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Total no. of page: 85

....From the Desk of Editors



Respected Seniors and my Dear Friends,

After completion of Bank Audit assignments, those who are practicing attest functions all are now geared up for non-corporate clients audits and thereafter Corporate client audit functions. Indeed in the month of April our Association has taken lots of efforts organised full day seminar on Audit, 5 days workshops on Income Tax and related subjects.

The new provisions for registration afresh for charitable trust and other institutions has brought in too many litigations almost countrywide on account of wrong selection of the applicable clause in the respective forms being 10A / 10AB and in some case also on account of delay in filing one or other form. Looking into the difficulty, the Central Board of Direct Taxes (CBDT) in past has extended times on multiple occasions however, the problem did not resolve. Understanding the difficulty on ground the CBDT has finally extended the due date of filing Form 10AB and Form 10A till 30-06-2024. Such extension shall also be available with respect to applications that are pending or rejected by Ld. CIT on account of the fact that the same was furnished after the due date and also to all such applications which were already rejected by Ld. CIT for one or other technical reason. The assessee should take timely actions, withdraw their wrongly filed forms and filed the new and correct forms within the time provided till 30-06-2024. This is may be the last relief as far as technical mistakes are concerned and therefore one should not even wait till the last date and take the relief provided by the CBDT at an early date.

Another big issue arisen for the first time before the taxpayers on account of deductions of TDS on invalid PANs at the regular rate. Invalid PANs means PAN which was not linked with AADHAR yet and quoting the same TDS /TCS on standard rates (as provided in the specified section) was deducted. On processing of the said TDS / TCS returns huge tax demands with interest were generated to the Deductors on account of such deducted as in case of such Invalid PANs cases higher rate of TDS /TCS was required to be deducted and deposited to the Government. To address grievances faced by deductors/collectors, the CBDT has specified that for the transactions entered into up to 31.03.2024 and in cases where the PAN becomes operative (as a result of linkage with Aadhaar) on or before 31.05.2024, there shall be no liability on the deductor/collector to deduct/collect the tax at higher rates specified under section 206AA/206CC. One must keep in mind that this is a temporary relief and trade associations, business houses may take an extra step and help these persons with whom they are dealing with and if their PAN's become invalid due to non-linkage with AADHAR to get them linked with AADHAR on or before 31.05.2024

Proactive steps like this by the Board in the interest of the taxpayers somehow adds to the growth to the Nation and therefore, the Budget Estimates (BE) for Direct Tax revenue in the Union Budget for FY 2023-24 were fixed at Rs. 18.23 lakh crore which were revised and the Revised Estimates (RE) were fixed at Rs. 19.45 lakh crore. The provisional Direct Tax collections (net of the refunds) have exceeded the BE by 7.40% and RE by 0.67%. Further, the provisional figures of Direct Tax collections for the FY 2023-24 represent an increase of 17.70% as compared to the preceding year.

India is experiencing the biggest festival presently where general elections are going on countrywide. Some will win and some will lose however this flavour of democracy is here to remain. 4th June is not far now and almost a month from here and we all will be witnessing the successful conclusions of the seven phases of long drawn election fever. I hope those whose vote were in earlier phases must have voted and the others who are in the coming phases it is my most personal request to **DO MUST VOTE** in the interest of Democracy.

Keep an eye on the Forthcoming Program section inside this journal and believe me you will find meaningful subjects and learned speakers on each topic. The biggest event of the Association **ANNUAL CONFERENCE, 2024** is on the cards and scheduled on **3rd of August, 2024 at Taj Bengal, Kolkata**. I urge you to **register soon** and experience the unprecedented learning as well as networking experience.

Wish you all a Very Happy Rabindra Jayanti, Akshya Tritya and Buddha Purnima.

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,

It is with great honour and enthusiasm that I address you as the President of our esteemed association in this important month of May, when after a busy month of Bank Audits we are gearing up for the Audit of Corporates as well as fulfilling other compliances.

As I write to all of you, I am filled with a sense of pride and gratitude for the privilege to lead such a distinguished group of professionals dedicated to excellence not only in taxation but also in many other areas of the profession which is playing a key role in helping businesses create more value.

Towards this objective, we had organised a full day CPE seminar on Audit Documentation and Regulatory Orders on 27th April, 2024 which was warmly attended by **more than 100 participants**. We had a wonderful line up of speakers from across India who gave their all to explain to the participants the importance of Audit documentation and also as to how in the near future, technology would have to be adopted by all of us if we have to be relevant and effective in our approaches. The speakers also shared as to how audit documentation has gained huge significance in the last few years, in the terms of the scrutiny of the audit procedures carried out by any of the regulatory authorities. Many of the participants also appreciated the group discussion mode of analysing the case studies about which the views of the Expert were also given. It was really a pleasure to know that many members felt that they had never witnessed such a well planned program on Audit Documentation in the recent past in any of the CPE seminars and also that the seminar gave them a huge opportunity to look at different aspects just before the Audit for the last financial year will start.

In these challenging times, the role of tax professionals has never been more critical. As stewards of fiscal responsibility and compliance, we play a pivotal role in shaping the economic landscape of our nation. Our expertise and insights are sought after to navigate the ever-evolving tax regulations and ensure compliance with integrity and precision.

With this background in mind, your association organised a 5 Days Income Tax Workshop which was planned and conceived by our entire Direct Tax Committee in consultation of Past Presidents and Executive Committee members. The course was curated so beautifully with some leading speakers with profound practical knowledge that **90+ participants from 16 states outside West Bengal** reposed their faith in DTPA, Kolkata by joining this workshop virtually through Zoom. The wonderful feedbacks that we have received from the participants clearly bears a testimony to the fact that Team DTPA has been really successfully in fulfilling the objective of having a complete refresher course in Income Tax covering everything from Law to Procedures to Portal issues, just before the next audit and filing season. Many participants have shared that the quality of the speakers was really wonderful and also the pain they took to explain things in a very lucid manner.

Looking ahead, I am excited about the opportunities that lie before us. Our association remains steadfast in its mission to provide unparalleled support, resources, and networking opportunities to our members. Through our diverse range of seminars, workshops, and networking events, we will continue to empower our members to stay ahead of the curve and excel in their practice.

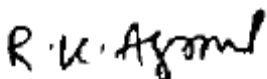
Furthermore, I encourage each of you to actively engage with your association, whether through participation in different group discussions, sharing your expertise at events, or mentoring the next generation of tax professionals. Your involvement is not only instrumental to the success of our association but also enriches the collective knowledge and experience of our membership.

I am also deeply grateful to many of our members who are spreading the word to their fellow professionals as to how they have benefitted by becoming members of DTPA, because of which we are receiving encouraging queries related to memberships.

In closing, I extend my heartfelt appreciation to each of you for your continued support and dedication to DTPA. Together, I am confident that we will continue to raise the bar of excellence and make a meaningful impact in the field of taxation, audit and compliance.

Thank you for your unwavering commitment and dedication.

Warm regards



CA Rajesh Agrawal

President

10th May, 2024

Full Day Seminar on Audit Documentation & Regulatory Orders at The Park Hotel On 27th April, 2024



Day 1 of 5 days Income Tax Workshop Held at DTPA Conference Hall On 29th April 2024



Day 2 of 5 days Income Tax Workshop Held at DTPA Conference Hall On 30th April 2024



Glimpses of Felicitation of Three Newly appointed members – Shri Sanjay Awasthi, Shri Rakesh Mishra and Shri Pradip Kumar Choubey And Bidding Farewell to Shri Girish Agarwal



Glimpses of Felicitation of Shri Krishna Mohan Dixit, IRS on his appointment as Pr. CCIT, West Bengal & Sikkim at Aaykar Bhawan by DTPA team on 24th April 2024



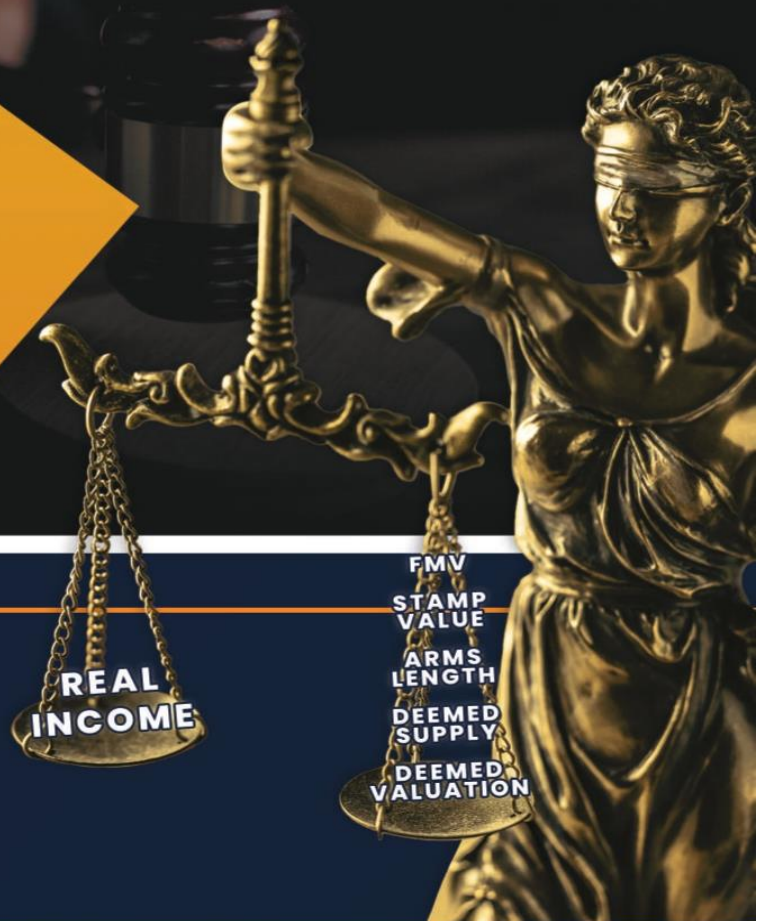
Forthcoming Programs of Direct Taxes Professionals' Association



ANNUAL CONFERENCE 2024

SATURDAY, 3RD AUGUST, 2024 | TAJ BENGAL, KOLKATA

HEADING TOWARDS **DEEMED TAXATION REGIME**



DIRECT TAXES PROFESSIONALS' ASSOCIATION

3, Govt. Place (West), Income Tax Building, Ground Floor, Kolkata - 700 001
Ph. (033) 2242-0638, 4003-5451 | E-mail : dtpakolkata@gmail.com | Website: www.dtpa.org

DELEGATE FORM



DIRECT TAXES PROFESSIONALS' ASSOCIATION

ANNUAL CONFERENCE - 2024

HEADING TOWARDS DEEMED TAXATION REGIME

DIRECT TAXES PROFESSIONALS' ASSOCIATION

3, Govt. Place West, Ground Floor
Kolkata - 700 001

Dear Sirs,

Please register me as a delegate for the **Annual Conference - 2024** to be held at **Hotel Taj Bengal, Kolkata** on **Saturday, 3rd August, 2024**

Name of Delegate (In Block Letters)	
Organisation	
GST Registration No.	
Address	
Phone	
Mobile	
Email ID	

DELEGATE FEE (Incl. GST):

₹2200/- (till 15th July) | ₹2500/- (from 16th July)

NO SPOT REGISTRATION

I am sending herewith my Registration Fee by Cash/Online/Cheque No.
dated ₹..... drawn on
..... in favour of DIRECT TAXES PROFESSIONALS' ASSOCIATION

For Online Payment:

A/c. Name: DIRECT TAXES PROFESSIONALS' ASSOCIATION
IDBI Bank, A/c. No. 0060102000138185, IFSC - IBKL0000060

Note - In case of RTGS/ NEFT/ IMPS payment, delegates are requested to please send the details of payment to dtpakolkata@gmail.com

Scan
QR Code
To Pay



3, Govt. Place (West), Income Tax Building, Ground Floor, Kolkata - 700 001
Ph. (033) 2242-0638, 4003-5451
E-mail : dtpakolkata@gmail.com | Website: dtpa.org

**DTPA 32nd Library Day and 42nd Foundation Day
At DTPA Conference Hall on 21st May 2024**



Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

32nd Library Day/ 42nd Foundation Day

**Request all
Members to Join**

Date - 21st May, 2024, Tuesday

Time - 04:00 PM

Venue - DTPA Conference Hall

**CA Rajesh Kr Agrawal
President**

**CA Mahendra K Agarwal
Gen. Secretary**

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



DTPA CA CPE Study Circle of EIRC of ICAI

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

Email :- dtpacasc@gmail.com

STUDY CIRCLE MEETING ON

CRITICAL ISSUES AND JUDICIAL PRONOUNCEMENTS IN GST



ADV ANKIT KANODIA

SPEAKER



**20 May, 2024, Monday
03:00 PM - 06:00 PM**

" 3 CPE HOURS "



DTPA Conference Hall

PARTICIPATION CHARGES:

RS. 200/-

**CA Rajesh Kumar Agrawal
Convenor**

**CA Shyam Agarwal
Deputy Convenor**

Compliance Calendar for May, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th May, 2024	Apr-24	Due date for deposit of Tax deducted/collected for the month of April, 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	
	15th May, 2024	Mar'24	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of March, 2024	
	15th May, 2024	Apr'24	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2024 has been paid without the production of a challan	
	15th May, 2024	Jan'24 –Mar'24	Quarterly statement of TCS deposited for the quarter ending March 31, 2024	
	30th May, 2024	Apr'24	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of April, 2024	
	30th May, 2024	FY 2023-24	Issue of TCS certificates for the 4th Quarter of the Financial Year 2023-24	
	31st May, 2024	Jan'24 –Mar'24	TDS Return in Form 24Q, 26Q, and 27Q for Quarter ending Jan'2024-Mar' 2024	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
	10th May, 2024	Apr-24	GSTR-7 (MONTHLY)	Summary of Tax Deducted at Source (TDS) and Deposited under GST Laws
	10th May, 2024	Apr-24	GSTR-8 (MONTHLY)	Summary of Tax Collected at Source (TCS) and Deposited by e-commerce operators under GST Laws
	11th May, 2024	Apr-24	GSTR-1 (MONTHLY)	Summary of Outward Supplies where turnover exceeds Rs. 5 Crore or have not chosen QRMP scheme for April 2024
	13th May, 2024	Apr-24	GSTR-1 (QRMP)	Uploading of outward supplies by quarterly return filers opting for the Invoice Furnishing Facility (IFF) under the QRMP Scheme for April 2024
	13th May, 2024	Apr-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th May, 2024	Apr-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th May, 2024	Apr-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services for April 2024
	20th May, 2024	Apr-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 for Apr'24.
	25th May, 2024	Apr-24	PMT-06	Challan for depositing GST by taxpayers who have opted for the QRMP Scheme
Statute	Due dates	Compliance Period	Details	
Professional Tax (West Bengal)	10th May, 2024	Apr-24	Professional Tax (PT) on Salaries for April 2024**	
	31st May, 2024	FY 2023-24	Professional Tax to be filed for FY 23-24	
ESI & PF	15th May, 2024	Apr'24	Depositing Contribution towards PF/ESI	

Compliance Calendar for June, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th June, 2024	May-24	Due date for deposit of Tax deducted/collected for the month of May, 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	
	15th June, 2024	Jan'24 –Mar'24	Due date for Issuing TDS Certificate for January 2024 - March 2024	
	30th June, 2024	FY 2024-25	Due date for 1st Installment of Advance Tax (15%) for FY 2024-2025	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th June, 2024	May-24	GSTR-7 (MONTHLY)	Summary of Tax Deducted at Source (TDS) and Deposited under GST Laws
	10th June, 2024	May-24	GSTR-8 (MONTHLY)	Summary of Tax Collected at Source (TCS) and Deposited by e-commerce operators under GST Laws
	11th June, 2024	May-24	GSTR-1 (MONTHLY)	Summary of Outward Supplies where turnover exceeds Rs. 5 Crore or have not chosen QRMP scheme
	13th June, 2024	May-24	GSTR-1 (QRMP)	Uploading of outward supplies by quarterly return filers opting for the Invoice Furnishing Facility (IFF) under the QRMP Scheme
	13th June, 2024	May-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th June, 2024	May-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th June, 2024	May-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th June, 2024	May-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.
	25th June, 2024	May-24	PMT-06	Challan for depositing GST by taxpayers who have opted for the QRMP Scheme for the month of May 2024
Statute	Due dates	Compliance Period	Details	
ESI, PF & Prof. Tax (West Bengal)	10th June, 2024	May-24	Professional Tax (PT) on Salaries for May 2024	
	15th Junr, 2024	May-24	Provident Fund (PF) & ESI Returns and Payment for May 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
- GST & Indirect Taxes
- Corporate & Allied Laws
- Information Technology
- International Taxation
- Accountancy and Audit
- Insolvency and Bankruptcy
- Emerging areas of Practice

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

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

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

Thanks and Regards,

CA. Rajesh Kr. Agrawal

President-DTPA
Ph. 9007217679
Email: thinkvisor18@gmail.com

Adv. Giridhar Dhelia

Chairman, DTPA–Journal Sub-Committee
Ph.9830255500
Email: gdhelia@gmail.com

CA. Sujit Sultania

Co- Chairman, DTPA–Journal Sub-Committee
Ph.9831016678
Email: sultaniasujit@gmail.com

DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 No new tax changes effective from April 1, 2024; CBDT issues clarification on New Tax regime - **Press Release, Dated 31-03-2024**

Editorial Note : The CBDT has clarified that no new change is coming in from 01.04.2024. The new regime under section 115BAC(1A) was introduced in the Finance Act 2023 and is applicable for persons other than companies and firms as a default regime from the financial year 2023-24, and the assessment year corresponding to this is AY 2024-25. The option for opting out from the new tax regime is available till the filing of the return for the AY 2024-25.

- 1.2 CBDT issues clarification on time limit to verify Income-tax Returns - **Notification No. 2 of 2024, Dated 31-03-2023**

Editorial Note : The Central Board of Direct Taxes (CBDT) has clarified that if income-tax return and e-verification/ITR V are submitted within 30 days of uploading, the upload date is considered as the filing date. If submitted after 30 days, the submission date becomes the filing date, with the consequence of late filing being applicable.

- 1.3 CBDT enables filing of commonly used ITR forms 1, 2 and 4 on e-filing portal from 01-04-2024 - **Press Release, Dated 04-04-2024**

Editorial Note : CBDT enables taxpayers to file Income Tax Returns for the AY 2024-25 starting April 1, 2024. Commonly used ITRs (ITR-1, ITR-2, and ITR-4) are accessible on the e-filing portal and ITR-6 for companies. This is for the first time that the Income Tax department has enabled taxpayers to file their Returns on the first day of the new financial year.

- 1.4 CBDT issues corrigendum to notification on time limit to verify Income-tax Returns - **Corrigendum to Notification No. 02 of 2024, Dated 04-04-2024**

Editorial Note : The CBDT issues a corrigendum to the notification issued on the time limit to verify Income-tax returns. Para 5 of the notification is amended to provide that ITR shall be deemed invalid if it isn't verified within 30 days of uploading or by the due date as per the Income-tax Act, 1961, whichever is later.

- 1.5 No special drive to re-open cases of mismatch in HRA claims: CBDT - **Press Release, Dated 08-04-2024**

Editorial Note : The CBDT has stated that any apprehensions about retrospective taxation and re-opening cases on HRA claims issues are completely baseless. The board has clarified that there is no special drive to re-open cases, and media reports alleging that the department is undertaking large-scale re-opening have been entirely misplaced.

- 1.6 India strengthens bilateral ties with Mauritius; enters protocol to amend DTAA to make it compliant with BEPS - **Press Release, Dated 13-03-2024**

Editorial Note : On March 13, 2024, President Droupadi Murmu concluded her state visit to Mauritius, holding talks with Prime Minister Pravind Jugnauth to bolster bilateral ties. Leaders witness exchange of 4 agreements which includes protocol to amend the India-Mauritius Double Tax Avoidance Agreement (DTAA) to make it compliant with Base Erosion and Profit Shifting (BEPS) Minimum Standards.

- 1.7 CBDT notifies 'Amul Research and Development Association' for the purpose of sec. 35 relief - **Notification S.O. No. 1651(E), Dated 09-04-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Amul Research and Development Association' under the category "Research Association" for Scientific Research for the purposes of section 35(1)(ii) of the Income-tax Act, 1961.

- 1.8 Net provisional Direct Tax collections for FY 2023-24 exceeds Union Budget Estimates by 7.40%: CBDT - **Press Release, Dated 21-04-2024**

Editorial Note : The Budget Estimates (BE) for Direct Tax revenue in the Union Budget for FY 2023-24 were fixed at Rs. 18.23 lakh crore which were revised and the Revised Estimates (RE) were fixed at Rs. 19.45 lakh crore. The provisional Direct Tax collections (net of the refunds) have exceeded the BE by 7.40% and RE by 0.67%. Further, the provisional figures of Direct Tax collections for the FY 2023-24 represent an increase of 17.70% as compared to the preceding year.

- 1.9 CBDT notifies 'Shree Ramanuj Kot Laxmi Venkatesh Mandir' for purposes of sec. 80G exemption - **Notification No. S.O. 1771(E), Dated 23-04-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Shree Ramanuj Kot Laxmi Venkatesh Mandir' for purposes of sec. 80G exemption. The Notification is valid solely for renovating or repairing the "Shree Ramanuj Kot Laxmi Venkatesh Mandir" up to Rs. 1,63,06,311/- or until 31.03.2029, whichever occurs first.

- 1.10 CBDT extends due date of filing Form 10A/10AB till June 30, 2024 - **Circular No. 7/2024, Dated 25-04-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has extended the due date of filing Form 10AB and Form 10A till 30-06-2024. Such extension shall also be available with respect to applications that are pending or rejected by CIT on account of the fact that the same was furnished after the due date.

- 1.11 No liability to deduct/collect tax at higher rates if payee links PAN-Aadhaar by May 31, 2024: CBDT - **Circular No. 6/2024, Dated 23-04-2024**

Editorial Note : To address grievances faced by deductors/collectors, the CBDT has specified that for the transactions entered into up to 31.03.2024 and in cases where the PAN becomes operative (as a result of linkage with Aadhaar) on or before 31.05.2024, there shall be no liability on the deductor/collector to deduct/collect the tax at higher rates specified under section 206AA/206CC.

2. SUPREME COURT

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

- 2.1 Permanent establishment - Liaison Office :** SLP dismissed against order of HC that where Liaison Office (LO) of assessee in India was clearly a fixed place and activities carried out by LO, could not be said to be preparatory or auxiliary in nature, LO did not constitute a permanent Establishment, liable to tax in India - *Commissioner of Income-tax v. Mitsui & Co. Ltd.* - [2024] 161 taxmann.com 635 (SC)
- 2.2 Permanent establishment - Agency PE :** SLP dismissed against order of HC that where MIPL was not performing additional function, in absence of material, it could not be taken as dependant agency PE to assessee liable to tax in India - *Commissioner of Income-tax v. Mitsui & Co. Ltd.* - [2024] 161 taxmann.com 635 (SC)
- 2.3 Royalties/Fee for technical services - Computer software :** SLP dismissed against order of HC that where payments were made by Indian company to non-resident-company which was computer software manufacturer/supplier for resale/use of computer software through/distribution agreements, said payment did not amount to royalty for use of copyright in computer software, and same did not give rise to any income taxable in India - *Commissioner of Income-tax v. Gracemac Corporation* - [2024] 161 taxmann.com 510 (SC)
- 2.4 Royalties or Fees For Technical Services - Rate of Tax :** SLP dismissed as withdrawn against order of HC that where assessee had entered into an agreement with UK based university for providing certain technical services for which it had agreed to bear Indian taxes, assessee was required to gross-up amount of fees for technical services (FTS) paid to university, for purpose of deducting TDS under India-UK DTAA - *Tvs Motor Company Ltd. v. Income Tax Officer, (IT)-II* - [2024] 161 taxmann.com 211 (SC)

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

- 2.5 Reassessment :** Where AO had issued a notice under section 148 seeking to reopen assessment on ground that assessee-trust had made payment to CIMS Hospital out of accumulated funds which was in contravention of section 11(3)(d), since CIMS Hospital was not even registered under section 12AA or covered under sub-clauses of clause (23C) of section 10 and, on reasons recorded, AO could not form belief that income chargeable to tax had escaped assessment, High Court was justified in setting aside impugned notice - *Dy. Commissioner of Income-tax v. Areez Khambatta Benevolent Trust* - [2024] 161 taxmann.com 528 (SC)

SECTION 13A OF THE INCOME-TAX ACT, 1961 - POLITICAL PARTIES - INCOME OF

- 2.6 Exemption :** Where during pendency of civil appeals against order of High Court denying section 13A exemption to assessee, **assessee** sought for an urgent hearing of application in view of demands being raised and revenue submitted that having regard to impending elections no coercive action of any nature shall be taken against assessee with regard to any of demands of approximately Rs.3,500 crores raised in March 2024; in view of submission by way of concession so made by revenue, no coercive action of any nature shall be taken against assessee till next date of hearing on 24-7-2024 - *Indian National Congress (I) / All India Congress Committee v. Commissioner of Income-tax* - [2024] 161 taxmann.com 115 (SC)

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

- 2.7 Compensation :** SLP dismissed against order of High Court that where mines owned by assessee were used by its subsidiaries for captive use, however said mines had lower grade of iron ores and subsidiaries purchased same from third parties, since compensation paid by assessee to its subsidiaries with respect to difference in price of ores purchased from assessee and third parties was to recoup business losses of subsidiaries and was irrecoverable as far as assessee was concerned, expenditure claimed by assessee with respect to such compensation was to be allowed - *Principal Commissioner of Income-tax v. Industrial Development Corporation of Orissa Ltd.* - [2024] 161 taxmann.com 247 (SC)
- 2.8 Reassessment :** SLP dismissed against impugned order of High Court wherein it was held that where on basis of agreement entered into by assessee with its dealer in subsequent year reassessment was initiated to disallow colour idea concept expenses treating same as capital expenditure instead of revenue expenditure, since said agreement could not form basis for Assessing Officer to have come to a reasonable belief that income chargeable to tax had escaped assessment for assessment year 2012-13, reassessment notice was without jurisdiction - *Assistant Commissioner of Income-tax, LTU-2 v. Asian Paints Ltd.* - [2024] 161 taxmann.com 126 (SC)

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

- 2.9 General :** SLP dismissed against order of High Court that when an expenditure was incurred by assessee for which payment was not made in cash or monetary terms, provisions of section 40A(3) would have no application - *Commissioner of Income-tax v. Bhartiya Hotels (P.) Ltd.* - [2024] 161 taxmann.com 506 (SC)
- 2.10 Purchases :** SLP dismissed against impugned order of High Court wherein it was held that where payments made by assessee to suppliers for purchase were not made through an account payee cheque drawn on a bank, account payee bank

draft or through use of electronic clearing system through a bank account and assessee failed to establish genuineness of transactions, AO was justified in denying deduction for said payment under section 40A(3) - **Rajesh Kumar v. Commissioner of Income-tax - [2024] 161 taxmann.com 125 (SC)**

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

2.11 Scope of : SLP dismissed against order passed by High Court that where assessee-firm entered into a contract with a company to sell its soft drink business assets and earned surplus, since, assets such as goodwill, know how, etc. were transferred and cost of acquisition of these assets could not be ascertained, Tribunal rightly held that sale of business assets was not an itemized sale, but a slump sale and thus was not exigible to tax - **Commissioner of Income-tax v. Shri Ganganagar Bottling Co. - [2024] 161 taxmann.com 426 (SC)**

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

2.12 Encumbrance : Review petition dismissed against order of Supreme Court that where Assessing Officer allowed payment made by assessee-company to its shareholders as encumbrance charges from sale proceeds of building as cost of improvement while computing long-term capital gains, Commissioner rightly treated said assessment order as erroneous and prejudicial to interest of revenue - **Paville Projects (P.) Ltd. v. Commissioner of Income-tax-7 - [2024] 160 taxmann.com 759 (SC)**

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

2.13 Others : SLP dismissed against order of High Court that where assessee failed to produce any documentary evidence to prove genuineness of sundry creditors, addition made by Assessing Officer at 100 per cent on account of such bogus creditors was to be restricted to profit element of 25 per cent - **Principal Commissioner of Income-tax v. Nandkishor Hulaschand Jalan - [2024] 161 taxmann.com 81 (SC)**

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

2.14 Non-existent entity : SLP dismissed against order of High Court that where department issued notice under section 148 in name of a non-existent entity, which had ceased to exist pursuant to scheme of amalgamation and arrangement and factum of its amalgamation was very much within knowledge of revenue, notice issued under section 148 was unsustainable in law and deserved to be set aside - **Income Tax Officer, Ward-1 v. Abhishek Caplease (P.) Ltd. - [2024] 161 taxmann.com 41 (SC)**

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

2.15 Illustrations : SLP disposed of reserving liberty to assessee to raise contentions regarding jurisdictional error vis-a-vis limitation period before appropriate authority against order of High Court that where ITO inspected three distinct lockers belonging to petitioner, namely, Lockers 299, 2070, and 1320, since restraint and revocation orders pertaining to Locker 299 unequivocally establish that Locker 299 underwent its initial search on 29-4-2021, even though it resulted in no recoveries, this date marked onset of limitation period prescribed under section 153B and, thus, assessment order dated 31-3-2023 notified under section 153A was within limitation period - **Anuradha Bakshi v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 195 (SC)**

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

2.16 Condition precedent : SLP dismissed against order of High Court that where Assessing Officer of searched person recorded that documents seized during search belonged to assessee, merely because he had not categorically stated that documents mentioned therein did not belong to searched person would not invalidate assumption of jurisdiction under section 153C in respect of assessee - **Shushre Securities (P.) Ltd. v. Commissioner of Income-tax - [2024] 161 taxmann.com 639 (SC)**

2.17 Incriminating document : SLP dismissed against order of High Court that where proceedings under section 153C were initiated against assessee on basis of seized documents which could not be said to be non-incriminating on bare perusal and despite of being given several opportunities no submission on merits of case were made by assessee, assessment order passed under said section to make additions was justified - **Shushre Securities (P.) Ltd. v. Commissioner of Income-tax - [2024] 161 taxmann.com 639 (SC)**

2.18 Scope of : Notices under section 153C would be valid for a period of six years from end of financial year preceding date on which satisfaction was recorded - **Principal Commissioner of Income-tax v. Shalimar Town Planners (P.) Ltd. - [2024] 161 taxmann.com 306 (SC)**

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

2.19 EDC Charges : SLP dismissed against order passed by High Court that external development charges (EDC) paid by assessee-builder to HUDA under its agreement with State Government of Haryana was not liable to TDS under section 194-I - **Joint Commissioner of Income Tax (OSD) v. DLF Home Panchkula (P.) Ltd. - [2024] 161 taxmann.com 237 (SC)**

3. HIGH COURT

SECTION 2(12A) OF THE INCOME-TAX ACT, 1961 - BOOKS OR BOOKS OF ACCOUNT

- 3.1 Definition:** Amended definition of "Books and Books of Accounts" as per section 2(12A) includes books of accounts in electronic form, digital form, scanned copies of data or printouts of data stored in digital or electronic form - *LKS Gold House (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2024] 161 taxmann.com 604 (Madras)

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

- 3.2 Illustrations :** Where assessee-society entered into redevelopment agreement with a developer to redevelop flats and developer, in turn, agreed to pay a certain amount to each member of society, amount received by members was not taxable in hands of assessee, as same was income of members - *Principal Commissioner of Income-tax v. MIG Co-op. Hsg. Soc. Group II Ltd.* - [2024] 160 taxmann.com 682 (Bombay)

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

- 3.3 Contractual receipts :** Where assessee-society entered into redevelopment agreement with a builder to redevelop flats and granted rights to builder for land and developer, in turn, agreed to pay Rs. 15 crores to corpus fund of assessee and out of which paid an amount of Rs. 3.50 crores on execution of agreement, since assessee had not given possession of land to developer during year under consideration, amount of Rs. 3.50 crores only could be taxed for year under consideration - *Principal Commissioner of Income-tax v. MIG Co-op. Hsg. Soc. Group II Ltd.* - [2024] 160 taxmann.com 682 (Bombay)

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

- 3.4 Royalties/Fee for technical services -Others :** Where assessee, a UK based company, was engaged in business of undertaking employment background checks and verification of testimonials for various clients, since mere undertaking of background checks of employees or verification of testimonials cannot possibly be recognized as entailing use of any technical knowledge, experience or skill as provided under article 13(4), receipts of assessee from its clients in India could not be regarded as Royalties or fee for technical services under provisions of Article 13 of India-UK DTAA - *Commissioner of Income-tax, (IT) v. Hireright Ltd.* - [2024] 161 taxmann.com 45 (Delhi)

- 3.5 Permanent establishment - DAPE :** Where notice under section 148 was issued based on contents and findings of Commissioner in his revision order, which

order was already set aside by Tribunal and pursuant to which, Assessing Officer also passed order giving effect to Tribunal order under section 143(3) read with section 254, impugned notice being a 'change of opinion' by Assessing Officer were liable to be quashed - *MFE Formwork Technology SDN. BHD. v. Deputy Commissioner of Income-tax* - [2024] 161 taxmann.com 292 (Bombay)

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

- 3.6 Form no. 10 :** Where assessee-trust filed form 10 beyond due date and assessee's auditor admitted to oversight that he did not consider provisions of Rule 17 and was under bonafide impression that since factum of accumulation of receipts was reported in audit report in Form No.10B a separate statement in Form No. 10 was not required, in view of fact that delay was not intentional, assessee could not be prejudiced on account of an ignorance of rules admitted by professional engaged by assessee and thus, delay was to be condoned - *Shree Jain Swetamber Murtipujak Tapagachha Sangh v. Commissioner of Income-tax (Exemptions)* - [2024] 161 taxmann.com 114 (Bombay)
- 3.7 Denial of benefit under sec. 11 will be restricted only to that income of Trust which was used/ applied directly or indirectly for benefit of prohibited persons - *Commissioner of Income-tax (Exemption) v. Maharashtra Academy of Engineering and Educational Research* - [2024] 161 taxmann.com 290 (Bombay)**
- 3.8** Where revenue by way of appeal challenged order of Tribunal that expenditure incurred on new objects were eligible for exemption u/s 11 even if such new objects had not been intimated to concerned CIT, Registry in first instance must send intimation of admission of this Appeal enclosing therewith a copy of this order so as to enable Tribunal to act accordingly - *Commissioner of Income-tax (Exemption) v. Maharashtra Academy of Engineering and Educational Research* - [2024] 161 taxmann.com 290 (Bombay)

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

- 3.9 Denial of registration :** Where assessee cricket association sought registration under section 12AA, however assessee had undertaken such activities that led to survey operation being conducted and search and seizure against its honorary secretary, since search and seizure were conducted in respect of activities or transactions not related to institution, Commissioner (Exemptions) did as required and empowered by provision of section 12AA existing prior to amendment and was right in denying registration to assessee - *Commissioner of Income-tax (Exemption) v. Orissa Cricket Association* - [2024] 161 taxmann.com 588 (Orissa)

