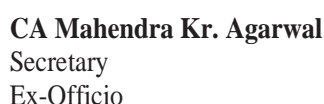
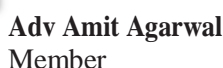




Editorial Board



DISCLAIMER

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

Total no. of page: 73

....From the Desk of Editors



Respected Seniors and my Dear Friends,

This August month this time started with one of the Grand event of DTPA its **Annual Conference, 2024** on 3rd August, 2024. The Chief Guest was none other than our own CA. Ranjeet Kumar Agarwal, President, ICAI. The line of speakers, the full house of delegates, hospitality of Taj Bengal and the super duper quiz contest. I would simply say it **Phenomenal!** The show no doubt was curated by the leadership at DTPA but real credit goes to the members, well-wishers and support partners who made the Annual Conference a **Big Success!!**

In the later part of the month it was **49th Regional Conference of EIRC of ICAI**, the great grand event on 23rd and 24th of August, 2024 at Biswa Bangla Mela Prangan which in itself was exemplary, incomparable, biggest one in its own style and presentation. The members of DTPA has attended the Conference in large numbers, many were in the role of knowledge sharers.

In the meantime, on 16th August 2024, The Union Budget (No.2) 2024-25 has received the assent of Hon'ble President of India and now is Finance Act, 2024. The statutory audit, tax audit, Charitable Trusts filings, Corporate and Audited Financials ITR's, Transfer Pricing reporting followed by GST audit and similar annual compliances are approaching their due dates. The professionals are going to be very busy in next few upcoming months. However, alongside knowledge updating is simultaneously very important and in view of the same Team DTPA is always bringing the best resources and updates at your desk.

On the Income Tax front still the re-assessment provisions are still creating one of the largest litigation. The Assessee has already witnessed the first round of litigation in the matter of Ashish Agarwal and now the second round of travelling back in time is on for consideration before the Apex Court. That many other direct issues like limitation under section 149 and its provisos, Approval under section 151, issue of notice under section 148 by the Jurisdictional Assessing Officer (JAO) under section 151A and so on apart from indirect legal points like borrowed satisfaction, mechanical approval, not providing underlying evidence and/or not allowing cross examination are largely under litigation. The Constitutional courts are full of writ petitions by the aggrieved assesseees. In fact, many High Courts have ruled on these issues in favour of Assessee. However, it seems that these litigations once again will reach to the door of Hon'ble Supreme Court. By that time the taxpayers hopefully receive the new tax code as announced by Hon'ble Finance Minister in her Budget speech on the floor of Parliament and that might give rest to the ongoing tax litigations.

We must appreciate that in order to have a healthy tax system and to minimize tax litigation the Vivad se Vishwas scheme is already been announced for both Income Tax and GST. However, the assessees are eagerly awaiting the respective forms and procedures to make most out of the same.

DTPA has lined up series of knowledge sessions on Tax Audit issues, Defective Returns, Processing of Returns currently by CPC and resolution of errors and many other topics for which more details are inside this issue.

Your Association is all set to hold its **Annual General Meeting (AGM)** on **Friday, the 13th September, 2024 at Spring Club**. The new leadership will be taking up the responsibilities and the current one will be shifting to the guidance role. It is a great opportunity for each of the member of the Association to be a part of this annual gala event as well as get-to-gather and networking amongst the members of the Association.

Wish you all the Very Best and Happy Teachers Day and Vishwakarma Puja in advance!!

Jai Hind!! Jai DTPA!!

With Best Regards

Yours truly,
Giridhar Dhelia
Chairman

Sujit Sultania
Co-Chairman



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*....From the desk of President*

Dear Members,

As we reflect on the past year, I am proud to share the accomplishments and milestones achieved by our association. We have successfully organized a diverse array of events, including seminars, training, interactive sessions, workshops, panel discussions, webinars, and group discussions, both in-person and via Zoom. Our commitment to providing valuable content was demonstrated through our engagement with distinguished speakers from Kolkata, other regions of the country, and international experts. These sessions covered a wide range of contemporary topics, ensuring that our members remained well-informed about the latest developments in our field.

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

The month of July was quite busy for all of us and we had devoted much of our time and efforts in planning for the annual conference 2024.

On July 23rd, 2024, we hosted a live telecast of the Union Budget Seminar at the DTPA Conference Hall, which witnessed overwhelming attendance. This event provided a platform for members to interact with others and analyse the key highlights and implications of the budget in real-time. The discussions led by CA P R Kothari and CA Vikash Parakh provided insights into some of the intricacies of the changes.

We also had a wonderful Budget seminar at Kala Mandir on 24th July which was attended by more than 240 delegates. The speakers CA G.S. Prashanth, Prof (Dr.) Suman K Mukherjee and CA Arpit Haldia deliberated on multiple issues in detail which was hugely appreciated by the August gathering.

I am delighted to announce that our Annual Conference was held on August 3, 2024, at the prestigious Taj Bengal. This year's conference featured a distinguished lineup of speakers, including CA (Dr.) Girish Ahuja, CA Jatin Christopher, Mr. Bharat C. Shah, Mr. Ajay Bagga, Mr. Asish Somayya and Mr. Sandeep Jain.

The event offered a comprehensive overview of current developments and future trends in our field. Their expertise and insights undoubtedly provided valuable perspectives and contributed to a deeper understanding of pressing issues.

As an innovative measure we also planned and executed a Quiz in the post lunch session where all the members present in the hall played with lot of enthusiasm and the participants reported that it was really a wonderful opportunity to enhance their knowledge and at the same time enjoy the competition. This was done for the first time at DTPA.

I take this opportunity to thank all the past presidents and executive committee members for their overall support in increasing the membership beyond 1900 members, which shows that your esteemed organization has been hugely accepted by professionals by across categories.

Warm regards

CA Rajesh Agrawal

President

13th August, 2024



Glimpses of Study Circle Meeting - Live Budget Analysis at DTPA Conference hall on 23rd July 2024





Glimpses of Study Circle Meeting – Budget Seminar at Kala Mandir on 24th July 2024







Glimpses of Annual Conference of DTPA held at The Taj Bengal on 3rd August 2024









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



Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

Group Discussion On

**Group Discussion on Defective Returns,
Resolution of Errors & Hurdles being faced in
ITR Processing by CPC**



SPEAKER

AKKAL DUDHWEWALA

Date : 30th Aug, 2024, Friday

Time : 4:00 pm - 06:00 pm

Participation Charges: "NIL"

Venue : DTPA Conference Hall

CA Rajesh Kr Agrawal
President

CA Sanjay Bajoria
Chairman,
Direct Taxes Committee

CA Mahendra K Agarwal
Gen. Secretary



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



DTPA CA CPE Study Circle of EIRC of ICAI

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

Email :- dtpacasc@gmail.com

Study Circle Meeting On: Audit Documentation



SPEAKER

CA HARI RAM AGARWAL

02nd Sep, 2024, Monday

Venue : DTPA Conference Hall

Time : 3:30 PM to 06:30 PM

“3 CPE Hours”

Participation Charges - Rs. 200/-

**CA Rajesh Kumar Agrawal
Convenor**

**CA Shyam Agarwal
Deputy Convenor**

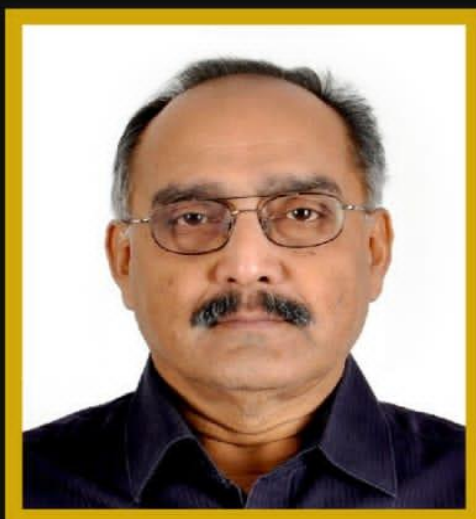


DTPA CA CPE Study Circle of EIRC of ICAI

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

Email :- dtpacasc@gmail.com

Study Circle Meeting On: **Tax Audits u/s 44AB and 12A(B)(ii) – Care to be taken**



SPEAKER

CA SANJAY BHATTACHARYA



Wednesday,
04 Sep, 2024



03:30 PM –
06:30 PM

"3 CPE HOURS"

PARTICIPATION CHARGES:

RS. 200/-



DTPA CONFERENCE HALL

**CA Rajesh Kumar Agrawal
Convenor**

**CA Shyam Agarwal
Deputy Convenor**



DIRECT TAXES PROFESSIONALS' ASSOCIATION

ANNUAL REPORT 2023-24

NOTICE

Notice is hereby given that the **41st Annual General Meeting** of the members of **Direct Taxes Professionals' Association** will be held on **13th September, 2024** at **6 p.m.** at **Silver Spring Club, 5, JBS Haldene Avenue (E.M. Bypass), Kolkata-700105** to transact the following business:

1. To call the meeting to order.
2. Welcome speech by President CA. Rajesh Kumar Agrawal.
3. To confirm the draft minutes of the 40th Annual General Meeting held on 12th September, 2023.
4. To consider and adopt the Annual Report of the Association for the year ended 31st March, 2024.
5. To consider and adopt the Audited Income & Expenditure Account, Receipts & Payments Account for the year ended 31st March, 2024 and the Balance Sheet as on that date together with the Auditors' Report thereon.
6. To appoint Auditors and fix their remuneration.
7. To elect Executive Committee for the year 2024-25.
8. Acceptance speech by the President elect for the year 2024-25.
9. To consider any other matter(s) with the permission of the chair.
10. Concluding remarks by CA. Rajesh Kumar Agrawal President for the year 2023-24.
11. Vote of thanks.

Date : 14th day of August, 2024
Place : Kolkata

CA. Mahendra Kr. Agarwal
General Secretary



Compliance Calendar for August, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th August 2024	Jul-24	Due date for deposit of Tax deducted/collected for the month of July, 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	14th August 2024	Jul-24	Issuance of TDS certificate for Tax deducted under Section 194-IA, 194-IB, 194M, 194S	
	15th August 2024	Jul-24	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2024	
	30th August 2024	Jul-24	Furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC) and 194M, 194S	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th August 2024	Jul-24	GSTR-7	Monthly Return by Tax Deductors For July
	10th August 2024	Jul-24	GSTR-8	Monthly Return by E-Commerce Operators For July
	11th August 2024	Jul-24	GSTR-1 (MONTHLY)	1. Summary of Outward Supplies where turnover exceeds Rs. 5 Crore during preceding year or have not chosen QRMP scheme 2. Registered person, with aggregate turnover of less than INR 5 Crore during preceding year, opted for monthly filing of return under QRMP.
	13th August 2024	Jul-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th August 2024	Jul-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th August 2024	Jul-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th August 2024	Jul-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of July, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year
	25th August 2024	Jul-24	PMT-06	Payment of tax in PMT-06 by a registered person who has opted to file return under QRMP Scheme in PMT-06 – challan for JULY month
Statute	Due dates	Compliance Period	Details	
Prof. Tax on Salaries	10th August 2024	Jul-24	Professional Tax (PT) on Salaries for July 2024	
ESI & PF	15th August 2024	Jul-24	Provident Fund (PF) & ESI Returns and Payment for July 2024	

Feedback and suggestions are Invited:

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



Compliance Calendar for September, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th September 2024	Aug-24	Due date for deposit of Tax deducted/collected for the month of August, 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	14th September 2024	Aug-24	Issuance of TDS certificate for Tax deducted under Section 194-IA, 194-IB, 194M	
	15th September 2024	FY 2024-25	2nd Installment Advance tax payment (45% of total estimated tax) for FY 2024-25 (AY 2025-26).	
	30th September 2024	Aug-24	Furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC) and 194M	
	30th September 2024	FY 2023-24	Submission of the audit report (Section 44AB) for FY 2023-24 for those assesseees covered under tax audit but do not have any international or specified domestic transactions.	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th September 2024	Aug-24	GSTR-7	Monthly Return by Tax Deductors For August
	10th September 2024	Aug-24	GSTR-8	Monthly Return by E-Commerce Operators For August
	11th September 2024	Aug-24	GSTR-1 (MONTHLY)	1. Summary of Outward Supplies where turnover exceeds Rs. 5 Crore during preceding year or have not chosen QRMP scheme 2. Registered person, with aggregate turnover of less than INR 5 Crore during preceding year, opted for monthly filing of return under QRMP.
	13th September 2024	Aug-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th September 2024	Aug-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th September 2024	Aug-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th September 2024	Aug-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of August, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year
Statute	Due dates	Compliance Period	Details	
Prof. Tax on Salaries	10th September 2024	Aug-24	Professional Tax (PT) on Salaries for August 2024	
ESI & PF	15th September 2024	Aug-24	Provident Fund (PF) & ESI Returns and Payment for August 2024	



Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Rajesh Kr. Agrawal
President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

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

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

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

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

Thanks and Regards,

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DIRECT TAXES

1. STATUTORY UPDATES

1.1 FM tables Economic Survey 2023-24 in the Parliament

Editorial Note: Finance Minister Nirmala Sitharaman tables the Economic Survey 2023-24 in Parliament on 22-07-2024. Economic Survey is an annual report published by the Government of India that presents an overview of the state of the Indian economy. It includes an analysis of the economic performance, key trends, and outlook for the current financial year, along with policy initiatives and reforms.

1.2 Copy of Finance (No. 2) Bill 2024

Editorial Note: The Finance Minister has presented the Union Budget 2024-25 on July 23, 2024. The copy of Finance (No. 2) Bill 2024 as tabled in the Lok Sabha is mentioned below:

1.3 Highlights of the Finance (No. 2) Bill, 2024

Editorial Note: On July 23, 2024, the Finance Minister, Smt. Nirmala Sitharaman tabled the Finance (No. 2) Bill, 2024, proposing various amendments to tax and corporate laws. The Bill initiates simplifications in several areas, including the tax regime for charities, the TDS rate structure, provisions for reassessment and searches, and capital gains taxation. A summary of all the proposed changes in the Finance (No. 2) Bill, 2024, is this document titled "Highlights of Finance (No. 2) Bill, 2024."

1.4 Budget 2024: NPS Vatsalaya Scheme will be started to allow parents to contribute for minors: FM

Editorial Note: The Finance Minister, Smt. Nirmala Sitharaman, has presented the final Union Budget 2024 in the parliament today, i.e., July 23, 2024. This budget comes after the Lok Sabha elections and follows an interim budget announced earlier.

1.5 Govt. keeps interest rates of small savings schemes unchanged for 2nd quarter of FY 2024-25 - **Notification No.1/4/2019-NS, Dated 28-06-2024**

Editorial Note: The Ministry of Finance has announced the small savings scheme rates for the second quarter of FY 2024-25. The interest rates for different small savings schemes during the second quarter of the Financial Year 2024-25, effective from July 1, 2024, to September 30, 2024, will remain unchanged from those set in the first quarter of FY 2024-25.

1.6 CBDT notifies 'APC & Secretary to Govt., Agriculture & Co-operation, Telangana' & mechanism for sharing info. u/s 138 - **Notification No. S.O: 2661(E) & Order F. no. 225/106/2024/ITA-II, Dated 09-07-2024**

Editorial Note: CBDT has notified the Agriculture Production Commissioner (APC) & Secretary to Government, Agriculture & Co-operation Department, Government of Telangana as the specified authority to share information regarding the income-tax payers under section 138. The board also notified the mechanism of sharing information.

1.7 CBDT notifies 'Uttaranchal Board of Technical Education, Roorkee' for Sec. 10(46) exemption - **Notification S.O. No. 2766(E), Dated 15-07-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified 'Uttaranchal Board of Technical Education, Roorkee' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The notification is applicable for assessment year 2023-24 subject to certain conditions.

1.8 CBDT notifies certain entities for the purpose Sec. 10(46) exemption

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified 'Society for Applied Microwave Electronics Engineering & Research (SAMEER), Mumbai', 'Himachal Pradesh State Load Despatch Centre, Shimla' & 'Punjab Skill Development Mission Society, Chandigarh' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961

1.9 Govt. releases FAQs on the New Capital Gains Taxation Regime

Editorial Note: Subsequent to the changes proposed by Finance (No.2) Bill, 2024 in the Capital Gains taxation scheme, the government released FAQs on the e-filing website specifying the major changes, applicability, changes in period of holding of various assets and clarity on the roll over benefits on capital gains.

1.10 CBDT extends deadline for specified funds notified u/s 10(23FE) to make investments in India - **Notification SO No. 2830 TO 2841, Dated 18-07-2024**

Editorial Note: Exemption under Section 10(23FE) is allowed to certain foreign funds that invest in Indian infrastructure entities. This exemption provision is being introduced to encourage foreign investment and support the development of infrastructure facilities in India. The Central Board has notified various foreign funds under section 10(23FE), which are eligible for an exemption if the investment is made on or before March 2024. Now, the board has extended said deadline from March 2024 to March 2025

1.11 CBDT notifies 'AIMCo India Infrastructure Limited' as pension fund for Sec. 10(23FE) exemption - **Notification S.O. NO. 2879(E), Dated 19-07-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified pension funds namely, AIMCo India Infrastructure Limited, for the purpose of exemption under section 10(23FE). The notified funds shall be eligible to claim the exemption in respect of investment made in India on or before 31-03-2025, subject to prescribed conditions.



2. SUPREME COURT

SECTION 2(15) OF THE INCOME-TAX ACT, 1961 - CHARITABLE PURPOSE - OBJECT OF GENERAL PUBLIC UTILITY

- 2.1 Proviso** : Review petition dismissed against order of Supreme Court that if dominant activity of charitable institution was not business, trade or commerce, merely because a fee or some other consideration was collected or received by institution, it would not lose its character of having been established for a charitable purpose - **Commissioner of Income-tax (Exemptions) v. India Trade Promotion Organization** - [2024] 164 taxmann.com 6 (SC)

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

- 2.2 Royalties/Fees for technical services - Subscription fee** : SLP dismissed against order of High Court that where assessee-company had made foreign remittance to Red Hat, Singapore without deducting tax at source on ground that payment for purchase of subscription was not taxable as per article 7 but Assessing Officer held that impugned subscription fees was liable to be taxed as 'royalty' and assessee was treated as assessee-in-default, since there was no liability of Red Hat, Singapore to pay tax in India and no assessment had been made in respect of tax liability of said company, assessee could not be saddled with liability under section 201 - **Commissioner of Income-tax (IT) v. Red Hat India (P.) Ltd.** - [2024] 164 taxmann.com 605 (SC)

- 2.3 Royalties/Fee for technical services - Rate of tax** : SLP dismissed against order of High Court holding that provision of section 206AA relating to deducting of tax at higher rate in absence of Permanent Account Number is not applicable to payments made to non-resident companies on ground that benefit of DTAA is available to assessee - **Commissioner of Income-tax, Bengaluru v. Infosys Ltd.** - [2024] 164 taxmann.com 281 (SC)

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

- 2.4 VAT, provision of** : SLP dismissed against High Court ruling that where Assessing Officer reopened assessment for relevant year for reasons that provisions of VAT was not allowable expenditure and should be added back to income of assessee, since in reasons recorded there was no allegation of failure on part of assessee to truly and fully disclose material facts and materials already available in books of account had only been re-apprised by Assessing Officer in said circumstances, reopening of assessment was bad in law - **Principal Commissioner of Income-tax v. Haldia Petrochemicals Ltd.** - [2024] 164 taxmann.com 409 (SC)

- 2.5 Software development** : SLP dismissed against High Court ruling that where assessee-company incurred expenditure on development of a software for advertisement but due to rapid change in technology, said application became obsolete and assessee abandoned further development of said software, impugned expenditure incurred by assessee was to be allowed as revenue expenditure - **Principal Commissioner of Income-tax (CIT) v. Adadyn Technologies (P.) Ltd.** - [2024] 164 taxmann.com 304 (SC)

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

- 2.6** SLP filed against High Court ruling that where revenue had failed to discharge his burden to establish cessation of trade liability of assessee towards loan creditors, however, assessee fulfilled duty casted upon him to provide evidence that liability existed even at end of relevant assessment year, in absence of any material on record stating that conditions referred under section 41(1) had been satisfied, impugned addition made by Assessing Officer under section 41(1) was to be deleted - **Principal Commissioner of Income-tax v. Soorajmull Nagarmull** - [2024] 164 taxmann.com 353 (SC)

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

- 2.7 Writ remedy** : SLP dismissed against High Court ruling that where assessee, a proprietary concern engaged in trade of iron and steel, received notice under section 148A alleging irregularities in financial transactions, said notice could not be challenged by way of writ petition as assessee had efficacious remedy under Income-tax Act - **Renu Singh v. Principal Commissioner of Income-tax** - [2024] 164 taxmann.com 381 (SC)

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

- 2.8** Excess consumption of rough diamonds : Miscellaneous application was to be dismissed against Supreme Court order that where High Court deleted addition made to income of assessee, a diamond exporter, towards unexplained expenditure taking into consideration excess consumption of rough diamonds, since assessee was maintaining books of account outside regular books which was not at all considered by High Court, High Court could not have deleted said addition by relying on affidavits of typist and a Chartered Accountant and accepting submission on behalf of assessee that there was a typographical error in audit report - **Assistant Commissioner of Income-tax v. Kantilal Exports Surat** - [2024] 164 taxmann.com 379 (SC)

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

- 2.9 Reassessment** : SLP dismissed against High Court ruling that where assessee had made full and true disclosure of facts while claiming deduction under section 80-IC at time of original assessment and also at time of scrutiny proceeding under section 143(2) and 143(3), it was for Assessing Officer



to draw correct inference from primary facts and if subsequent to assessment made under section 143(3), Assessing Officer drew an inference that assessment made by him was erroneous, such a change in opinion would not justify action for reopening assessment - **Union of India v. Dhansri Roller Flour Mills** - [2024] 164 taxmann.com 570 (SC)

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

2.10 Illustrations : SLP dismissed against impugned order of High Court that where assessee, a company, was engaged in business of providing security services to its clients and it was paying service tax on behalf of its clients to Government and recovering same from them, said amount could not be included in 'fee for technical services' (FTS) while computing disallowance under section 40(a)(ia) - **Mark Gulati v. Principal Commissioner of Income-tax** - [2024] 164 taxmann.com 604 (SC)

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

2.11 Competent Authority : SLP dismissed against High Court ruling that where ITO initiated reassessment proceedings against assessee by issuing notice under section 148 by obtaining satisfaction of Additional Commissioner which was an authority who was not covered by provision of section 151(1), said proceedings was not valid - **Union of India v. Dhansri Roller Flour Mills** - [2024] 164 taxmann.com 570 (SC)

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

2.12 Illustrations : SLP dismissed against order of High Court wherein it was held that where assessee, a computer and peripherals manufacturer, supplied products to distributors and Assessing Officer deemed payments to distributors as 'commission', since payment from distributor to assessee had no link with further sale made by distributor, said payment could not be treated as commission or brokerage as described in Explanation to section 194H - **Commissioner of Income-tax (TDS) v. Acer India (P.) Ltd.** - [2024] 164 taxmann.com 303 (SC)

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

2.13 Scope of : Where liquor vendors did not obtain any arrack in auction; they only obtained right/license to carry out retail vending of arrack, such contractors were not 'buyers' as defined in Explanation under section 206C and, therefore, provisions of section 206C were not applicable in respect of assessee, a public sector undertaking engaged in manufacture of arrack - **Excise Commissioner Karnataka v. Mysore Sales International Ltd.** - [2024] 164 taxmann.com 220 (SC)

2.14 Notice and hearing : Before an order is passed u.s 206C, it is incumbent upon Assessing Officer to put person concerned to notice and afford him an adequate and reasonable opportunity of hearing, including a personal hearing - **Excise Commissioner Karnataka v. Mysore Sales International Ltd.** - [2024] 164 taxmann.com 220 (SC)

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

2.15 Reasonable cause : SLP dismissed against High Court ruling that where petitioners had deducted TDS but deposited after substantial period of delay ranging from 31 to 214 delays, since failure on part of petitioners to deposit deducted TDS was on account of reasonable causes for prevalence of COVID-19 Pandemic standing on their way, Trial Court ought not to have taken cognizance of offences u.s. 279B, sections 2(35) and 278B - **Union of India v. D.N. Homes (P.) Ltd.** - [2024] 164 taxmann.com 569 (SC)

3. HIGH COURT

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

3.1 Compensation received by the licensee on termination by the licensor of the operating license to run the hotel is a revenue receipt - **Principal Commissioner of Income-tax-3 v. ITC Ltd.** - [2024] 164 taxmann.com 88 (Calcutta)

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

3.2 Royalties/Fees for Technical Services - Telecom or Transmission Services : Provisions of Section 9(1)(vi), as amended by Finance Act, 2012 with retrospective effect from 01.06.1976, which came into operation only after 31.03.2012, would not apply to an assessee - cellular service provider who has availed/used a standard facility that does not amount to royalty under Section 9(1)(vi) for asst. year 2012-13, thus, assessee could not be held liable to deduct tax as at material time there was no such liability - **CIT (TDS) v. Idea Cellular Ltd.** - [2024] 164 taxmann.com 323 (Calcutta)

3.3 Royalties/fees for technical services - Make available : Advisory and managerial services provided by assessee to BCCI for establishment, commercialization and operation of IPL events outside India was not liable to be taxed as FTS - **International Management Group (UK) Ltd. v. CIT** - [2024] 164 taxmann.com 225 (Delhi)

3.4 Fee for technical services : Where assessee made payments to non-residents towards charges for sampling and analysis of cargo at destination port, in view of fact that retrospective amendment brought to section 9(1)(vii) by Finance Act, 2010 was not in existence at time when payments were made, amount in question was not taxable in India as fee for technical services - **Assistant Commissioner of Income-tax v. Sociedade de Fomento Industrial (P.) Ltd.** - [2024] 164 taxmann.com 139 (Bombay)

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

- 3.5** Where assessee-trust filed a revision petition under section 264 regarding claim of exemption under section 10(23C), rejection of revision petition solely on grounds of delay and filing errors, without considering assessee's prior approval under section 10(23C)(vi) and substantive claim for exemption, was improper - **AKR Academy v. Commissioner of Income-tax (Exemption)** - [2024] 164 taxmann.com 1 (Madras)

**SECTION 10(25) OF THE INCOME-TAX ACT, 1961 -
PROVIDENT FUNDS, SUPERANNUATION FUNDS,
GRATUITY FUNDS, ETC.**

- 3.6 Exemption of interest :** Where assessee-trust was granted approval of superannuation fund and reopening notice was issued on ground that excess funds did not form part of 'approved fund', in view of fact that order for withdrawal of approval of superannuation fund dated 31-3-2014 was not communicated by Commissioner to assessee, in absence of any communication at time of issuance of reopening notice dated 24-3-2014, said reopening notice was to be set aside - **Commissioner of Income-tax (Exemptions) v. Kandla Port Trust Superannuation Scheme** - [2024] 164 taxmann.com 132 (Gujarat)

**SECTION 10(25)(iii) OF THE INCOME-TAX ACT, 1961 -
APPROVED SUPERANNUATION FUND**

- 3.7 General :** Where approval granted to assessee superannuation fund had not been withdrawn or cancelled, Assessing Officer could not look behind approval and could not hold that approval loses its effect on account of alleged non-submission of certain financial statements by assessee - **Assam Frontier Employees Pension Fund v. Commissioner of Income-tax** - [2024] 164 taxmann.com 116 (Calcutta)

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

- 3.8 Corpus donation :** Where assessee-educational trust received one time admission fee from students and treated same as corpus fund, since Assessing Officer had not taken any inquiry with regard to examination of parents who admitted students in school as to whether payment was made towards corpus fund or capitation fee, in absence of any material on record, said fee was to be held as a payment towards corpus donation and, thus, would be eligible for exemption under section 11(1)(d) - **N.H. Kapadia Education Trust v. Assistant Commissioner of Income-tax (Exemptions)** - [2024] 164 taxmann.com 442 (Gujarat)

