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Estd. 1982

# DTPA

Direct Taxes Professionals' Association



December, 2020

## Headlines

- Latest Updates on Insolvency
- Circular & Notification
- Recent Case Laws
- Notifications - November 2020
- Company Law Updates
- Individual Insolvency
- Latest Updates on Insolvency & Bankruptcy
- Things you should know about Will
- Bank Audit Check List & Procedure



e-BULLETIN



Dear Friends,

It gives me immense pleasure to share the Sixth Edition of our DTPA E-Bulletin for the month of December 2020 which contains the recent case laws, notifications and other informations which Members may found useful for them. This December month is very much busy for all professionals to fulfill the target for the due dates falling during this period.

I, on behalf of our Journal Committee, express my gratitude towards our honourable President CA Narendra Kumar Goyal and Advisor CA Sumantra Guha for their whole-hearted support and motivation which give strength to the Journal Committee to deliver the monthly E-Bulletin in time.

Wishing you a Merry Christmas and A Happy New Year in advance.

With warm regards

**CA MAHENDRA K AGARWAL**  
Chairman - DTPA Journal Committee  
16th December, 2020

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# DTPA



Dear Members,

The peak season for Chartered Accountants and Income Tax Professionals is on and all are struggling to complete the work and meet the deadlines in spite of the warnings issued by the Govt. - not to take the COVID-19 easy till vaccination starts.

Amidst this tight schedule also, the DTPA Journal Committee lead by CA Mahendra Kumar Agarwal has completed the compilation of the monthly E-Bulletin for Nov-Dec 2020 with all its sincere efforts, which need appreciation and applause by all and I am sure you will like the same for its useful contents.

The Journal Committee has been continuously working very hard to bring out these Bulletins of knowledge bank on a regular monthly basis.

This Volume includes articles and Case Laws for day to day use of the Members and the representations made by DTPA.

I would sincerely request all the Members to contribute useful articles and compilations, which I assure, will find place in the next published bulletin, if found worthy of publication.

**My best wishes to the Members, Merry Christmas and a Very Happy New Year in advance.**

With regards

**CA Narendra Kumar Goyal**

President - DTPA

16th December, 2020

#### **DISCLAIMER**

Views expressed in the articles of this bulletin are contributor's personal views. DTPA and its Journal Sub-Committee do not accept any responsibility in this regard. Although every effort has been made to avoid any error or omission in the Bulletin, the DTPA and its journal Sub-Committee shall not be responsible for any kind of loss or damage caused to any one on account of any error or omission which might have occurred.

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# LATEST INCOME TAX JUDGEMENTS

CA Manju Lata Shukla

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

**Siroya Developers v. Income-Tax Officer-17(3)(3), Mumbai - [2020] 119 taxmann.com 440 (Mumbai - Trib.)**

Valuation of stock : Where assessee-developer, for purpose of valuation of its closing stock by way of an unsold area of land, included certain expenses made on an ad hoc basis (expenses to be incurred upto completion of project) worked out cost per square meter of land at certain amount but then assessee reduced aforesaid estimated expenses from aforesaid value of closing stock, and by doing so, scaled down its value of closing stock, assessee by including an amount of said stock had clearly suppressed value of its closing stock, thus, impugned valuation of closing stock was to be rejected.

**RAM PRAKASH RUSTOGI VS INCOME TAX OFFICER : (2020) 60 CCH 0061 DelTrib**

Merely because the assessee has not maintained stock register with quantity wise details cannot justify the AO in discarding the method of valuation adopted by the assessee consistently.

## ASSESSMENT

**J D B F I N A N C E V S D E P U T Y C O M M I S S I O N E R O F I N C O M E T A X : (2020) 60 CCH 0060**

Assessing officer would not take up the assessee's case for 'Complete Scrutiny' without duly recording the reasons for expanding the scope of 'Limited Scrutiny'.

## ADDITION

**I N C O M E T A X O F F I C E R (INTERNATIONAL TAXATION) & ANR. VS C. ABDUL MAHAROOF & ANR. : (2020) 60 CCH 0059 CochinTrib**

Violation of the principles of natural justice can result in total nullity of the entire addition.

## APPEALS

**MAHINDER SINGH VS INCOME TAX OFFICER : (2020) 60 CCH 0080 ChdTrib**

Illiteracy, lack of funds as well as physical disability are reasonable causes for condoning the delay in filing appeal where no advantage has been derived by assessee and no advantage vested by Revenue has been upset by filing late appeal.

**DEPUTY COMMISSIONER OF INCOME TAX & ANR. VS PRASHANT KUMAR AHLUWALIA & ANR. : (2020) 60 CCH 0057 CuttackTrib**

Assessee cannot be held as aggrieved from such addition which has been made on voluntary consent of assessee before AO during assessment proceedings in line of Income Tax Settlement Commission.

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

**Director of Income Tax (International Taxation) v. Jeans Knit (P.) Ltd. - [2020] 119**

### **taxmann.com 305 (Karnataka)**

Payment made by assessee a 100 per cent export oriented undertaking towards services rendered by non-resident company would not fall within ambit of FTS under section 9(1)(vii) as non-resident company was not involved either in identification of exporter or selecting material and negotiating price. It was observed that quality of material was already determined by assessee and non-resident company was only required to make physical inspection of material to examine if it resembled quality specified by assessee and for rendering aforesaid service, no technical knowledge was required.

### **Growing Opportunity Finance (India) (P.) Ltd. v. Principal Commissioner of Income Tax - [2020] 119 taxmann.com 386 (Madras)**

Where issue relating to section 90 of Income-tax Act read with Double Taxation Avoidance Agreement between India and USA had not been raised before Assessing Officer or before Commissioner (Appeals) or before Tribunal, but for first time assessee had raised issue before this Court and said issue had also been raised in substantial questions of law, occasion to deal with said issue in this tax case Appeal did not arise.

### **Ampacet Cyprus Ltd. v. Deputy Commissioner of Income-tax - [2020] 119 taxmann.com 277 (Mumbai - Trib.)**

Interest - Paid by subsidiary : Matter referred to Larger Bench to examine connotations of expression 'paid' appearing in article 11 as in various decisions of Tribunal, there was no discussion about connotations of expression 'paid' and these decisions simply proceed on basis that since expression 'paid' is used in article 11(1) of India Cyprus tax treaty, taxability of interest can only be on cash basis.

### **Digitel v. ADIT, International Taxation, Circle-1(1), New Delhi - [2020] 119 taxmann.com 339 (Delhi - Trib.)**

Business profits - Business profit vs. Royalty : Amount received by assessee, a US based company, from sale of copyrighted software products/licences was in nature of business income which in absence of assessee's PE of India, could not be brought to tax said amount was not as 'royalty' under article 12 of India-USADTAA.

### **SECTION 32 OF THE INCOME-TAX ACT, 1961 - DEPRECIATION - ALLOWABILITY/RATE OF**

### **Deputy Commissioner of Income-Tax, Circle 6(1)(2), Bengaluru v. State Street Services (India) (P.) Ltd. - [2020] 119 taxmann.com 276 (Bangalore - Trib.)**

Applicability of section 40(a)(i) : Depreciation is a statutory deduction and not an outgoing expenditure, therefore, section 40(a)(i) does not apply to such a deduction.

### **Pr. Commissioner of Income-tax v. V. Hotels Ltd. - [2020] 119 taxmann.com 487 (Bombay)**

Assessee paid a premium to Government of Maharashtra and BMC in lieu of grant of additional FSI. With grant of additional FSI, assessee got permission to increase size of total building by constructing additional floors or additional building to extent of FSI available and claimed depreciation on same at 25 per cent claiming it to be a business/commercial right. However, Additional FSI cannot be said to be a business or commercial right falling within realm and scope of intangible asset within meaning of section 32(1)(ii), hence payment for additional FSI would be eligible for depreciation at rate applicable to building i.e., 10 per cent and not 25 per cent as applicable to an intangible right under section 32(1)(ii).



### LIABILITY IN SPECIAL CASES

#### **LATE GHANSHYAM H PARSANA VS INCOME TAX OFFICER : (2020) 59 CCH 0318 AhdTrib**

A proceeding could be continued against the legal representative of the deceased assessee only if it had been initiated when the assessee was alive.

### TDS

#### **ARIHANT CHARITABLE TRUST VS INCOME TAX OFFICER (TDS) : (2020) 59 CCH 0315 IndoreTrib**

Collection, transportation and disposal of waste by assessee cannot be said to be in the nature of technical, managerial or consultancy services as envisaged in Section 194J. It is covered under the provisions of Section 194C.

### REVISION

#### **SMT. BHAVNA B. KOTHARI VS INCOME TAX OFFICER : (2020) 60 CCH 0040 MumTrib**

Merely because issue was not elaborately discussed in quantum assessment could not be a ground to invoke revisional jurisdiction u/s 263 particularly when details called for by AO were submitted and placed on record.

#### **SURENDRA KEDIA VS PRINCIPAL COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0022 BangTrib**

Assessment order passed by AO is erroneous and prejudicial to the interest of revenue where during the course of original assessment the AO has not enquired/verified the issues in question.

#### **ASSISTANT COMMISSIONER OF INCOME TAX VS SIDHAVANDAN ENTERPRISES**

#### **PVT. LTD. : (2020) 60 CCH 0073 DelTrib**

Merely because loan is repaid through banking channel in assessment year by itself may not be a ground to delete the addition because ultimately assessee shall have to prove the ingredients of Section 68 to the satisfaction of the A.O.  
**INCOME**

#### **SAVAS ENGINEERING COMPANY PVT. LTD. VS PRINCIPAL COMMISSIONER OF INCOME TAX**

Where AO has taken a plausible view during the assessment proceedings, the order cannot be held to be erroneous and prejudicial to interest of revenue.

### PENALTY

#### **BEST PRINS ECOTECH P. LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0068 DelTrib**

Notice issued by the AO would be bad in law if it did not specify under which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income.

### BUSINESS EXPENDITURE

#### **MRINALINI BIRI MANUFACTURING CO. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0066 KolTrib**

Where an approved gratuity fund is created for the exclusive benefit of the employees under an irrevocable trust, contribution made to the fund during the year of account will be allowed to be deducted under section 36(1)(v).

#### **DEPUTY COMMISSIONER OF INCOME**

**TAX VS UNION BANK OF INDIA : (2020) 60 CCH 0063 MumTrib**

Once a provision for bad and doubtful debts are made by scheduled bank having rural Branches, assessee is entitled to a deduction, which is quantified not with reference to amount provided for in account but with respect to certain percentage of total income and also certain percentage of aggregated advances.

**Principal Commissioner of Income Tax v. HSI Automative Ltd. - [2020] 119 taxmann.com 445 (Madras)**

Where assessee gave up its claim of deduction under section 35(1) on account of scientific expenses paid to a research association as admittedly conditions required for claiming such expenditure under said section was not satisfied by assessee, since there was no dispute that said expenditure was incurred in ordinary course of business, Tribunal was right in allowing alternate claim of assessee toward scientific expenses under section 35(1) as revenue expenditure under section 37(1).

**Commissioner of Income-tax-1 v. Apollo Tyres Ltd. - [2020] 119 taxmann.com 336 (Kerala)**

Club membership fee : Where assessee paid subscription or membership fee to club on behalf of its employees, said amount was to be allowed as deduction under section 37(1).

**CHARITABLE TRUSTS**

**DEPUTY COMMISSIONER OF INCOME TAX & ANR. VS KANDULA LAKSHUMMA MEMOIAL EDUCATIONAL SOCIETY & A N R. : ( 2 0 2 0 ) 6 0 C C H 0 0 6 2 VisakhapatnamTrib**

When the assessee furnished the details and vouchers, simply brushing aside the same without causing any enquiry is unjustified.

**NNF STATE CHAPTER VS COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0074 HydTrib**

Where the predominant object of the assessee-society was dissemination of knowledge and education of commercial laws, tax laws for the benefit of general public to inculcate a sense of responsibility towards the nation and foster law abiding citizens, assessee is entitled for registration U/s. 12AA.

**SRI RAM SAMAJ VS JOINT DIRECTOR OF INCOME TAX (EXEMPTIONS) : (2020) 109 CCH**

Even though Assessee trust is running KalyanaMandapam, Gnanavapi and Community Hall, the income derived therefrom cannot be construed as business income as the very object of the Trust is for charitable purpose and it should be incidental for the Trust.

**KALINGA INSTITUTE OF SOCIAL SCIENCES (KISS) VS JOINT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0085 CuttackTrib**

Without registration u/s.12AA in the hands of the assessee the benefit of Section 11 cannot be given.