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

3.10 Rejection of application : Where assessee trust furnished explanation sought for regarding filing of wrong section code in Form No.10A, however, same was not considered by Commissioner (Exemption), application for registration under section 12AB could not have been rejected - ***Parmeswari Bai Memorial Trust v. Commissioner of Income-tax (Exemptions)*** - [2024] 161 taxmann.com 311 (Orissa)

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

3.11 Recording of satisfaction : Where Assessing Officer had not recorded his satisfaction as to why he was not satisfied with claim of assessee in respect of expenditure in relation to exempt income in form of dividend and long term capital gain, impugned disallowance made under section 14A by applying rule 8D was to be deleted - ***Principal Commissioner of Income-tax v. Tata Capital Ltd.*** - [2024] 161 taxmann.com 557 (Bombay)

3.12 AO's satisfaction : Where Assessing Officer being not satisfied with disallowance of Rs. 3.88 crores made by assessee under section 14A, had made disallowance of Rs. 87.85 crores without giving any reasons as to why he was not satisfied with disallowance of made by assessee, therefore, Tribunal was justified in restricting expenses under section 14A at 0.5 per cent of exempted income - ***Commissioner of Income-tax, (LTU) v. Reliance Industries Ltd.*** - [2024] 161 taxmann.com 423 (Bombay)

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

3.13 Reassessment : Where assessment was sought to be reopened in case of assessee on ground that income of assessee for relevant year had escaped assessment, however, except for a bald statement in reasons to believe escapement of income that assessee had entered into sales/purchase of equity shares with or without actual delivery in recognized Stock Exchange, there were no details provided and there was no live link between material before Assessing Officer and belief which he had to form regarding escapement of income, reopening of assessment being a mere change of opinion was not justified - ***Vibrant Securities (P.) Ltd. v. Income-tax Officer*** - [2024] 161 taxmann.com 243 (Bombay)

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

3.14 Advances : Where assessee accepted advances for which no proper explanation was furnished and Assessing Officer invoking section 28(iv) added amount to assessee's income, since benefit as contemplated by section 28(iv) had to be benefit other than a benefit in shape of money or cash, impugned addition was to be

deleted - ***Assistant Commissioner of Income-tax v. Infrastructure Logistics (P.) Ltd.*** - [2024] 161 taxmann.com 384 (Bombay)

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

3.15 Explanation 5 : Depreciation claim was optional up to insertion of Explanation 5 to section 32(1) with effect from 1-4-2002 - ***Commissioner of Income-tax, (LTU) v. Reliance Industries Ltd.*** - [2024] 161 taxmann.com 423 (Bombay)

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

3.16 Compensatory afforestation : Contribution made by assessee-company to Compensatory Afforestation Fund (CAF) would be revenue expenditure and not capital in nature - ***Principal Commissioner of Income-tax v. Tata Steel Ltd.*** - [2024] 161 taxmann.com 607 (Bombay)

3.17 Expenditure for drawing electricity line : Sales tax exemption granted by Government of Gujarat is capital receipt exempt from tax - ***Commissioner of Income-tax, (LTU) v. Reliance Industries Ltd.*** - [2024] 161 taxmann.com 423 (Bombay)

3.18 Contribution to temple : Where assessee contributed certain amount to temples and claimed deduction of same as revenue expenditure and Assessing Officer disallowed claim and added amount to assessee's income and Commissioner (Appeals) deleted addition and revenue submitted before High Court that Commissioner (Appeals) admitted additional evidence, since no additional evidence was allowed to be produced, it was not a case of any violation of rule 46A(3) - ***Assistant Commissioner of Income-tax v. Infrastructure Logistics (P.) Ltd.*** - [2024] 161 taxmann.com 384 (Bombay)

3.19 Revision : Where Pr. Commissioner invoking section 263 cancelled assessment order and directed Assessing Officer to pass fresh assessment order, since in order under section 263 Pr. Commissioner did not record reasons for arriving at conclusion that assessment order was erroneous and prejudicial to interest of revenue, impugned order was not sustainable in eyes of law - ***Principal Commissioner of Income-tax v. Mohak Real Estate (P.) Ltd.*** - [2024] 161 taxmann.com 388 (Delhi)

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

3.20 Where assessee withdrew funds through supervisors to pay labourers and Assessing Officer disallowed 20% under section 40A(3), since supervisors acted as agents and payments didn't exceed Rs. 20,000, said payment would not fall within scope of section 40A(3) and consequently, disallowance to extent of 20% would be deleted - ***S.K. Jaynal Abddin v. Commissioner of Income-tax, Kolkata*** - [2024] 161 taxmann.com 640 (Calcutta)

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

3.21 Allowance or deduction : Where assessee filed belated return for assessment years 1991-92, 1992-93 and 1993-94 disclosing loss on account of accrued bank interest and AO disallowed carry forward of said loss, thereafter in relevant assessment year, AO made additions under section 41(1) on account of waiver of interest on bank loan, since assessee had neither subsequently obtained any amount in respect of bank interest debited in his books of account in assessment years 1991-92, 1992-93 and 1993-94 nor waiver of interest on bank loan in relevant assessment year was remission or cessation of a trading liability, interest waived by bank would not be chargeable to tax in hands of assessee under section 41(1) - **Emec (P.) Ltd. v. Commissioner of Income-tax - [2024] 161 taxmann.com 415 (Calcutta)**

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

3.22 Full value of consideration : Capital gains on transfer of shares of company should be computed after reducing proportionate amount withdrawn from escrow account from full value of consideration and allowing refund of additional tax paid with interest - **Gopal Vazirani v. Principal Commissioner of Income-tax-8 - [2024] 161 taxmann.com 120 (Bombay)**

3.23 Cost of acquisition : Where assessee claimed LTCL on sale of property, however AO computed LTCG on sale of property by taking date of sale deed as date of purchase and thereafter in remand report AO accepted additional evidences filed by assessee and also accepted payments made in earlier year for purchase of property, in view of fact that relief was granted to assessee based on remand report of AO, revenue would be precluded from filing any further appeal before Tribunal - **ACIT v. Anu Bajaj - [2024] 159 taxmann.com 1558 (Delhi)**

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

3.24 General : Where apartment buyer agreement was entered into by assessee in respect of an under construction flat and sale as well as possession of property in question had been completed within a period of three years from date of sale of residential house by assessee, assessee would be entitled to be accorded relief under section 54 - **Commissioner of Income-tax (International Taxation) v. Reema Chawla - [2024] 161 taxmann.com 422 (Delhi)**

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

3.25 Fair Market Value : Where assessee sold his shares in a private company and on date of sale of shares, lease

period of beyond 20 years was still left with company, value of leasehold land could not be excluded for calculating fair market value of shares of company - **Principal Commissioner of Income-tax v. Dr. Karan Singh - [2024] 160 taxmann.com 757 (Jammu & Kashmir)**

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

3.26 Sub-section (2)(viib) : Where assessee-company for valuation of shares placed reliance on valuation report drawn by a merchant banker wherein DCF method was adopted, AO could not have rejected said method and adopted NAV method for valuation of shares - **Agra Portfolio (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 303 (Delhi)**

3.27 Interest on compensation : Interest, whether on compensation or on enhanced compensation, received for acquisition of land under section 28 and 34 of Land Acquisition Act, 1894 shall be considered as income from other sources under section 56(2)(viii) and shall be exigible to income-tax - **Principal Commissioner of Income-tax 10 v. Inderjit Singh Sodhi (HUF) - [2024] 161 taxmann.com 301 (Delhi)**

3.28 Share, valuation of : Where assessee sold its unquoted shares to its subsidiary, without pointing out as to how and in what manner, average growth figure taken by assessee at 19 per cent for succeeding years on basis of valuation report of an independent valuer was wrong, Commissioner(Appeals) was not justified in adopting figure of average growth at 25 per cent instead of 19 per cent adopted by assessee - **Commissioner of Income-tax v. Dabur India Ltd. - [2024] 161 taxmann.com 202 (Delhi)**

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

3.29 Share application money : Where Tribunal had found that Assessing Officer in compliance with revisionary order had conducted detailed enquiry in respect of share application money, Tribunal was justified in setting aside revisionary order passed by Commissioner - **Principal Commissioner of Income-tax, Central 1 v. Rani Sati Agro Tech (P.) Ltd. - [2024] 161 taxmann.com 124 (Calcutta)**

3.30 Accommodation entries : Where assessee had submitted copy of financial statement, ledger details, ledger account details of GST sales in respect of tax invoices of all parties and copy of bank statement of HDFC Bank through which supplier had made payment, Assessing Officer could not treat sales as bogus merely because assessee failed to submit e-way bills, etc - **Vijay Steel Traders v. Assistant Commissioner of Income-tax, Circle 7 - [2024] 161 taxmann.com 87 (Bombay)**

3.31 Revision : Where CIT revised assessment order on ground that issue of loans advanced to assessee by SA and U was not properly examined by Assessing Officer despite DDIT investigation report, in light of findings from DDIT investigation report and assessment proceedings of U that entities SA and

U were shell companies of an entry operator, relevance of ascertaining genuineness and credit worthiness of transactions could not be undermined and since there was no discussion about aforesaid aspects in assessment order, it was a fit case to invoke revisional powers under section 263 - **Principal Commissioner of Income-tax v. Paramount Propbuild (P.) Ltd. - [2024] 161 taxmann.com 85 (Delhi)**

3.32 Accommodation entries : Where on basis of information that assessee, NRI, had undertaken a financial transaction with a company which was providing accommodation entries of bogus sale/purchase, Assessing Officer issued reopening notice under section 148, assessee being NRI, Assessing Officer had no jurisdiction to issue notice under section 148A(b) and impugned notice issued under section 148A(b) was to be set aside - **Nimir Kishore Mehta v. Assistant Commissioner of Income-tax [2024] 161 taxmann.com 553 (Bombay)**

3.33 Reassessment : Where AO issued show cause notice under section 148A(b) on ground that assessee had made cash purchases from a seller at value exceeding Rs.20,000 and later while passing order under section 148A(d) raised a new ground on account of purchases being made outside books of account, since AO had reached bonafide satisfaction by conducting a survey against seller and assessee failed to establish that purchases made were paid through banking channel or that no purchases were made, same would make suffice test of valid assumption of jurisdiction to reassess assessee - **Durga Trading Co. v. Income-tax Officer - [2024] 161 taxmann.com 509 (Allahabad)**

3.34 Share capital: Where Assessing Officer concluded that share capital raised by assessee from two companies was a sham transaction and added entire share capital to assessee's income under section 68, however, assessee had successfully proved three necessary ingredients i.e., identity, creditworthiness of share applicants and genuineness of transactions as provided under section 68, Tribunal rightly upheld order of Commissioner (Appeals) in deleting addition made by Assessing Officer under section 68 - **Principal Commissioner of Income-tax v. Narsingh Ispat Ltd. - [2024] 161 taxmann.com 483 (Calcutta)**

3.35 Loan : Where AO made addition under section 68 on account of unsecured loans taken from certain entities and in remand proceedings AO accepted additional evidences filed by assessee and also accepted identity genuineness and creditworthiness of entities from whom assessee had received loans, in view of fact that relief was granted to assessee based on remand report of AO, revenue would be precluded from filing any further appeal before Tribunal - **ACIT v. Anu Bajaj - [2024] 159 taxmann.com 1558 (Delhi)**

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

3.36 Bogus purchases : Where AO received information from Investigation Wing that assessee had obtained non-genuine purchase bills from a group which was engaged in business of issuing non-genuine purchase bills, unsecured loans and accommodation entries, disallowance was to be made at rate of 6 per cent of bogus purchases - **Principal Commissioner of Income-tax v. Deepak Banwarilal Agarwal - [2024] 161 taxmann.com 601 (Gujarat)**

3.37 Where e-mail address from which assessee requested for reasons for reopening assessment was same as registered e-mail ID of assessee, in those circumstances, failure to provide reasons for reopening assessment was fatal - **S. Jeyammalav. Principal Commissioner of Income-tax-3 - [2024] 161 taxmann.com 164 (Madras)**

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

3.38 Where assessee-company acquired a partnership firm and formally communicated its conversion to a private limited company, disclosing bank account previously held by partnership firm which was duly considered in company's return for relevant year by AO, it could be said that there was no escapement of income warranting reopening of assessment under section 147 - **Parikh Marketing (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 359 (Jharkhand)**

3.39 Where AO reopened assessment of assessee for assessment year 2017-18 on receiving information relating financial transaction, since AO couldn't verify prior year's bank statements due to quashed proceedings, and gave a personal opinion on cash withdrawals, same could not be treated as a tangible material for reopening assessment - **Dinesh Kumar Goyal HUF v. Income-tax Officer - [2024] 161 taxmann.com 584 (Calcutta)**

3.40 Where assessee filed an instant writ petition against assessment order on ground that assessee had surrendered old PAN card and assessee was unable to file appeal in respect of assessment order for previous assessment year for which corrigendum was issued, in view of facts that both PAN cards of assessee were active as per ITBA site, assessee could file appeal against assessment order before CIT(A with old PAN card, therefore, instant writ petition was to be disposed of with liberty to assessee to file appeal against assessment order using old PAN card - **Mavoora Gramasree Vanitha Sahakarna Sangha v. Commissioner of Income-tax - [2024] 161 taxmann.com 458 (Kerala)**

3.41 Reassessment : Where Assessing Officer made additions to total income of assessee on account of difference between gross receipts and receipts actually accounted for as income from SCCPPL, since amount of labour cess was deposited directly by SCCPPL and only balance amount was thereafter remitted to assessee, Commissioner (Appeals) rightly deleted addition on ground that assessee correctly offered net amount received from SCCPPL as its income - **Principal Commissioner of Income-tax v. Surya Infraventure (P.) Ltd. - [2024] 160 taxmann.com 551 (Madhya Pradesh)**

3.42 Surrender during search : Where undisclosed income surrendered during search and seizure proceedings is derived from regular business activities, it is liable to be taxed at normal rate instead of tax rate stipulated under section 115BBE - *Principal Commissioner of Income tax v. Krishna Kumar Verma - [2024] 161 taxmann.com 44 (Madhya Pradesh)*

3.43 Reassessment : Where AO issued on a company and an individual notices under section 148 dated 31-3-2023 seeking to reopen assessment for asst. year 2013-14, since search under section 132 was conducted upon individual on 9-6-2022, Assessing Officer was correct in issuing notice under amended section 148 for assessment year 2013-14 in case of both assesseees, as ten years from end of relevant assessment year had not lapsed - *Devika Construction and Developers (P.) Ltd. v. Principal Chief Commissioner of Income-tax - [2024] 161 taxmann.com 386 (Jharkhand)*

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

3.44 Approval under sub-section (5) : Where clause 5(ii) of Circular No.6 of 2023, dated 24-5-2023 failed to extend due date for making an application for approval to new trusts under clause (iii) of first proviso to sub-section 5 of section 80G, without any basis for discrimination, it was arbitrary and violative of article 14 of Constitution of India and accordingly, would be ultra vires the Constitution - *Sri Nrisimha Priya Charitable Trust v. Central Board of Direct Taxes - [2024] 161 taxmann.com 209 (Madras)*

3.45 Where assessee made adequate disclosures regarding CSR expenditure and Section 80G deductions in various financial documents, including annual accounts and tax audit reports and those details were already considered by Assessing Officer during original assessment, subsequent reopening by AO would be treated as change of opinion as belief so formed lacked fresh tangible materials - *Castrol India Ltd. v. Deputy Commissioner of Income-tax, Circle-1(2)(1) - [2024] 161 taxmann.com 75 (Bombay)*

3.46 CSR : Where Assessing Officer had issued a notice under section 148 seeking to reopen assessment on ground that CSR expenses claimed by assessee was not allowable as business expenditure, since notice providing reasons to believe itself was based on verification of profit and loss account and computation of income showing amount of CSR expenses debited under head 'other expenses' and said amount being added back and claimed as deduction under Chapter VA as donation, reopening of assessment was purely on a re-examination of very same material on basis of which original assessment order was passed and, therefore, impugned notice was liable to be quashed and set-aside - *Castrol India Ltd. v. Deputy Commissioner of Income-tax, Circle-1(2)(1) - [2024] 161 taxmann.com 18 (Bombay)*

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

3.47 Computation of deduction : Where assessee had set up a captive power generating unit and provided electricity to its another unit and claimed deduction u.s. 80-IA in respect of profits arising out of such activity, valuation of electricity provided to another unit should be at rate at which electricity distribution companies were allowed to supply electricity to consumers - *CIT, (LTU) v. Reliance Industries Ltd. - [2024] 161 taxmann.com 423 (Bombay)*

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

3.48 Sale of scrap : Where assessee set up an industrial undertaking for purpose of manufacture of steel forging, transmission gears and part and accessories of motor vehicles, receipts of sale of scrap being part and parcel of activity of manufacturing of forging items and being proximate thereto would be within ambit of 'profits derived from industrial undertaking' for purpose of computing deduction under section 80-IB - *CIT v. Dabur India Ltd. - [2024] 161 taxmann.com 202 (Delhi)*

SECTION 89 OF THE INCOME-TAX ACT, 1961 - SALARY - RELIEF AVAILABLE WHEN SALARY IS PAID IN ARREARS OR IN ADVANCE

3.49 Refundable amount : There is no provision in Act to refund amount of relief granted u.s. 89 as it is; relief u.s. 89 is a relief or rebate not a refund - *Gurmit Singh Vilku v. PCIT - [2024] 160 taxmann.com 680 (Madhya Pradesh)*

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

3.50 Corporate guarantee : Where TPO made guarantee commission adjustment at 2.90 per cent without giving any reasons, Tribunal was justified in restricting guarantee commission to 0.38 per cent of guaranteed amount - *CIT, (LTU) v. Reliance Industries Ltd. - [2024] 161 taxmann.com 423 (Bombay)*

3.51 Adjustments - Others : When, as a result of computation of income on basis of arm's length price, income of assessee is lowered or loss is increased, provisions of computation of income on basis of arm's length price would not be applicable - *PCIT v. Mercer Consulting India (P.) Ltd. - [2024] 161 taxmann.com 420 (Delhi)*

3.52 Comparability factors - Geographical region filter : Where comparables selected by assessee were from same geography, i.e., USA and same industry, i.e., 'Kitchenware and home furnishing items' and hence were valid comparables to that of assessee, Tribunal was justified in directing TPO to include aforesaid comparables in final set of comparables - *Principal Commissioner of Income-tax v. Tupperware India (P.) Ltd. - [2024] 161 taxmann.com 489 (Delhi)*

3.53 Comparables, functional similarity- Software consultancy/ development services : Where selected company earned revenue from software development services and products but there was no separate segment of software development services, said company could not be termed as functionally similar with assessee, a software developer - **Principal Commissioner of Income-tax-1 v. Fiserv India (P.) Ltd. - [2024] 161 taxmann.com 479 (Delhi)**

3.54 Comparables, functional similarity - Software consultancy /development services : Where selected company was dealing in software products and marketing and published segmental data was not available, in these circumstances, said company could not have been included in list of comparables to software developer - **Principal Commissioner of Income-tax-1 v. Fiserv India (P.) Ltd. - [2024] 161 taxmann.com 479 (Delhi)**

3.55 Adjustments - Others : Where assessee had incurred expenses in respect of intra group services (IGS) to its AE and had submitted detailed break-up of such costs and, rendering of services was an aspect which was neither questioned nor doubted, Tribunal was right in deleting adjustment on account of payment of IGS - **Principal Commissioner of Income-tax v. A.T. Kearney Limited - [2024] 161 taxmann.com 310 (Delhi)**

3.56 Adjustments-Others : Where Assessing Officer made addition on account of excessive payment of managerial remuneration to a managerial personnel, since said payment of managerial remuneration had also been approved by Board of Directors of assessee and assessee had also complied with all provisions of Companies Act, 1956, said addition was to be deleted - **Principal Commissioner of Income-tax-6 v. Nalwa Steel & Power Ltd. - [2024] 161 taxmann.com 122 (Delhi)**

3.57 Comparability factors - Exclusion/inclusion of comparable selected by assessee/revenue : Where assessee-company was engaged in rendering research and technical services and had started its business in relevant financial year, it could not be compared with companies which were doing business for many years - **Principal Commissioner of Income-tax-11 v. Radhashir Jewellery Co. (P.) Ltd. - [2024] 160 taxmann.com 760 (Bombay)**

3.58 Adjustments - Royalty : Where assessee had adopted TNMM as most appropriate method for computation of ALP of transaction of payment of royalty and fee for technical service, since TPO had not discarded method adopted by assessee, TPO could not proceed to make adjustment in international transactions - **Principal Commissioner of Income-tax-2 v. Coim India (P.) Ltd. - [2024] 160 taxmann.com 756 (Delhi)**

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

3.59 Mistake apparent from record : Where assessee had surrendered certain income during survey proceedings and same was not included in book profit under section 115JB, non-inclusion of surrendered income in book profit was not a patent error amenable to rectification under section 154 - **Principal Commissioner of Income-tax v. Setco Automotive Ltd. - [2024] 161 taxmann.com 254 (Gujarat)**

3.60 Section 14A disallowance : Disallowance made under section 14A while computing MAT under section 115JB was unsustainable - **Principal Commissioner of Income-tax, Central-1 v. Moon Star Securities Trading & Finance Co. (P.) Ltd. - [2024] 161 taxmann.com 158 (Delhi)**

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

3.61 Conditions for refund : Where refund claimed by assessee in revised return was for an amount of tax deducted at source on rental income on basis of Form 16A, since said refund claim was not supplementary in nature as per Instruction No. 12, dated 30-10-2003, assessee's application seeking condonation of delay in filing revised return was to be allowed - **Sri Hari Rao and Co. v. Chief Commissioner of Income-tax - [2024] 161 taxmann.com 592 (Telangana)**

3.62 Condonation of delay : Where assessee-trust had inadvertently erred in claiming past years' deficit against current year's income and, as a result, it was saddled with a demand, application filed by assessee for condonation of delay in filing revised return was to be allowed - **Oneness Educational and Charitable Trust v. Commissioner of Income-tax (Exemption) - [2024] 161 taxmann.com 544 (Orissa)**

3.63 Condonation of delay : Where assessee's revision petition under section 264 was dismissed on ground that assessee had not applied for revision within limitation time prescribed and there was delay of more than two years, Legislature had conferred power on Principal Commissioner to condone delay under section 119 to enable authorities to do substantive justice to parties by disposing matter on merits, impugned delay was to be condoned and matter was to be decided on merits - **Pankaj Kailash Agarwal v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 383 (Bombay)**

3.64 Power to condone delay : Where assessee filed belated return for relevant year without claiming carry forward of loss arising out of derivative transactions and assessment order under section 143(3) was already passed by AO, since assessee failed to show any genuine hardship, CBDT could not have condoned delay under section 119(2)(b) to carry forward said loss - **Gaurangbhai Chimanbhai Kapadiya v. Union of India - [2024] 161 taxmann.com 304 (Gujarat)**

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

3.65 Scope of provisions : Where during search initiated against assessee, a practicing advocate, digital and physical documents from residence and office premises were gathered, in order to apply provision of section 126 of Evidence Act read with keeping in mind doctrine of attorney client privilege here assessee was found in possession of any document of his clients and as per revenue were incriminating prior to employment of assessee in his legal capacity, then no action could be taken against such documents, however, if assessee had come to knowledge of fraud or illegal activity, if any, to be committed by client during course of his engagement as illustrated by Illustrations (b) and (c) to section 126 of Evidence Act, revenue authorities could invoke provision of section 132(4A) and could take appropriate action in accordance with law - **Maulikkumar Satishbhai Sheth v. Income-tax Officer - [2024] 161 taxmann.com 543 (Gujarat)**

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

3.66 Release of seized assets : Where Assessing Officer upon search under section 132 seized cash and further did not take any decision on assessee's application made under first proviso to section 132B(1)(i) for release of cash seized within stipulated period of 120 days, provision under section 132B(1)(i) being directory, Assessing Officer was to be directed to decide application of assessee and if nature and source of cash seized was duly explained, such refundable amount would attract liability of interest under section 132B(4) read with rule 119 A - **Dipak Kumar Agarwal v. Assessing Officer - [2024] 161 taxmann.com 78 (Allahabad)**

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

3.67 Illustrations : Where assessee by way of instant petition sought quashing of impugned order passed under section 139(9) treating returns filed by it for relevant assessment year as invalid and submitted that it was engaged in business and was not carrying on any profession, however, issue as to whether assessee was carrying on business or engaged in profession had neither been adverted to nor addressed in impugned order, matter was to be remanded back for adjudication afresh - **Srijan Capital Advisors LLP v. Assistant Director of Income-tax - [2024] 161 taxmann.com 210 (Karnataka)**

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

3.68 Reassessment : Where consequent to order of Supreme Court, it was evident that amount of service tax refund had accrued to assessee during relevant assessment year but same had not been offered to tax

during year, reopening of assessment was justified - **Summit Online Trade Solutions Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 488 (Madras)**

3.69 Where in return of income for relevant assessment year assessee did not include income offered by it during search and income to that extent had escaped assessment, reopening of assessment was justified - **Summit Online Trade Solutions Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 488 (Madras)**

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

3.70 General : Where Assessing Officer in order passed under section 148A(d) did not deal with any of submissions of assessee in response to notice issued under section 148A(b), impugned order passed under section 148A(d) could not be sustained - **Middle Income Group Co-operative Housing Society Ltd. v. Income-tax Officer - [2024] 161 taxmann.com 455 (Bombay)**

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

3.71 Opportunity of hearing : Where Assessing Officer passed final assessment order under section 143(3) read with section 144B without providing opportunity of hearing to assessee, same was to be set aside and matter was to be remanded back to Assessing Officer - **Gokul Refoils and Solvent Ltd. v. National E-Assessment Centre - [2024] 161 taxmann.com 532 (Gujarat)**

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

3.72 Passing of assessment order : where draft assessment order was served upon petitioner on 23-9-2023 and 30 days period provided to file objections under section 144C(2) would have expired on 22-10-2023 and since no communication from petitioner having filed objections with DRP was sent to Assessing Officer, last date for passing final assessment order under section 144C(3)(b) read with section 144C(4)(b) would have expired on 30-11-2023 and, therefore, final assessment order dated 27-12-2023 was clearly barred by limitation - **Kent Engineering India (P.) Ltd. v. National Faceless Assessment Centre - [2024] 161 taxmann.com 546 (Bombay)**

3.73 Others : Final assessment order passed under section 143(3) without waiting for directions from Dispute Resolution Panel would not be valid - **Convergys India Services (P.) Ltd. v. Assessment Unit, National Faceless Assessment - [2024] 161 taxmann.com 309 (Delhi)**

**SECTION 147 OF THE INCOME-TAX ACT, 1961 AND
ARTICLE 226 OF THE CONSTITUTION OF INDIA -
INCOME ESCAPING ASSESSMENT - GENERAL**

3.74 Writ remedy : Where assessee filed writ petition challenging reassessment order, since Assessing Officer passed impugned order setting out certain reasons and to test correctness of those reasons facts had to be gone into,

reassessment order being an appealable order, same could be challenged before Appellate Authority - **Ananda Bag Tea Company Ltd. v. Union of India - [2024] 160 taxmann.com 675 (Calcutta)**

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

3.75 Illustrations : Where pursuant to resolution plan approved by NCLT, all claims of Governmental Authorities including income-tax dues were to stand fully and finally discharged and settled, reassessment proceedings initiated against assessee after approval of resolution plan for a period prior to closing date were invalid and were to be quashed - **Alok Industries Ltd. v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 285 (Bombay)**

3.76 Illustrations : Initiation of proceedings under section 148 for collection of evidence in respect of third parties, ex-promoters, etc. is not within scope and ambit of section 147 / 148, as reassessment proceedings under said section can only be initiated for bringing to tax income which has escaped assessment - **Alok Industries Ltd. v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 285 (Bombay)**

3.77 Reassessment : Notice issued under section 148 seeking reassessment on erroneous factual foundation was liable to be quashed - **FIVES India Engineering & Projects (P.) Ltd. v. Income Tax Officer, Corporate Ward 2(1) - [2024] 161 taxmann.com 79 (Madras)**

SECTION 148A OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - CONDUCTING INQUIRY, PROVIDING OPPORTUNITY OF HEARING, ETC.

3.78 Non-speaking order : Where Deputy Commissioner passed an order under section 148A(d) without considering response/reply submitted by assessee with respect to notice issued under section 148A(b), impugned order was liable to be set aside and matter was to be remitted to Deputy Commissioner for reconsideration afresh - **GMR Airports Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 417 (Karnataka)**

3.79 Applicability of a judgement of Supreme court : Completed assessments cannot be invalidated and reopened merely because Supreme Court in case of Union of India v. Ashish Agarwal [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1 (SC) held that all notices issued under section 148 between 1-4-2021 and 30-6-2021 were to be treated as show cause notices under section 148A(b) - **Anindita Sengupta v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 39 (Delhi)**

3.80 Illustrations : Where assessment was sought to be reopened in case of assessee and Assessing Officer

issued reopening notice upon assessee at an address registered with her PAN and also at address shown as her residential address in her sale deed, however, assessee claimed that she was not residing in any of these addresses and had failed to avail opportunity of filing objections, assessee was to be provided with an opportunity of personal hearing at stage of enquiry - **Abu. Shamima Parveen v. Income-tax Officer - [2024] 161 taxmann.com 475 (Madras)**

3.81 Opportunity of hearing: Service of show cause notice under section 148A(b) is only first step in process of extending an opportunity of being heard to assessee and thus, service of show cause notice by itself did not tantamount to a discharge of obligation to provide assessee with an opportunity of being heard - **Income-tax Officer v. Asamannoor Service Co-operative Bank Ltd. - [2024] 160 taxmann.com 681 (Kerala)**

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

3.82 Period of limitation : Where reasons were recorded for reassessment before issuance of notice and assessee had disclosed primary facts, there could not be any allegation of failure to truly and fully disclose material facts as time-limit stipulated under section 149(1)(b) is for issuing notice under section 148 after recording reasons and not for furnishing copy of reasons to assessee - **Bangalore Turf Club Ltd. v. Union of India - [2024] 161 taxmann.com 353 (Karnataka)**

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

3.83 Competent Authority : Where revenue issued a notice under section 148 to assessee after lapse of more than three years from end of relevant assessment year after obtaining approval from Chief Commissioner, since Chief Commissioner was not a specified authority under clause (ii) of section 151, reassessment proceedings were liable to be quashed - **FIVES India Engineering & Projects (P.) Ltd. v. Income Tax Officer, Corporate Ward 2(1) - [2024] 161 taxmann.com 79 (Madras)**

3.84 Illustrations: Where Pr. CCIT granted approval under section 151 stating that record had been carefully considered before granting of approval, however, there was not even an explanation as to how amount of escaped income had changed or gone down, it displayed total non-application of mind by Pr. CCIT and, thus, impugned reopening notice and order passed under section 148A(d) were to be set aside - **Vodafone India Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 609 (Bombay)**

3.85 Illustrations: Power vested in authorities under section 151 to grant or not to grant approval to Assessing Officer to reopen assessment is coupled with a duty and that power cannot be exercised casually in a routine perfunctory manner - **Vodafone India Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 609 (Bombay)**

- 3.86 PCIT, while granting approval under section 151 must diligently review approval application and draft order under section 148A(d) and on noticing any discrepancies they should either deny approval or sent application back to AO for filing correct form for approval - **Teleperformance Global Services (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 258 (Bombay)**

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

- 3.87 **Section 153C vis-a-vis section 148** : Where there is incriminating material seized or requisitioned belonging or relatable to person other than on whom search was conducted, section 153C is to be resorted to - **Shyam Sunder Khandelwal v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 255 (Rajasthan)**
- 3.88 Block period to be computed from the date of receipt by the AO of the non-searched person of the books or documents or assets seized or requisitioned - **Principal Commissioner of Income-tax, Central-1 v. Ojjus Medicare (P.) Ltd. - [2024] 161 taxmann.com 160 (Delhi)**

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

- 3.89 **Recording of satisfaction** : Where Assessing Officer of both searched person and other person is same then for completing assessment proceedings and passing assessment order will start from date on which documents were handed over or deemed to have been handed over to Assessing Officer of "other person" - **LKS Gold House (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 604 (Madras)**
- 3.90 Existence of material which is likely to impact total income, as determined or assessed for any assessment year, is a sine qua non for sustaining initiation of action under section 153C - **SAKSHAM COMMODITIES Ltd. v. INCOME TAX OFFICER - [2024] 161 taxmann.com 485 (Delhi)**

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

- 3.91 Where authorities ordered assessee to deposit 20% of demand but subsequently, granted stay subject to deposit of only 10% of demand based on order of assessment, it could be said that there was no procedural impropriety affecting order on stay application - **Kunj Bihari Lal Agarwal v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 156 (Rajasthan)**

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

- 3.92 **General** : Where assessee, a registered employer under Dock Workers (Regulation of Employment) Act, 1948, made payment of wages to its employees i.e. dock workers through Administrative Committee/Board, it was not liable to deduct tax at source u.s. 194C - **Kamal Mookerjee & Co. (Shipping) (P.) Ltd. v. CIT - [2024] 161 taxmann.com 419 (Calcutta)**

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

- 3.93 Where revenue rejected application u.s. 197 for issuance of a lower deduction of tax certificate filed by assessee noting that assessee had not submitted any explanation regarding queries raised, however, assessee contended that documents were loaded on Traces Portal which were not taken into consideration by revenue, since specific pleading was absent and parties had taken diametrically opposite stand on submission of documents, impugned order was to be set aside and matter was to be remitted back to consider claim of assessee in accordance with law and pass a fresh detailed/speaking order - **Goel Cargo (P.) Ltd. v. CIT (TDS) - [2024] 161 taxmann.com 358 (Madhya Pradesh)**

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

- 3.94 **General** : Section 199 could not come in way of granting credit of TDS to deductee - **BDR Finvest (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 583 (Delhi)**
- 3.95 **TDS Credit** : Where assessee had filed its return claiming TDS credit of certain amount, however, at time of filing return, TDS of certain amount which was deducted by 'RHBL' was not reflected in Form 26AS, since subsequently 'RHBL' filed its return and corresponding credit was reflected in Form 26AS and documents on record indicated that total amount deducted as TDS was Rs. 18.54 lakhs and credit was provided only in respect of Rs. 10.89 lakhs, assessee would be entitled to refund of differential amount of Rs. 7.65 lakhs - **Vajra Global Consulting Services LLP v. Assistant Director of Income-tax - [2024] 161 taxmann.com 86 (Madras)**

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

- 3.96 **Credit for TDS** : Where assessee had followed regime framed in Act for collecting tax at source albeit through an agent of Government, i.e., deductor, and agent/deductor failed to deposit tax with Government, recovery proceedings could only be initiated against agent/deductor and not against assessee/deductee ; credit for TDS amount could not be denied to assessee - **BDR Finvest (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 583 (Delhi)**