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

- 3.9** Where map sanction of assessee society for constructing temple and cremation site, was approved by SDA and thereafter, it claimed exemptions from development charges under Section 53 of Uttar Pradesh Urban Planning and Development Act, 1973 said exemptions could not be denied to assessee as it had obtained exemptions under Sections 12A and 80G, effective from 01.04.2014 and moreover, Government orders and Niyamavali, 2014, supported those exemptions for charitable institutions - **Shri Shiv Mandir Gauri Shanker Vishvanath Vaikunth Dham Evam Shamshan Bhumi Pravandhak Sabha v. State of U.P.** - [2024] 164 taxmann.com 197 (Allahabad)

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

- 3.10 Condition precedent :** Where immediately after assessee-trust came into existence and applied for registration under section 12AA, Commissioner(Exemptions) was required to satisfy himself that objects of trust were genuine and application for registration could not be refused solely on ground that assessee-trust had not yet started its charitable activities - **Commissioner of Income-tax (Exemption) v. Harnarayan Rajdulari Devi Taparia Charitable Trust** - [2024] 164 taxmann.com 322 (Calcutta)

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

- 3.11 Interest expenditure :** Where assessee was having interest free funds which were more than investment made by it for earning exempted dividend income, there was no reason to invoke provisions of section 14A read with rule 8D for making disallowance of interest expenses - **Principal Commissioner of Income-tax v. Nirma Chemical Works (P.) Ltd.** - [2024] 164 taxmann.com 380 (Gujarat)
- 3.12** Amendment by Finance Act, 2022, of section 14A, which inserted a non-obstante clause and explanation, takes effect from 01.04.22 and cannot be presumed to have retrospective effect and applied to assessment years prior to 01.04.22. - **Principal Commissioner of Income-tax (Central) 2 v. Avantha Realty Ltd.** - [2024] 164 taxmann.com 376 (Calcutta)

**SECTION 21A OF THE CHARTERED ACCOUNTANTS
ACT, 1949 - DISCIPLINARY DIRECTORATE**

- 3.13** By designating an individual CA as "member answerable", a CA firm cannot make him the scapegoat in disciplinary proceedings - **Harinderjit Singh v. Disciplinary Committee** - [2024] 164 taxmann.com 142 (Delhi)

**SECTION 24 OF THE PROHIBITION OF BENAMI
PROPERTY TRANSACTIONS ACT, 1988 - NOTICE AND
ATTACHMENT OF PROPERTY INVOLVED IN BENAMI
TRANSACTION**

- 3.14 Scope of provision :** Where assessee purchased a plot of land and Initiating Officer based upon statement given by a contractor issued on assessee a show cause notice under section 24(1) of Prohibition of Benami Property Transactions



Act, 1988 proposing to treat constructions being raised by her on above plot to be a benami transaction being carried out by her on behalf of her son-in-law and also issued provisional attachment order, since contractor had not given any basis or reason as to how he believed that original owner of constructions was son-in-law, show cause notice as well as order of provisional attachment deserved to be set aside - **Smt. Meera Pandey v. Union of India** - [2024] 164 taxmann.com 188 (Allahabad)

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

3.15 Sale of shares : Where assessee, a portfolio manager, had been filing returns and had been subjected to assessment for various assessment years and in assessment years 2006-07 and 2008-09, assessments were completed by treating profits on sale of shares as business income, assessee could not revisit assessment for years 2006-07 and 2008-09 which were concluded by treating profit on sale of shares as business income and have losses treated as business losses - **Equity Intelligence India (P.) Ltd. v. Principal Commissioner of Income-tax** - [2024] 164 taxmann.com 163 (Kerala)

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

3.16 Where assessee, an NBFC suffered loss on account of foreign exchange fluctuation on receipt of repayment of loan to a foreign company, Tribunal rightly allowed said loss in view of decision in case of Commissioner of Income Tax v. V.S.Dempo & Co. (P.) Ltd. (1994) 206 ITR 291 (Bom) - **Principal Commissioner of Income-tax (Central) 2 v. Avantha Realty Ltd.** - [2024] 164 taxmann.com 376 (Calcutta)

3.17 Where assessee had an agreement with certain industry and claimed deduction on insurance and audit fees expenses, since that agreement didn't cover those expenses, Tribunal rightly allowed same - **Principal Commissioner of Income-tax (Central) 2 v. Avantha Realty Ltd.** - [2024] 164 taxmann.com 376 (Calcutta)

3.18 Renovation and construction of schools/temples : Where assessee-company incurred expenses on renovation and construction of schools/temples situated in villages surrounding mining area in order to create and maintain good/cordial relations with villagers residing around mining and business activity area of assessee, since no capital asset had been acquired by assessee by incurring said expenditure, same was to be allowed as revenue expenditure - **Assistant Commissioner of Income-tax v. Sociedade de Fomento Industrial (P.) Ltd.** - [2024] 164 taxmann.com 139 (Bombay)

3.19 Provision for unsettled outstanding claims : Where assessee, health insurance company made provision for unsettled claims, on basis of customer wise details of

claims lodged, and merely because some claims were rejected subsequently being fraudulent/ erroneous in nature, same could not be considered to be an ad-hoc provision against contingent liability resulting in disallowance of said liability - **Principal Commissioner of Income-tax v. Care Health Insurance Ltd.** - [2024] 164 taxmann.com 53 (Delhi)

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

3.20 Reassessment : Where assessee was allotted equity shares and an order under section 148A(d) was passed alleging that a notional profit had escaped assessment with respect to said equity shares as there was substantial difference between allotment price and market price, since no sale of such shares had been effected in relevant year and no taxable event had occurred to bring any income from capital gains to tax, no income had escaped assessment and thus, impugned order was to be set aside - **Aditya Vijay Mirchandani v. Income-tax Officer** - [2024] 164 taxmann.com 161 (Bombay)

SECTION 50 OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTION ACT, 1988 - SPECIAL COURT

3.21 Section 202 Cr.P.C. merely directs magistrate to hold on enquiry to ascertain whether any case for summoning accused person is made out; it does not prescribe manner of holding an enquiry under this provision; thus where complaint was filed against applicant that amount deposited in his bank account in cash was a benami transaction and Special Court passed order summoning applicant after recording a satisfaction that from averments made in complaint and documents filed with complaint, there was sufficient ground for proceeding against applicant said order fulfilled requirement of holding on enquiry under section 202 Cr.P.C. - **Sandeep Miglani v. Union of India** - [2024] 164 taxmann.com 168 (Allahabad)

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

3.22 Undisclosed cash consideration : Where Assessee filed application before IBS and offered to tax sale consideration received in cash of property sold by it and invested cash portion of same for purchase of another property and claimed exemption under section 54 but IBS rejected claim of assessee on ground that such claim of exemption can be allowed to extent of disclosed amounts, since section 54 does not stipulate that assessee is required to disclose amount of sale consideration received in cash while claiming exemption under section 54 in return filed by assessee, grounds for rejection were apparently not in accordance with provisions of section 54 - **Ashwinbhai Babubhai Dudhat v. Interim Board for Settlement (IBS)** - [2024] 164 taxmann.com 77 (Gujarat)

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

3.23 Reassessment : Where pursuant to search and seizure operations conducted by CBI on premises of an employee of a company in which assessee was a



director, certain documents were found and CBI handed over photocopies of such documents to Income-tax Department and Assessing Officer initiated reassessment proceedings and passed an order for reassessment, since it was evident from record that Assessing Officer had passed order for reassessment under influence of his superiors, impugned order for reassessment was to be set aside - **Deputy Commissioner of Income Tax v. Surendra Kumar Jain - [2024] 164 taxmann.com 575 (Chhattisgarh)**

3.24 Loan : Where assessee had taken loan from a person and Assessing Officer made addition under section 68 in respect of said loan on ground that confirmation was not signed by person from whom loan had been taken, since said loan was accepted through cheques and confirmations were signed by authorised signatory, as person who advanced loan was in custody at time of assessment proceedings, impugned addition was not justified - **Principal Commissioner of Income-tax v. Vishal Exports Overseas Ltd. - [2024] 164 taxmann.com 286 (Gujarat)**

3.25 Loans : Where assessee had taken unsecured loan from two companies and had submitted all evidences to substantiate loan including confirmation from creditors and loan was taken and repaid through banking channels, Assessing Officer was not justified in treating said unsecured loan as fake and making addition of same to assessee's income - **Principal Commissioner of Income-tax v. Bairagra Builders (P.) Ltd. - [2024] 164 taxmann.com 162 (Bombay)**

3.26 Where assessee's request for personal hearing was denied on ground that video conferencing was not possible, thereafter order was passed making addition, in view of Circular dated 6-9-2019 where personal hearing was not technically possible through video conference, then personal hearing ought to be conducted in a designated area in Income-tax office - **Fusion Granito (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 164 taxmann.com 5 (Gujarat)**

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

3.27 Scope of provision : Where Assessing Officer made addition under section 69C in respect of unexplained investment in purchase of raw-material and subsequent manufacturing expenditure on unaccounted raw-material for manufacturing of boxes of vitrified tiles on basis of report furnished by Central Excise Department that assessee was involved in clandestine removal of boxes of finished goods, since Assessing Officer had not recorded any finding of any undisclosed investment found as a result of search by Excise Department and had only assumed undisclosed investment being source of purchases recorded for subsequent sales, impugned addition was unjustified - **Principal Commissioner of Income-tax 1 v. Simpex Granito (P.) Ltd. - [2024] 164 taxmann.com 351 (Gujarat)**

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

3.28 Illustrations : Where Assessing Officer issued show cause notice to assessee to explain interest income accruing on sale consideration of property sold by assessee but assessee did not file any reply and Assessing Officer considered sale deed but income tax challan and TDS were not taken into consideration, matter was to be remanded back - **Basheera Begum v. Joint Commissioner of Income-tax - [2024] 164 taxmann.com 600 (Madras)**

3.29 Bank deposit : Where Assessing Officer made addition on account of unexplained cash deposit in bank on ground that assessee did not have sufficient cash balance and there was no conclusive proof as to how such huge amount came into possession of assessee in form of cash, since cash was duly accounted for in cash book and audited bank accounts and no other conclusive proof could be given by assessee, impugned addition was to be deleted - **Principal Commissioner of Income-tax v. Vishal Exports Overseas Ltd. - [2024] 164 taxmann.com 286 (Gujarat)**

3.30 Illustrations : Where assessee had purchased an immovable property but did not file return, and Assessing Officer issued notice under section 148A(b) and made addition of purchase consideration under section 69A and assessee stated that immovable property was purchased from funds provided by her husband directly to vendor, but did not submit return of income of her husband or ledger account, if any, relating to purchase of said property, impugned order warranted interference and impugned assessment order was set aside - **Mrs. R. Chitra v. National Faceless Assessment Centre - [2024] 164 taxmann.com 134 (Madras)**

3.31 General : In case of an assessee who is not required to maintain books of account, but Department receives information that such person is owner of unexplained money or other article, such assessee would be called upon to provide an explanation and same consequences would follow if assessee does not reply or if reply of assessee is not satisfactory as provided in section 69A - **Mrs. R. Chitra v. National Faceless Assessment Centre - [2024] 164 taxmann.com 134 (Madras)**

3.32 Undisclosed Foreign Income and Assets : Where pursuant to an order under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Income-tax Act, 2015, assessee was required to provide bank statements from a closed DBS Bank account, since assessee's son had travelled to Singapore to obtain said statement his request for extending time to 45 days to provide all documents and information being reasonable was to be granted - **Unnamalai Thiagarajan v. Commissioner of Income-tax (Appeals) - [2024] 164 taxmann.com 32 (Madras)**

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

3.33 Reopening of assessment : Where assessee had only 50 per cent share in property since she and her late husband were governed by Portuguese Civil Code applicable to



residents of Goa and sale consideration corresponding to her share had been duly offered in return of income, reopening notice issued under section 148 on ground that actual payment had not been disclosed in return of income and order rejecting objections deserved to be quashed and set aside - **Smt. Sunita Purushottam Virgincar v. Income-tax Officer - [2024] 164 taxmann.com 352 (Bombay)**

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

- 3.34 Conditions precedent** : Where TPO's order was not signed digitally or physically even on last date of limitation, i.e., 31-7-2021 and was subsequently physically signed and furnished to assessee, TPO's order having not been signed digitally before purporting to be passed and uploaded on 31-7-2021, was clearly illegal and non-est and same deserved to be quashed - **Toyota Tsusho India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 85 (Karnataka)**

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

- 3.35** Where Assessing Officer made an upward adjustment under section 115JB while calculating book profits for MAT purposes but did not provide any reason for this adjustment lower authorities rightly held adjustment invalid, treating loss as real and written off. - **Principal Commissioner of Income-tax (Central) 2 v. Avantha Realty Ltd. - [2024] 164 taxmann.com 376 (Calcutta)**

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

- 3.36 Condonation of delay** : Power under section 119(2)(b) should be exercised liberally to avoid genuine hardship to assessee and, thus, where Form-10DA was signed within stipulated date and filed on extended date for filing return of income, it was an appropriate case for condoning delay in filing Form 10DA - **Svasti Microfinance (P.) Ltd. v. Central Board of Direct Taxes - [2024] 164 taxmann.com 229 (Madras)**

SECTION 120 OF THE INCOME-TAX ACT, 1961 - INCOME TAX AUTHORITIES - JURISDICTION OF

- 3.37 Locus standi** : Where petitioner a third party, who was not related to assessee or assessment proceedings in any manner, filed a writ petition on ground that letter transferring files of assessee-firm was issued without jurisdiction, since it was unclear as to how petitioner had any interest in subject matter and none of these persons had been made parties to this writ petition, discretionary jurisdiction couldnot be exercised in favour of petitioner - **B. Ramamoorthy v. Director General of Income-tax - [2024] 164 taxmann.com 23 (Madras)**

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

- 3.38 Revision** : Where Assessing Officer passed assessment order under section 143(3) on assessee and assessee complied with this order and subsequently Principal Commissioner took revisional proceedings against assessee and passed an order under section 263 and pursuant to impugned order Assessing Officer passed fresh assessment order on assessee, original assessment order passed under section 143(3) could not be confused with revisional order, pursuant to invocation of power under section 263 and thus assessee should file a statutory appeal before Tribunal; writ petition not maintainable - **Suresh Patel v. Principal Commissioner of Income-tax - [2024] 164 taxmann.com 189 (Madras)**

- 3.39** Where a corporate insolvency resolution process was initiated against assessee-company under provisions of Insolvency and Bankruptcy Code, 2016, and a resolution plan was approved by National Company Law Tribunal on 14-10-2022 which provided that no person shall be entitled to initiate any proceedings against assessee in relation to claims so long such result to a period prior to effective date of resolution plan, i.e., 10-11-2022, impugned notice issued under section 143(2) to assessee for A.Y. 2022-23 was bad in law - **AMNS Khopoli Ltd. v. Assistant Commissioner of Income-tax - [2024] 164 taxmann.com 187 (Bombay)**

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

- 3.40** It is duty of Faceless Assessment Unit in case of proposing variations to afford an opportunity to assessee to show cause why assessment should not be completed as per income or loss proposed in variations - **Sitaram Shyam Sundar Fashions (P.) Ltd. v. Union of India - [2024] 164 taxmann.com 574 (Calcutta)**
- 3.41 Reassessment** : Where request of assessee for granting personal hearing through video conferencing, intimation thereof was to be given one day advance, was not either acceded to or taken care of by revenue authorities and straightway assessment order was passed, there was violation of principles of natural justice, rendering reassessment order unsustainable and liable to be set aside - **Panchmahal Steel Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer - [2024] 164 taxmann.com 326 (Gujarat)**
- 3.42 Opportunity of hearing** : Where pursuant to show cause notice issued to assessee, assessee had filed its response, however, same was not considered by Faceless Assessment Unit, by recording that no response had been filed within stipulated time, impugned assessment order passed under section 143(3) read with section 144B could not be sustained and same was to be set aside and quashed - **Annadata Agro Industries (P.) Ltd. v. Union of India - [2024] 164 taxmann.com 251 (Calcutta)**

- 3.43 Opportunity of hearing** : Word "request" used under section 144B(6)(vii) and (viii) imply that where an assessee may furnish his written reply to show-cause notice but not opt to



avail opportunity of personal hearing, it may not be mandatory for Assessing Officer to grant such opportunity of personal hearing if he intends to accept explanation furnished, however, same could not be read to mean that opportunity of personal hearing may be granted only where assessee specifically requests for same - **Satish Kumar Bansal HUF v. National Faceless Assessment Centre NAFAC** - [2024] 164 taxmann.com 196 (Allahabad)

SECTION 145 OF THE INCOME-TAX ACT, 1961 - REVISION - OF ORDERS PREJUDICIAL TO INTEREST OF REVENUE

- 3.44 Illustrations** : Where assessee-company was following mercantile system of accounting but was recognizing interest on debtors on cash basis and said system had been accepted all along from year 2003-04, in absence of challenge to fundamental aspect permeated through different assessment years, no attempt could be made to alter position in subsequent year and ,thus, revision order passed by Commissioner that assessee was following hybrid basis of accounting which was not justified, was to be quashed - **Principal Commissioner of Income-tax v. North Eastern Electric Power Corporation Ltd.** - [2024] 164 taxmann.com 307 (Meghalaya)

SECTION 147 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - ILLUSTRATIONS /NON-DISCLOSURE OF PRIMARY FACTS

- 3.45 Alternative remedy of appeal** : Where assessment was conducted under section 147 on basis of information and materials received from office of DDIT (Investigation) as also report shared by GST department upon assessee and assessee filed instant writ petition challenging said assessment order on ground that aforesaid documents had not been made over to assessee, since assessee had an alternative remedy in form of an appeal, all these points could be agitated by assessee before appellate authority - **Sym Singhal Alloys (P.) Ltd. v. Union of India** - [2024] 164 taxmann.com 258 (Calcutta)

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

- 3.46 Validity of** : Where Assessing Officer issued a notice under section 148 on ground that assessee had two PANs and it had not filed return under new PAN, since Assessing Officer was made aware that assessee filed return for relevant assessment year under old PAN and Assessing Officer passed impugned order solely on ground that assessee did not file return under new PAN which was not in existence during relevant assessment year, same was to be quashed and set aside - **Swastik Co-op. Credit Society Ltd. v. Income-tax Officer** - [2024] 164 taxmann.com 444 (Gujarat)

- 3.47 Jurisdiction to issue reopening notice** : JAO had no authority to issue a notice under section 148A(b), as same would amount to breach of provisions of section 151A - **Venus Jewel v. Assistant Commissioner of Income-tax** - [2024] 164 taxmann.com 414 (Bombay)

- 3.48 Dead person** : Where a reopening notice under section 148A(b) was issued in name of a dead person, impugned notices, assessment order and order passed under section 148A were to be set aside and quashed - **Pradeep Jain v. Income-tax Officer** - [2024] 164 taxmann.com 284 (Delhi)

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

- 3.49 General** : Order passed under section 148A(d) by Assessing Officer was not tenable as it was bereft of any reason as to why submissions filed by assessee were not acceptable and, consequently, notice issued under section 148 was also liable to be quashed and set aside - **Shell Gas BV v. Assistant Commissioner of Income-tax, International Taxation** - [2024] 164 taxmann.com 555 (Gujarat)

- 3.50 Reasons** : If reasons which are set out in notice under section 148A(b) to which noticee is required to respond and reasons contained in order in section 148A(d) are different, issuance of notice would fail to serve its purpose and would be reduced to an empty formality - **Satluj Credit & Holdings (P.) Ltd. v. Income-tax Officer** - [2024] 164 taxmann.com 285 (Madras)

- 3.51 Reassessment** : Where in instant writ petition assessee contended that reassessment order passed in case of assessee did not contain any indication that Digital Evidence Investigation Manual was adhered to or even that section 65B of Indian Evidence Act, 1872 (Indian Evidence Act) was followed, since assessee was unable to point out any specific instances of revenue having breached manual or section 65B and it also did not appear that such objections were raised in course of assessment proceedings, this did not appear to be an appropriate case for exercise of discretionary jurisdiction under article 226 and assessee should carry a statutory appeal - **Chandrasekaran Shenbagamoorthy v. Assistant Commissioner of Income-tax** - [2024] 164 taxmann.com 24 (Madras)

SECTION 156 OF THE INCOME-TAX ACT, 1961- INCOME - TAX AUTHORITIES TO ENFORCE LAWFUL ORDER, DECISION, ETC.

- 3.52** Where reassessment proceedings culminated in assessment order wherein return of assessee was assessed at zero, since Faceless Assessment Unit, after taking into consideration all aspects, concluded that no adverse inference could be drawn in case of assessee and accordingly accepted income, which was filed in return as nil, no demand notice under section 156 could be issued on basis thereof - **Nazirpur Large Sized Multipurpose Co-op Society Ltd. v. Union of India** - [2024] 164 taxmann.com 573 (Calcutta)



3.53 Provisions of IBC overriding effect : Where assessee-company was granted approval of resolution plan by NCLT under IBC and said company was revived and rehabilitated by new management, meanwhile Assessing Officer passed assessment order under section 143(2) and issued demand notice under section 156, since successful resolution applicant started running business of assessee-company on a fresh slate, impugned order and demand notice were to be set aside - **National Sewing Thread Co. Ltd. v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 768 (Delhi)**

SECTION 194J OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

3.54 Doctors, payments by hospital : Where assessee, a medical professional, filed return in ITR-3 and claimed benefit under section 44ADA, since assessee consulted several hospitals and received remuneration for services rendered to these hospitals, although on monthly basis, since Assessing Officer had no document to substantiate that assessee was an employee in respective hospitals, from whom he received consideration and deductions were made wrongly under section 194J instead of section 192, assessment could not be reopened - **Sankarnaryanasamy Selvanarayanan v. Income-tax Officer - [2024] 164 taxmann.com 169 (Madras)**

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

3.55 Stay of demand : Where demand was raised against assessee and on filing application for stay, assessee was directed to deposit 20 per cent of outstanding demand, since assessee claimed that same would result in enormous financial burden/stress, furthermore appeal challenging assessment was still pending for disposal, in view of exceptional circumstances as noted in Office Memorandum dated 29-2-2016, assessee was directed to make payment of a sum of Rs.40 lakhs and demand was to be stayed till disposal of appeals - **Education Research and Development Foundation v. Union of India - [2024] 164 taxmann.com 54 (Calcutta)**

3.56 Where assessee appealed an assessment order and petitioned for a stay, which was rejected due to non-payment of required 20% deposit and a second stay petition was also dismissed, leading assessee to file a writ petition arguing they could demonstrate financial stringency if given another chance, since such stay petition did not contain details relating to financial stringency, therefore, it was necessary to impose costs on assessee - **Tiruvannamalai District Central Co-operative Bank Ltd. v. Commissioner of Income-tax (TDS) - [2024] 164 taxmann.com 30 (Madras)**

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

3.57 Where settlement applications did not contain true and full disclosure of income and manner in which it was earned, Court could not direct Settlement Commission to entertain settlement applications submitted by appellants, notwithstanding various shortcomings noticed by them, e.g. not providing adequate opportunity to applicants before passing order rejecting applications - **Anand Granite Exports (P.) Ltd. v. Income-tax Settlement Commission - [2024] 164 taxmann.com 599 (Madras)**

3.58 Retrospective amendment : Where assessees filed settlement applications prior to 31-03-2021, same would be deemed to be pending applications for purpose of consideration by Interim Board; and retrospective amendment of section 245C(5) by Finance Act, 2021, could not be placed into service to invalidate applications filed between 01-02-2021 and 31-03-2021 - **Vetrivel Infrastructure v. DCIT - [2024] 164 taxmann.com 123 (Gujarat)**

SECTION 245D OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - PROCEDURE ON APPLICATION UNDER SECTION 245C

3.59 Powers of Settlement Commission : Where assessee filed settlement application before ITSC and admitted of making additional income on account of certain off-market transactions, ITSC passed order accepting disclosure and based on report furnished by Commissioner as per section 245D(3) made further addition on account of commission and margin money paid for off-market transactions, since contested additions were not made on basis of assumptions, but after a careful perusal of report submitted to ITSC, it could not be said that ITSC lacked jurisdiction to make such an addition - **Harsh Dhanuka HUF v. PCIT - [2024] 164 taxmann.com 193 (Delhi)**

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

3.60 Where Tribunal extended stay on a tax demand beyond 365 days, considering assessee's compliance with stay condition however, revenue argued that such extension was illegal in terms of third proviso to section 254(2A), since SC in case of DCIT. v. Pepsi Foods Ltd. 2021(433) ITR 295(SC) had struck down impugned part of third proviso to Section 254(2A), Tribunal's order was to be upheld - **PCIT-2 v. Fulford (India) Ltd. - [2024] 164 taxmann.com 164 (Bombay)**

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

3.61 High Court exercising jurisdiction under Section 260A is required to consider as to whether any substantial question of law has arisen for consideration and this Court cannot be converted into an appellate Tribunal to examine factual issue which was never placed by assessee before Assessing Officer or before Commissioner (Appeals) or before Tribunal - **Manoj Jain (HUF) v. Income-tax Officer - [2024] 164 taxmann.com 133 (Calcutta)**



4. TRIBUNAL

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

- 4.1** Where Assessing Officer increased agricultural expenditure of assessee and consequently reduced its agricultural income (both exempt under section 10(1) to give rise to total income chargeable to tax as 'income from other sources', since revenue had not brought any material on record to show that assessee earned any other income, merely increasing agriculture expenditure & reducing exempt agriculture income would not automatically culminate in income from other sources, and accordingly, impugned addition made by Assessing Officer was to be deleted - **A.S. Srinath (HUF) v. Income-tax Officer, Ward 1 & TPS - [2024] 164 taxmann.com 321 (Bangalore - Trib.)**

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

- 4.2 Capital gains - Shares/units, transfer of :** Where assessee, a Mauritius based company, was incorporated as an investment fund and held investment in Indian companies for more than five years and had validly discharged its burden by establishing that day to day administrative activities of assessee company were as per law of land, Assessing Officer was not justified in denying treaty benefits to assessee - **India Property (Mauritius) Company-II v. ACIT - [2024] 164 taxmann.com 440 (Delhi - Trib.)**
- 4.3 Royalties/fee for technical services - Subscription fees :** Receipt from subscription of cloud based services was not taxable under article 12(4)(b) of India-US DTAA - **BlackLine Systems Inc. v. ACIT - [2024] 164 taxmann.com 408 (Delhi - Trib.)**
- 4.4 Royalties/fees for technical services - Certification services :** Where services rendered to assessee, Indian company, for product certification by non-resident entities, which included evaluating technical quality and issuing certificates, did not fall under definition of FTS as per section 9(1)(vii) and, therefore, assessee was not liable to withhold tax under section 195 - **Deputy Commissioner of Income-tax v. Elitecore Technologies (P.) Ltd. - [2024] 164 taxmann.com 571 (Ahmedabad - Trib.)**
- 4.5 Royalty/fees for technical services - Computer software :** Where assessee had procured software from third party vendor located in Russia and Israel, since royalty was payable to vendor only upon activation of software by end user, withholding tax liability did not get triggered and, thus, disallowance made under section 40(a)(i) was rightly deleted by Commissioner (Appeals) - **Deputy Commissioner of Income-tax v. Elitecore Technologies (P.) Ltd. - [2024] 164 taxmann.com 571 (Ahmedabad - Trib.)**

- 4.6 Royalties/Fees for technical services - Managerial service :** Where assessee, a German company, entered into an agreement with an Indian company, SIPL, for promotion, sale and distribution of print and electronic books and journals published by SIPL and received commission for providing said services, since assessee only rendered support to business operations and no special skills or knowledge were required to render services that were contemplated under agreement, commission received by assessee could not be treated as FTS - **Springer Nature Customer Service Center GmbH v. ACIT - [2024] 164 taxmann.com 354 (Delhi - Trib.)**