**Confederation of Real Estate Developers Association of India. v. Assistant Commissioner of Income Tax (Exemption)-1(1) Mumbai - [2020] 119 taxmann.com 491 (Mumbai - Trib.)**

Objects of general public utility : Where assessee-trust, set up to address national issues relating to real estate sector, earned revenue from activities of holding conventions, exhibitions etc., since activities that were carried out by assessee were with sole intent of attaining object for which trust

was established, activities of assessee would not be hit by exclusion carved out in definition of 'charitable purpose' in section 2(15) and as such, assessee was eligible for exemption under section.

### **DEDUCTIONS**

#### **ASSISTANT COMMISSIONER OF INCOME TAX VS THE ANAKAPALLE RURAL ELECTRICAL CO-OPERATIVE SOCIETY LTD. : (2020) 60 CCH 0067 Visakhapatnam Trib**

Income of the society is exempt even if the surplus goes to some other society with similar objects on dissolution.

#### **KAVANNUR SERVICE CO-OPERATIVE BANK LIMITED VS INCOME TAX OFFICER : (2020)**

Assessing Officer has to conduct an inquiry into the factual situation as to the activities of the assessee society to determine the eligibility of deduction u/s 80P.

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

#### **Rajasthan Nursing Council v. Commissioner of Income-tax (Exemptions), Jaipur - [2020] 119 taxmann.com 354 (Jaipur - Trib.)**

Where assessee council was a statutory authority established under Rajasthan Nursing Council Act, 1964 to provide for registration of nurses, midwives, health visitors and auxiliary nurse-midwives in State, activities of assessee were qualified activities of general public utility and, thus, fall under charitable activities as defined under section 2(15) and it was to be granted registration section 12AA.

#### **SECTION 164 OF THE INCOME-TAX ACT, 1961 - TRUST/TRUSTEES**

#### **Deputy Commissioner of Income-tax**

#### **(Exemptions) Circle Jaipur v. Central Academy Jodhpur Education Society - [2020] 119 taxmann.com 355 (Jaipur - Trib.)**

Charge of tax where share of beneficiaries unknown : Once there was a violation of section 13(1)(c) or section 13(1)(d) by a trust registered under section 12AA, then entire income of trust was not chargeable to tax at maximum marginal rate (MMR) and its only that part of income which had violated said sections would suffer MMR as per proviso to section 164(2).

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

#### **Sri Ram Samaj v. Joint Director of Income Tax (Exemptions) - [2020] 119 taxmann.com 334 (Madras)**

Where assessee-trust engaged in running educational institutions, earned income from letting out of community hall, KalyanaMandapam and Gnanvapi and utilized surplus income from letting out for objects of trust i.e. running educational institution and providing medical relief to poor, assessee-trust is entitled to exemption under section 11.

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

#### **NarasimmanPadmavathy v. Income Tax Officer, Ward-2, Tiruvannamalai - [2020] 119 taxmann.com 330 (Madras)**

Where Income-tax Officer treated cash deposited by assessee in saving bank account during demonetization period as unexplained money of assessee but there was no explanation for source and nature of cash deposited and assessee filed writ petition which was dismissed by Single Judge holding that assessee should file statutory appeal



before appellate authority, since Act provides effective and sufficient forum for any aggrieved party to work out their remedy, writ appeal filed by assessee against order passed by Single Judge was liable to be dismissed.

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

**CLSA India (P.) Ltd. v. Deputy Commissioner of Income Tax, Circle-4(1)(1), Mumbai - [2020] 119 taxmann.com 327 (Mumbai - Trib.)**

Methods for determination of - General : Where TPO determined ALP of intra-group services being availed by assessee from its AEs on an ad-hoc basis without applying any of prescribed methods as per section 92C(1), since TPO did not follow mandate of section 92C in determining ALP, matter was to be restored to file of Assessing Officer/TPO for determination of ALP of said international transactions by method prescribed under section 92C(1), read with Rule 10AB and 10B of Income-tax Rules, 1962.

**Haier Appliances India (P.) Ltd. v. Deputy Commissioner of Income Tax - [2020] 119 taxmann.com 428 (Delhi - Trib.)**

Where assessee-company, engaged in distribution of consumer durable products of its A.E. in India, purchased finished goods from its AE which owned intangible rights containing brand name in respect of said goods, the A.O. made addition on account of alleged international transaction resulting from AMP expenses incurred by assessee by applying bright line test, since Bright line test as applied by TPO was not appropriate, said transaction be benchmarked by applying RPM and adjustment be made accordingly.

**Himalaya Drug Company v. Assistant**

**Commissioner of Income Tax, Central Circle-1(1), Bangalore - [2020] 119 taxmann.com 421 (Bangalore - Trib.)**

Royalty : Where assessee obtained approval for marketing its products, however, exported finished goods to AEs located in respective countries which in turn marketed goods and assessee had not collected any amount over and above selling price either from domestic customers or from non-AEs, it could not be said that AEs had exploited product registration/license obtained by assessee from various Governments and accordingly royalty TP-adjustment was to be deleted.

**Himalaya Drug Company v. Assistant Commissioner of Income Tax, Central Circle-1(1), Bangalore - [2020] 119 taxmann.com 421 (Bangalore - Trib.)**

AMP expenses : Where legal ownership of assessee's brand was transferred to one of partners of assessee firm on account of business necessities, however, right to exploit brand name/logo/trademark etc. continued with assessee and hence assessee was beneficiary of AMP expenses/brand promotion, no TP adjustment could have been made in respect of AMP expenses on account of 'brand promotion'.

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

**Deputy Commissioner of Income Tax, Circle-2, Jaipur v. Veena Goyal - [2020] 119 taxmann.com 362 (Jaipur - Trib.)**

For invoking provisions of section 2(22)(e), there must be a payment by way of advance or loan, hence, where this vital aspect was missing in case of assessee as neither there was any payment nor company made any advance or loan to assessee, thus debit balance worked out by assessee

company will not fall within ambit of provisions of section 2(22)(e) and thus are not applicable in case of assessee.

**Deputy Commissioner of Income Tax, Circle-2, Jaipur v. Veena Goyal - [2020] 119 taxmann.com 362 (Jaipur - Trib.)**

For invoking provisions of section 2(22)(e), there must be a payment by way of advance or loan, hence, where this vital aspect was missing in case of assessee as neither there was any payment nor company made any advance or loan to assessee, thus debit balance worked out by assessee company will not fall within ambit of provisions of section 2(22)(e) and thus are not applicable in case of assessee.

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

**Polaris Consulting and Services Ltd. v. Principal Commissioner of Income Tax-5 - [2020] 119 taxmann.com 387 (Madras)**

Where assessee-company claimed that no expenditure was incurred to earn exempt income and section 14A disallowance was not called for, but it could not substantiate that fact before lower authorities and it was found that there was substantial increase in investment and value of assets of assessee, Assessing Officer was justified in making disallowance under section 14A read with rule 8D.

**WINDSOR GARDENS PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0076 BangTrib**

Disallowance under Section 14A cannot exceed the exempt income.

**Tata Sky Ltd. v. Assistant Commissioner of Income-tax, Circle 7(3), Mumbai - [2020] 119 taxmann.com 424 (Mumbai - Trib.)**

Dividend : Where there was no exempt income earned by assessee during year, no disallowance under section 14A was to be made.

**Commissioner of Income Tax v. Celebrity Fashion Ltd. - [2020] 119 taxmann.com 426 (Madras)**

In terms of section 14A, only expenditure, which was proved to be incurred in relation to earning of tax free income, could be disallowed and such provision could not be extended to disallow expenditure, which was assumed to have been incurred for earning tax free income. To apply provisions of section 14A, Assessing Officer should have recorded a finding as to how sub-section (1) of section 14A would stand attracted. In absence of any such finding, disallowance made was not justifiable.

**INCOME**

**JAYSINGG LAXMANRAO DESHMUKH VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0069 MumTrib**

As per CBDT Instruction No. 1916 dated 11.05.1994, the allowance of 500 grams has to be granted in respect of each married lady and 250 grams for each unmarried girl and 100 grams for each male member of the family.

**SANJAY SHARMA VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0083 DelTrib**

A liability for purchase which has been credited in the account of the supplier cannot be added under section 68, more so when the purchase has been accepted as genuine and a deduction therefore has been allowed.

**COMMISSIONER OF INCOME TAX VS CELEBRITY FASHION LTD. : (2020) 109 CCH 0007 ChenHC**

To apply provisions of Section 14A Assessing Officer should record a finding as to how Sub-Section (1) of Section 14A would stand attracted and in absence of any such finding, disallowance is not justifiable.

**Sanjay Kaul v. Principal Commissioner of Income Tax, Delhi-8, New Delhi - [2020] 119 taxmann.com 470 (Delhi)**

Tax avoidance : Where assessee was not a regular investor in shares and had invested only in high risk stocks of obscure companies with no business activity or asset which were identified as 'Penny Stocks', Assessing Officer had correctly concluded that assessee had entered into a pre-arranged sham transaction so as to convert unaccounted money into accounted money in guise of capital loss; alleged short term capital loss was rightly disallowed.

**Siroya Developers v. Income-Tax Officer-17(3)(3), Mumbai - [2020] 119 taxmann.com 440 (Mumbai - Trib.)**

Reimbursement of expenses : Where assessee entered into a sub-development agreement with a sub developer for re-development of a slum-rehabilitation project, since from perusal of terms and conditions of sub development agreement, it was clearly revealed that assessee was obligated to construct tenants/occupant buildings at cost of developer, impugned amount received by assessee from sub developer towards reimbursement of expenses incurred towards said construction could not be treated as its income from other sources.

**CAPITALGAINS**

**ALOK SWARUP & ANR. VS INCOME TAX**

**OFFICER & ANR. : (2020) 60 CCH 0077 DelTrib**

Where the marginal difference between the value declared by the assessee and value assessed by the DVO is less than 10% of difference between value declared and value estimated, marginal difference needs to be ignored.

**CHET RAM VERMA SO SHRI POORAN SINGH VS INCOME TAX OFFICER : (2020) 60 CCH 0081 AgraTrib**

Tax liability arising out of the long-term capital gain is required to be fastened on the registered owner of the property and not on the assessee who is merely a power-of-attorney holder.

**Smt. G Vijay Padma v. Income Tax Officer, Ward 7(2)(1), Bengaluru - [2020] 119 taxmann.com 441 (Bangalore - Trib.)**

Agricultural land : Where assessee claimed proceeds from sale of an agricultural land as exempt, since RTC produced by assessee could not prove that land sold by assessee was agricultural land and if any crop was grown upon it during year, further, assessee had neither claimed any expenses incurred in carrying out agricultural operations nor there was any evidence of agriculture produce having been sold by assessee, land could not be considered as agricultural land and same was to be treated as a capital asset liable to tax.

**Siroya Developers v. Income-Tax Officer-17(3)(3), Mumbai - [2020] 119 taxmann.com 440 (Mumbai - Trib.)**

Year in which assessable : Where assessee offered income from sale of two flats in previous assessment year 2008-09, since admittedly "agreements to sell" for said flats were executed on 23-5-2008 i.e relevant to year assessment year 2009-10, further, assessee's architect also acknowledged that construction of said flats was

completed during assessment year 2009-10, revenue from sale of said flats was to be recognized during relevant year 2009-10.

**ASHOKBHAI CHINUBHAI BHARWAD VS INCOME TAX OFFICER : (2020) 60 CCH 0018 AhdTrib**

Where the Circle rate at the time of execution of agreement was lesser than one adopted by the parties as sale consideration, full sale consideration for the purpose of computing long term capital gain in the hands of the assessee is to be adopted.

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

**Tata Sky Ltd. v. Assistant Commissioner of Income-tax, Circle 7(3), Mumbai - [2020] 119 taxmann.com 424 (Mumbai - Trib.)**

Where assessee had filed necessary evidences to prove availability of its own funds which were sufficient to cover investment made by assessee in capital work in progress during year, interest paid on borrowed funds was to be allowed under section 36(1)(iii).

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

**Tata Sky Ltd. v. Assistant Commissioner of Income-tax, Circle 7(3), Mumbai - [2020] 119 taxmann.com 424 (Mumbai - Trib.)**

Scope of provision : Where assessee made an ad hoc provision for expenditures in respect of sale promotion, legal and professional fees, interest and programming costs but did not pay TDS on same, impugned disallowance made under section 40(a)(ia) was justified.

**Nilkanth Urban Co-operative Bank Ltd. v. A. Commissioner of Income-tax Circle-1, Solapur - [2020] 119 taxmann.com 369 (Pune - Trib.)**

Where assessee co-operative bank made payment of interest to HUF and unregistered firms, since both of these entities were 'members' of assessee admitted by way of an application made by them to bank and then passing a resolution to extent of their admission as members of bank in its board of directors meeting, no deduction of tax at source was to be made under section 194A on such payments of interest.