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

- 3.97 Stay :** CBDT's Office Memorandums cannot be read as mandating a pre-deposit of 20 per cent of outstanding demand, without reference to prima facie merits of a challenge that may be raised by an assessee in respect of an assessment order, thus, impugned order passed by Principal Commissioner directing assessee to deposit 40 per cent of outstanding demand without dealing with aspect of prima facie merits, likelihood of success and undue hardship were to be set aside - **Sushen Mohan Gupta v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 257 (Delhi)**

**SECTION 220 OF THE INCOME-TAX ACT, 1961 -
COLLECTION OF TAX, WHEN PROCEEDINGS
PENDING**

- 3.98 Stay :** Where assessee's application for stay of demand was disposed of by Principal Commissioner on basis of instructions of CBDT as encapsulated in Office Memorandum dated 31-7-2017, however, assessee failed to directly raise contentions such as prima facie case, balance of convenience and irreparable loss that may be caused before Principal Commissioner, matter was to be remanded back for adjudication afresh - **Avantha Realty Ltd. v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 529 (Delhi)**

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

- 3.99 Attachment :** Where properties in question attached by Income-tax department were already subject matter of mortgage with bank and bank as a secured creditor will have a priority over dues that were payable to Income-tax department, sub-Registrar was to be directed to delete attachment entries with respect to subject properties - **State Bank of India v. Income-tax Department - [2024] 161 taxmann.com 389 (Madras)**

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

- 3.100 Waiver of :** Where assessee filed return of income and deposited tax upon coming to know of his liability within four days of receiving notice from Assessing Officer, interest under section 234A could be waived as in such a case it could not be said that assessee had deliberately or willfully evaded depositing of tax - **Baso Devi v. Central Board of Direct Taxes - [2024] 161 taxmann.com 17 (Punjab & Haryana)**

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

- 3.101** Where assessee-company filed a writ petition seeking early disposal of rectification applications and refunds for assessment years 2017-18 and 2018-19 against Short-Grant of TDS credit, authorities were directed to

decide rectification applications by way of a speaking order and consequential refunds, along with up-to-date interests if any, would be released to assessee - **Afilias India (P.) Ltd. v. DCIT Circle 1(1) - [2024] 161 taxmann.com 235 (Delhi)**

**SECTION 241 OF THE INCOME-TAX ACT, 1961-
REFUNDS - POWER TO WITHHELD IN CERTAIN CASES**

- 3.102 Adjustments against arrears :** Where adjustments were made by CPC against refund due to assessee for asst. year 2007-08 on account of there being outstanding amounts from assessee in respect of earlier assessment years, however, assessee submitted that no intimations or demand notices were issued in respect of alleged arrears, assessee was to be permitted to submit a consolidated grievance petition before jurisdictional AO in respect to asst. years in relation to which adjustments were made - **Mukundan Vijayan v. Income-tax Officer - [2024] 161 taxmann.com 421 (Madras)**

**SECTION 243 OF THE INCOME-TAX ACT, 1961 -
REFUNDS - INTEREST ON DELAYED**

- 3.103** Department's request for extension of time to pay interest on a delayed refund was deemed audacious as said interest incurred due to department's own delay and officers often fail to recognize that such interest payments utilize public funds and an effort should be made to save this public money, therefore, department was liable to pay interest within a specified timeframe, and failure to comply would result in contempt proceedings - **Laqshya Media Ltd. v. Deputy Commissioner of Income-Tax, Range-2(2)(1) - [2024] 161 taxmann.com 157 (Bombay)**

**SECTION 244 OF THE INCOME-TAX ACT, 1961 -
REFUNDS - INTEREST WHERE NO CLAIM IS NEEDED**

- 3.104 Rate of interest :** Where HC directed AO to refund due amount to assessee with allowable interest and AO granted refund along with interest calculated at rate of 0.5 per cent per month, since assessee had not suggested any provision under which he was entitled to interest at rate of 18 per cent, there was no error in calculation of interest at rate of 0.5 per cent per month - **Gurmit Singh Vilku v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 680 (Madhya Pradesh)**

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

- 3.105** Revenue cannot set off or withhold a refund without an intimation u.s. 245 - **Avana Global FZCO v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 452 (Bombay)**

**SECTION 245BA OF THE INCOME-TAX ACT, 1961 -
SETTLEMENT COMMISSION - JURISDICTION AND
POWERS OF**

- 3.106** General : Penalty for concealment may be imposed even by Settlement Commission and there is no legal embargo against such levy of penalty - **Rajendra Prasad Agarwal v. Income-tax Settlement Commission - [2024] 161 taxmann.com 638 (Allahabad)**

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

3.107 General: Where on 18-3-2021, petitioner filed before Settlement Commission an application under Section 245C but petitioner received a notice from ACIT that a valid application had not been filed before Settlement Commission in terms of Finance Act, 2021 which inserted sub-section 5 in section 245C to provide that no application would be made under this section on or after 1-2-2021, since date on which petitioner made its application, law, as it stood then, entitled petitioner to make application in terms of Section 245C, notice issued to petitioner was to be quashed - **Sar Senapati Santaji Ghorpade Sugar Factory Ltd. v. Assistant Commissioner of Income-tax, Circle 1(1) - [2024] 161 taxmann.com 166 (Bombay)**

3.108 True and full disclosure of income and its sources : Where assessee made an application under section 245C for settlement of cases and Settlement Commission held that assessee did not explain basis for apportionment of unaccounted sales, expenditure and income between himself and company and concluded that assessee had not offered full and true particulars of his income and rejected application, there was no ground to interfere with order of Commission - **R.J. Williams v. Assistant Commissioner of Income-tax - [2024] 160 taxmann.com 683 (Kerala)**

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

3.109 Full and true disclosure : Where assessee failed to make full and true disclosure of additional income before ITSC, ITSC had no jurisdiction to entertain settlement application of assessee, therefore, impugned order passed by ITSC granting immunity from penalty and prosecution to assessee was to be set aside - **Principal Commissioner of Income-tax (Central) 2 v. Pankaj Buildwell Ltd. - [2024] 161 taxmann.com 605 (Delhi)**

3.110 Full and true disclosure : Where assessee-company had disclosed transaction of receipt of certain amount in its application before ITSC, merely because assessee had contested position taken by revenue that said amount was an accommodation entry and had voluntarily agreed to surrender said amount and pay tax on same, it could not be said that there was no full and true disclosure of income and, thus, impugned settlement order passed by ITSC accepting said surrender could not be said to be without authority of law - **Pr. Commissioner of Income Tax (central)-II v. Trent East West LPG Bottling Ltd. - [2024] 161 taxmann.com 516 (Delhi)**

3.111 Sub-section (4) : Where Settlement Commission had concluded hearing and formally pronounced case as settled and noted terms of settlement by granting immunity from penalties and prosecutions, however,

pursuant to Finance Bill, 2021, Settlement Commission was not continued and assessee did not receive any order under section 245D(4), interim Board for Settlement was to be directed to pass an order under section 245D(4) accepting application as 'settled' in terms of settlement as pronounced by Settlement Commission - **Gagjibhai Bhurabhai Koshiya v. Interim Board of Settlement - [2024] 161 taxmann.com 48 (Gujarat)**

SECTION 246 OF THE INCOME-TAX ACT, 1961-COMMISSIONER

3.112 Appeals: Where proceedings under section 148 had attained finality, in such circumstances, petitioner had an efficacious statutory alternative remedy to challenge said notice under section 246, and therefore, it was inappropriate for this Court to take indulgence in matter by-passing statutory remedy available - **Smt. Shakuntala Thakur v. Income Tax Officer - [2024] 161 taxmann.com 167 (Madhya Pradesh)**

3.113 Appeals : Where assessee, a proprietary concern engaged in trade of iron and steel, received notice under section 148-A alleging irregularities in financial transactions, said notice couldn't be challenged by way of writ petition as assessee had efficacious remedy under Income Tax Act - **Renu Singh v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 296 (Jharkhand)**

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

3.114 Power to grant stay : Appellate authority is required to record reasons while directing assessee to pay 20 per cent of disputed demand in stay petition - **Telugupalayam Primary Agricultural Cooperative Bank v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 558 (Madras)**

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

3.115 Rescheduling of CA exams : Where CA examinations were scheduled in such a manner that no examination was scheduled for any date when general elections were being held and, thus, right of candidates to cast their votes was not affected, plea for postponement of CA examinations on account of general elections could not be accepted - **Harish Chandar T v. Institute of Chartered Accountants of India - [2024] 161 taxmann.com 418 (Delhi)**

3.116 Where assessee filed writ petition seeking stay of reassessment proceedings on ground that Crime Branch had seized certain documents, computers, hard disks, etc. from assessee and until all those were released, assessee would not be in a position to effectively respond to notices of reassessment, however, assessee never took serious steps for obtaining documents/material/hard disks from crime branch and simply wanted to stall reassessment proceedings, writ Court could not have assisted assessee in such endeavours - **Francisco Xavier Pacheco v. State of Goa - [2024] 161 taxmann.com 288 (Bombay)**

**SECTION 261 OF THE INCOME-TAX ACT, 1961 -
SUPREME COURT, APPEALS TO**

- 3.117 Special leave petition, effect of admission/dismissal of :** HC has power or jurisdiction to condone delay in filing an application seeking leave to appeal against an acquittal or in entertaining an appeal against acquittal under Code of 1973 - *Income Tax Department v. Dattaraj Vassudeva Salgaoncar - [2024] 161 taxmann.com 47 (Bombay)*

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

- 3.118 including orders of High Court :** Where assessee's application for rectification of income tax assessment was denied by CPC, leading to a subsequent rejection of section 264 application by Principal Commissioner on ground that Deputy Commissioner, CPC was not reporting to him, however, it was noted that CPC only acted as a facilitator to Jurisdictional Assessing Officer (JAO) who held jurisdiction over assessee and merely because return was processed by CPC, regular jurisdiction of JAO was not curtailed and he continued to hold same jurisdiction, therefore, Principal Commissioner was to be directed to dispose of application of assessee in accordance with law - *Sarda Paper Ltd. v. PCIT - [2024] 161 taxmann.com 362 (Bombay)*

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

- 3.119 Disallowance of claim :** Where assessee-banking company made a bona fide claim for deduction u.s. 36(1)(viii) and there was variance in deductions allowable due to change in determination of business profit, it could not be said that assessee had furnished inaccurate particulars of income or concealed inaccurate particulars of income and, thus, impugned penalty u.s. 271(1)(c) was not justified - *PCIT v. ICICI Bank Ltd. - [2024] 161 taxmann.com 454 (Bombay)*
- 3.120 Full value of consideration :** Penalty u.s. 271(1)(c) may be imposed only on occurrence of concealment and not on under-disclosure - *Rajendra Prasad Agarwal v. Income-tax Settlement Commission - [2024] 161 taxmann.com 638 (Allahabad)*

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

- 3.121 Illustrations :** Where assessee had belatedly remitted TDS amount due to delay caused as concerned staff who was looking after accounts left concern on maternity leave, however, assessee had subsequently rectified delay and remitted tax amount, proceedings u.s. 276B r.w.s. 278AA were to be quashed - *Sengoda Gounder Educational and Charitable Trust v. Income Tax Officer, TDS Ward-2 - [2024] 161 taxmann.com 123 (Madras)*

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

- 4.1 Personal effects :** Where assessee claimed capital loss on sale of car and adjusted same against LTCG, and AO allowed said claim, since assessee failed to demonstrate that car was used by for its business purposes nor was able to prove that same was held as an antique item or "possession of pride", same would qualify as personal effect which would be outside purview of capital asset and would come under definition of exclusions to section 2(14) - *Piyushkumar Ravjibhai Dedania v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 534 (Rajkot - Trib.)*

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

- 4.2 Objects of general public utility :** Where assessee was a trust registered under section 12AA and its objects were charitable in nature, since objects and activity of running Kalyanamandapams was incidental to attainment of main objects, assessee was eligible for exemption claimed by it under section 11(1) - *A.V.M. Charities v. The Income-tax Officer - [2024] 161 taxmann.com 600 (Chennai - Trib.)*
- 4.3 Objects of general public utility :** Where assessee, a charitable trust, was engaged in furtherance of its dominant object, viz. empowerment, betterment and creating awareness amongst industrialists of fragrance and flavours industry, and display of products of sponsors could safely be concluded to be for furtherance of and in interest of members of trade, sf viewed in a broader perspective and pitted against dominant object of assessee to hold a seminar for furtherance of and in interest of tmembers of industry, couldnot be characterised as a commercial activity - *Income-tax Officer v. Fragrance and Flavours Association of India - [2024] 161 taxmann.com 355 (Mumbai - Trib.)*
- 4.4 Objects of general public utility/Chamber of Commerce :** Where primary purpose of an institution was advancement of objects of general public utility, it would remain charitable even if an incidental or ancillary activity or purpose for achieving main purpose, was profitable in nature - *Institute of Indian Foundrymen v. Income Tax Officer, Ward-1(3) - [2024] 161 taxmann.com 20 (Kolkata - Trib.)*

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

- 4.5 Sub-section (e) :** Where assessee received certain loans and advances from a company in which assessee was a beneficial owner of shares in excess of 10 per cent voting power, since assessee had paid interest on such loans/advances, and further, such advances were not for individual benefit of assessee but for business purposes, impugned loans and advances were to be excluded from ambit of deemed fiction provided in section 2(22)(e) - *Deevik Garg v. ACIT - [2024] 159 taxmann.com 1561 (Delhi - Trib.)*

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

- 4.6 Subsidy** : Excise subsidy received by assessee was in nature of capital receipt not liable to tax - **IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)**
- 4.7 Interest** : Interest income earned on fixed deposits pertaining to period prior to commencement of business was in nature of capital receipt - **DCIT v. BTW Atlanta Transformers India (P.) Ltd. - [2024] 161 taxmann.com 507 (Ahmedabad - Trib.)**
- 4.8 Write-off of income of previous year** : Where assessee had been offering income from carbon credit for past several years and department had accepted same as other income, however, assessee had write-off this amount during relevant year due to non-recognition of project, treatment which was given by department to income of assessee on carbon credit during previous years, same treatment had to be given by department - **Indowind Energy Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1560 (Chennai - Trib.)**

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

- 4.9 Royalties/Fees for technical services - Others** : Where assessee made payment to foreign agencies for services rendered abroad, since none of payee had permanent establishment in India and provisions of DTAA, being more beneficial to assessee, would apply in preference to provisions of Act, no disallowance could be made u.s.40(a)(i) - **Express Publications (Madurai) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 453 (Chennai - Trib.)**
- 4.10 Royalties or fee for technical services - Computer software** : Subscription revenue received by assessee, US scientific society, for providing access to online chemistry data base and for sale of online journal in chemical extract service and publication division to Indian company did not qualify as "Royalty" in terms of section 9(1)(vi) of Act as well as article 12(3) of India-USA DTAA - **American Chemical Society v. Deputy Commissioner of Income-tax (International Taxation) - [2024] 161 taxmann.com 354 (Mumbai - Trib.)**
- 4.11 Royalties/fees for technical services - Others** : Where assessee paid certain amount to Bank of New York as shares listing charges in Luxembourg Exchange and Assessing Officer disallowed said amount as assessee had not deducted TDS on said amount, since Assessing Officer had examined provisions of section 9(i)(vii) but had not examined provisions of DTAA on issue, matter was to be remanded back for re-examination in light of provisions of DTAA - **Indowind Energy Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1560 (Chennai - Trib.)**

4.12 Royalties/Fee for technical services - Management service : Where assessee, a foreign company, entered into contract with Indian company to provide support services, since for rendering of these services, there was no element of imparting any 'know-how' or transfer of any knowledge, skill or experience, none of services provided by assessee fell within scope and ambit of 'royalty' as defined in article 12(4) of India-Netherlands DTAA - **Van Oord Dredging and Marine Contractors BV v. ACIT - [2024] 161 taxmann.com 308 (Mumbai - Trib.)**

4.13 Permanent Establishment - Fixed PE/ place of business : Where building which earlier constituted fixed place PE of assessee, US company, in India was vacated and no expatriates visited India during relevant assessment year, assessee did not have any PE in India in relevant assessment year and, hence, no profit could be attributed to such PE - **GE Energy Parts Inc. v. Assistant Commissioner of Income-tax - [2024] 159 taxmann.com 1544 (Delhi - Trib.)**

4.14 Permanent establishment - Fixed PE/place of business : Where assessee, a French company, was awarded contracts for designing, installation, testing and commissioning, etc. of entire train control and signalling systems for Delhi metro train corridor and AO relying upon assessment orders passed for earlier assessment years held that assessee had a fixed place PE in India, since department had simply relied upon decision taken in earlier assessment years without verifying factual position qua contracts executed in these assessment years, assessee must be given an opportunity to furnish relevant contracts to establish its case that in relevant assessment years assessee did not have any PE in India so as to bring to tax income from offshore supplies and thus, matter was to be remanded back to AO - **Alstom Transport SA v. ACIT - [2024] 159 taxmann.com 1516 (Delhi - Trib.)**

4.15 Royalties/fees for technical services - Make available : Where Indian AE of assessee, had sub-contracted a part of its e-publishing work in nature of editorial services to assessee and assessee received sub-contracting charges, since sub-contracting charges received by assessee did not satisfy make available condition as envisaged under article 12(4) of India-USA DTAA, same were not chargeable to tax as FIS in India in hands of assessee - **SPI Global US Inc. v. Deputy Commissioner of Income-tax, International Taxation - [2024] 160 taxmann.com 550 (Delhi - Trib.)**

4.16 Royalties/fees for technical services - Make available : Where sub-contracting charges received by assessee, US company, did not come within purview of FIS under India-USA DTAA, connected service of sales and marketing support service also did not satisfy make available conditions and, hence, sales commission received by assessee was not taxable in India - **SPI Global US Inc. v. Deputy Commissioner of Income-tax, International Taxation - [2024] 160 taxmann.com 550 (Delhi - Trib.)**

4.17 Royalties or Fee for technical services - Computer software : Where assessee, company incorporated in Netherlands, earned revenue from providing HR shell people support service to its Indian entities, since payment made by

Indian entities for use of computer software was not for use of copyright in computer software, same would not amount to royalty income taxable in India - **Shell International B.V v. Deputy Commissioner of Income-tax (IT) - [2024] 160 taxmann.com 761 (Ahmedabad - Trib.)**

4.18 Royalties or Fee for technical services - Make available : Where assessee, company incorporated in Netherlands, received CHR recruitment fees, external information services (license for online databases) and IT migration support services fee from its associated enterprises, since neither had technology be made available to recipient of services nor there was any such intention to render services in a manner that recipient of services was enabled to perform services itself without recourse to assessee, impugned fee was not FTS under India- Netherlands DTAA - **Shell International B.V v. Deputy Commissioner of Income-tax (IT) - [2024] 160 taxmann.com 761 (Ahmedabad - Trib.)**

4.19 Royalties or Fee for technical services - Computer software : Where assessee subscribed to various external information services(EIS) providers on behalf of its group and group companies access databases for purpose of using it internally, since access to software had been granted to entities and there was no transfer of copyright, payment received by assessee from its group companies for providing EIS would not fall within definition of royalty under India-Netherlands Tax Treaty - **Shell International B.V v. Deputy Commissioner of Income-tax (IT) - [2024] 160 taxmann.com 761 (Ahmedabad - Trib.)**

4.20 Royalties or Fee for technical services - Make available : Where assessee provided real estate and corporate travel services, HRIT-system administration services and international tax administration services to its Indian group company and had received payments, since revenue had not brought anything on record to demonstrate that technology was made available to recipient of services, aforesaid services could not be treated as FTS under India-Netherlands tax treaty - **Shell International B.V v. Deputy Commissioner of Income-tax (IT) - [2024] 160 taxmann.com 761 (Ahmedabad - Trib.)**

4.21 Royalties or Fee for technical services - Make available : Where assessee rendered IT services and Health Ecotox services to its group company, since revenue had not brought anything on record to demonstrate that technology was made available to recipient of services, aforesaid services could not be treated as FTS under India-Netherlands tax treaty - **Shell International B.V v. Deputy Commissioner of Income-tax (IT) - [2024] 160 taxmann.com 761 (Ahmedabad - Trib.)**

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

4.22 Exemption of income : Where assessee's, an educational institution, claim for exemption of its income including capital receipt u.s. 10(23C)(iiiad) extended to entire income received and not its annual receipt, assessee was eligible for exemption under section 10(23C)(iiiad) - **Nehru Memorial Education Society v. Income-tax Officer (Exemptions) - [2024] 161 taxmann.com 312 (Cochin - Trib.)**

4.23 Where assessee-society running a school claimed deduction of certain expenses and exemption u.s. 10(23C)(iiiad), since assessee contended that it had provided all details as required by Assessing Officer, however, Assessing Officer did not specify documents and information which had been given by assessee and disallowed both claims of assessee, in interest of justice, matter was to be remanded back to Assessing Officer for a fresh decision - **Nitin Education Society v. Income-tax Officer - [2024] 159 taxmann.com 1505 (Delhi - Trib.)**

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

4.24 Conditions precedent : Where assessee earned long-term capital gain on sale of shares of a company and claimed same as exempt u.s. 10(38) and had furnished all relevant details and documents in support of said transaction which were not rebutted, addition made towards long-term capital gain by AO treating same as unexplained income was to be deleted - **Ritu Udaipuria v. Income-tax Officer - [2024] 161 taxmann.com 554 (Ranchi-Trib.)**

4.25 Bogus LTCG : Where AO disallowed claim of exemption u.s. 10(38) made by assessee on LTCG earned on sale of shares of a company for reason that High Court in a case held that said company in whose shares assessee made investment was a paper company, since very credential of this company in question was unreliable, a different view could not be taken particularly qua one company, which was part of list of 84 companies, where investments were held by High Court as bogus, and further, assessee's investment could not become genuine merely because he earned a lesser amount of profit, thus, impugned order of AO was to be upheld - **Brajesh Narnolia v. Income-tax Officer - [2024] 159 taxmann.com 1525 (Kolkata - Trib.)**

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

4.26 Net income v. Gross receipts : Where assessee, an educational institution, moved an application u.s. 154 claiming exemption on entirety of its gross receipt u.s. 11 and since assessee's final accounts reflected a loss on operations which were mistakenly returned as income, matter was to be remanded to Assessing Officer for taking on record audited final accounts on basis of which assessee had returned income and then passing an order u.s. 154 - **Nehru Memorial Education Society v. Income-tax Officer (Exemptions) - [2024] 161 taxmann.com 312 (Cochin - Trib.)**

- 4.27 Additional evidence** : Where assessee-trust submitted additional evidence before Commissioner (Appeals) in form of bank account statements and deposit certificates from scheduled banks to prove that surplus fund was invested in modes prescribed under section 11(5) and Commissioner (Appeals) admitted said additional evidence without granting AO an opportunity to examine same, matter was to be remanded back for fresh consideration - **Deputy Commissioner of Income-tax v. Uttarakhand Sheep and Wool Development Board** - [2024] 161 taxmann.com 608 (Delhi - Trib.)
- 4.28 Reassessment** : Where assessee, a charitable trust registered under section 12AA, had made full and true disclosure of all facts necessary for completion of assessment in respect of rental income derived from let out of property to a partnership firm, re-opening of assessment after four years from end of relevant assessment years on ground that there was no full and true disclosure from assessee in respect of said rental income was bad in law and liable to be quashed - **A.V.M. Charities v. The Income-tax Officer** - [2024] 161 taxmann.com 600 (Chennai - Trib.)
- 4.29 Reassessment** : Where new tangible materials were found during course of survey under section 133A which constituted a fresh material and as per said material there was escapement of income on account of under assessment rental income, reopening of assessments was justified - **A.V.M. Charities v. The Income-tax Officer** - [2024] 161 taxmann.com 600 (Chennai - Trib.)
- 4.30 Advertisement expenses** : Where assessee, a charitable institute, had incurred advertisement expenses pertaining to advertisement work that was handled by REM, a specified person, falling within meaning of section 13(3), since REM had billed assessee-society same amount that newspaper company had billed REM, Commissioner (Appeals) was justified in deleting addition made by AO on account of excess payment made to REM - **Assistant Commissioner of Income-tax v. Institute for Technology & Management University** - [2024] 161 taxmann.com 154 (Raipur - Trib.)
- 4.31 Brokerage expenses** : Where Assessing Officer had made an addition on account of brokerage and commission expenses incurred by assessee without giving any cogent reason and without examining documentary evidence supporting assessee's claim of aforesaid expenditure, matter was to be restored to Assessing Officer for re-adjudication - **Assistant Commissioner of Income-tax v. Institute for Technology & Management University** - [2024] 161 taxmann.com 154 (Raipur - Trib.)
- 4.32** Where amount accumulated / set apart with assessee-trust within meaning of section 11(2) had been donated to certain institutions during relevant previous year, such

application of funds by assessee was in clear violation of explanation to section 11(2) read with section 11(3) and therefore, CIT(E) rightly set aside matter to file of AO for making a denovo assessment - **Sanganeria Foundations For Health & Education v. Commissioner of Income-tax, Exemption** - [2024] 161 taxmann.com 165 (Delhi - Trib.)

- 4.33 Corpus donation** : Where assessee-society, running a school, collected school development fund and welfare fund for employees in addition to tuition fees from parents of child by making it a part of school fees and parents did not have any choice to deny any of these fees/charges, said fund collected by assessee could not be said to be voluntary in nature and, thus, assessee's claim for exemption under section 11(1)(d) was to be rejected - **Carmel Convent v. Income-tax Officer (Exemption)** - [2024] 161 taxmann.com 286 (Cochin - Trib.)

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

- 4.34 Time limit** : Where assessee-trust had been granted provisional registration which was valid till assessment year 2026-27 and assessee had applied for final registration before expiry of said period but Commissioner rejected same on ground that application of assessee was premature, since there was no bar to move an application before period of six months from expiry of provisional registration, matter was to be remanded back for consideration of application on merits - **Susamskar Foundation v. Commissioner of Income-tax (Exemptions)** - [2024] 160 taxmann.com 552 (Kolkata - Trib.)

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

- 4.35 Denial of registration** : Where assessee-trust's application for regular approval under section 80G was rejected by Commissioner (Exemptions), since assessee's application seeking approval under section 12AB was restored to file of Commissioner (Exemptions), application seeking approval under section 80G was also to be restored to file of Commissioner (Exemptions) - **Sunil Tibrewal Foundation v. Commissioner of Income-tax (Exemptions)** - [2024] 161 taxmann.com 643 (Mumbai - Trib.)
- 4.36 Denial of registration** : Where assessee was denied registration under section 12AB on ground that all objects of assessee-trust were restricted to particular religious community or caste 'sunni muslims', however, fact that all objects of trust were not restricted to particular religious community or caste 'Sunni Muslims', Commissioner (Exemption) was to be directed to reconsider application of assessee regarding registration under section 12AB - **Sunni Muslim Jamat Aamena Madressa Ebdatgah Waqf Committee v. CIT (Exemption)** - [2024] 161 taxmann.com 555 (Surat-Trib.)

- 4.37 Denial of registration** : Where Commissioner(Exemption) rejected application of assessee for registration on ground

that assessee did not provide details of expenditure on object of trust by producing bills/vouchers and supportings of expenditure incurred on object of trust, matter was to be remanded back to file of Commissioner (Exemption) to substantiate objects with activities carried on and necessary supporting of expenditure incurred shown as spent on object of trust - **Child Education and Vision Foundation v. CIT (Exemption) - [2024] 161 taxmann.com 547 (Mumbai - Trib.)**

4.38 Denial of registration : Where assessee-trust failed to file income-tax returns and audit report for previous three preceding financial years, however, it undertook to file same as well as other details before Commissioner (Exemption), appeal was to be disposed of by restoring this issue to file of Commissioner (Exemption) with a direction upon him to provide further opportunity of being heard to assessee and consider documents, evidences which assessee would file as per notice issued by Commissioner(Exemption) - **Shree Shakuntal Education Trust v. Commissioner of Income-tax (Exemption) - [2024] 160 taxmann.com 762 (Ahmedabad - Trib.)**

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

4.39 Sub-section (2) : Where property of a trust has been allowed to use by any person by paying consideration or compensation which is commensurate with prevailing market rent, then provisions of section 13(1)(c) read with section 13(2) cannot be applied - **A.V.M. Charities v. The Income-tax Officer - [2024] 161 taxmann.com 600 (Chennai - Trib.)**

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

4.40 Dividend : Disallowance under section 14A should be restricted to extent of exempt income earned during assessment year in question - **Dharani Developers (P.) Ltd. v. Assistant/Deputy Commissioner of income tax - [2024] 159 taxmann.com 1565 (Chennai - Trib.)**

4.41 General : Where assessee had not earned any exempt income in relevant assessment year against its investments, disallowance made by Assessing Officer under section 14A read with rule 8D was completely contrary to provisions of that section and same was to be deleted - **Dharani Developers (P.) Ltd. v. Assistant/Deputy Commissioner of income tax - [2024] 159 taxmann.com 1565 (Chennai - Trib.)**

4.42 General : Section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year - **Express Publications (Madurai) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 453 (Chennai - Trib.)**

4.43 Illustrations : Where assessee had not earned any exempt income during year under consideration, no disallowance of expenses was to be made u.s. 14A - **Indowind Energy Ltd. v. DCIT - [2024] 159 taxmann.com 1560 (Chennai - Trib.)**

4.44 Rule 8D : Where assessee failed to furnish details of fund utilized for making investment in shares yielding exempt dividend income, impugned disallowance of expenditure u.s. 14A made by Assessing Officer by applying rule 8D was justified - **Jiwanram Sheodutrai Industries (P.) Ltd. v. ACIT - [2024] 159 taxmann.com 1564 (Kolkata - Trib.)**

4.45 Dividend : Where assessee had made investment in equity shares, however, it had not disallowed suo motu any thing u.s.14A contending that there was no fund which was borrowed for purpose of investing in shares and also it had not earned any exempt income during year, since assessee had not placed on record any material to support its contention, impugned disallowance computed u.s. 14A was to be upheld - **Klenzer Trading (P.) Ltd. v. Income-tax Officer - [2024] 159 taxmann.com 1549 (Kolkata - Trib.)**

SECTION 17 OF THE INCOME-TAX ACT, 1961 - SALARIES - PROFIT IN LIEU OF SALARY

4.46 Where assessee received certain amount as lump sum amount after his termination from service as a settlement out of court with his employer and said payment was voluntary in nature without there being any obligation on part of employer to pay further amount to assessee in terms of any service rule, such payment would not amount to compensation in terms of section 17(3)(i) - **Income-tax Officer v. Avirook Sen - [2024] 161 taxmann.com 462 (Delhi - Trib.)**

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

4.47 Where assessee had declared rental income of certain amount from basement and ground floor of a property, since assessee had filed documents to prove that there was no first floor in said property, impugned addition made on account of alleged rental income for first floor which was not in existence was to be deleted - **Kedar Nath Babbar v. Income-tax Officer - [2024] 159 taxmann.com 1597 (Delhi - Trib.)**

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

4.48 Where assessee sold goods to a party but since assessee got some other client for these goods, goods were purchased back from said party with a small margin and sold again to new purchaser, since transaction was carried out by assessee with earlier buyer with a mala fide intention of claiming refund of customs duty, Commissioner (Appeals) had been magnanimous enough to grant deduction of purchase value and disallow only loss arising out of total purchase and sales transaction with said previous buyer and that once element of mala fide intention or fraud was proved beyond doubt, no further concession needed to be given to assessee and that assessee had already obtained more than eligible relief from Commissioner (Appeals) - **Kedar Nath Babbar v. Income-tax Officer - [2024] 159 taxmann.com 1597 (Delhi - Trib.)**

4.49 Nature of income : Where assessee, engaged in business of property development, contended that land sold by it was held as investment for long period of time and not as stock-in-trade, and therefore, income arising out of its sale was to be treated as income from capital gains and not business income, since assessee had not filed any details as to when land was converted into stock-in-trade, matter was to be remanded back to Assessing Officer to examine it afresh and upto conversion of property, same had to be treated as capital asset and after its conversion, property had to be treated as business asset - ***Dharani Developers (P.) Ltd. v. Assistant/Deputy Commissioner of income tax - [2024] 159 taxmann.com 1565 (Chennai - Trib.)***

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

4.50 Conditions precedent : Where assessee-company had not carried out any business activity during relevant year but claimed depreciation, assessee was to be directed to prove that in absence of any business activity carried on by it, how assessee was entitled to claim of depreciation under section 32(1) - ***Swami Vivekanand Trading & Education Centre (P.) Ltd. v. DCIT - [2024] 161 taxmann.com 556 (Mumbai - Trib.)***

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

4.51 Trust, in case of : In case of assessee, a charitable trust registered under section 12AA, even though cost of acquisition/purchase of fixed assets has been allowed as application of income, yet depreciation on fixed assets has to be allowed as application of income upto assessment years 2014-15 and same could not be allowed from assessment year 2015-16 onwards in view of amendment by Finance Act, 2014 to provisions of section 11(6) - ***A.V.M. Charities v. The Income-tax Officer - [2024] 161 taxmann.com 600 (Chennai - Trib.)***

4.52 Amendment : Amendment by way of insertion of the third proviso to section 32(1)(ia) by Finance Act, 2015, w.e.f. 1-4-2016, is retrospective in nature - ***Diadora Shoes (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 602 (Cochin - Trib.)***

4.53 Position prior to 1-4-2015 : When assessee-society had not claimed cost of asset as an application, there was no justification for Assessing Officer to have disallowed its claim for depreciation for reason that once cost of asset had been claimed as an application, then it was not permissible for assessee-society to have further raised a claim for depreciation - ***Assistant Commissioner of Income-tax v. Institute for Technology & Management University - [2024] 161 taxmann.com 154 (Raipur - Trib.)***

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

4.54 Unabated assessment : Where AO made an addition u.s. 35(2AB), since AO had made addition on re-appraisal of claim made in return of income, which had been accepted in original assessment u.s. 143(3), in absence of any incriminating material to justify impugned addition, Commissioner (Appeals) was justified in deleting same - ***IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)***

4.55 Donation : Where assessee claimed deduction u.s. 35(1)(ii) on account of donation made to a trust, however, AO found that said trust had raised donation on basis of forged documents and assessee was one of beneficiaries and furthermore its recognition for purpose of section 35(1)(ii) had expired, impugned disallowance of claim made by assessee was justified - ***C K Zipper (P.) Ltd. v. ACIT - [2024] 160 taxmann.com 1026 (Ahmedabad - Trib.)***

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

4.56 Loans to subsidiary, in case of : Where assessee had both interest bearing and non-interest bearing funds and there was no reason to presume that interest bearing funds were diverted to group companies, no disallowance u.s. 36(1)(iii) was to be made - ***Express Publications (Madurai) (P.) Ltd. v. DCIT - [2024] 161 taxmann.com 453 (Chennai - Trib.)***