- 4.7 Royalties/Fees for technical services - Subscription fees :** Where assessee, a German company, entered into an agreement with an Indian company, SIPL, for promotion, sale and distribution of print and electronic books and journals published by SIPL, and collected subscription from sale of electronic books and journals to third party customers, since assessee only sold copyrighted publication to concerned entities without conferring any copyright in said material to subscribers of e-journals, subscription amount could not be treated as royalty - **Springer Nature Customer Service Center GmbH v. ACIT - [2024] 164 taxmann.com 354 (Delhi - Trib.)**

- 4.8 Royalties/fees for technical services - marketing services :** Where assessee, a US based company, was subsidiary of SEPL India and performed pure sales function by connecting potential customers from US by performing presales activity of introducing SEPL India to potential customers and rest of activity was predominantly taken care by SEPL India, commission received by assessee on sales and marketing services was not for rendering services resulting in provision of FTS or make available technical knowledge to SEPL India and thus, would not be taxable in India - **Steer America Inc. v. DCIT (International Taxation) - [2024] 164 taxmann.com 355 (Bangalore - Trib.)**

- 4.9 Royalties/Fees for technical services - Others :** Receipts by assessee (a Singapore based company) from reservation fee, marketing fee and loyalty programme could not be brought to tax in India as royalty income under India-Singapore DTAA - **AAPC Singapore Pte. Ltd. v. ACIT, International Taxation - [2024] 164 taxmann.com 302 (Delhi - Trib.)**

- 4.10 Royalties/Fees for technical services - make available :** Where Assessing Officer held that payments made by assessee to its associated enterprise (AE) were in nature of fees for technical services (FTS) but failed to bring on record any material to support this averment, payments made by assessee to US company for administrative and IT services were not in nature of FTS - **Herbalife International India (P.) Ltd. v. Deputy Commissioner of Income-tax (International Taxation) - [2024] 164 taxmann.com 81 (Bangalore - Trib.)**

- 4.11 Royalties/Fees for technical services - Others :** Where assessee had made payments as regards professional and



consultancy services to US/UK parties and AO disallowed same by invoking provisions of sec 40(a)(i) holding that source of income for assessee was within India as income earning activity was situated within India, since legal position prior to amendment brought out vide Finance Act, 2010, whereby Explanation to section 9(2) was that unless services were rendered in India, no income accrues/arises in hands of non-residents, thus, assessee was under no obligation to deduct tax at source in respect of payments made in assessment year 2009-10 - ***Titan Company Ltd. v. Assistant Commissioner of Income-tax - [2024] 164 taxmann.com 84 (Chennai - Trib.)***

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

4.12 Non-registered trust, computation of taxable income : Where assessee, a non-profit organization, was denied exemption under section 11 for want of registration under section 12A, only net profit/margin earned by assessee from operation should be brought to tax and not gross receipts - ***Masonic Fraternity of New Delhi v. Income-tax Officer - [2024] 164 taxmann.com 325 (Delhi - Trib.)***

4.13 Illustrations : Where assessee-society timely filed revised return correcting inadvertent error in income classification from 'Business income' to 'Income from other sources', and disclosed all necessary particulars of receipts and utilization, claim of exemption under section 11 should be allowed - ***Jan Shikshan Sansthan v. Income-tax Officer (Exemptions) - [2024] 164 taxmann.com 226 (Chandigarh - Trib.)***

4.14 Conditions precedent : Where Assessing Officer found that two individuals who had made donations to assessee society had stayed in guest house of society by paying inadequate rent and he invoked section 13(1)(c)(ii) and exemption under section 11 was revoked, since assessee was a charitable society duly registered under section 10(23C)(iv) along with section 12A(a), conditions prescribed in section 13 were not applicable and Assessing Officer could not make disallowance under section 11 - ***Income-tax Officer (Exemptions) v. Theosophical Society - [2024] 163 taxmann.com 770 (Chennai - Trib.)***

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

4.15 Eligibility : Where assessee-trust filed an application for registration under section 12AB, however, it was an admitted fact that assessee was not registered under Rajasthan Public Trust Act, since assessee had not followed provisions of Rajasthan Public Trust Act, as it was applicable to it, assessee would not be eligible for registration under section 12AB - ***Lokesh Agarwal Dharmarth Charitable Trust v. CIT (Exemption) - [2024] 164 taxmann.com 228 (Jaipur - Trib.)***

4.16 Denial of registration : Where Commissioner(Exemption) rejected application of assessee under section 12A on ground that no charitable activity was initiated and no expenses were incurred on any charitable activity as detailed in section 2(15), since assessee submitted documents to show that it had given financial assistance/donation to improve healthcare, education and services and to uplift standard of living of tribals, matter was to be remanded back for fresh consideration - ***Karamshi Jethabhai Somaiya (Delhi) Trust v. CIT (Exemption) - [2024] 164 taxmann.com 165 (Delhi - Trib.)***

4.17 Denial of registration : A Commissioner is bound to consider whether objects of trust are genuinely charitable in nature and whether activities which trust **proposed** to carry on are genuine in sense that they are in line with objects of trust - ***Karamshi Jethabhai Somaiya (Delhi) Trust v. CIT (Exemption) - [2024] 164 taxmann.com 165 (Delhi - Trib.)***

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

4.18 Where CIT (Exemption) rejected claim of registration under section 12AA to assessee for reason activities of assessee appeared to be of commercial nature rather than charitable nature, since claim of **assessee** trust that it was a section 8 company registered under Companies Act, 2013 with charitable object of providing medical relief to geriatric population and registration under section 7(2) of Companies Act, 2013 was not at all considered by CIT(Exemption) before rejecting claim of registration made by assessee, matter was to be remitted to CIT(Exemption) to decide issue afresh - ***Geriatric Wellness Foundation Lokmanya Hospital v. CIT (Exemption) - [2024] 163 taxmann.com 765 (Pune - Trib.)***

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

4.19 Condonation of delay by Tribunal : Where assessee filed an instant appeal before Tribunal against denial of registration under section 12AB after a delay of 291 contending that management of said society were engrossed in carrying out activities of said society, and thus, could not find time to file appeal on time, it was difficult to understand that an aggrieved assessee had casually allowed matter of filing appeal in time to transpire in such a manner that said substantial delay had occurred, thus, there was no sufficient and satisfactory explanation filed by assessee to prove that there was a reasonable cause for said delay, instant appeal filed by assessee was to be dismissed - ***Liberal Association For Movement of People v. CIT (Exemption) - [2024] 164 taxmann.com 83 (Kolkata - Trib.)***

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

4.20 Conditions precedent : Where Assessing Officer had not recorded satisfaction as regards nature of expenditure and investments and dividend earned while making disallowance under section 14A read with rule 8D, in view of Supreme



Court's decision in *Maxopp Investments Ltd. v. CIT* [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 (SC), disallowance made under section 14A was to be deleted - ***Titan Company Ltd. v. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 84 (Chennai - Trib.)**

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

- 4.21 Vacancy allowance** : Where assessee had let out property for a period of 15 days and it remained vacant during remaining part of each previous year, benefit of section 23(1)(c) was to be allowed - ***Sunil Ramnarayan Mantri v. DCIT* - [2024] 164 taxmann.com 310 (Pune - Trib.)**

SECTION 24 OF THE INCOME-TAX ACT, 1961 - INCOME FROM HOUSE PROPERTY - DEDUCTIONS

- 4.22 Interest on borrowed capital** : Interest on housing loan allowable as deduction under section 24 for let-out property, based on bank certificate and consistent claims in previous years - ***Smt. Syeda Bibi Sadiqa v. Deputy Commissioner of Income-tax* - [2024] 164 taxmann.com 28 (Bangalore - Trib.)**

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

- 4.23 Computer software** : Where assessee purchased computer software and charged depreciation at 60 per cent, since software was guiding hardware and also an integral part of hardware, assessee was rightly claiming depreciation at rate of 60 per cent - ***PRL Developers (P.) Ltd. v. ACIT* - [2024] 164 taxmann.com 328 (Mumbai - Trib.)**
- 4.24 UPS (Uninterrupted Power Supply)** being integral part of computer, is eligible for depreciation at 60 per cent - ***Titan Company Ltd. v. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 84 (Chennai - Trib.)**

SECTION 35AC OF THE INCOME TAX ACT, 1961 - ELIGIBLE PROJECTS OR SCHEMES, EXPENDITURE ON

- 4.25** Prime requirement for deduction under section 35AC is that payment is made by an assessee to an approved institute for carrying out any eligible project or scheme and merely because approved institute has applied funds towards ineligible project or scheme, this cannot be a ground to deny deduction in hands of assessee - ***Piramal Capital and Housing Finance Ltd. v. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 120 (Ahmedabad - Trib.)**

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

- 4.26** Where assessee advanced funds to three parties for commercial purposes without charging interest and

Assessing Officer added back an amount under Section 36(1)(iii) as interest on such advances, since advances were for business dealings and funded by interest-free loans shown in audited balance sheet addition in question deserved to be deleted - ***DCIT v. Apex Fibre India Ltd.* - [2024] 163 taxmann.com 764 (Amritsar - Trib.)**

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

- 4.27 Commissions or equivalent fees** : Where assessee had paid sales commission to its AE and one another party, since assessee had duly provided copy of agreement and debit notes which clearly demonstrated sales effected through said parties and furthermore, TPO had also accepted international transaction of payment of sales commission paid by assessee to its AE, no addition could be made to assessee's income on account of such sales commission paid - ***Assistant Commissioner of Income-tax v. Heubach Colour (P.) Ltd.* - [2024] 161 taxmann.com 521 (Ahmedabad - Trib.)**
- 4.28 Sales promotion expenses** : Where assessee, a developer, incurred sales promotion expenses in respect of its construction project, since assessee was purely a civil construction developer and AS-7 was purely effective for contractor in construction, not for developers, question of capitalizing project cost of sale promotion was unjustified - ***PRL Developers (P.) Ltd. v. ACIT* - [2024] 164 taxmann.com 328 (Mumbai - Trib.)**
- 4.29 Inventory** : Slow and non-moving inventory and other winding up costs are revenue in nature - ***Titan Company Ltd. V. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 84 (Chennai - Trib.)**
- 4.30** Customer loyalty points (CLP) provision created by assessee on basis of estimated percentage of redemption was to be allowed as deduction - ***Titan Company Ltd. V. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 84 (Chennai - Trib.)**
- 4.31 Forward contracts** : Marked to market loss arising on ECB loans and loss arising due to hedging exposures related to commitments on sales and purchases was allowable under section 37 - ***Titan Company Ltd. V. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 84 (Chennai - Trib.)**
- 4.32 General** : Where assessee incurred various expenditure in relation to its discontinued business and there was no likelihood of revival of said business, said expenditure could not be allowed as a business expenditure - ***Shanmugam Ravi v. DCIT* - [2024] 164 taxmann.com 122 (Bangalore - Trib.)**

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

- 4.33** Where Assessing Officer had treated guarantee commission paid by assessee to its associate concern as excessive and disallowed 50% of claim without bringing on record any comparable case or invoking Section 40A(2)(b), and



moreover, similar payments were accepted in previous years, it could be said that disallowance, was based on assumptions and was to be deleted - **Piramal Capital and Housing Finance Ltd. v. Assistant Commissioner of Income-tax - [2024] 164 taxmann.com 120 (Ahmedabad - Trib.)**

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

- 4.34 Applicability of :** Where assessee had written off balance of sundry creditors in its books of account and same was duly reported by tax auditor in tax audit report, since it was credited to profit and loss account, net profit disclosed by assessee already included said amount and consequently, same had already been offered to tax by assessee, there was no requirement of making addition of aforesaid amount under section 41(1) again while processing return of income - **Ceat Ltd. v. Assistant Director of Income-tax - [2024] 164 taxmann.com 252 (Mumbai - Trib.)**

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

- 4.35** Where in transactions of buying and selling edible oil via high sea sales entered into by assessee final and physical delivery of goods had been taken by end user (last buyer) at port of destination (ie at port of arrival) after compliance with all customs formalities, said transaction could not be termed as speculative under section 43(5), by any stretch of imagination - **DCIT v. Apex Fibre India Ltd. - [2024] 163 taxmann.com 764 (Amritsar - Trib.)**

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

- 4.36** Interest payable on loan taken from State Government/World Bank is not covered within provision of section 43B - **Jaipur Vidyut Vitran Nigam Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 282 (Jaipur - Trib.)**
- 4.37** Where assessee engaged in business of distribution of electricity to consumers, collected electricity duty from consumers and paid same to State Government, section 43B was not applicable in case of assessee - **Jaipur Vidyut Vitran Nigam Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 282 (Jaipur - Trib.)**

SECTION 45 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - YEAR IN WHICH ASSESSABLE

- 4.38 Transfer :** Where assessee booked a Villa with builder vide allotment letter dated 9-4-2005 and before completion of property, entered into agreement to sell dated 8-3-2008 for subsequent transfer of booking rights to buyer, in view of fact that transfer of booking rights by

assessee as contemplated in agreement to sell dated 8-3-2008 was dependent upon permission to be granted by builder, which happened only on 2-5-2008, transfer of booking rights would be completed only in assessment year 2009-10 and capital gain thereon would be taxable as LTCG in assessment year 2009-10 - **R.C. Nirula & Sons HUF v. Assistant Commissioner of Income-tax - [2024] 164 taxmann.com 308 (Delhi - Trib.)**

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

- 4.39 Cost of improvement :** Where pursuant to remand order with respect to computation of cost of improvement, assessee changed total amount of claim on ground that major expenses for improvement were through family concern, since assessee had changed not only quantum of cost but also sources for incurring cost of improvement, assessee could be given credit for withdrawals declared by himself only and not by other persons - **Balkrishan Joshi v. Income-tax Officer - [2024] 164 taxmann.com 377 (Indore - Trib.)**

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

- 4.40** Amendment to Section 50C by Finance Act, 2016 allowing consideration of stamp duty value on date of agreement instead of date of registration for computing capital gains, introduced with effect from Assessment Year 2017-18, is retrospective in nature and thus applicable to assessment year 2010-11 - **Income-tax Officer v. Meelendra Deependra Singh - [2024] 164 taxmann.com 8 (Mumbai - Trib.)**

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

- 4.41** Where assessee sold her shares and in lieu thereof received land and claimed exemption under section 54F on account of purchase/consideration of house on land purchased, since assessee proved with evidences that finally she had got land transferred in her favour and further investment was made within stipulated time period, exemption could not be denied under section 54F on ground of technical that no permission was granted by ADDA to transfer land in name of assessee till date of investment - **Basabdutta Dutta v. Income-tax Officer - [2024] 164 taxmann.com 406 (Kolkata - Trib.)**
- 4.42 Depreciable immovable property :** Where building was held for more than 36 months by assessee before sale, thus, there was a transfer of long-term capital asset, assessee could claim exemption under section 54F on long term capital gain as asset remained a long-term capital asset despite deeming fiction of section 50, however, s assessee had claimed depreciation on this property, provision of section 41(2) applies, therefore, profit on sale of this property was required to be computed under provisions of sections 41(2) and 50 - **Sonia Pathak Khanna v. Income-tax Officer - [2024] 164 taxmann.com 607 (Mumbai - Trib.)**



4.43 Non-filing of return : Where assessee, a non-resident, furnished all details and documentary evidences in respect of sale of immovable property by her as well as in respect of new residential flat purchased by her, for claiming deduction under section 54, benefit under section 54 could not be denied to assessee on ground that she did not furnish return of income claiming such deduction - **Seema Heera v. Assistant Commissioner of Income-tax (OSD) - [2024] 164 taxmann.com 329 (Mumbai - Trib.)**

4.44 New residential house : Deduction under section 54 to be allowed on full purchase cost of new residential property, including stamp duty, restricted to sale proceeds of original property - **Smt. Syeda Bibi Sadiqa v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 28 (Bangalore - Trib.)**

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

4.45 Where assessee sold right to a property conferred by an allotment letter and reinvested in another property, holding period should be computed from date of allotment letter, and gain should be taxable as a long-term capital gain and therefore, assessee was eligible to claim a deduction under section 54F for investment made in another house property - **Minaxi Mahesh Pawani (Deceased) through Legal Heir Pratik Mahesh Pawani v. Income-tax Officer - [2024] 164 taxmann.com 255 (Mumbai - Trib.)**

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

4.46 Reference to DVO : Where assessee opted for deduction of cost of acquisition on basis of FMV as on 1-4-1981 at Rs. 7.50 lacs, however, Assessing Officer made a reference to DVO for determining correct amount of FMV as on 1-4-1981 and allowed deduction of cost of acquisition adopting FMV as determined by DVO, since there was a good working done by DVO on basis of a strong undisputable method, 'reverse indexation method' couldnot be allowed and FMV reported by DVO was to be accepted - **Balkrishan Joshi v. Income-tax Officer - [2024] 164 taxmann.com 377 (Indore - Trib.)**

SECTION 55A OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - REFERENCE TO VALUATION OFFICER

4.47 Where Assessing Officer rejected registered valuer's report without valid reasons and failed to refer to Departmental Valuation Officer as per section 55A, Fair Market Value determined by registered valuer was to be adopted for capital gains computation - **Manick Chandra Paul v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 572 (Kolkata - Trib.)**

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

4.48 Where assessee transferred her investment in shares and in lieu thereof received land of equal value, since difference in value of said land given by DVO and value of land mentioned by assessee in transfer deed was less than 5 percent and further market value determined by DVO was purely a work of estimation only, no additions were warranted on account of differential amount between value of land given by DVO and value of land mentioned by assessee - **Basabduutta Dutta v. Income-tax Officer - [2024] 164 taxmann.com 406 (Kolkata - Trib.)**

4.49 Sub-section (2)(viib) : Where difference between issue price of shares shown by assessee and value adopted by Assessing Officer was 2.1 per cent, i.e., less than 10 per cent, in view of curative amendment in rule 11UA introduced by CBDT Notification No. 81/2023, dated 25-8-2023, with effect from 1-4-2018, addition made on account of differential amount of share capital and premium amount under section 56(2)(viib) was not justified - **Sakshi Fincap (P.) Ltd. v. Income-tax Officer - [2024] 161 taxmann.com 520 (Delhi - Trib.)**

4.50 Sub-section (2)(viib) : Where assessee-company filed additional evidence before Commissioner (Appeals) which was not admitted, since said additional evidence was crucial, matter was to be remanded back to consideration of Assessing Officer after admitting additional evidence - **ADM Agro Industries Kota & Akola (P.) Ltd. v. DCIT - [2024] 164 taxmann.com 564 (Delhi - Trib.)**

4.51 Share premium : Where Assessing Officer made addition to assessee's income under section 56(2)(viib) on account of difference between fair market value of shares and issue price of shares allotted by assessee to certain companies, since Assessing Officer had not rejected valuation report duly prepared under rule 11UA by assessee, addition made by Assessing Officer was not justified in absence of any unaccounted money of assessee - **PRL Developers (P.) Ltd. v. ACIT - [2024] 164 taxmann.com 328 (Mumbai - Trib.)**

4.52 Where assessee purchased agricultural land with two co-owners, and Assessing Officer made an addition under section 56(2)(x) due to a higher stamp duty value, Assessing Officer should have referred valuation to the DVO, as was done for a co-purchaser and addition was to be deleted because DVO's valuation was within 10% of purchase price, showing no significant difference from purchase consideration - **Dilip Manibhai Prajapati v. Income-tax Officer - [2024] 164 taxmann.com 224 (Ahmedabad - Trib.)**

4.53 Deeming provisions of section 56(2)(viib) would not be applicable to subscriptions by holding companies - **ITO v. Solitaire BTN Solar (P.) Ltd. - [2024] 164 taxmann.com 170 (Delhi - Trib.)**

4.54 Share premium : Where assessee allotted 5 percent non-cumulative redeemable preference shares to a company at certain rate per share including share premium, since



valuation report as submitted by assessee in form of additional evidence was good enough to explain valuation, impugned addition made by Assessing Officer on ground that assessee had not furnished report from merchant banker with respect to computation and rational behind price of each share for purpose of rule 11UA was to be set aside - **Deputy Commissioner of Income-tax v. Weldon Polymers (P.) Ltd.** - [2024] 163 taxmann.com 773 (Delhi - Trib.)

4.55 Where assessee-company, engaged in hospitality and agriculture, reported a loss due to pre-operative expenses before business commencement and it raised funds through secured debentures, part of which were invested in a perpetual debt instrument (PDI) generating interest income, since investment in PDI was financed by borrowed funds only net interest income, after deducting interest expenditure (11% per annum), should be assessed under Section 56 - **Muthoot Agri Projects And Hospitalities (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2024] 164 taxmann.com 59 (Cochin - Trib.)

4.56 Sub-section 56(2)(vii)(b) : Where amount of purchase consideration for transferring immovable property was fixed as per terms of agreement to purchase executed between assessee's late father and D in year 1991 at Rs.92,000 (including development charges), which was paid vide cheques/drafts by assessee's late father over period 27-6-1991 to 12-9-1992 and assessee had acquired title of property during year under consideration and had paid only development charges, stamp duty value as on date of agreement should only be compared with actual consideration for purpose of section 56(2)(vii)(b) - **Deputy Commissioner of Income-tax v. Ravi Shankar Gupta** - [2024] 163 taxmann.com 338 (Raipur - Trib.)

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

4.57 Interest expenses : Interest expenses claimed under "Income from Other Sources" are not allowable as deduction under section 57(iii) of the Income Tax Act when there is no direct nexus between expenditure and income earned, as expenses must be incurred "wholly and exclusively" for earning such income - **Gunvantrai Vrajlal Bhadani v. ACIT** - [2024] 164 taxmann.com 131 (Rajkot - Trib.)

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

4.58 Cash deposit : Where Assessing Officer made addition under section 68 in respect of cash deposit made by assessee during demonetization period on ground that cash sales shown by assessee during period of 10 days just before demonetization was not genuine but fabricated and after thought being colourable device used to show unaccounted cash as accounted one, since stock register as well as family evidences

produced by assessee in support of cash transaction were found to be genuine, impugned addition made by Assessing Officer was to be deleted - **Hinima Atul Shah v. Income-tax Officer** - [2024] 164 taxmann.com 439 (Ahmedabad - Trib.)

4.59 Revision : Where assessee's case was framed based on ledger account seized during search of another company which showed entries of unsecured loans, course of action was required to be taken under section 153C and not under section 147, and thus, subsequent revisionary proceedings invoked on ground that Assessing Officer failed to make necessary enquiries in reassessment proceedings with respect to ledger account seized were based on invalid order and were without jurisdiction - **Jagjeet Singh v. DCIT ACIT** - [2024] 164 taxmann.com 324 (Amritsar - Trib.)

4.60 Revision of reassessment order : Where Assessing Officer had not made any addition with respect to cash deposits made in bank account of assessee, i.e. issue, based on which, its case was reopened by him under section 147, and thus, was divested of his jurisdiction from making any further independent addition/disallowance, Pr. CIT could not have held said re-assessment order so passed by Assessing Officer as erroneous for reason that he had failed to carry out verification on different issues viz. share capital/premium and unsecured loans received by assessee which were not subject matter of reassessment proceedings - **Hotel Babylon Continental (P.) Ltd. v. Principal Commissioner of Income-tax** - [2024] 164 taxmann.com 306 (Raipur - Trib.)

4.61 Accommodation entries : Where Assessing Officer issued a reopening notice on ground that he received information that assessee received certain amount from a shell company which was engaged in providing bogus accommodation entries, since there was nothing brought by Assessing Officer to substantiate that an amount had been received by assessee from said company, and further, in preceding assessment year, reopening proceedings were initiated against assessee on same issue but no addition was made after being satisfied with identity of entity and genuineness of transaction, impugned reopening notice was to be quashed - **R.S. Darshan Singh Motor Car Finance (P.) Ltd. v. Income-tax Officer** - [2024] 163 taxmann.com 1234 (Kolkata - Trib.)

4.62 Bank deposit : Where Assessing Officer reopened assessment of assessee to examine cash deposit of certain amount in bank account, but did not make any addition for reasons recorded at time of issue of notice under section 148, he could not have made any addition on account of capital gain in assessment proceedings under section 147/148 and, thus, assessment order was not erroneous and prejudicial to interest of revenue - **Ashok Kumar v. Principal Commissioner of Income-tax** - [2024] 164 taxmann.com 115 (Delhi - Trib.)