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

**Tata Sky Ltd. v. Assistant Commissioner of Income-tax, Circle 7(3), Mumbai - [2020] 119 taxmann.com 424 (Mumbai - Trib.)**

Discount : Where assessee, engaged in business of providing DTH services, sold set top Box (STB) & hardware and recharge coupon vouchers to distributors at a discounted rate and also provided also provided certain discount/bonus or credits to customers/subscribers for taking subscription directly from company's website, discount so offered could not be considered as commission and, hence, not liable for deduction of tax at source under provisions of section 194H.

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

**Commissioner of Income Tax v. L & T Valdel Engineering (P.) Ltd. - [2020] 119 taxmann.com 443 (Karnataka)**

Where assessee claimed exemption under section 10A in respect of its new unit, since assessee was engaged in site development of software program and programs were delivered at premise of client



at work site in foreign country and activities of assessee finally culminated at work site of clients outside India and there was no need for full fledged infrastructure facility in India, thus, industrial undertaking of assessee was independent of all undertakings which it already possessed, assessee was to be allowed exemption under section 10A on its new unit.

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

**Siroya Developers v. Income-Tax Officer-17(3)(3), Mumbai - [2020] 119 taxmann.com 440 (Mumbai - Trib.)**

Interest : Where assessee firm utilised its interest bearing funds for overdrawing of capital by its partner, rate of interest received by assessee firm from its partner, which was in excess as in comparison to rate on which funds were raised/borrowed by firm from third parties, same was liable to be assessed as income of assessee firm from "other sources".

**BUSINESS INCOME**

**ASSISTANT COMMISSIONER OF INCOME TAX VS BISWANATH PODDAR : (2020) 60 CCH 0078 KolTrib**

Where the assessee's case is covered in Explanation 1 to section 43(5)(d) and assessee's transaction is an eligible transaction, it cannot be termed as 'speculative transaction'.

**REASSESSMENT**

**SHRINIVAS GUPTA VS INCOME TAX OFFICER : (2020) 60 CCH 0087 LucknowTrib**

Notice has to be issued either on the address available in PAN database or address available in the income tax return and held Assessing Officer is circumscribed and bound by the express mandate of Rule 127.

**INCOME FROM UNDISCLOSED SOURCES**

**BHUWAN GOYAL VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0089 ChdTrib**

Provisions of Section 69 are not applicable where the business transactions of the assessee were recorded in the books of account and the assessee either earned commission or profit on all those Real Estate transactions and the income earned therefrom was utilized for making the investment in the property.

**INCOME TAX AUTHORITIES**

**COMMISSIONER OF INCOME TAX VS M.A. JACOB & COMPANY & ANR. : (2020) 109 CCH 0008 ChenHC**

Settlement Commission cannot re-open its concluded proceedings by invoking section 154 so as to levy interest under section 234.

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

**Principal Commissioner of Income Tax v. Atul Ltd. - [2020] 119 taxmann.com 287 (SC)**

Loss on sale of stores : Where Assessing Officer initiated reassessment on ground that during assessment under section 143(3) loss on sale of stores was wrongly allowed as business loss, but Tribunal set aside reassessment holding it to be change of opinion and Tribunal's order was upheld by High Court, SLP against High Court's order was to be dismissed.

**Commissioner of Income-tax-1 v. Apollo Tyres Ltd. - [2020] 119 taxmann.com 336 (Kerala)**

Where assessee as a guarantor of its JV company GPEL, had to pay certain amount to banks and



financial institutions as one time settlement on account of inability of GPEL to pay off its debts, since truthfulness of entries was not doubted and it was not a case of syphoning of money through fictitious entries, assessee's claim for business loss in respect of amount paid was to be allowed .

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

**Commissioner of Income-tax-1 v. Apollo Tyres Ltd. - [2020] 119 taxmann.com 336 (Kerala)**

Bonus : Where Tribunal allowed assessee's claim for payment of bonus in relevant year which was relatable to earlier assessment year by taking a view that there was no restrictive provision in section 43B to effect that deduction could not be allowed in year of payment if it had been made before due date for filing return for previous year, no substantial question of law arose from Tribunal's order.

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

**Asian Satellite Broadcast (P.) Ltd. v. Income Tax Officer - [2020] 119 taxmann.com 481 (Bombay)**

Where assessee during assessment submitted that it had transferred equity shares of ZEE to its related entity at nil consideration to consolidate onshore media assets including shares of listed companies and requested to treat said transfer as gift not liable to tax under section 45 and Assessing Officer passed assessment order accepting said claim but after more than four years, section 148 notice was

issued to assessee on basis of CIT(A)'s decision in case of group entity that said transfer was nothing but colourable device, since communication between assessee and Assessing Officer clearly demonstrate that assessee had disclosed all primary facts regarding said transfer during assessment, it was a clear case of change of opinion and, thus, section 148 notice would no longer survive .

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

**Principal Commissioner of Income-tax, Delhi 2 v. Bluebird Software (P.) Ltd. - [2020] 119 taxmann.com 348 (SC)**

Condition precedent : Where High Court upheld Tribunal's order setting aside addition made by AO under section 153A on ground that said addition was not based on any incriminating material found during course of search, SLP filed against said order was to be dismissed due to low tax effect .

**SECTION 255 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - PROCEDURE OF**

**Ampacet Cyprus Ltd. v. Deputy Commissioner of Income-tax - [2020] 119 taxmann.com 277 (Mumbai - Trib.)**

Special Bench : In event of a doubt about correctness of earlier decisions of Tribunal, a reference can be made for constituting a larger Bench for considering same .

Circular No. 19/2020

**F.No.197/135/2020-ITA-1**  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

New Delhi, the 3<sup>rd</sup> November, 2020

**Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No. 10BB for Assessment Year 2016-17 and subsequent years – Reg.**

Under the provisions of section 10(23C) of Income-tax Act, 1961 (hereafter 'Act') where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

2. As per Rule 16CC of the Income-tax Rules, 1962 (hereafter 'Rules') the audit report of the accounts of such a fund or trust or institution or any university or other educational institution or any hospital or other medical institution is to be furnished in Form No. 10BB. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return results in disentitlement of such entity from claiming exemption under section 10(23C) of the Act.

3. Representations have been received by the Board/field authorities stating that Form No. 10BB could not be filed along with the return of income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form No 10BB may be condoned.

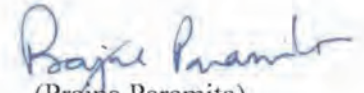
4. Accordingly, with a view to expedite the disposal of applications filed by such entities for condoning the delay and in exercise of the powers conferred under section 119(2) (b) of the Act, the Central Board of Direct Taxes hereby directs that:

(i) In all the cases of belated applications in filing of Form No. 10BB for years prior to AY. 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay u/s 119(2)(b) of the Act. The Commissioner will while entertaining such applications regarding filing Form No. 10BB shall satisfy themselves that the applicant was

prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed of by 31.03.2021.

(ii) where there is delay of upto 365 days in filing Form No. 10BB for Assessment Year 2018-19 or for any subsequent Assessment Years, the Commissioners of Income-tax are hereby authorized to admit such belated applications of condonation of delay under section 119(2) of the Income-tax Act, 1961 and decide on merits.

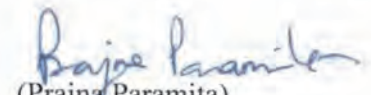
5. The Commissioners of Income-tax shall, while entertaining such belated applications in filing Form No. 10BB, satisfy themselves that the applicant was prevented by reasonable cause from filing such application within the stipulated time.



(Prajna Paramita)  
Director (ITA-I)

Copy to:-

1. PS to FM/OSD to FM/ PS to MoS (R) / OSD to MoS (R)
2. PPS to Secretary(Revenue)
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax/ Chief Commissioner of Income-tax (Exemptions) – with a request to circulate amongst all officers in their regions/ charges.
5. CIT(M&TP), CBDT and Official spokesperson of CBDT.
6. The Additional Director General (PR & PP), New Delhi).
7. ITCC Division of CBDT
8. Data Base Cell – for placing it on [www.irsofficersonline.gov.in](http://www.irsofficersonline.gov.in)
9. DIT (S) -4/ Web manager for placing it on [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)
10. The Guard File.



(Prajna Paramita)  
Director (ITA-I)



**MINISTRY OF FINANCE**

**(Department of Revenue)**

**(CENTRAL BOARD OF DIRECT TAXES)**

**NOTIFICATION**

New Delhi, the 2nd November, 2020

**(INCOME-TAX)**

**S.O. 3952(E).**—In exercise of powers conferred by sub-clause (vi) of clause (b) of the *Explanation* to clause (23FE) of section 10 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), the Central Government hereby specifies the sovereign wealth fund, namely, the MIC Redwood 1 RSC Limited, Abu Dhabi, United Arab Emirates, (hereinafter referred to as “the assessee”) as the specified person for the purposes of the said clause in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31<sup>st</sup> day of March, 2024 (hereinafter referred to as “said investments”) subject to the fulfilment of the following conditions, namely:-

- (i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;
- (ii) the assessee shall get its books of account audited for the previous years referred to in clause (i) by any accountant specified in the *Explanation* below sub-section (2) of section 288 of the Act and furnish the Audit Report in the format annexed as Annexure to this notification herewith at least one month prior to the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act.
- (iii) the assessee shall furnish a quarterly statement within one month from the end of each quarter electronically in Form II as annexed to the Circular No 15 of 2020, dated the 22<sup>nd</sup> July, 2020 with F. No. 370142/26/2020-TPL, issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (Tax Policy and Legislation Division), in respect of each investment made by it during the said quarter;
- (iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;
- (v) the assessee shall continue to be owned and controlled, directly or indirectly, by the Government of the Abu Dhabi and at no point of time any other person should have any ownership or control, directly or indirectly, in the assessee;
- (vi) the assessee shall continue to be regulated under the law of the Government of Abu Dhabi;
- (vii) the earnings of the assessee shall be credited either to the account of the Government of Abu Dhabi or to any other account designated by that Government so that no portion of the earnings inures to any private person;
- (viii) (a) the assessee does not and shall not have any loan, borrowing, advances, deposits or investment in it of any kind directly or indirectly from any person other than the Government of the Abu Dhabi;  
(b) The assessee shall only invest the surplus fund of the Government of Abu Dhabi and that Government shall not raise any loan, debt etc. directly or indirectly, from the market or any entity to make the said investment;
- (ix) the asset of the assessee shall vest in the Government of Abu Dhabi upon dissolution;

- (x) the assessee does not and shall not undertake any commercial activity whether within or outside India other than the said investment or investment of similar nature;
  - (xi) the assessee shall have monitoring mechanism to protect the said investment with investee but shall not manage day to day operations of the investee or appoint executive directors in the investee company or participate in the decision making process or control them; and
  - (xii) the assessee shall not carry out asset management activity for any person other than itself.
2. Violation of any of the conditions as stipulated in the said clause (23FE) and this notification shall render the assessee ineligible for the tax exemption.
  3. This notification shall come into force from the date of its publication in the Official Gazette.

**ANNEXURE**

**Audit report to be filed by the Sovereign Wealth Fund claiming exemption under clause (23FE) of section 10 of the Income -tax Act, 1961**

**Part I**

\*I/we report that the statutory audit of M/s. .... (Name and address of the assessee with Permanent Account Number or Aadhaar Number), the particulars of which are given in Part II was conducted by \*me/ us/ M/s. .... as per the requirement under the Notification No ...../..... dated ..... published in the Official Gazette on .....

2. In \*my/ our opinion and to the best of \*my/ our information and according to examination of books of account including other relevant documents and explanations given to \*me/us, it is certified that the assessee \*has/ has not complied with the conditions as laid down under clause (23FE) of section 10 of the Income-tax Act, 1961 and those provided in the said notification specifying the assessee being the Sovereign Wealth Fund as specified person for the purposes of claiming exemption under the said clause (23FE).

2.1 \*The conditions not complied with by the assessee are as under:-

- (a) .....
- (b) .....

3. In \*my/our opinion and to the best of \*my/ our information and according to examination of books of account including other relevant documents and explanations given to \*me/us, the particulars given in the Part II are true and correct subject to the following observations/qualifications, if any, namely:-

- (a) .....
- (b) .....

**Part II**

1. Name of the Assessee :
2. PAN/ AADHAAR :
3. Previous Year :
4. Total Income of the Assessee during the previous year:
5. Amount of income eligible for exemption under clause (23FE) of section 10 of the Income-tax Act, 1961 :

Place: .....

Date: .....



\*\*(Signature and stamp/ Seal of the signatory)

Name of the signatory .....

Full address .....

Membership No.....

UDIN.....

**Notes:**

3. \*Delete whichever is not applicable.
4. This report has to be signed by an accountant falling within the meaning of expression “accountant” as provided in the *Explanation* below sub-section (2) of section 288 of the Income-tax Act, 1961.