4.57 Interest on interest free advance to directors : Where assessee-company had given advance to its Director and AO made disallowance of interest, since best evidence in shape of account statement including bank statement of assessee was not produced by assessee before lower authorities below, matter was to be remanded to Assessing Officer to verify correctness and authenticity of documents and to re-adjudicate matter - ***Moonlight Propqerties (P.) Ltd. v. ACIT - [2024] 161 taxmann.com 456 (Chandigarh - Trib.)***

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

4.58 Deduction under section 36(1)(va) could not be allowed where amount collected towards employees contribution to PF/ESI was deposited beyond due date prescribed under relevant Act even if such contribution was deposited within due date of filing of return - ***Jiwanram Sheodutrai Industries (P.) Ltd. v. ACIT - [2024] 159 taxmann.com 1564 (Kolkata - Trib.)***

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

4.59 Opportunity to cross examine : Where Assessing Officer disallowed professional fee paid by assessee to ACIAL on basis of statement of S, since copy of statement of S was never provided to assessee nor was any opportunity to cross-examine him was afforded to assessee, impugned addition was rightly deleted by Commissioner (Appeals) - ***IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)***

- 4.60 Freebies to doctors :** Expenditure incurred on freebies given to doctors, prior to 14-12-2009, was not hit by rigors of CBDT Circular No.5/2012 read with MCI regulations dated 14-12-2009 and was allowable as business expenditure - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.61 Patient detection/education camp and camp expenses :** Patient detection/education camp expenses incurred by assessee, a pharmaceutical company, for benefit of patients and not doctors, were allowable as deduction u.s. 37(1) - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.62 Sponsorship expenses :** Sponsorship expenses not having been incurred for benefit of doctors but to create brand awareness about assessee, a pharmaceutical company, were allowable as deduction u.s. 37(1) - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.63 Payments made to institutions/trade bodies :** Payments made by assessee, a pharmaceutical company, to institutions/trade bodies for registration, hiring of stall, designing and erecting their stalls did not result in any benefit to medical practitioners and, thus, could not be disallowed u.s. 37 - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.64 hotel and travelling expenses :** Hotel and travelling expenses incurred by assessee, a pharmaceutical company, which benefitted doctors and tantamount to availing hospitality from a pharmaceutical company, would fall under mischief of MCI regulations and was required to be disallowed u.s. 37(1) - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.65 Doctor's Meeting/Medical Awareness Expenses :** Registration/conference expenses paid by assessee, a pharmaceutical company, for organizing events for their brand awareness and dissemination of information and research, could not be said to constitute 'freebies' to medical practitioners and, thus, were allowable u.s. 37(1) - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.66 Sales promotion and CRM expenses:** Where assessee, a pharmaceutical company, had incurred sales promotion and CRM expenses to maintain cordial relations with medical practitioners, since items of these expenses were of nominal value less than Rs.1000, same were allowable u.s. 37(1) - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.67 Journals and Periodicals :** Where assessee, a pharmaceutical company, had incurred expenses for researching and printing literature or purchasing journals, since these expenses did not result in any benefit or gifts given to doctors, disallowance made by Assessing Officer on account of expenses incurred under this sub-head was to be deleted - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.68 Taxi hire charges :** Where assessee was a pharmaceutical company and expenses related to reimbursements of local taxi/conveyance expenses were incurred by sales employees/staff on their outstation visits and not paid to any doctors or medical practitioners, disallowance of taxi hire charges was to be deleted - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.69 Field printing expenses :** Expenses incurred by assessee, a pharmaceutical company, in respect of printing of files, folders, pads and pens which were to be used by field staff and also doctors who were attending camps, could not be termed as freebies given to doctors and, hence, Commissioner (Appeals) was justified in deleting disallowance made by Assessing Officer - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.70 Trade relation and gift for sales promotion expenses :** Trade relation expenses and gifts for sales promotion incurred by assessee, a pharmaceutical company, on distributors and stockists for domestic marketing and were not incurred in relation to doctors, Commissioner was justified in deleting disallowance of said expenses made by Assessing Officer - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.71 Air ticket expenses :** Air ticket expenses paid for doctors by assessee, a pharmaceutical company, directly fell under mischief of MCI Regulations 2009 and, thus, were not allowable as deduction under explanation (1) to section 37(1) - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.72 Discount on ESOP :** ESOP compensation expenditure incurred by assessee is an allowable deduction under section 37(1) - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*
- 4.73** Any CSR expenditure of the kind referred to u/s 135 of CA 2013, even if voluntarily incurred, is liable to be disallowed - *City Union Bank Ltd. v. Assistant Commissioner of Income-tax, Circle-1 - [2024] 161 taxmann.com 118 (Chennai - Trib.)*
- 4.74 Prior period expenses :** Prior period expenditure cannot be allowed in assessing income of a particular year - *Indowind Energy Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1560 (Chennai - Trib.)*

4.75 Interest : Where assessee failed to substantiate claim that personal loans raised were exclusively used for purpose of business before lower authorities, however, assessee had filed a "chart" to substantiate his claim that interest bearing funds raised by way of personal loans were utilized wholly and exclusively for purpose of business for first time in course of instant proceedings, in all fairness, matter to be restored to file of AO who was to be directed to re-adjudicate issue after considering said additional documentary evidence filed by assessee - **Jairamdas Kachela v. ITO - [2024] 159 taxmann.com 1562 (Raipur - Trib.)**

4.76 Relaunching expenses : Where assessee incurred relaunch expenses on flagship English daily newspaper with new look and contents, since assessee had not enlarged profit making apparatus and sought improvement in existing line of business, said relaunch expenses to be allowed as revenue expenditure - **Express Publications (Madurai) (P.) Ltd. v. DCIT - [2024] 161 taxmann.com 453 (Chennai - Trib.)**

4.77 Fees to ROC : Fee paid to Registrar of Companies for enhancing working capital of company was to be treated as capital expenditure - **Dharani Developers (P.) Ltd. v. Asst/Dy CIT - [2024] 159 taxmann.com 1565 (Chennai - Trib.)**

4.78 Non-appearance : Where due to non-appearance before CIT (Appeals), appeal of assessee against order of AO disallowing of sales promotion expenses was dismissed, since assessee submitted that given opportunity, it was in a position to substantiate its case by producing relevant detail, in interest of justice, matter was to be remanded back to CIT (Appeals) with a direction to grant one final opportunity to assessee to substantiate its case by filing necessary documents and decide issue as per fact and law - **Green Bio Tech v. ITO - [2024] 159 taxmann.com 1573 (Hyderabad - Trib.)**

4.79 Travelling expenses : Where assessee claimed travelling expenses in respect of a person and submitted that person for whom travelling expenses incurred was an expert in repairing of coffee machines and he was sent to repair same for which travelling expenses, boarding and lodging expenses were incurred by assessee, since none of these facts were controverted by revenue, entire travelling expenses were to be allowed as business expenditure - **Kedar Nath Babbar v. ITO - [2024] 159 taxmann.com 1597 (Delhi - Trib.)**

4.80 Vehicle and telephone expenses : Where assessee claimed vehicle and telephone related expenditure including interest on car loan and depreciation of car, disallowance should be restricted only to 10 per cent of these expenditure on account of personal element against 20 per cent disallowance made by AO - **Kedar Nath Babbar v. ITO - [2024] 159 taxmann.com 1597 (Delhi - Trib.)**

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

4.81 Tax paid by payee : Where assessee made payment towards processing charges, closure charges and exhibition expenses to three different parties without deducting tax at source on these payments, since assessee submitted that payees had duly included receipts in their respective hands and paid due taxes on same, Commissioner (Appeals) had correctly directed Assessing Officer to verify aforesaid claim of assessee in respect of all payments and if payees had included subject mentioned receipt in their respective returns and paid taxes then no disallowances should be made in hands of assessee under section 40(a)(ia) - **Kedar Nath Babbar v. Income-tax Officer - [2024] 159 taxmann.com 1597 (Delhi - Trib.)**

4.82 Condition precedent : Where assessee stated that due to inadvertent lapse it could not deduct TDS on contractual payment made by it and had no objection to proposed disallowance under section 40(a)(ia) made by Assessing Officer, said disallowance was to be sustained - **Jiwanram Sheoduttrai Industries (P.) Ltd. v. ACIT - [2024] 159 taxmann.com 1564 (Kolkata - Trib.)**

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

4.83 Salary : Where assessee paid salary to an employee in cash, since payee was stationed in Delhi where bank facilities were available in every nook and corner of Delhi, and further, assessee was not able to demonstrate business exigencies which warranted him to make payment of salary in cash, impugned disallowance made under section 40A(3) was to be upheld - **Kedar Nath Babbar v. Income-tax Officer - [2024] 159 taxmann.com 1597 (Delhi - Trib.)**

SECTION 43(5) OF THE INCOME-TAX ACT, 1961 - SPECULATIVE TRANSACTIONS

4.84 Where assessee, engaged in export business, incurred loss due to currency fluctuation, since losses were bifurcated into two parts indicating different nature of contracts and assessee failed to provide transaction details for claimed losses, issue was to be restored back to CIT(A) for fresh adjudication, requiring assessee to provide necessary details - **Deputy Commissioner of Income-tax v. Standard Match Industries (P.) Ltd. - [2024] 161 taxmann.com 459 (Chennai - Trib.)**

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

4.85 Leave encashment : Where assessee failed to pay leave encashment to employees before due date of filing of return under section 139(1), Assessing Officer was justified in making disallowance of said payment under section 43B - **Jiwanram Sheoduttrai Industries (P.) Ltd. v. ACIT - [2024] 159 taxmann.com 1564 (Kolkata - Trib.)**

4.98 Joint ownership : Joint ownership in two residential properties at time of sale of original asset would not disentitle assessee to claim deduction under section 54F - *Shweta Singh v. Income-tax Officer* - [2024] 161 taxmann.com 302 (Mumbai - Trib.)

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

4.99 Immovable property : Where assessee had purchased property for a consideration which was less than value determined by DVO in accordance with provisions of section 50C, Commissioner (Appeals) was justified in upholding addition under section 56(2)(x)(b) to assessee's income being difference between valuation of property determined by District Valuation Officer (DVO) and actual consideration - *West End Investment and Finance Consultancy Ltd. v. Deputy Commissioner of Income-tax* - [2024] 160 taxmann.com 679 (Mumbai - Trib.)

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

4.100 Interest : Where assessee's claim of deduction on account of interest expenses under section 57 was allowed, but Principal Commissioner revised said order holding same to be erroneous but did not give any specific finding to controvert written submission filed by assessee that interest expenditure had been incurred wholly for purpose of earning interest income, order passed under section 263 was to be set aside - *Kishorkumar Bhalara v. Principal Commissioner of Income-tax* - [2024] 161 taxmann.com 587 (Rajkot - Trib.)

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

4.101 Share : Where assessee earned long term capital gain on sale of shares (Sunrise) which was claimed as exempt under section 10(38) and had furnished complete evidence including contract note of shares, demat details, detail of bonus shares and no adverse evidence was brought against such evidence, Assessing Officer was not justified in making addition in respect of LTCG on sale of shares as unexplained cash credit - *Sanjaykumar Damjibhai Gangani v. Assistant Commissioner of Income-tax* - [2024] 161 taxmann.com 606 (Surat-Trib.)

4.102 Share application money : Where Assessing Officer made addition to assessee's income under section 68 in respect of share application money, since assessee had raised a plea that share capital of assessee company remained unchanged for last 3 years, assessee was to be directed to substantiate SAME before Assessing Officer - *Swami Vivekanand Trading & Education Centre (P.) Ltd. v. DCIT* - [2024] 161 taxmann.com 556 (Mumbai - Trib.)

4.103 Loan: Where assessee received unsecured loan from a company and assessee had given confirmation of bank statement of lender company to establish its identity and creditworthiness and genuineness of transaction as well as intention for obtaining said loan, section 68 would not be applicable to said transaction - *Parshotambhai Naranbhai Gevariya v. Income-tax Officer* - [2024] 159 taxmann.com 1571 (Ahmedabad - Trib.)

4.104 Reassessment : Where a reopening notice was issued upon assessee for reason that during a search and seizure operation conducted in case of three groups certain documents were found which revealed that assessee had taken unsecured loan from a company which was engaged in providing accommodation entries against unaccounted cash/cheque for cash, since reopening was in respect of search conducted on three entities and verification was a must for these transactions and statements were made by concerned directors and accountants of said groups and there were no discrepancies pointed out by assessee, impugned reopening was valid - *Parshotambhai Naranbhai Gevariya v. Income-tax Officer* - [2024] 159 taxmann.com 1571 (Ahmedabad - Trib.)

4.105 Bogus sales: Once sales made by assessee are supported by stock register, sale bills, payments through banking channel and sales have not only been disclosed in VAT returns but stand duly verified and accepted by VAT Department, such sales cannot be treated as bogus, so as to enable Assessing Officer to invoke provisions of section 68 - *JMK Exports v. ACIT* - [2024] 161 taxmann.com 481 (Delhi - Trib.)

4.106 Unsecured loan : Where assessee raised unsecured loans from three parties but failed to substantiate identity and creditworthiness of lenders during assessment proceedings, since assessee had placed on record certain additional evidence by way of confirmations of lenders, copy of returns of income, computation of income, bank statements, balance sheets of respective lenders for first time in course of appellate proceedings, matter was to be restored to file of Assessing Officer who was to be directed to readjudicate issue after considering aforesaid fresh documents filed by him - *Jairamdas Kachela v. Income-tax Officer* - [2024] 159 taxmann.com 1562 (Raipur - Trib.)

4.107 Share application money : Where assessment order was passed treating share application money as unexplained cash credit and Commissioner(Appeals) confirmed additions so made and appeal to Tribunal was time barred by 24 days and no details were submitted as to how this delay had happened and assessee had not filed any confirmation from its tax practitioner showing that appeal papers were submitted to her within time and she was busy in other tax matters and, therefore, could not file appeal, appeal was to be dismissed being time barred - *Manmohak Infrastructure (P.) Ltd. v. Income-tax Officer* - [2024] 161 taxmann.com 457 (Kolkata - Trib.)

Commissioner (Appeals) which were sent to AO for remand report, however Commissioner (Appeals) did not take effort to send reminder letter to AO to submit remand report before him and passed ex-parte order without adjudicating on merit, matter was to be remanded to Commissioner (Appeals) for fresh adjudication - **Nanubhai Ukadbhai Ahir v. ITO - [2024] 161 taxmann.com 637 (Surat-Trib.)**

4.119 Sale consideration : Where assessee was engaged in real estate business and he filed an agreement of sale and confirmation letter of purchaser before AO for justifying cash deposit in his accounts as sale consideration, AO was not justified in making addition of said deposit u.s. 69A - **Konathala Nooku Naidu v. ITO, Ward-1 - [2024] 160 taxmann.com 758 (Visakhapatnam - Trib.)**

4.120 Illustrations : Where assessee had availed a loan and had repaid said amount in one and half month but he had not properly explained as to why and for what purpose loan was availed by him, AO rightly treated said cash deposit as unexplained cash in hands of assessee and made addition by invoking provisions of section 69A - **Konathala Nooku Naidu v. ITO, Ward-1 - [2024] 160 taxmann.com 758 (Visakhapatnam - Trib.)**

4.121 Illustrations : Where Assessing Officer treated cash deposit made by assessee as unexplained cash in hands of assessee and made addition by invoking provisions of section 69A, since assessee had deposited old currency notes which were kept for petty expenses and obtained new currency notes from bank, cash deposit was to be treated as explained - **Konathala Nooku Naidu v. Income-tax Officer, Ward-1 - [2024] 160 taxmann.com 758 (Visakhapatnam - Trib.)**

4.122 Addition made by AO as unexplained money and unexplained interest income on basis of whatsapp image in I-Phone of assessee found during search was not justified in absence of any corroborative evidence - **ACIT v. Shanker Nebhumal Uttamchandani - [2024] 161 taxmann.com 536 (Surat-Trib.)**

4.123 Addition made by AO as unexplained money and unexplained interest on basis of an image retrieved from digital device found in premises of third party during search was not justified without there being any independent or corroborative material on record - **ACIT v. Shanker Nebhumal Uttamchandani - [2024] 161 taxmann.com 536 (Surat-Trib.)**

4.124 Purchase of land : Addition made by AO on account of some undisclosed land transaction on basis of a loose paper found during search at assessee's premises when said paper was not in handwriting of assessee and there was no direct evidence found or brought on record that assessee had ever purchased or sold any land - **ACIT v. Shanker Nebhumal Uttamchandani - [2024] 161 taxmann.com 536 (Surat-Trib.)**

4.125 Cash deposit during - Demonetization period : Where cash deposited by assessee, a registered dealer under VAT Act, in its bank account during demonetization period out of turnover returned under VAT, impugned addition made under section 69A was to be deleted - **Mohammad Ashraf War v. Income-tax Officer - [2024] 161 taxmann.com 293 (Amritsar - Trib.)**

4.126 Deposits during demonetization : Where assessee deposited cash in her bank account during demonetization period, since assessee had explained source of such cash deposit to be amount earlier withdrawn by her from same bank account which were out of maturity proceeds of fixed deposits and said cash amount was kept by assessee as she had to pay requisite fees to medical college to get admission for her son in management quota within three days from date of intimation by college management, impugned addition made on account of cash deposit under section 69A was to be deleted - **Mrs. Pushpa Rai v. Income-tax Officer - [2024] 159 taxmann.com 1585 (Delhi - Trib.)**

4.127 Bank deposits : Where assessee deposited substantial cash in bank account and AO treated entire cash deposits as unexplained moneys, since assessee failed to discharge onus cast upon him in explaining huge cash deposits and himself admitted that books of account were not maintained by him and no plausible explanation could be furnished before AO, addition proposed by Assessing Officer under section 69A could not be faulted with - **Biplob Paul v. Income-tax Officer - [2024] 160 taxmann.com 1024 (Raipur - Trib.)**

4.128 Demonetization period : Where AO made addition under section 69A towards cash deposits in bank account of assessee during demonetization period, since assessee was an agriculturist and he had no taxable income, thus, he did not file return of income and also AO had not considered explanation furnished by assessee in respect of such cash deposited, and further, issue involved in this case was related to demonetization period which had to be examined in light of instructions issued by CBDT in regard to cash deposited during demonetization period, matter was to be remitted back to AO to decide issue afresh - **Mohammed Masood v. Income-tax Officer - [2024] 159 taxmann.com 1580 (Bangalore - Trib.)**

4.129 Shares transactions in : Where AO reopened assessment on ground that an information was received from Investigation Wing that assessee was one of beneficiaries of artificially rigged up prices of shares sold by it with assistance of entry operators, since no evidence was brought on record to prove that assessee was directly involved in price manipulation of shares dealt by him in connivance with brokers and entry operators and that entire addition was made merely by placing reliance on Investigation Wing report which was more general in nature and did not implicate assessee in any manner whatsoever, impugned reopening was void ab initio - **Naz Shazia v. Income-tax Officer - [2024] 159 taxmann.com 1589 (Delhi - Trib.)**

4.130 Gold jewellery : Where at time of search had surrendered a sum of Rs. 70 lakhs in respect of gold and silver jewellery seized but had offered Rs. 41.03 lakhs for taxation in return of income out of surrendered amount, addition made by Assessing Officer of difference amount of Rs. 28.96 lakhs as unexplained investment under section 69A merely on reasons that assessee had at time of recording of statement under section 132(4) admitted lumpsum sum as unexplained investment which was not found correct was to be deleted - **Anup Agrawal v. Deputy Commissioner of Income-tax, Central Circle-1 - [2024] 161 taxmann.com 151 (Jodhpur - Trib.)**

4.131 Cash : Where Assessing Officer had made an addition of Rs. 3 lakhs treating as unexplained cash seized during search and Commissioner (Appeals) had granted relief of only Rs. 1 lakh to assessee considering stature of assessee, therefore there being reason to sustain addition of Rs. 2 lakhs in hands of assessee when assessee had disclosed income, Assessing Officer was to be directed to delete addition on account of cash seized - **Anup Agrawal v. Deputy Commissioner of Income-tax, Central Circle-1 - [2024] 161 taxmann.com 151 (Jodhpur - Trib.)**

4.132 Illustrations : Where Assessing Officer had not brought any conclusive evidence to establish beyond reasonable doubt that it was assessee who had given demonetized cash for depositing in bank accounts of RBPL a private company, addition so made on basis of said statement and some CCTV footages obtained from bank was to be deleted - **D.L. Heera Bhai Jewellery Arcade (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-1 - [2024] 161 taxmann.com 49 (Delhi - Trib.) (TM)**

4.133 On-money received by assessee : Where Assessing Officer made addition in hands of assessee on ground that assessee had received on-money from clients on sale of flats which was not accounted for in books of account but assessment order had not specified any details as to what was seized material that was available before Assessing Officer, matter was to be remanded back - **Deputy Commissioner of Income-tax v. Nilesh Shantilal Tank - [2024] 161 taxmann.com 84 (Mumbai - Trib.)**

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

4.134 Jewellery : No addition could be made u/s 69B on account of jewellery found during search, when entire jewellery consisting of gold and diamond were shown in Wealth tax Return of female family members and was declared before Settlement Commission - **ACIT v. Shanker Nebhumal Uttamchandani - [2024] 161 taxmann.com 536 (Surat-Trib.)**

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

4.135 Bogus purchases : Where Assessing Officer had made an addition on account of purchases made by assessee treating same as bogus purchases, in view of fact that goods purchased from supplier had been duly reflected in stock registers maintained by assessee and same were sold by assessee by making due reduction in stock register to extent of sales, moreover, sales made by assessee were not doubted by revenue and also payments were made for same through account payee cheques out of disclosed sources of income, Commissioner (Appeals) was justified in deleting impugned addition - **ACIT v. Sharp Corp Ltd. - [2024] 161 taxmann.com 207 (Delhi - Trib.)**

4.136 Bogus purchases : Where assessee was found to be one of beneficiary of accommodation entries by way of bogus purchase and failed to rebut statement of broker who admitted to modus operandi of availing bogus purchase bills, CIT(A) was justified in making addition on gross profit margin @ 12.5 per cent on alleged bogus purchases where sales were not in dispute as against entire purchases made by AO - **Deputy Commissioner of Income-tax v. Nilesh Shantilal Tank - [2024] 161 taxmann.com 84 (Mumbai - Trib.)**

4.137 Furniture purchase : No addition could be made u/s 69B on account of jewellery found during search, when entire jewellery consisting of gold and diamond were shown in Wealth tax Return of female family members and was declared before Settlement Commission - **ACIT v. Shanker Nebhumal Uttamchandani - [2024] 161 taxmann.com 536 (Surat-Trib.)**

4.138 Bogus purchases : Where Assessing Officer had made addition in hands of assessee on account of over invoicing of raw material purchases on basis of statement given by employees stating that over invoicing purchases were booked through Reynolds Petro, since assessee-company had not made any purchases from Reynolds Petro and merely because there were rates differential amongst purchases from different vendors, it could not be sole reason to infer over invoicing/inflation of purchases, thus, impugned addition on account of alleged over invoicing was to be deleted - **IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)**

4.139 Purchases : Where purchases were made by assessee, but parties, were not genuine, in such a situation, only profit element embedded in purchases made from bogus parties had to be brought to tax and entire value of purchases could not be disallowed - **IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)**

4.140 Bogus purchases : Where assessee failed to substantiate authenticity of purchases made from certain parties, addition with respect to unsubstantiated purchases to be restricted to extent of difference/variance between rate of profit element on genuine purchases vis-a-vis unsubstantiated purchases - **Jairamdas Kachela v. Income-tax Officer - [2024] 159 taxmann.com 1562 (Raipur - Trib.)**

USA (holding company), since it was always intention of contracting parties that royalty had to be paid with respect to entire sale revenues of assessee including sales to third party customers of TP USA for which revenue was received from TP USA, impugned adjustment made by TPO was unjustified - **CRM Services India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 508 (Delhi - Trib.)**

4.152 Comparability factors - Segmental results : Where assessee had provided segmental account and had also allocated expenses and had given basis of allocation, merely because segmental accounts were not audited, segmental accounts could not be rejected without pointing out any specific defect/error/fallacy in them - **Spectris Technologies (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-9(1) - [2024] 160 taxmann.com 763 (Delhi - Trib.)**

4.153 Methods for determination of – Most appropriate method, determination of : When a transaction involving land was to be benchmarked, then market value was more realistic parameter for making adjustment and not circle rates - **DCIT v. DLF Urban Ltd - [2024] 161 taxmann.com 585 (Delhi - Trib.)**

4.154 Adjustments - Interest : Where assessee had provided tier II loan to its UK based AE, interest rates prescribed under head Safe Harbour Rules as per rule 10TD(2A)(5)(v) i.e. 6 months LIBOR plus 400 bps could be accepted - **Axis Bank Ltd. v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 530 (Ahmedabad - Trib.)**

4.155 Adjustments - Interest : Where TPO made addition to assessee's ALP in respect of interest on loan given to its AE, since interest rate charged by assessee from its AE was higher than LIBOR rate in year under consideration, impugned addition was to be deleted - **Motherson Sumi Systems Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 294 (Delhi - Trib.)**

4.156 Methods for determination of - Others : Where assessee was engaged in trading of edible oils and it adopted 'other method' for benchmarking its international transaction of purchase of traded goods and TPO applied TNMM, since assessee had considered all market quotations available while maintaining transfer pricing report and market quotes were available on corresponding dates, other method had been rightly applied by assessee and, thus, determination of arm's length price by assessee by adopting quotations from various brokerage houses/associations/exchanges could not be faulted with - **Golden Agri Resources (India) (P.) Ltd. v. Assistant Commissioner of Income-tax (OSD) - [2024] 161 taxmann.com 19 (Delhi - Trib.)**

4.157 Comparables, functional similarity- Others : Where assessee-company was engaged in trading of vegetable oils, companies engaged in manufacturing edible /non-edible oils, were functionally dissimilar - **Golden Agri Resources (India) (P.) Ltd. v. Assistant Commissioner of Income-tax (OSD) - [2024] 161 taxmann.com 19 (Delhi - Trib.)**

4.158 Adjustments - Export/domestic sale : ALP should be determined in respect to international transactions falling in Chapter X, hence, where TPO proposed TP adjustments in case of assessee and addition made by TPO was having two elements i.e., (i) US related and (ii) Non-US related TP adjustments, matter was to be remanded back to TPO for denovo examination of facts to decide whether addition as made by TPO with respect to domestic services would be sustainable in eyes of law - **Microsoft Global Services Centre (India) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 5(1) - [2024] 161 taxmann.com 116 (Hyderabad - Trib.)**

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

4.159 Revision : Where TPO after making specific enquiries and considering assessee's replies had passed an order under section 92CA(3) accepting international transactions of export sales of SIM cards made by assessee to its AEs to be at arm's length, Commissioner (TP) erred in assuming jurisdiction under section 263 directing TPO to pass order afresh on ground that order passed by TPO was without making enquiries or verification and, therefore, Commissioner (TP)'s order was to be set-aside and order of TPO was to be restored - **Idemia Syscom India (P.) Ltd. v. The Commissioner of Income-tax - [2024] 161 taxmann.com 357 (Delhi - Trib.)**

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

4.160 Gift : Where Assessing Officer made an addition under section 115JB being of view that in assessment year 2012-13, at time of gifting of shares, value thereon was not added back by assessee in computation of book profits and hence when said shares were partially surrendered during year under consideration, receipt thereof would have to suffer tax under section 115JB in assessment year 2015-16, since assessee had directly credited same in reserves and surplus in assessment year 2015-16 and said receipt did not fall under any of items reflected in explanation 1 to section 115JB(2), same could not be taxed under section 115JB in assessment year 2015-16 - **Shivi Holdings (P.) Ltd. v. ACIT - [2024] 161 taxmann.com 535 (Delhi - Trib.)**

4.161 Computation of book profit : Excise duty subsidy and interest subsidy received by assessee in respect of undertaking situated in notified area of Sikkim could not be regarded as income for purpose of book profit - **IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)**

4.162 Forex rate fluctuation gains : Restatement gains credited to foreign fluctuation translation reserve could not be added while assessing book profit u.s. 115JB - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*

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

4.163 Jurisdiction : Where jurisdictional notice u.s. 143(2) was issued by ITO who had no jurisdiction and infact was not empowered to make assessment, assessment proceedings and consequential asst. order were liable to be quashed - *Monarch & Qureshi Builders v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 356 (Mumbai - Trib.)*

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

4.164 General : A transfer of case records by Faceless Assessing Officer (FAO) to Jurisdictional Assessing Officer (JAO) will not entitle Department to get extension of limitation period for framing assessment - *Nikon India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-3(1) - [2024] 161 taxmann.com 42 (Delhi - Trib.)*

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

4.165 General : Where DRP issued certain directions to Assessing Officer vide order 17-3-2022 and FAO being designated assessment unit was privy to DRP order in April 2022, limitation in extreme case scenario would run from April 2022 and would end on 31-5-2022 and, thus, asst. order having been passed on 30-6-2022, was clearly time barred - *Nikon India (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-3(1) - [2024] 161 taxmann.com 42 (Delhi - Trib.)*

4.166 Passing assessment order : Where CIT revised final assessment order but it was found that TPO had passed final order without passing draft assessment order making final assessment order as non est, since void and non est order could not be subject matter to revisionary proceedings under section 263, revision was to be quashed - *WSP Consultants India (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 161 taxmann.com 559 (Delhi - Trib.)*

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

4.167 Conditions precedent : Where no incriminating material was found in course of search under section 132, addition made by Assessing Officer in case of completed assessments/unabated assessments was unsustainable under section 153A - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*

4.168 Unabated assessment : Where AO had disallowed loss incurred in SEZ Unit of assessee while computing book profit u.s. 115JB without any reference to any seized material impounded in course of search, since impugned assessment years were unabated asst. years, disallowance made by AO was to be deleted - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*

4.169 Unabated assessment : Where AO held that tax paid for and on behalf of employees was in nature of income-tax and, hence, added same under explanation (1) to section 115JB, since impugned asst. years were unabated asst. years, in absence of any incriminating material found in course of search, Assessing Officer was not justified in making impugned addition - *IPCA Laboratories Ltd v. DCIT, Central Circle-5(2) - [2024] 161 taxmann.com 511 (Mumbai - Trib.)*

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

4.170 Revision : Where Principal Commissioner invoked revisionary proceedings on ground that assessee had made certain payments to contractors without deduction of TDS and directed AO to invoke provisions of section 40(a)(ia), since assessee admitted to inadvertently including names of parties in list of entities with no TDS deduction and also furnished relevant details which indicated that work carried out by said parties was quantified and crystalized during subsequent year, Principal Commissioner was not justified in invoking revisionary jurisdiction under section 263 - *Gujarat Energy Transmission Corporation Ltd. v. Principal Commissioner of Income-tax - [2024] 160 taxmann.com 1039 (Ahmedabad - Trib.)*

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

4.171 Rectification : Where assessee had not deducted TDS and claimed that deductees must have already deposited tax on their entire income and, thus, assessee-payer was not liable to pay amount of short/non-deduction of tax under section 201(1), fact that whether deductees had already deposited tax on entire income was a matter which required verification, therefore, in interest of justice, matter was to be remanded to AO to examine same - *Lufthansa Cargo AG v. Deputy Commissioner of Income-tax (TDS) - [2024] 159 taxmann.com 1553 (Delhi - Trib.)*

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

4.172 Where AO completed assessment under section 153A on 28.03.2013, charging interest from 1.4.2010 to 31.3.2013 for 36 months, since income stood assessed at first instance u/s. 153A on 28.03.2013, it therefore was to be regarded as per regular assessment and therefore, interest charged u/s. 234B upon this assessment was only u/s. 234B(1) and same, thus, and correctly, was for 36-month period, from April, 2010 to March, 2013 - *Mariamamma Joseph v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 633 (Cochin - Trib.)*

4.173 Tax deductible at source : Where during relevant assessment year assessee was a non-resident, entire tax was to be deducted at source on payment made by payer to it under section 195 and there was no question of advance tax payment by assessee and thus, no interest under section 234B could be levied upon assessee - *Shell International B.V v. Deputy Commissioner of Income-tax (IT)* - [2024] 160 taxmann.com 761 (Ahmedabad - Trib.)

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

4.174 Procedure of (Rule 46A) : Where AO treated cash deposits made by assessee in bank account as unexplained moneys and Commissioner (Appeals) upheld said additions, since Commissioner (Appeals) summarily accepted decision of AO and did not attend to merits of issue by dealing with additional submissions of assessee or by causing any further enquiries by himself or by directing AO to do so, matter was to be remanded to Commissioner (Appeals) for fresh adjudication - *Biplob Paul v. Income-tax Officer* - [2024] 160 taxmann.com 1024 (Raipur - Trib.)

4.175 Appeals : Where Assessing Officer passed assessment order under section 144 and Commissioner (Appeals) passed an ex parte order, in view of facts that pendency of appeal before Commissioner (Appeals) was lost sight of assessee as it was also embroiled in SARFAESI proceedings during assessment proceedings, and further, notice issued by Commissioner (Appeals) was not served on assessee on its registered email-id with department, hence, assessee could not be represented by assessee before lower authorities, in interest of justice, issues in appeal were to be remitted to Assessing Officer for fresh consideration and decision was to be passed as per law after giving proper opportunity of being heard to assessee - *Dhanya TMT (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2024] 159 taxmann.com 1563 (Bangalore - Trib.)

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

4.176 Power to condone delay : Where assessee-company filed an appeal against ex parte order passed by Commissioner (Appeals) after a delay of 295 days for reason that impugned order was not communicated to assessee on email-id mentioned by assessee in e-filing portal, there was sufficient reason for not filing appeal within time, thus, delay was to be condoned - *Dhanya TMT (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2024] 159 taxmann.com 1563 (Bangalore - Trib.)

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

4.177 Condonation of delay : Where Pr. Commissioner invoking section 263 set aside assessment order with certain directions and assessee initially had chosen to

proceed with revision proceedings before Assessing Officer and subsequently during pending of proceedings before Assessing Officer it filed appeal challenging order under section 263 before Tribunal with a delay of 384 days, since assessee adopted wait and see method to have best of both worlds, delay in filing appeal did not deserve to be condoned - *Anthelio Business Technologies (P.) Ltd. v. Assistant Commissioner of Income-tax* - [2024] 161 taxmann.com 385 (Hyderabad - Trib.)

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

4.178 Notice : Where AO initiated penalty proceedings in case of assessee for under reporting of income and levied penalty, since AO framed charge to reach at a satisfaction that there was under reporting but did not specify that it was either concealment of income or furnishing of inaccurate particulars of income, AO had not applied his mind for that penalty under section 271(1)(c) and penalty so levied was to be deleted - *Sree Navaladiyan Finance v. Deputy Commissioner of Income-tax* - [2024] 161 taxmann.com 641 (Chennai - Trib.)

