasonable and petitioner-assessee's right to prefer appeal could not be deprived on account of delay which occurred beyond their control, therefore, delay was condoned; petitioner-assessee was allowed to file appeal - **Tvl. GT India (P.) Ltd. v. State Tax Officer - [2024] 159 taxmann.com 94 (Madras)**

- 3.129** Where assessee filed writ petition assailing order of Adjudicating Authority wherein it was held that assessee had wrongly taken ITC, since efficacious alternative statutory remedy of appeal was available to assessee, writ petition filed by assessee was not maintainable - **ACME Ferro Alloys (P.) Ltd. v. Union of India - [2024] 158 taxmann.com 693 (Madhya Pradesh)**

- 3.130** Where there was no proof of service of hearing notice to assessee and assessee was not heard before appellate order was issued, thus, said order was to be quashed and matter was remanded to appellate authority for reconsideration - **F1 Auto Components (P.) Ltd. v. Deputy**

Commissioner (ST) - [2024] 159 taxmann.com 190 (Madras)

- 3.131** Where petitioner's appeal challenging impugned order passed under section 130 of CGST Act was not entertained as petitioner had not made pre-deposit, no tax payable as per order in appeal, time was to be granted to respondent representative to take instructions, whether respondent would proceed with appeal or petitioner to proceed with petition - **MR Lub Industries v. State of Gujarat - [2024] 159 taxmann.com 189 (Gujarat)**
- 3.132** Where assessee's appeals were rejected on ground of limitation keeping in view fact that appeals were filed electronically on 27-5-2022 but manually on 10-6-2022, since appeals were filed within period of limitation, if calculated from date of electronic filing, Order-in-Appeal was to be set aside and Appellate Authority was to be directed to decide appeals on merits - **Star Health and Allied Insurance Co. Ltd. v. State of Haryana - [2024] 159 taxmann.com 381 (Punjab & Haryana)**
- 3.133** Where assessee contested assessment order on transitional credit, initial recourse should have been statutory appeal process, even if assessee believed that appeal might be futile due to his claim's association with excise duty. - **Metalex Agencies v. State Tax Officer - [2024] 159 taxmann.com 613 (Kerala)**
- 3.134** Where an order-in-original remained unserved due to undelivery and was subsequently delivered later, limitation for filing appeal shall commence from date of actual service, not original date of order - **Vibgyor Services v. Union of India - [2024] 159 taxmann.com 618 (Delhi)**
- 3.135** Assessment orders could be challenged via statutory appeal mechanisms before resorting to writ petition - **Lotus Electricals v. State of Andhra Pradesh - [2024] 159 taxmann.com 368 (Andhra Pradesh)**
- 3.136** Where an impugned order was passed rejecting appeal filing by assessee on ground of period of limitation, since, assessee placed a death certificate of his mother, it was observed that assessee should be provided an opportunity to prosecute and appeal, accordingly impugned order was quashed and department was directed to receive and dispose assessee's appeal - **Vishal Export v. Appellate Deputy Commissioner (ST) - [2024] 159 taxmann.com 332 (Madras)**
- 3.137** Where Joint Commissioner issued impugned endorsement whereby appeal preferred by assessee was dismissed on ground of limitation, since assessee preferred appeal before wrong authority, time spent before wrong authority was to be excluded while computing limitation period, thus, endorsement issued

by respondent-authority was to be set aside and Appellate Authority was to be directed to consider appeal filed by assessee on merits - **Sree Krishna Hot Dip Galvanizers v. State of Karnataka - [2024] 159 taxmann.com 379 (Karnataka)**

- 3.138** Where assessee challenged impugned assessment orders, alleging procedural violations, lack of document access, and incorrect findings, High Court, upon dismissing petition, held that assessee had sufficient opportunities during assessment process, finding no grounds for interference, noting typographical errors in CGST liability, rejecting entitlement to cross-examine in non-inquiry proceedings, and concluding that none of challenges constituted adequate grounds for discretionary jurisdiction - **Tvl. Sakthi Ganesh Textiles (P.) Ltd. v. Assistant Commissioner (State Tax) - [2024] 159 taxmann.com 486 (Madras)**
- 3.139** Where Petitioner's appeal under section 107 of APGST Act against cancellation of GST registration was rejected on ground that it was barred by limitation and beyond condonable statutory period, petitioner's health not good and on bed rest, delay was to be condoned - **Shaik Abdul Azeez v. State of AP - [2024] 159 taxmann.com 481 (Andhra Pradesh)**
- 3.140** Where petitioner's appeal under section 107 of CGST Act was rejected on 28.12.2023 for reason of two days delay in submission, petitioner could not avail benefit of scheme of Notification No. 53 of 2023-Central Tax, dated 2-11-2023, applicable to orders passed prior to 31-3-2023, following decision of Patna High Court, Civil Writ Jurisdiction 17202 of 2023, dated 7-12-2023, in similar matter, impugned order was to be set aside - **Aditri Jewellers v. Additional Commissioner of CT and GST - [2024] 159 taxmann.com 430 (Orissa)**
- 3.141** Section 107 of CGST Act, 2017 does not exclude provisions of Section 5 of Limitation Act, 1963 and therefore Appellate Authority to consider condonation of delay beyond period prescribed - **S.K. Chakraborty & Sons v. Union of India - [2024] 159 taxmann.com 259 (Calcutta)**
- 3.142** Where assessee demonstrated that delay in filing appeal was due to valid mitigating circumstances, such as serious medical condition, Appellate Authority could condone delay and consider appeal on its merits - **Great Heights Developers LLP v. Additional Commissioner Office of the Commissioner of CGST & Central Excise, Chennai - [2024] 159 taxmann.com 434 (Madras)**
- 3.143** Where appellate tribunal had not been constituted and impugned order was appealable, assessee could resort to writ petition for interim protection, ensuring that assessee was not prejudiced by absence of tribunal - **G. L. Kundu & Sons Steel (P.) Ltd. v. Deputy Commissioner State Taxes - [2024] 159 taxmann.com 402 (Calcutta)**
- 3.144** Where adequate statutory appeal mechanism existed for GST assessments, High Court's writ jurisdiction under Article 226 should not be invoked without strong grounds or

exceptional circumstances, as mere assertions of jurisdictional defects or violations of natural justice were deemed insufficient - **Frontier Agrotech (P.) Ltd. v. Joint Commissioner of State Tax - [2024] 159 taxmann.com 401 (Patna)**

3.145 Since assessee had availed alternate remedy of filing an appeal and had made, instant writ petition became infructuous regarding said aspect and was to be disposed of - **Dada Motors (P.) Ltd. v. Union Territory of Chandigarh - [2024] 159 taxmann.com 68 (Punjab & Haryana)**

3.146 Where appellate authority has power to extend time for filing appeal by further period of one month, since assessee had remitted 10% of disputed tax and period of delay in filing appeal against assessment order was only 20 days, writ petition was to be disposed of directing revenue to receive and dispose of assessee's appeal on merits - **Sumathi Fabrics v. State Tax Officer - [2024] 159 taxmann.com 584 (Madras)**

3.147 Where order under section 73(9) was passed against petitioner confirming liability for ineligible ITC and interest, petitioner intended to file appeal against sr. no. 1 of order for which period of limitation under section 107(1) had not expired, petitioner was to be allowed to file appeal with respect to amount under sl. no.1 - **Penna Cement Industries Ltd. v. State of Andhra Pradesh - [2024] 159 taxmann.com 369 (Andhra Pradesh)**

3.148 Where technical glitch led to use of alternative form for pre-deposit by assessee, and delay condoning petitions were overlooked in impugned order, rejection of appeals solely based on form used was deemed procedurally unfair, necessitating reconsideration by Respondent authority - **Manjunatha Oil Mill v. Assistant Commissioner (ST) (FAC) - [2024] 159 taxmann.com 514 (Andhra Pradesh)**

3.149 Where appeal not filed in time, State Government allowing window of opportunity vide Notification dated 4-11-2023 to taxable persons who could not file appeal against order passed on or before 31-3-2023 under sections 73 or 74 of TSGST Act, concerned bank was to be directed to permit petitioner to remit amount of pre-deposit from attached bank accounts to enable petitioner to file appeal within cut-off date - **Kamrul Nahar v. Union of India - [2024] 159 taxmann.com 468 (TRIPURA)**

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

3.150 Where refund of inverted duty structure sanctioned to petitioner, pursuant to amendment to CGST Rules, revision proceedings initiated and impugned order issued, impugned order travelled beyond scope of revision proceedings under section 108 of TNGST Act as no findings were recorded with regard to this,

respondent also did not engage with petitioner's contentions with regard to penalty, no reasons recorded for not accepting same, impugned order was to be set aside - **Tvl. Renault Nissan Automotive India (P.) Ltd. v. Joint Commissioner (ST) (FAC), Chennai - [2024] 159 taxmann.com 581 (Madras)**

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

3.151 Where assessee's appeal was rejected, assessee deposited 20% of tax in dispute as per section 112(8) of CGST Act, Tribunal not constituted, demand issued, assessee filed writ petition, tax authorities, recovered entire amount remaining payable under section 79 of CGST Act, no such recovery could be made, amount recovered was to be refunded - **National Insurance Co. Ltd. v. State of Bihar - [2024] 159 taxmann.com 226 (Patna)**

3.152 Where assessee filed instant writ petition impugning assessment order and appellate order and submitted that in absence of constitution of GST Appellate Tribunal, it had no other forum to challenge appellate order, assessee was to be directed to deposit 20 per cent of remaining amount of tax in dispute and demand of tax assessed was to be kept in abeyance till disposal of instant petition - **Assa Allakappallil Prabhakarasn alias Asha A.P. v. Joint Commissioner (Appeals) II - [2024] 159 taxmann.com 139 (Kerala)**

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

3.153 Where assessee faced seizure for non-downloading of E-way Bill due to confusion arising from frequent changes in notifications, High Court held that imposition of maximum penalty, without allegations in show cause notice or impugned order, was unjustified; particularly when lesser penalty is prescribed under Section 122 of CGST Act - **Girish & Co. v. State of U P - [2024] 159 taxmann.com 433 (Allahabad)**

3.154 Where allegations prima facie pointed to cognizable offense, police had duty to investigate, and High Court emphasized that quashing FIR should be contemplated only when investigation is nearing completion with minimal disruption to proceedings; in light of ongoing investigation and discovery of diaries indicating bribery, High Court deemed petition premature - **Mandeep Singh v. State of Punjab - [2024] 159 taxmann.com 753 (Punjab & Haryana)**

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

3.155 Where petitioner's detained goods were released after deposit of penalty imposed, order also passed imposing penalty on ground that both firms were not involved in business of supply of areca nuts but engaged in business of stationary items, once order already passed by authorities, writ against order not maintainable, petitioner was to be directed to avail statutory remedy of appeal - **Fayiz**

Nangaparambill v. State of Haryana - [2024] 159 taxmann.com 126 (Punjab & Haryana)

- 3.156** Where impugned order was passed under section 129, detaining vehicle and goods and a representation was made by assessee to release goods on payment of penalty, department was directed consider representation made by assessee - ***Hari Enterprises v. State of Gujarat - [2024] 159 taxmann.com 128 (Gujarat)***
- 3.157** Where order proposing levy of tax and penalty was passed against petitioner-assessee under Section 129 on ground that e-way bill was invalid as it was found to be an attempt to post facto rationalize illicit transportation of goods and petitioner-assessee did not oppose aforesaid finding, therefore, order proposing levy of tax and penalty and appellate order were upheld; writ petition was dismissed - ***Jay Vijay Traders Varanasi v. State of U.P - [2024] 159 taxmann.com 122 (Allahabad)***
- 3.158** Detention order and imposing penalty at rate 200 % for a non-taxable movement of JCB machine that was returning from work was not in accordance with as law as assessee, owner of said machine, did not had intention to evade tax, therefore said order of detention was to be set aside - ***Mohammad Shamasher v. State of West Bengal - [2024] 159 taxmann.com 192 (Calcutta)***
- 3.159** Where show cause notice mentions that M/S. Navaraj Trading Company i.e., supplier of assessee had discrepancies in documents and was accused of involvement in circulating fictitious/bogus Input Tax Credit (ITC) to other parties, since assessee being no way connected with any allegations that had been levelled against supplier company, could not be made liable to pay penalty, therefore order of detention of goods and order imposing penalty was to be set aside - ***Fairdeal Metals Ltd. v. Assistant Commissioner of Revenue, State Tax, Bureau of Investigation (NB) - [2024] 159 taxmann.com 158 (Calcutta)***
- 3.160** Where assessee imported goods from china and paid IGST @28% and mistakenly only Part B of the E-Way Bill was not filled up at time of interception, it was crystal clear that IGST had already been paid and there was no involvement whatsoever of any mens rea for evasion of tax and there was only technical fault, order of detention was to be quashed and set aside - ***Abilities Pistons and Rings Ltd. v. Additional Commissioner, Circle-2 (Appeal) Commercial Tax - [2024] 159 taxmann.com 326 (Allahabad)***
- 3.161** Where vehicle containing goods broke down and goods were loaded on another vehicle, and since there was Bharat Band on said date, driver of vehicle could not update E-way bill, however, revised E-way bill had been produced before authorities prior to passing of seizure order, presence of mens rea for evasion of tax

being a sine qua non for imposition of penalty, order passed by Assistant Commissioner imposing penalty and order of Appellate Authority confirming same were to be set aside - ***Ashoka P.U. Foam (India) (P.) Ltd. v. State of U.P. - [2024] 159 taxmann.com 328 (Allahabad)***

- 3.162** Where one of E-way bills had expired however, goods matched description of e-invoices and E-way bills, since authorities had not been able to indicate any intention on part of assessee to evade tax in relation to e-invoices and E-way bills, such a technical violation by itself without any intention to evade tax could not lead to imposition of penalty - ***Globe Panel Industries India (P.) Ltd. v. State of U.P. - [2024] 159 taxmann.com 203 (Allahabad)***
- 3.163** Where goods of assessee being transported from one branch to another were intercepted and penalty and tax was imposed on ground that there was a mismatch in e-way bill and tax invoice, mere discrepancy in date in e-way bill and branch transfer invoice would not lead to evasion of tax, thus penalty and tax were not leviable - ***Anchor Health And Beauty Care (P.) Ltd. v. State of U.P. - [2024] 159 taxmann.com 341 (Allahabad)***
- 3.164** Where assessee challenged assessment order, appellate order, and demand notices for penalty under Section 129(1)of CSGT Act, High Court granted interim order directing Revenue not to invoke assessee's bank guarantee till disposal of petition, subject to depositing further 10% of assessed penalty - ***AMA (P.) Ltd. v. State of Kerala - [2024] 159 taxmann.com 75 (Kerala)***
- 3.165** Where delay in generating new e-way bill was reasonably explained, supported by circumstances like accident, and there was no intent to violate provisions of CGST Act, imposition of 200% penalty may not be justified - ***Saraf Trexim Ltd. v. Deputy Commissioner of State Tax - [2024] 159 taxmann.com 582 (Calcutta)***
- 3.166** Although assessee failed to generate e-Way Bill on time, Tax Invoices issued contained all relevant details including detail of vehicle transporting goods, moreover, CGST and SGST were already charged by SAIL, therefore, no intention to evade tax was evident in instant case and once e-Way Bills were presented before passing of penalty order, and all documents including tax invoices, were found to be in order revenue had no sound rationale to pass order under section 129, hence, order passed by revenue was to be quashed and set aside - ***Falguni Steels v. State Of U.P. - [2024] 159 taxmann.com 100 (Allahabad)***
- 3.167** Where goods were accompanied with relevant invoices, bilty documents and only four out of eight of E-way bills had incorrect address, even said incorrect address was registered office of assessee, therefore, there was no intention to evade tax, mere technical error committed by assessee could not result in imposition of harsh penalty upon assessee, hence, detention order was to be quashed and set aside - ***Hawkins Cookers Ltd. v. State of U.P. - [2024] 159 taxmann.com 404 (Allahabad)***