[Notification No. 89/2020/ F. No. 370133/16/2020-TPL]

ANKIT JAIN, Under Secy. (Tax Policy and Legislation Division)

## RECENT CASE LAWS

CA Ankit Kanodia

**M/s. Sun Dye Chem Versus The Assistant Commissioner – Madras HC permits assessee to correct Form GSTR-1 for the period August 2017 to December 2017 and redistribute the credit available from IGST column to CGST and SGST field.**

W.P. No.29676 of 2019- 2020-TIOL-1858-HC-MAD-GST

Madras High Court

Citing that it is “nobody's case that the error was deliberate and intended to gain any benefit” by reflection of credit in a wrong column, holds that “assessee should not be prejudiced from availing credit that they are otherwise legitimately entitled to” in absence of an enabling provision for rectification of error; Explains that request for rectification was rejected by Revenue on the ground that there was no provision to grant amendment to Form -GSTR 1 sought after March 31, 2019; Perceiving that the Forms, by filing of which the Assessee might have noticed the error and sought amendment, viz. GSTR-2A and GSTR-1A are yet to be notified, observes that, had the requisite Forms been notified, the mismatch between the details of credit in the Assessee's and the supplier's returns might well have been noticed and appropriate and timely action taken; Thus, allows Assessee to re-submit the annexures to Form GSTR-3B with the correct distribution of credit between IGST, SGST and CGST and directs the Revenue to take the same on file and enable the auto-population of the correct details in the GST portal.

### Comments:

One can use this decision to approach the Authority requesting them to rectify the GSTR-1/GSTR 3B beyond the prescribed due date. A path breaking judgment indeed and the assesses facing litigation

on various grounds such as B2B shown as B2C, IGST shown as CGST/SGST can very well take help of the above judgment.

**Bon Cargos Pvt Ltd Vs Assistant State Tax Officer (INT) – E-way bill for a consignment of value < 50K for multiple invoices in the same conveyance**

2020-TIOL-1825-HC-KERALA-GST

Kerala High Court

The High Court of Kerala has held it is the duty of the transporter or the consignor, consignee to generate e-way bill when the aggregate value of the consignment is more than Rs.50,000/- and if otherwise i.e., less than Rs.50,000/- there is no such requirement is not acceptable.

Relevant Provision:

1. Rule 138(1) provides that every registered person, where consignment having a value >Rs.50,000/- has to generate an e-way bill.
2. The proviso to Sub-rule 3 provides generation of the e-way bill at the option of resisted person/transporter when the value of the invoice is < Rs.50,000/-
3. Sub-Rule 7 provides the transporter to generate e-way bill, where the consignor/consignee has not generated an e-way bill where the aggregate of the consignor value of the goods carried in the conveyance is > Rs.50,000/-

### Comments:

In many cases, the consignment has been split to reduce each invoice value to less than Rs.50,000/- to avoid the generation of e-way bill. It is recommended to generate the e-way bill irrespective of the value to avoid any disputes during transportation.

**Agarwal Foundries Private Limited vs. UOI – GST Officials Cannot Use Physical Violence**

### **During Search, Investigation Or Interrogation**

**Writ Petition No.28268 of 2019- 2020-TIOL-1898-HC-TELANGANA-GST**

**Telangana High Court**

DGGST officials conducted simultaneous raids on business units and residential houses without any prior intimation or show-cause notice. Petitioner, his relatives, and employees have alleged that all the phones were seized. During questioning, officials abused them with filthy language for not giving satisfactory replies and physically assaulted them repeatedly. It is contended that when petitioners were requesting not to resort to violence, officials aggravated assault on them and grievously hurt his leg of one of them. This person was unable to stand, and with the help of employees, he was rushed to the nearest hospital. Company employees made a police complaint by dialing

phone number 100. Police Officials arrived at the office premises, but they refused to take any action at the tax official's insistence.

Held:

Tax officials shall not use any acts of violence or torture against petitioners or their employees in further inquiry proceedings.

Enquiry in the above proceedings shall not be handled by "THE" tax officer, and he shall not even participate in said enquiry. Proceedings of this case shall be

Any interrogation of the petitioner or their employees shall be between 10:30 a.m. and 05:00 p.m. on week days in the visible range of an advocate appointed by them, who shall not be in hearing range.

Tax officials shall adhere to the CGST Act, 2017 in conducting search, investigation, or enquiry in relation to the alleged tax evasion by the petitioners.

#### **Comments:**

There have been numerous cases where the assessee have been tortured and human rights have been abused in the garb of conducting an enquiry/investigation. The fact that a High Court of

the country had to give such a judgement is appalling.

**Sri Kali Krishna Industries - Mismatch reports is indicative in nature, but cannot be seen as final to conceive any suppression of turnover/tax**

**[2020] 121 taxmann.com 149 (AA - GST - AP)**

**Appellate Authority - GST, ANDHRA PRADESH**

GST - Assessing authority had conducted scrutiny of GST returns of assessee for tax period from July, 2017 to June, 2018 - On such scrutiny, Assessing authority noticed that assessee's declared sale turnover in GSTR-3B was not equaling to GSTR-1 declared sale turnover - Thus, it had determined under declared tax of certain amount - Assessee contended that due to unknown problems in GSTN network software, though it had attempted to file GSTR-3B return for month of October 2017, it was automatically conceived 'NIL' return and it could not file any return for this month afterwards since no pending return shown in GSTN login - It was noted that mismatch reports was indicative in nature, but could not be seen as final to conceive any suppression of turnover/tax - Assessing Authority ought to have examined assessee's contentions submitted in response to show cause notice which it failed to do - Whether, therefore, determined under declared tax liability by Assessing Authority could not be upheld as bona fide and tax levied basing on mismatch reports was annulled - Held, yes

#### **Comments:**

Appellate Authority by above order has upheld the fact that mere mismatch in GSTR-1 and GSTR-3B is indicative in nature and cannot be seen as final to conceive any suppression of turnover /tax. In the given case, mismatch existed due to technical issues in GSTN portal and assessee had proper clarification for mismatch but same was not considered by the authority while passing the order. Thus, Appellate Authority has rightly annulled tax liability imposed by Assessing Authority. This case will help all assessee's facing similar issues as incorrect filing of GST returns

due to technical glitches of GSTN has been a very common issue among taxpayers at large.

Above order can also be considered in cases where notice for payment of excess ITC claimed is being issued by department for mismatch in ITC as per GSTR-3B and GSTR-2A even where assessee has proper justification for difference in the two. Though whether ITC can be disallowed for non filing of returns by supplier is itself a matter of litigation, but for the time being till any favourable judgement is issued in this regard, ITC should be taken as per Rule 36(4) and onus to justify reason for difference between ITC as per GSTR-3B and GSTR-2A is on assessee. Thus a detailed invoice level working for the same is suggested.

### **Sree Ram Steels Vs The Deputy State Tax Officer - Tax demand, detention**

#### **of assessee's goods & vehicle for 'small documentation defect', arbitrary**

TS(DB)-GST-HC(TEL)-2020-664

#### Telangana HC

Telangana HC finds the demand of tax by detaining goods and vehicle of assessee raised by Revenue, on the ground of a small defect in documentation alleging that issuance of E-way bill subsequent to detention is an after-thought, to be “arbitrary and violative of Articles 14 and 265 of the Constitution of India, and also the provisions of CGST Act, 2017 and TGST Act, 2017”; Notes that in the show-cause notice issued to the assessee, the only reason assigned by Revenue was that 'wrong destination is noticed', and holds that 'Noticing the conveyance at a wrong destination' without anything more cannot be said to be a contravention of the CGST Act/Telangana GST Act,2017 and it is not a taxable event; Highlights that in the E-way bill there was an option to disclose the place of unloading such as job worker's address which was not done in present case as per Rule 46 (o); However, stating that although not in the E-way bill, the place of delivery of the goods at the address of the job work site of the purchaser was mentioned in delivery challan, HC clarifies that this corroborates the assessee's defence and explanation to show-cause notice; Accordingly, Court directs refund of the amount with interest, keeping in mind that as per para 5 of

Circular CBEC/20/16/03/2017 - GST dated September 14, 2018 “the conveyance/vehicle driver had the tax invoice and the e-way bill, there is prima facie compliance with the provisions of the CGST Act and Telangana GST Act” and remarks that “...it did not warrant initiating of proceedings under Sec.129 of the Telangana GST Act, 2017”; Follows the ratio laid down by Gujarat HC in Synergy Fertichem while rejecting Revenue's contention that unlike that case no confiscation has been initiated herein, and pointing-out that GST Act are recent laws, HC states that “interpretation of taxing statutes should be done in a way to facilitate business and inter-State trading, and not in a perverse manner which would result in impediment of the same by harassing business persons”

#### Comments:

Above is a welcome judgement by HC wherein HC has specifically stated that tax statute should be interpreted in a manner as to facilitate and ease business and not in a perverse manner which cause hinderances in doing business by harassing business persons. HC in the judgement has highlighted that 'Noticing the conveyance at a wrong destination' without anything more cannot be said to be a contravention of the CGST Act/TSGST Act,2017 and it is not a taxable event. It added that once the conveyance has Tax invoice and EWB, prima facie compliance of CGST/SGST Act and rules are complied and it does not warrant initiation of proceedings under section 129 and mere omission to mention job worker's address cannot be a ground to presume that there is an intention to violate law or evade tax.

### **Shri AnantJignesh Shah proprietor of M/s Nakoda and Company Vs**

#### **The Deputy State Tax Officer - SCN for confiscation cannot be issued on mere suspicion.**

2020-TIOL-1921-HC-AHM-GST

#### Gujarat HC

GST - Applicant is engaged in business of trading of pan masala and is registered under provisions of CGST Act, 2017 - They had placed an order



with one M/s. Atharva Enterprises for supply of pan masala - The said goods were to be transported from Ujjain, Madhya Pradesh in a vehicle and were to be delivered at Ahmedabad, Gujarat - The ground on which authority proposes to confiscate the goods and vehicle is not tenable in law - The goods and the vehicle can be detained under Section 129 of the Act only if such goods are transported in contravention of provisions of the Act or the Rules made thereunder - The court specifically inquired with Mr. Dave, Assistant Government Pleader as to whether any provision of the Act or the Rules could be said to have been contravened with regard to the transaction in question - Mr. Dave, with his usual fairness pointed out that when the goods were in transit and detained, it cannot be said that there was any contravention of provisions of the Act or the Rules - However, according to Mr. Dave, the authorities have grave suspicion that the driver of vehicle might have entered Ahmedabad on the same E-way bill and might have succeeded in getting out thereafter without payment of any tax -

Thus, the case of Assistant Government Pleader is one of evasion of tax for some transaction which is unknown - The SCN under Section 130 of the Act cannot be issued on a mere suspicion - There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under Section 130 of the Act - The notice in Form GST MOV-10 is set aside - It is clarified that if there is any other inquiry to be made as regards any other transaction, it is open for authority to initiate and carry out such inquiry

#### **Comments:**

Above judgement by HC has come as a relief for bonafide tax payers and protects them from arbitrary SCN under section 130 issued by department merely on suspicion. Department should refrain from issuing such notices.

**HC: Uploading SCN on Revenue's website a statutory mandate, directs Dept. To follow 'procedure prescribed'**

Shri Shyam Baba Edible Oils vs. The Chief Commissioner and Anr.-[TS-1001-HC-2020(MP)-NT]

Madhya Pradesh HC strikes down demand for non-observance by Revenue of statutory procedure prescribed for communicating show-cause notice (SCN)/order under Rule 142(1) of CGST Act; Pursuant to reply sought in response to Petitioner's grievance regarding violation of principle of natural justice on the anvil of Rule 142 of CGST Rules, Counsel for Revenue fairly concedes that the SCN was not uploaded on website of the revenue but communicated to Petitioner by Email; Perusing Rule 142 as well as the reply filed, states that "the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue" whilst emphasizing that State in its reply has provided no material to show that SCN was uploaded on website of revenue; Explains, "when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded", while elaborating that, this principle becomes all the more stringent when statutorily prescribed as is the case herein; Accordingly, allows writ petition with liberty to Revenue to follow the procedure prescribed under Rule 142 of CGST Rules by communicating the SCN to the Petitioner by appropriate mode: Madhya Pradesh HC

#### **Comments:**

The above judgment is a classical judgments which sets out that the procedure prescribed in the law is to be followed equally by the assessee as well as the department. In the given case Rule 142 of the CGST Rules, 2017 statutorily obliges the revenue department to communicate show-cause notice/order by uploading the same on the website of revenue so that the aggrieved person can have access to the same and be aware of reasons behind the demand to enable the aggrieved person to avail alternative remedy before the higher forum under CGST Act and since the same was not followed, the Hon'ble HC rightly quashed the demand with liberty to Revenue to follow the procedure prescribed under Rule 142 of CGST Rules by communicating the SCN to the Petitioner by appropriate mode.