4.63 Demonetization period : Where, assessee-medical practitioner, deposited cash in bank from her professional income which was already reflecting in return and same was supported by entries books and by patient register required details, merely because assessee had



deposited said sourced income in form of SBNs during demonetization, same couldnot be considered as unexplained in hands of assessee - **Shobha Tomar v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 61 (Jaipur - Trib.)**

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

4.64 Immovable property : Since difference between stamp value of subject property and actual purchase consideration is only deemed/notional income, same could not be brought with meaning of unexplained investment under section 69 - **Deputy Commissioner of Income-tax v. Ravi Shankar Gupta - [2024] 163 taxmann.com 338 (Raipur - Trib.)**

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

4.65 Where cash deposits made by assessee was not properly explained, since sole source of income of assessee was retail business, such deposits should be treated as unaccounted business income subject to presumptive taxation under section 44AD, rather than unexplained income under section 69A read with section 115BBE - **Jayesh Jagat Parekh v. Income-tax Officer - [2024] 164 taxmann.com 348 (Mumbai - Trib.)**

4.66 Bank deposits : Where assessee, a NRI, claimed that cash deposited in his NRO account was out of previous withdrawals kept for emergency requirement of his old and sick mother, since assessee explained that for personal need, he made withdrawal from ATM and no adverse material was brought by revenue against such contention nor any remand report to disregard such fact was brought on record, impugned addition made by Assessing Officer without bringing any adverse evidence on record was not justified - **Mahesh Chittubhai Patel v. Income-tax Officer (International Taxation) - [2024] 160 taxmann.com 1523 (Surat-Trib.)**

4.67 Where assessee, dealing in shares, claimed a trading loss in scrip of certain company, since all transactions were conducted through registered stockbrokers and there was no complaint filed by any of party either to SEBI or stock exchange about assessee or brokers that it was involved in manipulation of prices of shares, allegation of revenue that there was manipulations in scrip for providing accommodation entries could not be accepted for disallowing claim of assessee - **Vicky Rajesh Jhaveri v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 86 (Ahmedabad - Trib.)**

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

4.68 Diary seized during search : Where during search conducted at premises of assessee, an incriminating diary was seized which contained entries of cash

expenses and assessee claimed that said diary belonged to one, R, however, affidavit filed by R vaguely mentioned entries with respect to names of person paying amount and expenses, in absence of specific details and other supporting documents, affidavit of R was to be rejected and additions made with respect to said expenses under section 69C were justified - **Kailash Gahlot v. DCIT - [2024] 164 taxmann.com 118 (Delhi - Trib.)**

SECTION 70 OF THE INCOME-TAX ACT, 1961 - LOSSES - SET OFF OF FROM ONE SOURCE AGAINST INCOME FROM ANOTHER SOURCE UNDER SAME HEAD OF INCOME

4.69 Capital gains/loss : Short-term capital loss, on which securities transaction tax was paid and which was taxable at rate of 15 per cent can be set off against short-term capital gain which was not subject to securities transaction tax and was taxable at rate of 30 per cent - iShares **MSCI EM UCITS ETF v. Deputy Commissioner of Income-tax (International Taxation) - [2024] 164 taxmann.com 56 (Mumbai - Trib.)**

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

4.70 Approval : Where assessee trust had commenced it's activities prior to amendments brought in grant of registration of trust effective from 1-4-2021 and it filed application for grant of final approval under section 80G(5) within a period of six months from date of grant of provisional registration within extended timeline upto 30-9-2023, application could not be denied on ground that same was not filed before 30-9-2022 - **Navsari Agricultural University v. CIT (E) - [2024] 164 taxmann.com 256 (Ahmedabad - Trib.)**

4.71 Where CIT(Exemption) rejected assessee-society's approval application under section 80G(5) due to late filing beyond specified time limit, as per Circular No. 6/2023 dated 24-5-2023, which was later declared unconstitutional, and subsequently, CBDT vide Circular No. 07/2024 dated 25-4-2024 extended due date to 30.06.2024, allowing society to reapply in Form 10AB, assessee would be at liberty to approach CIT(Exemption) by filing a fresh application in Form 10AB, which would be treated as a valid application as per CBDT Circular No. 07/2024 - **Dharam Foundation v. Income-tax Officer - [2024] 164 taxmann.com 223 (Raipur - Trib.)**

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

4.72 Allocation of expenses : Appropriate method of allocation of overhead expenses would be based on turnover for computing deduction under section 80IC - **Titan Company Ltd. V. Assistant Commissioner of Income-tax - [2024] 164 taxmann.com 84 (Chennai - Trib.)**

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



4.73 Interest - Rate of tax : Where assessee, a resident of New Zealand, declared interest income in his return of income and claimed benefit of lower tax rates as per Article 11 of DTAA between India and New Zealand, since DTAA has overriding effect over Income-tax Act, assessee could not be dis-entitled to take benefit of Article 11 of DTAA, which is a beneficial provision - ***Shanmugam Ravi v. DCIT - [2024] 164 taxmann.com 122 (Bangalore - Trib.)***

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

4.74 Corporate guarantee : Where assessee provided corporate guarantee to its step down subsidiaries against loan taken by them and also collected fees for providing guarantee in past, since, in relevant assessment year, assessee's step down subsidiaries failed to service obligation towards loan and were classified as NPA by bank and in beginning of year and recovery proceedings were initiated from assessee, corporate guarantee provided by assessee seized to exist and there would be no international transaction in year under consideration - ***JE Energy Ventures (P.) Ltd. v. DCIT - [2024] 164 taxmann.com 441 (Delhi - Trib.)***

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

4.75 Adjustments - Aggregation of transactions : Where assessee, a banking and financial organization registered in Hongkong, had earned float income on account of corresponding banking services provided by its overseas entities i.e. selling INR Vostro accounts of HSBC India to banks domiciled outside India, since assessee and overseas entities derived reciprocal benefits, no mark-up should be loaded on attribution of costs towards incidental marketing activities undertaken by assessee in connection with correspondent banking activities - ***The Hongkong & Shanghai Banking Corporation Ltd. v. Additional Director of Income-tax (International Taxation) - [2024] 164 taxmann.com 356 (Mumbai - Trib.)***

4.76 Adjustments - Support service fee : Where assessee rendered support services as regards External Commercial Borrowings (ECBs) to its AE who advanced ECBs to Indian customers and it did not assume any risk in respect of continuing ECBs, no transfer pricing adjustment as regards services rendered by assessee in respect of continuing ECBs would be made more so when entire commission income/Debt Syndication Fee received by assessee from its AE was already accepted to be at arm's length - ***The Hongkong & Shanghai Banking Corporation Ltd. v. Additional Director of Income-tax (International Taxation) - [2024] 164 taxmann.com 356 (Mumbai - Trib.)***

4.77 Adjustment - Interest : Where assessee-bank had received interest from its overseas entities, Fed Fund rate which is target interest rate fixed by Federal Open Market Committee (FOMC) should be used as most appropriate for purposes of benchmarking rather than taking LIBOR rates - ***The Hongkong & Shanghai Banking Corporation Ltd. v. Additional Director of Income-tax (International Taxation) - [2024] 164 taxmann.com 356 (Mumbai - Trib.)***

4.78 Comparability factors - Current year v. Multiple year data : Where assessee had used multiple year data for computing three years weighted average margin of comparable companies merely because data for financial year 2006-07 was not available for comparables, same would not allow assessee to consider multiple year data and, therefore, TPO was justified in applying single year data - ***The Hongkong & Shanghai Banking Corporation Ltd. v. Additional Director of Income-tax (International Taxation) - [2024] 164 taxmann.com 356 (Mumbai - Trib.)***

4.79 Comparability factors - Foreign comparable : Where assessee benchmarked its purchase transaction by taking AE as tested party but TPO observed that AE could not be taken as tested party due to difference in function of AE and assets employed and risks taken by assessee, since AE was considered as tested party for earlier assessment years and in subsequent assessment years and TPO had not brought out any change in material facts and circumstances in functionality, complexity of manufacturing process and products dealt with by assessee with its AE when compared to other years, AE should be taken as tested party and entire TP adjustment was to be deleted - ***Assistant Commissioner of Income-tax v. Fysolate Technologies - [2024] 164 taxmann.com 438 (Visakhapatnam - Trib.)***

4.80 Adjustments - Royalty : Where assessee, a US based entity, earned royalty income from its Indian group entities and there were differences in amount of royalty as reflected by assessee in Form 3CEB and amount of royalty reflected by group entities, since such differences were only on account of timing differences in recognition of revenue, TPO was not justified in making transfer pricing adjustment on account of such differences in royalty amount - ***GE Subsidiary Inc. v. ACIT (Intl. Taxation) - [2024] 164 taxmann.com 305 (Mumbai - Trib.)***

4.81 Comparability analysis - Additional evidence : Where assessee's segmental details were not available on record however assessee had rendered services for marketing of credit cards and personal loans to Indian branches of a foreign entity since in subsequent years TPO had changed search of comparable companies from 'financial and leasing services' to companies engaged in 'providing business support services' matter was to be remanded to TPO for fresh adjudication - ***American Express Services India Ltd. v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1378 (Delhi - Trib.)***



4.82 Comparables functional similarity - Business support services : Where assessee had acquired a business database and goodwill for a consideration since assessee's segmental details were not available on record matter was to be remanded to TPO for fresh adjudication - **American Express Services India Ltd. v. DCIT - [2024] 159 taxmann.com 1378 (Delhi - Trib.)**

4.83 Adjustment - Management Fee : Where assessee-company made payment for global/regional management overhead allocation fee and TPO suggested an adjustment, since matter required factual verification at end of AO in view of need for assessee to file additional documentary evidence in support of their claim, issue was to be restored to file of AO - **Kantar GDC India (P.) Ltd. v. DCIT - [2024] 164 taxmann.com 25 (Hyderabad - Trib.)**

4.84 Adjustments - Interest : Interest on outstanding receivable is an international transaction requiring separate benchmarking - **Kantar GDC India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 25 (Hyderabad - Trib.)**

4.85 Comparables, functional similarity - Software consultancy/development services : Where assessee objected for inclusion of certain companies on ground that both companies were functionally dissimilar to assessee-company and could not be compared but had not assigned any reason as to how said companies were functionally different from assessee-company, inclusion of said companies by TPO was to be upheld - **Oakton Global Technology Services Centre (India) (P.) Ltd. v. Income-tax Officer - [2024] 163 taxmann.com 769 (Hyderabad - Trib.)**

4.86 Adjustment - Interest : Where assessee had outstanding receivables from its AEs and TPO adopted SBI PLR for computing interest on said receivables, matter was to be remanded back for reconsideration as interest rate should be market determined interest rate applicable to currency concerned in which loan has to be repaid - **Oakton Global Technology Services Centre (India) (P.) Ltd. v. Income-tax Officer - [2024] 163 taxmann.com 769 (Hyderabad - Trib.)**

4.87 Comparables, functional similarity - Auto Companies : Where selected company was manufacturing auto suspension springs and coil springs while assessee was manufacturing tubular products, same being not functionally comparable was correctly rejected by TPO - **Bundy India Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 117 (Ahmedabad - Trib.)**

4.88 Comparability factors - Profit margin/Import filter : Where selected company was manufacturing coil springs and raw materials were indigenous springs steel round and there was no import of any raw material by this company whereas in case of assessee 50 per cent of raw materials were imported, same was rightly rejected

by TPO - **Bundy India Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 117 (Ahmedabad - Trib.)**

4.89 Comparables, functional similarity - Auto Companies : Where selected company was manufacturing shock absorbers, struts, front forks, bimetal strips and bimetal bearings, whereas assessee was manufacturing tubular products, said company being not functionally comparable was rightly rejected by TPO - **Bundy India Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 117 (Ahmedabad - Trib.)**

4.90 Comparability factors - Profit margin/Import filter : Where assessee was manufacturing tubular products and 50 per cent of raw materials were imported, selected company manufacturing spring and spring leaves and there was no import of any raw material, in view of difference in product and in mode of acquisition of raw materials viz. import filter, this company was rightly rejected by TPO - **Bundy India Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 117 (Ahmedabad - Trib.)**

4.91 Comparability factors - Related Party Transaction : Where related party transaction of selected company in respect of purchase of raw materials during year was 37.17 per cent, same was to be excluded from set of comparables - **Bundy India Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 117 (Ahmedabad - Trib.)**

4.92 Comparability factors - Intangible assets : Where TPO had analyzed intangibles owned by selected company and stated that intangible assets owned by this company was not in nature of those that could affect margin by enabling entity to earn higher margins; which had not been controverted by assessee, said company was rightly selected by TPO as comparable - **Bundy India Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 117 (Ahmedabad - Trib.)**

4.93 Adjustments – MAP : Where after taking FAR analysis of non-US transactions, if it was found that factors influencing price were similar between US AEs and non-US AE transactions, same price fixed under MAP in respect of US AEs could be adopted for non-US AE transactions also - **Bundy India Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 117 (Ahmedabad - Trib.)**

4.94 Adjustment – Interest : Where loan taken by assessee was utilized for providing short term financial assistance to its AE and TPO opined that assessee had not recovered full amount of interest from AE and had considered entire period of 180 days to work out ALP of interest, since interest from AE can be charged only for period for which amount was actually advanced and loan was advanced to AE in installments, for period for which loan amount was lying with assessee, no interest could have been charged from AE, and, hence, TP adjustment was deleted - **Candila Pharmaceuticals Ltd. v. ACIT - [2024] 164 taxmann.com 52 (Ahmedabad - Trib.)**



4.95 Comparables, functional similarity - Others : Where assessee had raised ground of appeal before DRP that companies selected by TPO were not comparable entities, but there was no adjudication of said issue by DRP independently, matter be remitted to file of DRP to consider argument of assessee and decide accordingly - **Embassy One Developers (P.) Ltd. v. DCIT - [2024] 164 taxmann.com 4 (Bangalore - Trib.)**

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

4.96 Illustration : Where TPO made adjustments on account of interest on trade receivables and Commissioner (Appeals) directed TPO to verify claim of assessee that interest was not charged on outstanding receivables either from AEs or non-AEs, since TPO exercised his independent powers u.s. 92CA, Commissioner (Appeals) could not apply his appellate powers as per section 250(4) r.w.s 251(1) to issue directions to TPO and thus, matter was to be remanded to Commissioner (Appeals) to pass fresh order - **ACIT v. Knowledge Infrastructure Systems (P.) Ltd. - [2024] 164 taxmann.com 349 (Delhi - Trib.)**

SECTION 115VI OF THE INCOME-TAX ACT, 1961 - INCOME FROM SHIPPING BUSINESS - RELEVANT SHIPPING INCOME

4.97 Interest on housing loan given to employees : Where assessee, a tonnage tax company, received interest income on housing loan given to employees, since loans were advanced to employees involved in core shipping activity, this income could not be brought to tax separately and it would be covered u.s. 115VI - **Shipping Corporation of India Ltd. v. ACIT - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

4.98 Insurance and P & I claim : Where assessee, a tonnage tax company, received insurance and P & I claims in respect of its two ships which were damaged in preceding years but post-tonnage tax era, since receipt of insurance and P & I claim was directly in relation to core shipping activity of assessee in respect of its qualifying ships, same was covered u.s. 115VI - **Shipping Corporation of India Ltd. v. Addl. Commissioner of Income-tax - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

4.99 Handling and cargo expenses : Where assessee, a tonnage tax company, received recovery of container related costs in respect of handling expenses, transshipment handling charges, etc., since said receipt was mere reimbursement of expenditure, same was not in nature of income - **Shipping Corporation of India Ltd. v. Addl. Commissioner of Income-tax - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

4.100 Handling and cargo expenses : Where assessee, a tonnage tax company, received Terminal handling charges and commission on disbursement, since terminal handling charges and commission on

disbursement are essentially part of core shipping activities, same would be covered under section 115VI - **Shipping Corporation of India Ltd. v. Addl. Commissioner of Income-tax - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

4.101 Accommodation on rent : Where assessee, a tonnage tax company, had taken accommodation on rent for its employees involved in core activity of organization, received housing rent, rent on furniture, company's bus service, contribution for employees' new post-retirement medical and penal charges levied respect of employees involved in core activity of business of assessee, same would be covered under section 115VI - **Shipping Corporation of India Ltd. v. Addl. Commissioner of Income-tax - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

4.102 Liquidated damages : Where assessee, a tonnage tax company, received liquidated damages on account of delay or deficiency in service in respect of its qualifying ships, since liquidated damages on account of delay or deficiency in service in respect of qualifying ships was directly in relation to core shipping activity of assessee in respect of its ships which were qualifying ships, receipt would be covered under section 115VI - **Shipping Corporation of India Ltd. v. ACIT - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

4.103 Profit on sale of assets : Profit on sale of assets is taxable under head 'capital gains' and, thus, same cannot be considered as turnover in view of provisions of section 115VA and consequently, out of purview of Chapter XII-G - **Shipping Corporation of India Ltd. v. ACIT - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

4.104 Interest income : Where assessee, a tonnage tax company, received interest income on deposits placed with banks and financial institutions out of funds required for business but temporarily lying idle, since funds were nothing but funds required for running shipping business, income by way of interest arising from said deposits was in nature of business income and related to core shipping activity - **Shipping Corporation of India Ltd. v. ACIT - [2024] 164 taxmann.com 391 (Mumbai - Trib.)**

SECTION 115BAC OF THE INCOME-TAX ACT, 1961 - INCOME OF INDIVIDUALS AND HINDU UNDIVIDED FAMILY - TAX ON TOTAL INCOME

4.105 Option for new tax regime : Where assessee opted for new tax regime and filed Form No. 10IE after due date prescribed for filing of return, however, said form was available with CPC at time of processing of return, CPC ought to have considered same allowing benefit of new tax regime - **Akshay Devendra Birari v. DCIT - [2024] 164 taxmann.com 58 (Pune - Trib.)**

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

4.106 Computation of book profits : Provision for staff welfare and loss on guarantee is an ascertained liability and same cannot be added while computing book profits - **DCIT v. Tata Motors Ltd. - [2024] 164 taxmann.com 29 (Mumbai - Trib.)**

**SECTION 144C OF THE I-T ACT, 1961 - TRANSFER PRICING - DISPUTE RESOLUTION PANEL**

- 4.107 Others :** where assessee had filed a rectification application before DRP which had not been disposed of till date and delay in disposal of said rectification application could not be attributed to any malafide conduct of assessee, stay on recovery of demand was to be granted - *Tata Cummins (P.) Ltd. v. DCIT* - [2024] 164 taxmann.com 140 (Ranchi-Trib.)

SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - VALUATION OF CLOSING STOCK

- 4.108 FIFO method :** Where AO made additions on ground that there was undervaluation of closing stock of inventories at year end with respect to methodology adopted by assessee which resulted in underreporting of profits/income by assessee, since assessee had claimed to follow AS-2 by ICAI and adopted FIFO method by applying weighted average method, in view of fact that assessee had adopted weighted average cost method of yearly costs while valuing finished stock, and weighted average cost method of monthly costs while valuing WIP, matter was to be remanded back to Assessing Officer to justify reasons for adopting such methods - *Assistant Commissioner of Income-tax v. Heubach Colour (P.) Ltd.* - [2024] 161 taxmann.com 521 (Ahmedabad - Trib.)

- 4.109 Revision :** Where assessee, real estate developer, was consistently following Project Completion Method which was not prohibited by law, acceptance of same by Assessing Officer could not be held as erroneous decision and, therefore, order passed under section 263 by Pr. CIT was not sustainable in law and liable to be set aside - *Parth Developers v. Principal Commissioner of Income-tax* - [2024] 164 taxmann.com 119 (Indore - Trib.)

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

- 4.110 Jurisdiction to issue reopening notice :** There is no question of concurrent jurisdiction of JAO and FAO for issuance of reopening notice under section 148 or even for passing assessment or reassessment order and it is only FAO which could issue notice under section 148 and not JAO - *Swarn Singh v. Income-tax Officer* - [2024] 163 taxmann.com 745 (Amritsar - Trib.)

SECTION 156A OF THE INCOME-TAX ACT, 1961 - DEMAND - MODIFICATION AND REVISION OF NOTICE IN CERTAIN CASES

- 4.111 General :** Assessing Officer shall modify demand payable in conformity with order of an Adjudicating Authority as defined in section 5(1) of the IBC code and shall thereafter serve on assessee a notice of demand specifying sum payable, if any, and such notice of demand shall be deemed to be a notice under section

156 and provisions of Act shall apply accordingly - *Aircel Ltd. v. Deputy Commissioner of Income-tax* - [2024] 164 taxmann.com 405 (Chennai - Trib.)

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

- 4.112** Where assessee claimed that full credit for TDS was not allowed by Assessing Officer and submitted a reconciliation of TDS as per Form 26AS and they also filed a rectification application, under such circumstances, Assessing Officer was directed to verify TDS claim and reconciliation statement, and to allow TDS credit as per Section 199 - *Piramal Capital and Housing Finance Ltd. v. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 120 (Ahmedabad - Trib.)
- 4.113** Where discrepancies were found between assessee's records and TDS credits as per Form 26AS since, assessee had not reconciled discrepancies or provided confirmation from parties matter would be remitted back to Assessing Officer for re-examining matter once again by making necessary enquiry from concerned parties - *Piramal Capital and Housing Finance Ltd. v. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 120 (Ahmedabad - Trib.)

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

- 4.114** Where due date of filing of return for Assessment Year 2014-15 was 30th September, 2014, which was extended by CBDT and in case of tax payers who have paid entire amount of tax on or before 30th September, 2014, no interest for late filing of return may be levied despite their filing of return after 30th September, 2014 - *Piramal Capital and Housing Finance Ltd. v. Assistant Commissioner of Income-tax* - [2024] 164 taxmann.com 120 (Ahmedabad - Trib.)

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

- 4.115** Where refund was granted to assessee in order passed under section 154 along with interest under section 244A, since refund had already been granted to assessee pursuant to original assessment but subsequent to rectification order, refund was increased on which interest amount was also to be given, interest for assessment year 2017-18 needed to be computed from 01.04.2017 to date of grant of refund - *Srei Infrastructure Finance Ltd. v. ACIT* - [2024] 163 taxmann.com 1129 (Kolkata - Trib.)

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

- 4.116 Appeals :** Where assessee-company filed an appeal against order of Assessing Officer that arbitral award granted to assessee was taxable giving effect to order of Principal Commissioner passed under section 263, since order passed by Assessing Officer was not a simple order giving effect to order of Principal Commissioner but he was required to examine facts of case and apply law as laid down in a decision of Supreme Court to it while subjecting arbitral



amount to tax, assessee was well within his rights to have filed an appeal against this order - **MSK Project (India) JV Ltd. v. ACIT - [2024] 160 taxmann.com 1248 (Ahmedabad - Trib.)**

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

- 4.117** Where Commissioner (Appeals) erroneously decided appeal of assessee based on facts and grounds of different case, failing to comply with section 250(6) requirements, such order was liable to be set aside - **Bijesh Kabra v. Income-tax Officer - [2024] 164 taxmann.com 79 (Surat-Trib.)**

SECTION 251 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER

- 4.118 Appeals :** Where assessee explained delay in filing appeals before Commissioner (Appeals) was on reason that assessee presumed appeals were filed by representative who was handling case at that point of time, and it was only on receipt of recovery notice that lapse was realized, said delay in filing appeals before Commissioner (Appeals) belatedly was to be condoned - **J C R Drillsol (P.) Ltd. v. Income-tax Officer - [2024] 164 taxmann.com 283 (Bangalore - Trib.)**

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

- 4.119 Condonation of delay :** Condonation of delay in filing appeal is justified when assessee/appellant provides bona fide reasons such as serious health issues and family circumstances, following principle that meritorious case should not be dismissed solely on grounds of limitation - **Gunvantrai Vrajlal Bhadani v. ACIT - [2024] 164 taxmann.com 131 (Rajkot - Trib.)**

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

- 4.120 Condonation of delay :** Where assessee's application for registration under section 12A(1)(ac)(iii) and approval under section 80G(5)(iii) was dismissed for want of prosecution, which was one of reasons for condoning delay in filing appeal, delay in filing appeal was to be condoned - **Kalyan Brata Sangha v. Commissioner of Income-tax (Exemption) - [2024] 164 taxmann.com 227 (Kolkata - Trib.)**

- 4.121** Third proviso to sub-section (2A) of section 254 : Where proceedings for grant of extension of stay has exceeded

365 days, Tribunal has power to extend stay even beyond period of 365 days if proceedings are delayed for reasons not attributable to assessee - **Tata Cummins (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 164 taxmann.com 140 (Ranchi-Trib.)**

SECTION 263 OF THE INCOME-TAX ACT, 1961 - REVISION - OF ORDERS PREJUDICIAL TO INTEREST OF REVENUE

- 4.122 Limitation period :** Where subject matter of re-assessment is distinct and different from issues regarding which revision jurisdiction under section 263 has been invoked, then in that case relevant date for purpose of determination of period of limitation for exercising powers under section 263 would be date of original assessment order - **Hotel Babylon Continental (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 164 taxmann.com 306 (Raipur - Trib.)**

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

- 4.123 Audit objection :** Where revenue filed appeal before Tribunal claiming that in view of circulars of CBDT case would fall under exception provided in Circular No.3/2018 as same was case of audit objections, in view of latest CBDT Circular No. 5/2024, dated 15-3-2024, there was no exception to monetary limit regarding any audit objection, thus, due to low tax effect appeals of revenue would not be maintainable and were to be dismissed - **Income-tax Officer v. M.P. Police Sakh Sahakari Sanstha Maryadit - [2024] 164 taxmann.com 412 (Indore - Trib.)**

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

- 4.124** Where order of Principal Commissioner passed under section 263 was quashed by Tribunal, and accordingly, further assessment order passed under section 143(3) r.w.s. 263 was also quashed, consequential levy of penalty under section 271(1)(c) which was based on said order passed under section 143(3) r.w.s. 263 also had no leg to stand - **ACIT v. Jaipur Telecom (P.) Ltd. - [2024] 164 taxmann.com 57 (Jaipur - Trib.)**



GST & INDIRECT TAXES

1. STATUTORY UPDATES

- 1.1** GSTN issued advisory for biometric-based Aadhaar authentication and document verification for applicants of Uttarakhand

Editorial Note : The GSTN has issued an advisory to inform taxpayers of Uttarakhand about recent developments concerning the application process for GST registration. Now, an applicant can be identified on the common portal, based on data analysis and risk parameters for Biometric-based Aadhaar Authentication and taking a photograph of the applicant along with the verification of the original copy of the documents uploaded with the application.

- 1.2** GSTN Update: Enhancements to Address-Related Fields in GST Registration Functionalities

Editorial Note : The GSTN has issued advisory to inform taxpayers that several enhancements have been made to address-related fields in the registration functionalities i.e. New Registration, Amendment Application (Core & Non-Core), and Geocoding Business Addresses. These enhancements are based on the analysis of tickets and user feedback.

- 1.3** CBIC issued Central Goods and Services Tax (Amendment) Rules, 2024 - **Notification No. 12/2024 – Central Tax, Dated 10-07-2024**

Editorial Note : The CBIC has issued notification to notify Central Goods and Services Tax (Amendment) Rules, 2024 as per the recommendations of GST Council. The changes include insertion of new Form GSTR-1A, amendment to Rule 88B to provide no interest liability on amount deposited upto due date of filing GSTR-3B and debited from Cash Ledger while filing return, exemption from GSTR-9 upto turnover of 2 crores etc.

- 1.4** CBIC exempts filing of annual return for taxpayers having turnover up to 2 crores for FY 23-24 - **Notification No. 14/2024 – Central Tax, Dated 10-07-2024**

Editorial Note : The CBIC has issued notification to provide exemption from filing of annual return for taxpayers having turnover up to 2 crores for FY 23-24.

- 1.5** ECOs to collect 0.5% TCS on net value of taxable supplies made through it by other suppliers: Notification - **Notification No. 15/2024- Central Tax, Dated 10-07-2024**

Editorial Note : The CBIC has issued notification to reduce the rate of TCS to 0.5% which shall be collected by ECOs on net value of taxable supplies made through it by other suppliers. This notification shall come into force from the date of its publication in official gazette.

- 1.6** CBIC issued guidelines for recovery of outstanding dues in cases wherein first appeal has been disposed of - **Circular No. 224/18/2024 - GST, 11-07-2024**

Editorial Note : The CBIC has issued circular to issue guidelines for recovery of outstanding dues in cases wherein first appeal is disposed of till Appellate Tribunal comes into operation. It is also clarified that in cases where the taxpayer decides to file an appeal against the order of the appellate authority, he can make the payment of an amount equal to the amount of pre-deposit by navigating to Services >> Ledgers>> Payment towards demand, from his dashboard.

- 1.7** CBIC issued clarification on taxability and valuation of supply of services of providing corporate guarantee between related persons - **Circular No. 225/19/2024-GST, 11-07-2024**

Editorial Note : The CBIC has received various representations from trade and industry seeking clarifications on various issues pertaining to the taxability and valuation of supply of services of providing corporate guarantee between related persons. Therefore, the CBIC has issued circular to provide clarity regarding the applicability of Rule 28(2) which is amended retrospectively with effect from 26.10.2023.

- 1.8** CBIC issued clarification regarding processing of refund applications filed by Canteen Stores Department - **Circular No. 227/21/2024-GST, 11-07-2024**

Editorial Note : The CBIC has issued circular to provide clarity on revised procedure for electronic submission and processing of refund application by CSD, in accordance with section 55 of CGST Act, in supersession of Circular No. 60/34/2018-GST dated 04.09.2018 since a new functionality has been made available on the common portal which allows CSD to apply for refund by filing an application electronically on the common portal.

- 1.9** Mechanism for refund of additional IGST paid on account of upward revision in price of goods subsequent to exports: Circular - **Circular No. 226/20/2024-GST, 11-07-2024**

Editorial Note : The CBIC has issue circular to clarify that in case of upward revision in prices of goods subsequent to export, the exporter may file an application for refund of such additional IGST paid in FORM GST RFD-01 electronically on the common portal under the category "Any other" till the time such separate category is developed on the common portal.

- 1.10** CBIC exempts supply of goods falling under heading 2202 by Unit Run Canteen to authorised customers from compensation cess - **Notification No. 01/2024-Compensation Cess (Rate), Dated 12-07-2024**

Editorial Note : The CBIC has issued notification to provide that supply of goods falling under heading 2202 by Unit Run Canteen to authorised customers would be exempted from levy of Goods and Services Tax Compensation Cess.



- 1.11** CBIC issued notification to reduce GST rate on Solar Cooker, Milk cans etc. to 12% - **Notification No. 02/2024-Central Tax (Rate), Dated 12-07-2024**

Editorial Note : The CBIC has issued notification to reduce GST rate from 18% to 12% on Solar Cooker, Milk cans, Cartons, boxes and cases of corrugated paper or paper board; or non-corrugated paper or paper board etc. This notification shall come into force on 15th July, 2024.

- 1.12** CBIC exempts several services from levy of GST as recommended in 53rd GST Council Meeting: Notification - **Notification No. 04/2024- Central Tax (Rate), Dated 12-07-2024**

Editorial Note : The CBIC has issued notification to exempt several services from levy of GST as recommended in 53rd GST Council Meeting. There shall be no GST on supply of accommodation services having value of supply less than or equal to Rs. 20000 p.m. per person provided that service is supplied for a minimum continuous period of 90 days. Also, certain services provided by Ministry of Railways are made exempt from GST.