3.168 Where confiscation order was based on facts not disclosed to assessee in show cause notice, it violated principles of natural justice and was liable to be quashed - **Metro Fress Trading Company v. State of Gujarat** - [2024] 159 taxmann.com 515 (Gujarat)

3.169 Where goods and details in invoice matched and only shortfall was non-completion of Part B of e-way bill, which was subsequently rectified, presumption of tax evasion solely because of short distance between origin and destination of goods was deemed unjustified, leading to quashing of penalty order - **Nokia Solutions & Networks India (P.) Ltd. v. State Of U.P** - [2024] 159 taxmann.com 517 (Allahabad)

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

3.170 Where petitioner-assessee was issued show cause notices along with order to confiscate goods under Section 130 and petitioner-assessee filed a writ petition to quash show cause notices, further, following decision in State of Punjab vs. M/s. Shiv Enterprises and others, in which apex court had set aside order passed by high court on ground that it was 'premature' for high court to quash show cause notice issued under Section 130, therefore, writ petition was disposed of with liberty to petitioner-assessee to challenge impugned order dated 18.01.2024 - **Kanchan Supplier v. State of Punjab** - [2024] 159 taxmann.com 689 (Punjab & Haryana)

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

3.171 Where assessee was in custody for availing benefit of ITC on basis of forged and fictitious records, investigation was over and charge-sheet had been filed, in view of law laid down in Sanjay Chandra v. Central Bureau of Investigation, reported in [2012]1 SCC 40 and without discussing evidence in detail, prime facie, assessee was to be enlarged on regular bail on executing personal bond of Rs 10,000 - **Hitesh Prabhudas Lodhiya v. State of Gujarat** - [2024] 159 taxmann.com 293 (Gujarat)

3.172 Where assessee was in custody for more than 23 months in criminal complaint filed under section 132 of CGST Act, interim bail was already granted, he was regularly appearing before Court thereafter, no allegation that in case of bail pending trial, he would misuse concession in any manner, assessee was to be granted regular bail - **Sunny Singhal v. Directorate General of Goods and Services Tax Intelligence (DGGI)** - [2024] 159 taxmann.com 725 (Punjab & Haryana)

3.173 Where assessee created firm by using mobile phone of friend, had no functional business therein, created fake

bills showing fictitious transactions in name of non-existent firms, caused loss of more than Rs. 7 crores to State exchequer, custodial interrogation of assessee required to unearth modus operandi for committing crime, no case made out in favour of assessee for grant of anticipatory bail - **Shanky Khurana v. State of Haryana** - [2024] 159 taxmann.com 690 (Punjab & Haryana)

3.174 Where petitioner arrested for involvement of firm, in which he was proprietor, in utilizing bogus ITC through fake documents, not done any business at registered address, petitioner in custody for more than one year, offences triable, conclusion of trial could take long time, co-accused already granted bail, petitioner was to be granted regular bail - **Sonu v. State of Haryana** - [2024] 159 taxmann.com 659 (Punjab & Haryana)

3.175 Where assessee, falsely implicated in a government job sale, secured anticipatory bail as their involvement was limited to unknowingly accepting money from co-accused for goods purchased at their shop, assessee had produced GST Bill/Invoice showing that he was bona fide shopkeeper, thus, anticipatory bail was to be granted to assessee upon arrest or surrender within six weeks, requiring a bail bond of Rs.10,000/- and two sureties - **Ajay Khalkho v. State of Jharkhand** - [2024] 159 taxmann.com 290 (Jharkhand)

3.176 Where petitioner was in custody for more than 11 months and 18 days for offence under section 132(1) CGST Act /PGST Act read with section 69(1) of PGST Act for issuing fake bills and causing loss to Exchequer by conniving with other co-accused, keeping in view incarceration suffered by petitioner, maximum punishment prescribed under law and investigation already concluded, petitioner was to be released on bail - **Pankaj Kumar v. State of Punjab** - [2024] 159 taxmann.com 260 (Punjab & Haryana)

3.177 Where assessee was arrested and had already accepted that he had obtained GST registration of several firms on same PAN and issued invoices without actual supply, and assessee had already paid Rs. 81 lakhs towards tax amount, further incarceration of assessee was not required and, therefore, he was to be released on bail - **Rahul v. Director General of Goods and Service Tax** - [2024] 158 taxmann.com 664 (Bombay)

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

3.178 Where, vide impugned show cause notice a demand was proposed to be created against petitioner, respondent-officer had not complied with provisions of Rule 142(1) of CGST Rules by giving an opportunity to petitioner to respond or to pay tax, proper officer was to be directed to give an opportunity of personal hearing to petitioner and adjudicate show cause notice in accordance with law - **Asus India (P.) Ltd. v. GST Officer, Ward-91, Zone-8** - [2024] 159 taxmann.com 398 (Delhi)

SECTION 160 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - NOT TO BE INVALID ON CERTAIN GROUNDS

- 3.179** Where unsigned order was passed by respondent-department against petitioner-assessee and unsigned order was no order in eyes of law, further, unsigned order could not be covered under any mistake, defect or omission therein as used in Section 160, therefore, impugned assessment order was set aside - **Sri Srinivasa Enterprises v. Assistant Commissioner of State Tax - [2024] 159 taxmann.com 660 (Andhra Pradesh)**

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

- 3.180** Where appellate authority wrongly attempted to rewrite its earlier decision in violation of limited scope of Section 161, revenue was directed to restore assessee's registration within three weeks - **Sajal Kumar Das v. State of West Bengal - [2024] 158 taxmann.com 690 (Calcutta)**

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

- 3.181** Where input tax credit claimed by petitioner in returns filed for period from July, 2017 to March, 2018 in GSTR-3B was disallowed on ground of mismatch between GSTR-3B and GSTR-2A to extent of mismatch, impugned orders was to be set aside and matter was to be remitted back to assessing authority to consider case of petitioner afresh in light of Para 4 of circular dated 27-12-2022 - **Kochi Medicals v. State Tax Officer - [2024] 159 taxmann.com 225 (Kerala)**

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

- 3.182** Where assessee failed to give reply to notice issued by GST Authorities to email ID of assessee and an order was passed calling upon assessee to pay disputed ITC, it was incumbent upon GST authorities to serve at least another notice through other other modes if reply to notice sent on email was not received, thus said order was to be set aside and assessee was to be directed to reply to show cause notice issued by authorities - **Sakthi Steel Trading v. Assistant Commissioner (ST) - [2024] 159 taxmann.com 233 (Madras)**

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

- 4.1** In view of provisions of clauses (c) and (d) to sub-section (5) of section 17 of GST Act, ITC for such portion of expenses pertaining to re-construction, renovation, additions, alterations or repairs which are capitalized stands ineligible, related ITC available only when such expenses not capitalised in books - **Bathula Mahesh Babu, In re - [2024] 159 taxmann.com 685 (AAAR-WEST BENGAL)**

5. AAR

CLASSIFICATION OF SERVICES

5.1 Services of Bio Medical Waste : Where services of Bio Medical Waste obtained from clinical establishments provided by applicant-assessee were exempted under Entry 75 of Notification No. 12/2017-CT(Rate) dated 28.06.2017, but aforesaid services were made taxable vide Notification No.03/2022-CT(Rate) dated 13.07.2022(effective from 18.07.2022), therefore, aforesaid services are taxable under Notification No.03/2022-CT(Rate) dated 13.07.2022; Further, registered dealer is liable to pay GST from 18.07.2022 and rate of GST leviable is 12%. - **Instromedix Waste Management (P.) Ltd., In re - [2024] 159 taxmann.com 579 (AAR- RAJASTHAN)**

CLASSIFICATION OF SERVICES

5.2 Transfer of Leasehold Rights : Where applicant-lessee has transferred lease right to assignee, therefore, it is a service classifiable under 'Other services' (SAC 999792) and taxable at 18% under Serial No. 35 of Notification No. 11/2017 CT (Rate) dated 28.06.2017 - **Fena (P.) Ltd., In re - [2024] 159 taxmann.com 541 (AAR- UTTAR PRADESH)**

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

5.3 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 - **Sri Krishna INN., In re - [2024] 159 taxmann.com 164 (AAR - TAMILNADU)**

5.4 Supply of Tree Pruners is exempted vide Entry No. 137 of Notification No.2/2017-Central Tax (Rate) dated 28-06-2017 - **Global Marketing, In re - [2024] 159 taxmann.com 254 (AAR - KARNATAKA)**

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

5.5 Rate of tax on supply of hiring of electrical equipment, air conditioning system, sprinkler system comprising fire detectors, DG set with accessories and services installed in building to provide required facilities and services through such assets to sub-leased space acquired by applicant in such building, attract tax @ 18% under serial number 17(viii) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as leasing or rental services - **Sun Knowledge (P.) Ltd., In re - [2024] 159 taxmann.com 724 (AAR-WEST BENGAL)**

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

5.6 Where applicant-lessee has entered into lease deed with Noida Authority-lessor for 99 years and applicant-lessee has transferred lease right to third party - assignee, therefore, it has provided service of transferring leasehold rights, thus, action of applicant-lessee is covered under paragraph 2 of Schedule II of CGST Act 2017 and transfer of leasehold rights falls within ambit of supply of service - **Fena (P.) Ltd., In re - [2024] 159 taxmann.com 541 (AAR- UTTAR PRADESH)**

5.7 Supply of food by employer, i.e., assessee to their employees is a composite supply of food held as 'supply of service' as per schedule-II of GST Act and amount collected by applicant is consideration on which GST is liable to be paid as providing canteen facility is an activity in furtherance of business which is mandated under Factories Act when number of employees exceeds 250 - **Sundaram Clayton Ltd., In re - [2024] 159 taxmann.com 224 (AAR - TAMILNADU)**

5.8 Upfront amount charged by applicant (as lease premium) for granting long term lease of plots for 90 years for development of NOIDA as 'industrial development area, not in nature of transaction for sale of land, not outside scope of levy of GST - **New Okhla Industrial Development Authority (NOIDA), In re - [2024] 159 taxmann.com 616 (AAR- UTTAR PRADESH)**

5.9 Supplies made by applicant of unbranded food grains, pulses, etc. will be exempt from CGST and SGST if made to 'institutional consumer' who is satisfying provided conditions - **Narayan Trading Corporation, In re - [2024] 159 taxmann.com 615 (AAR- TELANGANA)**

5.10 Where applicant-assessee is engaged in printing of books and supplied books to JCERT on his own account, further, printing of books took place by using inputs purchased by applicant-assessee and subsequent delivery of same is to be treated as supply of goods being "printed books" - **Swapna Printing Works (P.) Ltd., In re - [2024] 159 taxmann.com 406 (AAR-WEST BENGAL)**

5.11 Where applicant-assessee is engaged in printing of "Bilingual Parental Calendar" would be treated as supply of services and same is classifiable under Tariff Code 998912 being "printing and reproduction services of recorded media, on a fee or contract basis" - **Swapna Printing Works (P.) Ltd., In re - [2024] 159 taxmann.com 406 (AAR-WEST BENGAL)**

5.12 Where applicant-assessee is engaged in printing of notebooks and "predominant supply" is that of goods, further, supply of printing of content [supplied by recipient of supply] is ancillary to principal supply of goods, therefore such supplies would constitute supply of goods - **Swapna Printing Works (P.) Ltd., In re - [2024] 159 taxmann.com 406 (AAR-WEST BENGAL)**

5.13 Where applicant-assessee is engaged in printing of Comprehensive Report Progress Card, further, supply is

provided to Education Department and not to an educational institution, therefore, instant supply shall not be covered under aforesaid entry for exemption, further, supply of Comprehensive Report Progress Card to Education Department would be treated as supply of services - **Swapna Printing Works (P.) Ltd., In re - [2024] 159 taxmann.com 406 (AAR-WEST BENGAL)**

5.14 Where applicant mandated by Factories Act entered into contract with 'CSP' to provide canteen facilities to workers, deduction made by applicant from employees availing food in factory would not be considered as a 'supply' and thus GST would not be applicable on employee's portion - **Kohler India Corporation (P.) Ltd., In re - [2024] 159 taxmann.com 470 (AAR - GUJARAT)**

5.15 Where applicant entered into a contract with a 'CSP' to provide canteen facilities to its workers, ITC was to be restricted to extent of cost borne for providing canteen services to employees, proportionate ITC embedded in cost of goods recovered from such employees was not to be allowed - **Kohler India Corporation (P.) Ltd., In re - [2024] 159 taxmann.com 470 (AAR - GUJARAT)**

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

5.16 Manpower services such as data entry operators, drivers "D" group staff, FDA SDA, typist provided by assessee are not by way of any activity in relation to any function entrusted to panchayat under article 243G of Constitution or in relation to any function entrusted to municipality under article 243W of constitution, Hence provision of said manpower services is liable to tax at rate 18 percent - **Manish Manpower Agency., In re - [2024] 159 taxmann.com 294 (AAR - KARNATAKA)**

5.17 Where assessee is engaged in business activity of buying and selling of products called 'Tree Pruners', same is classifiable under Heading No. 8201 6000 - **Global Marketing, In re - [2024] 159 taxmann.com 254 (AAR - KARNATAKA)**

5.18 Micro barrier sterilization reels and pouches used by medical devices companies, pharmaceuticals industries and hospitals is classified under tariff item 39239020 and is taxable at rate 18 % GST - **Rups Medipack (P.) Ltd., In re - [2024] 159 taxmann.com 754 (AAR- UTTAR PRADESH)**

5.19 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 - **Sri Krishna INN., In re - [2024] 159 taxmann.com 164 (AAR - TAMILNADU)**

5.20 Supply of services by way of providing hostel accommodation falls under Heading 9963 and is taxable at 18 per cent - **Sri Krishna INN., In re - [2024] 159 taxmann.com 164 (AAR - TAMILNADU)**

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

5.21 Where applicant providing building on rent to schedule caste development department, Government welfare departmental hostels and Government social welfare college boys hostels, no direct relation between services provided and functions discharged by GHMC under Article 243W read with schedule 12 to Constitution of India, services not qualified for exemption under Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 - **Navya Nuchu., In re - [2024] 159 taxmann.com 546 (AAR- TELANGANA)**

5.22 All India Institute of Medical Sciences, Bibinagar established by Government by an Act of Parliament, not "Central Government" but a "Governmental Authority, not eligible for exemption under serial numbers Sl. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 - **All India Institute of Medical Sciences, In re - [2024] 159 taxmann.com 508 (AAR- TELANGANA)**