## NOTIFICATIONS

CA Ankit Kanodia

### Notification No. 81, 82, 84, 85/ 2020 Dated 10<sup>th</sup> November, 2020 - Quarterly Return Monthly payment

#### Eligibility

- A registered person who is required to furnish a return in **FORM GSTR-3B**, and who has **an aggregate turnover of up to 5 crore rupees in the preceding financial year**, is eligible for the QRMP Scheme.
- The aggregate annual turnover for the preceding financial year shall be calculated in the common GSTN portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 01.01.2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

#### Exercising Option for QRMP Scheme

##### **Rule 61A of the CGST Rules, 2017**

1. A registered person can opt in for any

quarter from first day of second month of preceding quarter to the last day of the first month of the quarter.

2. The registered person must have furnished the last return, as due on the date of exercising such option.

The option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

#### Notification No.84/2020

##### Default Migration

For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, the default migration facility is being enabled and it has been provided that all the registered persons, whose aggregate turnover for the FY 2019-20 is up to 5 crore rupees and who have furnished the return in FORM GSTR-3B for the month of October, 2020 by 30<sup>th</sup> November, 2020, shall be migrated on the common portal, as below.

SL.No	Class of registered person	Default Option
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished <b>FORM GSTR-1</b> on quarterly basis in the current financial year	Quarterly return
2.	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished <b>FORM GSTR-1</b> on monthly basis in the current financial year	Monthly Return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial	Quarterly Return

Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5th of December, 2020 to 31st of January, 2021.

The taxpayers who have not filed their return for October, 2020 on or before 30th November, 2020 will not be migrated to the Scheme.

### **New Invoice Furnishing Facility (IFF) under QRMP Scheme**

The registered persons opting for the QRMP Scheme would be required to furnish the details of outward supply in FORM GSTR-1 quarterly as per the rule 59 of the CGST Rule.

- For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month.
- The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month.
- It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month.
- The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.
- The IFF facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP

Scheme.

- The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in FORM GSTR-1 for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in FORM GSTR-1 only, without using the IFF.

### **Notification 85/2020**

#### **Monthly Payment of taxes under QRMP Scheme**

The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month.

The said person can use any of the following two options provided below for monthly payment of tax during the first two months –

- (a) Fixed Sum Method:** A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to thirty-five per cent of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.
- (b) Self-Assessment Method:** The Registered Persons, can also pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in FORM GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been

made available in FORM GSTR- 2B, for every month.

In case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

debited solely for the purposes of offsetting the liability furnished in that quarter's FORM GSTR-3B. However, any amount left after filing of that quarter's FORM GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters.

- In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in FORM GSTR-3B for the relevant tax period.

#### Applicability of Interest

- **A. For registered person making payment of tax by opting Fixed Sum Method**

Turnover	Particulars	Date
aggregate turnover of up to five crore rupees in the previous financial year,	principal place of business is in the States of <b>Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi</b>	the <b>twenty-fourth day of the month succeeding such month.</b>
aggregate turnover of up to five crore rupees in the previous financial year,	<b>principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep</b>	the <b>twenty-second day of the month succeeding such month.</b>

#### **Quarterly filing of FORM GSTR-3B**

- The registered persons would be required to furnish their quarterly returns in FORM GSTR-3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In FORM GSTR-3B, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein.
- The amount deposited by the registered person in the first two months shall be

- No interest would be payable in case the tax due is paid in the first two months of

unpaid / paid beyond the due date for the first two months of the quarter.

Interest payable, if any, shall be paid through **FORM GSTR-3B**.

Further, in case **FORM GSTR-3B** for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

### Applicability of Late Fee

Late fee is applicable for delay in furnishing of return/details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to Section 39(1) of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/details of outward supply. No late fee is applicable for delay in payment of tax in first two months of the quarter.

### Notification No. 83/2020 Dated 10<sup>th</sup> November, 2020

The Government has bought this Notification for **due date of GSTR 1** for each of the tax periods.

The time limit for furnishing the details of outward supplies in FORM GSTR 1 of the CGST Rules, 2017, for each of the tax periods extended till **11<sup>th</sup> day of the month** succeeding such tax period.

The time limit for furnishing the details of outward supplies in FORM GSTR 1 of the CGST Rules, 2017 for the class of registered persons required to furnish **quarterly return** under provision to section 39(1) of the CGST Act, 2017 extended till **13<sup>th</sup> of the month** succeeding such tax period.

### Notification No. 86/2020 Dated 10<sup>th</sup> November, 2020

The Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 76/2020-Central Tax, dated the 15th October,

2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 636(E), dated the 15th October, 2020, except as respects things done or omitted to be done before such rescission.

Notification No. 76/2020 prescribed staggered due-dates categorizing tax payers region-wise for filing of FORM GSTR-3B for October, 2020 to March, 2021.

### Notification No. 87/2020 Dated 10<sup>th</sup> November, 2020

The Commissioner, with the approval of the Board, hereby **extends** the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from **July, 2020 to September, 2020 till the 30th day of November, 2020**.

2. This notification shall be deemed to have come into force with effect from the 25th day of October, 2020.

### Notification No. 88/2020 Dated 10<sup>th</sup> November, 2020

CBIC amends requirement for issuance of e-invoice w.e.f. January 1, 2021 making it applicable to registered persons whose turnover in any preceding financial year from 2017-18 onwards exceeds **Rs. 100 crore** in respect of supply of goods or services or both or exports;

Before Government had issued principal Notification No 13/2020, dated 21<sup>st</sup> March for implementing E invoice for taxpayers having aggregate turnover of **Rs 100 crore** which was further increased to **Rs 500 crore** vide Notification No.70/2020 dated 30<sup>th</sup> September, 2020.

### Notification No. 89/2020 Dated 29<sup>th</sup> November, 2020

CBIC waives the amount of penalty payable by a registered person u/s 125 of CGST Act for non-compliance of provisions of dynamic QR code in **B2C invoices** prescribed vide Notification



No.14/2020 – Central Tax, dated March 21, 2020 between the period from the December 1, 2020 to March 31, 2021, subject to the condition that said person complies with provisions of said notification w.e.f. April 1, 2021.

The Government had earlier bought **Notification No-14/2020 dated 21<sup>st</sup> March'2020** which deferred the date of implementation of Dynamic Quick Response (QR) code to 1st October, 2020 for those registered persons whose aggregate turnover in a financial year exceeds five hundred crore rupees. The Government had also exempted certain categories of persons from requirement of QR Code even if the turnover exceeds the specified limit.

## Instruction No. 4/3/2020-GST

### Standard Operating Procedure (SOP) for verification of taxpayers granted deemed registration

1. With effect from 21.08.2020, rule 9 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) provide that in cases where Aadhaar authentication has either not been opted for by the applicant or where such authentication has failed, the proper officer has to mandatorily initiate physical verification of the premises, or in cases where the physical verification is difficult, certain additional documents may be called for by the proper officer (upon approval of an officer not below the rank of Joint Commissioner) for verification before deciding upon grant of registration. Further, the present provisions allow for deemed registration upon completion of 21 days of application in such cases if the proper officer has not issued any notice within the said 21 days.

2. Data suggests that during the period from 21st August, 2020 to 16th November, 2020 deemed registration has been granted in many cases where Aadhaar authentication has not been opted for or has failed. These registrations granted on deemed basis require verifications to ascertain that they have genuine business or intends to carry out so. In order to complete the verification of such

registrants, following instructions are issued for immediate compliance:

3.1 The list of registrations granted on deemed approval basis, zone wise, during the period from 21st August, 2020 to 16th November, 2020 have been circulated to the field formations by the DG, Systems.

3.2 Rule 25 of the CGST Rules provide for physical verification of business premises in certain cases and include such verification after grant of registration. All such deemed registrations would be subjected to compulsory post registration verification. On completion of verification, if the proper officer has reasons to believe that the registration is liable for cancellation, he shall initiate the proceedings under rule 22 of the CGST Rules.

3.3 Pending physical verification, notice in **FORM REG-17** may be issued in specific cases based on following risk parameters seeking explanation from the registered person regarding the differences and anomalies noticed:

- i. Where **FORM GSTR-1** is filed and **FORM GSTR-3B** is not filed either for August or September, 2020 tax period;
- ii. The difference in tax amount, as reported in **FORM GSTR-1** and **FORM GSTR-3B** is more than Rs. 1 lakh ( $R1 > R3B$ )

On receipt of the reply to the notice, the proper officer would complete the proceedings under rule 22 of the CGST Rules

3.4 All the verifications must be completed in a time bound manner, within 3 weeks of these instructions. Zonal Chief commissioners already have the freedom to divert the staff from one formation to another within the Zone to complete the task. A weekly status report to be submitted to the Board in the format enclosed to this instruction.

4.1 The Standard Operating Procedure (SOP) to be followed by the proper officer for carrying out the physical verification of the persons who have been granted a deemed GST registration is outlined below.

4.2 The proper officer shall conduct physical verification of the principal place of business and wherever possible, additional place of business, indicated in GST registration **FORM REG-01** of the concerned registrant. During the physical verification, the officer, among other things, would also verify the following details:

a. In case the applicant intends to carry out manufacturing activity, whether capital goods, if required for the said manufacturing activity, have been installed.

b. Electricity connection, bills paid in the relevant period.

c. Size of the premises – whether it is commensurate with the activity to be carried out by the applicant.

d. Whether premises is self-owned or is rented and documents relating ownership/ registered lease of the said property. In case of doubt, enquiry may also be made from the landlord/ owner of the property in case of rented / leased premises.

e. No of employees already employed and record of their employment

f. Aadhaar and PAN of the applicant and its proprietor, partners, Karta, Directors as the case may be and the authorised signatories.

g. Bank's letter for up to date KYC.

4.3 In addition to the physical verification conducted, the proper officer, in the interest of revenue, would carry out the preliminary financial verification of the registrants by seeking the following documents and carrying out its scrutiny:

a. ITRs of the company / LLP from the date of incorporation or for last three financial years, whichever is less. ITRs of proprietor, partners, Karta, etc. may be taken in other cases.

b. The status of activity from the date of registration of all the bank account(s) linked to registration; the same may be taken through a letter / undertaking from the applicant. Phone number declared / linked to each of the bank accounts may also be obtained.

c. Quantum of capital employed/proposed to be

employed.

d. Out of the amount mentioned at (c) above:

(i) Own Funds:

(ii) Loan Funds: (indicate the names, complete address, PAN and amount borrowed from each such lender separately):

e. In case of own funds, also check the audited balance sheet for previous financial year, where available, in addition to the Income Tax Returns mentioned in (a) above.

f. In case of loan funds check the proposal submitted to the Bank/FI for approval of the loan and the maximum permissible bank finance as per such proposal, where the amount is proposed to be borrowed from a Bank and/or FI.

5. Field formations are advised that in cases where the applicant has not opted for Aadhaar authentication or where such authentication has failed, there should not be any case where registration is granted on deemed approval basis. Suitable instructions may kindly be issued to the field formations under your charge.

6. Difficulties, if any, in implementation of these instructions may be informed to the board ([gst-cbec@gov.in](mailto:gst-cbec@gov.in)).

7. This issues with the approval of the Chairman, CBIC.

## Company Law Updates

CA Mayur Agrawal

Reference	Date	Topic	Description
General Circular No. 37/2020	09-11-2020	Extension of LLP Settlement Scheme, 2020	<p>In continuation to this Ministry's General Circular No. 13/2020 dated 30.03.2020 &amp; in the General Circular No. 31/2020 dated 28.09.2020 the scheme was extended till 31<sup>st</sup> December 2020, in view of large scale disruption caused by the COVID-19 pandemic and after due examination, it has been decided to extend the date on applicability to defaulting LLP and therefore, in serial number 3, para 8A, sub-para (iii) of the said circular dated 30.03.2020, belated documents due for filing till 30th November 2020 shall be substituted. All other requirements provided in the said circulars shall remain unchanged.</p> <p>2. If a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of financial year but not later than 30<sup>th</sup> November, 2020, the same shall not be deemed as non-compliance.</p> <p><a href="http://mca.gov.in/Ministry/pdf/GeneralCircularNo.37_09112020.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircularNo.37_09112020.pdf</a></p>
S.O. 4283(E)	27-11-2020	Notification of Special Courts under section 435 of the Companies Act, 2013	<p>In exercise of the powers conferred by sub-section (1) of section 435 of the Cos. Act, 2013, the Central Government hereby designates 4 Courts mentioned in the link below as Special Courts in the States of Maharashtra, West Bengal and Tamil Nadu for the purposes of trial of offences under this Act, in respect of cases filed by the Securities and Exchange Board of India.</p> <p><a href="http://mca.gov.in/Ministry/pdf/NotificationCompAct_01122020.pdf">http://mca.gov.in/Ministry/pdf/NotificationCompAct_01122020.pdf</a></p>
General Circular No. 38/2020	01-12-2020	Relaxation of additional fees and extension of last date of filing of CRA-4 (form for filing of cost audit report) for FY 2019-20 under the Companies Act, 2013	<p>In continuation to this Ministry's General Circular No. 29/2020 dated 10th September 2020, in view of large scale disruption caused by the COVID-19 pandemic and after due examination of the representations received from various stakeholders, it has been decided to substitute the word and figures "30th November, 2020" with the word and figures "31st December, 2020" in the said General Circular.</p> <p><a href="http://mca.gov.in/Ministry/pdf/GeneralCircularNo.38_01122020.pdf">http://mca.gov.in/Ministry/pdf/GeneralCircularNo.38_01122020.pdf</a></p>

### **SEBI Updates**

**Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957, Dated 03.11.2020**

It has been decided to further streamline the processing of draft schemes filed with the stock exchanges, and make certain amendments to the aforesaid Circular dated March 10, 2017, as provided in the Annexure to this Circular.