- 1.13** Supply of agricultural farm produce in package of more than 25 kg or 25 litre not to be treated as 'pre-packaged and labelled' - **Notification No. 03/2024-Central Tax (Rate), Dated 12-07-2024**

Editorial Note : The CBIC has issued notification to insert new proviso in exemption notification to provide that the supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litre shall not be considered as a supply made within the scope of expression 'pre-packaged and labelled'. A similar proviso is also inserted in Notification No. 1/2017-Central Tax (Rate).

- 1.14** GSTN issued advisory on refund of additional IGST paid on account of upward revision in prices of goods subsequent to exports

Editorial Note : The GSTN has issued an advisory to inform taxpayers that GSTN is in the process of development of a separate category of refund application in FORM GST RFD-01, for filing an application of refund of additional IGST paid on account of upward revision in prices of goods subsequent to exports. However, till the time such separate category is developed, such exporters may claim refund by filing an application of refund in FORM GST RFD-01 under the category "Any other".

- 1.15** CBIC issued clarification regarding GST applicability on certain services: Circular - **Circular No. 228/22/2024-GST, Dated 15-07-2024**

Editorial Note : The CBIC has issued circular to provide clarifications regarding GST applicability on certain services as recommended by GST Council in its 53rd Council Meeting.

- 1.16** CBIC clarifies GST rates and classification of goods as recommended by GST Council - **Circular No. 229/23/2024-GST, 15-07-2024**

Editorial Note : The CBIC has issued clarification regarding GST rates & classification of certain goods such as solar cookers, fire water sprinklers etc. based on the recommendations of GST Council in its 53rd meeting.

- 1.17** FORM GSTR-1A would be available to all the taxpayer from August 2024: GSTN Update

Editorial Note : The GSTN has issued an advisory to inform that FORM GSTR-1A would be available to all the taxpayer from August 2024, through which details furnished in FORM GSTR-01 for the month of July 24 can be amended. The corresponding effect of the changes made through FORM GSTR-1A on the liability of the taxpayer shall be reflected in FORM GSTR-3B for the same tax period.

2. SUPREME COURT

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

- 2.1** Apex Court issues notice to Union of India in appeal filed by assessee against validity of CBIC circulars appointing Central Tax officers as proper officers for specified functions of issuing Audit report and SCN - **Fomento Resorts & Hotels Ltd. v. Union of India - [2024] 164 taxmann.com 612 (SC)**

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

- 2.2** Where non-applicant was summoned under Section 69(1) for allegedly running fake firms and generating fake E-way bills, and by following judgement, State of Gujarat v. Choodamani Parmeshwaran Iyer [2023] 152 taxmann.com 522/2023 (76) G.S.T.L. 146/99 GST 253/(2023) 8 Centax 224, High Court cancelled anticipatory bail granted to applicant by trial court, stating that Section 438 CrPC cannot be invoked for summons under Section 69 CGST Act 2017, thus high court committed no error, and instant special leave petition was to be disposed of - **Bharat Bhushan v. Director General of GST Intelligence - [2024] 164 taxmann.com 435 (SC)**

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

- 2.3** Special leave petition, challenging order of high court, where assessee was granted bail in ITC fraud case was to be dismissed as supreme court was not inclined to interfere with impugned judgment - **Director General of Goods and Service Tax Intelligence Ahmedabad v. Harsh Vinodbhai Patel - [2024] 164 taxmann.com 410 (SC)**



3. HIGH COURT

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

- 3.1** Where in impugned order VAT turn over had been included into GST turn over merely by making a comparison with returns filed by assessee in Form GSTR 7B, impugned order was to be set aside and matter was to be remitted to pass fresh order - **Natarajan Patchirajan v. State Tax Officer - [2024] 164 taxmann.com 102 (Madras)**
- 3.2** Where assessee's grievance was that Authorities had deducted GST at rate of 18 per cent for contract which was entrusted to them in year 2009 and completed before year 2015 whereas at that point of time VAT was prevalent, assessee was granted liberty to approach appropriate Authorities for refund of GST which had been illegally deducted - **D.B.S. Construction (P.) Ltd. v. State of Bihar - [2024] 164 taxmann.com 247 (Patna)**
- 3.3** Where assessee contended that their case was squarely covered by a previous judgment of High Court in Sudershan Lal Gupta v. Union of India & Ors., present case is also dismissed in terms of judgment rendered in Sudershan Lal Gupta - **Ramdev Agro Agency v. Union of India - [2024] 162taxmann.com752 (Rajasthan)**

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

- 3.4** Where assessee, being unaware of proceeding pertaining to mismatch between GSTR 3B return and auto populated GSTR 2A, could not respond to show cause notice as same was uploaded on portal in "view additional notices and orders" and impugned order was passed confirming tax proposal, same was to be set aside and matter was to be remanded in interest of justice - **Tvl. Annai Earth Movers v. Assistant Commissioner (ST) (FAC) - [2024] 164 taxmann.com 177 (Madras)**
- 3.5** Where assessee could not reply to show cause notice on account of being unaware of proceedings, order confirming tax liability for mismatch between GSTR 3B returns and GSTR-1 statement was to be set aside and matter was to be remanded for passing fresh order - **Vignesh Binding Works v. State Tax Officer/Commercial Tax Officer - [2024] 164 taxmann.com 105 (Madras)**
- 3.6** Where assessee filed writ petition assailing order of Adjudicating Authority confirming tax proposal on ground that it did not have a reasonable opportunity to contest tax demand on merits, since assessee could not participate in proceedings on account of being

unaware of same, impugned order was to be set aside and matter was to be remanded - **C. Senthil Kumar v. State Tax Officer - [2024] 164 taxmann.com 109 (Madras)**

- 3.7** Where assessing authority while passing impugned order concluded that taxable person was providing a service to supplier while taking benefit of a discount by facilitating an increase in volume of such supplier, same was erroneous and contrary to fundamental tenets of GST law, thus impugned order only relating to reversal of ITC for volume of credit notes issued by supplier was to be set aside and matter was to be remanded for reconsideration by original authority - **Tvl. Shivam Steels v. Assistant Commissioner (ST)(FAC) - [2024] 164 taxmann.com 156 (Madras)**
- 3.8** Where assessee submitted reply along with purchase invoices, e-way bills, bank statements and other documents to establish that purchase was genuine, but Adjudicating Authority without examining such documents passed an order reversing ITC on ground that assessee failed to establish movement of goods, impugned order was to be set aside and matter was to be remanded back to Adjudicating Authority for fresh consideration - **M.R.V. Traders v. Assistant Commissioner (ST) (FAC) - [2024] 164 taxmann.com 421 (Madras)**
- 3.9** Where assessee contended that department had wrongly assumed that assessee had purchased huge quantity of raw materials from suppliers, based on information in GSTR-2A, which was auto-populated record, whereas input tax credit that had been claimed by assessee was confined to Rs.6,88,304, impugned order proposing tax demand was to be quashed and case was to be remitted back as assessee had a case on merits - **Tvl. Easan Electric v. Assistant Commissioner (ST) - [2024] 164 taxmann.com 237 (Madras)**
- 3.10** Where petitioners arrested for irregular availment of input tax credit despite not receiving associated services, transfer of such irregularly claimed input tax credit without providing any services during relevant period, no apprehension for prosecution that petitioners would tamper with evidence or interfere with ongoing investigation, anticipatory bail was to be granted to petitioners - **Smt. Prathipati Teene Venkayamma v. State of Andhra Pradesh - [2024] 164 taxmann.com 198 (Andhra Pradesh)**
- 3.11** Time limit for furnishing return for month of September is to be treated as 30th November in each financial year with effect from 1-7-2017; assessee who had filed their returns for month of September on or before 30th November, their claim for ITC should be processed, if they are otherwise eligible for ITC - **K.S. Pareed v. State of Kerala - [2024] 164 taxmann.com 40 (Kerala)**
- 3.12** Where impugned order imposed tax liability in respect of mismatch between GSTR 3B return and auto populated GSTR 2A, apart from referring to circular 123/42/2019-GST, dated 11-11-2019 and pointing out that GSTR 2A was notified by said circular, no other documents enclosed with reply, assessee in position to establish that only eligible ITC



was claimed, opportunity was to be provided to assessee, impugned order was to be set aside - **Contemporary Leather (P.) Ltd. v. Asst. Commissioner (ST)** - [2024] 164 taxmann.com 222 (Madras)

3.13 Where assessee filed detailed reply to show cause notice issued for excess claim of ITC etc., however Adjudicating Authority without granting any opportunity to assessee passed impugned holding that taxpayer had not uploaded supporting documents, same was to be set aside and SCN was to be remitted for re-adjudication - **P.S. Enterprises v. Union of India** - [2024] 163 taxmann.com 247 (Delhi)

3.14 Where SCN was issued to assessee for mismatch between GSTR 1 statement and GSTR 3B returns and impugned order was passed confirming demand, since assessee was unable to respond to SCN or participate in personal hearing due to personal difficulty, an opportunity was to be granted to assessee to contest tax demand in interest of justice and impugned order was to be set aside - **TVL. Priya Tiles and Interiors v. The Dy State Tax Officer** - [2024] 164 taxmann.com 21 (Madras)

3.15 Where Adjudicating Authority had not considered reply filed by assessee on merits and merely held in impugned order that reply was not satisfactory, also audit observations made in impugned order were erroneous, impugned order was to be set aside and Adjudicating Authority was to be directed to re-adjudicate matter - **Manpower Group Services India (P.) Ltd. v. Sales Tax Officer** - [2024] 164 taxmann.com 19 (Delhi)

3.16 Where assessee contended non-availment of ITC on cancelled invoices, matter remanded for reconsideration, allowing opportunity to establish non-availment - **Sidhivinayak Marketing v. Dy Commercial Tax Officer** - [2024] 162 taxmann.com 530 (Madras)

3.17 Where tax proposal pertaining to mismatch between assessee's GSTR 3B returns and auto populated GSTR 2A confirmed, assessee did not reply to show cause notice or attend personal hearing as assessee's business discontinued, show cause notice and impugned order uploaded on portal but not communicated to assessee through any other mode, impugned order was to be set aside and matter remanded - **Mohan Enterprises v. Dy/Asst Commissioner of GST & Central Excise** - [2024] 164 taxmann.com 26 (Madras)

3.18 Constitutional challenge to Section 16(4) of CGST/SGST Act, 2017 dismissed without deciding merits; assessee/petitioner granted liberty to pursue remedies under CGST and KGST Acts - **Hiremath Paints, Hardware and Electrical v. Assistant Commissioner of Commercial Taxes (Enforcement)** - [2024] 162 taxmann.com 494 (Karnataka)

3.19 Where adjudicating authority noticing discrepancies between ITC claimed as per GSTR-3B and GSTR-2A directed excess claim of ITC for financial year 2017-18 to be reversed, Circular No.183/15/2022-GST dated 27-12-2022, prescribing procedure w.r.t. such discrepancies not followed by adjudicating authority, impugned order was to be set aside - **R.S. Marketing and Logistics (P.) Ltd. v. Commercial Tax Officer** - [2024] 164 taxmann.com 9 (Karnataka)

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

3.20 Where assessee had imported timber from overseas customer and had paid IGST at time of import, since there was no scope for auto population of ITC on IGST, impugned order passed by Adjudicating Authority imposing tax on assessee on account of difference in return filed by assessee in Form GSTR-3B and auto populated Input Tax Credit in Form GSTR-2A was to be set aside - **Xavier Timber v. State Tax Officer** - [2024] 164 taxmann.com 425 (Madras)

3.21 Where assessee, a subsidiary of GAIL, engaged in regassification of LNG at its regassification plant, reconstructed a breakwater to enable LNG berthing during monsoons and sought for eligibility to avail Input Tax Credit (ITC) for taxes on said construction, as per explanation to Section 17, "plant and machinery" must be used for making outward supplies of goods or services, whereas said breakwater construction was used solely for protecting vessels during unloading and not for making outward supplies, thus assessee was not eligible to avail ITC for taxes on construction of breakwater - **Konkan LNG Ltd. v. Commissioner of State Tax** - [2024] 164 taxmann.com 167 (Bombay)

3.22 Where assessee did not reply to show cause notice being unaware of proceedings, show cause notice uploaded in GST portal but not communicated to assessee through any other mode, impugned order denying input tax credit relying on section 17(5) of CGST Act was to be set aside - **Tvl. Muthu Packaging Works v. Proper Officer/Assistant Commissioner (ST)** - [2024] 164 taxmann.com 31 (Madras)

SECTION 20 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - CENTRAL GOODS AND SERVICES TAX ACT - APPLICATION OF

3.23 Where penalty order for alleged tax evasion was imposed without proper opportunity to explain, matter remanded for fresh consideration with due hearing opportunity - **Maa Kamakhya Traders v. Union of India** - [2024] 163 taxmann.com 361 (Allahabad)

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

3.24 Where assessee sought information on misuse of PAN for GST registration, High Court disposed of writ petition after disclosure of available details, granting liberty to seek further information from appropriate authority - **Gurjeet Singh v. GST (Network)** - [2024] 162 taxmann.com 884 (Delhi)


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

- 3.25** Where GST registration was suspended, assessee directed to appear before authorities for timely reconsideration of suspension - **Balaji Tilak Metal and Alloys (P.) Ltd. v. Pr. Comm. of Department of Trade and Taxes** - [2024] 162 taxmann.com 919 (Delhi)
- 3.26** GST registration cancelled for non-filing of returns during COVID-19 pandemic set aside; registration restored with direction to file pending returns - **Amirul Islam v. State of WB** - [2024] 162 taxmann.com 917 (Calcutta)
- 3.27** GST registration cancellation order set aside, directing restoration upon filing pending returns and paying dues within specified timeframe - **Sourav Kumar Maity v. State of WB** - [2024] 163 taxmann.com 592 (Calcutta)
- 3.28** Where petitioner's GST registration was cancelled and Competent Authority had confirmed tax liability by adding 110 per cent to inward value of supply in auto populated ITC in GSTR-2A without taking into account that petitioner has not filed any return either in GST DRC 01 or GSTR-3B for respective asst years, impugned order was to be set aside and matter was to be remitted back to Competent Authority to pass fresh orders - **Tvl. Venus Textiles v. Dy State Tax Officer-1** - [2024] 164 taxmann.com 423 (Madras)
- 3.29** Where assessee filed reply to show cause notice, proper officer by proceeding on premise that assessee firm had failed to reply to show cause notice, cancelled firm's registration, impugned order mechanical and perverse and was thus to be set aside - **Chiranjib Ghosh v. Asst Comm, Jorasanko Charge** - [2024] 164 taxmann.com 568 (Calcutta)
- 3.30** Cancellation of GST registration without following proper physical verification procedure under Rule 25 of CGST Rules is invalid and liable to be quashed - **TC Tours Ltd. v. Commissioner, State Taxes Department** - [2024] 163 taxmann.com 490 (Jammu & Kashmir and Ladakh)
- 3.31** GST registration cancelled retrospectively without proper reasons modified to take effect from date of application for cancellation, preserving revenue's right to recover dues after due process - **Prime Industries v. Pr. Comm.** - [2024] 163 taxmann.com 403 (Delhi)
- 3.32** Where registration of petitioner was cancelled on ground of non-filing of returns, assessee's registration was to be restored subject to deposit of all taxes, interest, late fees, penalty, etc. due and filing of due returns - **Leeways Integrated Services (P.) Ltd. v. Commissioner of GST** - [2024] 164 taxmann.com 240 (Madras)

- 3.33** Where order cancelling GST registration lacked proper reasoning, court quashed order and remanded for fresh consideration with opportunity of hearing - **Image Labs v. State of U.P.** - [2024] 162 taxmann.com 622 (Allahabad)
- 3.34** Where registration of assessee was cancelled retrospectively vide impugned order without spelling out reasons for such retrospective cancellation, same could not be sustained and was to be set aside - **Rosmerta HSRP Ventures (P.) Ltd. v. Union of India** - [2024] 163 taxmann.com 214 (Delhi)
- 3.35** Show Cause Notice for GST registration cancellation to be adjudicated within four weeks after giving opportunity of personal hearing, despite previous unadjudicated reply - **Tushar Anand v. Avato Ward 63 State Goods and Service Tax** - [2024] 162 taxmann.com 788 (Delhi)
- 3.36** GST registration cancellation based on non-conduct of business and non-existence allegations, issued on higher authority instructions without independent application of its mind and also without providing DGCI letter to assessee, violated natural justice principles and therefore same was to be quashed - **R.H. Enterprises Gonda v. State of U.P.** - [2024] 163 taxmann.com 461 (Allahabad)
- 3.37** Audit notice and assessment order for period when assessee/petitioner was GST registered are valid even if issued after cancellation of registration, assessee/petitioner who fraudulently availed ITC before cancelling registration not entitled to relief - **Ashoka Fabricast (P.) Ltd. v. Union of India** - [2024] 162 taxmann.com 719 (Rajasthan)
- 3.38** Where GST registration of assessee/petitioner was cancelled without assigning reasons and appeal against cancellation dismissed as time-barred, HC quashed cancellation order and order dismissing appeal, remanding matter to Adjudicating Authority to pass fresh order after giving opportunity to petitioner to file reply - **S.S. Enterprises v. State of U.P.** - [2024] 164 taxmann.com 127 (Allahabad)
- 3.39** Where assessee sought cancellation of GST registration due to closure of business and responded to department's notice regarding incorrect cancellation date, Proper Officer was directed to dispose of the application for cancellation of GST registration expeditiously within four weeks - **Hari Om Enterprises v. Pr. Comm. of Department of Trade and Taxes** - [2024] 162 taxmann.com 689 (Delhi)
- 3.40** Where assessee's/petitioner's registration was cancelled for non-filing of returns and failure to reply to show cause notice or avail appellate remedy or amnesty scheme, High Court dismissed writ petition declining to exercise discretion in favour of assessee/petitioner who had been negligent and did not act diligently - **Sai Constructions (A Sole Proprietorship Firm) v. Union of India** - [2024] 164 taxmann.com 92 (Patna)
- 3.41** Where petitioner-assessee did not monitor GST portal in view of cancellation of GST registration and petitioner-assessee agreed to remit 10% of disputed tax demand as a condition for remand, therefore, impugned asst order was to be set-aside - **Venew Decors v. Deputy State Tax Officer** - [2024] 162 taxmann.com 590 (Madras)



3.42 Where appeal against GST registration cancellation was dismissed as time-barred, writ jurisdiction can still examine original cancellation order and remand for reconsideration if sufficient cause shown - **Sri Suvarna Enterprises v. Superintendent of Central Tax - [2024] 162 taxmann.com 535 (Karnataka)**

3.43 Where writ petition was filed by assessee challenging cancellation of its registration under GST on ground that assessee was not supplied with reports of certain dealers who allegedly passed on ITC to assessee without supply of goods, assessee filed an application for revocation of cancellation, since assessee had alternative remedy to challenge impugned order which it did not avail, writ petition was to be dismissed - **M.R. Metals v. Assistant Commissioner, State Tax - [2024] 163 taxmann.com 767 (Andhra Pradesh)**

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

3.44 Where assessee contended that compensation cess liability was inadvertently missed in GSTR-3B returns but corrected in annual return GSTR-9, matter remanded to adjudicating authority for fresh consideration taking into account GSTR-9 and revenue neutral nature of transaction - **Ankit Kumar Agarwal v. Assistant Commissioner of State Tax - [2024] 162 taxmann.com 918 (Calcutta)**

3.45 Where assessee had filed GSTR-3B return for January in assessment period 2018-2019 by correctly reflecting outward taxable supplies and IGST value thereof and inadvertently while filing GSTR-1 statement belatedly for January, 2019, return was filed by specifying that it was for July in assessment period 2019-2020 instead of January in assessment period 2018-2019, a prima facie case was made out for consideration of rectification petition and GST Authorities were to be directed to dispose of same - **Veeran Mehhta v. Deputy Commercial Tax Officer/Deputy State Tax Officer - [2024] 164 taxmann.com 243 (Madras)**

3.46 Where assessee had wrongly filed GSTR-1 return and in order to get input tax credit benefit said return needs to be rectified, thus assessee had sought for a direction to permit assessee to rectify GST Return, since by permitting assessee to rectify said return there will be no loss whatsoever caused to revenue, assessee was permitted to resubmit corrected Form-GSTR-1 return - **Chintamaniswar Constructions (P.) Ltd. v. Chairperson, Central Board of Indirect Taxes - [2024] 164taxmann.com253 (Orissa)**

3.47 Where respondent department had confirmed demand proposed in Form GST DRC-01 against assessee vide impugned order, same being non-speaking in nature, impugned order was to be set aside and matter was to be remitted to pass a fresh order - **Pushpam Marketing v. State Tax Officer - [2024] 164 taxmann.com 42 (Madras)**

3.48 Where tax demand order relating to mismatch between assessee's GST returns was confirmed without assessee being heard and interest of justice warrants that assessee be provided an opportunity to contest tax demand on merits by putting assessee on terms, said order was to be set aside - **Kayen Q Source v. Assistant Commissioner (ST) - [2024] 164 taxmann.com 166 (Madras)**

3.49 Where tax demand order relating to mismatch between assessee's GST returns was confirmed without assessee being heard and interest of justice warrants that assessee be provided an opportunity to contest tax demand on merits by putting assessee on terms, said order was to be set aside - **Skyrams Outdoor Advertisings India (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 164 taxmann.com 138 (Madras)**

SECTION 44 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RETURNS - ANNUAL RETURN

3.50 Where assessee had filed an annual return by choosing wrong column which resulted in tax proposal, since assessee had not subsequently participated in proceedings or filed reconciliation statement in Form GSTR-9C, impugned order passed under section 74 was to be set aside on condition that assessee remits 5 per cent of disputed tax demand and thereafter Assessing Officer would provide a reasonable opportunity to assessee and pass a fresh order - **Murugan Metals v. State Tax Officer (ST) - [2024] 164 taxmann.com 242 (Madras)**

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

3.51 Where petitioner submitted that interest was levied by impugned order reckoning period of delay in payment of tax as 2080 days, whereas period of delay was only 700 days, subject to petitioner discharging interest liability on basis that period of delay was 700 days instead of 2080 days, impugned order was to be set aside and matter was to be reconsidered by providing reasonable opportunity to petitioner - **Amman Constructions v. Assistant Commissioner - [2024] 164 taxmann.com 235 (Madras)**

3.52 Writ petition challenging show cause notice without exhausting available remedies may be dismissed as not maintainable at show cause notice stage - **Shree Renuka Sugars Ltd. v. Joint Commissioner, Central GST and Central Excise - [2024] 162 taxmann.com 588 (Karnataka)**

3.53 In case of payment of tax, interest can be levied only from due date of payment of tax till deposit of such tax in electronic cash ledger; demand of interest for subsequent period from date of deposit in electronic cash ledger till date of filing of return is not tenable - **Arya Cotton Industries v. Union of India - [2024] 164 taxmann.com 2 (Gujarat)**

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

3.54 Where assessee filed refund application for excess GST paid to service provider, writ petition dismissed holding that refund



application should have been filed by registered service provider and not by assessee who received service - **Tvl. Norton Granites & Properties (P.) Ltd. v. Commercial Tax Officer - [2024] 164 taxmann.com 636 (Madras)**

3.55 Where refund claim of assessee was rejected vide impugned order for being time barred, assessee being eligible for benefit of Notification No. 13/2022-Central Tax, dated 5-7-2022, whereby limitation period was extended, impugned order was to be set aside - **Qutone Ceramic (P.) Ltd. v. Commissioner (Appeals), GST and Central Excise - [2024] 164 taxmann.com 103 (Gujarat)**

3.56 Where assessee filed writ petitions against impugned order rejecting refund claim, however failed to establish that any of fundamental right had been violated or there had been any violation of principles of natural justice, writ petition was to be dismissed - **GNRC Ltd. v. Union of India - [2024] 164 taxmann.com 150 (Gauhati)**

3.57 Where assessee, importer of gold and exporter of gold jewellery, claimed refund of accumulated unutilised ITC, value in GST Invoice declared by assessee was FOB value of USD 224846.75, and gold supplied free of cost was USD 219017.61, impugned order granted refund of only USD 6479.39 considering same as net realised value, nothing mentioned in CGST Rules to indicate that only net realisation value to be considered, value of goods to be considered was USD 224846.75, impugned order was to be set aside - **AU Finja Jewels v. Assistant Commissioner Div. V CGST and CX - [2024] 164 taxmann.com 278 (Bombay)**

3.58 Where assessee's part refund rejected on ground that export proceeds were not realized despite lapse of nine months, respondents after verification submitted that contention of assessee that exports proceeds were duly realized for reason that sales were made to Nepal and currency in which sale proceeds were to be received was INR and INR was duly received, was correct, impugned Order-in-original to limited extent that it rejected part refund of assessee and impugned Order-in-Appeal were to be set aside - **SK Creations v. Commissioner of Central Tax and GST - [2024] 164 taxmann.com 257 (Delhi)**

3.59 Where assessee's application for refund was rejected without providing any reasons and moreover refund rejection order appears to be from a template used as though amount of refund being allowed was Nil, officer had not bothered to even delete paragraph that amount was to be paid to bank account specified by applicant in his application, thus there had been non application of mind by revenue and on these grounds alone, impugned order was to be set aside - **Sanjeev Suresh Desai v. Union of India - [2024] 164 taxmann.com 135 (Bombay)**

3.60 Where Appellate Authority had denied refund of accumulated ITC on account of inverted tax structure by classifying spunbonded polypropylene bed sheets under Chapter Heading 5603 instead of Chapter Heading 6304 of Customs Tariff Act, 1975 without examining common parlance test and processes undertaken on non-woven fabrics, matter was remanded to it for fresh decision on issue of classification and refund claim - **Harsh Polyfabric (P.) Ltd. v. Union of India - [2024] 164 taxmann.com 55 (Calcutta)**

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

3.61 Where assessee filed writ petition challenging order issued under section 73(9) for period from 1-7-2017 to 31-3-2018 and contended that since Form GST ASMT-10 had not been served upon assessee, it could not appropriately respond to show cause notice and adjudication order stood vitiated on such ground, impugned order was to be kept in abeyance and Adjudicating Authority was to be directed to make available Form GST ASMT-10 and to provide appropriate opportunity to assessee to file additional response to show cause notice - **Amex Services v. Deputy Commissioner, State Tax, Assansol Charge - [2024] 163 taxmann.com 242 (Calcutta)**

3.62 Where all communication including assessment orders were issued subsequent to demise of assessee, same could not be sustained and was to be set aside - **Munusamy Nagabushanam (Deceased) v. Deputy Commercial Tax Officer - [2024] 164 taxmann.com 20 (Madras)**

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

3.63 Where assessee could not reply to notices issued under section 62 and impugned assessment order due to fact that its Managing Director had met with an accident and was hospitalized, impugned assessment order was to be set aside and matter was to be remitted back to authority concerned to pass fresh order after affording assessee an opportunity of being heard - **Tvl. Pearlport Industries India (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 164 taxmann.com 422 (Madras)**

3.64 Where petitioner legal heir of deceased assessee was unaware of impugned assessment orders and notice for assessment years 2017-2019 as same were posted in GST common portal, impugned orders passed in December 2023 and January 2024 were to be set aside and case was to be remitted to pass fresh orders on merits - **R. Jayalakshmi v. Assistant Commissioner (ST) - [2024] 164 taxmann.com 43 (Madras)**

SECTION 68 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SEARCH, SEIZURE, ETC.- GOODS IN MOVEMENT, INSPECTION OF

3.65 Where assessee's goods being transported from Muzaffarnagar to Ghaziabad, with all requisite documents i.e. tax invoice, e-way bill, etc., intercepted and detained at



Hapur under pretext it was not on its normal route, no discrepancy with regard to quality or quantity of goods, no finding recorded with regard to mens rea to avoid payment of tax, impugned order was to be set aside - **Vishal Steel Supplier v. State of U.P.** - [2024] 164 taxmann.com 609 (Allahabad)