5.23 Applicant, assigned with function of allocating land for purposes of creating necessary infrastructure for development of NOIDA as 'industrial development area', allotted plots on long-term lease of 90 years for development of infrastructure for financial business, upfront amount charged, exempt from GST in terms of Entry No. 41 of Notification No. 12/2017-CT (Rate), dated 28-6-2017 - **New Okhla Industrial Development Authority (NOIDA), In re - [2024] 159 taxmann.com 616 (AAR- UTTAR PRADESH)**

5.24 Where assessee, providing healthcare services for psychiatric, substance use, and neurological disorders, offers inpatient care with room charges capped at Rs 5000/day, supply of medicines, consumables, and food to inpatients is integral to healthcare service, forming a naturally bundled "Composite supply," qualifying for exemption under Sl 74(a) of Notification No 12/2017-Central Tax (Rate) - **Spandana Rehabilitation, In re - [2024] 159 taxmann.com 371 (AAR - KARNATAKA)**

5.25 Where assessee is engaged in providing health care services to patients, assessee deduct retention money from amount collected by patients and make payments to consultant doctors who has been invited by hospital for diagnosing and treating patients, said amount charged by hospital from patients including retention money is towards healthcare services provided by hospital to patient and is therefore exempt from GST as per Circular No 32/06/2018-GST - **Spandana Rehabilitation, In re - [2024] 159 taxmann.com 371 (AAR - KARNATAKA)**

5.26 Applicant-assessee is engaged in providing health care services to patients and is providing practical training to nursing students and psychologists who are about to complete their course in recognized educational institutions

and collects fees for providing said training, said practical is not covered under definition of health care services and therefore fees collected for said training is not exempt from GST - **Spandana Rehabilitation, In re - [2024] 159 taxmann.com 371 (AAR - KARNATAKA)**

5.27 Where assessee, providing healthcare services for psychiatric, substance use, and neurological disorders, offers inpatient care with room charges capped at Rs 5000/day, supply of medicines, consumables, and food to inpatients is integral to healthcare service, forming a naturally bundled "Composite supply," qualifying for exemption under Sl 74(a) of Notification No 12/2017-Central Tax (Rate) - **Spandana Pharma., In re - [2024] 159 taxmann.com 330 (AAR - KARNATAKA)**

5.28 Where assessee is engaged in providing health care services to patients, assessee deduct retention money from amount collected by patients and make payments to consultant doctors who has been invited by hospital for diagnosing and treating patients, said amount charged by hospital from patients including retention money is towards healthcare services provided by hospital to patient and is therefore exempt from GST as per Circular No 32/06/2018-GST- **Spandana Pharma., In re - [2024] 159 taxmann.com 330 (AAR - KARNATAKA)**

5.29 Applicant-assessee is engaged in providing health care services to patients and is providing practical training to nursing students and psychologists who are about to complete their course in recognized educational institutions and collects fees for providing said training, said practical is not covered under definition of health care services and therefore fees collected for said training is not exempt from GST - **Spandana Pharma., In re - [2024] 159 taxmann.com 330 (AAR - KARNATAKA)**

5.30 Manpower services such as cleaning staff, cook, assistant cook, staff nurse, teachers and watchman provided by assessee to Social welfare department is exempted since said manpower services provided are by way of any activity in relation to any function entrusted to panchayat under article 243G of Constitution or in relation to any function entrusted to municipality under article 243W of Constitution and said services are provided to social welfare department which is department of state government - **Manish Manpower Agency., In re - [2024] 159 taxmann.com 294 (AAR - KARNATAKA)**

5.31 Where supplies of printed text books, notebooks, activity calendar and comprehensive progress report card involves supply of paper, ink, binding and packing materials etc., therefore, such supplies will not come under Serial No. 3 of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 ,further, applicant-assessee has not furnished any documents wherefrom value of goods involved in supply can be ascertained,

therefore, authority has refrained from pronouncing any ruling on this issue - **Swapna Printing Works (P.) Ltd., In re - [2024] 159 taxmann.com 406 (AAR-WEST BENGAL)**

5.32 Supply of services by assessee for removal of hump by dredging to Government of Delhi is covered under Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017, and is therefore exempt from GST - **Dredging & Desiltation Company (P.) Ltd., In re - [2024] 159 taxmann.com 400 (AAR-WEST BENGAL)**

5.33 Where port with which applicant-assessee has entered into a lease agreement is governed by Major Port Authorities Act, 2021 through which Central Government has formed Board for Port for administration, control and management of aforesaid port, therefore, Central government is not holding ownership over port - **Anmol Industries Ltd., In re - [2024] 159 taxmann.com 431 (AAR-WEST BENGAL)**

5.34 Where 'notified person' under notification is an authority or a board or any other body, which is set up by an Act of Parliament or a State Legislature or established by any Government and Ownership of port with which applicant-assessee has entered into a lease agreement is vested upon board appointed under Major Port Authorities Act, 2021 , therefore, both Section 51 of CGST Act read with Notification No 50/2018-CT dated 13.09.2018 as referred above, aforesaid port is liable to get themselves registered for deduction of tax at source and deposit same with Central Government - **Anmol Industries Ltd., In re - [2024] 159 taxmann.com 431 (AAR-WEST BENGAL)**

5.35 Where ownership of port with which applicant-assessee has entered into a lease agreement is vested upon board which is appointed under Major Port Authorities Act, 2021, therefore, as per section 44 of Major Port Authorities Act, audit of Port is to be carried out each year by Comptroller and Auditor General of India (CAG) - **Anmol Industries Ltd., In re - [2024] 159 taxmann.com 431 (AAR-WEST BENGAL)**

5.36 Where port with which applicant-assessee has entered into a lease agreement is not owned by Central Government and aforesaid port is liable to get themselves registered for deduction of tax at source and deposit same with Central Government but not as supplier of services under Entry 41 of Notification 12/2017 - Central Tax(Rate) dated 28.06.2017 , further, accounts of audit of port is carried out by Comptroller and Auditor General, but, it cannot be concluded that port may be regarded as an entity having 20 percent or more ownership of Central Government merely on ground that it's books of accounts are audited by CAG, therefore, applicant-assessee is not liable for exemption under Entry 41 of Notification 12/2017 - Central Tax(Rate) dated 28.06.2017 - **Anmol Industries Ltd., In re - [2024] 159 taxmann.com 431 (AAR-WEST BENGAL)**

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

5.37 Tax paid on supply of hiring of electrical equipment, air conditioning system, sprinkler system comprising fire detectors, DG set with accessories and services installed in building, to provide required facilities and services through such assets to sub-leased space acquired by applicant in such building, eligible for input tax credit - **Sun Knowledge (P.) Ltd., In re - [2024] 159 taxmann.com 724 (AAR-WEST BENGAL)**

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

5.38 An applicant is required to get themselves registered, if their aggregate turnover in a financial year exceeds twenty lakh rupees - **Sri Krishna INN., In re - [2024] 159 taxmann.com 164 (AAR - TAMILNADU)**

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

5.39 Where applicant is established by Government under Ministry of Fertilizer as a PSU, it can be classified under notified persons under section 51(1)(d) of CGST Act 2017 and does not attract TDS for making supplies to National Fertilizers Limited - **Ramagundam Fertilizers & Chemicals Limited, In re - [2024] 159 taxmann.com 16 (AAR- TELANGANA)**

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

5.40 Where Department for Women, Children, Disabled & Senior Citizens of State of Telangana is buying packaged commodities directly from manufacturer or from wholesale dealers for use by that institution and not for commercial or trade purpose, it will qualify to be an 'institutional consumer' - **Narayan Trading Corporation, In re - [2024] 159 taxmann.com 615 (AAR- TELANGANA)**

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

5.41 No ruling is to be issued, where question put forth by applicant was related to applicability of a case law to facts of instant case as it does not fall under scope of Section 97(2) of GST Act - **Sri Krishna INN., In re - [2024] 159 taxmann.com 164 (AAR - TAMILNADU)**

5.42 Where question raised by applicant-lessee is about related to "Admissibility of input tax credit of tax paid or deemed to have been paid", which is related to recipient of service, therefore, it is not covered under Section 97(2); no ruling is given - **Fena (P.) Ltd., In re - [2024] 159 taxmann.com 541 (AAR- UTTAR PRADESH)**

6. CCI

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

6.1 Where respondent, real estate developer, was alleged to have failed to pass on Input Tax Credit benefits, increase in ITC as percentage of turnover post-GST implementation was noted, yet due to missing certified sale deeds and unavailable buyer contact information, veracity of claim could not be verified, leading to Competition Commission ordering reinvestigation - **Abhilash Mohanty v. Vertex Homes (P.) Ltd. - [2024] 159 taxmann.com 439 (CCI)**

6.2 Where respondent/ assessee company allegedly failed to pass on reduced GST benefits to customers, Competition Commission, without ruling on penalties or settlement, ordered further investigation by DGAP to address objections regarding proper GST rate, cancelled flats' impact, and verification accuracy before reaching final decision - **Smt. Sudha v. Diya Greencity (P.) Ltd. - [2024] 159 taxmann.com 125 (CCI)**

FORM GST DRC-01A: Intimation Of Tax Ascertained Payable



CA Rohit Prasad

GST was introduced in India, aiming to streamline the indirect tax system in the country. Its aim was to eliminate the burden of the multiplicity of taxes on consumers, simplify compliance, and monitor and check tax evasion. But ever since the introduction of GST, the problem of fake registrations based on fake documents, fake invoices, etc. has caused considerable loss to the government.

Many steps have been taken by the authorities to control the issue of fake invoicing, and strict enforcement has been taken to check fraudulent activities. In this regard, the GST council has introduced the new feature of issuing intimation to the taxpayers if there is a discrepancy in tax payment in Form GST DRC-01. Through the intimation, the taxpayer can pay or explain the difference within the specified time without the intervention of the tax officials and avoid scrutiny. Under the GST Act, Section 73 deals with bona fide or genuine cases of non-payment or underpayment of tax, while Section 74 deals with mala fide or intent to deceive non-payment of tax.

What is GST DRC-01?

GST DRC-01 is a summary of the show cause notice to a taxpayer, while Form GST DRC-01A is an intimation issued before the show cause notice. If the taxpayer agrees with the demand of the department, he can pay the liability through Part B of the form, or if he disagrees with the contention of the department, he can reply with clarifications through Part B of the form. If the taxpayer fails to pay or reply, a show cause notice will be sent, and after that, recovery proceedings will be initiated against him.

What is a show cause notice in GST?

The GST officer may serve a show cause notice to a taxpayer due to tax not paid or short paid, tax erroneously refunded, or input tax credit wrongly availed or utilized. Along with the show cause notice, he will issue a summary of the show cause notice in Form DRC-01 with the following details:

- Details of the person to whom the show cause notice is issued, including GSTIN, address, etc.

- Tax period, financial year, section reference, notice reference
- Brief facts and grounds of the case
- Taxes and other dues, including interest, penalties, and others

What is the difference between GST DRC 01 and GST DRC-01 A?

GST DRC-01 is a summary of the show cause notice to a taxpayer, while Form GST DRC-01A is an intimation issued before the show cause notice. If the taxpayer agrees with the demand of the department, he can pay the liability through Part B of the form, or if he disagrees with the contention of the department, he can reply with clarifications through Part B of the form. If the taxpayer fails to pay or reply, a show cause notice will be sent, and after that, recovery proceedings will be initiated against him.

Intimation of tax ascertained through Part A of GST DRC-01A

As per notification no. 49/2019, Central Tax dated October 9, 2019, in Rule 142, related to notice of demand under GST, the following changes have been made:

- **Notice and order for the demand of amounts payable under the act:** The proper officer shall serve, along with i) notice issued under Sections 52, 73, 74, 76, 122 to 125, Sections 127, 129, and 130, a summary thereof electronically in GST DRC-01.
- The concerned officer shall, before serving the notice chargeable with tax, interest, and penalty under (1) of Section 73 or (1) of Section 74, as the case may be, communicate the details of any tax, interest, or penalty as ascertained by the officer in Part A of GST DRC-01A.
- Statement under (3) of Section 74, a summary thereof electronically in GST DRC-02, specifying the details of the amount payable, or
- Where, before the serving of the notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of (5) of Section 74, or where any person makes payment of tax, interest, penalty, or any other amount due in accordance with the provisions of the act, whether on his own or as communicated by the concerned officer under sub-rule 1(A), shall inform the officer of such payment in GST DRC-03, and the concerned officer shall issue an acknowledgement accepting the payment in GST DRC-04.
- Where the person referred to in sub-rule 1(A) has made a partial payment of the amount communicated to him or wishes to file any reply against the proposed liability, he may submit such reply in Part B of GST DRC-01A.

Explanation of the changes in the rule and its effects

- Before the introduction of Rule 142 (1A), show cause notice was being issued through the Form GST DRC-01. But after the introduction of the rule, the concerned officer has to ensure that the intimation in GST DRC-01A is issued under sub-rule 1 (A) for the amount determined regarding tax, interest, or penalty before serving the show cause notice under Section 73(1), or 74(1). By doing so, the taxpayer gets extra time to pay the differential amount. In other words, after determining the amount payable by the taxpayer, the first communication should be through intimation under Rule 142(1) through GST DRC-01A.
- There have been instances where taxpayers have received GST DRC-01 directly without receiving the intimation in GST DRC-01A. In such cases, the taxpayers can ask the proper officer to first communicate through the Form GST DRC-01A.
- After receiving the intimation in GST DRC-01A, the taxpayer can pay the difference amount under Section 73(5), or 74(5), as the case may be, and there would not be any penalty imposed by the officer. If the taxpayer does not agree with the liability, he can reply in Part B of GST DRC-01A, after which normal adjudication will continue.

Conclusion

GST DRC-01A is an intimation of tax liability due to tax short paid, not paid, or input tax credit wrongly claimed. The demand from GST is shown in Part A of the intimation. The taxpayer can either accept the calculation and pay the tax or reply about his disagreement with the demand in Part B of the intimation in GST DRC-01 provides the taxpayer with the option to resolve the dispute either by depositing the tax or, in the case of disagreement, to face judicial proceedings. This rule was passed with the intent of providing the dealer with a pre-show cause notice stage time to verify the records at his end and either confirm or deny the liability. It is meant to benefit both the taxpayer and the department and reduce litigation.

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1** SEBI cautions investors against fraudulent trading schemes claiming to be offered to Indian residents by FPIs - **Press Release No. 04/2024, Dated 26-02-2024**

Editorial Note : SEBI has cautioned investors against fraudulent trading schemes claiming to be offered to Indian residents by Foreign Portfolio Investors (FPIs). In this regard, SEBI clarified that FPI investment route is unavailable to resident Indians, with limited exceptions. Further, there is no provision for an "Institutional Account" in trading, and direct access to equities market requires investors to have a trading and demat account with a SEBI-registered broker/trading member and DP respectively.

- 1.2** SEBI releases Consultation Paper on 'Ease of doing business initiatives for 'Mutual Funds'

Editorial Note : SEBI has released a Consultation Paper on ease of doing business initiatives for Mutual Funds (MFs). The objective of consultation paper is to seek comments/ suggestions from public on proposals regarding ease of doing business initiatives for MFs. The key proposals include (a) appt. of a single fund manager for domestic and overseas/commodity funds, (b) nomination of MF units, and (c) streamlining prudential norms of passive schemes w.r.t exposures to a single stock of own group companies.