The amendments are aimed at ensuring that the recognized stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, Rules, Regulations and circulars issued thereunder.

[https://www.sebi.gov.in/legal/circulars/nov-2020/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957\\_48064.html](https://www.sebi.gov.in/legal/circulars/nov-2020/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_48064.html)

**Relaxation in timelines for compliance with regulatory requirements, Dated 01.12.2020**

In view of the prevailing situation due to Covid-

19 pandemic and representation received from the Stock Exchanges, it has been decided to extend the timelines for compliance as detailed in the below link.

[https://www.sebi.gov.in/legal/circulars/dec-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements\\_48324.html](https://www.sebi.gov.in/legal/circulars/dec-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_48324.html)

### **RBI Updates**

**Discontinuation of Returns/Reports under Foreign Exchange Management Act, 1999, Dated 13.11.2020**

With a view to improve the ease of doing business and reduce the cost of compliance, the existing forms and reports prescribed under FEMA, 1999, were reviewed by the Reserve Bank. Accordingly, it has been decided to discontinue the 17 returns/reports as listed in the Annexure with immediate effect.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11994&Mode=0>



# INDIVIDUAL INSOLVENCY

CA Binay Singhania

Pramod Mittal, brother of Lakshmi Narayan Mittal and former steel tycoon who had spent over Rs 500 crore on his daughter's wedding in december, 2013, has got the tag of Britain's biggest bankrupt, with debts of £2.5 billion i.e. Approximately Rs.24,000 crores.

The Insolvency and Companies court, had declared him bankrupt in June, 2020 on an application made by Moorgate Industries. Moorgate Industries claimed a total outstanding debt of £130 million, which is due to business guarantee given by Pramod Mittal.

The main creditor is in the British Virgin Islands — over £1 billion (Rs 9,829 crore). Other creditors include his family members namely his nephew Amit Lohia in Indonesia, to whom he owes £1.7 million (Rs 16 crore); he owes his son Divyesh £2.4 million (Rs 23 crore), his father Mohan Lal £170 million (Rs 1,634 crore) and his financially independent wife Sangeeta over £1 million (Rs 10 crore), all of above-stated family members live with him in Mayfair, London.

Pramod Mittal in his attempt to fight the bankruptcy has come up with an Individual Voluntary Arrangement, (IVA) in his bid to have his bankruptcy cancelled.

## What is a IVA

Under the UK Insolvency Act 1986, an IVA is an arrangement between insolvent debtor and his creditors and creditors agree to settlement of dues against debtor. It is a formal repayment proposal that a debtor presents to the creditors. Through this debt management plan, the return to unsecured creditors is higher than what they would receive through bankruptcy. Unlike bankruptcy, the IVA

does not restrict a debtor from obtaining credit and the biggest benefit to an IVA over bankruptcy is that the debtor may still be able to have control over his home. In bankruptcy, assets (including home) are seized to realise funds to pay the creditors.

## Recent Updates

Surprisingly, Creditors have approved a proposed individual voluntary arrangement (IVA) by Pramod Mittal, in which he offered to pay back just £4.4 million (Rs 42 crore), after costs, of the £2.5 billion (Rs 24,000 crore) he owes them and he can be scot-free from all rigorous troubles keeping all his assets with him.

Pramod Mittal in the IVA proposal, declared that his total assets amount to just £115,669 (Rs 1.1 crore), he has no personal income, and his personal expenditure of £2,000 to £3,000 (Rs 1.9 to Rs 2.8 lakh) a month which is mainly met and borne by his wife and family. He also claimed that he has no properties in his name apart from a plot of land, 15 bighas at Anagpur, Ballabgarh, Faridabad.

He has declared his only other assets is jewellery worth £7,000 (Rs 6.7 lakh) held in India, and three watches with a value of £6,000 (Rs 5.7 lakh), gifted to his three children many years ago. He said he did not own any motor vehicle in the UK, and that several vintage cars he owns in India are valued at £1,000 (just under Rs 1 lakh). He says he has shares worth £64,482 (Rs 62 lakh) and £35,000 (Rs 33 lakh) in his bank account. The cash, shares, watches, cars and jewellery will all be excluded from the IVA as per norms.

Considering that IVA is a legally binding

agreement between a debtor and creditors to pay all or part of a debt. The IVA has to be agreed with the creditors, but it seems that Moorgate Industries are not comfortable with the details of his assets and creditors (as laid out in the IVA), which also includes his family members. Hence, the IVA proposed was not accepted and voted against in creditors' meeting by Moorgate Industries UK Limited, the incorporation which obtained the bankruptcy order against Pramod in the high court, however it was carried by a majority of the creditors.

In the IVA he proposes to pay back each creditor 0.19 pence for every pound they are owed. This represents 19 paise for every Rs100.

Pramod Mittal owes Moorgate £139 million (Rs 1,332 crore), and as per IVA terms, Moorgate

will get around £250,000 (Rs 2.39 crore.)

John Soden, director of Moorgate, unhappy with IVA said: “We will challenge the IVA under the Insolvency Act. We don't accept the veracity of the claimant's claims and we feel his assets are understated.” If Moorgate appeals, Pramod's attempts to annul his bankruptcy order will be delayed.

In the IVA Pramod Mittal has also stated that he is a retired “entrepreneur” and he is suffering from significant health issues. Creditors approved the IVA at a virtual meeting on October 26, 2020. The settlement is facilitated by a contribution of £4.7 million (Rs 45 crore) by Pramod Mittal's son, Divyesh Mittal. His brother Lakshmi Narayan Mittal, one of the richest person of world, did not come to his rescue.

# Latest Updates on Insolvency & Bankruptcy Code, 2016

Niraj Agrawal  
CA, CS, MBA, IP

## Status of Corporate Insolvency Resolution Process as on 30.09.2020

Period	CIRPs at the beginning of the Period	Admitted	Closure By				CIRPs at the end of the Period
			Appeal/ Review/ Settled	Withdrawals u/s 12A	Approval of Resolution Plan	Commencement of Liquidation	
2016-17	0	37	1	0	0	0	36
2017-18	36	705	90	0	20	90	541
2018-19	541	1152	141	95	80	306	1071
Apr-Jun 2019	1071	301	45	31	26	96	1174
Jul – Sep 2019	1174	588	46	43	33	155	1485
Oct – Dec 2019	1485	623	71	43	40	150	1804
Jan – Mar 2020	1804	441	62	46	36	135	1966
Apr – Jun 2020	1966	81	7	21	20	25	1974
Jul – Sep 2020	1974	80	10	12	22	68	1942
<b>Total</b>	<b>NA</b>	<b>4008</b>	<b>473</b>	<b>291</b>	<b>277</b>	<b>1025</b>	<b>1942</b>

CIRP Initiated By:			Ageing of CIRPs:	
Operational Creditors		2017	> 270 days	1442
Financial Creditors		1730	> 180 days ≤ 270 days	349
Corporate Debtors		261	> 90 days ≤ 180 days	74
			≤ 90 days	77
<b>Total</b>		<b>4008</b>	<b>Total</b>	<b>1942</b>

Source: IBBI

## Status of Resolution of 12 large accounts initiated by banks, as directed by RBI

(Amount in Rs. Crores)

Name of CD	Claims of FCs Dealt Under Resolution			Realisation by all Claimants as a % of Liquidation Value	Successful Resolution Applicants
	Amount Admitted	Amount Realised	Resolution as % of claims		
Electrosteel Steels Limited	13175	5320	40.38	183.45	Vedanta Ltd.
Bhushan Steel Limited	56022	35571	63.50	252.88	Bamnipal Steel Ltd.
Monnet Ispat & Energy Limited	11015	2892	26.26	123.35	Consortium of JSW and AION Investments P Ltd.
Essar Steel India Limited	49473	41018	82.91	266.65	Arcelor Mittal India P Ltd.
Alok Industries Limited	29523	5052	17.11	115.39	Reliance Industries Limited, JM Financial Asset Reconstruction Company Ltd., JMFARC - March 2018 Trust
Jyoti Structures Limited	7365	3691	50.12	387.44	Group of HNIs led by Mr. Sharad Sanghi
Bhushan Power & Steel Limited	47158	19350	41.03	209.12	JSW Limited
Jaypee Infratech Limited	23176	23223	100.20	130.82	NBCC (India) Limited
Amtek Auto Limited	12641	2615	20.68	169.65	Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd.
Era Infra Engineering Ltd.	Under CIRP				
Lanco Infratech Limited	Under Liquidation				
ABG Shipyard Limited	Under Liquidation				

Source: IBBI

## IBBI - NEW COMPLIANCE REQUIREMENTS

## IBBI - NEW COMPLIANCE REQUIREMENTS

### 1. Filing of list of creditors with IBBI under clause (ca) of sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

*Circular No. IBBI / CIRP / 36 / 2020 dated 27.11.2020*

Clause (ca) of sub-regulation (2) of regulation 13 of the CIRP Regulations, 2016 requires the IRP / RP to file the list of creditors on the electronic platform of the Board for dissemination on its website. The purpose of this requirement is to improve transparency and enable stakeholders to ascertain the details of their claims at a central platform.

The above requirement is applicable to every corporate insolvency resolution process (a) ongoing as on the date 13th November, 2020, that is, the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020; and, (b) commencing on or after the said date.

### 2. Serving of copy of the application to the Board, as mandated under Rules 4, 6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

*Circular No. IBBI / LAD / 35 / 2020 dated 29.10.2020*

The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as amended vide notification No. G.S.R. 583(E) dated 24th September, 2020 published in the Gazette of India, Part II, Section 3, Sub-section (i), No. 474 dated 24th September, 2020 requires an applicant to provide a copy of the application for initiating corporate insolvency resolution process against a corporate debtor,

inter alia, to the Board, before filing the same with the Adjudicating Authority.

For convenience of applicants, the Board has made available a facility on its website at <https://www.ibbi.gov.in/intimation-applications/iaaa> for serving a copy of the application online to the Board.

## IMPORTANT AMENDMENTS IN REGULATIONS

### 1. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020. (w.e.f. 13.11.2020)

**New Regulation 39(5A) inserted:** The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formulae, as the case may be, for payment of debts under such resolution plan:

Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after 13.11.2020.

### 2. Insolvency and Bankruptcy Board of India (Liquidation Process) (Fourth Amendment) Regulations, 2020.

#### Regulation 30A - Transfer of debt due to creditors

(1) A creditor may assign or transfer the debt due to him or it to any other person during the liquidation process in accordance with the laws for the time being in force dealing with such assignment or transfer.

(2) Where any creditor assigns or transfers the debt due to him or it to any other person under sub-regulation (1), both parties shall provide to the liquidator the terms of such assignment or transfer and the identity of the assignee or transferee.



(3) The liquidator shall modify the list of stakeholders in accordance with the provisions of regulation 31.

### 3. Regulation 37A - Assignment of not readily realisable assets.

(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

*Explanation* - For the purposes of this sub-regulation, "not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.