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

- 3.66** GST officers directed to follow official guidelines when summoning persons under section 70 of CGST Act, including conducting interrogations during office hours except in exceptional cases - **Shiva Kumar Deora v. Union of India** - [2024] 163 taxmann.com 591 (Jharkhand)

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

- 3.67** Tax demand based on inward-outward supply mismatch set aside for composition scheme taxpayer filing GSTR-4; opportunity for reply and hearing directed before fresh order - **Aalient v. Assistant Commissioner** - [2024] 164 taxmann.com 434 (Madras)
- 3.68** Where assessee's GST registration was cancelled and they were unaware of proceedings leading to tax demand, assessee should be given opportunity to contest demand on merits, subject to remitting 10% of disputed amount - **Bhagawan Dass Arora & Co. (P.) Ltd. v. Assistant Commissioner (ST)** - [2024] 164 taxmann.com 407 (Madras)
- 3.69** Where assessee was not given opportunity to explain discrepancies between GSTR-1 and GSTR-3B returns, High Court remanded matter for fresh consideration with opportunity to submit documents - **Hajabandenawas v. State Tax Officer** - [2024] 162 taxmann.com 920 (Madras)
- 3.70** Where impugned order under section 73 was passed against assessee without giving it an opportunity to reply to show-cause notice, impugned order was to be quashed and matter was to be remitted back to authority concerned - **Ramaswamy Prabhaar v. State Tax Officer (FAC)** - [2024] 164 taxmann.com 104 (Madras)
- 3.71** Where assessee, a small time operator failed to take notice of show cause notice as well as notice for personal hearing issued prior to impugned order, same was to be set aside by giving liberty to assessee to file a reply to show cause notice and respondent authority was to be directed to pass fresh orders on merits - **M. Sankaralingam v. State Tax Officer** - [2024] 164 taxmann.com 101 (Madras)

- 3.72** Erroneous reporting of ITC in wrong column of GSTR-3B, asst order set aside and matter remanded for reconsideration, allowing assessee to contest tax demand on merits after remitting 10% of disputed amount - **Ace Industrial Gases (P.) Ltd. v. Asst Comm (ST)** - [2024] 164 taxmann.com 375 (Madras)

- 3.73** Where notice was issued u.s. 73 CGST Act for which no reply filed and no opportunity of personal hearing demanded by assessee, application for extension of time to file reply not submitted, plea regarding denial of opportunity of hearing and violation of principles of natural justice could not be countenanced, assessee was to be directed to avail statutory remedy available u.s. 107 of CGST Act - **Chaudhary Associates Lko. v. State of U.P.** - [2024] 164 taxmann.com 567 (Allahabad)

- 3.74** Where only after disposal of appeal against order raising demand and imposing penalty, service recipient -IOC issued declaration that they had availed GTA services from assessee for relevant period, considering fact that if this declaration was issued by IOC in time, assessee would be entitled to take advantage of same as said declaration clearly mentioned that GST liability on Reverse Charge Mechanism (RCM) had been discharged by IOC, matter was to be readjudicated - **Sarkar Diesel v. Dy Comm., State Tax** - [2024] 164 taxmann.com 276 (Calcutta)

- 3.75** Since both SCN and impugned order were issued on same date, reasonable opportunity was not provided to assessee and as such, impugned order was unsustainable - **Pithamber Distributors v. Asst. Comm. (ST)** - [2024] 162 taxmann.com 630 (Madras)

- 3.76** Where double reporting of turnover by petitioner and its sister concern led to a mismatch between GSTR-3B returns and GSTR-1 statement, and petitioner claimed denial of reasonable opportunity due to communications being only uploaded on GST portal, Tax proposal which relates to a mismatch between petitioner's GSTR-3B returns and the GSTR-1 statement should be set aside - **Promatrix Systems v. Asst. Comm. (ST)** - [2024] 164 taxmann.com 274 (Madras)

- 3.77** Where tax proposal was arrived at on best judgment basis because petitioner did not respond to notice or appear at personal hearing and petitioner was not heard before order was issued and petitioner asserts that he was unaware of proceedings, interest of justice warrants reconsideration albeit by putting petitioner on terms - **Tvl. Samikannu Mariappan v. State Tax Officer** - [2024] 164 taxmann.com 275 (Madras)

- 3.78** Where, it had been held that petitioner-assessee was not required to request for "opportunity of personal hearing" and it remained mandatory upon respondent-department to afford such opportunity before passing an adverse order, therefore, fact that petitioner-assessee might have signified 'No' in column which meant to mark petitioner-assessee's choice to avail personal hearing would bear no legal consequence; matter was remanded back - **Sahu Enterprises v. State of U.P.** - [2024] 162 taxmann.com 786 (Allahabad)



- 3.79** Ex-parte GST demand order set aside, and matter remanded for re-adjudication where assessee unable to respond to show cause notice due to cancelled registration - **Trendz v. Sales Tax Officer - [2024] 163 taxmann.com 492 (Delhi)**
- 3.80** Where assessee's reply to show cause notice levying interest for belated filing of return disregarded and with respect to excess ITC claimed, assessee's reply that no excess ITC availed and attached GSTR 9 return and copies of invoices, finding recorded that tax payer did not reply, impugned order in original and recovery notice were to be set aside - **Tvl. Maurya Hotels (Madras) (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 164 taxmann.com 357 (Madras)**
- 3.81** Where assessee failed to reply to show cause notice for mismatch between GSTR-1 and GSTR-3B and tax proposal was confirmed, interest of justice warranted that an opportunity be provided to assessee to contest tax demand, thus, order confirming tax proposal was to be set aside and matter was to be remanded - **Abishek Suppliers v. Commercial Tax Officer - [2024] 164 taxmann.com 148 (Madras)**
- 3.82** Where proper officer passed order without applying mind to assessee's detailed reply to show cause notice, order set aside and remitted for re-adjudication with opportunity for further reply and hearing - **Tata Motors Ltd. v. Goods and Service Tax Officer (GSTO) - [2024] 163 taxmann.com 489 (Delhi)**
- 3.83** Where assessment order under GST Act passed without considering assessee's reply to show cause notice, order quashed and remanded for fresh consideration with opportunity of hearing - **Tvl. Shakthi Mother and Child Care v. Union of India - [2024] 163 taxmann.com 463 (Madras)**
- 3.84** Where assessee contended that GST was originally payable in respect of civil contracts at rate of 12 per cent and was subsequently increased to 18 per cent and after initially raising an invoice with GST at 12 per cent, a revised invoice was issued by adding GST at 18 per cent, since differential tax was paid by assessee while filing return in Form GSTR 3B, matter was to be verified by Assessing Officer and impugned order raising demand was to be set aside - **P R Earth & Contracts v. State Tax Officer - [2024] 164 taxmann.com 249 (Madras)**
- 3.85** Where assessee contended that proper officer did not consider its detailed reply to show cause notice before passing demand order, impugned order set aside and remanded matter back to proper officer for re-adjudication after considering assessee's reply and giving opportunity of personal hearing - **Oriental Trimex Export (P.) Ltd. v. Commissioner of Delhi Goods and Services Tax - [2024] 163 taxmann.com 401 (Delhi)**
- 3.86** Where assessee failed to respond to show cause notice due to mistaken belief, matter remitted for re-adjudication after granting opportunity to file reply - **Delhi Soccer (P.) Ltd. v. Union of India - [2024] 163 taxmann.com 280 (Delhi)**
- 3.87** Where tax liability was imposed on assessee for assessment period 2017-2018 on difference between turnover reflected in Form 26AS and turnover reflected in assessee's GST returns, since petitioner was not heard on an aspect that period running from 1-4-2017 to 30-6-2017 did not fall within GST period, impugned order was to be set aside - **Haarine Associates v. Assistant Commissioner (ST)(FAC) - [2024] 164 taxmann.com 238 (Madras)**
- 3.88** Where petitioner was unaware of proceedings culminating in impugned order for tax proposal pertaining to mismatch between GSTR-3B returns and auto-populated GSTR-2A as notice and impugned order were uploaded in "View Additional Notices and Orders" tab on GST portal and not communicated to petitioner through any other mode, petitioner was to be provided an opportunity to contest tax demand on merits and therefore, impugned order was to be set aside and matter was to be remanded for reconsideration - **Acme Fab-Con India (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 164 taxmann.com 234 (Madras)**
- 3.89** Where upon receiving a show cause notice, assessee replied to SCN explaining discrepancy between their returns and recipient's GST 7 return, but despite explanation, revenue issued an order concluding that said reply was not genuine, since impugned order was completely unreasoned, it could not be sustained and therefore same was to be set aside and matter was remanded for reconsideration - **Jupiter & Co. v. Deputy State Tax Officer - [2024] 164 taxmann.com 254 (Madras)**
- 3.90** Where assessee had not replied to show cause notices issued under section 73 and impugned orders were passed and assessee contended that show cause notices went unnoticed as they were hosted in GST common portal, impugned orders were to be set aside and case was to be remitted back to pass a fresh order on merits - **Sri Radhakrishna Multiple Industries (P.) Ltd. v. Assistant Commissioner (State Tax) - [2024] 164 taxmann.com 45 (Madras)**
- 3.91** Where classification of goods is disputed, fresh hearing and de novo order was directed, allowing assessee to present detailed evidence, subject to partial deposit of disputed tax - **Robert Fibre Industries v. Commissioner, Office of the Principal and Special Commissioner of Commercial Taxes - [2024] 162 taxmann.com 753 (Madras)**
- 3.92** Where assessee paid IGST on imports from SEZ and claimed exemption from CGST/WBGST, matter was remanded for re-adjudication considering assessee's submissions and relevant press release - **Softrose Petrochemicals (P.) Ltd. v. Assistant Commissioner of State Tax - [2024] 162 taxmann.com 756 (Calcutta)**



- 3.93** Where SCN was issued to assessee u.s. 73 and Adjudicating Authority had passed impugned order creating demand against assessee even before due date for filing reply, impugned order was not sustainable and was to be quashed - **Mitchem Impex v. Government of NCT of Delhi** - [2024] 163 taxmann.com 213 (Delhi)
- 3.94** Where period for which subsequent Asst order was passed, was already assessed in previous Asst order passed by respondent-department on basis of intelligence report, therefore, subsequent Asst order was quashed and matter was remanded back - **Royal Infinity Multiventures (P.) Ltd. v. Addl. Comm. GST & Central Excise Commissionerate** - [2024] 162 taxmann.com 785 (Orissa)
- 3.95** Where assessee claimed unawareness of GST proceedings due to consultant's negligence, impugned Asst order set aside subject to 10% tax payment, with directions for fresh opportunity to explain GSTR-3B and GSTR-2A discrepancies - **Newlab F Apparels LLP v. Asst Comm (ST)** - [2024] 161 taxmann.com 338 (Madras)
- 3.96** Where assessee claimed GST return mismatch was due to inadvertent error, matter remanded for reconsideration, allowing assessee opportunity to contest after replying to show cause notice - **Arupadai Infrastructure v. Dy State Tax Officer** - [2024] 162 taxmann.com 717 (Madras)
- 3.97** Where shop of assessee was closed back in 2020 where notice was issued, it was for assessee to furnish correct address for communication to department; Assessee not having furnished same, writ petition filed by assessee on grounds of violation of natural justice was to be dismissed - **Space 3 Interiors v. State Tax Officer** - [2024] 164 taxmann.com 22 (Kerala)
- 3.98** Where assessee/petitioner contended its water supply services were exempt from GST, matter remanded for reconsideration of exemption applicability, subject to deposit - **Chennai Metropolitan Water Supply and Sewerage Board v. Addl Comm, CGST & Central Excise** - [2024] 162 taxmann.com 686 (Madras)
- 3.99** Where clubbed common impugned order for two financial years passed under section 73(9) of CGST Act, opportunity including contemplated under section 75(4) of CGST/KGST Act not given to assessee before adverse impugned order passed, impugned order was to be set aside - **Bangalore Golf Club v. Commercial Tax Officer (Enforcement)** - [2024] 164 taxmann.com 51 (Karnataka)
- 3.100** ITC availed net of credit notes requires opportunity for assessee to explain discrepancy, subject to partial payment of disputed tax demand - **Raj Rekha v. Deputy State Tax Officer** - [2024] 162 taxmann.com 587 (Madras)

- 3.101** Where revenue authorities passed cryptic order confirming tax demand without properly considering assessee's detailed reply to the show cause notice, High Court set aside the order and remanded the matter for re-adjudication after providing proper opportunity to the assessee - **Lava International Ltd. v. Govt. of NCT of Delhi** - [2024] 164 taxmann.com 36 (Delhi)
- 3.102** Where assessee was unaware of Show Cause Notice due to non-access of GST portal, ex-parte order set aside, and matter remanded for re-adjudication after allowing assessee to file reply - **Swastik Enterprises v. Union of India** - [2024] 162 taxmann.com 536 (Delhi)
- 3.103** Where Proper Officer passed order confirming demand of tax and penalty without considering detailed replies filed by assessee, High Court set aside impugned order and remitted matter to Proper Officer for re-adjudication after providing opportunity to assessee to furnish requisite details and documents - **Sandeep Jain v. Union of India** - [2024] 163 taxmann.com 780 (Delhi)
- 3.104** Where assessee/petitioner contended that GST was inadvertently shown as payable instead of on reverse charge basis in GSTR-1 return for October 2019 but corrected in subsequent GSTR-3B and GSTR-9 returns, High Court quashed impugned assessment order and remanded matter back to revenue authorities to provide reasonable opportunity to assessee/petitioner - **Amarjyothi Carrying Corporation v. Assistant Commissioner (ST)** - [2024] 164 taxmann.com 11 (Madras)
- 3.105** Where assessment order was issued on ground that petitioner-assessee did not reply to show cause notice and interest of justice warrants that an opportunity of hearing should be provided to petitioner-assessee, therefore, assessment order was to be set aside - **Tvl. God Venkateswara Transport v. Assistant Commissioner (ST)** - [2024] 162 taxmann.com 500 (Madras)

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

- 3.106** Where adjudication notice was issued on ground of fraud and assessee contended that registration of its firm under pre-existing law stood surrendered and it never obtained registration under CGST Act, since fact disputes had been raised and no inherent lack of jurisdiction had been shown to exist, interreference claimed at instant stage by High Court was to be declined - **Harsh Steels v. Union of India** - [2024] 164 taxmann.com 151 (Allahabad)
- 3.107** Where final adjudication order was passed by an authority different from one issuing show-cause notice without hearing assessee, stay was granted on impugned order - **INC World Business House v. Deputy Commissioner State Tax** - [2024] 163 taxmann.com 284 (Rajasthan)
- 3.108** Where assessee contended that impugned orders blocking ITC having been passed by Deputy Commissioner of State



Tax, CT & GST Enforcement, could not be sustained in eye of law as he had no jurisdiction to pass such orders, since as per rule 86A(1), Commissioner or an officer authorized by him in this behalf, not below rank of an Assistant Commissioner, can pass order and in instant case, impugned orders having been passed by Deputy Commissioner, who was higher in rank to Assistant Commissioner, it was well within his jurisdiction to pass such orders - **Atulya Minerals v. Commissioner of State Tax** - [2024] 163 taxmann.com 784 (Orissa)

3.109 Where assessee challenged show cause notice issued by Additional Director of DGGI under Section 74(5) of CGST Act on grounds of lack of competence, writ petition was dismissed, holding that Additional Director is competent to issue such notice as per relevant circular - **Sona Infracon (P.) Ltd. v. Directorate General of GST Intelligence** - [2024] 162 taxmann.com 816 (Patna)

3.110 Where no opportunity of personal hearing was granted before passing GST assessment order despite statutory requirement under Section 75(4), order quashed, and matter remanded for providing mandatory personal hearing - **Evereedy Industries India Ltd. v. State of U.P.** - [2024] 162 taxmann.com 583 (Allahabad)

3.111 Where petitioner was unaware of proceedings culminating in impugned order for tax proposal pertaining to mismatch between GSTR-3B returns and auto-populated GSTR-2A as notice and impugned order were uploaded in "ViewAdditionalNotices and Orders" tab on GST portal and not communicated to petitioner through any other mode, petitioner was to be provided an opportunity to contest tax demand on merits and therefore, impugned order was to be set aside and matter was to be remanded for reconsideration - **Quantum Associates v. Deputy State Tax Officer** - [2024] 163 taxmann.com 757 (Madras)

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

3.112 Where assessee was denied opportunity of personal hearing by Assessing Authority before passing an adverse assessment order, impugned order was to be set aside and matter was to be remitted back to Assessing Authority to issue a fresh notice to assessee and grant an opportunity of personal hearing - **New Regal Electric Works v. State of U.P.** - [2024] 164 taxmann.com 154 (Allahabad)

3.113 Where order passed without opportunity of hearing under Section 75(4) of CGST Act, interim stay granted on coercive action pending petition - **Navigators Exim Services v. Union of India** - [2024] 162 taxmann.com 626 (Gujarat)

3.114 Where assessee requested an adjournment to attend a personal hearing due to his daughter's illness; however, despite this being his first request and section 75(5)'s restriction on adjournments applying only after three occasions, adjudicating officer hypertechnically denied said request, therefore, order issued under section 73 was to be set aside and matter was to be remanded back - **Tulasi Medical Distributors v. State of Karnataka** - [2024] 163 taxmann.com 772 (Karnataka)

3.115 Where assessee/petitioner contended that impugned order was non-speaking and personal hearing was not provided, order was set aside and matter was remanded back to respondent for reconsideration, directing to provide reasonable opportunity including personal hearing to assessee/petitioner before issuing fresh order - **China Petroleum Pipeline Bureau India (P.) Ltd. v. Deputy Commercial Tax Officer** - [2024] 162 taxmann.com 489 (Madras)

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

3.116 Where notice demanding GST interest liability was challenged for lack of hearing opportunity, it was clarified that proper hearing would be given before recovery action, while directing assessee to respond to notice - **GPS Automobiles (P.) Ltd. v. Union of India** - [2024] 162 taxmann.com 883 (Rajasthan)

SECTION 85 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TRANSFER OF BUSINESS, LIABILITY OF PAY TAX

3.117 Writ petition challenging GST liability for alleged business transfer dismissed, directing exhaustion of statutory appeal remedy before judicial review - **JR Metal Chennai Ltd. v. Assistant Commissioner of Central Tax** - [2024] 163 taxmann.com 358 (Andhra Pradesh)

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

3.118 Where assessee's input tax credit was blocked by assessing authority invoking Rule 86A on ground that assessee was not conducting business from registered premises, High Court dismissed assessee's appeal against order upholding blockage of input tax credit after allowing assessee opportunity to produce documents showing physical occupation and business operations at registered premises, but assessee failed to do so - **Shine Abraham v. State Tax Officer** - [2024] 164 taxmann.com 14 (Kerala)

SECTION 87 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - AMALGAMATION/MERGER OF COMPANIES, LIABILITY OF PAY TAX

3.119 Where Sealing Solutions (India) Pvt. Ltd. was amalgamated resulting in creation of petitioner-company, Trelleborg India Pvt. Ltd., vide NCLT order dated 13-6-2017, petitioner-company was issued notices in Form GST DRC-01 between



4-9-2022 to 18-5-2024, for tax periods for tax periods 2017-18, 2018-19 and 2019-20, once amalgamating entity ceases to exist upon approved Scheme of Amalgamation, question of continuing proceedings as regards non-existent company could not be permitted, show cause notices were to be set aside - **Trelleborg India (P.) Ltd. v. State of Karnataka** - [2024] 164 taxmann.com 383 (Karnataka)

SECTION 88 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMPANY IN LIQUIDATION, LIABILITY OF PAY TAX

- 3.120 Proceedings initiated by GST authorities against company dissolved under Section 59(8) of Insolvency and Bankruptcy Code, 2016 are without jurisdiction, as they target non-existent entity - **Hitachi Nest Control Systems (P.) Ltd. v. Additional Commissioner of Central Tax** - [2024] 162 taxmann.com 621 (Karnataka)

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

- 3.121 Original authority in State of West Bengal should not place any reliance on Advance Ruling rendered by Authority in Goa - **Sarkar Diesel v. Deputy Commissioner, State Tax** - [2024] 164 taxmann.com 276 (Calcutta)

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

- 3.122 Where assessee impugned cancellation of registration in writ petition and filed appeal against cancellation after expiry of limitation period, which was rejected, did not avail remedy of Amnesty Scheme issued vide Circular No. 3 of 2023, did not in memorandum of petition controvert allegation that he failed to furnish returns for a continuous period of six months, writ petition was to be dismissed - **Rajkishore Sah v. Union of India** - [2024] 164 taxmann.com 195 (Patna)

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

- 3.123 Where assessee filed an appeal against order passed under section 73(9) and also made a pre-deposit as is required for maintaining appeal, however, there was a delay in filing appeal due to medical reasons, appellate authority ought to have condoned delay and heard appeal on merits - **Farinni Leather (P.) Ltd. v. Joint Commissioner of State Tax** - [2024] 164 taxmann.com 516 (Calcutta)
- 3.124 Appellate authority's failure to consider condonation application in time-barred GST appeal warrants judicial intervention to restore appeal for hearing on merits - **Gour Mohan Bera v. State of West Bengal** - [2024] 162 taxmann.com 882 (Calcutta)

- 3.125 Where assessee instead of availing alternate remedy of appeal against impugned order imposing tax demand, interest and penalty had approached High Court by way of writ, same was to be dismissed - **RCC Infraventures Ltd. v. Union of India** - [2024] 164 taxmann.com 155 (Madhya Pradesh)

- 3.126 Where Adjudicating Authority had rejected appeal on ground of limitation, since assessee had deposited pre-deposit amount and there was no lack of bona fide on part of assessee, explanation given by assessee that delay in filing appeal was due to an oversight by accountant, though not entirely adequate, was to be accepted in interest of justice, and therefore, impugned order was to be set aside - **Acme Paints and Resin (P.) Ltd. v. Deputy Commissioner of Revenue, State Tax** - [2024] 164 taxmann.com 420 (Calcutta)

- 3.127 Where appeal was filed through online mode within period of limitation but same was rejected by impugned order on ground of limitation taking date of physical filing of order impugned as date of filing, impugned order was to be set aside and matter was to be remitted for consideration afresh - **Hitachi Energy India Ltd. v. State of Karnataka** - [2024] 164 taxmann.com 152 (Karnataka)

- 3.128 Where assessee approached high court against assessment order long after time for filing appeal under section 107 had expired, liberty was to be granted to assessee to file appeal within 30 days - **Global Hardwares v. State Tax Officer** - [2024] 164 taxmann.com 149 (Madras)

- 3.129 Writ petition challenging GST assessment order not maintainable when statutory appeal remedy not availed within prescribed time limit - **Maa Veshno Devi Gangsaw Enterprises v. State of Rajasthan** - [2024] 162 taxmann.com 624 (Rajasthan)

- 3.130 Electronic filing of appeal within prescribed time limit considered valid, despite later submission of physical copies; appeal held to be filed within time - **Neospark Drugs and Chemicals (P.) Ltd. v. Additional Commissioner of Central Tax (GST)** - [2024] 162 taxmann.com 814 (Andhra Pradesh)

- 3.131 Filing of writ petition within condonable period for statutory appeal may allow subsequent appeal filing with exclusion of writ petition period from appeal limitation calculation - **M J Gold v. State Tax Officer** - [2024] 162 taxmann.com 722 (Kerala)

- 3.132 Orders cancelling GST registration and dismissing appeal as time-barred quashed due to lack of reasoned decision-making, adjudicating authority was directed for fresh order after providing assessee opportunity to reply and be heard - **Sarvashree Bala Ji Enterprises v. State of U.P.** - [2024] 162 taxmann.com 526 (Allahabad)

- 3.133 Where assessee/petitioner sought refund of bank guarantee amount and challenged order confirming tax demand, refund of amount was directed within one month subject to



furnishing of fresh bank guarantee and granted liberty to file statutory appeal before Goods and Services Tax Appellate Tribunal (GSTAT) once constituted - **Cultgear (P.) Ltd. v. Commercial Tax Officer (Enf) - [2024] 162 taxmann.com 490 (Karnataka)**

RULE 108 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - APPELLATE AUTHORITY - APPEALS TO

- 3.134** Non-submission of physical copy of impugned order within 7 days under Rule 108(3) of GST Rules held to be mere technical defect; appeals filed on GST portal within time limit to be processed by treating portal filing date as date of appeal - **Indian Potash Ltd. v. Deputy Commissioner (ST) - [2024] 163 taxmann.com 357 (Madras)**

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

- 3.135** Appellate Tribunal under GST law - High Court directs Union of India to establish GST Tribunals expeditiously within four months by completing selection process - **CA. P.J. Johney v. GST Council, New Delhi - [2024] 164 taxmann.com 602 (Kerala)**

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

- 3.136** Where penalty proceedings under Section 129(3) of UP GST Act were initiated after search of business premises, such proceedings unjustified and quashed penalty order - **Gupta Mentha Oil Commission Agent v. State of U.P. - [2024] 162 taxmann.com 688 (Allahabad)**
- 3.137** Where penalty was imposed on detained goods without providing relied-upon lab report or proper hearing, order set aside with directions to furnish adverse material, allow reply, and pass fresh order after hearing - **Tirupati Agro Commodities v. State of U.P. - [2024] 163 taxmann.com 491 (Allahabad)**
- 3.138** Technical violation of e-way bill expiry without intention to evade tax does not warrant penalty under Section 129(3) of UP GST Act - **Raghuveer Ispat (P.) Ltd. v. State of U.P. - [2024] 163 taxmann.com 432 (Allahabad)**
- 3.139** Non-filing of Part-B of e-way bill, without proof of tax evasion intent, does not warrant penalty under Section 129(3) of GST Act - **RS Industrial Solutions v. Additional Commissioner - [2024] 162 taxmann.com 755 (Allahabad)**
- 3.140** Tax and penalty demand under Section 129 against assessee, a Mercedes Benz distributor, due to a vehicle number mismatch on e-way bill and actual replacement truck used after a breakdown, was to be

set aside as discrepancy was deemed a minor error per Circular No. 64/38/18, warranting a penalty of Rs 500 under Section 125 of GST Act and Rs 1000 under IGST Act - **Landmark Cars (P.) Ltd. v. Union of India - [2024] 164 taxmann.com 82 (Gujarat)**

- 3.141** Where assessee imported machinery from China under EPCG scheme, exempt from Customs Act and IGST, and arranged transport to their Surat factory, however vehicle was intercepted in Maharashtra without an e-way bill, leading to a penalty u.s. 129(1) equivalent to tax applicable on value of machinery was imposed, since, transporting machinery to one's own factory does not constitute a supply under Section 7, and therefore, no tax was applicable under section 9, making penalty invalid - **Fabricship (P.) Ltd. v. Union of India - [2024] 164 taxmann.com 80 (Bombay)**

- 3.142** Where assessee imported machinery from China under EPCG scheme, exempt from Customs Act and IGST, and arranged transport to their Surat factory. however vehicle was intercepted in Maharashtra without an e-way bill, leading to a penalty under Section 129(1), said transportation of goods to assessee's own factory after Customs clearance is a non-taxable supply as does not constitute a supply under Section 7, thus falling under "exempted goods." and under said scenario penalty under second limb of Section 129 (1) (a) would be levied which is two per cent of value of goods or 25,000/- whichever is less - **Fabricship (P.) Ltd. v. Union of India - [2024] 164 taxmann.com 80 (Bombay)**

- 3.143** Where assessee had furnished a Bank Guarantee for release of goods detained but it was found that said bank guarantee had been expired and assessee had not renewed same, since It was an obligation to have continued to renew bank guarantee till disposal of writ petitions, it deems fit to impose cost of Rs.15 Lakhs on assessee to be paid to PM care fund - **Fabricship (P.) Ltd. v. Union of India - [2024] 164 taxmann.com 80 (Bombay)**