- 1.3** Govt. notifies July 1, 2024 as the effective date for enforcement of provisions of Bharatiya Nyaya Sanhita, 2023 - **Notification No. S.O. 850(E), Dated 23-02-2024**

Editorial Note : The Central Government has notified July 1, 2024 as the effective date for the enforcement of the provisions of the Bharatiya Nyaya Sanhita, 2023, except section 106(2).

- 1.4** Bharatiya Sakshya Adhiniyam, 2023 will be effective from July 1, 2024: Govt. - **Notification No. S.O. 849(E), Dated 23-02-2024**

Editorial Note : The Central Government has appointed July 1, 2024 as the effective date on which the provisions of the Bharatiya Sakshya Adhiniyam, 2023 will be effective.

- 1.5** Bharatiya Nagarik Suraksha Sanhita, 2023 to come into force w.e.f. July 01, 2024 - **Notification No. S.O. 848(E), Dated 23-02-2024**

Editorial Note : The Central Government has appointed July 1, 2024 as the effective date on which the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall come into force. The exception to this is the provisions of the entry relating to section 106(2) of the Bharatiya Nyaya Sanhita, 2023, in the First Schedule.

- 1.6** MCA extends the deadline for filing Form BEN-2 & Form 4D for LLPs without additional fees until May 15, 2024 - **General Circular No. 01/2024, Dated 07-02-2024**

Editorial Note : MCA vide. Notifications dated 09.11.2023 and 27.10.2023 had prescribed E-form LLP BEN-2 and E-form LLP Form no. 4D. In view of the transition of MCA-21 from V2 to V3 and to promote compliance on the part of reporting LLPs, the MCA has decided to allow LLPs to file Form LLP BEN-2 and LLP Form No. 4D, without payment of any additional fees, upto 15.05.2024. The two forms shall be made available in version 3 for filing purposes w.e.f 15.04.2024.

- 1.7** Floor price for institutional placement for privately placed InvITs shall be NAV per unit of such InvIT: SEBI - **Circular No. SEBI/HO/DDHS/DDHS-PoD/P/CIR/2024/10, Dated 08-02-2024**

Editorial Note : Earlier, in terms of SEBI Master Circular for InvITs dated July 06, 2023, Institutional placement of InvIT was required to be made at a price not less than the average of weekly high & low closing prices of units on stock exchange 2 weeks before relevant date. Now, the SEBI has decided that floor price for institutional placement for privately placed InvITs shall be NAV per unit of such InvIT. The price shall be based on the full valuation of all existing InvIT assets.

- 1.8** MCA notifies norms w.r.t processing of forms by Central Processing Centre; specifies their jurisdiction - **Notification No. G.S.R 107(E), Dated 14-02-2024**

Editorial Note : MCA has notified an amendment to the Companies (Registration Offices and Fees) Amendment Rules, 2014. A new rule 10A has been inserted to the existing rules. The rule specifies the list of e-forms, applications and documents on which the Central Processing Centre (CPC) shall exercise jurisdiction. Further, the timeline for processing of application has also been specified. The provisions shall be effective from 16.02.2024.

- 1.9** Enhancing Transparency: SEBI's Latest Directives on Offer Document Compliance

Editorial Note : To ensure completeness of the offer document for investors and provide greater clarity & consistency in the disclosures and for timely processing, the SEBI vide. Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/009, Dated Feb 06, 2024, has issued 'Guidelines for returning of draft offer documents and its resubmission'. Market intermediaries shall ensure that draft offer documents comply with Schedule VI of ICDR Regulations. Non-compliant documents will be returned to the issuer.

- 1.10** ICSI unveils revised Secretarial Standards on 'Meeting of Board of Directors' and 'General Meetings'

Editorial Note : The ICSI has notified revision in SS-1 i.e., Secretarial Standard on Meeting of Board of Directors, and SS-2 i.e., Secretarial Standards of General Meeting. The revised Secretarial Standards align with recent amendments to the Companies Act, 2013 post publishing of second versions of SS-1 & SS-2. The revised SS- 1 and SS-2 will be effective from 01.04.2024.

- 1.11** MCA adopts a centralized approach for processing all e-forms filed by Cos. starting from Feb 06, 2024 - **Notification No. S.O. 446(E) dated 02-02-2024**

Editorial Note : MCA has notified that w.e.f 06th Feb, 2024 the Central Processing Centre (CPC) shall process and dispose off e-forms filed by the Companies. This is aimed at freeing up capacity at the offices of Regional Directors and Registrar of Companies to deal with enforcement matters. Further, it has been clarified that the jurisdictional Registrars shall continue to have jurisdiction over the companies whose e-forms are processed by the CPC in respect of all other provisions of the Companies Act, 2013.

- 1.12** SEBI floats addendum to a consultation paper on streamlining ICDR and LODR norms for ease of doing business

Editorial Note : Earlier, the SEBI on 11th Jan, 2024 issued a consultation paper on Interim Recommendations of the Expert Committee for facilitating ease of doing business and harmonization of the provisions of the ICDR and LODR Regulations. Now, the committee has proposed that the requirement to deposit an amount equal to 1 % of the issue size available for subscription to the public with designated stock by the issuer is to be done away with. The stakeholders can submit their comments latest by 09th Feb, 2024.

- 1.13** SEBI proposes to allow Category I and II AIFs to encumber equity for infrastructure investee Cos. to ease debt-raising

Editorial Note : SEBI proposes to allow Category I and II AIFs to create an encumbrance on equity of an investee company only for borrowing by the said investee company where the investee company is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonised Master List of Infrastructure issued by the Govt., from time to time. AIFs however, will not be allowed to create encumbrance on equity of foreign investee Cos.

- 1.14** SEBI proposes guardrails and additional measures to revamp nomination facilities in securities market

Editorial Note : To provide convenience to investors, and establish uniformity in the nomination facilities and procedures, SEBI has issued a consultation paper to revise & revamp nomination facilities in the Indian securities market. Proposals include secure and

verifiable methods, such as digital signatures or Aadhar, for making, changing, or cancelling nominations. Acknowledgement of these actions will be provided to investors. Stakeholders may submit their comments by Mar 08, 2024.

- 1.15** MCA Operationalises Central Processing Centre (CPC) for Corporate Filings to Promote Ease of Doing Business - **MCA Press Release, Dated 16-02-2024**

Editorial Note : MCA has operationalised the Central Processing Centre (CPC) for centralised processing of corporate filings without requiring any physical interaction with the stakeholders to promote ease of doing business. The Ministry said 12 forms have begun to be processed at CPC from Feb 16 which will be followed by other forms from April 1, 2024 onward. Further, it has been noted that Incorporation of LLPs and companies is highest as compared to any of the previous financial years as on 14.02.2024.

- 1.16** SEBI releases Consultation Paper on 'Ease of doing business initiatives for Portfolio Managers'

Editorial Note : SEBI has released a Consultation Paper on ease of doing business initiatives for Portfolio Managers. The objective of the consultation paper is to seek comments/ suggestions from the public on the proposals regarding ease of doing business initiatives for Portfolio Managers. The consultation paper provides detailed recommendations for the working group and some additional proposals and seeks suggestions from the public on the same

- 1.17** MCA deploys the 'Change Request Form' on MCA-21 for the convenience of users of MCA-21 services - **General Circular No. 02/2024; Dated 19-02-2024**

Editorial Note : MCA has provided for deployment and usage of the 'Change Request Form' (CRF) on MCA-21. Stakeholders are informed that CRF has been made available on the V3 portal for convenience of users of MCA-21 services. This web-based Form is to be used only under exceptional circumstances, for making a request to ROC, for purposes which cannot be catered through any existing form or services or functionality available either at Front Office level (users of MCA-21 services) or Back Office level (ROCs).

- 1.18** CII issues guidelines on the appointment of Independent Directors and Board evaluation process

Editorial Note : The Confederation of Indian Industry (CII) has issued Guidelines on the Appointment of Independent Directors and the Process of Board Evaluation. The Guidelines aim to serve as guidance on the Appointment of Independent Directors, Succession Planning and the Process of conducting Board Evaluation. The Guidelines are divided into two parts respectively with 'Part A' focusing on Appointment of Independent Directors & Succession Planning and 'Part B' on the Process of Board Evaluation.

- 1.19 SEBI notifies guidelines for returning of draft offer document and its resubmission - **Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/009, Dated 06-02-2024**

Editorial Note : SEBI has observed that at times, draft offer documents filed with the Board for public issue / rights issue are found lacking in compliance with respect to Schedule VI of ICDR **Regulations**. Such documents require revisions/changes and thus lead to a longer processing time. Now, for consistency in the disclosures & timely processing, SEBI has decided to issue 'Guidelines for returning of draft offer document and its resubmission'. This Circular shall come into force with immediate effect.

- 1.20 MCA introduces 'Change Request Form' on V3 Portal for corrections in master data and other details

Editorial Note : The MCA has introduced the 'Change Request Form' under the Company e-filing's Approval Services (Registrar of Companies) Tab. Stakeholders can now update information relating to master data or any other information, via this **form**. Further, it should be noted that this form is a NON-STP Form, which will be reviewed by the relevant Approving Authority.

- 1.21 SEBI cautions the public to avoid transactions with unregistered entities - **Press Release No.02/2024, Dated 13-02-2024**

Editorial Note : SEBI has issued a caution against unregistered entities falsely claiming registration, showcasing fake certificates, and promising high returns. SEBI urged investors to verify the registration status and exercise due diligence to avoid potential fraud risks. In this regard, SEBI has also advised **investors** to (a) verify before investing (b) Beware of promises of high returns (c) Verify enforcement action by SEBI (d) Be well informed.

- 1.22 SEBI directs intermediaries to centralize FATCA and CRS certifications at KYC Registration Agencies - **Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2024/12, Dated 20-02-2024**

Editorial Note : To promote ease of doing business and compliance **reporting**, SEBI suggests measures for the centralization of certifications under the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) at KYC Registration Agencies. As per the new norms, SEBI has directed the intermediaries, who are reporting to financial institutions (RFI), to upload the FATCA and CRS certifications obtained from the clients onto the system of KRAs with effect from July 01, 2024.

2. SUPREME COURT

REGULATION 32 OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 - STATEMENT OF DEVIATION(S) OR VARIATION(S)

- 2.1 SAT was justified in dismissing SEBI's order imposing penalty upon Respondent company for not utilizing proceeds from preferential issue as per objects since object of issue stood ratified and became authorized pursuant to special resolution passed by shareholders, and there was an inordinate delay in issuance of adjudication proceedings - **Securities and Exchange Board of India v. ALPS Motor Finance Ltd. - [2024] 159 taxmann.com 422 (SC)**

SECTION 123 OF THE COMPANIES ACT, 2013 - DIVIDEND - DECLARATION OF

- 2.2 Where appellant company committed default in depositing and disbursing amount of dividend declared to its shareholders in terms of section 205 of 1956 Act, and hence, prosecution came to be launched against appellant, in view of fact that even though entire amount due to shareholders had been paid at belated stage, penal provisions could not be exonerated and interest of justice would be served if appellants were put to terms of violation committed by them, and thus, High Court had rightly declined to quash proceedings, and accordingly, fine of Rs.25 lakh was to be imposed on appellant - **Kaveri Telecom Products Ltd. v. Securities and Exchange Board of India - [2024] 159 taxmann.com 4 (SC)**

SECTION 182 OF THE COMPANIES ACT, 2013 - POLITICAL CONTRIBUTIONS - PROHIBITIONS AND RESTRICTIONS

- 2.3 SC strikes down as unconstitutional the Electoral Bonds Scheme, and FA 2017 amendments allowing unlimited corporate political donations - **Association for Democratic Reforms v. Union of India - [2024] 159 taxmann.com 383 (SC)**

3. HIGH COURT

SECTION 43 OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 - ESTABLISHMENT OF REAL ESTATE APPELLATE TRIBUNAL

- 3.1 Where against order of Maharashtra Real Estate Appellate Tribunal (Appellate Tribunal) directing appellant-real estate company to pre-deposit specified amounts towards compliance of section 43(5) of 2016 Act, appellant preferred instant writ, and when petitions were listed before writ court, it invited an order for quantification of amount to be pre-deposited, thus, having chosen to invite an order from writ court to seek quantification of amount of pre-deposit, appellant was now estopped from taking volte face and contend that interest was payable to respondents only at the time of procurement of occupancy certificate and thus, as of now no amount was required to be pre-deposited - **Balaji Construction Co. v. Anjusha Ajit Kadam** - [2024] 159 taxmann.com 737 (Bombay)

SECTION 71 OF THE COMPANIES ACT, 2013 - DEBENTURES

- 3.2 Where pledger / director of a company authorized pledgee to exercise voting rights in respect of pledged shares of said company on event of default in repayment, pledger being guilty of default for failing to redeem pledged property by tendering repayment, could not be permitted to urge that voting rights continued to vest in him, therefore, findings of Single Judge that pledgee became entitled to exercise voting rights could not suffer any illegality - **Rahul Dilip Shah v. Catalyst Trusteeship Ltd.** - [2024] 159 taxmann.com 476 (Delhi)

SECTION 77 OF THE COMPANIES ACT, 2013 - CHARGES - REGISTRATION OF

- 3.3 Delhi HC dismisses PIL filed by NGO seeking probe by SIT into allegations of dubious loans against IBFHL and its promoters - **Citizens Whistle Blower Forum v. Union of India** - [2024] 159 taxmann.com 154 (Delhi)

SECTION 123 OF THE COMPANIES ACT, 2013 - DIVIDEND - DECLARATION OF

- 3.4 Where after receiving complaints from shareholders of accused company regarding non-payment of dividend, a SCN was issued to petitioner directors of accused company on 13.2.2013 and on 23.2.2013 and reply was given by petitioners on 23.2.2013 seeking extension of time and subsequently, a letter dated 28.6.13 was issued by petitioners stating they have made all payments of dividend, thus, offence was continuing offence and such being case, complaint came to be filed in year March 2016 was within 3 years of offence committed - **Kavveri Telecom Products Ltd. v. Securities and Exchange Board of India** - [2024] 159 taxmann.com 3 (Karnataka)

SECTION 206 OF THE COMPANIES ACT, 2013 - INVESTIGATIONS AND INQUIRIES

- 3.5 Where a company and its directors were alleged by its homebuyer of acts of manipulating of records and siphoning off funds of said company to its sister concern, RoC having been failed to exercise their statutory and public duties in arresting pilferage, siphoning off of assets and safeguard legitimate interests of homebuyers and investors of said company, interim directions were to be passed directing RoC to initiate appropriate legal action against alleged ex directors of said company and to inspect affairs of it, also call for records of books of account of all related cos. of said company - **Suresh Kumari v. Registrar of Companies** - [2024] 159 taxmann.com 284 (Delhi)

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

- 3.6 SFIO not barred from investigating an offence under the IPC nor is SFIO barred from conducting "further investigation" under Cr.PC - **R. K. Gupta v. Union of India** - [2024] 159 taxmann.com 474 (Delhi)

SECTION 336 OF THE COMPANIES ACT, 2013 OF THE COMPANIES ACT, 1956 - WINDING UP - OFFENCES BY OFFICERS OF COMPANIES-IN-LIQUIDATION