## IMPORTANT RECENT JUDICIAL PRONOUNCEMENTS - NCLAT

### 1. Application of Limitation Act : B.Prashanth Hegde vs State Bank of India (14 October, 2020)

The right to sue under IBC occurs when default occurs. If the default has occurred over three years period prior to the date of filing the Application, the Application would be time-barred given the law laid down by Hon'ble Supreme Court in B K Educational (supra). Company Appeal (AT) (Insolvency) No. 68 of 2019 of 11

Admittedly, in this case the Corporate Debtor was declared to be Non-performing Asset on 28th May 2014. The date was later changed to 31st January 2010. Therefore, if the position taken by the Financial Creditor Bank is taken as correct, 'Default' occurred on or before 31st January 2010. The period of Limitation for the

same would expire on 30th January 2013. The Application for initiation is filed on 23rd July 2018. The contention of the Respondent that their right accrued only on 01st December 2016 is not consonant to the ratio of judgement in B K Educational Services (supra) wherein the Hon'ble Supreme Court has held that "It is thus clear that since the [Limitation Act](#) is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, [Article 137](#) of the [Limitation Act](#) gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the Application, the Application would be barred under [Article 137](#) of the [Limitation Act](#), save and except in those cases where, in the facts of the case, [Section 5](#) of the Limitation Act may be applied to condone the delay in filing such Application".

In view of the law enunciated by the Hon'ble Supreme Court of India in the above-mentioned cases and the facts and circumstances of this case, it is clear that the Application filed under Section 7 of the Code by the Financial Creditor is barred by Limitation.

### 2. Simultaneous initiation of CIRP against Principal Borrower and Corporate Guarantor permissible under IBC :

**State Bank Of India vs Athena Energy Ventures Pvt. Ltd.** (24 November 2020)

We find substance in the arguments being made by the learned Counsel for Appellant which are in tune with the Report of ILC. The ILC in para - 7.5 rightly referred to subsequent [Judgement of "Edelweiss Asset Reconstruction Company Ltd. v. Sachet Infrastructure Ltd. and Ors."](#) dated 20th September, 2019 which permitted simultaneously initiation of CIRPs against Principal Borrower and its Corporate Guarantors. In that matter Judgment in the

matter of Pirmal was relied on but the larger Bench mooted the idea of group Corporate Insolvency Resolution Process in para - 34 of the Judgement. The ILC thus rightly observed that provisions are there in the form of [Section 60\(2\)](#) and (3) and no amendment or legal changes were required at the moment. We are also of the view that simultaneously remedy is central to a contract of guarantee and where Principal Borrower and surety are undergoing CIRP, the Creditor should be able to file claims in CIRP of both of them. The IBC does not prevent this. We are unable to agree with the arguments of Learned Counsel for Respondent that when for same debt Company Appeal (AT) (Ins) No.633 of 2020 claim is made in CIRP against Borrower, in the CIRP against Guarantor the amount must be said to be not due or not payable in law. Under the Contract of

Guarantee, it is only when the Creditor would receive amount, the question of no more due or adjustment would arise. It would be a matter of adjustment when the Creditor receives debt due from the Borrower/Guarantor in the respective CIRP that the same should be taken note of and adjusted in the other CIRP. This can be conveniently done, more so when IRP/RP in both the CIRP is same. Insolvency and Bankruptcy Board of India may have to lay down regulations to guide IRP/RPs in this regard.

It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon'ble High Courts for the respective jurisdictions, and law as laid down by the Hon'ble Supreme Court for the whole country is binding.

# THINGS YOU SHOULD KNOW ABOUT WILL

CA Raj Lakhotia  
CA Namita Lakhotia

## The Backdrop :

History has seen innumerable cases of strife due to wealth right from the Vedic ages. Till date the scenario has not changed, only the ways of settlement have. There are various famous cases and judgments which have time and again reinforced the importance of having a will. This may sometimes lead the lay man into believing that Will is only for the famous and the rich. But, this is not true. As per PIB data 2016, 76% of all cases pending in Indian Courts are relating to Family and Property Disputes. We feel, most of which could have been avoided if proper Succession Planning or Will were in place. Study suggests that the property dispute cases go on for a minimum average of 10yrs. These years bring with them a lot of distress for the family. Financial distress is caused is due to non-accessibility to assets for use and the expense to be incurred for legal services. Mental, emotional and physical distress is also due to the prolonged period taken for dispute settlement and resolution. In this period a lot can change starting from financial needs, relationships and life status. This is the least we can sum up about the challenges.

## What is a Will?

A will is a written document that speaks for you after you die. Most people should have a will. It can communicate how you want your property and assets to be distributed; name a guardian for your children if you pass away before they reach adulthood; and leave specific instructions like arrangements for your funeral, organ donation, forgive debts and a lot more. Having a Will gives you the comfort of knowing that the rewards of your life's work will be distributed and managed according to your wishes. When you write a Will, you appoint an executor who will oversee the

processes of distributing your estate in line with your wishes.

## Importance of Will :

It is important to make a will because, When you die without a will or a succession plan which is known as intestate succession, Succession laws of country decides which family members will inherit your estate and in what proportion. In India it is the Hindu Succession Act or Indian Succession Act or Muslim Law based on the religion of the person. This may not be the way that you would have wished your money and possessions to be distributed.

Most people want to distribute their property differently than the state would distribute it. For example, many people want to leave gifts to friends, distant relatives, helps, educational or charitable organizations – and intestate succession does not allow for any of that. If you want other people or organizations to inherit some of your property, or if you want to decide the proportions, a will can make sure your wishes are followed. Also this helps in saving taxes and stamp duty.

## Myths and Facts :

### # Registration:

Registration of Will is not mandatory. It is recommended in cases where chances of the will getting challenged can be perceived.

### #Stamp Paper:

Will on a plain paper is valid. There is no need to take the print of the will on a stamp paper.

### #Nomination:

Appointment of nominee is a stop gap arrangement. Succession Law supersedes

nomination in most cases.

### # Gifts vs will :

Gift to non relative has tax implications. By gifting, the right to the property is relinquished immediately. However in the case of will, the property is transferred only after the death of the person writing the will. Stamp duty is also applicable on gifts.

### # It is a costly and time taking task :

With an online portal like [www.dilsewill.com](http://www.dilsewill.com), will making is now affordable, available 24\*7, fast and secure.

### # It's too early to make a will:

“Death is certain, but the timing is uncertain.” Especially at a time when the world is going through an unprecedented situation of a global Pandemic, the luxuries to procrastinate will making to old age is not there. With the inset of westernization of India, nuclear family structures are at a rise. This makes will making at an early stage an essential.

### # Will can only be written once in a lifetime :

One can change his/her will innumerable times in his life span. In fact, it is recommended that the will be revisited every 3-5 yrs due to changes in financial status, relationship status, social status and the like. The last dated will is the final will. Changes to a will can also be done through codicil.

### Key ingredients of a Will are as follows:

**Testator Details** – Name, age, address details of the person making the Will

**Legal declaration** – A Will is a declaration by which a living person (called testator) declares his desires or intentions. The declaration must be legal. A declaration that is illegal either by way of the ultimate objective or in some other way will not be considered as a Will.

**Intention of testator** – A Will is a declaration of intention of the person making the Will. By definition, intention relates to the future and is different from statement of narration of facts as at

present. A Will that only narrates the present state of affairs and does not carry a clear exposition of the intention of the testator is not a Will. Similarly, if a Will made by a wife stating what her deceased husband always desired before death is not a Will; since it carries intentions of the testator's deceased husband and not of the testator.

**With respect to his / her property** – A Will can only be made with respect to the property that the testator owns or has rights over. The simple rule is that one can only give what one has. There is no way that one can give away something that one does not have.

The details of the properties which the testator wants to give to his beneficiaries under his Will like the description, the registration number, the date of registration and whether it is his self acquired property etc. If it is a movable property, then the details and description of each should be clearly and individually mentioned.

**Beneficiary Details** – In case of multiple beneficiaries, the details of each beneficiary like name, age, address, relationship of the beneficiary with the Testator.

**Desires to be carried into effect after his / her death** – The Will must state clearly that the testator desires that it comes into effect after his / her death. A renunciation during one's lifetime does not amount to a Will. If the document desires to partition property among the testator's sons while the testator is still living, the document cannot be called a Will.

**Guardian for Minors** – If the Testator wishes to give his property to any beneficiary who is a minor, then definitely he should appoint a guardian who will take care of the minor's property till the minor attains majority.

**Executor of the Will** – The Testator should appoint an Executor to his Will. An Executor is a person who shall implement the Will after the Testator's death.

**Signature and Date** – The Will should be clearly dated and signed by the Testator at the place in the



document just below the last sentence in the document.

**Exclusions** – The Testator cannot give any property that is joint family property or ancestral property that is common to many other members too. Such a Will becomes void.

### **Types of wills:**

#### **Privileged Will:**

A privileged Will can be in writing or can be oral. A privileged Will written in his own hand by the Testator need not be signed. A privileged Will signed by the Testator does not need attestation by witnesses. Privileged Will is a special Will made in extraordinary circumstances like war or dangerous expedition.

The only persons who can make a privileged Will are the following:

- (a) Soldier / airman employed in an expedition or engaged in actual warfare; and
- (b) mariner at sea

#### **Unprivileged Will:**

Every person who is not entitled to make a privileged Will can only make an unprivileged Will.

#### **Handwritten Wills:**

Handwritten wills are also called holographic wills. If you are in a pickle and need a will fast, by all means write your wishes down in a handwritten will. In many cases, a handwritten will is better than no will at all. However, if you have the means and opportunity, make a formal typed will with expert help – it will result in a more robust, precise, and easily probated document.

#### **Oral Wills:**

Oral wills are valid under very limited circumstances. They usually require a presence of fear of death and they can be used only to distribute personal property. Oral wills are unusual and uncertain. If you are planning to make a will, do not plan to make an oral will on your death bed.

Instead, take some time to make a formal will.

#### **Joint Wills:**

A joint will distributes the property of two or more people, usually a married couple. Joint wills determine what will happen to the couple's property after one spouse dies, and also what will happen to the property after the second spouse dies. Though it may seem convenient to a couple to make just one will, joint wills can cause problems for the surviving spouse because it ties up property and restricts what he or she can do with it, forever. Joint wills are best used (if at all) by couples who have children in common and who want to ensure that property will go to those kids (instead of a subsequent spouse or child). But there are better ways to do this, like making trusts.

#### **Mutual Wills:**

Couples can consider making mutual wills (also called reciprocal or mirror wills). Mutual wills are two separate wills that are close mirrors of each other. They allow couples to “leave everything to each other” and any number of other similar wishes, but because each person has his or her own will, he or she is free to change it as needed after the first spouse dies.

#### **Conditional and Contingent Wills:**

Conditional wills only go into effect when a certain act or condition happens. This means something other than the person who wrote the will's death. This could be a future event not closely related to writing the will, such as attaining a certain age.

#### **Advance Medical Directives (Living Will):**

Living Wills are still not popular and the directives that govern it are stringent. Unlike other types of wills, a living will gives instructions on what type of medical treatment you wish to receive if you become too ill to communicate. For example, you might state that if you become terminally ill and unconscious, you don't want to be hooked up to a feeding tube even if you would die without it.

### **Testamentary Trust Wills:**

A testamentary trust will is a will that puts at least some of your property into a trust. A trust distributes your assets to a beneficiary but is administered by a third person who controls when and how the property is distributed to the trust beneficiary.

### **CODICIL to the Will**

If a testator intends to make a few changes to the Will, without changing the entire Will, he can do so by making a codicil to the Will. The codicil can be executed in a similar way as the Will. One must note that a Will or codicil is not unalterable or irrevocable. They can be altered or revoked at any time.

When you decide to make a will, what not to miss when making a Will:

- The testator should have attained the age of majority.
- Will can be made a person having a sound mind.
- It is recommended to attach the Doctor's Certificate as a proof for the same.

- It is recommended that an expert be involved in the drafting of the will.
- It is suggested that every page of the will should be signed by the testator with page numbers mentioned therein.
- The testator should sign his will in the presence of at least two witnesses.
- The will should be attested by the two independent witnesses.
- Witness can be anyone other than beneficiary.
- The video recording of the will signing ceremony is also recommended.
- Executor must be communicated about the place of storage.
- It should be clearly mentioned that this is the last will and it supersedes all other wills.

“The greatest certainty in life is death, but the greatest uncertainty is the time.”- Carl Sandburg

CA Raj K Lakhota, Founder| CA Namita Lakhota, Co-Founder| [www.dilsewill.com](http://www.dilsewill.com)

# UPDATE ON CODE OF ETHICS OF ICAI

CA. Sumantra Guha

## Authority Attached to Documents Issued by the Institute

- The Institute of Chartered Accountants of India has, from time to time, issued 'Guidance Notes' and 'Statements' on a number of matters. With the formation of the Accounting Standards Board and the Auditing Practices Committee 'Accounting Standards' and 'Statements on Standard Auditing Practices'<sup>3</sup> are also being issued.
- Members have sought guidance regarding the level of authority attached to the various documents issued by the Institute and the degree of compliance required in respect thereof. This is being published here to provide this guidance.
- The 'Statements' have been issued with a view to securing compliance by members on matters which, in the opinion of the Council, are critical for the proper discharge of their functions. 'Statements' therefore are mandatory. Accordingly, while discharging their attest function, it will be the duty of the members of the Institute:

(a) to examine whether 'Statements' relating to accounting matters are complied with in the presentation of financial statements covered by their audit. In the event of any deviation from the 'Statements', it will be their duty to make adequate disclosures in their audit reports so that the users of financial statements may be aware of such deviations;

and

(b) to ensure that the 'Statements' relating to auditing matters are followed in the audit of

financial information covered by their audit reports. If, for any reason, a member has not been able to perform an audit in accordance with such 'Statements', his report should draw attention to the material departures therefrom.