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

4.179 Scope of : Where assessee was earning commission income of only Rs. 3.24 lakhs on sales from Mother Dairy products and deposits of Rs. Rs. 2.77 crores in its bank were sales on behalf of Mother Dairy and that assessee was under a reasonable/bona fide belief that he was not needed to get his accounts audited as transactions belonged to Mother Dairy, impugned levy of penalty under section 271B upon assessee was to be deleted - *Ved Singh v. Income-tax Officer* - [2024] 159 taxmann.com 1568 (Delhi - Trib.)

5. SAFEMA

SECTION 2(9) OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 - BENAMI TRANSACTIONS

5.1 If benami transaction defined under section 2(9) of Act of Amending Act of 2016 was to be applied then it would be not for transfer of property but even its holding - *Sukhlal Baiga v. Initiating Officer* - [2024] 161 taxmann.com 119 (SAFEMA - New Delhi)

SECTION 24 OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 - BENAMI PROPERTY

5.2 Provisional Attachment Order : Opportunity of cross examination is otherwise a part of natural justice but it is to be provided when statement of witnesses are recorded before Authority who is adjudicating matter; there is no provision to provide cross examination of witness by Investigating Officer - *Sukhlal Baiga v. Initiating Officer* - [2024] 161 taxmann.com 119 (SAFEMA - New Delhi)

GST & INDIRECT TAXES

1. STATUTORY UPDATES

- 1.1** Rs. 1.78 lakh crores gross GST revenue collected during March 2024: Press Release

Editorial Note : The Government has issued press release to inform that Rs. 1.78 lakh crores gross GST revenue collected during March 2024 and Gross GST collection reaches Rs. 20.14 lakh crores for FY 2023-24 which is 13.4% higher than the collection for the same period in FY 2022-23. With this, the year-on-year collection is 11.7% higher as compared to the previous year.

- 1.2** Issuance of instruction to the officers for enforcement of investigations under GST: Instruction - **Instruction No. 01/2023-24-GST, Dated 30-03-2024**

Editorial Note : The CBIC has issues instructions to GST officers for undertaking enforcement activities to ensure uniformity in the same. It includes the manner of initiation of investigations, officers whose approval is required before initiation of such activities. It also provides that the officers must take into consideration, the trade practices for conducting such investigation. Further, the summons issued and the investigation conducted must be in in accordance with the GST law.

- 1.3** GSTN issued advisory on Reset and Re-filing of GSTR-3B of some taxpayers

Editorial Note : The GSTN has issued an advisory to inform about the facility for re-filing of GSTR-3B for some of the taxpayers since there were discrepancies in the returns of some taxpayers during the filing process between the saved data in the GST system and actually filed data in the fields of ITC availment and payment of tax liabilities.

- 1.4** GSTN issued advisory on facility to auto-populate the HSN-wise summary from e-Invoices into Table 12 of GSTR-1

Editorial Note : The GSTN has issued an advisory to inform that a new feature to auto-populates the HSN-wise summary from e-Invoices into Table 12 of GSTR-1 is now available on the GST portal. This allows for direct auto-drafting of HSN data into Table 12 based on e-Invoice data.

- 1.5** Special procedure and compliance for manufacturers of tobacco, pan masala etc. deferred further till 15-05-2024 - **Notification No. 08/2024- Central Tax, Dated 10-04-2024**

Editorial Note : The registered persons engaged in the manufacturing of tobacco, pan masala and other similar items were required to follow a specific procedure such as furnishing the details of packing

machines, maintaining additional records, and submission of special monthly statements with effect from 01-04-2024. However, the Government has now issued notification to defer the implementation of special procedures till 15-05-2024.

- 1.6** GSTN recommends CBIC to extend due date for filing of GSTR-1 of March 2024 for the monthly taxpayers

Editorial Note : The GSTN has noticed that taxpayers are facing difficulties in filing GSTR-1 intermittently since yesterday due to technical issues leading to slow response on the portal. GSTN has accordingly recommended to CBIC that the due date for filing of GSTR-1 for the monthly taxpayers be extended by a day i.e. till 12/04/2024.

- 1.7** Analyzing GST Implications on Subscription-Based Models by Cab Aggregators

Editorial Note : Recently, key players in the Ride-Hailing industry have begun implementing subscription-based plans for auto-rickshaw drivers. While this move holds potential to lessen the burden and optimize earnings of the drivers, it also raises pertinent questions regarding its GST implications. This article delves into the GST implications on the subscription based models.

2. SUPREME COURT

SECTIONS 65(51) OF THE FINANCE ACT, 1994 - HEALTH AND FITNESS SERVICE

- 2.1 Yoga training provided by assessee Trust to various residential and non-residential camps is classifiable under taxable category of services "health and fitness service" provided by "health club and fitness centre" as defined under Section 65(52) of Finance Act, 1994 and therefore, assessee-Trust is liable to pay service tax - ***Patanjali Yogpeeth Trust v. Commissioner of Central Excise - [2024] 161 taxmann.com 630 (SC)***
- 2.2 Yoga training provided by assessee Trust to various residential and non-residential camps - Yoga of all sorts is included in definition of "health and fitness service" whether it is for physical well being or for therapeutic purposes - ***Patanjali Yogpeeth Trust v. Commissioner of Central Excise - [2024] 161 taxmann.com 630 (SC)***
- 2.3 Entry fee Trust to event organized as Yoga camp-both residential and non residential collected by assessee from participants, disguising it as "Donation" amounts to "consideration" for provision of taxable service of 'health and fitness service' - ***Patanjali Yogpeeth Trust v. Commissioner of Central Excise - [2024] 161 taxmann.com 630 (SC)***

SECTION 65(52) OF THE FINANCE ACT, 1994 - HEALTH CLUB AND FITNESS CENTRE

- 2.4 Patanjali Yog Peeth Trust situated at Maharishi Dayanand Gram, Delhi Haridwar-NH, Near Bhadarabad, Haridwar is an establishment and would come under purview of "health club and fitness centre" - ***Patanjali Yogpeeth Trust v. Commissioner of Central Excise - [2024] 161 taxmann.com 630 (SC)***

SECTION 73 OF THE FINANCE ACT, 1994 - RECOVERY OF SERVICE TAX NOT LEVIED OR PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED

- 2.5 Demand for period 01.10.2006 to 31.03.2007 needs to be recomputed after reconciling amounts received by assessee Trust during that period with accounts of assessee Trust and certificate of Chartered Accountant; Matter remanded for this limited purpose - ***Patanjali Yogpeeth Trust v. Commissioner of Central Excise - [2024] 161 taxmann.com 630 (SC)***

SECTION 75 OF THE FINANCE ACT, 1994 - INTEREST ON DELAYED PAYMENT OF SERVICE TAX

- 2.6 Demand of interest on delayed payment of service tax is justified when assessee Trust has not paid service tax, payable by them on taxable services provided by them by due date - ***Patanjali Yogpeeth Trust v. Commissioner of Central Excise - [2024] 161 taxmann.com 630 (SC)***

SECTION 76 OF THE FINANCE ACT, 1994 - PENALTY FOR FAILURE TO PAY SERVICE TAX

- 2.7 Service Tax not being paid by reason of suppression of fact of receiving consideration for provision of "health and fitness services" and by reflecting the same as donation on receipts and book of accounts, penalty under Section 78 of Finance Act, 1994 is imposable, however, simultaneous penalties under sections 76 and 78 not imposable w.e.f. 10.05.2008 in view of fourth proviso added to Section 78 ibid. w.e.f. 10.05.2008 - ***Patanjali Yogpeeth Trust v. Commissioner of Central Excise - [2024] 161 taxmann.com 630 (SC)***

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

- 2.8 Portion of High Court's order pertaining to applicability of good faith clause to officers of State was to be expunged and appeal was to be disposed of as said observation made by high court was deemed as an advance ruling made before initiation of legal proceedings, compromising integrity and independence of adjudication and if such observations remain, they will affect integrity and independence of that adjudication, compromising prosecution and defence equally - ***State of Gujarat v. Paresh Nathalal Chauhan - [2024] 161 taxmann.com 295 (SC)***

3. HIGH COURT

SECTION 3 OF THE ANDHRA PRADESH MOTOR VEHICLES ACT, 1963 - LEVY OF TAX ON MOTOR VEHICLES

- 3.1 Where petitioner was managing director of a company which had allegedly purchased school buses in name of another educational institution and caused loss to Government by resorting to tax evasion, since it was not case of prosecution that petitioner had forged documents, police was to be directed to conduct investigation without taking any coercive steps against assessee for 6 weeks - ***Puneet Kothapa v. State of Andhra Pradesh*** - [2024] 160 taxmann.com 557 (Andhra Pradesh)

SECTION 5 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - LEVY AND COLLECTION

- 3.2 Where impugned show cause notice was issued to assessee, engaged in importing coal on FOB basis, primarily relying on Notification No. 8/2017-Integrated Tax (Rate) dated 28-6-2017, said notification having been declared ultra vires to IGST Act, 2017, petition of assessee assailing impugned notice was to be allowed - ***Agarwal Coal Corporation (P.) Ltd. v. Assistant Commissioner of State Tax*** - [2024] 161 taxmann.com 1 (Bombay)

SECTION 6 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - EXEMPTION FROM TAX, POWER TO GRANT

- 3.3 Where petitioner's son was suffering from a life-threatening disease and only medicine for treating said ailment was 'Risdiplam', a medicine imported from Switzerland, since application of petitioner for grant of exemption from GST was pending consideration before Union Finance Minister, petitioner was entitled an interim order granting permission to purchase said medicine without payment of GST - ***Amrutha S. v. Union of India*** - [2024] 160 taxmann.com 745 (Kerala)

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

- 3.4 Assessee who are assigned to either Central Tax authorities or State Tax authorities under respective CGST Act, 2017 and/or SGST Act, 2017 cannot be subjected to investigation and further proceeding by counterparts under respective GST enactments - ***Tvl. Vardhan Infrastructure v. Special Secretary, Head of the GST Council Secretariat, New Delhi*** - [2024] 160 taxmann.com 771 (Madras)

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

- 3.5 Where entire salary paid to seconded employees by assessee was treated as a taxable supply by impugned order, entire proceeding was to be stayed on challenge before High Court - ***Hyundai Motor India.Ltd. v. Additional Commissioner*** - [2024] 161 taxmann.com 129 (Madras)

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

- 3.6 Classic Malabar Parota and Whole Wheat Malabar Parota are classified under heading no 1905 and are liable to be taxed at rate 5 percent as per SL No 99A of Notification 1/2017-Central Tax (Rate) - ***Modern Food Enterprises (P.) Ltd. v. Union of India*** - [2024] 161 taxmann.com 538 (Kerala)
- 3.7 Where in spite of petitioner-assessee replying to show cause notice, order imposing GST on basis of total trade payable of petitioner-assessee came to be issued, therefore, impugned order was liable to be quashed and matter was remanded for reconsideration by assessing authority - ***DSV Air and Sea (P.) Ltd. v. State of Tamil Nadu*** - [2024] 161 taxmann.com 152 (Madras)
- 3.8 Where assessee has assailed intimation communicating the GST liability under applicable GST laws in respect of both seigniorage fee and mining lease amounts paid by assessee to Government in Tvl. A. Venkatachalam [2024] 159 taxmann.com 325 (Madras) directions were issued that upon receipt of the objections / representations from writ petitioners against show cause notice, authority concerned shall proceed with adjudication, on merits, however, orders of adjudication shall be kept in abeyance until Nine Judge Constitution Bench decides issue as to nature of royalty, therefore, following said direction, instant writ petition was to be disposed of - ***Y. Jagadeesh v. Deputy State Tax Officer*** - [2024] 161 taxmann.com 58 (Madras)

- 3.9 Where assessee filed writ petition challenging intimation communicating GST liability in respect of seigniorage fee paid by assessee to Government, assessee was to be permitted to submit its reply to intimation and order of adjudication was to be kept in abeyance until Nine Judge Constitution Bench decided issue as to nature of 'royalty' - ***N. Muniraj v. Deputy State Tax Officer*** - [2024] 160 taxmann.com 445 (Madras)

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

- 3.10 Where petitioner, an association, representing Small Scale Ice Cream Manufacturers, challenged decision of GST Council to exclude Ice Cream Manufacturers from Composition Levy under section 10, ice Cream was being widely consumed by people of India, It could not be termed a luxurious item as all kinds of people use to taste Ice Cream, thus, council ought to have taken into consideration socio-economic effect as mentioned in Constitution, therefore instant writ petition was to be disposed of directing council to

re-consider exclusion of Small Scale Manufacturers of Ice Cream from benefit of Section 10(1) in light of judicial precedents - **Small Scale Ice Cream Manufacturer Association v. Union of India - [2024] 161 taxmann.com 297 (Chhattisgarh)**

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

- 3.11 Where per assessee, goods dealt with on assessee's market place were exempted goods under Notification No.2/2017-Central Tax (Rate), dated 28-6-2017, revenue submitted goods not fully exempt as per Notification No.1/2017-Central Tax (Rate), dated 28-6-2017, assessee did not raise issue relating to exemption before assessing officer, assessing officer also did not take note of above notifications, impugned order was to be set aside - **Tiruchengode Agricultural Producers Co-op. Marketing Society Ltd. v. State Tax Office - [2024] 161 taxmann.com 134 (Madras)**
- 3.12 Running private ladies hostels by providing residential accommodation and food to college students and working women on monthly basis with reasonable tariffs was exclusively for residential purpose; condition prescribed to claim exemption, viz., 'residential dwelling for use as residence' has been fulfilled and, hence, said services are covered under Entry Nos.12 and 14 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 and, hence, exempted from levy of GST - **Thai Mookambikaa Ladies Hostel v. Union of India - [2024] 160 taxmann.com 667 (Madras)**

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

- 3.13 Where assessee's parent company demerged and assets and liabilities of consumer division transferred to assessee, audit under section 65, impugned order issued under section 73 as Form ITC-02 not filed, assessee's reply to non filing of Form ITC-02 not considered, no ITC availed by consumer division and no transfer of ITC, matter was to be remanded on condition of deposit of 10% of disputed tax demand to protect revenue's interest - **GG Organics Care (P.) Ltd. v. State Tax Officer - [2024] 161 taxmann.com 549 (Madras)**
- 3.14 Where petitioner-assessee was not given opportunity of personal hearing to prove his claim of input tax credit, therefore, matter was remitted back to respondent-department - **Unity OOH Media Solutions (P.) Ltd. v. Deputy State Tax Officer (Addl. Charge) - [2024] 161 taxmann.com 524 (Kerala)**
- 3.15 Where petitioner was put on notice of alleged contravention of section 16(2)(b) of TNGST Act and wrong claim of ITC, documents relating to mode of transport and physical movement of goods i.e.,

invoices and E-way bills not examined by AO, impugned order was to be quashed - **Tvl.Sharmi Traders v. Asst. Comm. - [2024] 161 taxmann.com 173 (Madras)**

- 3.16 Where assessee reversed ITC wrongly availed on purchase of car, in GSTR 3B return filed subsequently, still impugned order, further debited amount from electronic credit ledger of assessee, impugned order was to be set aside - **Vijayshanthi Hardware v. Asst. Comm. (ST)(FAC) - [2024] 161 taxmann.com 94 (Madras)**

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

- 3.17 Where assessee's ITC claim arose out of purchases from a supplier based in West Bengal who had made a mistake by filing return in Form GSTR-1 by specifying total IGST as zero and therefore total taxable value was apportioned between CGST and SGST and upon realizing error, supplier rectified same while filing return in Form GSTR-3B, impugned order denying input tax credit to assessee was to be set aside matter was to be remanded - **Lalithaa Jewellery Mart Ltd. v. Asst. Comm. (ST) - [2024] 161 taxmann.com 3 (Madras)**
- 3.18 Where assessee was deprived of ITC as supplier had wrongly mentioned GSTIN of another person in invoice, order rejecting ITC claim of assessee was to be set aside and matter was to be remanded to Assessing Officer to provide assessee with an opportunity to redress said grievance - **Tvl. Hansraj and Company v. Asst. Comm. (ST) - [2024] 160 taxmann.com 555 (Madras)**

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

- 3.19 Where input tax credit utilized for payment of SGST by assessee was subsequently transferred and appropriated to respective state, said specific averments/allegations made by appellant were not addressed in the affidavit-in-opposition, therefore Instant case was to be adjourned for further proceedings directing revenue to get specific written instructions from appropriate authority of department with regard to these averments/allegations made by assessee - **Cosyn Ltd. v. Asst. Commissioner of State Tax - [2024] 161 taxmann.com 413 (Calcutta)**

SECTION 25 OF THE CENTRAL GOODS SERVICES TAX ACT, 2017 - REGISTRATION - PROCEDURE FOR

- 3.20 Where assessee was a successful resolution applicant in plan **submitted** to NCLT through IRP and registration of assessee was denied by Registering Authority, such order was infringing on assessee's right to carry on business and same was to be set aside and a positive mandamus was to be issued to authority to consider application of assessee - **K.V. Developers (P.) Ltd. v. State of U.P. - [2024] 160 taxmann.com 442 (Allahabad)**

SECTION 28 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - AMENDMENT OF

3.21 Where assessee filed application for amendment of registration seeking change in address of place of business and same was rejected by Competent Authority without hearing assessee there was breach of mandate of second proviso to section 28(2), thus impugned order was required to be set aside - **Aaurum Enterprises v. Union of India - [2024] 160 taxmann.com 583 (Bombay)**

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

3.22 Time line provided in rule 22(3) for adjudication of order on show cause notice issued to assessee for cancellation of registration is only directory and not mandatory - **Fayiz Nangaparambil v. Union of India - [2024] 160 taxmann.com 441 (Delhi)**

3.23 Where neither show Cause Notice, nor order of cancellation of registration issued to assessee spell out reasons for retrospective cancellation, show Cause Notice and impugned order were bereft of any details accordingly same could not be sustained and therefore impugned order was to be modified to limited extent that registration should now be treated as cancelled from date when Show Cause Notice was issued - **Singla Enterprises v. Commissioner of Delhi Goods & Service Tax - [2024] 161 taxmann.com 28 (Delhi)**

3.24 Where show cause notice was issued to assessee which was not responded to by him consequently leading to cancellation of registration, assessee expressed willingness to deposit taxes, penalty, and interest in accordance with GST Act, 2017, provided his GST number was restored and in absence of objections from revenue, instant writ petition was to be disposed of by directing assessee to approach Officer concerned for restoration of his GST number who shall restore GST number of assessee and thereafter assessee shall deposit the taxes, penalty along with interest - **Abdul Ahad Wani v. Union Territory of J & K - [2024] 161 taxmann.com 244 (Jammu & Kashmir and Ladakh)**

3.25 Where petitioner-assessee had filed appeal within a period of 3 months from date of communication of said cancellation order dated on 20.09.2022, therefore, by virtue of provisions of Section 107(1), appeal filed by petitioner-assessee was within limitation; impugned order dated 25.10.2023, which held that appeal of petitioner-assessee was barred by limitation, was directed to be set aside - **Tribest Fine Yarns Ltd. v. Uoi - [2024] 161 taxmann.com 370 (Bombay)**

3.26 Where assessee was not properly informed about retrospective cancellation and was not given a reasonable opportunity to object retrospective

cancellation, therefore order cancelling assessee's registration retrospectively was to be modified to limited extent that registration should now be treated as cancelled with effect date when assessee discontinued his business - **Archit Khandelwal v. Principal Comm. of DGST - [2024] 161 taxmann.com 614 (Delhi)**

3.27 Where assessee's GST registration was cancelled for non-filing of returns, assessee prayed for restoration of registration, was ready to deposit all dues, respondent-authority was to be directed to restore assessee's registration and open portal for 30 days to enable assessee to file return and pay all dues in said time frame - **Suraj Mahapatra v. State of West Bengal - [2024] 161 taxmann.com 593 (Calcutta)**

3.28 Where tax demand issued after cancellation of assessee's GST registration, pertaining to mismatch between GSTR 1 and 3B returns, assessee had little reason to continually monitor GST portal after cancellation, assessee be provided opportunity to contest tax demand, impugned order to be quashed - **Thirumurugan Traders (Defunct) v. Dy. State Tax Officer - [2024] 161 taxmann.com 537 (Madras)**

3.29 Where application seeking cancellation of GST registration was rejected on ground of pendency of DRC-01 proceedings, GST Registration of assessee was to be treated as cancelled with effect from date from which assessee sought cancellation of GST registration as proceedings under DRC-01 were independent of proceedings for cancellation of GST registration and could continue despite cancellation of GST registration - **Chetan Garg v. Avato Ward 105 State GST - [2024] 161 taxmann.com 468 (Delhi)**

3.30 Where assessee discontinued business, applied for cancellation of registration effective from 1-11-2019, Show cause notice dated 30-9-2023 and reminders issued related to discrepancy between GSTR 3B returns and GSTR 2A returns, assessee unaware of show cause notice, became aware only from department, assessee's request for two weeks' time to reply not considered, impugned order was to be quashed subject to assessee remitting 10% of disputed tax demand - **Selva Ganesh Constructions (P.) Ltd. v. Dy State Tax Officer - [2024] 161 taxmann.com 486 (Madras)**

3.31 Where assessee received a show cause notice for non-filing of GST returns and assessee had admitted that he had not filed GST returns because of illness of Accountant and that notice was served upon him, but he ignored same and did not choose to submit any reply because it was not in the prescribed format, therefore, assessee could not be given benefit on basis of violation of principles of natural justice, instant writ petition was to be dismissed - **Govardhan Traders v. State of U.P. - [2024] 161 taxmann.com 480 (Allahabad)**

3.32 Where assessee filed application for amendment of registration seeking change in address of place of business and same was rejected, and also registration of assessee was suspended on ground that no business was carried out

at declared place of business, respondent authority was to be directed pass an order on amendment application of assessee and subject to outcome of same, further appropriate course of action could be adopted - **Aaurum Enterprises v. Union of India** - [2024] 160 taxmann.com 583 (Bombay)

3.33 Where assessee submitted application seeking cancellation of GST registration on ground of closure of business, impugned order, without giving any reasons for cancellation, issued cancelling assessee's registration retrospectively, assessee not interested to carry on business or continue registration, impugned order was to be modified cancelling registration w.e.f. date when assessee closed down its business activities - **Supreme Enterprises v. Principal Commissioner of Goods & Service Tax** - [2024] 161 taxmann.com 171 (Delhi)

3.34 Respondents were to process application of assessee seeking cancellation of its GST registration and dispose of same, if not already done, within period of two weeks from today with intimation to assessee - **Shree Shakti Sales v. Principal Commissioner of Department of Trade and Taxes, Government of Nct of Delhi** - [2024] 161 taxmann.com 168 (Delhi)

3.35 Where on account of non-filing of returns, assessee's GST registration was cancelled, assessee was in great financial difficulty and, therefore, requires time for payment of amounts outstanding towards interest, as tax liability was discharged and assessee also paid about Rs.7.20 lakhs towards interest liability of 75.8 lakhs, it is just and appropriate that assessee was to be permitted to pay interest liability in installments, writ petition was to be disposed of - **Angel Label Division & Angel Zippel (HUF) v. Assistant Commissioner (ST) (FAC)** - [2024] 161 taxmann.com 88 (Madras)

3.36 Where registration of assessee was cancelled alleging non compliance of provisions of GST Act, since neither show cause notice nor order of cancellation indicated which provisions were not complied with, order of cancellation was to be quashed and registration of assessee was to be restored - **PAV Warehouse v. Assistant Commissioner (ST), Poonamallee** - [2024] 160 taxmann.com 491 (Madras)

3.37 Where GST registration of assessee was suspended, said order was to be modified to extent that assessee would be permitted to make supplies against pending orders - **OSM Projects (P.) Ltd. v. Union of India** - [2024] 161 taxmann.com 29 (Delhi)

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

3.38 Delay in invoking proviso to rule 23 by assessee was to be condoned and application for revocation of cancellation of registration was to be considered in accordance with law by competent authority as long as

assessee deposited all taxes, interest, late fee, penalty etc. due and comply with other formalities - **Ganesh Chand v. Principal Commissioner of GST and Central Excise** - [2024] 160 taxmann.com 663 (Orissa)

3.39 Where registration of assessee was cancelled for failure to furnish returns for a continuous period of six months, period of limitation for filing application under section 30 having been lapsed due to paucity of time, assessee was to be allowed to file application under section 30 subject to making payment of dues and other statutory penalty/fine for moving such application - **Abdul Satar v. Principal Commissioner, Central Goods and Service Tax and CX** - [2024] 160 taxmann.com 489 (Jharkhand)

3.40 Where registration of assessee was cancelled and time for filing application for revocation of cancellation of registration or appeal had lapsed, liberal approach was to be taken and assessee was to be allowed to file application for revocation of cancellation of registration - **Mohammad Nassruddin v. Principal Commissioner, Central Goods and Services Tax and CX** - [2024] 160 taxmann.com 444 (Jharkhand)

3.41 Where assessee had delayed filing a revocation application for registration, delay was to be condoned subject to assessee having deposited all taxes, interest, late fee, penalty, etc., due and having complied with other formalities - **Binaya Mandal v. Chief Commissioner of CT & GST** - [2024] 160 taxmann.com 769 (Orissa)

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

3.42 As per section 50(1) interest liability arises automatically on delayed filing of returns, irrespective of whether payment is made from Electronic Credit Ledger or Electronic Cash Ledger - **Sincon Infrastructure (P.) Ltd. v. Union of India** - [2024] 161 taxmann.com 616 (Patna)

SECTION 52 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COLLECTION OF TAX AT SOURCE

3.43 Where petitioner-assessee had raised an issue of maintainability of alleged demand on ground that Section 52 was not applicable and particularly considering nature of business, it is appropriate that adjudicating officer considered same as preliminary issues and decide it in accordance with law; matter remanded - **NCDEX Markets Ltd. v. Union of India** - [2024] 161 taxmann.com 132 (Bombay)

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

3.44 Where assessee seeks refund of ITC, assessee having unconditionally withdrawn earlier petition and liberty being specifically declined to assessee, assessee precluded from filing instant petition seeking same relief which was earlier withdrawn by assessee therefore Instant petition was barred on principle of issue of estoppel and as such petition was not maintainable and same was consequently dismissed - **Jetibai Grandsons Services India (P.) Ltd. v. Union of India** - [2024] 161 taxmann.com 130 (Delhi)

3.45 When order which was appealed against was issued or uploaded on common portal and same could be viewed by appellate authority, requirement of submission by assessee of certified copy of such uploaded order to vouch for its authenticity would be insignificant in view of availability of order online - **Otsuka Pharmaceutical India (P.) Ltd. v. Union of India** - [2024] 161 taxmann.com 368 (Gujarat)

3.46 For period July 2017 to December, 2018, assessee had exported goods on consignment/exhibition basis and paid IGST on exported goods; since assessee had complied with relevant provisions, assessee at relevant time, on presentation of shipping bills in regard to confirmed sales, was entitled to refund of IGST amounts paid on goods in question; conflicting stands taken by different authorities denying refund of IGST were unjustified - **Venus Jewel v. Union of India** - [2024] 161 taxmann.com 313 (Bombay)

3.47 Where assessee's refund claim for unutilized ITC was rejected for period July to Dec 2019, prior to said period, refund claims had duly been sanctioned by revenue to assessee on same facts and circumstances, revenue's sudden change treatment of refund for said period was not only inconsistent but also irrational, principle of consistency dictates that when faced with identical factual and legal circumstances, treatment should remain uniform, therefore order rejecting refund claim of assessee for said period was palpably erroneous and could not be sustained and same was to be set aside - **Samsung India Electronics (P.) Ltd. v. State of U.P.** - [2024] 161 taxmann.com 205 (Allahabad)

3.48 Assessee had not moved any application within prescribed time and not even extended time for claiming refund, instant Court, in exercise of its limited jurisdiction could not amend statute, prescribes different time limit for moving such an application and, therefore, instant writ petition was to be dismissed - **M Trans Corporation v. State Tax Officer** - [2024] 160 taxmann.com 766 (Kerala)

SECTION 60 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - PROVISIONAL ASSESSMENT

3.49 Where two separate proceedings were initiated in respect of same assessment period, same issue and rectification order was also unclear with regard to reasons for rectification, assessee was entitled to another opportunity to explain disparity between GSTR-3B and GSTR-2A returns - **South India Steels v. Assistant Commissioner (ST)** - [2024] 161 taxmann.com 30 (Madras)

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

3.50 Where assessee did not participate in proceedings and hence could not contest tax demand, impugned assessment order was to be quashed subject to condition that assessee remitted 10 per cent of disputed tax demand within a period of two weeks and was to be permitted to file a reply to show cause notice - **Tvl. J.J. Distributors v. Assistant Commissioner (ST)** - [2024] 160 taxmann.com 750 (Madras)

3.51 Where admittedly assessee had not uploaded reply to intimation on portal which culminated in impugned order in original, in interest of justice, said order was to be set aside and matter was to be remitted subject to assessee depositing 10 per cent of tax demand - **T.V.R. Edible Refineries v. Deputy State Tax Officer** - [2024] 160 taxmann.com 545 (Madras)

3.52 Due taxes had already been deposited way back in October 2020 and impugned order demanding tax had never been served upon assessee and as such, demand of entire amount was against principle of natural justice - **K.P. Indane Service v. State of Jharkhand** - [2024] 161 taxmann.com 24 (Jharkhand)

3.53 Operation of order provisionally attaching bank account would cease to be operative after expiry of statutory period of one year - **K.P. Indane Service v. State of Jharkhand** - [2024] 161 taxmann.com 24 (Jharkhand)

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

3.54 Where assessee alleged that respondent authority forced to deposit certain amount during search and secure action conducted by department, since records revealed that assessee made such payment voluntarily and also agreed to make payment of balance tax amount in 10 days, petition of assessee was misconceived and was to be accordingly rejected - **Innovators Facade Systems Ltd. v. Assistant Additional Director General of GST Investigation** - [2024] 160 taxmann.com 747 (Bombay)

3.55 Where assessee sought quashing of detention order and release of detained good, petition was dismissed directing assessee to seek redress from Revenue Authority, as reply to show-cause notice had already been filed by assessee - **Mahant Steel v. State of Gujarat** - [2024] 161 taxmann.com 56 (Gujarat)

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

3.56 Where summons under section 70 had been issued to petitioner's establishment located in Pune by authority situated at Mumbai, jurisdiction for challenging impugned summons would lie before High Court which has territorial jurisdiction over Pune as well as Mumbai - **Mytrah Energy India (P.) Ltd. v. Union of India** - [2024] 160 taxmann.com 585 (Telangana)

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

- 3.57** Where pursuant to an inspection on business premises of assessee, several discrepancies were pointed out and assessee sought extension of time, however impugned asst. order was passed without providing any extension, such order was to be quashed and AO was to be directed to issue fresh assessment order after affording reasonable opportunity to assessee subject to condition that assessee remitted 10 percent of disputed tax amount - *Tvl. KCP Infra Ltd. v. State Tax Officer* - [2024] 161 taxmann.com 2 (Madras)
- 3.58** Since Assessee had enclosed copies of service tax return and GSTR-3B returns to substantiate that entire indirect income was disclosed and as such, finding in assessment order that no documentary evidence was submitted was untenable, thus asst. order passed confirming tax liability in respect of discrepancies was to be quashed - *Golden Mandir Retail (P.) Ltd. v. Assistant Commissioner (ST) (FAC)* - [2024] 161 taxmann.com 89 (Madras)
- 3.59** Where assessee in response to intimation issued in FORM GST DRC-01A furnished documents to establish genuineness of supplies received by it but respondent in impugned order recorded that assessee had not furnished any documents and had failed to establish movement of goods, impugned conclusions were unsustainable and matter was to be remanded for fresh consideration - *Sri Kumaran Steels v. Deputy State Tax Officer-I* - [2024] 161 taxmann.com 55 (Madras)
- 3.60** Since revenue had confirmed tax demand without considering replies provided by assessee to SCN, order confirming tax demand was unsustainable and therefore same was to be quashed and matter was remanded for reconsideration - *Indofil Industries Ltd. v. Commercial Tax Officer (State Tax)* - [2024] 161 taxmann.com 54 (Madras)
- 3.61** Since assessee was deprived of a reasonable opportunity to contest tax demand, asst. order was unsustainable as there was violation of principle of natural justice, therefore said order was to be quashed and matter was remanded back for reconsideration - *Santhosh Kumar Bhavesa Bothra v. Commercial Tax Officer* - [2024] 160 taxmann.com 764 (Madras)
- 3.62** Where a detailed reply furnished by assessee to impugned SCN giving full disclosures under each heads, impugned order u.s. 73 of CGST Act recorded that reply was incomplete, not duly supported by adequate documents, not clear and unsatisfactory, proper officer not applied mind to reply, impugned order was to be set aside - *Canara Bank v. Asst. Comm., DGST* - [2024] 161 taxmann.com 448 (Delhi)
- 3.63** Where assessee's GST registration was cancelled, and revenue authority attempted to serve show cause notice and personal hearing notice through GST portal, despite assessee being unable to access portal due to cancellation, such service was deemed invalid and in violation of principles of natural justice - *Thirumalai Sales Corporation v. Assistant Commissioner (Circle)* - [2024] 161 taxmann.com 427 (Madras)
- 3.64** Where a detailed reply furnished by assessee to impugned show cause notice giving full disclosures under each heads, impugned order under section 73 of CGST Act recorded that reply was incomplete, not duly supported by adequate documents, not clear and unsatisfactory, proper officer not applied mind to reply, impugned order was to be set aside - *Charu Overseas (P.) Ltd. v. Union of India* - [2024] 161 taxmann.com 513 (Delhi)
- 3.65** Where GST registration of assessee had been cancelled retrospectively and assessee was not served with impugned SCN and order which was issued after registration was cancelled, matter was to be remitted to Proper Officer for re-adjudication - *Jain Cement Udyog v. Central Board of Indirect Taxes and Customs** - [2024] 161 taxmann.com 512 (Delhi)
- 3.66** Where show cause notice issued in respect of disparity between GSTR-1 and GSTR-3B returns, assessee explained disparity by pointing out that error occurred on account of reflecting amount wrongly towards CGST and SGST instead of IGST, impugned order confirming demand was to be quashed, matter to be remanded subject to condition - *Subh Sri Agencies v. Deputy State Tax Officer* - [2024] 161 taxmann.com 487 (Madras)
- 3.67** Tax demand confirmed without hearing assessee was to be quashed - *Tvl. PL Lawrence Eggs Stores v. Assistant Commissioner* - [2024] 161 taxmann.com 371 (Madras)
- 3.68** Since assessee was not heard before order was issued demanding tax, impugned order was to be quashed - *Ramasamy Kuppusamy v. Deputy Commercial Tax Officer* - [2024] 161 taxmann.com 369 (Madras)
- 3.69** Where assessee's auditor was suffering from cancer and did not keep assessee informed about SCN and proceedings culminating in impugned order, substantial part of demand pertained to belated filing of returns and denial of ITC u.s. 16(4) of GST Act, impugned order issued without assessee being heard, was to be quashed subject to conditions - *Kandhasamy Jothimani v. Commercial Tax Officer* - [2024] 161 taxmann.com 320 (Madras)
- 3.70** Where documents submitted by petitioner-assessee were not duly considered and petitioner-assessee was not provided a reasonable opportunity of hearing, therefore, assessment order passed against petitioner-assessee was set aside - *Kumaran Cotspin v. Deputy State Tax Officer* - [2024] 161 taxmann.com 289 (Madras)