- 3.7 Where company-in-liquidation had sold its subject property for a total consideration of Rs.3.6 lakh, and that amount for sale consideration had been credited in account of company, details of which (bank account) had not been disclosed by ex-directors pursuant to inquiries initially conducted by OL, and resultantly, such an amount had not been made available for satisfaction of outstanding dues of secured creditors etc, ex-directors were held accountable and liable to pay Rs.3.6 lakh with penal interest @12 % from date of execution of sale deed - **Dr. V.P. Mainra v. Dawsons Leasing Ltd.** - [2024] 159 taxmann.com 569 (Delhi)

SECTION 358 OF THE COMPANIES ACT, 2013 - WINDING UP

- 3.8 Where applicant company placed purchase order on respondent company and paid an advance on 10-4-2008, period of limitation for recovery of advance was three years from date of winding up order passed i.e. 3-6-2011 and extended by another year which expired on 3-6-2015, instant application filed by applicant on 26-10-2017 recovery of said advance was barred by limitation and, thus, such application was to be dismissed - **Dimension Investment & Securities Ltd., In re** - [2024] 159 taxmann.com 495 (Delhi)

4. NCLAT

SECTION 59 OF THE COMPANIES ACT, 2013 - REGISTER OF MEMBERS - RECTIFICATION OF

- 4.1 When there is a violation of 'SEBI Regulations', a 'Member' of a company's cannot ask for 'Rectification of Register', although, 'company' itself can apply for such 'rectification' - *Jitendra Virmani v. MRO – Tek Reality Ltd.* - [2024] 159 taxmann.com 453 (NCLAT - Chennai)

SECTION 230 OF THE COMPANIES ACT, 2013 - COMPROMISE AND ARRANGEMENT

- 4.2 Scheme of amalgamation could not be sanctioned where transferor or and transferee companies had violated sections 73 and 74 by retaining huge amounts accepted from directors of companies and not disclosing facts of acceptance of such deposits - *Hotel City Plaza (P.) Ltd. v. Union of India* - [2023] 157 taxmann.com 740 (NCLAT - Chennai)

SECTION 241 OF THE COMPANIES ACT, 1956 - OPPRESSION AND MISMANAGEMENT - APPLICATION TO TRIBUNAL FOR RELIEF

- 4.3 'Transfer of shares' cannot be construed to be an act of 'oppression' and 'mismanagement' in 'eye of law'; section 241 has no application for redressal of 'grievances' and 'wrong acts' of management of company - *Jitendra Virmani v. MRO – Tek Reality Ltd.* - [2024] 159 taxmann.com 453 (NCLAT - Chennai)
- 4.4 Where 91.13 per cent of shareholders of 1st respondent/company who were present and voted, appreciated and understood requirement for entering into a development agreement in regard to company's properties with a view to enable company to have a recurrence of cash flow and ultimately passed resolution, in benefitting 1st respondent-company and its shareholders, said special resolution was just, fair and valid and not an act of oppression - *Jitendra Virmani v. MRO – Tek Reality Ltd.* - [2024] 159 taxmann.com 453 (NCLAT - Chennai)

SECTION 244 OF THE COMPANIES ACT, 2013 - PENALTY - FOR CERTAIN OFFENCES - OPPRESSION AND MISMANAGEMENT - RIGHT TO APPLY

- 4.5 Where applicant held 10 per cent shareholding in company as on date of filing petition under section 241/242, petition was perfectly 'maintainable', but he was precluded from adverting to 'events' which took place 'before he possessed/acquired 10 per cent shareholding in company' - *Jitendra Virmani v. MRO – Tek Reality Ltd.* - [2024] 159 taxmann.com 453 (NCLAT - Chennai)

SECTION 248 OF THE COMPANIES ACT, 2013 - REMOVAL OF NAME OF COMPANY - POWER OF REGISTRAR

- 4.6 Power to permit additional evidence to produce / documents are within jurisdiction of appellate authority and if there is any lacuna or gap in evidence to be filled up, discretionary power conferred upon Appellate Authority does not authorize appellate authority to fill gap in question - *AKL Enterprise (P.) Ltd. v. Registrar of Companies* - [2024] 159 taxmann.com 738 (NCLAT- New Delhi)

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

- 4.7 Where appellant company's name was struck off from Register of Companies however, appellant was ready and willing to comply with all provisions contemplated under law and pay requisite charges/fee as well as late charges/fee, thus, name of company was to be restored in register of RoC - *Sivagnanagovindasamy Nambi Shareholder cum Director of Manasanthi Mental Health Care (P.) Ltd. v. Registrar of Companies* - [2024] 159 taxmann.com 2 (NCLAT - Chennai)

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

- 4.8 When section 419(3) empowered, 'Judicial Member' of 'Tribunal' to 'hear case', based on order dated 22-10-2019 of NCLT, New Delhi, which had 'Approval', of 'President of NCLT', New Delhi, 'impugned order' passed by Member (Judicial) of NCLT, Bengaluru Bench, sitting singly, could not be found fault with - *Jitendra Virmani v. MRO – Tek Reality Ltd.* - [2024] 159 taxmann.com 453 (NCLAT - Chennai)

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

- 4.9 Where delay of 18 days was satisfactorily explained on side of appellants, by sufficient/bonafide cause, and when no negligence or inaction nor want of bonafide is attributable to a party for delay in filing a remedy, then, it certainly constitutes a sufficient cause in an appeal, thus, delay of 18 days was covered within further limitation period of 45 days prescribed in proviso to section 421(3) and same was to be condoned - *Negolice India Ltd.v.Preeti Jaikishan Bhagchandka* - [2024] 159 taxmann.com 641 (NCLAT- New Delhi)

5. NCLT

SECTION 213 OF THE COMPANIES ACT, 2013 - INVESTIGATION - INTO COMPANY'S AFFAIRS IN OTHER CASES

- 5.1 Where documents filed by petitioner along with petition seeking investigation into affairs of respondent company would show that allegation made by petitioner were not corroborated with documents filed therewith, *facie*, petitioner had miserably failed to make out a case under Section 213(b) and also failed to satisfy that affairs of respondent have been conducted in a fraudulent manner or unlawful purpose, and thus, instant petition was to be dismissed - ***Supertech Realtors (P.) Ltd. v. Indiabulls Housing Finance Ltd.*** - [2024] 159 *taxmann.com* 597 (NCLT - New Delhi)

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

- 5.2 Where petitioner-ex directors of R1 company had failed to show any act done by management or apprehension that affairs of company in future were likely to be conducted in a prejudicial manner as a result of removal of petitioners from position as directors, and hence, instant oppression and mismanagement petition was to be dismissed being without any merits - ***Chekuri Sekharv.Kinnera Cold Storage (P.) Ltd.*** - [2024] 159 *taxmann.com* 672 (NCLT - Hyd.)

6. SAT

REGULATION 32 OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 - STATEMENT OF DEVIATION(S) OR VARIATION(S)

- 6.1 Where company initially utilized proceeds of preferential issue for a different purpose in variance of objects specified, nonetheless, alleged variance in utilization of proceeds stood ratified and became authorized pursuant to special resolution passed by shareholders prior to issuance of show cause notice (SCN) by SEBI for alleged violation of provisions of LODR Regulations or of listing agreement, even otherwise there was an inordinate delay in issuance of SCN, thus, impugned order by SEBI imposing penalty upon appellant was to be set aside - ***Alps Motor Finance Ltd. v. Securities & Exchange Board of India*** - [2024] 159 *taxmann.com* 421 (SAT - Mumbai)

7. SEBI

SECTION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - FUNCTIONS OF BOARD

- 7.1 SEBI impounds Rs. 7.41Crores of wrongful gains from Zee Business Guest Experts giving stock recommendations and "Profit makers" - ***Nirmal Kumar Soni., In re*** - [2024] 159 *taxmann.com* 239 (SEBI)

SECTION 11AA OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - POWERS AND FUNCTIONS OF BOARD - COLLECTIVE INVESTMENT SCHEME

- 7.2 Where *prima facie* a CIS was being operated and run through Growpital platform without obtaining any certificate of registration from SEBI and over Rs. 132 crore had been mobilized through Growpital platform in ZF Project 1 LLP alone, in order to ensure that additional funds were not mobilized through Growpital platform under its scheme/arrangement/plans and to safeguard assets acquired from funds of investing public until full facts and materials were brought out and final decision was taken in matter, *ad-interim* ex-parte order was to be passed - ***Growpital Platform, In re*** - [2024] 158 *taxmann.com* 704 (SEBI)

COMPETITION LAW

1. STATUTORY UPDATES

1.1 MCA notifies February 20, 2024 as effective date for enforcement of Section 33 of Competition (Amendment) Act, 2023 - **Notification No. S.O. 740(E), Dated 19-02-2024**

Editorial Note : The Govt. has notified February 20, 2024 as the effective date for the enforcement of section 33 of the Competition (Amendment) Act, 2023. Section 33 of the Act deals with provisions relating to the power to impose lesser penalties. The CCI may, if satisfied that any producer, seller, distributor, trader or service provider alleged to have violated section 3 has made full and true disclosure and such disclosure is vital, then impose a lesser penalty than that leviable under this Act.

1.2 CCI notifies 'Lesser Penalty' Regulations, 2024 - **Notification No. L-3(4)/Reg-L.P./2023-24, Dated 20-02-2024**

Editorial Note : The CCI has notified the Lesser Penalty regulations, 2024. Under these regulations, the CCI may impose a lesser penalty than that leviable under the

Act. The norms prescribe the conditions for a lesser penalty, and a detailed procedure for grant of a lesser penalty. Further, the norms specify information that needs to be kept confidential, provisions w.r.t inspection and obtaining certified copies of documents. Also, contents of the application for a lesser penalty are mentioned in schedules.

2. CCI

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

2.1 Where an OP company / digital payment company was alleged for abuse of dominance in relevant market i.e. market for digital payment platforms, by informant, there were several players operating in said market and informant did not seem to be dependent on OP, there was neither any evidence nor any occasion to examine such allegation, therefore, no case of contravention of provisions of section 4 was made out against OP for causing an investigation - **Ayudha Foundation v. Talk Charge Technologies (P.) Ltd. - [2024] 159 taxmann.com 673 (CCI)**

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 PFRDA amends Trustee Bank and Central Recordkeeping Agency regulations to enhance the ease of doing business - **Press Release, Dated 22-02-2024**

Editorial Note : The Pension Fund Regulatory and Development Authority (PFRDA) has notified the amendments to the Trustee Bank (TB) and Central Record keeping Agency (CRA) Regulations, 2023. These amendments aimed at promoting good governance with a focus on subscriber protection, reducing cost of compliance and enhancing the ease of doing business. The latest amendments, among others, introduced the concept of 'fit and proper' criteria for CRA and their key personnel.

- 1.2 RBI permits authorised banks and non-banks to issue PPIs for making payments across various public transport systems - **Circular No. RBI/2023-24/126 CO.DPSS.POLC.No.S1092/02-14-006/2023-2024, Dated 23-02-2024**

Editorial Note : Earlier, the RBI vide master directions dated August 27, 2021 on prepaid payment instruments (PPIs) prescribed various types of PPIs that banks and non-banks can issue after obtaining necessary approval from the RBI. Now, the RBI has allowed authorised banks and non-bank PPI issuers to issue PPIs for making payments across various public transport systems. This is done to provide convenience, speed, affordability, and safety of digital modes of payment to commuters for transit services.

- 1.3 RBI keeps the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 % - **Press Release: 2023-2024/1826, Dated 08-02-2024**

Editorial Note : The RBI's Monetary Policy Committee (MPC) at its meeting today on 08.02.2024 decided to keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 %. Further, the standing deposit facility (SDF) rate remains unchanged at 6.25 % and the marginal standing facility (MSF) rate and the Bank Rate at 6.75 %. The MPC also decided to remain focused on withdrawal of accommodation to ensure that inflation progressively aligns to the target, while supporting growth.

- 1.4 RBI to introduce Key Fact Statement (KFS) for Retail and MSME Loans & Advances - **Press Release: 2023-2024/1827, Dated 08-02-2024**

Editorial Note : The RBI has released Statement on Developmental and Regulatory Policies. Presently, Key Fact Statement (KFS) containing the key information regarding a loan agreement is mandated in respect of loans by SCBs to individual borrowers; digital lending by

REs; and microfinance loans. Now, RBI has decided to mandate all REs to provide the KFS to the borrowers for all retail and MSME loans. Further, RBI will also release revised regulatory framework for Electronic Trading Platforms.

- 1.5 RBI urges Regulated Entities to review and update compliance tracking and monitoring systems by June 30, 2024 - **Circular No. RBI/2023-24/117 DoS.CO.CSITEG.SEC.No.9/31-01-015/2023-24, Dated 31-01-2024**

Editorial Note : RBI recently emphasized the need for comprehensive, integrated, and workflow-based solutions to enhance compliance monitoring in Supervised Entities, fostering communication among stakeholders, managing compliance, escalating non-compliance issues, and providing a unified dashboard for Senior Management. In this regard, RBI has urged REs to revamp extant systems or implement new systems by 30.06.2024 for seamless internal compliance tracking and monitoring processes.

- 1.6 AD Category-I banks can allow India-UAE CEPA TRQ holders to make 11-day advance payments for gold imports via IIBX: RBI - **Circular No. RBI/2023-24/118 A.P. (DIR Series) Circular No.13, Dated 31-01-2024**

Editorial Note : Currently, AD Category – I banks are permitted to remit advance payment on behalf of Qualified Jewellers as notified by IFSCA for eleven days for import of gold through India International Bullion Exchange IFSC Ltd (IIBX). Now RBI has allowed AD Category-I banks to allow valid tariff Rate Quota (TRQ) holders under the India-UAE CEPA to remit advance payment for eleven days for import of gold through IIBX against the TRQ.

- 1.7 IFSCA notifies norms for offering payment services in or from IFSC - **Notification No. IFSCA/GN/2024/001., Dated 29-01-2024**

Editorial Note : The IFSCA has notified Payment Services Regulations, 2024. Now, any person seeking to provide Payment Services in or from IFSC shall require a certificate of authorisation under these regulations. An Applicant seeking authorisation to provide payment services is required to be incorporated as a Company with its registered office in IFSC. Also, the Payment Service Provider shall ensure that its directors, KMP & persons exercising control satisfy the "fit and proper requirements".

- 1.8 Rbi bars 'Paytm Payment Bank' from accepting deposits or top-ups in any customers' accounts/wallets after Feb 29, 2024 - **Press Release: 2023-2024/1774, Dated 31-01-2024**

Editorial Note : Earlier, RBI vide. Press Release dated March 11, 2022, directed Paytm Payments Bank Ltd to stop onboarding of new customers with immediate effect. Now, the RBI has directed the bank not to accept deposits or credit transactions or top-ups in any customer accounts, prepaid instruments, wallets, FASTags, etc. after February 29, 2024, other than any interest, cashbacks, or refunds which may be credited anytime. Also, Nodal Accounts of the bank are to be terminated at the earliest.

- 1.9** Gem/Jewellery units in SEZs can now freely source from and export to the same foreign buyer without charges: Govt. - **Notification No. G.S.R. 105(E), Dated 05-02-2024**

Editorial Note : The Central Government has notified amendment in Rule 27(6) i.e., Import and Procurement, of Special Economic Zones Rules, 2006. Now, a Gem or Jewellery Unit may also source free of charge from foreign buyer and Export thereof to the same foreign buyer.