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

- 3.144** Where show cause notice was issued to assessee under section 130 calling upon assessee to show cause why goods and vehicle under transport should not be confiscated, however, said notice lacked detailed reasons and necessary material was not provided to assessee and also confiscation order contains various details which were not placed before assessee in show cause notices, thereby violating principles of natural justice and thus, same were to be set aside - **Cluster Enterprises v. Deputy Assistant Commissioner (ST)-2 - [2024] 164 taxmann.com 624 (Andhra Pradesh)**
- 3.145** Where goods and vehicle of assessee were detained under section 129 and thereafter notice under section 130 proposing to confiscate goods and vehicle was issued, conveyance and goods were allowed to be released provisionally subject to payment of total amount of tax, penalty, fine imposed for confiscation of goods and conveyance - **Krystaline Traders (P.) Ltd. v. State Tax Officer - [2024] 164 taxmann.com 239 (Gujarat)**

**SECTIONS 132 OF THE CENTRAL GOODS & SERVICE TAX ACT, 2017 - OFFENCES - PUNISHMENTS FOR CERTAIN OFFENCES**

- 3.146** Bail granted to assessee accused of GST fraud through fake ITC, considering nature of offense, lack of evidence, and jail period, subject to conditions - **Pradip Kumar Jain v. Union of India** - [2024] 163 taxmann.com 402 (Allahabad)
- 3.147** Where assessee/accused was charged under CGST Act for alleged fraudulent ITC claims, regular bail was granted considering factors like custody duration, evidence nature, and witness influence potential, while imposing conditions to ensure trial appearance - **Vishal Rai v. Union of India** - [2024] 162 taxmann.com 594 (Punjab & Haryana)

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

- 3.148** Where assessee received a SCN alleging wrongful availment of ITC and such SCN was replied to by assessee stating that transitional VAT credit was claimed by filing Form TRAN-1, but impugned order was issued without taking into consideration reply of assessee, impugned order was to be set aside - **Monika Alloys India (P.) Ltd. v. State Tax Officer** - [2024] 164 taxmann.com 241 (Madras)

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

- 3.149** Payment of tax during course of search could not have been stated to be voluntarily made - **ATR Malleable Casting (P.) Ltd. v. Inspector of Central Taxes** - [2024] 164 taxmann.com 78 (Calcutta)

SECTION 155 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - BURDEN OF PROOF

- 3.150** Where tax authorities failed to consider material documents supporting input tax credit claim, order set aside and matter remanded for reconsideration with reasonable opportunity to assessee - **Brakes India (P.) Ltd. v. Asst. Comm. (ST)** - [2024] 164 taxmann.com 601 (Madras)

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

- 3.151** Where writ petition of assessee against Asst order was dismissed by Single Judge on grounds of alternate remedy of appeal, since main case of assessee was that Asst order had been passed by assessing authority without jurisdiction, same could be interfered with in writ petition, thus, assessee was to be granted liberty to file review application before single Judge - **John Buildwell India (P.) Ltd. v. Jt Comm. of Central GST and Central Excise** - [2024] 164 taxmann.com 71 (Madras)

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

- 3.152** Service of notice and orders under GST law - Under PIL, Court cannot direct amendment of GST law to provide for service of notice and orders by more than one mode of service - **CA. P.J. Johnney v. GST Council, New Delhi** - [2024] 164 taxmann.com 602 (Kerala)
- 3.153** Where impugned proceedings were issued by Competent Authority without generating Document Identification Number (DIN), same were liable to be set aside - **Sai Manikanta Electrical Contractors v. Deputy Commissioner, Special Circle** - [2024] 164 taxmann.com 73 (Andhra Pradesh)

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

- 3.154** Where GST collected at cinema theatres in State of Telangana @ 28% & 18%, from 1-1-2019 got reduced to 18% and 12%, respectively, assessee-theatre reduced prices of tickets w.e.f. 11-3-2019, no exception carved out under sections 171 and 172, authority not also empowered to relax conditions enumerated under section 171(1), no illegality in impugned order passed by Anti-profiteering Authority directing respondent department to re-compute amount of profiteering - **Sudarshan Theatre v. Union of India** - [2024] 164 taxmann.com 331 (Telangana)

4. AAR

CLASSIFICATION OF GOODS

- 4.1 Transportation of minerals** : Where transportation of coal (minerals) by applicant-assessee within a mining area, from mining pit head or coal stockyard located at mines to railway siding, as mentioned in agreement will be classified under SAC 9966 and applicable tax rate is 12% - **Utkal Coal Mining India (P.) Ltd., In re** - [2024] 164 taxmann.com 642 (AAR-ODISHA)
- 4.2 Marine Ships and Spare Parts like navigational systems** : Where all other equipments listed under Annexure 2A, except equipments mentioned in Sl. Nos. 25, 28, 60, 72, 73, 90, 97, 111, 117, 118, 119, 123, are to be considered as an essential part of a warship/submarine without which ship would not be complete and would not be able to function, therefore, chargeable under Sl.No.252 of Schedule-I of Notification No.01/2017-Central Tax (Rate), dated 28-6-2017 - **Hindustan Shipyard Ltd., In re** - [2024] 164 taxmann.com 333 (AAR - ANDHRA PRADESH)
- 4.3 Marine Ships and Spare Parts like metals used for construction** : Where items listed under Annexure 2B, are metals used for constructing a warship/submarine which are consumed in process of construction, further, said metals cannot be removed as such for repairs etc., therefore, they will be considered as consumables; Hence, they cannot be considered as parts of a warship/submarine and they are not liable for concessional rate of tax - **Hindustan Shipyard Ltd., In re** - [2024] 164 taxmann.com 333 (AAR - ANDHRA PRADESH)



4.4 Marine Ships and Spare Parts like portable engine driven etc : Where items listed under Annexure 2B(i), are not considered as essential part of a warship/submarine without which ship would not be complete and would not be able to function, therefore, applicant-assessee are not very clear because goods therein are mentioned as "General items", hence, these items would not be eligible to concessional rate of tax - **Hindustan Shipyard Ltd., In re - [2024] 164 taxmann.com 333 (AAR - ANDHRA PRADESH)**

4.5 Marine Ships and Spare Parts like anti fouling marine chemical paints etc. : Where items under Annexure 2C pertains to consumables, therefore, they cannot be considered as parts of a warship/submarine, hence, aforesaid items would not be eligible to concessional rate of tax - **Hindustan Shipyard Ltd., In re - [2024] 164 taxmann.com 333 (AAR - ANDHRA PRADESH)**

4.6 Sewerage Treated Water : 'Sewerage treated water' supplied by applicant-assessee, subject to specification and utility, falls under Sr. No. 99 of Notification No. 02/2017-C.T. (R), dated 28-6-2017 and rate of tax is NIL as per aforesaid Notification - **Greater Visakhapatnam Smart City Corporation Ltd., In re - [2024] 164 taxmann.com 288 (AAR - ANDHRA PRADESH)**

4.7 Pebbles, gravel, broken crushed stone products for concrete aggregates : Supply of aggregates manufactured from boulders by applicant-assessee would fall under HSN code 251710 and attract CGST @2.5% and SGST @2.5% - **R. V. Minerals., In re - [2024] 164 taxmann.com 262 (AAR - ANDHRA PRADESH)**

CLASSIFICATION OF SERVICES

4.8 Leasing or Rental Services with or without Operator : Royalty charges collected by applicant-assessee for manufacturing aggregates (Stone crusher unit) from boulders purchased from quarries having mining permit would fall under SAC 997337 and would attract 9% CGST and 9% SGST - **R. V. Minerals., In re - [2024] 164 taxmann.com 262 (AAR - ANDHRA PRADESH)**

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

4.9 Where retention bonus, joining bonus, work from home allowance and expenses under Tuition Assistance Program(TAP)are in nature of perquisites provided by applicant-employer to its employees, therefore, recovery of joining bonus, retention bonus, work from home allowance and expenses under TAP are not taxable under GST - **Fidelity Information Services India (P.) Ltd., In re - [2024] 164 taxmann.com 311 (AAR - KARNATAKA)**

4.10 Penalties or liquidated damages deducted by assessee from amount due to its supplier for compensating loss borne by assessee on account of supplier not adhering to time limits for supplies to be affected as agreed upon by contracting parties as per agreement are liable to GST at rate 18 percent under Heading no 9997 as liquidated Damages are to be treated as consideration for an act of tolerance of non-performance - **Transmission Corporation of Andhra Pradesh Ltd., In re - [2024] 164 taxmann.com 141 (AAR - ANDHRA PRADESH)**

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

4.11 Where applicant-assessee have rented out a building to Department of Social Welfare and aforesaid service is in relation to function entrusted to a Panchayat under Article 243G of Constitution of India, 1950, therefore, pure services provided by applicant-assessee to State Government are exempted as per Entry No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28-6-2017, hence, it is not taxable - **K A Sujit Chandan., In re - [2024] 164 taxmann.com 386 (AAR - KARNATAKA)**

4.12 Where professional services provided by applicant-assessee are not provided by way of any activity in relation to a function entrusted to a Panchayat under article 243G of Constitution or in relation to any function entrusted to a Municipality under article 243W of Constitution, therefore, services provided by applicant-assessee to BWSSB are not exempt as per Entry No. 3 of Notification 12/2017-Central Tax (Rate) dated 28.06.2017 - **Ernst & Young LLP, In re - [2024] 164 taxmann.com 359 (AAR - KARNATAKA)**

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

4.13 Where applicant-assessee is eligible to avail input tax credit on said contract staffing services, therefore, subject to fulfilment of conditions specified under Section 16, applicant-assessee is eligible to avail input tax credit on 'contract staffing services' under section 16(1) - **Access Healthcare Services (P.) Ltd., In re - [2024] 164 taxmann.com 230 (AAR - TAMILNADU)**

5. CCI

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

5.1 Where GST rate of services by way of admission to exhibition of cinematography films supplied by respondent-assessee was reduced from 28 per cent to 18 per cent and respondent-assessee had not passed benefit of reduction in GST rate to recipients by way of commensurate reduction in price in terms of section 171, therefore, commission directed respondent-assessee to deposit profiteered amount - **Rahul Sharma v. Cinema Ventures (P.) Ltd. - [2024] 164 taxmann.com 445 (CCI)**



COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1 SEBI proposes new measures to strengthen index derivatives for investor protection and market stability

Editorial Note : SEBI has released a Consultation paper on proposed measures to strengthen index derivatives framework for increased investor protection and market stability. Some of the proposals include (a) rationalisation of strike price for options, (b) upfront collection of options premium, (c) Intraday monitoring of position limits, and (d) increasing the minimum value of derivative contracts from Rs 5 to Rs 10 lakh in the first phase and from Rs 20 to Rs 30 lakh in the second phase.

- 1.2 SEBI proposes redefining 'immediate relative' to 'relative' as per Income Tax Act for insider trading rules

Editorial Note : SEBI has released a Consultation Paper on proposed amendments to SEBI (PIT) Regulations, 2015, to rationalize the scope of the expression 'connected person' while not increasing compliance requirements. As per proposed norms, the term 'immediate relative' in definition of connected person under regulation 2(1)(d)(ii)(a) is proposed to be replaced with term 'relative' in line with definition of relative under Income Tax Act, 1961. Also, SEBI has proposed to rationalise definition of 'relative'.

- 1.3 SEBI launches chatbot "SEVA" for investors - **PR No. 14/2024, Dated 29-07-2024**

Editorial Note : SEBI has launched its Virtual Assistant (SEVA) – an Artificial Intelligence (AI) based conversation platform for investors. The Beta version of the chatbot includes features like citations for generated responses, speech-to-text and text-to-speech functionality for accessibility etc. The chatbot is presently enabled to answer questions w.r.t general information on securities market, grievance redressal process etc. The beta version is available on SEBI's investor website and SAARTHI mobile app.

- 1.4 SEBI amends AIF Regulations, 2012; introduces norms for 'Migrated Venture Capital Funds' - **Notification No. SEBI/LAD-NRO/GN/2024/194, Dated 11-07-2024**

Editorial Note : SEBI has notified SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2024. A new chapter III-D w.r.t 'migrated venture capital fund' has been introduced. The provisions of this Chapter shall apply only to migrated venture capital funds and schemes launched by such funds. Further, SEBI has prescribed the eligibility conditions & procedure for grant of certificate as a migrated venture capital fund. Also, the term 'migrated venture capital fund' has been defined under chapter.

- 1.5 SEBI raises 'Basic Services Demat Account' limit from Rs 2 lakh to Rs 10 lakh - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/91, Dated 28-06-2024**

Editorial Note : Earlier, SEBI provided a "Basic Services Demat Account" (BSDA) facility for eligible individuals. Individuals can opt for BSDA subject to a condition that the value of securities held in demat account must not exceed Rs 2 lakh. SEBI has now raised this limit to Rs 10 lakh. BSDA is a special category of demat account that can be opened/held only by individual investors. Only one account can be opened under BSDA where the investor is a first holder and has no other demat account with him/her.

- 1.6 SEBI amends Stock Brokers Regulations; introduces a new chapter on 'Mechanism for prevention & detection of fraud' - **Notification No. SEBI/LAD-NRO/GN/2024/186, Dated 27-06-2024**

Editorial Note : SEBI has notified an amendment to SEBI (Stock Brokers) Regulations, 1992. A new Chapter IVA relating to 'Institutional Mechanism for Prevention and Detection of Fraud or Market Abuse', has been introduced. As per amended norms, KMP and senior management of stock broker must put in place adequate systems for surveillance of trading activities & internal control systems to ensure compliance with all regulatory norms for the detection, prevention & reporting of potential fraud or market abuse.

- 1.7 SEBI prohibits transactions via 'mule accounts' for indulging in manipulative, fraudulent and unfair trade practices - **Notification No. SEBI/LAD-NRO/GN/2024/187, Dated 27-06-2024**

Editorial Note : SEBI has notified amendment to SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. SEBI clarified that transactions via 'mule accounts' for indulging in manipulative, fraudulent & unfair trade practices must be prohibited. Also, the term 'mule account' has been defined under Reg. 2(da). It refers to a trading, dematerialised, or bank account linked with a trading account, where the account is effectively controlled by another person.

- 1.8 SEBI releases a Consultation Paper on 'Disclosure of Risk-Adjusted Return by Mutual Funds'

Editorial Note : SEBI has released a Consultation Paper on 'Disclosure of Risk-Adjusted Return (RAR) by Mutual Funds'. The objective is to seek public comments on the proposal w.r.t disclosure of the Risk-Adjusted Return of an MF scheme portfolio, thereby enabling investors to make informed investment decisions. SEBI has proposed a methodology for calculating the Information Ratio (IR) for different categories of MF schemes. An IR is an established financial ratio to measure the RAR of the scheme portfolio.



- 1.9** MIs must ensure that charges levied on end clients by members match actual charges they receive: SEBI - **Circular No. SEBI/HO/MRD/TPD-1/P/CIR/2024/92, Dated 01-07-2024**

Editorial Note : SEBI observed that some market infrastructure institutions (MIs) follow a volume-based slab-wise charge structure, where charges for various services offered by MIs are recovered from end clients by members. This can result in an incorrect disclosure to the end client. SEBI has clarified that charges levied by MIs must be true to label, i.e. if a charge is levied on the end client by members (e.g. stock brokers, DPs, clearing members), MIs must ensure that they receive the same amount.

- 1.10** SEBI mandates email as default mode for dispatching CAS and holding statements by Depositories, MF-RTAs, and DPs - **Circular No. SEBI/HO/MRD-PoD2/CIR/P/2024/93, Dated 01-07-2024**

Editorial Note : Considering the increasing reach of digital technology, and to streamline the regulatory guidelines on mode of dispatch of account statements, SEBI has decided to revisit the regulatory provisions and provide for email as default mode of dispatch for Consolidated Account Statement (CAS) by Depositories, Mutual Fund –Registrar and Transfer Agents (MF-RTAs) and holding statement by Depositories Participant (DP). Accordingly, modifications has been notified in circular dated 06.10.2023.

- 1.11** Equity-oriented ETFs and index funds can invest in listed securities of sponsor's group companies beyond 25%: SEBI - **Notification No. SEBI/LAD-NRO/GN/2024/188, Dated 02-07-2024**

Editorial Note : The SEBI has notified amendment in clause 9(c) of seventh schedule of SEBI (Mutual Funds) Regulations, 1996. As per the amended norms, Equity-oriented ETFs and index funds can now invest in the listed securities of group companies of the sponsor beyond 25% of the net assets. Earlier, Mutual funds were restricted from investing in listed securities of group companies of the sponsor beyond 25 % of net assets.

- 1.12** SEBI issues FAQs on 'SEBI Registered Investment Advisers'

Editorial Note : SEBI has issued frequently asked questions (FAQs) on 'SEBI Registered Investment Advisers'. Some of the FAQs include (a) Who is an Investment Adviser (IA)? (b) Are IAs regulated in India?, (c) What is investment advice? (d) What is the procedure for obtaining registration as an IA?, (e) What is the fee structure for registration as an IA? and (f) What are the qualification and certification requirements under the IA Regulations?

- 1.13** SEBI releases frequently asked questions (FAQs) on 'Credit Rating Agencies'

Editorial Note : SEBI has released frequently asked questions (FAQs) on 'Credit Rating Agencies' (CRAs). Some of the FAQs include (a) the meaning of Credit Rating Agency, (b) the meaning of Credit Rating, (c) how a CRA differ from a credit bureau, (d) who regulates CRAs, (e) how a credit rating denoted?, (f) who pays for the credit rating, (g) why rating change, (h) SEBI's role in the rating exercise, (i) whether rating is a one-time exercise and (j) measures taken by SEBI to strengthen credit ratings.

- 1.14** SEBI reduces face value for private placement of debt securities/non-convertible preference shares to Rs 10,000 - **Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/94, Dated 03-07-2024**

Editorial Note : SEBI has reduced the face value for issuing debt security or non-convertible redeemable preference shares on a private placement basis from Rs 1 lakh to Rs 10,000, subject to certain conditions. The condition is that the issuer must appoint at least one merchant banker, and such debt security or non-convertible redeemable preference share must be an interest/dividend-bearing security paying coupon/dividend at regular intervals with a fixed maturity.

- 1.15** Penalty for non-listing of non-convertible securities would accrue on a daily basis at 1% p.a. for period of delay: SEBI

Editorial Note : Belstar, a NBFC that issued listed non-convertible debentures at a coupon rate of 10%, sought informal guidance w.r.t penal interest for delaying listing of securities issued via private placement. SEBI clarified that in case of a debt instrument, since interest/coupon/dividend is accrued daily and is payable at a defined interval, the penalty for not listing would also accrue daily. In addition to coupon/dividend rate, issuer must pay penal interest at the rate of 1% p.a. for period of delay.

- 1.16** Equity ETFs & Index Funds can invest in group companies of sponsor, with a cap of 35% of the scheme's NAV - **Circular No. SEBI/HO/IMD/IMD-PoD-2/P/CIR/2024/098, Dated 08-07-2024**

Editorial Note : Earlier, SEBI allowed equity oriented exchange traded funds (ETFs) and Index Funds to make any investment in the listed securities of group companies of the sponsor which is in excess of 25% of the net assets of the scheme. Now, SEBI has decided that equity oriented ETFs & Index Funds, based on widely tracked and non-bespoke indices, can make investments by the weightage of the constituents of the underlying index. However, such investments shall be capped to 35% of NAV of the scheme.

- 1.17** SEBI issues updated 'Master Circular on Surveillance of Securities Market' - ***Circular No. SEBI/HO/ISD/ISD-PoD-2/P/CIR/2024/99, Dated 09-07-2024***

Editorial Note : SEBI has issued various circulars from time to time regarding effective surveillance of the securities market. To ensure the availability of consolidated information contained in all the circulars regarding surveillance of the securities market at one place, SEBI has issued an updated master circular incorporating all relevant circulars issued to date. The master circular is categorized subject-wise under various headings, such as trading rules and shareholding in dematerialised mode.

- 1.18** MCA extends the time for filing of Web-Form PAS-7 without additional fees up to August 5, 2024 - **General Circular No. 5/2024, Dated 06-07-2024**

Editorial Note : As per Companies (Prospectus and Allotment of Securities) Rules, 2014, every public company that issued share warrants before commencement of Co(s) Act and not converted into shares must inform the ROC about details of share warrants in Form PAS-7. Web-Form PAS-7 has now been deployed on MCA 21 Portal on V3. Stakeholders can file details as per Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 via this web form without payment of additional fees up to 05.08.2024.

- 1.19** SEBI sets new filing requirements for AIF schemes availing dissolution period and additional liquidation period - **Circular No. SEBI/HO/AFD-1-PoD/P/CIR/2024/100, Dated 09-07-2024**

Editorial Note : SEBI has outlined the filing requirements for alternative investment funds (AIFs) schemes that opt for a dissolution period to deal with their unliquidated investments. AIF schemes entering into the dissolution period must file an information memorandum (IM) through a merchant banker before the expiry of the liquidation period or additional liquidation period of the scheme. The IM and due diligence certificate format is attached as an annexure to the circular.

- 1.20** Listed entities to publish a window advertisement in newspapers referring QR code & website link for Financial Results: SEBI - **Notification No. F. No. SEBI/LAD-NRO/GN/2024/189: Dated 08-07-2024**

Editorial Note : SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2024. A new proviso has been inserted to Reg 52(8) relating to publication of financial results. It states that listed entities may publish only a window advertisement in the newspapers that refers to a Quick Response Code and the link to listed entity's website and stock exchanges, where such results are available and capable of being accessed by investors subject to certain conditions.

- 1.21** SEBI amends NCS norms; requires issuer to fix a record date 15 days before due date for payment of interest/dividend - **Notification No. SEBI/LAD-NRO/GN/2024/190, Dated 08-07-2024**

Editorial Note : SEBI has notified SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2024. As per the amended norms, the issuer must fix a record date for payment of interest, dividend, redemption or repayment amount, or for such other purpose as specified by Board. The record date must be fixed 15 days before due date of payment. Also, SEBI has updated the format of due diligence certificate that debenture trustee is required to submit at time of filing the draft offer document.

- 1.22** SEBI expands scope of 'liquid assets' to include units of overnight/liquid mutual fund schemes & repo on corporate bonds - **Notification No. SEBI/LAD-NRO/GN/2024/191, Dated 08-07-2024**

Editorial Note : SEBI notified amendment in clause i of explanation to Regulation 28B(1)(d) of SEBI (Credit Rating Agencies) Regulations, 1999, redefining 'liquid assets'. Now, liquid assets shall also include units of overnight/liquid mutual fund schemes & repo on corporate bonds. Earlier, it was defined as a low risk asset that can easily be converted into cash in a short period of time, such as cash, fixed deposits, government securities, treasury bills and repo on government securities.

- 1.23** SEBI amends REITs and InvITs Regulations; introduces a framework for 'unit-based employee benefit scheme' - **Notification No. SEBI/LAD-NRO/GN/2024/192 & 193, Dated 09-07-2024**

Editorial Note : SEBI has notified SEBI (InvITs) (Second Amendment) Regulations and SEBI (REITs) (Second Amendment) Regulation, 2024. A framework for 'unit-based employee benefit scheme' has been inserted. As per the new framework, the unit-based employee benefit scheme must be in nature of the employee unit option scheme. Also, SEBI has inserted a definition of "employee unit option scheme" which refers to a scheme under which a manager grants unit options to its employees via employee benefit trust.

- 1.24** SEBI recognizes 'BSE Limited' as the Supervisory Body for research analysts and investment advisers for 5 years - ***Circular No. SEBI/HO/MIRSD/MIRSD-POD-1/P/CIR/2024/101, Dated 12-07-2024***

Editorial Note : SEBI has recognized 'BSE Limited' as the supervisory body for research analysts and investment advisers for a period of 5 years starting from July 25, 2024. Accordingly, BSE must formulate bylaws regarding its activities as Research Analyst Administration and Supervisory Body (RAASB) and Investment Adviser Administration and Supervisory Body (IAASB). Also, BSE must issue circulars, SOPs and FAQs to provide guidance and ensure smooth adoption of RAASB and IAASB framework by RAs and IAs.



- 1.25** MCA revises MSME Form-1 with enhanced disclosures for reporting payments pending over 45 days to micro/small enterprises - **Notification No. S.O. 2751(E), 15-07-2024**

Editorial Note : MCA has notified Specified Companies (Furnishing information about payment to micro and small enterprise suppliers) Amendment Order, 2024. A new proviso has been added. It states that only those specified companies with payments pending to any micro or small enterprises for more than 45 days from the date of acceptance/date of deemed acceptance of goods or services u/s 9 of MSME Development Act, 2006 must furnish information in MSME Form-1. Subsequently, MSME Form-1 has been substituted.

- 1.26** SEBI proposes faster summary proceedings for securities law violations by intermediaries

Editorial Note : SEBI has released a Consultation Paper on proposed legal provisions for summary proceedings. The objective is to seek public comments on proposed legal changes in SEBI (Intermediaries) Regulations, including summary proceedings, to address certain securities law violations more efficiently by intermediaries. The proposals involve identifying the cases for summary proceedings and detailing the provisions for the summary procedure. Comments on the same may be submitted by August 6, 2024.

- 1.27** Government omits mandatory requirement to use 'Nidhi Limited' in Nidhi Company's proposed names - **Notification F.NO. 1/13/2013-CL-V(E), Dated 16-07-2024**

Editorial Note : The Central Government has notified an amendment to Rule 8A of Companies (Incorporation) Rules, 2014. As per the amended norms clause (v) of the incorporation rules, which mandates that the proposed name of a Nidhi company should have the last words "Nidhi Limited" as part of its name, has been omitted. Now, the proposed Nidhi Company's name doesn't need to mandatorily contain the words 'Nidhi Limited' in its name.

- 1.28** MCA allows directors to update mobile numbers and email IDs anytime during the FY on payment of Rs 500 - **Notification F.NO. 8/4/2018-CL-I, Dated 16-07-2024**

Editorial Note : The MCA has notified an amendment to Rule 12A of the Companies (Appointment and Qualifications of Directors) Rules, 2014, relating to Directors' KYC. A new proviso has been added, which states that if an individual intends to update his personal mobile number or email address again at any time during the financial year in addition to the updation allowed under the third proviso, he shall update the same by submitting an e-form DIR-3KYC on the payment of fees of Rs 500.

- 1.29** MCA notifies e-Form MGT-6 for MCA V3 Portal; Introduces PAN validation feature for shareholders and beneficial owners - **Notification No. G.S.R. 403, Dated 15-07-2024**

Editorial Note : The MCA has notified amendment in Companies (Management and Administration) Rules, 2014. Now, the Form MGT-6 has been substituted with the new format for MCA V3 Portal. New feature of PAN validation of shareholders and beneficial owners has been introduced.

- 1.30** MCA notifies e-Form BEN-2 for MCA V3 Portal; allows users to report changes in particulars of existing SBO u/s 90 - **Notification G.S.R. No. 404, Dated 15-07-2024**

Editorial Note : MCA has notified an amendment to the Companies (Significant Beneficial Owners) Rules, 2018. As per the amended norms, Form BEN-2 has been substituted with the new format for the MCA V3 Portal. The new format allows users to fill out a form to change an existing Significant Beneficial Ownership or update the particulars of existing Significant Beneficial Ownership under Section 90 of the Companies Act.

- 1.31** SEBI proposes to introduce a new asset class or product category to bridge the gap between Mutual Funds and PMS

Editorial Note : SEBI has released a Consultation Paper on the 'Introduction of new asset class or product category'. The objective is to seek public comments on proposal to introduce a new asset class or product category to bridge the gap between Mutual Funds and Portfolio Management Services (PMS) in terms of flexibility in portfolio construction. The minimum investment amount under the new asset class has been proposed at Rs 10 lakh per investor. Comments on the same may be submitted by August 6, 2024.

- 1.32** SEBI study finds that 7 out of 10 individual intraday traders in equity cash segment made losses in FY 2022-23 - **PR No. 13/2024, Dated 24-07-2024**

Editorial Note : A study conducted by SEBI has revealed that more than 70% (7 out of 10) of individual intraday traders in the equity cash segment have incurred losses in the financial year 2022-23. The study also noted a surge of over 300% in the number of individuals participating in intraday trading in the equity cash segment in FY 2022-23 compared to FY 2018-19. This study has been peer-reviewed by a working group with representation from academia, brokers and market experts.