- 3.71** Where proper officer issued a SCN to assessee proposing a demand and thereafter passed an order holding that reply submitted by assessee was not satisfactory without giving any opportunity to assessee to clarify its reply or furnish further documents/details, impugned order was to be set aside and matter was to be remitted to proper officer for re-adjudication - **Realsteel Tyre Company (India) v. Principal Commissioner of GST - [2024] 160 taxmann.com 587 (Delhi)**
- 3.72** Where asst. orders were passed without hearing assessee, same was to be set aside and matter was to be remitted on condition that assessee remitted 10 per cent of disputed tax amount - **Coimbatore District Printer Service INDL Co-operative Society Ltd. v. Deputy Commercial Tax Officer - [2024] 160 taxmann.com 554 (Madras)**
- 3.73** Where AO, in impugned asst. order noticed that all India balance sheet of assessee GTA disclosed other income of Rs.20,05,359 and than tax liability with interest and penalty was imposed in respect of turnover taxable entirely on RCM basis, impugned asst. order vitiated by non application of mind and was to be quashed - **Sunrise Freight Movers (P.) Ltd. v. State Tax Officer - [2024] 161 taxmann.com 170 (Madras)**
- 3.74** Where impugned SCN was not replied by assessee as assessee could not access portal due to cancellation of its registration, impugned order passed creating demand against assessee solely on account that assessee had not filed reply, could not be sustained and matter was to be remitted for re-adjudication - **Singla Enterprises v. Comm., Delhi GST - [2024] 160 taxmann.com 543 (Delhi)**
- 3.75** Solely with a view to provide an opportunity to assessee to contest tax demand on merits, order demanding tax was to be quashed subject to assessee remitting 10% of disputed tax demand as agreed to within fifteen days - **Mrs. Preetha v. Deputy Commercial Tax Officer - [2024] 161 taxmann.com 131 (Madras)**
- 3.76** Where challenge was raised to validity of Notification No. 09/2023 dated 31-3-2023 and Notification No. 515/SI-2-23-9(47)/17-T.C215-U.P. Act-1-2017- Order-(273/2023) dated 24-4-2023; following lead case being M/s Graziano Transmission Vs. GST, matter requires consideration - **Neeru Menthol (P.) Ltd. v. Goods and Service Tax Council - [2024] 161 taxmann.com 91 (Allahabad)**
- 3.77** Where assessee was unaware of assessment proceedings until bank attachment order was communicated and also assessee had engaged a consultant for GST compliance, who failed to keep assessee informed, solely on reason that assessee should be provided opportunity of being heard, impugned order was to be quashed subject to condition

that assessee remits 10 percent of disputed tax demand - **A. Kumar Hardwares v. State Tax Officer - [2024] 161 taxmann.com 127 (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

- 3.78** Where show cause notice issued to assessee did not contain adequate information as to alleged nature of mismatch between GSTR 3B and GSTR 2A returns, and also impugned assessment order was passed without affording opportunity of hearing to assessee, same was to be set aside and matter was to be remanded for reconsideration - **MD Electric Co. v. State Tax Officer - [2024] 160 taxmann.com 782 (Madras)**
- 3.79** Where despite assessee's consultant's explanation, turnover reflected in one single month had been compared with turnover reflected in GSTR 7 return filed by counter party while passing assessment order, same was unsustainable and matter was to be remanded for passing fresh order - **Tvl. R.P. Constructions v. State Tax Officer - [2024] 161 taxmann.com 5 (Madras)**
- 3.80** Where order was issued to assessee, pertaining to three issues: issuance of credit notes, treatment of freight charges, and denial of Input Tax Credit, assessee had also bifurcated amounts paid towards freight, enclosed both a reconciliation statement and a statement from Chartered Accountant in respect of such bifurcation, there were discrepancies in assessing officer's observations regarding evidence presented by assessee, except for holding that tax payer had availed Input Tax Credit which was blocked credit under Section 17(5), no reasons were specified as to why such Input Tax Credit was denied, therefore impugned order was to be set aside and remanded matter for reconsideration - **APL Apollo Tubes Ltd. v. State Tax Officer (Intelligence) - [2024] 161 taxmann.com 613 (Madras)**
- 3.81** Where first appeal of assessee was rejected due to absence of certified copy of order passed under section 74, technical ground on which appellate authority rejected first appeal of assessee was not justified, therefore, order passed by appellate authority was to be quashed and set aside - **Jai Prakash Shiv Charan Bidi v. Commissioner, Commercial Taxes - [2024] 161 taxmann.com 551 (Allahabad)**
- 3.82** Where show cause notice was issued to assessee in relation to discrepancy between GSTR 1 statement and GSTR 3B returns and upon receipt thereof, assessee had remitted a sum of Rs.3,00,000/- towards tax liability before issuance of assessment order, which was 10 percent to total tax, since assessee was not heard before assessment order was issued, interest of justice warrants provision of an opportunity to assessee, and thus, assessment order was to be set aside subject to condition that assessee remits an additional sum of Rs.3,00,000/- as agreed - **K.C. Mathaiyan v. Assistant Commissioner (ST) - [2024] 161 taxmann.com 365 (Madras)**

3.83 Where petitioner challenged impugned show-cause notice on ground of jurisdiction and violation of CBIC Instruction No. 05/2023-GST, dated 13-12-2023, petitioner was to be directed to file reply to notice taking all points including point of jurisdiction, adjudicating authority to first decide issue of jurisdiction by passing reasoned and speaking order after giving opportunity of hearing to petitioner and not to take coercive action till disposal of such reply - **Sonex Engineers Co-operative Society Ltd. v. Asst. Comm. of Revenue - [2024] 161 taxmann.com 321 (Calcutta)**

3.84 Where no opportunity of personal hearing was given by respondent no.2-department to petitioner-assessee and respondent no.3-appellate authority had failed to correct aforesaid glaring impropriety, therefore, both order passed u.S. 74 and appellate order were quashed and set aside - **Shree Sai Palace v. State of U.P. - [2024] 161 taxmann.com 240 (Allahabad)**

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

3.85 Where assessee, a dealer in cardamom and pepper, received show cause notice to show cause and pay a wrongly carried forward credit amount along with interest, however, net tax payable on previous year had been shown in minus and if it was in minus, that means tax excessively paid previously had to be returned back, therefore, excess payment had been made as a carry forward by way of ITC in next year starting from 1st July, 2017, revenue's cryptic order making a demand without considering said aspect and without giving assessee a proper opportunity of being heard was erroneous, therefore same was to be set aside and matter was remitted back for reconsideration - **Tvl. Devesh Spices v. Assistant Commissioner (CT) (ST) - [2024] 161 taxmann.com 631 (Madras)**

3.86 Where assessee's explanations in respect of show cause notice received were disregarded in assessment order and since no personal hearing was granted after assessee's reply to show cause notice, assessment order was to be quashed as principles of natural justice were not adhered to - **Tvl. Saravanaa Projects & Co. v. Assistant Commissioner (ST) - [2024] 161 taxmann.com 429 (Madras)**

3.87 Where assessee averred in affidavit that he carried on trade of electrical goods on a small scale and that his consultant had not brought to his knowledge initiation of proceedings against him, since assessee was under an obligation to monitor GST portal on an on going basis, it should not be lost sight of that tax demand was confirmed without assessee being heard, therefore solely for purpose of providing assessee with an opportunity to contest tax demand, impugned order was to be set aside - **Tvl. Bharathi Electricals v. State Tax Officer - [2024] 161 taxmann.com 428 (Madras)**

3.88 Where order under section 75(4) of CGST Act was passed without providing opportunity of personal hearing, though requested by assessee, was in violation of principles of natural justice and ex facie contrary to provisions of section 75(4) of CGST / MGST Act, impugned order was to be set aside - **Cowtown Software Design (P.) Ltd. v. Union of India - [2024] 161 taxmann.com 363 (Bombay)**

3.89 Where assessee had changed their address on GST portal twice, but show-cause-notice was sent to old address, thus assessee was not served show cause notice and could not participate in adjudication of show cause notice and eventually revenue proceeded to adjudicate show cause notice while passing ex-parte order-in-original, impugned order adjudicating show-cause-notice was in breach of principle of natural of justice, and was to be set aside - **Fino Paytech Ltd. v. Union of India - [2024] 161 taxmann.com 416 (Bombay)**

3.90 Where assessee, a partnership firm, requested for time extension to reply to show cause notice by referring to death of mother of one of partners of firm, however revenue did not respond to request for adjournment and instead issued an assessment order, said order was unsustainable as no personal hearing was offered to assessee, therefore same was to be quashed and matter was remanded back for reconsideration - **Elcon Infrastructure v. State Tax Officer - [2024] 161 taxmann.com 287 (Madras)**

3.91 Since documents on record indicate clearly that assessee was not heard before order demanding tax was issued, it is just and appropriate that an opportunity be provided to assessee albeit by putting assessee on terms therefore, order demanding tax was to be quashed subject to condition that assessee remits 10% of disputed tax demand - **Tvl. Auro Hosting v. State Tax Officer (ST) (FAC) - [2024] 161 taxmann.com 299 (Madras)**

3.92 Where assessee filed a GSTR 1 return, mistakenly uploading duplicate invoices, upon receipt of an intimation regarding said discrepancies, assessee replied thereto by stating that it was an inadvertent error and that correct details were contained in assessee's GSTR 3B return and also certifies that relevant purchasers stated that they had availed of input tax credit (ITC) by excluding duplicate invoices, therefore in view of documents submitted by assessee order imposing tax liability was to be set aside and matter was required to be reconsidered so as to ascertain whether purchasers indeed did not avail of excess input tax credit on basis of duplicate invoices - **A. Ansari Abu Agencies v. Superintendent of GST and Central Excise - [2024] 161 taxmann.com 234 (Madras)**

3.93 Where order under section 75(4) of CGST Act was passed without providing opportunity of personal hearing, though requested by assessee, was in violation of principles of natural justice and ex facie contrary to provisions of section 75(4) of CGST / MGST Act, impugned order was to be set aside - **Cowtown Software Design (P.) Ltd. v. Union of India - [2024] 161 taxmann.com 201 (Bombay)**

- 3.94** Wherein notice preceding impugned order, except indicating date for filing of reply as 30-10-2023, abbreviation "NA" was mentioned against columns to disclose date of personal hearing, time of personal hearing and venue of personal hearing, impugned order was passed in gross violation of fundamental principles of natural justice and was to be set aside - **Virat Agencies v. State of U.P.** - [2024] 161 taxmann.com 95 (Allahabad)
- 3.95** Where no personal hearing was offered to assessee after their reply to intimation and assessment order was issued, in view of breach of mandatory requirement to provide personal hearing as per Section 75(4), impugned assessment order was to be quashed and matter was remanded for reconsideration - **Vel Steel Tubes and Engineering (P.) Ltd. v. Assistant Commissioner (ST)** - [2024] 161 taxmann.com 93 (Madras)
- 3.96** Where assessee was not given minimal opportunity of personal hearing before passing an adverse assessment order, same was to be set aside and matter was to be remitted to respondent authority to issue fresh notice to assessee - **Mahendra Educational (P.) Ltd. v. State of U.P.** - [2024] 160 taxmann.com 443 (Allahabad)

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

- 3.97** Where assessee participated in personal hearing after receipt of impugned show cause notice, impugned order not passed in violation of principle of natural justice, authority having jurisdiction, impugned order not a non-speaking order, constitutional validity of any provision of law not involved, statutory alternative remedy of appeal available, writ petition was to be dismissed - **M.M.T.C. Ltd. v. Commissioner of CGST & CX Kolkata (North)** - [2024] 161 taxmann.com 367 (Kolkata)
- 3.98** Where assessee's appeal, relating to availment of ITC as assessee inadvertently committed error by entering eligible ITC details in space pertaining to "inward supplies liable to reverse charge" instead at "all other ITC", rejected on ground of limitation, period for condonation of limitation for filing appeal expired in early January, 2024, appeal filed shortly thereafter, impugned order was to be set aside - **Tvl. Sri Gokul Stores v. Deputy Commissioner (ST)** - [2024] 161 taxmann.com 300 (Madras)

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

- 3.99** Where impugned order was passed and assessee couldn't attend hearing as his residence was shifted, assessee was granted liberty to approach appellate authority and appellate authority was directed to

entertain appeal filed by assessee without insisting issue of limitation - **Johnson Bevisedmond v. Jt. Comm. of GST & Central Excise** - [2024] 161 taxmann.com 632 (Madras)

- 3.100** Where assessee challenged order in original was passed by GST Authority, which was appealable under statute, since it was not a case that said order was passed by authority lacking jurisdiction or without affording opportunity of being heard, petition of assessee was to be dismissed on ground of availability of alternative remedy - **Calcutta Radio Service (P.) Ltd. v. Uol** - [2024] 160 taxmann.com 746 (Calcutta)
- 3.101** Where respondent-appellate authority could only allow extension of period of four months within which appeal could have been filed and petitioner-assessee filed appeal beyond period of four months, further, application of section 5 of Limitation Act, 1963 was implicitly excluded in tax-related matters, therefore, writ petition was dismissed - **Yadav Scrap Traders v. Additional Commissioner** - [2024] 161 taxmann.com 432 (Allahabad)
- 3.102** Where assessee had failed to timely prefer appeal against cancellation of GST registration within statutory period, and had not availed of amnesty scheme offered for restoration of cancelled registrations, HC should not exercise its extraordinary jurisdiction under Article 226 of Constitution - **Nitya Enterprises Hathidah v. State of Bihar** - [2024] 161 taxmann.com 92 (Patna)
- 3.103** Where assessee filed writ petition challenging order of Adjudicating Authority holding that oil coolers are classifiable under Heading 8708, since assessee had already replied to SCN and participated in proceedings, it should raise its contention before Appellate Authority - **Modine Thermal Systems (P.) Ltd. v. Joint Commissioner** - [2024] 161 taxmann.com 57 (Madras)

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

- 3.104** Where instant appeal challenges an interim order passed by court directing appellants to deposit 20% of disputed remaining unpaid interest to approach appellate tribunal, section 112(8)(b) of clearly restricts pre-deposit amount to 20% of the remaining amount of tax in dispute and does not speak of interest, since where legislative intent was clear from language, court should give effect to it, thus portion of order passed by learned Single Bench directing assessee to pay 20% of remaining interest was to be set aside - **Evergreen Construction, Durgapur (P.) Ltd. v. Commissioner of Commercial Taxes, Government of West Bengal** - [2024] 161 taxmann.com 478 (Calcutta)
- 3.105** Where petitioner-assessee filed instant writ petition against appellate order and appellate tribunal was not yet constituted, therefore, petitioner-assessee was to be directed to deposit 20 per cent of remaining amount of tax in dispute and subject to such deposit, petitioner-assessee must be extended statutory benefit of stay under Section 112 - **Anil Kumar Mandoi v. Joint Commissioner of State Tax** - [2024] 161 taxmann.com 52 (Orissa)

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

3.106 Where penalty under section 129(3) was imposed upon assessee in spite of there being search and seizure carried out under section 67, order imposing penalty was to be set aside - ***Poddar Trading Company v. Commissioner, Commercial Tax, U.P.*** - [2024] 160 *taxmann.com* 492 (Allahabad)

3.107 Where there exists clerical or typographical error in documents such as e-way bill, initial burden of proof lies on Revenue department to demonstrate intention to evade tax; penalties should be imposed only in cases of intentional tax evasion, not on inadvertent errors - ***Indeutsch Industries (P.) Ltd. v. State of U.P.*** - [2024] 160 *taxmann.com* 733 (Allahabad)

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

3.108 Where stock was not weighed or counted, specifically when same could have very well been done in premises of assessee, calculation of stock by appellate authority on basis of an estimate was without any basis in law, thus, entire procedure followed by authorities indicates not only a lackadaisical approach but also showcases incompetence and inefficiency of authorities, therefore order related to confiscation and penalty related to additional stock was to be set aside - ***Eco Plus Steels (P.) Ltd. v. State of U.P.*** - [2024] 161 *taxmann.com* 414 (Allahabad)

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

3.109 Where petitioner was not named in FIR, no incriminating evidence collected against him during investigation, was only named by co-accused in their respective disclosure statements, arrested on 21-1-2021 and in custody since then, offences triable and final report under section 173 Cr.P.C. already presented, petitioner was to be released on bail - ***Anupam Singla v. State of Haryana*** - [2024] 161 *taxmann.com* 505 (Punjab & Haryana)

3.110 Where assessee was arrested in case filed under sections 132(l)(b) & (c) of CGST Act read with section 20(XV) of IGST Act, criminal liability of assessee not decided, arrested on 19-4-2023 and maximum sentence provided under statute five years, not in a position to influence witnesses to be produced before trial Court, assessee could not be confined in jail as an under-trial for an indefinite period, assessee was to be released on bail subject to conditions - ***Rahul Bassi v. Directorate General of GST Intelligence*** - [2024] 161 *taxmann.com* 238 (Punjab & Haryana)

3.111 Where assessee was alleged to have availed fake input tax credit, instant writ petition was to be disposed of as there was no immediate apprehension that assessee was being arrested as alleged availment of fake input tax credit by assessee had not crossed limit of 500 lakhs, which is punishable under Section 132(5), however revenue was directed that if revenue intends to arrest assessee it should give 48 hours prior notice to assessee on registered email and should also follow Instruction no. 02/2022-23 (GST- Investigation) of Guidelines dated 17.08.2022 issued by CBIC - ***Saurabh v. Directorate General of GST Intelligence*** - [2024] 160 *taxmann.com* 765 (Bombay)

SECTION 137 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - OFFENCES - COMPANIES, OFFENCE BY

3.112 Petitioner, who was a mere employee of MLIPL which was although a group company of Maersk, could not fall within purview of section 122(1A), as petitioner could not be a 'taxable' or a 'registered person' within meaning and purview of CGST Act so as to retain such benefits as provision ordains, hence, there was no question of revenue invoking section 122(1-A) against petitioner, thus, revenue invoking said provision against petitioner was an act wholly without jurisdiction, so as to issue show cause notice demanding tax and penalty from petitioner was also without jurisdiction - ***Shantanu Sanjay Hundekari v. Union of India*** - [2024] 161 *taxmann.com* 27 (Bombay)

4. AAAR

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

- 4.1 Where appellant is a dealer in whose name a license to sell S.K. Oil to ration card holders under Public distribution system, since, appellant makes a single supply of service as agent to state government by way of distributing S.K. Oil to ration card holders, said service provided by appellant does not qualify as composite supply - **CHANCHAI SAHA v. STATE OF WEST BENGAL - [2024] 161 taxmann.com 315 (AAAR-WEST BENGAL)**

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

- 4.2 Where M/s. Vedanta awarded engineering, procurement and construction contract (EPC contract) to assessee for provision of service for development of integrated gas surface facilities for rageshwari deep gas field, entire scope of activities to be carried out by assessee relates to construction of all facilities which has been proposed for enhancement of production, SAC heading no 9954 of scheme of classification cover overall construction services with general construction of mines and industrial plants, therefore AAR ruling was upheld that construction services proposed to be supplied by assessee for creating gas extraction facility are appropriately classifiable under SAC Heading No. 9954 and attract tax at rate 18 percent - **Petrofac International UAE LLC, In re - [2024] 161 taxmann.com 514 (AAAR-RAJASTHAN)**
- 4.3 Where appellant, being a fair price shop as defined under Notification No 2565/FS/FS/Sectt/Sup/4M-16-2014 issued by government is providing services to state government, Sl No. 11B of notification No. 12/2017 -Central Tax (Rate) is applicable for appellant and appellant is entitled for benefit extended by said notification was and since tax liability of appellant while providing service to State government is 'NIL' question of charging GST from state government becomes inapplicable - **CHANCHAI SAHA v. STATE OF WEST BENGAL - [2024] 161 taxmann.com 315 (AAAR-WEST BENGAL)**

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

- 4.4 Appeal filed by assessee against AAR order is to be dismissed on ground of limitation there has been a delay of 920 days from last date of filing appeal under section 100(2) and as per section 100 appellate authority is not empowered to condone said delay in filing - **Arun Cooling Home, In re - [2024] 161 taxmann.com 53 (AAAR - TAMILNADU)**

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

- 4.5 Where assessee, a subsidiary of Haworth, Inc., seeks to conduct import and resale transactions from a Free Trade Warehousing Zone (FTWZ) for operational efficiency, AAR failed to adequately consider Haworth's arguments regarding FTWZ's classification as a customs bonded warehouse, therefore ruling passed by AAR was to be set aside and matter was remanded back - **Haworth India (P.) Ltd., In re - [2024] 161 taxmann.com 90 (AAAR - TAMILNADU)**
- 4.6 Where a test report of South India Textile Research Association, is now available in respect of a sample of appellant and other documents like consent letter, process explanation, etc., have also been adduced by appellant which were not available before AAR earlier, therefore, for interests of justice, matter is remanded back to Authority for advance ruling - **Mannaraj Common Effluent Treatment Plant (P.) Ltd., In re - [2024] 161 taxmann.com 26 (AAAR - TAMILNADU)**

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

- 5.1** Stadiometer and Infantometer described as diagnostic instruments are covered under heading no 90189019 and are liable to GST at rate 12 percent - **Bhawna Khandelwal (SRK Modular Furniture Co.), In re - [2024] 161 taxmann.com 197 (AAR- RAJASTHAN)**
- 5.2** Where applicant leased a property to Back Office IT Solutions Private Limited(lessee) for commercial use, said demised premises will not be covered under definition of residential dwelling and therefore said supply of service i.e. renting property for commercial use is covered under Heading no 997212 and taxable at rate of 18 per cent - **Deepak Jain, In re - [2024] 161 taxmann.com 317 (AAR- RAJASTHAN)**
- 5.3** Where services other than service by way of transmission or distribution of electricity by an electricity transmission or distribution utility are taxable ,therefore, application fee, meter rent, testing fee and service/line structures and equipment shifting charge are taxable based on CBIC Board's Circular No.34/8/2018-GST, dated 01.03.2018 - **Tamil Nadu Generation & Distribution Corporation Ltd., In re - [2024] 160 taxmann.com 768 (AAR - TAMILNADU)**
- 5.4** Where services provided by applicant are not naturally bundled with principal supply i.e. transmission/distribution of electricity, therefore, above services are not composite supply and thereby charges for above services will be taxed at appropriate prevailing rate, i.e. 18% GST as per Notification 11/2017-CT(Rate) dated 28.06.2017 - **Tamil Nadu Generation & Distribution Corporation Ltd., In re - [2024] 160 taxmann.com 768 (AAR - TAMILNADU)**
- 5.5** Where applicant runs canteen on his own account as provider of canteen service to employees, which is a composite supply and is a supply of service, therefore, amount charged on employees by applicant is to be treated as consideration for such supply of canteen service and GST is liable to be discharged by applicant - **Faiveley Transport Rail Technologics India (P.) Ltd., In re - [2024] 161 taxmann.com 531 (AAR - TAMILNADU)**
- 5.6** Where nominal amount recovered from employees forms part of total cost reimbursed to transportation service providers, no consideration actually accrues to applicant, therefore, no supply of service by applicant is present involving transportation facility extended to employees through a third party, and therefore, GST is not liable to be discharged on such cases - **Faiveley Transport Rail Technologics India (P.) Ltd., In re - [2024] 161 taxmann.com 531 (AAR - TAMILNADU)**

5.7 Where nominal amount recovered from employees forms part of total cost reimbursed to transportation service providers and no consideration actually accrues to applicant, therefore, no supply of service by applicant is present involving transportation facility extended to employees through a third party; GST is not liable to be discharged on such cases - **Faiveley Transport Rail Technologics India (P.) Ltd., In re - [2024] 161 taxmann.com 531 (AAR - TAMILNADU)**

5.8 Where lease premium is recovered from salary of employees concerned, amount recovered do not qualify as a 'perquisite' by any means, therefore, GST is applicable on facility of car extended to employees of applicant, even if it is in course of employment - **Faiveley Transport Rail Technologics India (P.) Ltd., In re - [2024] 161 taxmann.com 531 (AAR - TAMILNADU)**

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

- 5.9** Benefit of notification could not be availed by assessee as it had not registered with Directorate General of Training, Ministry of Skill Development and Entrepreneurship - **Additional Skill Acquisition Programe Kerala, In re - [2024] 160 taxmann.com 767 (AAR - KERALA)**
- 5.10** Where nature of works to be designed and executed by applicant is civil and electromechanical works for pumping stations and reservoirs, further, such service falls under works contract service, therefore, it can't be a pure service and it is not covered under any of entry in Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended - **KBL SPML (P.) Ltd., In re - [2024] 161 taxmann.com 552 (AAR - KARNATAKA)**
- 5.11** Where security services provided by applicant is not entrusted to a Panchayat under Article 243G or to a Municipality under Article 243W, therefore, applicant is not entitled to avail exemption in term of Serial No. 3 of Notification No.12/2017-CT(Rate) dated 28-6-2017 - **Mpower Saksham Skills, In re - [2024] 161 taxmann.com 482 (AAR- RAJASTHAN)**
- 5.12** Where applicant is supplying services of of manpower with machine and Anti-termite treatment with goods, hence, aforesaid services can be termed as composite supply but not pure services, therefore, applicant is not entitled to avail exemption in terms of Serial No. 3 of Notification No.12/2017-CT(Rate) dated 28-6-2017 - **Mpower Saksham Skills, In re - [2024] 161 taxmann.com 482 (AAR- RAJASTHAN)**
- 5.13** Where charges collected for belated payment surcharge, dishonoured cheque service charge and Network/wheeling charges rendered by applicant are directly or closely related to transmission or distribution of electricity, therefore, these charges will be completely exempted as per Notification No.12/2017-CT(Rate), dated 28.06.2017 - **Tamil Nadu Generation & Distribution Corporation Ltd., In re - [2024] 160 taxmann.com 768 (AAR - TAMILNADU)**

5.14 Where charges collected for services rendered by applicant are only ancillary services, akin to one included in Board's No.34/8/2018-GST dated 01.03.2018 and thereby taxable, therefore, above services will be taxed at appropriate prevailing rate, i.e. 18% as per Notification 11/2017-CT(Rate) dated 28.06.2017 - **Tamil Nadu Generation & Distribution Corporation Ltd., In re - [2024] 160 taxmann.com 768 (AAR - TAMILNADU)**

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

5.15 Where section 46 of Factories Act, 1948 states that when more than 250 employees are ordinarily employed, employer is mandatorily required to provide canteen facility to employees, therefore, GST charged on inward supplies received, if any, in relation to provision of food to employees by applicant is admissible as ITC to them, provided number of direct employees in establishment is more than 250 - **Faiveley Transport Rail Technologics India (P.) Ltd., In re - [2024] 161 taxmann.com 531 (AAR - TAMILNADU)**

5.16 Where applicant claim that providing medical facility is part of service contract and applicant has not adduced any details or documentary evidence in support of same, therefore, no further discussions could be made in this regard - **Faiveley Transport Rail Technologics India (P.) Ltd., In re - [2024] 161 taxmann.com 531 (AAR - TAMILNADU)**

5.17 Where it is observed that gardening and maintenance of green belt in and around unit's premises is an activity in course or furtherance of business that is mandatorily required to be carried out by applicant, therefore, ITC is available on input services received by applicant in relation to gardening activities carried out within factory premises - **Faiveley Transport Rail Technologics India (P.) Ltd., In re - [2024] 161 taxmann.com 531 (AAR - TAMILNADU)**

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

5.18 Where applicant is seeking advance ruling regarding a concluded supply, therefore, instant application is beyond jurisdiction of authority for advance ruling; application is liable for rejection. - **KBL SPML (P.) Ltd., In re - [2024] 161 taxmann.com 552 (AAR - KARNATAKA)**

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1 SEBI launches 'SCORES 2.0', a new version of the SEBI Complaint Redressal System - **PR No. 06/2024, Dated 01-04-2024**

Editorial Note : SEBI with an objective to make redressal process more efficient has introduced SCORES 2.0, a new version of SEBI Complaint Redress System. It would lead to auto-routing and auto-escalation, monitoring by 'Designated Bodies and reduction of timelines. Investors can lodge complaints only through the new version from 01.04.2024. In the old SCORES, investors would not be able to lodge new complaints. However, they can check the status of their complaints already lodged and pending in old SCORES.

- 1.2 SEBI obtains ISO/IEC 27001:2022 Certification for its Information Security Management Systems - **PR No. 07/2024, Dated 04-04-2024**

Editorial Note : SEBI has successfully obtained the ISO/IEC 27001:2022 certification for Information Security Management System at the primary data centre, Security Operations Control (SOC) and Network Operations Control (NOC) and Information Security Management System at the disaster recovery site. This certification underscores SEBI's commitment to continuous improvement and enhancement of its systems and controls to achieve confidentiality, integrity, and availability (CIA) of data and operations.

- 1.3 Govt. appoints Shri Dheeraj Bhatnagar as 'Technical Member' of the Securities Appellate Tribunal - **Notification No. S.O. 1620(E), Dated 04-04-2024**

Editorial Note : The Central Government has appointed Shri Dheeraj Bhatnagar, Retd. Principal Chief Commissioner of Income Tax, Delhi as Technical Member of the Securities Appellate Tribunal (SAT) for a period of four years. This appointment is effective from the date of assumption of charge or till he attains the age of sixty-seven years, or until further orders, whichever is the earlier.

- 1.4 Govt. appoints Justice (Retd.) Sh. P.S. Dinesh Kumar as 'Presiding Officer' of the Securities Appellate Tribunal - **Notification No. S.O. 1621(E); Dated 04-04-2024**

Editorial Note : The Central Government has appointed Justice (Retd.) Sh. P.S. Dinesh Kumar, Former Chief Justice, High Court of Karnataka as Presiding Officer of the Securities Appellate Tribunal (SAT) for a period of four years. This appointment is effective from the date of assumption of charge or till he attains the age of seventy years, or until further orders, whichever is the earlier.

- 1.5 SEBI proposes direct reporting of changes in terms of 'Private Placement Memorandum of AIFs' - **Circular No. SEBI/HO/AFD/PoD/CIR/2024, Dated 05-04-2024**

Editorial Note : As per Master Circular dated July 31, 2023 for AIFs, an intimation regarding any change in terms of a Private Placement Memorandum (PPM) is required to be submitted to SEBI through a merchant banker, along with a due diligence certificate from merchant banker in a format specified by SEBI. The SEBI has now proposed the direct reporting of changes in terms of PPM of AIFs and may not be required to be submitted via merchant banker. The comments / suggestions must be submitted by 26.04.2024.

- 1.6 SEBI allows reporting entities to use e-KYC Aadhaar Authentication services of UIDAI in Securities Market as 'sub-KUA' - **Circular No. SEBI / HO / MIRSD / SEC FATF / P / CIR/2024/21, Dated 05-04-2024**

Editorial Note : Earlier, MoF vide notification dated Feb 20, 2024 allowed 24 reporting entities to perform aadhaar authentication services under the Aadhaar Act, 2016. These entities are now allowed to perform authentication services of UIDAI in the securities market as sub-KUA. The KUAs shall facilitate the onboarding of these entities as sub-KUAs to provide the services of Aadhaar authentication with respect to KYC.

- 1.7 SEBI introduces a standard reporting format of 'Private Placement Memorandum audit report' for AIFs - **Circular No. SEBI/HO/AFD/SEC-1/P/CIR/2024/22, Dated 18-04-2024**

Editorial Note : SEBI has introduced a standard reporting format for alternative investment funds (AIF) in the Private Placement Memorandum (PPM) audit report. This is to ensure uniform compliance standards and facilitate ease of compliance. The reporting format has been prepared in consultation with the pilot Standard Setting Forum for AIFs (SFA). It shall be hosted on the websites of the AIF Associations which are part of SFA within 2 working days of issuance of this circular.

- 1.8 SEBI extends cross-margin benefits for index and stock futures in offsetting positions with different expiry dates - **Circular No. SEBI/HO/MRD/TPD-1/P/CIR/2024/24, Dated 23-04-2024**

Editorial Note : SEBI has extended cross-margin benefits on offsetting positions having different expiry dates subject to certain conditions. A spread margin of 40% would be levied in case of offsetting positions in correlated indices having different expiry dates. A spread margin of 30% would continue to be levied in case of the same expiry date (i.e. the existing requirement). Presently, cross-margin benefits are provided if both the correlated indices or an index and its constituents have the same expiry date

- 1.9** SEBI relaxes the requirement of publishing 'fit and proper' text on contract notes to enhance ease of doing business - **Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/25, Dated 24-04-2024**

Editorial Note : SEBI received representations from market participants via Industry Standards Forum (ISF) to relax the requirement under Chapter 6 at Para 2.4.2.2.2 of the Master Circular dated 16.10.2023, of publishing text related to 'fit and proper' on contract notes. SEBI has now waived the requirement of publishing 'fit and proper' text on contract notes as a step to enhance ease of doing business. Only a reference to applicable regulation about 'fit and proper' must be made part of contract note.

- 1.10** SEBI amends Alternative Investment Funds Regulations, 2012; introduces a new regulation w.r.t 'dissolution period' - **Notification No. SEBI/LAD-NRO/GN/2024/168, Dated 25-04-2024**

Editorial Note : SEBI has notified the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2024. As per the amended norms, a new regulation 29B relating to the dissolution period has been inserted. It states that a scheme of an Alternative Investment Fund may enter into a dissolution period in the manner and subject to the conditions specified by the Board. Further, SEBI has introduced definitions of 'dissolution period' and 'encumbrance' under Regulation 2 of existing regulations.

- 1.11** SEBI allows AIFs to create encumbrances on their equity holdings in investee companies engaged in infra sector - **Circular No. SEBI/HO/AFD/PoD1/CIR/2024/027, Dated 26-04-2024**

Editorial Note : SEBI has allowed Category I and Category II AIFs to create encumbrances on their holdings of equity in investee companies, engaged 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 Central Government. This move aims to provide ease of doing business and flexibility to Category I and II AIFs to create encumbrances to facilitate debt raising by such investee companies.

- 1.12** SEBI allows recognised stock exchanges to carry out administration and supervision over specified intermediaries - **Notification No. SEBI/LAD-NRO/GN/2024/171, Dated 26-04-2024**

Editorial Note : SEBI has notified the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2024. A new regulation 38A has been inserted to the existing regulations. This regulation states that the activities of administration and supervision over specified intermediaries may be carried out by a recognised stock exchange with the approval of the Board on such terms and conditions as may be specified.