- 1.10** India opens up 100% FDI under automatic route in the field of satellite component manufacturing -**Press Release, Dated 21-02-2024**

Editorial Note : The Union Cabinet has approved of the amendment to the Foreign Direct Investment (FDI) policy in the space sector. The satellites sub-sector has been divided into three different activities with defined limits for foreign investment in each such sector. Currently, FDI is permitted in establishment and operation of satellites via Govt. approval route only. As per amended FDI policy, 100% FDI is allowed under automatic route for manufacturing of components and systems/sub-systems for satellites.

- 1.11** RBI includes 'Clearing Corporation of India Ltd' as a Financial Information Provider under Account Aggregator Framework - **Circular No. RBI/2023-24/125 DoR.FIN.REC.77/03.10.123/2023-24, Dated 22-02-2024**

Editorial Note : The RBI Retail Direct Scheme was launched on Nov 12, 2021 to facilitate retail investors to invest in Government Securities. The Scheme enables individuals to open Retail Direct Gilt Accounts with the Bank and access the Government Securities market. Now, to enable aggregation of financial information on Government Securities held by retail investors in their Retail Direct Gilt accounts under the Scheme, RBI includes 'Clearing Corporation of India Limited' as a Financial Information Provider.

- 1.12** Govt. extends Interest Equalization Scheme for pre and post-shipment rupee export credit upto June 30, 2024: RBI to banks - **Circular No. RBI/2023-24/124 DOR.STR.REC.78/04.02.001/2023-24, Dated 22-02-2024**

Editorial Note : The Govt. has extended the Interest Equalization Scheme for Pre and Post-Shipment Rupee Export Credit Scheme up to June 30, 2024. The rate of interest equalization shall be 2% for Manufacturers and Merchant Exporters exporting under specified 410 HS lines and 3% for MSME manufacturers exporting under any HS line. Further, w.e.f FY 2023-24, banks that have priced loans covered under the scheme at an average interest rate of higher than Repo rate + 4% would be subjected to certain restrictions.

- 1.13** IRDAI notifies 'Obligatory Cession' for the financial year 2024-25 - **Notification F. No IRDAI/RI/3/197/2024, Dated 16-02-2024**

Editorial Note : IRDAI has notified 'Obligatory Cession' for the financial year 2024-25. This shall apply to Indian Re-insurers and other applicable insurers as per provisions of section 101A of Insurance Act, 1938. The percentage cession of the sum insured on each General Insurance Policy to be reinsured with Indian Re-insurers must be 4% for insurance attaching during the FY beginning from 01.01.2024 to 31.03. 2025, except terrorism premium and premium ceded to Nuclear pool where it would be made 'NIL'.

- 1.14** Govt. notifies the list of reporting entities to perform aadhaar authentication service under the Aadhaar Act - **Notification S.O. 810(E), Dated 20-02-2024**

Editorial Note : The Ministry of Finance has notified 24 reporting entities that shall comply with the standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. Further, these entities are permitted to perform authentication under the Aadhaar Act for the purposes of section 11A of the Money Laundering Act.

- 1.15** Govt. Agency Seeks Public Comments on Draft Guidelines to Prevent Misleading Advertisements in Coaching Sector - **Press Release, Dated 16-02-2024**

Editorial Note : The Central Consumer Protection Authority (CCPA) has sought public comments on draft guidelines aimed at preventing misleading advertisements in the coaching sector. These guidelines have been framed after detailed deliberations with all stakeholders including coaching institutes, law firms, government and voluntary consumer organizations (VCOs). Further, public comments, suggestions and feedback are solicited and may be submitted to the Central Authority within 30 days (until 16 March 2024).

- 1.16** RBI Releases Faqs to Improve Convenience for Customers of Paytm Payments Bank Ltd - **PR NO. 2023-2024/1895, Dated 16-02-2024**

Editorial Note : The RBI has released a list of frequently asked questions (FAQs) for the convenience

of the customers of Paytm Payments Bank Limited (PPBL) and the general public. The RBI extended its previous deadline of February 29 by an additional 15 days i.e. till March 15 allowing PPBL time to stop further deposits, credit transactions and top-ups in customer accounts. Further, the bank must facilitate a seamless withdrawal of customer deposits parked with partner banks.

- 1.17** RBI excludes "Rupee Co-operative Bank Limited" from the list of Scheduled Banks under RBI Act, 1934 - **Circular No. RBI/2023-24/122 DOR.RET.REC.76/12.07.160/2023-24, Dated 15-02-2024**

Editorial Note : The RBI notified that the "Rupee Co-operative Bank Limited" has been excluded from the Second Schedule i.e., Scheduled Banks, to the Reserve Bank of India Act, 1934 vide Notification DoR.REG/LIC.No.S4847/07.12.000/2023-24 dated November 29, 2023, which is published in the Gazette of India dated December 26, 2023.

- 1.18** RBI directs a card network to restrain unauthorized commercial payment systems - **Press Release: 2023-2024/1885, Dated 15-02-2024**

Editorial Note : The RBI has noticed that a Card Network had an arrangement that enables businesses to make card payments through certain intermediaries, to entities that do not accept card payments. A card network connects your bank, merchants, and you to make the transaction possible in a secure, smooth, and efficient way. On closer scrutiny, RBI observed that this arrangement qualified as a payment system. It was that the Card Network to keep all such arrangements under abeyance, till further orders.

- 1.19** RBI and Nepal Rastra Bank sign agreement for Cross-Border remittances through UPI-NPI integration - **Press Release No. 2023-2024/1882, Dated 15-02-2024**

Editorial Note : RBI and Nepal Rastra Bank has signed and exchanged terms of reference for integrating the Unified Payments Interface (UPI) of India and the National Payments Interface (NPI) of Nepal for cross-border remittances. The integration is aimed at facilitating cross-border remittances between India and Nepal by enabling users of the two systems to make instant, low-cost fund transfers.

- 1.20** Over 20 lakh PACL investors get their money back successfully: SEBI - **PR No 03/2024, Dated 15-02-2024**

Editorial Note : The Justice (Retd.) R.M. Lodha Committee (in the matter of PACL.) had initiated the process of refund to investors of PACL Ltd. As on this date, the Committee has successfully effected refunds in respect of a total number of 20,84,635 eligible applications with outstanding (principal) amount upto Rs.19,000/- aggregating to Rs.1021.84 crore.

- 1.21** RBI issues fresh Master Directions on 'Prepaid Payment Instruments' - **Circular No. RBI/DPSS/2021-22/82 CO.DPSS.POLC.No.S-479/02.14.006/2021-22, Dated 23-02-2024**

Editorial Note : RBI has issued fresh master directions on 'Prepaid Payment Instruments' (PPIs). As per the master directions, banks/non-banks are permitted to issue PPIs. These PPIs can be issued without KYC verification of the holders and can be reloadable in nature. Further, such PPIs must be enabled only for payments across various modes of public transport such as metro, buses, rail, waterways, tolls and parking. These shall be effective from the date they are placed on the RBI website.

- 1.22** RBI issues master directions for filing of supervisory returns by banks, NBFCs and ARCs - **Circular No. RBI/DoS.DSG/2023-24/110 DoS.DSG.No.10/33.01.001/2023-24, Dated 27-02-2024**

Editorial Note : RBI has issued master directions on 'Filing of Supervisory Returns' for commercial banks, all Primary Urban Co-operative banks, Select All India Financial Institutions as well as all NBFCs and Asset Reconstruction Companies (ARCs). These directions aim to consolidate all relevant instructions issued to supervisory entities w.r.t submission of returns and reduce the compliance burden and harmonise the timelines for filing of returns. These directions shall be effective immediately.

- 1.23** RBI prescribes format for furnishing information w.r.t appointment/re-appointment of director, MD or CEO in ARCs - **Circular No. RBI/2023-24/127 DOR.GOV.REC.79/18.10.006/2023-24, Dated 27-02-2024**

Editorial Note : As per section 3(6) of SARFAESI Act and guidelines to circular dated 11.10.2022, ARCs are required to obtain prior approval of RBI for the appt. or re-appt. of any director, MD or CEO. RBI has now prescribed a format for furnishing the requisite information about the candidate along with an indicative list of documents to be submitted with the application. Further, ARCs are advised to submit complete applications within 90 days before a vacancy arises or the proposed date of appt. or re-appt.

- 1.24** Chairperson, DRAT Mumbai, will now head DRAT Delhi for ' Standard Chartered Bank. Vs SCK Infratech P. Ltd.': Govt - **Notification No. S.O. 511(E), Dated 01-02-2024**

Editorial Note : In exercise of the powers conferred by the Recovery of Debts and Bankruptcy Act, 1993, the Govt. has authorised the Chairperson of the Debts Recovery Appellate Tribunal, Mumbai to discharge also the functions of the Chairperson of the Debts Recovery Appellate Tribunal, Delhi for deciding the appeal in the matter of 'M/s Standard Chartered Bank & Anr. Vs M/s

SCK Infratech Pvt. Ltd. & Anr. in addition to his being the Chairperson of the Debts Recovery Appellate Tribunal, Mumbai.

- 1.25** RBI hikes ceiling on remuneration for Non-Executive Directors of Private Banks from 20 Lakhs to 30 Lakhs per annum - **Circular No. RBI/2023-24/121 DoR.HGG.GOV.REC.75/29.67.001/2023-24, Dated 09-02-2024**

Editorial Note : According to circular dated 26.04.2021, ceiling of Rs 20 lakhs per annum was specified in respect of the remuneration of Non-Executive Directors (NEDs), other than the Chair of the Board. Now, the RBI has decided to revise the ceiling to Rs. 30 lakhs per annum. This ceiling shall be applicable on all the Private Sector Banks including Small Finance Banks (SFBs) and Payment Banks (PBs) and also to the wholly owned subsidiary of foreign banks.

- 1.26** Indian banks which are authorized to import gold/silver can now act as Special Category Client (SCC) of IIBX: RBI - **Circular No. RBI/2023-24/120 DoR.AUT.REC.74/24.01.041/2023-24, Dated 09-02-2024**

Editorial Note : Earlier, the RBI had allowed the branches of Indian Banks operating in GIFT-IFSC to act as Professional Clearing Member (PCM) of India International Bullion Exchange IFSC Limited (IIBX). Now, on review, RBI has decided to allow Indian banks authorized to import gold/silver to act as Special Category Client (SCC) of IIBX. Further, Branch/subsidiary/joint venture of an Indian bank in GIFT-IFSC to act as a Trading Member (TM)/Trading and Clearing Member (TCM) of IIBX.

- 1.27** Sovereign Gold Bond Scheme 2023-24 - Series IV to be open for subscription during February 12–16, 2024: RBI - **Press Release: 2023-2024/1849, Dated 09-02-2024**

Editorial Note : The RBI has notified that the Sovereign Gold Bond Scheme 2023-24 - Series IV will be open for subscription during February 12–16, 2024. The nominal value of the bond based on the simple average of closing price for gold of 999 purity of the last 3 working days of the week preceding the subscription period works out to Rs 6,263.

- 1.28** RBI assigns SBI as Lead Bank for "Hojai" District - **Circular No. RBI/2023-24/123 FIDD.CO.LBS.BC.No.15/02.08.001/2023-24, Dated 20-02-2024**

Editorial Note : Earlier, the Government of Assam vide Gazette Notification ECF No.367433/28 dated September 7, 2023, had notified the formation of a new district in the state of Assam. Now, the RBI has decided to assign the lead bank responsibility for the new district, 'Hojai' to the State Bank of India (SBI). Further, there is no change in the lead banks of the other districts in the state of Assam.

2. SUPREME COURT

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 2.1** HC cannot pass blanket orders staying arrest of accused pending pleas u/s 482 of Cr.PC where accused had not applied for anticipatory bail - **Directorate of Enforcement v. Niraj Tyagi - [2024] 159 taxmann.com 355 (SC)**

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 2.2** Where borrower challenged service of notice for auction of mortgaged property, which plea had been accepted by DRT, by quashing auction and said order had been upheld by DRAT and High Court, in view of fact that borrower knew about auction and was also present at time of auction, also, auction purchaser had constructed flats on property and transferred same to various third parties, sale of subject property by lender in favour of auction purchaser was to be upheld and confirmed - **Bombay Mercantile Cooperative Bank Ltd. v. U.P. Gun House - [2024] 158 taxmann.com 683 (SC)**

SECTION 13 OF THE THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

- 2.3** SC rejects successful bidder's excuse of demonetization for not depositing balance payment under e-auction under SARFAESI Act - **Authorised officer, Central Bank of India v. Shanmugavelu - [2024] 159 taxmann.com 137 (SC)**

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

- 2.4** Classification of underlying debt or liability as being barred by limitation is a question that must be decided based on evidence adduced by parties - **Atamjit Singh v. State (Nct of Delhi) - [2024] 159 taxmann.com 153 (SC)**

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

- 2.5** Where appellant, directors of accused company resigned from said company prior to issuance of cheque in question, which was evident from statutory form no 32, they ought to be then entitled to be discharged from prosecution initiated against them for alleged violation under section 138 of NI Act - **Rajesh Viren Shahv.Redington (India) Ltd. - [2024] 159 taxmann.com 397 (SC)**

3. HIGH COURT

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

3.1 Where an ECIR was registered by respondent/ED based on alleged income derived by 'J' from his criminal activity and co-accused persons including petitioner have been alleged to have assisted him in projecting it as untainted property and District Judge and Additional Sessions Judge/Special Judge (PMLA) framed charge for offence under section 3 of PMLA punishable under section 4 of PMLA against petitioner vide impugned order, in view of fact that Trial court acquitted 'J' of all charges framed against him and same had not been challenged and had therefore, attained finality date, there could be no offence of money laundering under section 3 of PMLA against petitioner, impugned order was to be set aside qua petitioner - **Sanjay Gupta v. Prabhakant Directorate of Enforcement Govt. of India** - [2024] 159 taxmann.com 186 (Delhi)

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

3.2 Where borrower filed a writ petition for issuance of proper directions for regularization of loan account maintained with respondent bank and to stay further proceeding and in meanwhile, application by petitioner for suspending recovery action during pendency of renewal agreement stands posted before Debts Recovery Tribunal, it would be only just and proper that petitioner prosecute his claims before Tribunal, and therefore, instant writ was to be disposed of permitting petitioner to prosecute his petition before Debts Recovery Tribunal - **Panat Sudhakaran Lavin v. South Indian Bank Ltd.** - [2024] 159 taxmann.com 185 (Kerala)

SECTION 17 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - APPLICATION AGAINST MEASURES TO RECOVER SECURED DEBTS

3.3 Where respondent-borrower approached DRT during pendency of writ petition before High Court seeking refund of amount since, borrower had already availed statutory remedies under SARFAESI Act, 2002, High Court ought not to have entertained prayer of borrower for refund of any amount - **State Bank of India v. Varun Roshan Kohli** - [2024] 159 taxmann.com 59 (Calcutta)

SECTION 26E OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - PRIORITY TO SECURED CREDITORS

3.4 Banks which are Secured Creditors and are having charge over subject property, their charge over property

would prevail over unsecured Creditor i.e. Sales Tax Department (Crown's Debt) and hence, claim of Secured Creditor would prevail over claim of Unsecured Creditor - **Madhaviben Jitendrabhai Rupareliya v. State of Gujarat** - [2024] 159 taxmann.com 642 (Gujarat)