- A list of Statements issued by the Institute and in force as on 1.8.2019 is given below.
  - (i) Statement on Reporting under section 227(1A) of the Companies Act, 1956
  - (ii) Statement on Peer Review.
  - (iii) Statement on Continuing Professional Education.
- Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary.

- The 'Accounting Standards' and 'Statements

on Standard Auditing Practices<sup>4</sup> issued by the Accounting Standards Board and the Auditing Practices Committee<sup>5</sup>, respectively, establish standards which have to be complied with to ensure that financial statements are prepared in accordance with generally accepted accounting standards and that auditors carry out their audits in accordance with the generally accepted auditing practices. They become mandatory on the dates specified either in the respective document or by notification issued by the Council.

- There can be situations in which certain matters are covered both by a 'Statement' and by an 'Accounting Standard'/'Statement on Standard Auditing Practices'<sup>6</sup>. In such a situation, the 'Statement' shall prevail till the time the relevant 'Accounting Standard'/'Statement on Standard Auditing Practices'<sup>7</sup> becomes mandatory. It is hereby clarified that once an 'Accounting Standard'/'Statement on Standard Auditing Practices'<sup>8</sup> becomes mandatory, the concerned 'Statement' or the relevant part thereof shall automatically stand withdrawn.

#### **Engagement and Quality Control Standards and Accounting Standards**

- The 'Accounting Standards' and 'Engagement and Quality Control Standards' establish standards which have to be complied with to ensure that financial statements are prepared in accordance with generally accepted accounting standards and that auditors carry out their audits in accordance with the generally accepted

auditing practices. They become mandatory on the dates specified in their respective document or notified by the Council.

- There can be situations in which certain matters are covered both by a Statement and by an Accounting Standard/Engagement and Quality Control Standard. In such a situation, the Statement shall prevail till the time the relevant 'Accounting Standard'/'Engagement and Quality Control Standard' becomes mandatory. Once an 'Accounting Standard'/'Engagement and Quality Control Standard' becomes mandatory, the concerned 'Statement' or the relevant part thereof automatically stands withdrawn.
- In a situation where certain matters are covered by a commendatory Accounting Standard and subsequently, an Accounting Standard is issued which also covers those matters, the commendatory Accounting Standard or the relevant portion thereof will be considered as superseded from the date of the new Accounting Standard coming into effect, unless otherwise specified in the new Accounting Standard.
- In a situation where certain matters are covered by a mandatory Accounting Standard and subsequently, an Accounting Standard is issued which also covers those matters, the earlier Accounting Standard or the relevant portion thereof will be considered as superseded from the date of the new Accounting Standard becoming mandatory, unless otherwise specified in the new Accounting Standard.



# Bank Audit Check List & Procedure (Concurrent Audit)

CA Suman Chaudhury  
FCA, MCOM, MBA, LLB, DISA

A financial entity requires continuous monitoring of transactions. For an entity like a bank, the review mechanism must be robust and unabating. Hence the need for a concurrent audit.

## Introduction to Concurrent Audit

### Concurrent Audit Procedure

#### 1. Introduction to Concurrent Audit

As the name itself suggests, it is an audit that takes place at the moment when transactions take place, that means it is parallelly conducted. Unlike most audits that are post transactional review, the concurrent audit is as and when transactions take place. It gives an early warning to ensure timely detection of irregularities and lapses.

#### 2. Concurrent Audit Procedure

The concurrent audit covers all transactions of the bank. Hence to understand how this audit needs to be conducted, an understanding of the processes of the banks is imperative.

Banking functions are inclusive but not limited to the following:

- Acceptance of deposits
- Loans and advances
- Cash management
- Safety Lockers
- Forex
- Bill payment

To conduct a concurrent audit, functions of the bank must be fragmented to transactions, and the necessary checks and balances must be assigned.

Acceptance of deposits: Acceptance of deposits is a core function of banks. The deposits are of varied nature depending on the holder and purpose of the account. Nevertheless, the process of acceptance of deposits can be summed up as follows:

- Collection of details
- KYC and AML norms compliance
- Creation of account in Core Banking System (CBS)

The following steps must be adhered to ensure correctness:

#### Checkpoints

1. Is the account opening form duly filled?
2. Is the application signed by an officer?
3. Are all the necessary proofs collected in original and verified as per KYC and AML norms?
4. Are all the details inputted in the CBS correctly and is the account created?
5. Is the signature and photo scanned in CBS?
6. Are the account number, customer id and account opening date specified on the application form?
7. Are all the documents correctly filed and stored properly?
8. Are the interest rates correctly applied, verified by conducting test checks in the CBS?
9. Check if the fixed deposits that have an OD facility have lien marked?

10. Test check if all the charges, prematurity penalties are correctly charged in the CBS

The KYC norms will differ as per the status of the holder of the accounts. Hence the document verification must be carried on accordingly.

Loans and advances : The lending of funds is the other core function of the bank. The bank accepts deposits at a certain rate and lends at a higher rate. The margin is the bank's profit. Lending function ranks higher on the risk factor as there is a possibility of the debt not being recovered. Hence there is a great significance and need for proper documentation.

There are several loans and advances that a bank offers. However, the process for disbursement remains more or less the same. The process for disbursement of loan can be summed up as the following transactions:

- Building a relationship with the customer
- Collection of all requisite documents
- Checking the credibility of the customer
- Disbursing the loan and monitoring the loan

To reduce instances of defaults and fraudulent transactions, the following points must be taken into consideration:

#### Checkpoints

1. Is the application duly filled?
2. Are all the documents collected for loan processing?
3. Are all documents self-attested and verified with originals?
4. Are all checks required for checking credibility performed like CIBIL report?
5. Are all the documents collected for guarantors as well?
6. Are the pre-sanction and post-sanction inspections conducted and are the reports

stored?

7. Are all the processing charges collected?
8. Are the interest rates in line with the bank policies?
9. Does the sanction letter include all accurate details?
10. Are all the particulars specified in CBS accurately?

The documents required for loan processing will vary depending on the type of loan. The auditor must verify all the documents and ensure that they are placed safely. Post sanction, the loans and advances have to be monitored periodically for warning signs of Non-performing Assets (NPA). The concurrent auditor must closely examine the NPA management and report any discrepancies.

Cash management: Since the bank earns interest on the rupee it lends, maintaining a high cash balance can result in interest losses. However, banks need to hold enough to fund the ATMs. Hence the bank must achieve a balance.

As an auditor, one must:

#### Checkpoints

1. Check the cash balances in the cash book and ensure that it as per the policy.
2. Conduct surprise audits to verify the cash in hand.
3. Verify the insurance cover and ensure that the cash is kept safely.
4. If any expense which is sizable in nature is made in cash, the authorizations for the transaction must be verified.

Safety lockers: Banks also hold valuables of the customers in lockers. As an auditor, the following checks must be done:

#### Checkpoints

1. Is the locker register maintained correctly?

2. Is the locker rent collected duly as per the size of the locker, any deviations should be backed up by satisfactory explanation?
3. Does the rent account in CBS reflect all the transactions?
4. Is the insurance policy for the lockers up to date?
5. Are there any suspicious transactions like multiple visits in a short duration by a customer or customers visiting only at a particular time or for a longer duration?

Forex : For forex operations of a bank, the auditor must ensure the following checks:

- Rate of foreign exchange on the transaction date and correct entry in books
- Adherence to RBI norms relating to forex.
- Correct valuation of forex held in hand at the time of the audit.

Bill payments: This is an add on service offered by banks; wherein a customer can make payments towards public utilities through the bank.

The auditor will have to verify:

- If standing instructions have been received from customers, then ensure that the same has been noted in the CBS to generate an auto payment.
- Ensure proper reconciliations of the utility accounts.

Income leakage: For an auditor to ensure completeness of audit it is imperative to check that all charges are collected, interest rates are inputted accurately in the CBS. The auditor must generate MIS to analyze the various charges and interest computations. Also, there has to be a documented process for changing the rates in the system, and the same must be strictly monitored.

The concurrent audit aims at reducing the gap between the occurrence of a transaction and its examination. A concurrent audit report covers all transactions and hence is the second line of defense for a bank.

## DTPA News Links

The DTPA News has been carried extensively in media. More than 25 newspapers (both English and Hindi), TV News websites and other websites across the nation. Some Links are here. We are thankful to all of them.

DTPA news items were also well covered by Sanmarg, Prabhat khabar, Rajasthan Patrika, Vishwamitra, Sahajsatta, Chhapte Chhapte, Yuva Shakti and other media. Our thanks & gratitude to all media

[https://www.business-standard.com/article/economy-policy/direct-tax-practitioners-seek-extension-of-sebi-settlement-scheme-till-mar-120102601429\\_1.html](https://www.business-standard.com/article/economy-policy/direct-tax-practitioners-seek-extension-of-sebi-settlement-scheme-till-mar-120102601429_1.html)

**Direct tax practitioners seek extension of Sebi settlement ...**

[www.business-standard.com](http://www.business-standard.com) › Economy & Policy › News

**Direct Tax Practitioners Seek Extension Of Sebi Settlement ...**

[www.ndtv.com](http://www.ndtv.com) › Home › Tax

**Direct tax practitioners seek extension of Sebi settlement ...**

[timesofindia.indiatimes.com](http://timesofindia.indiatimes.com) › ... › India Business News

**Direct tax practitioners seek extension of SEBI settlement ...**

[www.outlookindia.com](http://www.outlookindia.com) › newscroll › direct-tax-practit...

**Direct tax practitioners seek extension of SEBI settlement ...**

[www.theweek.in](http://www.theweek.in) › 2020/10/26 › ccm2-biz-dtpa

**Plea for extension of date for SEBI Settlement Scheme**

[taxguru.in](http://taxguru.in) › sebi › plea-extension-date-sebi-settlement-s...

SEBI extends SEBI Settlement Scheme 2020 till 31.12.2020

[taxguru.in](http://taxguru.in) › sebi › sebi-extends-sebi-settlement-scheme...

**Direct Tax Practitioners Seek Extension Of Sebi Settlement ...**

[newzzhub.com](http://newzzhub.com) › Buisness news



## [Direct Tax Practitioners Search Extension Of Sebi Settlement ...](#)

[www.todaynews.in](#) › 2020 › October › 27

## [Direct Tax Practitioners Seek Extension Of Sebi Settlement ...](#)

[newsdeal.in](#) › Business

## [Stock options settlement plan extended - Telegraph India](#)

[www.telegraphindia.com](#) › business › cid

<https://www.telegraphindia.com/business/stock-options-settlement-plan-extended/cid/1796256>

## [Direct tax practitioners want extension of SEBI settlement ...](#)

[indianlekhak.com](#) › direct-tax-practitioners-want-extens...

## [Direct Tax Practitioners Seek Extension Of Sebi Settlement ...](#)

[www.pehalnews.in](#) › direct-tax-practitioners-seek-exten...

## [Direct tax practitioners seek extension of Sebi settlement ...](#)

[littleposts.in](#) › Economy

## [Direct Tax Practitioners Seek To Extend Sebi Settlement ...](#)

[www.thebharatexpressnews.com](#) › Business

## [Latest News | Direct Tax Practitioners Seek Extension of SEBI ...](#)

[www.latestly.com](#) › Agency News

## **ITR Date Extension News**

### [Extension of Tax Audit and ITR Due dates is a welcome Move](#)

[taxguru.in](#) › income-tax › extension-tax-audit-itr-due-d...

### [Extend Tax Audit/TP Audit/ITR due date of AY 2020-21](#)

[taxguru.in](#) › income-tax › extend-tax-audit-tp-audit-itr-...

**DTPA “Representation Committee” has been formed to prepare and send representations to Government on various issues including Income Tax, Corporate Law, GST, SEBI, RBI matters.**

***It constitutes of:***

Adv Narayan Jain, Chairman  
Adv SM Surana, Advisor  
CS Mamta Binani, Co-Chairperson  
CA Arun Agarwal, Co-Chairman  
CA Barkha Agarwal, Convenor

***Other Members :***

CA Debasish Mitra  
CA KP Khandelwal  
CA Indu Chatrath  
Adv RD Kakra  
Adv Paras Kochar  
CA Sunil Surana  
CA Vikas Parakh  
CA Ruby Bhalotia

***Ex officio :***

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