- 1.13** Investment Advisers/Research analysts applying for registration shall be listed with a recognised body corporate - **Notification No. SEBI/LAD-NRO/GN/2024/169 & 170, Dated 26-04-2024**

Editorial Note : SEBI has amended the Research Analysts and Investment Advisers Regulations. As per the amended norms, SEBI may recognize a body or body corporate for administration and supervision of research analysts and investment advisers on such terms and conditions as may be specified by SEBI. Further, registration with this body corporate will be required as one of the qualifications for obtaining a registration certificate for Investment Advisers and Research Analysts.

- 1.14** SEBI allows one-time flexibility to AIF schemes whose liquidation period expired to deal with unliquidated investments - **Circular No. SEBI/HO/AFD/PoD-1/P/CIR/2024/026, Dated 26-04-2024**

Editorial Note : Earlier, SEBI notified SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2024, to provide flexibility to AIFs and investors to deal with unliquidated investments of their schemes. SEBI has now allowed one-time flexibility to AIF schemes whose liquidation period has expired to deal with unliquidated investments. Thus, AIF schemes, whose liquidation period has expired or shall expire on or before July 24, 2024 shall be granted a fresh liquidation period till April 24, 2025.

2. SUPREME COURT

REGULATION 3 OF THE SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 - PROHIBITION ON DEALING, COMMUNICATING OR COUNSELLING ON MATTERS RELATING TO INSIDER TRADING

2.1 Where SEBI alleged that appellant being Chief Executive Officer of 'NDTV' while in possession of unpublished price sensitive information (PSI) traded in scrip of company, and thus, directed appellant to disgorge amount of unlawful gains, but, SAT remanded matter to WTM to decide issue afresh and after order of SAT, a notice was issued to appellant requiring him to file written submission before WTM which he had complied with, however, no hearing had taken place before WTM, in facts and circumstances, delay by appellant in filing appeal against order of remand by SAT was to be condoned - **Vikramaditya Chandra v. Securities and Exchange Board of India** - [2024] 161 taxmann.com 259 (SC)

2.2 Where SEBI alleged that appellant being Chief Executive Officer of 'NDTV' while in possession of unpublished price sensitive information (PSI) traded in scrip of company, and thus, directed appellant to disgorge amount of unlawful gains, but, SAT remanded matter to WTM to decide issue afresh and after order of SAT, a notice was issued to appellant requiring him to file written submission before WTM which he had complied with, however, no hearing had taken place before WTM, in facts and circumstances, delay by appellant in filing appeal against order of remand by SAT was to be condoned - **Vikramaditya Chandra v. Securities and Exchange Board of India** - [2024] 161 taxmann.com 259 (SC)

SECTION 14 OF THE COMPANIES ACT, 2013 - ARTICLES - ALTERATION OF

2.3 Where respondent company increased its share capital to Rs.600 crores and paid a stamp duty of Rs.1.12 crores and subsequently, appellant-State Legislature introduced maximum stamp duty of Rs. 25 lakhs payable on Articles of Association by a company, respondent was not liable to pay stamp duty on further increase in share capital to Rs.1200 crores, since instrument ie. Article of Association was same, duty already paid on same very instrument would have to be considered, and thus, order of High Court by which it directed appellant to refund stamp duty paid on subsequent increase in share capital was to be upheld - **State of Maharashtra v. National Organic Chemical Industries Ltd.** - [2024] 161 taxmann.com 324 (SC)

SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - APPLICATION FOR SETTING ASIDE ARBITRAL AWARD

2.4 A 'finding' based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under head

of 'patent illegality'; An award without reasons would suffer from patent illegality and arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice - **Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express (P.) Ltd.** - [2024] 161 taxmann.com 618 (SC)

SECTION 132 OF THE COMPANIES ACT, 2013 - NATIONAL FINANCIAL REPORTING AUTHORITY - CONSTITUTION OF

2.5 Where NFRA imposed minimal permissible penalty on DHFL, a housing finance company, who was involved in financial fraud and, barred auditors from practicing for a period of one year, order of NCLAT holding that penalty imposed by NFRA could not be considered excessive and mere filing of appeal with 10 per cent deposit of penalty, did not affect order on debarment and, thus, order passed by NCLAT was to be upheld - **CA Sam Varghese v. National Financial Reporting Authority (NFRA)** - [2024] 161 taxmann.com 246 (SC)

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

2.6 Where a company whose name was struck from register of companies was in existence and even operative during relevant time, name of company was to be restored in Register of Companies as maintained by RoC - **R. P. Casting (P.) Ltd. v. Registrar of Companies, NCT of Delhi & Har.** - [2024] 161 taxmann.com 162 (SC)

3. NCLAT

SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT

3.1 Where land parcels of company were not clear and marketable (mortgaged to SBI) and admittedly properties which were not clear and marketable would fetch a lower than market value, and also, company was in urgent need of funds at that point of time, thus, there was no act of oppression and mismanagement by respondent directors of company for selling land parcels at a price lower than market price, and therefore, instant petition alleging oppression and mismanagement by respondents being devoid of any substance was to be dismissed - **Arun Kumar Kedia v. Om Shiv Shakti Iron Industries (P.) Ltd.** - [2024] 161 taxmann.com 461 (NCLT - Hyd.)

4. HIGH COURT

RULE 7 OF THE KARNATAKA LAND GRANT RULES, 1969 - POWERS OF REVENUE OFFICERS TO GRANT LANDS

- 4.1 Where grant of a land was ordered in favour of appellant and while determination of consideration to be paid for said land, Single Judge relegated appellant to Assistant Commissioner to pursue a remedy as appellant was to be charged at revised rates as per Amendment in 2023 in said Rules, since, a mistaken version of said amendment was published by a publication company adding word 'substitution', Notification issued for said amendment did not carried same and, thus, appellant was liable to pay charges as per pre-amendment Rules of 2023 - **Fr. Valerian Fernandes v. State of Karnataka - [2024] 161 taxmann.com 113 (Karnataka)**

SECTION 11B OF THE SECURITIES & EXCHANGE BOARD OF INDIA ACT, 1992 - POWER TO ISSUE DIRECTIONS AND LEVY PENALTY

- 4.2 Where petitioner had approached High Court challenging order passed by Addl. Session Judge rejecting his petition under section 203 Cr.P.C. on ground that he was not proposed as accused in complaint filed by respondent-SEBI, in view of fact that earlier also petitioner had approached Writ Court by filing an application seeking similar relief and said application was dismissed as withdrawn and nothing had changed since dismissal, petitioner could not be permitted to reassert or reiterate same grounds seeking identical reliefs and, therefore, instant petition was to be dismissed - **Subhash Nagpal v. Securities & Exchange Board of India - [2024] 160 taxmann.com 677 (Delhi)**

SECTION 271 OF THE COMPANIES ACT, 2013 - WINDING UP BY TRIBUNAL

- 4.3 A company is not liable to be wound up under section 433(e) in respect of debts that are disputed - **Rahul Kulshreshtha v. Triveni Media Ltd. - [2024] 161 taxmann.com 281 (Delhi)**
- 4.4 Where appellant, shareholder in company had filed winding up petition alleging that respondent-directors have sold valuable land and building of company at a throw away price and that too without calling for meeting of shareholders, in view of fact that no material had been placed by respondents to extent that requisite provisions have been complied while selling movable and immovable properties of company and in support of sending notices to shareholders of holding meeting, Single Judge had committed error in rejecting petition, and same was to be restored on file of Single Judge to decide petition afresh - **Sanjay Suchanti v. Anurag Cinema (P.) Ltd. - [2024] 160 taxmann.com 754 (Patna)**

5. SEBI

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

- 5.1 SEBI bars YouTuber from the share market and impounds Rs. 12 Cr made by his private Co. from unregistered investment advisory activities - **Ravindra Bharti Education Institute (P.) Ltd., In re - [2024] 161 taxmann.com 280 (SEBI)**

COMPETITION LAW

1. STATUTORY UPDATES

- 1.1 CCI Invites Proposal for Launching Market Study on 'Artificial Intelligence and Competition' in India - **Press Release, Dated 22-04-2024**

Editorial Note : The CCI has invited proposals for launching market study on 'Artificial Intelligence and Competition' in India. The proposed study will be a knowledge building exercise to develop an in-depth understanding of the emerging competition dynamics in development ecosystems of AI systems and implications of AI applications in key user industries. The objective is to examine the emerging competition issues in these markets/ecosystems. The last date for submission of proposals is 03.06.2024.

2. CCI

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

- 2.1 Where informant filed information alleging collusion amongst medical equipment companies i.e. OPs in relation to tender issued by Government Medical College, Haldwani for supply of minikins and simulators and in support of allegations, informant had furnished certain documents, however, said documents did not substantiate allegations made by informant, and thus, no case of contravention of provisions of sections 3 was made out and matter was to be closed forthwith under Section 26(2) - **Manohar Rawat v. Laerdal Medical (P.) Ltd. - [2024] 160 taxmann.com 386 (CCI)**

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

- 2.2 Where OP issued circular which allegedly directed its accredited CABs operating as sole proprietors to align with any of following forms of entity, i.e., One Person Company, Limited Liability Partnership, Company, Society/Trust, and Government and according to informant said circular was discriminatory, in view of fact that same circular was challenged in a case Prem Prakash v. National Accreditation Board for Testing and Calibration Laboratories [2023] 155 taxmann.com 73 (CCI), wherein CCI, had held that there was no reason to intervene with impugned circular, as same was mandating a structure which a laboratory had to follow if it wished to seek accreditation services from NABL, accordingly, there was no reason for CCI to re-examine contents of impugned circular from competition perspective in instant matter - **Association of Indian Laboratories ('AOIL') v. National Accreditation Board for Testing and Calibration**

Laboratories ('NABL') - [2024] 161 taxmann.com 523 (CCI)

- 2.3 Where informant, allottee of residential complex developed by OP was aggrieved with having to accept catering and housekeeping services of OP, by virtue of conditions imposed in agreement for sale as well as service agreement entered into by him with OP, and thus, filed information alleging contravention of sections 3 and 4, in view of fact that other than OP, there were many other real estate developers in a relevant market i.e. Bangalore Metropolitan Region, which pose competitive constraints to OP, thus, OP did not enjoy dominant position and thus, information was ordered to be closed - **Buchi Ramarao Valury v. Covai Property Centre (India) (P.) Ltd. - [2024] 161 taxmann.com 560 (CCI)**

SECTION 19 OF THE COMPETITION ACT, 2002 - INQUIRY INTO CERTAIN AGREEMENTS AND DOMINANT POSITION OF ENTERPRISES

- 2.4 Disciplinary proceedings initiated by OP against informant in capacity of his being Joint Secretary of OP and organizing an allegedly unauthorized inter-taluk chess tournament, which was not in accordance with regulations issued by OP did not raise any competition concern under provisions of 2002 Act, and therefore, no case of contravention of provisions of act warranting an investigation into matter was made out and thus, matter was to be closed forthwith under section 26(2) - **Prem Kumar G v. Mrs. T. Karpagavalli - [2024] 161 taxmann.com 617 (CCI)**

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 RBI excludes 'Kapol Co-operative Bank Limited' from the Second Schedule of the RBI Act, 1934 - **Notification No. DoR.REG/LIC.No.S6720/07.12.000/2023-24, Dated 22-02-2024**

Editorial Note : The RBI has directed the exclusion of 'Kapol Co-operative Bank Limited' from the second schedule of the RBI Act, 1934. This is in the exercise of the powers conferred under section 42 of the RBI Act, 1934. Accordingly, the bank will not be covered under the list of Scheduled Banks.

- 1.2 RBI notifies master circular consolidating important instructions on Conduct of Government Business by Agency Banks - **Circular No. RBI/2024-25/07 CO.DGBA.GBD.No.S2/31-12-010/2024-2025, Dated 01-04-2024**

Editorial Note : The RBI has now revised and updated the Master Circular which consolidates important instructions on Conduct of Government Business by Agency Banks - Payment of Agency Commission. Circular prescribes the government transactions eligible and ineligible for agency commission, Reporting of transactions by agency banks to RBI, and Rates for agency commission. Further, Agency banks will be liable to pay penal interest at Bank Rate plus 2% for any wrong claims of agency commission settled.

- 1.3 RBI issues updated Master Direction on 'Counterfeit Notes, 2024 – Detection, Reporting and Monitoring' - **Master Direction NO. RBI/DCM/2024-25/115 DCM (FNVD)/G4/16.01.05/2024-25, Dated 01-04-2024**

Editorial Note : RBI has issued an updated master direction on 'Counterfeit Notes, 2024 – Detection, Reporting and Monitoring'. The master direction consolidates all existing guidelines/instructions/directives issued to banks from time to time. Each bank must designate a Nodal Bank Office, district-wise to serve as the contact point for all Counterfeit Note detection-related activities and notify same to RBI. Further, banks must also monitor patterns of such detection and bring to notice of RBI immediately.

- 1.4 RBI notifies Master Circular on Basel III Capital Regulations consolidating earlier issued guidelines - **Circular No. RBI/2024-25/08DOR.CAP.REC.4/21.06.201/2024-25, Dated 01-04-2024**

Editorial Note : The Reserve Bank of India has issued a mater circular on Basel III Capital Regulations consolidating therein the prudential guidelines on Basel III capital adequacy issued to banks till that date. The bank shall comply with the capital adequacy ratio

requirements at two levels i.e., the consolidated level capital adequacy ratio requirements and standalone level capital adequacy ratio requirements. Further, RBI has also prescribed capital adequacies at solo and group level.

- 1.5 RBI issues Master Direction on 'Penal provisions in reporting of transactions/balances at Currency Chests' - **Master Direction No. RBI/DCM/2024-25/114 DCM (CC) No.G-2/03.35.01/2024-25, Dated 01-04-2024**

Editorial Note : The RBI has issued a master direction on 'Penal provisions in reporting of transactions/balances at Currency Chests'. The objective is to ensure timely and accurate reporting of currency chest transactions. The minimum deposit/withdrawal amount from currency chests shall be Rs.1,00,000, and then in multiples of Rs.50,000. Further, RBI provides detailed guidelines covering reporting procedures, the time limit for reporting and operational guidelines on the levy of penalties.

- 1.6 RBI issues Master Circular on 'Board of Directors of Urban Cooperative Banks' - **Master Circular No. RBI/2024-25/01 DoR.HGG.GOV. No. 1/02.01.001/2024-25; Dated 01-04-2024**

Editorial Note : RBI has issued Master Circular on 'Board of Directors - UCBs', consolidating all existing guidelines/instructions issued till date. The master circular discusses Constitution of BODs of Urban Cooperative Banks (UCBs), the role of directors, board committees, and matters to be placed before the BODs. Further, it discusses norms related to donations to trusts and institutions where directors or their relatives hold positions or are interested and payment of fees and allowances to directors.

- 1.7 RBI issues Master Direction on 'Framework of incentives for Currency Distribution & Exchange Scheme for bank branches - **Master Direction No. RBI/DCM/2024-25/113 DCM (CC) No. G-3/03.41.01/2024-25, Dated 01-04-2024**

Editorial Note : RBI has issued master direction on the "Framework of incentives for Currency Distribution & Exchange Scheme for bank branches including currency chests' (CCs). The framework has been formulated to encourage all bank branches to provide better customer service to the public, keeping in view the objectives of the Clean Note Policy. The nature of services includes opening and maintaining CCs at centres having a population of less than Rs 1 lakh in underbanked states and distribution of coins

- 1.8 RBI notifies Master Circular on 'Prudential Norms on Capital Adequacy – Primary (Urban) Cooperative Banks - **Circular No. RBI/2024-25/09 DOR.CAP.REC.5/09.18.201/2024-25, Dated 01-04-2024**

Editorial Note : RBI has issued a master circular on 'Prudential Norms on Capital Adequacy – Primary (Urban) Cooperative Banks (UCBs). This circular consolidates and updates all instructions/guidelines issued to banks up to 31.03.2024. Tier 1 UCBs operating in a single district must have a minimum net worth of Rs 2 crore and all other UCBs (of all tiers) must maintain a min. net worth of Rs 5 crore. Further, UCBs that do not meet the minimum net worth requirement must achieve the same in a phased manner.

- 1.9 RBI Notifies Revised Master Circular Consolidating Instructions on 'Disbursement of Govt. Pension by Agency Banks' - **Circular No. RBI/2024-25/06 DGBA.GBD.no.s1/31.02.007/2024-25**

Editorial Note : RBI has now revised and updated the Master Circular, consolidating important instructions on subject of 'Disbursement of Government Pension by Agency Banks'. The Circular highlights the prompt implementation of the Government's instructions by agency banks, the timing of pension disbursement, and the process for refunding excess pension payment to the Government. Further, it discusses norms w.r.t the withdrawal of pension by old/sick/disabled pensioners and reimbursement of pension payments

- 1.10 RBI issues updated Master Circular on 'SHG-Bank Linkage Programme' - **Master Circular No. RBI/2024-25/05 FIDD.CO.FID.BC.No.1/12.01.033/2024-25, Dated 01-04-2024**

Editorial Note : RBI has issued the updated Master Circular on the 'SHG-Bank Linkage Programme', incorporating all the existing guidelines/instructions to banks from time to time. The Self-Help Groups (SHGs), whether registered or unregistered engaged in promoting savings habits among their members are eligible to open savings bank accounts with banks. Further, bank lending to SHGs should be included in the branch credit plan, block credit plan, district credit plan and state credit plan of each bank.

- 1.11 RBI issues scheme of penalties for bank branches & Currency Chests for deficiency in rendering customer service - **Circular No. RBI/DCM/2024-25/112 DCM(CC) No.G-1/03.44.01/2024-25, Dated 01-04-2024**

Editorial Note : The RBI has issued a circular maintaining the quality of customer service in the banking industry through its Scheme of Penalties for bank branches and Currency Chests. This scheme is designed to promote efficient customer service, uphold operational guidelines, and enforce compliance with the Clean Note Policy. The penalty will be levied for Shortages of notes in soiled note remittances and shortages of notes and coins in currency chest balances.

- 1.12 RBI issues revised master circular on 'Housing Finance for Urban Cooperative Banks' - **Circular No. RBI/2024-25/10 DOR.CRE.REC.No.6/07.10.002/2024-25, Dated 02-04-2024**

Editorial Note : The RBI has revised master circular on 'Housing Finance for Urban Cooperative Banks'. This circular consolidates all instructions on this subject up to 31.03.2024. It specifies norms w.r.t eligible category of borrowers, eligibility for housing finance, terms & conditions for housing loans, maximum loan amount and margin and period of loan. Further, it discusses norms relating to advances to builders/contractors, aggregate limit for housing finance and housing loans under priority sector.

- 1.13 RBI issues revised master circular on 'Income Recognition, Asset Classification, Provisioning' to commercial banks - **Master Circular No. RBI/2024-25/12 DOR.STR.REC.8 /21.04.048/2024-25, Dated 02-04-2024**

Editorial Note : RBI has issued the revised Master Circular on 'Income Recognition, Asset Classification and Provisioning on Advances' to all commercial banks (excluding RRBs). This circular consolidates all the instructions issued to banks up to 31.03.2024. The circular highlights norms w.r.t income recognition policy, computation of NPA levels and guidelines for classification of assets. Further, it prescribes a framework for resolution of stressed assets and early identification & reporting of stress.

- 1.14 RBI notifies revised master circular on 'Income Recognition, Asset Classification, Provisioning – UCBs' - **Master Circular No. RBI/2024-25/13 DOR.STR.REC.9 /21.04.048/2024-25, Dated 02-04-2024**

Editorial Note : RBI has revised and updated the Master Circular on 'Income Recognition, Asset Classification, Provisioning and Other Related Matters – UCBs', consolidating all the instructions issued up to 31.03.2024. The circular highlights norms w.r.t classification of assets as non-performing, treatment of accounts as NPAs, housing loans to staff, and NPA Reporting to RBI. Further, it specifies guidelines for the classification of assets and an internal system for the classification of assets as NPAs.

- 1.15 RBI notifies revised master circular on 'Housing Finance for Scheduled Commercial Banks (excluding RRBs)' - **Circular No. RBI/2024-25/11 DOR.CRE.REC.No.7/08.12.001/2024-25, Dated 02-04-2024**

Editorial Note : The RBI has now revised and updated the master circular on 'Housing Finance for Scheduled Commercial Banks (excluding RRBs)'. The purpose is to consolidate the framework of rules and regulations on Housing Finance issued to banks from time to time. It specifies that banks must ensure that bank credit is used for production and construction activities and not for activities connected with speculation in real estate.

1.16 Key Highlights of RBI's Statement on Developmental and Regulatory Policies

Editorial Note : RBI vide. Press Release no. 2024-2025/43, dated April 5, 2024, has released a Statement on various developmental and regulatory policies relating to (i) Financial Markets; (ii) Regulation; (iii) Payment Systems and FinTech. Some of the key proposals include (a) allowing eligible foreign investors in IFSC to invest in 'Sovereign Green Bonds', (b) the introduction of a mobile application for the Retail Direct Scheme, and (c) permitting the linking of PPIs via third-party applications

1.17 No change in the regulatory framework for 'Exchange Traded Currency Derivatives': RBI clarifies - **Press Release No. 2024-2025/32, Dated 04-04-2024**

Editorial Note : The RBI has clarified that there is no change in the regulatory framework for 'Exchange Traded Currency Derivatives' (ETCD). Further, RBI has extended the deadline to comply with these directives from April 5, 2024 to May 3, 2024. This decision followed concerns expressed about participation in ETCD market in the light of RBI currency derivative norms. It is emphasized that the framework for ETCDs has remained consistent over the years and that there is no change in RBI's policy approach.

1.18 RBI keeps the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 % - **Press Release: 2024-2025/42, Dated 05-04-2024**

Editorial Note : The RBI's Monetary Policy Committee (MPC) at its meeting today on 05.04.2024 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 the withdrawal of accommodation to ensure that inflation progressively aligns with the target, while supporting growth.

1.19 RBI proposes to allow eligible foreign investors in IFSC to invest in 'Sovereign Green Bonds' - **Press Release: 2024-2025/43, Dated 05-04-2024**

Editorial Note : RBI has released a Statement on Developmental and Regulatory Policies. Presently, foreign portfolio investors (FPIs) registered with SEBI are permitted to invest in Sovereign Green Bonds (SGrBs) under different investment routes available for FPIs in government securities. Now, RBI has decided to allow eligible foreign investors in the International Financial Services Centre (IFSC) to also invest in such bonds. Further, a mobile app for the Retail Direct portal is to be introduced.

1.20 RBI launches new website and mobile application - **Press Release No. 2024-2025/57, Dated 05-04-2024**

Editorial Note : RBI has launched a new website and mobile application. Governor Shri Shaktikanta Das announced the release of new website and mobile application today. The new website can be accessed via the URL (<https://website.rbi.org.in>) or through QR code. Also, new mobile application can be downloaded from Play Store for Android users and App Store for iOS users. Users can also download mobile app using QR code. The existing website (<https://rbi.org.in>) will remain available simultaneously for some time.

1.21 RBI imposes a monetary penalty of Rs 1 crore on 'IDFC First Bank Limited' for non-compliance with RBI norms - **Press Release No. 2024-2025/54, Dated 05-04-2024**

Editorial Note : The RBI has imposed a monetary penalty of Rs 1 crore on 'IDFC First Bank Limited' for violating certain norms. The penalty has been imposed for non-compliance with certain directions issued by the RBI on 'Loans and Advances – Statutory and Other Restrictions'. This action is based on deficiencies in regulatory compliance and is not intended to pronounce upon the validity of any transaction or agreement entered into by the bank with its customers.

1.22 RBI imposes a monetary penalty of Rs 49.70 lakh on 'LIC Housing Finance Limited' for non-compliance with RBI norms - **Press Release No. 2024-2025/56, Dated 05-04-2024**

Editorial Note : The RBI has imposed a monetary penalty of Rs 49.70 lakh on 'LIC Housing Finance Limited' for violating certain norms. The penalty has been imposed for non-compliance with certain provisions of the Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 issued by RBI. This action is based on deficiencies in regulatory compliance and is not intended to pronounce upon the validity of any transaction or agreement entered into by the bank with its customers.

1.23 IFSCA notifies IFSCA (Payment Services) (Amendment) Regulations, 2024; broadens the definition of 'escrow service' - **Notification No. IFSCA/GN/2024/002, Dated 02-04-2024**

Editorial Note : IFSCA has notified IFSCA (Payment Services) (Amendment) Regulations, 2024. An amendment has been made to regulation 2(1)(l). The definition of 'escrow service' has been broadened. The term 'escrow service' means service provided by a payment service provider under an agreement, whereby money is held by such payment service provider in an escrow account with an IFSC Banking Unit or IFSC Banking Company for and on behalf of one or more parties that are in process of completing a transaction.

- 1.24** RBI allows resident entities to hedge their exposures to Gold Price Risk using OTC derivatives in IFSCs - **Circular No. RBI/2024-25/17 A. P. (DIR Series) Circular No. 01, Dated 15-04-2024**

Editorial Note : Earlier, resident entities were permitted to hedge their exposure to the price risk of gold on exchanges in the IFSC recognised by the IFSCA. To provide flexibility to resident entities for hedging their gold price risk exposures, RBI has now decided to permit resident entities to hedge these exposures using OTC derivatives in IFSC, in addition to derivatives traded on exchanges in IFSC. This is subject to certain stipulations set out in master directions on 'Hedging of Commodity Price Risk'.

- 1.25** RBI allows banks to submit statutory returns on 'unclaimed deposits' via CIMS Portal - **Circular No. RBI/2024-25/16 DoR.RET.REC.12/12.01.001/2024-25, Dated 15-04-2024**

Editorial Note : As per RBI (CRR and SLR) Directions, 2021, banks submit statutory returns (i.e. Form A, Form VIII and Form IX on unclaimed deposits) in an electronic form on the XBRL Portal. With the launch of the Centralized Information Management System (CIMS), the RBI has decided to shift the submission of statutory returns from the XBRL Portal to the CIMS Portal. Further, banks must continue to submit Form A and Form VIII on both XBRL and CIMS portals concurrently.

- 1.26** RBI decides to harmonise instructions on Key Facts Statement and disclosure of Annual Percentage Rate - **Circular No. RBI/2024-25/18 DOR.STR.REC.13/13.03.00/2024-25, Dated 15-04-2024**

Editorial Note : Earlier, the RBI has issued instructions on Key Facts Statement (KFS) and disclosure of Annual Percentage Rate (APR). Now, RBI has decided to harmonize the instructions on the subject. The harmonised instructions shall be applicable in cases of all retail and MSME term loan products extended by all regulated entities (REs). REs shall provide a KFS to all prospective borrowers to help them take an informed view before executing the loan contract, as per the prescribed format.

- 1.27** Govt. authorises Chennai DRAT Chairperson to discharge Mumbai DRAT functions for ' Juana Sanjeev Uppal' case - **Order No. S.O. 1710(E), Dated 12-04-2024**

Editorial Note : The Central Government has now authorised the Chairperson of Debts Recovery Appellate Tribunal, Chennai to discharge also the functions of the Chairperson of the Debts Recovery Appellate Tribunal, Mumbai for deciding appeals in the matter of 'Juana Sanjeev Uppal vs. Indus Mechanical Engg. Co. Pvt Ltd. and Urmila & Co. Ltd. in the matter between Union Bank of India vs Indus Mechanical Engg. Co. Pvt. Ltd. & Anr. in addition to his being the Chairperson of Debts Recovery Appellate Tribunal, Chennai

- 1.28** RBI issues master circular on 'credit facilities to Scheduled Castes and Scheduled Tribes' - **Master Circular No. RBI/2024-25/19 FIDD.CO.GSSD.BC.No. 04/09.09.001/2024-25; Dated: 16.04.2024**

Editorial Note : RBI issued several guidelines and instructions to banks regarding credit facilities to Scheduled Castes and Scheduled Tribes. The Master Circular consolidates the circulars issued by RBI on the subject till date. The RBI has directed banks to establish closer liaison with the District Industries Centres, which have been set up in different districts for promoting self-employment. Further, at the block level, a certain weightage is to be given to SCs/STs in the planning process.

- 1.29** RBI issues updated master circular on 'Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY-NRLM)' - **Master Circular No. RBI/2024-25/20 FIDD.GSSD.CO.BC.No.03/09.01.003/2024-25; Dated 16-04-2024**

Editorial Note : Earlier, RBI issued a master circular on 'Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY-NRLM)'. The master circular consolidates and updates all instructions and guidelines on subject issued till date, thereby replacing earlier one. DAY-NRLM promotes affinity-based women Self Help Groups (SHGs). However, in cases of groups to be formed with persons with disabilities and other special categories like elders and transgenders, it may include both men and women in SHGs.

- 1.30** RBI issues draft directions on 'regulation of Payment Aggregators (PAs)' - **Press Release No. 2024-2025/116; Dated 16-04-2024**

Editorial Note : RBI has issued two draft directions on regulation of Payment Aggregators (PAs). Firstly, new directions on regulation of PAs, covering a broad range of aspects including point-of-sale (PA-O) and secondly, amendments to existing directions on PAs. RBI has proposed that non-bank providing PA services must have a minimum net worth of Rs 15 crore at the time of applying for authorisation and a minimum net worth of Rs 25 crore by 31.03.2028. The public comments on same may be sent by 31.05.2024.

- 1.31** Govt. notifies 100% FDI under automatic route for manufacturing of components, systems or sub-systems for satellites - **Notification No. S.O. 1722(E), Dated 16-04-2024**

Editorial Note : The Govt. has notified the FEM (Non-debt Instruments) (Third Amendment) Rules, 2024. An amendment has been made to Schedule I of the existing rules. As per the amendment, 100% FDI is now allowed under the automatic route for the manufacturing of components and systems/sub-systems for satellites, ground segments and user segments. Currently, FDI is permitted in the establishment and operation of satellites via the Govt. approval route.

- 1.32** State Bank of India to be the lead bank Tamulpur district of Assam: RBI - **Circular No. RBI/2024-25/22 FIDD.CO.LBS.BC.No.05/02.08.001/2024-25, Dated 18-04-2024**

Editorial Note : Earlier, the Government of Assam has notified formation of a new district, viz., Tamulpur in the state of Assam. Accordingly, it has been decided to designate State Bank of India as the lead bank of Tamulpur. District Working Code allotted to new district is 02Q.

- 1.33** RBI Issues Revised Master Circular on 'Bank Finance to Non-Banking Financial Companies (NBFCs)' - **Master Circular No. RBI/2024-25/24 Dor.cre.rec.no. 17/21.04.172/2024-25, Dated 24-04-2024**

Editorial Note : RBI has issued the revised Master Circular on 'Bank Finance to Non-Banking Financial Companies (NBFCs)'. This circular consolidates all instructions issued up to 23.04.2024. The purpose is to outline the RBI's regulatory policy regarding the financing of NBFCs by banks. This circular applies to all Scheduled Commercial Banks (excluding RRBs). It highlights norms regarding bank finance to NBFCs registered with RBI, NBFCs not requiring registration and activities not eligible for bank credit.

- 1.34** RBI advises AD Category-I banks to be more vigilant in preventing facilitation of unauthorised forex trading - **Circular No. RBI/2024-25/24 A.P. (DIR Series) Circular No.02, Dated 24-04-2024**

Editorial Note : RBI observed that entities offering forex trading facilities have taken recourse to engaging local agents who open accounts at different bank branches to collect money towards margin, investment, charges, etc. to facilitate unauthorised forex trading. In this regard, RBI has advised AD Category-I banks to be more vigilant to prevent misuse of banking channels in facilitating unauthorised forex trading. Also, banks must report the same to the Directorate of Enforcement for further action.

- 1.35** RBI allows Small Finance Banks to deal in permissible rupee interest rate derivative products - **Circular No. RBI/2024-25/23 DOR.MRG.REC.15/00.00.018/2024-25, Dated 23-04-2024**

Editorial Note : RBI has decided to permit Small Finance Banks (SFBs) to deal in permissible rupee interest rate derivative products for hedging interest rate risk. This aims to expand the avenues available to the SFBs for hedging interest rate risk in their balance sheets and commercial operations more effectively and to provide them with greater flexibility. Earlier, RBI permits SFBs to use only interest rate futures (IRFs) for the purpose of proprietary hedging. The circular is effective immediately.

- 1.36** RBI specifies norms for mode of payment and remittance of sale proceeds for equity shares of Indian cos listed on IEs - **Notification No. FEMA. 395(2)/2024-RB, Dated 19-04-2024**

Editorial Note : RBI has notified FEM (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024. A new schedule XI has been inserted to Regulation 3.1. The schedule specifies norms for mode of payment and remittance of sale proceeds for equity shares of Indian companies listed on International Exchanges (IEs). Further, an investee Indian company must report to RBI via authorised dealer bank in Form LEC (FII), purchase/subscription of equity shares by permissible holders on IEs.

- 1.37** Funds raised through listing of equity shares of Indian Cos. on IE can be kept in foreign currency a/c opened abroad - **Notification No. FEMA 10R(3)/2024-RB, Dated 19-04-2024**

Editorial Note : RBI has notified FEM (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2024. An amendment has been made to Regulation 5(F)(1). Now, funds raised via the direct listing of equity shares of Indian companies listed on International Exchanges can be held in foreign currency accounts with a bank outside India, pending utilisation or repatriation to India. Earlier, funds raised via ECBs, ADRs or GDRs could only be held in foreign currency accounts.

- 1.38** RBI issues Master Directions on 'Asset Reconstruction Companies' - **Master Direction No. RBI/DOR/2024-25/116 DoR.FIN.REC.16/26.03.001/2024-25, Dated 24-04-2024**

Editorial Note : RBI has issued master directions on Asset Reconstruction **Companies** (ARCs). These directions shall apply to every ARC registered with RBI u/s 3 of the SARFAESI Act, 2002. They outline norms regarding the registration of ARC, the requirement of having a min. net-owned fund, activities of ARCs, and guidelines on ARCs. Further, ARC must have a board-approved policy w.r.t a change in or takeover of management. These directions shall come into effect on the day they are placed on website of RBI.

- 1.39** RBI directs 'Kotak Mahindra Bank Ltd' to cease and desist from onboarding new customers and issuing fresh credit cards - **Press Release No. 2024-2025/172, Dated 24-04-2024**

Editorial Note : RBI has directed 'Kotak Mahindra Bank Ltd' to cease and desist from onboarding new customers via its online and **mobile** banking channels and issuing fresh credit cards. However, the bank can continue to provide services to its existing customers including its credit card customers. Further, RBI has decided to place certain business restrictions on bank. These restrictions are without prejudice to any other regulatory, supervisory or enforcement action that may be initiated by RBI against bank.

- 1.40** RBI alters the name of 'AB Bank Limited' to 'AB Bank PLC' in Second Schedule to RBI Act - **Circular No. RBI/2024-25/DOR.RET.REC. 18 /12.07.160/2024-25, Dated 25-04-2024**

Editorial Note : RBI vide notification dated January 25, 2024 advised that the name 'AB Bank Limited' has been changed to 'AB Bank PLC' in the second schedule to the RBI Act, 1934. This change was published in the Gazette of India on March 6, 2024.