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

3.5 Where respondent bank gave loan to petitioner against collateral i.e. security and enforcement of said security was allowed by Metropolitan Magistrate without any jurisdiction vide impugned order, whereas, DRT has jurisdiction under section 17 to assess whether enforcement of security by secured creditor is in accordance with provisions of SARFAESI Act, therefore, such order was to be suspended for a period of one week, in order to grant opportunity to petitioner to approach DRT u/s 17 - **Subhash Chand Kathuria v. PNB** - [2024] 159 taxmann.com 598 (Delhi)

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

3.6 Delhi HC denies bail to AAP MP Sanjay Singh in PMLA case saying "Court bound by law and cannot be influenced by position of petitioner" - **Sanjay Singh v. Directorate of Enforcement** - [2024] 159 taxmann.com 213 (Delhi)

SECTION 118 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - PRESUMPTION AS TO NEGOTIABLE INSTRUMENTS

3.7 Where Trial Court convicted accused for offence punishable under section 138 and said order was passed after going through cheque, notice, preliminary evidence in form of an affidavit and other documents attached to complaint and Magistrate was satisfied that there existed sufficient ground to proceed against accused under Section 138 of N.I. Act, instant petition for quashing summoning order and complaint pending before Trial Court was to be dismissed - **Sumit Juneja v. State of H.P.** - [2024] 159 taxmann.com 214 (Himachal Pradesh)

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

3.8 Where to answer question involved in matters, namely, whether an inquiry u/s.202 of Cr.P.C, was mandatory or directory in nature, a larger Bench was constituted, in view of fact that Constitution Bench of Apex Court in suo motu Writ Petition (CRL) No.2 of 2020 in Re : Expeditious Trial Of Cases Under Section 138 OF N.I. Act, 1881 had already held that provision was mandatory in nature, it was not necessary to answer reference - **Bansilal S. Kabra v. Global Trade Finance Ltd.** - [2024] 159 taxmann.com 317 (Bomb)

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

- 1.1 IBBI requires liquidator to share progress reports with members of the Stakeholders' Consultation Committee - **Circular No. IBBI/LIQ/70/2024, Dated 22-02-2024**

Editorial Note : As per IBBI (Liquidation Process) Regulations, 2016, liquidators must submit progress reports to the AA and the Board within 15 days after the end of every quarter. However, these reports are not shared with the key stakeholders of the ecosystem i.e. creditors, thus leaving them unaware of the progress in the process. Consequently, IBBI has directed the liquidators to share progress reports with members of the Stakeholders' Consultation Committee after receiving a confidential undertaking.

- 1.2 IBBI prescribes format for withdrawal from Corporate liquidation Account for onward distribution to stakeholders - **Circular No. IBBI/LIQ/69/2024, Dated 22-02-2024**

Editorial Note : Regulation 46 of IBBI (Liquidation Process) Regulations, 2016 provides a framework for the management of unclaimed deposits and undistributed proceeds during the liquidation process. As per the regulation, liquidators are mandated to deposit unclaimed/undistributed amounts into the Corporate Liquidation Account and inform the IBBI. Now, the IBBI has prescribed the format for the liquidator to withdraw the amount from corporate liquidation account for onward distribution to the stakeholders.

- 1.3 Liquidators must justify economically and seek consultation committee's advice before legal proceedings: IBBI - **Notification No. IBBI/2023-24/GN/REG112, Dated 12.02.2024**

Editorial Note : The IBBI has notified amendments to the IBBI (Liquidation Process) Regulations, 2016. Amendments have been made to various regulations and a new Reg. 6A has been inserted which provides that before pursuing or initiating any legal proceedings, the liquidator must present the economic rationale and seek advice from the consultation committee. A new Reg. 6B mandates liquidators to update the consultation committee on: a) current liquidation costs, b) ongoing legal proceedings, c) progress update.

- 1.4 IBBI mandates RP to share Sec. 99 report with debtor and creditor in all cases for equal information access - **Circular No. IBBI/II/66/2024, Dated 12-02-2024**

Editorial Note : The IBBI observed that in certain cases, RPs have not shared a copy of the report u/s 99 with both debtor and creditor, leading to a lack of equal information access among them. In this regard, the IBBI has advised that the RP shall provide a copy of the report to both debtor and creditor in all cases. This will ensure that the debtor and the creditor are well-informed about the evaluation and recommendations made by the RP, thereby promoting transparency and informed decision-making.

- 1.5 IBBI amends Insolvency Process for Corporate Persons norms; mandates opening of a separate bank account by IRP/RP - **Notification No. IBBI/2023-24/GN/REG113, Dated 15-02-2024**

Editorial Note : The IBBI has notified the Insolvency Resolution Process for Corporate Persons (Amendment) Regulations, 2024. A new Reg. 4D has been inserted which mandates the opening of a separate bank account for each real estate project by IRP/RP. Further, the IP must place in each meeting of the committee, the operational status of the corporate debtor and must seek its approval for all costs, which are part of IRP costs.

- 1.6 IBBI releases report on Framework for Use of Mediation under the IBC, 2016

Editorial Note : An expert committee was mandated to examine the scope of use of mediation in respect of processes under the IBC, 2016 and submit its recommendations. In this report, the Committee presents its recommendations on the likely framework for introducing mediation as a complementary mechanism for resolving disputes. In its formal introduction, the Committee has cautiously aimed to balance the Code's core objectives of time-bound reorganization and value maximisation.

- 1.7 IBBI issues directions w.r.t Reporting / Sharing of information in the Voluntary Liquidation process of FSPs - **Circular No. IBBI/LIQ/67/2024, Dated 13-02-2024**

Editorial Note : IBBI regulations allow the Financial Service Providers (FSPs) to undergo a voluntary liquidation process after obtaining prior permission of the appropriate regulator. However, some FSPs have commenced the liquidation without notification/prior permission. Therefore, IBBI has directed that liquidator shall declare that corporate person has obtained prior permission from the appropriate regulator. Further, the final report and dissolution order is to be shared with IBBI.

- 1.8 IBBI prescribes format for releasing funds from Corporate Voluntary Liquidation Account by liquidator - **Circular No. IBBI/LIQ/68/2024, Dated 13-02-2024**

Editorial Note : As per the IBBI (Voluntary Liquidation Process) Regulations, 2017, liquidators are mandated to deposit unclaimed/undistributed amounts into the Corporate Voluntary Liquidation Account and inform the IBBI in Form-G containing the details regarding the stakeholders entitled to such deposited amount. To facilitate the request received, the liquidator shall now apply to the Board in the format prescribed, for the release of the amount for onward distribution to the stakeholders.

- 1.9 IBBI permits IPs to resign from assignment on the recommendation of CoC/consultation committee/ debtor or creditor - **Notification No. IBBI/2023-24/GN/REG 110, Dated 31-01-2024**

Editorial Note : IBBI has notified amendment to the IBBI (Insolvency Professionals) Regulations, 2016 whereby a new clause 22A has been inserted in the

First Schedule allowing insolvency professionals to resign from the assignment, subject to recommendation of a) committee of creditors in a CIRP, b) consultation committee in liquidation process, debtor or creditor in the insolvency resolution process of personal guarantor to the corporate debtor, as the case may be, and the approval of Adjudicating Authority.

- 1.10** Applicability of limit on number of Assignments applies to IPs who are individuals, not IPEs; IBBI clarifies - **Circular No. No. IBBI/IPE/64/2024, Dated 01-02-2024**

Editorial Note : Earlier, in order to enhance the efficiency of the insolvency resolution processes, in September 2022, the insolvency professional entities (IPEs), which can be a company, LLP, registered partnership firm, were allowed to carry on the activities of an insolvency professional (IP). Now, the IBBI has clarified that restriction imposed on the number of assignments that can be undertaken by an IP, applies to individual IPs and not to IPEs.

- 1.11** IPs can now offer services for implementing of resolution plan as long as those services are outlined in the plan: IBBI - **Circular No. IBBI/IP/65/2024, Dated 01-02-2024**

Editorial Note : IBBI has observed that the AA approves resolution plans (RP) with provisions for implementation or monitoring committees to ensure effective management of the CD during the transitional phase. Given the IP's familiarity with the CD's business, they are typically assigned a role in these committees. To ensure smooth RP implementation, IBBI has clarified that IPs can provide professional services as outlined in plan approved by the AA.

- 1.12** IBBI amends norms relating to Insolvency Process for Personal Guarantors; mandates RP to present repayment plan - **Notification No. IBBI/2023-24/GN/REG107, Dated 31-01-2024**

Editorial Note : The IBBI has notified the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024. A new Reg. 17A, has been inserted which mandates the resolution professional to place the repayment plan mentioned under section 105 before the creditors in a meeting for their consideration. Further, if no repayment plan is received within the stipulated period under section 106, the resolution professional shall notify the same in creditors meeting.

- 1.13** Assignment issued by Agency shall remain valid till June 30 of the year if the expiry of 1 year falls from Jan to Jun: IBBI - **Notification No. IBBI/2023-24/GN/REG111., Dated 31-01-2024**

Editorial Note : The IBBI has notified amendment in clause 12A (6) of IBBI (Model Bye-Laws and Governing Board of IPAs) Regulations, 2016. As per the amended norms, an authorisation for assignment issued or renewed by the Agency shall be valid till 30th of June of the year where the expiry of the period of one year falls from 1st of January to 30th of June, or till 31st of December of the year where the expiry of the period of one year falls from 1st of July to 31st of December.

- 1.14** IPs who served or acting as IRP/RP or liquidator for CD can now be appointed as 'professionals' by a bankruptcy

trustee - **Notification No. IBBI/2023-24/GN/REG108, Dated 31-01-2024**

Editorial Note : IBBI has notified the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024. An amendment has been made in Regulation 3 whereby eligibility criteria for Bankruptcy have been relaxed, also Regulation 5(1)(c) has been omitted which means now Insolvency Professionals who served or acting as IRP/RP or liquidators can be appointed as 'professionals' by bankruptcy trustees.

- 1.15** IBBI amends voluntary liquidation process norms to enhance more disclosures and reporting from corporate debtors - **Notification No. IBBI/2023-24/GN/REG109, Dated 31-01-2024**

Editorial Note : IBBI has notified the IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2024. An amendment has been made to Regulations 3,8,37 and 39. As per the amended norms whenever the liquidation is initiated the corporate person shall also verify by an affidavit that it has made sufficient provision to meet the obligations arising on account of pending matters. Further, pending proceedings/assessments before statutory authorities, and pending litigations are also be disclosed

2. SUPREME COURT

SECTION 10A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - SUSPENSION OF

- 2.1 Supreme Court upheld NCLAT's order, which stated that u/s 10A, any application filed by an operational creditor u/s 9 was not maintainable if amount due and payable by corporate debtor on or after 25-3-2020 because no application for initiation of CIRP could have been filed for such defaults for a period of six months or such a further period not exceeding one year and, thus, there was no cogent reason to entertain appellant's appeal, impugned order passed by NCLAT did not warrant any interference - **AL Sadiq Sweets v. B. Sreekala** - [2024] 159 taxmann.com 530 (SC)

SECTION 43 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS

- 2.2 Where NCLAT vide impugned order had already directed expeditious disposal of pending proceedings before NCLT, at request of appellant, since there was no substantial question of law arose in instant appeal against said impugned order, thus, same was to be dismissed - **Mehul Parekh v. Unimark Remedies Ltd** - [2024] 159 taxmann.com 708 (SC)

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

- 2.3 Even in the absence of a specific power in IBC empowering NCLT to recall its order, NCLT can recall its order under its inherent powers notwithstanding that an appeal lay before the NCLAT against the order of approval passed by the Adjudicating Authority - **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni** - [2024] 159 taxmann.com 301 (SC)

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

- 2.4 WP under Article 32 dismissed by SC as ,though purportedly in public interest, it pertained to petitioner's specific grievance wrt NCLT's order under IBC - **K.M. Cherian v. Union of India**

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 2.5 Where Supreme Court by order held that correctness and genuineness of acknowledgements regarding limitation period could be objected regarding its correctness by Corporate Debtor and not by an unsecured creditor; in said order, word 'unsecured creditor' be now read as 'secured creditor' - **Axis Bank Ltd. v. Naren Sheth** - [2024] 159 taxmann.com 356 (SC)

3. HIGH COURT

SECTION 196 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - BOARD - POWERS AND FUNCTIONS OF

- 3.1 Delhi HC directs IBBI to frame a Code of Conduct for members of the Committee of Creditors within reasonable time - **Kunwer Sachdev v. IDBI Bank** - [2024] 159 taxmann.com 324 (Delhi)

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

- 3.2 Where RP filed an application before NCLT seeking permission to file an appeal against an assessment order passed by appellant- GST Dept. However, instead of considering RP's application, NCLT assumed jurisdiction of Constitutional Court to declare assessment order as void ab initio, since NCLT has no power and authority under IBC to declare an assessment order as void ab initio and non est in law, therefore, impugned order passed by NCLT was unsustainable, and same was to be set aside - **Deputy Commissioner v. National Company Law Tribunal** - [2024] 159 taxmann.com 277 (Kerala)

4. NCLAT

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

- 4.1 Where a corporate debtor failed to make any payments despite work being completed by an operational creditor and also after running bills have been signed and verified by technical persons of corporate debtor, thus, NCLT rightly held that appellant had defaulted in making full payments against services rendered by operational creditor and rightly proceeded with CIRP proceedings under section 9 - **Ashok Singh v. Babu Lal Sharma - [2024] 159 taxmann.com 529 (NCLAT- New Delhi)**

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- 4.2 Where appellant claimed its financial debt on basis of inter-corporate loans given from time to time to corporate debtor, however, there was no disbursement for time value of money and, there was no financial records of corporate debtor reflected any such transaction with regard to alleged inter-company loan, since essential ingredients to prove a financial debt was missing thus, NCLT did not commit any error in rejecting appellant's claim as a financial creditor - **Kesoram Industries Ltd. v. Pratim Bayal - [2024] 159 taxmann.com 27 (NCLAT- New Delhi)**

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 4.3 Where transactions between parties arose out of sale and purchase of goods, in which appellant as financiers, made direct payment to suppliers, however, no disbursement was made directly to corporate debtor, thus, impugned order passed by NCLT rightly held that transactions could not be held to be a financial debt and claim of appellant was only an operational debt was justified - **Mudraksh Investfin (P.) Ltd. v. Brijesh Singh Bhaduriya, Resolution Professional of RCI Industries and Technologies Ltd. - [2024] 159 taxmann.com 89 (NCLAT- New Delhi)**

SECTION 25 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - DUTIES OF

- 4.4 Where appellant filed claim before RP for consultancy services rendered to corporate debtor, since appellant failed to provide any document to RP to substantiate its claim, impugned order passed by NCLT rejecting claim of appellant was justified - **Umesh Kumar v. Narendra Kumar Sharma, Insolvency Resolution Professional of Indirapuram Habitat Centre (P.) Ltd. - [2024] 159 taxmann.com 707 (NCLAT- New Delhi)**

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

- 4.5 Where appellant, a related party to corporate debtor, filed an appeal claiming that distribution of amount under resolution plan was contrary to section 53, since distribution of amount under resolution plan was made on basis of security interest and no workers and employees had any grievance, nor were they dissatisfied with payments made to them under plan, thus, appeal filed by appellant was to be dismissed - **Manav Investments and Trading Co. Ltd. v. Pratim Bayal - [2024] 158 taxmann.com 682 (NCLAT- New Delhi)**

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

- 4.6 Insolvency Resolution had to be conducted in a time bound manner and, resolution plan which was under consideration before CoC should either be approved or rejected instead of extending CIRP period of corporate debtor, since appellant was not in final list of PRAs published by RP, thus, impugned order passed by NCLT disallowed appellant to from submitting a resolution plan for corporate debtor on account of bar under Regulations 39(1-B) and Regulation 36-B(7) of CIRP Regulations was justified - **Jindal Power Ltd. v. Dhiren Shantilal Shah Resolution Professional of Tuticorin Coal Terminal (P.) Ltd. - [2024] 159 taxmann.com 386 (NCLAT- New Delhi)**
- 4.7 Where appellant, one of bidder, challenged approved resolution plan of R2 on ground that no marks were allocated to appellant on equity allotment, however non-allocation of marks on equity allotment to appellant was in accordance with Process Document and Evaluation Matrix further determination of NPV of R2 was as per final Resolution Plan as done by Consolidated CoC and its advisors, thus, approval of resolution plan by NCLT was in commercial wisdom of CoC and, no grounds had been made out to interfere with NCLT's order approving resolution plan - **Authum Investment and Infrastructure Ltd. v. Rajneesh Sharma Administrator of SREI Equipment Finance Ltd. and SREI Infrastructure Finance Ltd. - [2024] 159 taxmann.com 242 (NCLAT- New Delhi)**

SECTION 41 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - CLAIMS - DETERMINATION OF VALUATION OF

- 4.8 Where appellant (JAL), promoter of respondent company (JIL) which was going through insolvency proceedings, had deposited Rs. 750 crores in Supreme Court for protecting interest of homebuyers in projects floated by JIL and in insolvency resolution process of JIL, Supreme Court directed reconciliation of accounts of JAL and JIL and if any amount was found receivable

by JIL/Homebuyers of JIL, same would be made over to JIL from out of said amount of Rs. 750 crores and accrued interest and remainder thereof would be returned to JAL, it was clear that Supreme Court never contemplated determination of any claim of JAL against JIL, in pursuance of above direction and any claim of JAL against JIL which was in nature of operational debt could have been claimed only in insolvency resolution process - ***Jaiprakash Associates Ltd. v. Jaypee Infratech Ltd.*** - [2024] 158 taxmann.com 536 (NCLAT-New Delhi)

SECTION 65 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR MALICIOUS PROCEEDING

- 4.9 NCLT has jurisdiction under section 65 to close CIRP process and pass all consequential order thus, mere admission of a section 7 application does not denude jurisdiction of NCLT to examine application under section 65 - ***Ashmeet Singh Bhatia v. Pragati Impex India (P.) Ltd.*** - [2024] 159 taxmann.com 314 (NCLAT-New Delhi)

5. NCLT

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBTS

- 5.1 Where balance sheet of corporate debtor reflected short-term borrowings, which showed that there existed cash credit facilities from a financial creditor Bank further, as per Auditor's report of corporate debtor for financial year ending as on 2017-2018, it revealed defaults in repayment of loans to financial institutions and banks, since petition filed by applicant established that corporate debtor was in default of a debt, which was due and payable and therefore, petition filed against respondent was to be admitted - ***IDBI Bank v. Saraju Flour Mills (P.) Ltd.*** - [2024] 159 taxmann.com 497 (NCLT - Kolkata)

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 5.2 Where operational creditor leased its office to corporate debtor and corporate debtor defaulted in payment of rent, since, corporate debtor vide its reply to demand notice issued by operational creditor admitted its liability to repay dues to operational creditor and claim of operational creditor was an operational debt, instant petition filed under section 9 was to be allowed - ***Thakral Computers (P.) Ltd. v. Pythhos Technology (P.) Ltd.*** - [2024] 159 taxmann.com 503 (NCLT - New Delhi)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 5.3 Where corporate debtor-lessee defaulted between 1-7-2017 to 2-3-2018 to pay rent dues to operational creditor-less or and instant petition under section 9 was filed by operational creditor on 1-10-2021, Supreme Court in its judgement excluded period of limitation w.e.f. 15-3-2020 owing to outbreak of COVID-19, period of limitation having been extended, therefore, instant petition was not barred by limitation - ***Thakral Computers (P.) Ltd. v. Pythhos Technology (P.) Ltd.*** - [2024] 159 taxmann.com 503 (NCLT - New Delhi)

ACCOUNT AND AUDIT UPDATES

1.1 ICAI issues Guidance Note on Audit of Banks (2024 Edition)

Editorial Note : The Institute of Chartered Accountants of India (ICAI) issues Revised Guidance Note on Audit of Banks (2024 edition). The objective of this GN is to provide detailed and updated guidance to the members on various aspects of bank audits. The Guidance Note is an important resource for the members carrying out audits of banks and bank branches including new developments in the banking sector. This Guidance Note is divided into two sections Statutory Central Audit and Bank Branch Audit

1.2 ICAI issues CPE Statement, 2023: Guidelines on Continuing Professional Education for undergoing CPE Activities by CAs

Editorial Note : In exercise of powers conferred under Chartered Accountants Act 1949, the Council of ICAI had decided to issue "Statement on Continuing Professional Education, 2023" for undergoing CPE activities by the members and the mechanism to implement the same by POU's. This includes consequential provisions for non-compliance with CPE hours' requirements applicable to various categories of members on a yearly basis from Calendar Year 2024 onwards as decided by the Council of ICAI.

1.3 ICAI issues Revised Standard on Auditing (SA) 800, SA 805 and SA 810

Editorial Note : The Institute of Chartered Accountants (ICAI) issues revised Standards on Auditing (SAs) 800, SA 805 and SA 810. The Chartered Accountants may note that current SA 800, SA 805, SA 810 will continue to apply till audits/engagements for the financial year 2023-24. These revised standards will apply to audits/engagements for the financial year 2024-25 and

onwards.

1.4 ICAI issues Technical Guide on Preparation of Financial Statements under Cash Basis of Accounting

Editorial Note : The Institute of Chartered Accountants of India (ICAI) has issued **Technical** Guide on Preparation of Financial Statements under Cash Basis of Accounting to provide guidance on the application of relevant provisions of Accounting Standards while following the cash basis of accounting. This publication is relevant for the entities who follows cash basis of accounting including Non-corporate entities (NCEs), LLPs, small entities and individuals.

1.5 ICAI can refer matter to Disciplinary Committee if Board of Discipline disagrees with Director's opinion: SC

Editorial Note : Section 21(3) of the ICAI Act states that should the Director (Discipline) arrive at a prima facie opinion that the member is guilty of professional misconduct, he shall refer the matter to the Board of Discipline or the Disciplinary Committee, depending on whether the alleged misconduct falls within the First Schedule or the Second Schedule or both.

1.6 ICAI issues Implementation Guide (Revised) on Reporting on Audit Trail

Editorial Note : The Institute of Chartered Accountants of India issues Implementation Guide on Reporting on Audit Trail under Rule 11(g) of the Companies (Audit and Auditors) Rules, 2014 (Revised 2024 Edition) to guide its members on reporting on use of accounting software by companies which has audit trail feature and report that audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for retention of records.

Embracing Technology for Financial Forecasting: Tech tells your Future



"Technology is not just a tool. It can give learners a voice that they may not have had before." - George Couros

CA Sanjib Sanghi

Financial Forecasting is one of the critical activities for businesses and organizations, small or large, to estimate future financial outcomes and make informed decisions and strategies; helping them navigate uncertainties and plan for the future. In the ever-evolving landscape of finance, the use of modern tools and techniques has become imperative for accurate and insightful financial projections.



The future is digital and the digital is Now. Thus, every business should opt towards implication of the modern-day technology and make every effort to predict the future. Organizations that are proactive rather than reactive are the ones that shine the brightest. Here are some effective technologies that are of great help for the purpose.

Artificial Intelligence and Machine Learning: One of the most significant advancements in financial forecasting is the integration of Artificial Intelligence (AI) and Machine Learning (ML) algorithms. These technologies analyse vast amounts of historical and real-time data to identify patterns and trends, providing more accurate predictions. AI-driven forecasting models continuously learn and adapt, enhancing their accuracy over time.



Models can be trained on time series financial data to identify trends and seasonal fluctuations. This enables more accurate forecasts of metrics like sales revenue, operational expenses, investment returns etc. Companies like Anaplan and PlanPlus Global provide ML-powered financial planning and modeling platforms.

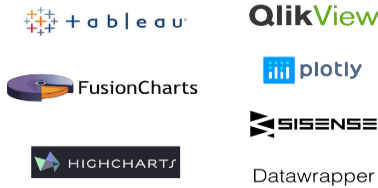
Cloud-Based Forecasting Solutions: Cloud Computing has revolutionized the accessibility and efficiency of financial forecasting. Cloud-based solutions offer Real-Time Collaboration, allowing teams to work on forecasts simultaneously from different locations. This not only improves efficiency but also ensures that all stakeholders have access to the latest data, fostering better decision-making.



Predictive Analytics: Predictive analytics leverages Statistical Algorithms and Machine Learning techniques to forecast future trends based on historical data. By analysing patterns and correlations, businesses can make informed decisions about potential market changes, customer behaviour, and financial performance. This proactive approach enables organizations to stay ahead of the curve.



Data Visualization Tools: Visualization is a powerful tool for interpreting complex financial data. Modern data visualization tools, such as Tableau and Power BI, enable finance professionals to create interactive and easy-to-understand dashboards. These tools help in presenting financial forecasts in a visually compelling way, making it easier for stakeholders to grasp insights and trends.



Modern forecasting platforms provide user-friendly dashboards to track KPIs, display reports, analyse trends and patterns, create projections and diagrams for key metrics and decisions. Visualizing data as graphs, charts, tables etc. makes it easier to communicate insights with stakeholders. Leaders can quickly grasp outcomes, assumptions, possibilities and make strategic calls backed by forecasts.

Simulation, Scenario Analysis and Stress Testing: In today's unpredictable business environment, scenario analysis and stress testing have become essential components of financial forecasting. Businesses use these techniques to model different scenarios and assess the potential impact of various economic, market, or internal changes. This proactive approach enables organizations to develop contingency plans and mitigate risks.



Sophisticated simulation software has made scenario analysis easier for financial forecasting. Tools like Oracle Crystal Ball and Palisade Decision Tools integrate with spreadsheet software to run simulations for budget models. This analyses the probability of different outcomes occurring under various hypothetical market conditions and events. Simulations provide greater insights for forecasting during uncertainty.

Leveraging the latest innovation in Artificial Intelligence and Machine Learning, Data Analytics, Modelling, Automation and Business Intelligence augments financial forecasts to drive better business planning amidst the complexities of today's markets. Adopting such technologies is the key for organizations to gain and sustain competitive advantage.



Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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APPLICATION FOR MEMBERSHIP

2 Pcs.
Pass Port
Colour
Photographs

To
The Hony' Secretary,
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place, Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.

I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

1. Name in Full (Mr. / Mrs. / Miss) : _____
(BLOCK LETTERS)
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Qualifications : _____
5. Professional Status (Pls. specify) : In Practice In Service In Business Others
6. Organisation : _____
8. Mem. No. of CA/CS/ICWAI/Bar Council : _____
9. Blood Group : _____ (Self) _____ (Spouse)
10. Name of Spouse : _____
11. Office Address : _____

12. Residence Address : _____

13. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
Mobile : _____ E-mail : _____
14. Address where Circular etc. should be sent : Office Residence
Enclosed herewith Rs. _____ (Rupees _____)
by Cash/Cheque No. _____ Dated _____ Drawn on _____
towards Life Membership General Membership.

Place : _____

Date : _____

Signature of the Applicant

Would you like to contribute to the following activities of DTPA ? (Pls. specify)

- Contributing articles for Journal Being part of the Core group which runs the functioning of DTPA
 Being faculty / Speaker at Conferences / Seminars / Workshops Others

Area of Professional Interest (Pls. specify) : Indian Income Tax International Tax

- FEMA Company Law Auditing Corporate Finance Indirect Tax General Management
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Proposed By : Name : _____

DTPA Membership No. : _____ Signature : _____

Seconded By : Name : _____

DTPA Membership No. : _____ Signature : _____

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Date of Receipt _____ Membership Approved on _____ Membership No. Allotted _____

Chairman, Membership Sub-Committee

President

General Secretary

NOTES : 1. Fee for Life Membership (a) Individual Rs. 7,500/- (G.S.T. Extra @ 18%), (b) If application is made within a period of 5 years of attaining first professional qualification Rs. 5,000/- (G.S.T. Extra @ 18%), (c) Corporate Bodies Rs. 7,500/- (G.S.T. Extra @ 18%).

2. Cheques should be drawn in favour of "Direct Taxes Professionals' Association".

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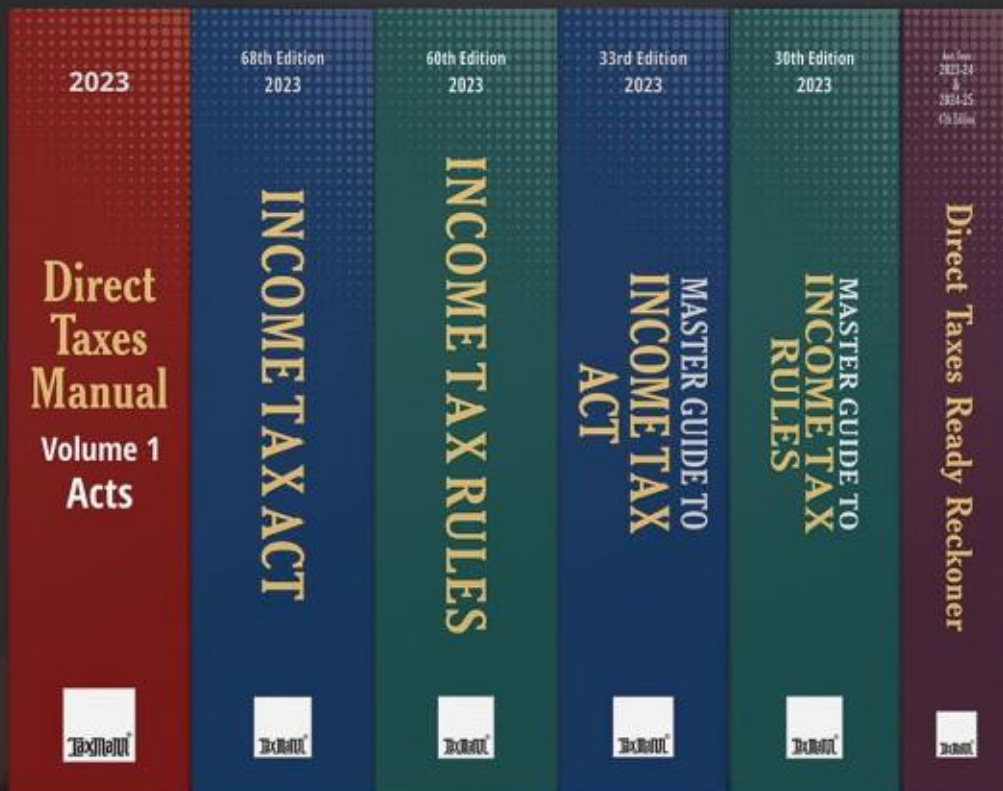
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