- 1.41** Rs 10L recovery limit for DRT filings now also applies to applications between 26.09.2018 and 30.06.2019: Finance Ministry - **Notification No. S.O. 1796(E), Dated 25-04-2024**

Editorial Note : Earlier, Finance Ministry vide notification dated 11.07.2019, stated that the pecuniary limit of Rs. 10 Lakhs for filing application for recovery of debts in the Debts Recovery Tribunals by such banks and financial institutions shall continue to apply for applications filed prior to 06.09.2018. Now, Ministry has stated that this limits shall also be applicable to applications filed between 26.09.2018 and 30.06.2019.

- 1.42** An Insight into RBI's Proposals in redefining transparency in 'Loan Aggregation Services' and 'Digital Lending Practices'

Editorial Note : The RBI vide Press Release dated April 26, 2024 has notified the draft Circular on 'Digital Lending – Transparency in Aggregation of Loan Products from Multiple Lenders. The circular is open for public comments and feedback till 31.05.2024. Some of the key highlights include (a) Lending Service Providers (LSPs) to provide borrowers with a digital view of available loan offers, (b) LSPs are required to follow a consistent approach in determining lenders' willingness to offer loans.

- 1.43** RBI introduces Draft Circular on 'Digital Lending – Transparency in Aggregation of Loan Products from Multiple Lenders' - **Press Release 2024-2025/194, Dated 26-04-2024**

Editorial Note : Earlier, RBI announced in its Statement dated 08.12.2023 regarding issuance of a regulatory framework for aggregation of loan products by lending service providers (LSPs). Now, Draft Circular on 'Digital Lending – Transparency in Aggregation of Loan Products from Multiple Lenders', has been notified. Bank proposed that LSP shall provide a digital view of all the loan offers available to the borrower, from all the willing lenders with whom the LSP has arrangements with.

- 1.44** RBI amends eligibility criteria for Small Finance Banks to transition into a Universal bank - **Circular No. RBI/2024-25/28 DOR.LIC.REC.20/16.13.218/2024-25, Dated 26-04-2024**

Editorial Note : Earlier, RBI vide guidelines dated 05.12.2019 has notified a transition path for Small Finance Banks (SFBs) to convert into Universal Banks. Now, the amended eligibility criteria for an SFB to transition into a Universal bank has been introduced. The SFBs shall have scheduled status with a satisfactory track record of performance for a min. period of 5 years, listed shares, a minimum net worth of ₹1,000 crore as at the end of the previous quarter, and compliance of CRAR requirements for SFBs.

- 1.45** RBI notifies limits for investment in debt and sale of Credit Default Swaps by Foreign Portfolio Investors - **Circular No. RBI/2024-25/27 A.P. (DIR Series) Circular No. 03, Dated 26-04-2024**

Editorial Note : The RBI has notified investment Limits for the financial year 2024-25 in debt and sale of Credit Default Swaps by FPIs. The limits for FPI investment in government securities, state government securities and corporate bonds shall remain unchanged at 6 %, 2 % and 15 % respectively, of the outstanding stocks of securities for 2024-25. Further, the aggregate limit of the notional amount of Credit Default Swaps sold by FPIs shall be 5 % of the outstanding stock of corporate bonds.

2. SUPREME COURT

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

2.1 Where offences alleged in complaint filed by Directorate of Enforcement against petitioner were not scheduled offences, there could not be any proceeds of crime and hence, there could not be an offence under section 3 - **Yash Tuteja v. Union of India - [2024] 161 taxmann.com 494 (SC)**

2.2 Where for offences punishable under PMLA, appellant had been in custody for over three years and nine months, keeping in view period of custody undergone, appellant was to be released on bail and Trial Court would fix terms and conditions for grant of bail - **Ram Binod Prasad Sinha v. Union of India - [2024] 161 taxmann.com 163 (SC)**

SECTION 13 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

2.3 Where borrower filed a securitization application under Section 17 for setting aside sale of mortgaged property on ground that before holding auction sale, mandatory notice as required under rules 8(6) and 8(7) of Security Interest (Enforcement) Rules, 2002, had neither been issued nor served upon borrower and bank itself had admitted said fact, order DRTs order setting aside auction sale, which was subsequently upheld by DRAT and High Court, could not be faulted with - **Govind Kumar Sharma v. Bank of Baroda - [2024] 161 taxmann.com 646 (SC)**

2.4 Liability of guarantor is joint and several with principal debtor - **State Bank of India v. Devendra Kumar Sinha - [2024] 161 taxmann.com 76 (SC)**

2.5 There being a mortgage and loan amounts recoverable, bank was entitled to proceed under SARFAESI Act against borrower - **State Bank of India v. Devendra Kumar Sinha - [2024] 161 taxmann.com 76 (SC)**

SECTION 17 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - APPLICATION AGAINST MEASURES TO RECOVER SECURED DEBTS

2.6 SC deprecates the practice of HCs entertaining WPs arising out of DRT Act/SARFAESI Act in an effective alternative remedy being available - **PHR Invent Educational Society v. UCO Bank - [2024] 161 taxmann.com 410 (SC)**

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

2.7 Where ED arrested respondents under PMLA and sought judicial custody of respondents with all justifiable materials, however, Designated Court did not refer said aspects and rejected remand of respondents, matter was remanded to Designated Court with a direction to consider remand application submitted by ED and pass appropriate orders strictly in accordance with law by putting ED and respondents on notice and affording them an opportunity - **T. Venkatram Reddy v. Directorate of Enforcement - [2024] 161 taxmann.com 323 (SC)**

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

2.8 Court in criminal jurisdiction would be bound by Civil Court having declared cheque, subject matter of dispute, to be only for purposes of security - **Prem Raj v. Poonamma Menon - [2024] 161 taxmann.com 161 (SC)**

2.9 Where there was no proof of any loan transaction between accused and complainant and complainant had also failed to prove that cheques, dishonour of which was subject of proceeding under section 138, were handed over to complainant by accused, thus, there was no perversity in order of acquittal of accused passed by First Appellate Court and subsequently by High Court - **Rajco Steel Enterprises v. Kavita Saraff - [2024] 161 taxmann.com 561 (SC)**

3. HIGH COURT

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

- 3.1 Where ECIR was registered against petitioner for predicate offence, pursuant to which cognizance of ECIR was taken by Trial Court and process was issued against all accused persons, and petitioner had never appeared either before investigating agency during investigation or before Trial Court for last one year despite repeated opportunities granted to him, also, petitioner had been residing in Singapore for a long period of time and had not yet appeared before Trial Court, in such circumstances, impugned order by Trial Court issuing NBW against petitioner suffers from no illegality or infirmity - *Rajeev Jhawar v. Directorate of Enforcement* - [2024] 161 taxmann.com 112 (Delhi)
- 3.2 Filing of discharge applications by accused cannot be treated as delaying tactics by Court while exercising discretion to grant bail - *Sarang Wadhawan v. Directorate of Enforcement* - [2024] 161 taxmann.com 346 (Bombay)

SECTION 13 SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST

- 3.3 If secured creditors took any measure under section 13 of SARFAESI Act, 2002 to recover their secured debt which was not less than three-fourth of outstanding amount, any appeal preferred to Appellate Authority(AAIFR) or any reference made or inquiry pending before BIFR should stand abated by operation of law, therefore, reference made under section 15 of SICA, by appellant company - borrower was abated in view of enforcement of security interest under section 13 by its secured creditor - *Swadeshi Cement Ltd. v. Asset Care Enterprise Ltd. (ACE)* - [2024] 161 taxmann.com 347 (Rajasthan)
- 3.4 Where a show cause notice was issued to principal borrower to declare its account as NPA as per Master Circular issued by RBI and assets of principal borrower and its guarantor were proposed to be sold, since under scheme of Master Circular, lender banks could proceed against guarantor/surety when a default was made in repayment by a principal borrower, as its liability was co-extensive with principal borrower, writ petition filed by guarantor challenging said notice was to be disposed off - *Atibir Industries Company Ltd. v. Indian Bank* - [2024] 161 taxmann.com 647 (Calcutta)

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

- 3.5 Where a case against petitioner company pending before Special Director of ED was transferred to Additional Director of ED in view of enhancement of

pecuniary jurisdiction by Ministry of Finance vide Notification in exercise of power under section 16, once pecuniary jurisdiction underwent changes, pending cases would be to transfer cases to appropriate Court, appointment of an Adjudicating Authority of a lower rank would not disentitle said Authority from conducting an adjudication, thus, petition filed by petitioner against such transfer was to be dismissed - *Auro Logistics Ltd. v. Assistant Director (SRO)* - [2024] 161 taxmann.com 404 (Madras)

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

- 3.6 Delhi HC rejects Delhi CM Kejriwal's plea to declare his arrest by ED as illegal - *Arvind Kejriwal v. Directorate of Enforcement* - [2024] 161 taxmann.com 403 (Delhi)
- 3.7 Where ED arrested respondents under PMLA and sought judicial custody of respondents with all justifiable materials, however, Designated Court did not refer said aspects and rejected remand of respondents, matter was remanded to Designated Court with a direction to consider remand application submitted by ED and pass appropriate orders strictly in accordance with law by putting ED and respondents on notice and affording them an opportunity - *Directorate of Enforcement v. T. Venkatram Reddy* - [2024] 161 taxmann.com 322 (Telangana)
- 3.8 Where petitioner / managing director of a company was arrested by ED, for laundering proceeds of crime through a complex web of companies having a common ownership and control of petitioner, he was shown grounds of his arrest and arrest order was duly signed by petitioner and countersigned by two independent witness, hence, petitioner stood informed of grounds of arrest in terms of section 19(1), thus, arrest of petitioner was not illegal - *Neeraj Singal v. Directorate of Enforcement* - [2024] 161 taxmann.com 82 (Delhi)

SECTION 24 OF THE RIGHT TO INFORMATION ACT, 2005 - ACT NOT TO APPLY TO CERTAIN ORGANIZATIONS

- 3.9 ED is exempted under section 24 of RTI Act, 2005 from disclosing information and where information requested by RTI applicant pertained to recruitment rules and did not involve any human right violation, said information was exempted by proviso to section 24 of RTI Act - *Directorate of Enforcement v. Ms. Sonali G Badhe* - [2024] 160 taxmann.com 678 (Delhi)
- 3.10 Non-disclosure of information of allegations of sexual harassment falls within conspectus of human rights violations, as exempted by proviso to section 24 of RTI Act, 2005 - *Directorate of Enforcement v. Ms. Sonali G Badhe* - [2024] 160 taxmann.com 678 (Delhi)

SECTION 26B OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - REGISTRATION BY SECURED CREDITORS AND OTHER CREDITORS

- 3.11** Where auction for sale of secured assets of mortgagor was conducted for a fixed reserve price and DRT passed an order approving such auction for a bid lower than said price, also, treating an unsecured creditor of mortgagor as a secured creditor in preference to mortgagee / secured creditor who had foremost and highest priority over recovery of proceeds of said auction, order passed by DRT was to be set aside and DRT was to be directed to conduct an auction afresh in accordance with law, treating petitioner as only secured creditor - **Assets Reconstruction Company (India) Ltd. v. Union of India - [2024] 161 taxmann.com 50 (Bombay)**

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

- 3.12** Since, SARFAESI Act is a complete code in itself providing specific remedies for any grievance which may arise on account of proceedings taken thereunder and interference by High Court in such cases has to be minimal and actuated only in extraordinary or exceptional circumstances, and thus, instant petition by petitioner-successful bidder for quashing sale proceedings, being violative of provisions of SARFAESI Act as well as rule 8(6)(A) and (F) as well as rule 8(7) of 2002 rules, was to be dismissed with liberty to petitioner to avail remedies as available to it in accordance with law - **Oswal (India) v. State Bank of India - [2024] 161 taxmann.com 409 (Punjab & Haryana)**

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

- 3.13** Where respondent seized Indian Currency as well as Foreign Currency from residential premises of petitioner, and despite repeated representations by petitioner seeking release of seized assets for over 02 years and 09 months, neither assets had been released nor representations had been rejected, same was in violation of section 132B of 1961 Act, which was applicable in terms of section 37(3) of 1999 Act and, therefore, respondent was directed to pass appropriate orders for release of seized assets - **Harish Forex Services (P.) Ltd. v. Assistant Director of Enforcement - [2024] 161 taxmann.com 277 (Rajasthan)**

SECTION 50 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002- POWERS OF AUTHORITIES REGARDING SUMMONS, PRODUCTION OF DOCUMENTS AND TO GIVE EVIDENCE, ETC.

- 3.14** Where applicant had been summoned by ED in a money laundering case and apprehending arrest, applicant approached High Court invoking jurisdiction under

section 482 Cr.P.C. seeking quashing proceedings of ECIR, however, applicant himself was not aware as to whether he was being summoned under Section 50 as an accused or as a witness and decisions in this regard was to be taken only after completion of investigation by competent authorities, also ED had not filed any complaint against applicant and he was yet not an accused in ECIR and it could not be said at this uncertain stage that ED was identifying applicant as an accused - **Saurabh Mukundv. Directorate of Enforcement - [2024] 161 taxmann.com 191 (Allahabad)**

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

- 3.15** Where a complaint under section 138 was filed against accused on ground that cheque issued by her to discharge her loan liability had been dishonoured, in view of fact that subject cheque was signed only by late husband of accused and although conceded that cheque was issued from a joint account but subject cheque did not bear signature of accused, thus, criminal complaint filed against accused was clearly an abuse of process of law and was to be quashed - **Neeta Gupta v. Suman Anand - [2024] 161 taxmann.com 83 (Delhi)**
- 3.16** Where petition for quashing of complaint under section 138 was filed by petitioner director on ground that she had resigned from Directorship of company with effect from 06.03.2020 and reference in this regard had been made to Board of Directors, although no material had been placed on record showing that same was communicated to Registrar of Companies, even otherwise, same would be of no consequence inasmuch as concededly, on date of dishonour of cheque i.e on 15.04.2019, petitioner was a Director of accused company, petition for quashing complaint was to be dismissed - **Suman Arora v. B. C. Gupta Huf - [2024] 161 taxmann.com 15 (Delhi)**

SECTION 148 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 POWER OF APPELLATE COURT TO ORDER PAYMENT PENDING APPEAL AGAINST CONVICTION

- 3.17** If any order is challenged and appeal is pending, one cannot permit a swinging pendulum continuously taking place during pendency of appeal - **Mangla Prasad Singh v. State of U.P - [2024] 161 taxmann.com 189 (Allahabad)**
- 3.18** Where accused filed an appeal against order of Trial Court convicting accused and against award of sentence of three months simple imprisonment and also imposition of fine and Appellate Court although admitted appeal and also allowed Bail Application moved by accused but rejected stay and operation of passed by Trial Court, thus, Appellate Court had failed to consider Statutory Provisions as enshrined under Sections 148(1) and 148(2), which resulted in miscarriage of justice - **Mangla Prasad Singh v. State of U.P - [2024] 161 taxmann.com 189 (Allahabad)**

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

- 1.1 Central Government appoints Prof. M.P.Ram Mohan and Shri Dinabandhu Mohapatra as part time members of IBBI - **Notification No. 30-36/2022-Insolvency, Dated 21-03-2024**

Editorial Note : Central Government has appointed Prof. M.P. Ram Mohan, Professor, Indian Institute of Management, Ahmedabad and Shri Dinabandhu Mohapatra, Non-Executive Independent Director, Indiabulls Housing Limited as Part-time members in the IBBI with effect from 19th February, 2024. The appointment is being made for a period of five years or till they attain age of 65 years or until further orders, whichever is earlier.

- 1.2 IBBI modifies circular regarding 'Clarification w.r.t liquidators' fee' - **Circular No. IBBI/LIQ/70/2024, Dated 18-04-2024**

Editorial Note : Earlier, IBBI issued a circular titled 'Clarification w.r.t liquidators' fee' under Regulation 4 of the IBBI (Liquidation Process) Regulations. The Hon'ble Bombay High Court in the matter of 'Amit Gupta vs. IBBI & Union of India' has struck down paras 2.1 and 2.5 of the circular. Para 2.1 deals with the amount realised while para 2.5 deals with the period for the calculation of the fee. The remaining paras of the circular remain valid.

2. SUPREME COURT

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- 2.1 Where corporate debtor committed default in repayment, which led lenders of corporate debtor to invoke corporate/personal guarantees and called upon appellant-guarantors to pay outstanding amount however, no payments had been made by appellants towards invocation of guarantee, which could be construed as a 'financial debt' owed by corporate debtor and, thus, NCLAT rightly held that it was not open for appellants to file any claim in CIRP of corporate debtor as financial creditor and same was to be upheld - **Skil Infrastructure Ltd. v. Sudip Bhattacharya - [2024] 161 taxmann.com 474 (SC)**

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

- 2.2 Where in CIRP of corporate debtor, SRA filed an application to withdraw said resolution plan and to justify same, SRA submitted that it was prevented, and was handicapped because of lack of information or rather

fraud on part of RP, said application was to be allowed and revised resolution plan, as submitted by SRA was to be approved - **Deccan Value Investors L.P. v. Dinkar Venkatasubramanian - [2024] 161 taxmann.com 325 (SC)**

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

- 2.3 Where appellant, stake holder of corporate debtor challenged NCLAT's order, however, there was delay in filing instant appeal which was beyond maximum period and could not be condoned and, therefore, instant appeal was to be dismissed - **Punjab National Bank (International Limited) v. Perfect Day Inc - [2024] 161 taxmann.com 279 (SC)**

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

- 2.4 Where order passed by NCLT approving resolution plan was remanded back by NCLAT, observing that said order was passed by a single member of NCLT in violation of provision of section 419(3) of Companies Act, 2013 and without recording its own satisfaction, appeal filed against order of NCLAT before Supreme Court was not to be entertained as these matters were to be considered by NCLT when proceedings would appear before it on remand - **Bank of Baroda v. Suchi Paper Mills Ltd. - [2024] 161 taxmann.com 343 (SC)**

SECTION 236 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - SPECIAL COURT - TRIAL OF OFFENCES BY

- 2.5 A Special Court presided by a Sessions Judge or an Additional Sessions Judge will have jurisdiction to try the complaint under IBC - **Insolvency and Bankruptcy Board of India v. Satyanarayan Bankatlal Malu - [2024] 161 taxmann.com 578 (SC)**

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 2.6 Where financial creditor invoked corporate guarantee given by appellant on 21-2-2012 and SICA was repealed w.e.f. 1-12-2016 vide notification dated 25-11-2016, therefore, limitation would start running from 1-12-2016 and shall go up to 1-12-2019, application filed by financial creditor against corporate debtor under section 7 on 30-8-2019 fell within this limitation period - **Maneesh Pharmaceuticals Ltd. v. Export-Import Bank of India - [2024] 161 taxmann.com 14 (SC)**

3. HIGH COURT

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

- 3.1 Where CIRP was initiated against corporate debtor and Slum Rehabilitation Authority (SRA) continued acquisition proceedings against corporate debtor, emphasizing welfare of slum dwellers over IBC provisions, instant Court underscored that developers must fulfill obligations to provide rehabilitation units and transit accommodation, asserting that IBC shouldn't override citizen rights in slum redevelopment - **Rajan Garg, Resolution Professional of Truly Creative Developers (P.) Ltd. v. Chief Executive Officer, Slum Rehabilitation Authority - [2024] 161 taxmann.com 682 (Bombay)**

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

- 3.2 Where a resolution plan submitted by Insolvency Resolution Professional was approved granting an operational creditor 15 per cent of claim amount despite said approval, respondent filed an execution plea for Rs.8.73 lacs alleging non-payment, which led to a High Court warrant of attachment on current account since, applicant had discharged its liability as per approved resolution plan, any warrant of attachment on their bank account of applicant deserved to be set aside - **Mars Art Studio v. Shirdi Industries Ltd. - [2024] 161 taxmann.com 51 (Bombay)**

SECTION 96 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - INTERIM-MORATORIUM

- 3.3 Where a show cause notice was issued against petitioner company and its directors and guarantors for declaring petitioners as wilful defaulters as per Master Circular issued by RBI, writ petition was filed by petitioners challenging same on ground that a proceeding under section 95 had been initiated against guarantors, thus simultaneous proceeding seeking to declare petitioners wilful defaulter was in violation of section 96, was to be disposed of as proceeding for declaration of wilful defaulter were different from a recovery proceeding, as such declaration was merely to disseminate credit information pertaining to wilful defaulters for cautioning banks - **Atibir Industries Company Ltd. v. Indian Bank - [2024] 161 taxmann.com 647 (Calcutta)**

SECTION 196 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - BOARD - POWERS AND FUNCTIONS OF

- 3.4 Bombay HC strikes down Paras 2.1 and 2.5 of IBBI's Circular and bars IBBI from relying on these paragraphs

to determine whether the liquidator's fees were excessive - **Amit Gupta v. Insolvency and Bankruptcy Board of India - [2024] 161 taxmann.com 150 (Bombay)**

SECTION 208 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONALS - FUNCTIONS AND OBLIGATIONS OF

- 3.5 Where petitioner filed instant review application on ground that their previous petition challenging constitutional validity of regulation 23A of IBBI Regulations, 2016 was wrongly rejected by High Court without considering principles of natural justice in a proper perspective however, said review application filed by petitioner was nothing but an appeal in disguise and, thus, same could not be entertained - **V.Venkata Sivakumar v. Insolvency and Bankruptcy Board of India (IBBI) - [2024] 160 taxmann.com 755 (Madras)**

4. NCLAT

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

- 4.1 Where appellant-Regional P.F. Commissioner submitted claims under sections 7A, 7Q, and 14B of EPFO Act, 1952, while claim under section 7A was fully paid, but no payment was proposed for sections 7Q and 14B however, all amounts claimed by appellant under sections 7A, 7Q and 14B were part of provident fund dues which were admitted by RP and, thus, instant Tribunal affirmed all admitted claims and directed SRA to make payment accordingly - **Regional Provident Fund Commissioner, EPFO Regional Office, Jamshedpur v. Ms. Mamta Binani, Resolution Professional - [2024] 161 taxmann.com 250 (NCLAT-New Delhi)**

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- 4.2 Where successful auction purchaser took over a developing real estate project of a company under SARFAESI Act, it was obliged to honour allotments of said project, however no steps were taken to start construction which indicated inaction of purchaser or default committed by it, financial debt owed by said company to allottees was now debt owed by purchaser as per section 5(8), there was no error in order passed by NCLT initiating CIRP against purchaser - **Anjani Kumar Prashar v. Manab Datta - [2024] 161 taxmann.com 252 (NCLAT- New Delhi)**

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

4.3 Where there was nothing on record to show that corporate debtor had any intention to pay due amount prior to demand notice was issued and that there was existence of any dispute since, despite demand notice amount therein was not paid by corporate debtor in all to operational creditor indicated an admission of debt and, thus, impugned order passed by NCLT admitting application under section 9 was justified - **Srinivas Reddy Yadiki v. Ardee Hi-Tech (P.) Ltd.** - [2024] 161 taxmann.com 345 (NCLAT - Chennai)

SECTION 12A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

4.4 Where settlement of MoU was entered between parties and, on basis of which petition was withdrawn ,however, defendant no.1 did not honour MoU and breached settlement, since D1 defaulted in making payment was admitted facts, instant Court directed D1 to deposit a sum of Rs.70 lacs within a period of two week - **G. Sreevidhya v. Karisama Foundations (P.) Ltd.** - [2024] 161 taxmann.com 276 (Madras)

4.5 Where settlement of MoU was entered between parties and, on basis of which section 9 application was withdrawn ,however, corporate debtor did not honour MoU and breached settlement since, section 9 application was withdrawn based on a section 12A application, there was no reason to deny operational creditor further opportunities to approach NCLT, impugned order passed by NCLT declining liberty to appellant to reapproach NCLT was to be set aside - **Ankit Traders v. Supershine Agrofoods (P.) Ltd.** - [2024] 161 taxmann.com 111 (NCLAT- New Delhi)

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

4.6 Where appellant, a minority homebuyer opposed approval of a resolution plan, however, majority of home-buyers had voted in favour of resolution plan, which was evident from 99.96 per cent voting share resolution plan had been approved, since there was no material irregularity in conducting CIRP by RP which warrant interference and, therefore, impugned order passed by NCLT approving resolution plan was justified - **Yester Investment (P.) Ltd. v. Manish Motilal Jaju, Resolution Professional of Sivana Realty (P.) Ltd.** - [2024] 161 taxmann.com 526 (NCLAT- New Delhi)

SECTION 36 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATION ESTATE

4.7 'Assets' which are subject to determination of 'ownership' by 'Court or Authority/Tribunal' will form part of 'Liquidation estate of corporate debtor' and merely because in respect of 'title of property' a 'corporate debtor' has no valid or any marketable title, ipso facto, 'value of property' cannot be described as Zero - **Kineta Global Ltd. v. IDBI Bank Ltd.** - [2024] 160 taxmann.com 686 (NCLAT - Chennai)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

4.8 Where impugned order was issued on 22-11-2023 and 30 days period for filing an appeal ended on 22-12-2023 and a further period of 15 day period ended on 7-1-2024 ,however, appeal having been filed on 1-2-2024 with a delay of more than 15 days from date of expiry of limitation but jurisdiction to condone delay was limited to only 15 days as per section 61(2) hence, application to condone delay could not be entertained - **Deepak Dahyalal v. Steel Resources** - [2024] 161 taxmann.com 193 (NCLAT- New Delhi)

ACCOUNT AND AUDIT UPDATES

1.1 ICAI seeks comments/suggestions on the Consultation Paper on the Draft IFSCA (BATF) Regulations 2024

Editorial Note : The ICAI has requested its members provide valuable insights and expertise in shaping Draft IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations 2024 being framed by International Financial Services Centres Authority (IFSCA). This consultation paper aims to gather feedback, comments, views, and suggestions for bookkeeping, accounting, taxation, and financial Crime Compliance Services. The last date to submit comments/suggestions is 10th April 2024.

1.2 ICAI forms Expert Panel for addressing queries related to Statutory Audit pertaining to auditing aspects

Editorial Note : To provide guidance to its members, ICAI has formed an Expert Panel which will address the

queries related to Statutory Audit pertaining to auditing aspects only. This expert panel will address the queries from 16th April 2024 till 30th September 2024 through e-mails.

1.3 ICAI has updated disclosure requirements relating to the amendments made in Ind AS Companies (Ind AS) Amendments Rules, 2023

Editorial Note : To enhance the quality and transparency of financial statements, under Ind AS, entities are required to provide comprehensive and detailed disclosures including disclosures of management judgments, assumptions, business models sources of estimation uncertainty, etc. ASB of ICAI has issued this disclosure checklist to help entities to identify the relevant disclosures required under Ind AS while preparing and presenting FS under Ind AS.

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

Secretariat : 3, GOVT. PLACE (WEST), INCOME TAX BUILDING, KOLKATA - 700 001

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OFFICE BEARERS 2023-2024

President



CA. Rajesh Kr. Agrawal
9007217679
thinkvisor18@gmail.com

L.P.P.



CA. D.S. Agarwala
9433097972
agards@gmail.com

Sr. Vice-President



CA. Barkha Agarwal
9831184871
barkhaagarwal@hotmail.com

Vice-President



CA. Manju Lata Shukla
9831491002
ml_shukla@rediffmail.com

General Secretary



CA. Mahendra Kr. Agarwal
9830096405
mahendrasubhashandco@gmail.com

Joint Secretary



CA. Shyam Agarwal
9903040775
Shyam_ag12@yahoo.co.in

Treasurer



CA. Giridhar Dhelia
9830255500
gdhelia@gmail.com

EXECUTIVE COMMITTEE MEMBERS 2023-2024



CA. Ajit Kr. Tulsian
9831131100
aaakdt@gmail.com



CA. Akkal Dudhwewala
9748090242
akkal.dudh@gmail.com



Adv. Ankit Kanodia
9831543580
ankitkanodia@gmail.com



CA. Arup Dasgupta
9831503290
orup.dasgupta@gmail.com



CA. Ashish Rustagi
9339768131
rustagico@rediffmail.com



CA. Bharat D. Sarawgee
9830022057
bharatsarawgee@gmail.com



CA. Kedar Nath Gupta
9830648056
guptakn123@yahoo.co.in



CA. Neena Maheshwari
9830281121
neenamaheshwari@gmail.com



Adv. Rites Goel
9831029805
replyrites@gmail.com



CA. Ritesh Vimal
9830574278
vimalritesh@gmail.com



CA. Sahib Singh Choudhary
9339328137
sahibschoudhary@gmail.com



CA. Sanjay Jhajharia
9831012743
s.jhajharia@hotmail.com



CA. Sanjay Poddar
9830047033
poddar.sanjay@gmail.com



CA. Sujit Sultania
9831016678
sultaniasujit@gmail.com

PAST PRESIDENTS



CA. K. C. JAIN
9830 07338 7
kcjain34@yahoo.co.in



Adv. N. P. Jain
983 09512 52
npjainadv@gmail.com



Adv. J. R. Bhadani
98 301351 50
jvtaxation@yahoo.co.in



Adv. V. K. Singhania
983 10036 09
vkrum@vsnl.net



CA. Indu Chatrath
98 31048 516
ichatrath@yahoo.co.in



Adv. R. D. Kakra
98 31052 151
rdkakra@gmail.com



CA. Pawan Agarwal
98 30038 817/9830 26246 4
pawana@aac.co.in



CA. Raja Ram Chowdhary
9830 08879 6
rchowdhary@hotmail.com



CA. D. N. Agrawal
943 30395 96
dn.agrawal@dc.coa.co.in



CA. P. K. Agarwalla
983 12207 97
pkaco_caa@yahoo.co.in



Adv. S. D. Verma
983 00261 77
kdsaraju@hotmail.com



CA. M. C. Jagwayan
98 31021 650
mijags81@rediffmail.com



Adv. B. L. Kheria
9831 69992 1
b_l_kheria@yahoo.co.in



CA. R. N. Rustagi
983 00308 45
rustagioca@rediffmail.com



CA. A. K. Tibrewal
983 10709 22
anand@hnp.co.in



CA. Santosh Kuthia
9748731590
kkscaindia@gmail.com



CA. Nilima Joshi
983 00399 90
canilimajoshi@gmail.com



CA. P. R. Kothari
9 83002 11 98
pk.narran@gmail.com



Adv. Arvind Agrawal
9831 02666 0
gpaakoffice@gmail.com



CA. Sajjan Kr. Sultania
9830 03749 8
sundeepsultania@gmail.com



CA. Sanjay Bajoria
983 18450 05
sbac.a2.019@gmail.com



Adv. Subash Agarwal
983 00521 41
subash_sushma@yahoo.co.in



CA. Aghor Kr. Dudhwale
9831039440
aghorassociates@yahoo.co.in



CA. Bishnu Kr. Loharuka
9830260400
bkkloharka2003@yahoo.co.in



CA. P. K. Himmatsinghka
9331024755
pkhkoka@gmail.com



Adv. Paras Kochhar
983 10245 63
paraskochhar@hotmail.com



CA. K. P. Khandelwal
983 00302 16
ca.kpkhandelwal@gmail.com



CA. Sunil Surana
983 10055 33
thanmalji@hotmail.com



CA. Kamal Bagrodia
98 30043 311
kamalbagrodia@gmail.com



CA. Ramesh Kr. Chokhani
97487470 44
rlochkhani@yahoo.co.in



CA. Vikash Parakh
983 09692 34
vikashparakh.ca@gmail.com



CA. N. K. Goyal
983 10460 53
ngc.narendra@hotmail.com



Adv. Kamal Kr. Jain
983 07083 41
kamalkojain@yahoo.co.in

SUB COMMITTEES 2023-2024

Sub-committee	Chairman/Chairperson	Co-chairman/Chairperson	Advisor
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SPECIAL INVITEES 2023-2024



CA. Nitesh More
8336087901
moreassociate@gmail.com



CA. Sanjib Sanghi
9831434000
sanjib@cloudinfosolution.com



CA. Mahesh Chand Gupta
9831046652
mc_gupta90@hotmail.com



CA. Sanjay Satnalika
9830041626
satnalika2096@gmail.com



CA. Amit Singhania
9836356488
amitsinghania86@yahoo.co.in



CA. Vivek Jain
9874746182
vivekjain4u@yahoo.com



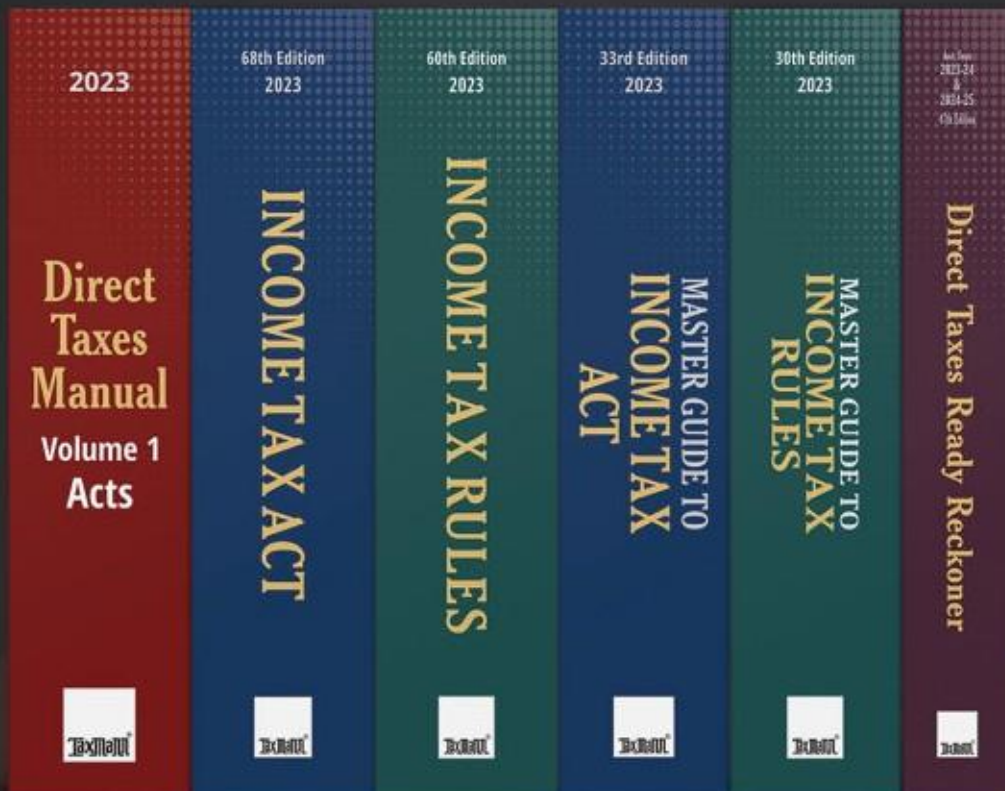
Adv. Prasanta Dutta
9830162034
p_dutta_advocate@yahoo.co.in



Adv. Amit Agarwal
9804118873
amit25385@gmail.com

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