- 1.33** Companies must now remit amounts to the IEPF Authority online within 30 days of the due date: MCA - **Notification G.S.R. No. 414(E), Dated 16-07-2024**

Editorial Note : The MCA has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2024. As per the amended norms, companies must remit any



amount required to be credited to the Investor Education and Protection Fund (IEPF) online to the Authority within 30 days from the date it becomes due. Earlier, companies were required to remit the amount into a specified account of the IEPF Authority maintained in the Punjab National Bank.

- 1.34** MCA merges Form IEPF-3 with IEPF-4 and Form IEPF-7 with IEPF-1 in MCA V3 Portal - **General Circular No. 07/2024, Dated 17-07-2024**

Editorial Note : To ease the compliance burden and simplify filings, the MCA has merged Form IEPF-3 with Form IEPF-4 and Form IEPF-7 with IEPF-1 in MCA Version 3. The revised forms will be made STP (straight-through process). Further, various amounts that need to be transferred to the IEPF Authority as due on shares transferred by companies will be paid online via MCA 21 through the "Pay Miscellaneous Fee" service after selecting the option "Investor Education and Protection Fund."

- 1.35** MCA waives of additional fees on filing of IEPF e-forms due to migration to MCA V3 portal until 16.08.2024 - **General Circular No. 06/2024, Dated 16-07-2024**

Editorial Note : In view of the transition of forms from MCA 21 V2 to MCA 21 V3, the MCA has waived additional fees on the filing of various IEPF e-forms (IEPF -1, IEPF-1A, IEPF-2, IEPF-4) and e-verification of claims filed in e-form IEPF-5 till August 16, 2024. Similarly, a one-time relaxation for filing e-verification under the third proviso to rule 7(3) of the IEPFA (Accounting, Audit, Transfer and Refund) Rules has also been provided till August 16, 2024.

- 1.36** SEBI enables Credit Rating Agencies and ESG rating providers to undertake rating activities under IFSCA - **Circular No. SEBI/HO/DDHS/DDHS-POD3/P/CIR/2024/102, Dated 19-07-2024**

Editorial Note : In order to enable ESG rating providers (ERPs) and Credit Rating Agencies (CRAs) to undertake rating activities in the International Financial Services Centres. IFSCA has been added to the list of financial sector regulators at IFSC-GIFT City, Gujarat. Further, ratings undertaken by an ERP and a CRA under the guidelines of IFSCA must be under the purview of IFSCA. Also, any issue arising from the activities of SEBI-registered ERPs and CRAs in the IFSC must be dealt with by the IFSCA.

- 1.37** Insider trading restrictions for Mutual Fund units to be enforced from Nov 1, 2024: SEBI - **Notification No. SEBI/LAD-NRO/GN/2024/195, Dated 25-07-2024**

Editorial Note : SEBI has notified November 1, 2024, as the effective date for the enforcement of norms relating to restrictions on communication about and trading by insiders in the units of mutual funds. It states that an insider cannot trade in the units of a mutual fund scheme when in possession of UPSI, which may have a material impact on the net asset value of a scheme or on the interest of the unit holders of the scheme.

2. SUPREME COURT

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

- 2.1** Where investigation by SEBI revealed that companies floated by petitioners were involved in illegal mobilization of funds, which was in nature of Collective Investment Scheme and petitioners filed instant writ seeking directions to SEBI to liquidate attached assets for purpose of refund monies collected by them to investors, said petitions was to be allowed and High-Powered Sale Committee (HPSC) was to be constituted to auction immovable assets of companies, to extent they were required to satisfy investors' claims and liquidate all other statutory liabilities of Companies - **Balasaheb Keshawrao Bhapkar v. Securities and Exchange Board of India - [2024] 164 taxmann.com 611 (SC)**

3. HIGH COURT

SECTION 79 OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 - BAR OF JURISDICTION

- 3.1** Where petitioner booked an apartment in a project launched by respondent, a government undertaking and paid total consideration for flat i.e. Rs.76.85 lakh in a timely manner and despite paying entire sales cost of flat, flat was never handed over to petitioner, and neither alternate flat had been given to petitioner nor a refund, with appropriate interest, was offered by respondent, structural defects had also been found out in construction after certain persons started occupying flats, and thus, petitioner and several other persons had been left in lurch and had been forced to knock doors of various forums including writ court, instant writ petition was to be allowed - **Sanjay Raghunath Piplani v. National Buildings Construction Corporation - [2024] 164 taxmann.com 389 (Delhi)**

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

- 3.2** Order u.s. 206(4) should make out a prima facie case as to information called for, and how same relates to business of a company being carried on for fraudulent and unlawful purpose, however, in instant case, said linkage was totally absent and, there was no finding even prima facie of petitioner's business being conducted fraudulently or unlawful purpose or in defiance of provisions of Act, etc, on contrary in affidavit in reply it was stated that in impugned notice respondent was not alleging or establishing any fraud against petitioner, but was issued for gathering information and it was an opportunity of being heard, initiation of proceeding under section 206(4) was wholly without jurisdiction - **HDFC Bank Ltd. v. ROC. Mum. - [2024] 164 taxmann.com 143 (Bombay)**

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



- 3.3** Where investigation by SFIO into financial affairs of companies Fortis Healthcare Limited and Religare Enterprises Limited and other sister concerns besides role of various individuals associated with such companies including that of petitioner were commenced, in view of fact that petitioner had sizeable assets and properties, directly or indirectly, outside India in foreign jurisdictions and there was a strong inference that if liberty to go abroad was granted to him, he might not come back to India to face the investigation and trial, as and when it commences, there was no illegality, perversity or incorrect approach adopted by Special Judge in passing impugned order declining suspension of LOC and permission to travel abroad - **Dr. Shivinder Mohan Singh v. Serious Fraud Investigation Office** - [2024] 164 taxmann.com 15 (Delhi)

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

- 3.4** Where plaintiff company, which was struck off from register of companies due to non-filing of financial statements sought to restore company and though NCLT dismissed said application, NCLAT vide its order set aside order of striking off subject to satisfaction of conditions, in view of fact that conditions imposed by NCLAT stand complied with and thus, name of to be restored in register of companies maintained by RoC - **Durga Builders (P.) Ltd. v. Sonal Developers (P.) Ltd.** - [2024] 164 taxmann.com 12 (Delhi)

SECTION 302 OF THE COMPANIES ACT, 2013/SECTION 481 OF THE COMPANIES ACT, 1956 - WINDING UP BY TRIBUNAL - DISSOLUTION OF COMPANY

- 3.5** Where petitioner company was ordered to be wound up and company had no further assets, either movable or immovable, from which any money could be realized, and therefore, no fruitful purpose would be served in keeping winding up proceedings pending, thus, instant application for dissolution of company was to be allowed - **Moradabad Syntex Ltd., In re** - [2024] 163 taxmann.com 778 (Delhi)

SECTION 327 OF THE COMPANIES ACT, 2013 - WINDING UP - PREFERENTIAL PAYMENTS

- 3.6** Where Bank of Baroda (BoB) had dual claims against company (in liquidation); firstly, as a secured creditor and secondly, as a Debenture Trustee and Writ Court adjudicated claim of secured creditors, including applicant as well as BoB up to date of provisional winding up and accordingly, allowed OL to pay Rs. 7.56 crore to BoB against their dues in capacity of a Debenture Trustee and such amount had been adjudicated up till date of appointment of Provisional Liquidator, and subsequently, released Rs. 6.50 crores in favour of BoB in its capacity as a secured creditor,

there was no disparity between secured creditors and thus, instant application by applicant for modification of order of writ court was to be dismissed - **Kostub Investments Ltd. v. Reinz Talbros Ltd.** - [2024] 164 taxmann.com 261 (Delhi)

SECTION 333 OF THE COMPANIES ACT, 2013 - WINDING UP - DISCLAIMER OF ONEROUS PROPERTY

- 3.7** Where sub-demised office space was leased by applicant to respondent company-in liquidation vide registered Indenture of Sub-Lease, which was subsequently mortgaged by respondent in favour of PNB bank to secure credit facilities, in view of fact that applicant had already exercised its option of terminating sub-lease on account of non-payment of rent and other charges and PNB could not claim right in property beyond what was available to company in liquidation during subsistence of sub lease rights, and therefore, instant application by applicant for disclaimer of said property was to be allowed - **Harmuny Entertainment (P.) Ltd. v. Mahuaa Media (P.) Ltd.** - [2024] 164 taxmann.com 33 (Delhi)

SECTION 334 OF THE COMPANIES ACT, 2013 - WINDING UP - TRANSFERS, ETC., AFTER COMMENCEMENT OF WINDING UP TO BE VOID

- 3.8** Where MIDC leased a property in favour of respondent company and applicant company purchased said property and leasehold rights from respondent, subsequent to passing of winding up order against respondent, order of permanent injunction was to be passed restraining official liquidator from disturbing possession of applicant as sale agreement was duly registered after obtaining permission from MIDC and transaction evidenced by sale agreement was not only bonafide but also fair, just and reasonable and deserved to be protected - **Helbon Engineers (P.) Ltd. v. Ferral Anant Machinery Manufacturers (P.) Ltd.** - [2024] 163 taxmann.com 775 (Bombay)

4. NCLAT

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

- 4.1** Where name of company was struck off by ROC on ground that it was not carrying on any business for two immediately preceding financial years as indicated by non-filing of financial statements of company for two or more years, since company was having substantial movable as well as immovable assets, its name could not be struck off, impugned order was to be set aside and name of company was to be restored to Register of Companies - **Jagjit Singh Suri v. Registrar of Companies** - [2024] 164 taxmann.com 204 (NCLAT-New Delhi)



FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1** RBI restricts FPIs from investing in new 14-year and 30-year G-Secs under Fully Accessible Route - **Circular No. RBI/2024-25/56 FMRD. FMID. Mo. 03/14.01.006/2024-25, Dated 29-07-2024**

Editorial Note : Earlier, RBI vide circular dated March 30, 2020, introduced the 'Fully Accessible Route' (FAR), where certain specified categories of Central Government securities (G-Secs) were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors. In consultation with the Government, RBI has excluded government securities of 14-year and 30-year tenors from the Fully Accessible Route for investment by foreign portfolio investors (FPIs).

- 1.2** IFSCA introduces norms for the regulation and supervision of Payment and Settlement Systems - **Notification No. IFSCA/GN/2024/005, Dated 12-07-2024**

Editorial Note : The IFSCA has notified the IFSCA (Board for Regulation and Supervision of Payment and Settlement Systems) Regulations, 2024. These regulations cover definitions and norms related to the composition of the Board, its duties, powers, & functions, vacation of office, meetings of the Board & quorum, constitution of subcommittees & advisory committees, and reporting to the Authority.

- 1.3** RBI mandates ADs to obtain Form A2 for all cross-border remittances - **Circular No. RBI/2024-25/47 A.P. (DIR Series) Circular No. 13, Dated 03-07-2024**

Editorial Note : RBI has mandated authorised dealers (ADs) to obtain Form A2 in physical or digital form for all cross-border remittances, irrespective of value of the transaction. Earlier, the RBI allowed ADs to release foreign exchange for any current account transaction based on a simple letter containing basic information, without the need for Form A2. This exemption was subject to an upper limit of USD 25,000 or its equivalent.

- 1.4** RBI removes limit on the amount of remittance via online submission of Form A2 - **Circular No. RBI/2024-25/46 A.P. (DIR Series) Circular No. 12, Dated 03-07-2024**

Editorial Note : The RBI has now permitted all ADs to facilitate remittances based on the online/physical submission of Form A2 with no limit on the amount that can be remitted through the online Form A2. Earlier, RBI permitted AD Category-I banks & AD Category-II entities to allow their customers to submit Form A2 via online mode, subject to certain restrictions. However,

the online facility was available for transactions with an upper limit of USD 25,000 for individuals & USD 1,00,000 for corporates.

- 1.5** RBI notifies effective date for Exim Bank's Line of Credit for Solar Plant at Cheddi Jagan Airport, Guyana as 24.06.2024 - **Notification No. RBI/2024-2025/48 A.P. (DIR Series) Circular No. 14, Dated 08-07-2024**

Editorial Note : Earlier, Exim Bank entered into an agreement with the Government of the Co-operative Republic of Guyana, for making available supported Line of Credit (LoC) of USD 2.50 mn for installation of Solar Photo Voltaic Power Plant at Cheddi Jagan International Airport in Guyana. Now, Agreement under the LoC is effective from June 24, 2024. Under the LoC, the last date for disbursement will be 48 months after scheduled completion date of the project.

- 1.6** RBI permits banks to use ratings of 'Brickwork Ratings India Private Limited' for bank loans up to Rs 250 crore - **Circular No. RBI/2024-25/50 DOR.STR.REC.26/21.06.008/2024-25, Dated 10-07-2024**

Editorial Note : The RBI has permitted banks to use the ratings of the 'Brickwork Ratings India Private Limited' (the CRA) to risk weight their claims for capital adequacy purposes subject to certain conditions. One condition is that, for fresh rating mandates, ratings may be obtained from the CRA for bank loans up to Rs 250 crore. Further, regarding existing ratings, CRA may undertake rating surveillance irrespective of the rated amount, till the residual tenure of such loans.

- 1.7** RBI allows authorised persons to facilitate remittances for all permissible purposes under LRS to IFSCs - **Circular No. RBI/2024-25/49 A.P. (DIR Series) Circular No. 15, Dated 10-07-2024**

Editorial Note : Presently, remittances under LRS to IFSCs can be made only for making investments in IFSCs in securities, and payment of fees for education to foreign universities/institutions in IFSCs. Now, the RBI has allowed Authorised Persons to facilitate remittances for all permissible purposes under LRS to IFSCs. This includes availing financial services /products as per the IFSCA Act, 2019 and for all current or capital account transactions in any other foreign jurisdiction via an FCA held in IFSCs.

- 1.8** IFSCA amends IFSCA (Banking) Regulations; designates 4 additional currencies as 'specified foreign currencies' - **Notification No. IFSCA/GN/2024/004; Dated 04-07-2024**

Editorial Note : IFSCA has notified IFSCA (Banking) (Amendment) Regulations, 2024. An amendment has been made to the First Schedule relating to



'specified foreign currencies'. The IFSCA has designated four additional currencies as 'specified foreign currencies' under First Schedule. These currencies include Swedish Krone (SEK), New Zealand Dollar (NZD), Danish Krone (DKK) and Norwegian Krone (NOK). The term 'specified foreign currencies' refers to currencies specified in First Schedule to the regulations.

- 1.9** RBI extends due date for filing of FLA return to 31-07-2024

Editorial Note : RBI has extended the due date for filing of Foreign Liability and Assets (FLA) return for the F.Y. 2023-24 to 31st July 2024. Originally the date for filing the FLA Annual Return for Financial year (FY) 2023-24 was 15th July 2024. Considering the technical glitches on the FLAIR portal, the same has been extended. FLA return is required to be filed annually on FLAIR (a reporting platform) by Cos., LLPs etc. that have received FDI and/or made overseas investments.

- 1.10** RBI issues revised master directions on 'Fraud Risk Management' for the Regulated Entities - **Press Release No. 2024-2025/698; Dated 15-07-2024**

Editorial Note : RBI has issued three revised master directions on fraud risk management for the Regulated Entities (REs) viz. (i) Commercial Banks (including RRBs) and All India Financial Institutions, (ii) Cooperative Banks and (iii) NBFCs (including HFCs). These master directions are principle-based and strengthen the role of the Board in overall governance and oversight of fraud risk management in REs. These directions also emphasise the need for a robust internal audit and control framework in REs.

- 1.11** RBI revises framework for 'Domestic Money Transfer'; mandates remitting banks to keep beneficiary records for cash payout - **Circular No. RBI/2024-25/52 CO.DPSS.POLC.No.S415/02.27.019/2024-25, Dated 24-07-2024**

Editorial Note : RBI has revised the extant regulatory framework of domestic money transfer services by making know-your-customer (KYC) record requirements more stringent. Under the new framework, RBI mandates the remitting bank to obtain and keep a record of the beneficiary's name and address for cash payout. Further, remitting banks / Business Correspondents (BCs) must register the remitter based on a verified cell phone number and a self-certified 'Officially Valid Document (OVD)'.

- 1.12** Govt. revises Prevention of Money-Laundering rules to enforce stringent KYC updates by reporting entities - **Notification G.S.R No. 419(E), Dated 19-07-2024**

Editorial Note : Govt. has notified Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2024. As per amended norms, the reporting entity must seek the KYC Identifier or retrieve the KYC

Identifier from the Central KYC Records Registry for client identity verification or ongoing due diligence. Also, the client must only be required to submit KYC records or additional documents if the validity period of downloaded documents has lapsed or the KYC information retrieved needs to be completed.

- 1.13** RBI issues 'Prompt Corrective Action' framework for Primary (Urban) Cooperative Banks - **Circular No. RBI/2024-25/55 DOS.CO.PPG.SEC.No.8/11.01.005/2024-25, Dated 26-07-2024**

Editorial Note : RBI has issued a prompt corrective action (PCA) framework for primary urban cooperative banks. The objective of framework is to enable supervisory intervention at an appropriate time and require the UCBs to initiate and implement remedial measures in a timely manner to restore their financial health. The framework shall apply to all UCBs under Tier 2, Tier 3 and Tier 4 categories except UCBs under All Inclusive Directions. The provisions of framework will be effective from April 01, 2025.

- 1.14** RBI issues master direction on Overseas Investment - **FED Master Direction No.15/2024-25, Dated 24-07-2024**

Editorial Note : RBI has issued the master direction on Overseas Investment (OI). This master direction compiles instructions issued on Overseas Investment by persons resident in India. Further, these directions lay down the modalities for conducting the foreign exchange business by the Authorised Persons with their customers/ constituents with a view to implementing the OI Rules and the OI Regulations.

2. SUPREME COURT

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

- 2.1** Order XXI Rule 90 of CPC does not apply to a writ petition under Article 226 challenging an auction sale in violation of mandatory provisions - **Al-Can Export (P.) Ltd. v. Prestige H.M. Polycontainers Ltd. - [2024] 164 taxmann.com 259 (SC)**

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

- 2.2** SC continues interim bail to CM Kejriwal pending a larger Bench decision on whether the doctrine of 'need & necessity to arrest' applies to an arrest u/s 19 of PMLA - **Arvind Kejriwal v. Directorate of Enforcement - [2024] 164 taxmann.com 318 (SC)**

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



4. SAFEMA

SECTION 3 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - DEALING IN FOREIGN EXCHANGE ETC.

- 4.1** Where company O was merged with appellant company and for alleged violation of Section 8 (3) & 8 (4) read with Section 68 of FERA by O, a (SCN) was issued and subsequently, penalty was imposed, in view of fact that SCN was issued to previous address of company O, which was returned, also contravention was with respect to remittance of NLG 76913.27 which was only 1.76% to alleged contravention, as wrongly mentioned in impugned order, therefore, in interest of justice, penalty amount was to be reduced from Rs.40 lakh to Rs.2.5 lakh - **Hindustan National Glass & Industries Ltd. v. Special Director, Directorate of Enforcement - [2024] 164 taxmann.com 613 (SAFEMA - New Delhi)**

- 4.2** Where firm S affected export of three consignments of ready made garments to Dubai for a value of Rs. 2.51 crore and though it failed to recover amount and secure export value of entire sum, it took benefit of drawback, thus, there was violation of section 18(2) and 18(3) r.w.s. 64(2) of FERA, 1973, and accordingly, Adjudication Officer imposed imposed heavy penalty of Rs. 50 lacs on appellant while imposed penalty of Rs.45 lacs on main defaulter, which was disproportionate, and thus, to make penalty rational, penalty amount of Rs.50 lakh was to be reduced to Rs. 14 lacs - **V. K. Singh v. Assistant Director - [2024] 164 taxmann.com 336 (SAFEMA - New Delhi)**

- 4.3** Where ED imposed penalties on appellant for alleged violations of sections 3 and ED's findings were not solely based on statements of appellant but also on documents seized from his business premises, thus, there was no error in findings recorded by ED, however, penalty for contravention of Section 3 was to be reduced from Rs.5 lakhs to Rs. 1.5 lakhs and as appellant had already deposited Rs.1 lakh towards pre deposit and Rs.50 thousand was still lying with ED after confiscation, thus amount lying with ED should be taken towards deposition of penalty amount, resulting in partial allowance of appeal - **D. SelvaKumar v. Special Director Directorate of Enforcement - [2024] 164 taxmann.com 125 (SAFEMA - New Delhi)**

SECTION 4 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - HOLDING OF FOREIGN EXCHANGE, ETC.

- 4.4** Where for alleged contravention of Section 4(1) of FEMA, penalty was imposed upon appellant with giving an opportunity of hearing, impugned order by Adjudicating Authority imposing penalty on appellant, was passed in violation of principle of natural justice, matter was to be remand back to Adjudicating Authority for hearing of case afresh - **Mrs. A. A. Parekh v. Special Director, Directorate of Enforcement - [2024] 164 taxmann.com 576 (SAFEMA - New Delhi)**

SECTION 5 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - ATTACHMENT OF PROPERTY INVOLVED IN MONEY LAUNDERING

- 4.5** Where one of trustee of appellant-trust had infused Rs. 9.01 crore with Trust which was allegedly generated out of criminal activities by said trustee and said amount was utilized by trust for purpose of construction of property in question and when trust came to know about fact, they asked said trustee to vacate post of trusteeship, but alleged proceeds of crime generated out of criminal activities was not returned to him, and thus, there was subjective satisfaction of ED that property in question was liable to be attached, and accordingly, instant appeal against order by Adjudicating Authority confirming PAO of property in question was to be dismissed - **Orissa Millennium Education Trust v. Deputy Director Directorate of Enforcement - [2024] 164 taxmann.com 66 (SAFEMA - New Delhi)**

SECTION 8 OF THE FOREIGN EXCHANGE REGULATION ACT, 1973 - RESTRICTIONS ON DEALING IN FOREIGN EXCHANGE

- 4.6** Where in year 1994, appellant joined company 'Grapco' as a clerk and there was nothing on record that being clerk, he was instrumental in conducting business of company, he could not be made vicariously liable for violation of FERA Act in year 1994-1995, simply because he was appointed as a director for a brief period from 20-6-2000 to 19-7-2001 - **Mahesh Kumar Nathany v. Special Director, E.D. - [2024] 164 taxmann.com 89 (SAFEMA - New Delhi)**

SECTION 10 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - AUTHORIZED PERSON

- 4.7** Where appellant, employee of company accused of mis-declaring foreign exchange, was found drawing and possessing foreign exchange beyond permissible limit without permission of RBI and an penalty was imposed on appellant, since applying for foreign exchange was managed by directors of company and there was no statutory duty on part of appellant to verify said fact, there was no reasonable ground to enforce penalty upon him as he has not committed any contravention either directly or vicariously and, therefore, order confirming imposition of penalty was to be set aside qua appellant - **Faiyaz Shamim v. Directorate of Enforcement - [2024] 164 taxmann.com 287 (SAFEMA - New Delhi)**

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

- 4.8** Where during search, Enforcement Directorate (ED) seized foreign currencies of value Rs.2.99 lakh and Indian currency of Rs.9.29 lakh from premises of appellant and a bank passbook of overseas account was also found from residential premises of appellant and total credits in passbook were found to be US\$5.95 lakh and RMB 5.78 lakh and though, Adjudicating Authority found no contravention of FEMA for seized Indian and foreign currency, contravention of section 3 for amounts US\$5.95 lakh and RMB 5.78 lakh by



appellant was established since he failed to provide adequate explanation as to how said passbook of Chinese bank account remained in his possession, therefore, penalty of Rs. 46. 40 lakh imposed on appellant were disproportionately higher and therefore, same was to be reduced to Rs.15 lakh - **Vaseem Kapadia v. Special Director Directorate of Enforcement - [2024] 164 taxmann.com 450 (SAFEMA - New Delhi)**

- 4.9** Where respondents were indulged in illegal business of buying foreign exchange from local black market so as to sell same to passengers who were travelling abroad and foreign currencies of various countries as well as Indian currencies were seized from respondents, and thus, Adjudicating Authority by impugned order ordered confiscation of seized foreign currency under section 13(2) of 1999 Act, it however, refrained from passing any order of confiscation for seized Indian currency thought seized Indian currency was sale proceed arising from foreign exchange transactions, confiscation order for seized Indian currency was to be issued - **Joint Director, Directorate of Enforcement v. Shaikh Mohd. & Abbas Mohd. - [2024] 164 taxmann.com 39 (SAFEMA - New Delhi)**

SECTION 18 OF THE FOREIGN EXCHANGE REGULATION ACT, 1973 - PAYMENT FOR EXPORTED GOODS

- 4.10** Where appellant submitted 10 GR forms for exports under two firms, Universal Traders and Zen Series, but only exported goods using 6 forms from Universal Traders and 5 from Zen Series, he also failed to realize export proceeds for 1 GR from Zen Series and 6 GRs from Universal Traders, without providing evidence of reasonable efforts to recover amounts, this constituted a violation of section 18(2) of 1973 Act and therefore, Adjudicating Authority's decision to impose a penalty of Rs. 70 lakh was upheld, and appeal was dismissed - **Rajiv Khanna v. Special Director Directorate of Enforcement - [2024] 164 taxmann.com 361 (SAFEMA - New Delhi)**

SECTION 49 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - REPEAL AND SAVING

- 4.11** Where Adjudicating Officer had noticed contravention of FERA by appellant in year 1999, i.e. much before commencement of FEMA and inquiry against appellant was initiated on 14-5-1999 with issuance of memorandum, proceedings under section 51 of FERA initiated by Adjudicating Officer after sunset period i.e. on 14-4-2004 was within jurisdiction - **Tata Korf Engineering Services Ltd. v. Special Director - [2024] 164 taxmann.com 314 (SAFEMA - New Delhi)**



INSOLVENCY AND BANKRUPTCY CODE

1. HIGH COURT

SECTION 35 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - POWERS AND DUTIES OF

- 1.1 Where liquidator of a company was suspended by respondent-IBBI for period of 2 years on ground that he had appointed a firm, in which he himself was a partner, to provide support services and allowing said firm to raise bills which were higher than fee of liquidator himself, since actual motive of liquidator behind appointing said firm was to increase his own fee by circumventing Regulation 4 of Liquidation Regulations, impugned order of suspension of liquidator was to be upheld - **Sundaresh Bhat v. Insolvency And Bankruptcy Board Of India** - [2024] 164 taxmann.com 147 (Delhi)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES

- 1.2 Where Petitioner-Association was involved in proceedings presently pending before Mumbai bench of NCLT and it filed instant writ seeking declaration / direction, to hold rule 45(6) of NCLT rules, 2016 as null and void ab initio as if non est, being hit by void for vagueness doctrine, in view of fact that any decision with regard to issue raised in writ petition would have an impact on all NCLT benches spread across country as well as Appellate Forum, i.e., NCLAT, best way forward would be that instant writ petition would be treated as a representation to be dealt with by Chairperson, NCLAT - **Gujarat Operational Creditors Association v. National Company Law Tribunal** - [2024] 164 taxmann.com 416 (Delhi)

SECTION 96 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - INTERIM-MORATORIUM

- 1.3 Where petitioner extended personal guarantee in favour of lender bank and on default of repayment by principal borrower bank initiated action against petitioner under SARFAESI Act, however, bank could not proceed further under SARFAESI Act, in view of interim moratorium under section 96 operating on account of insolvency proceedings pending against petitioner, in his capacity as a personal guarantor and, therefore, writ petition filed by petitioner was to be disposed along with a liberty to approach DRT subsequent to interim moratorium - **Sanjay Dhingra v. IDBI Bank Ltd.** - [2024] 164 taxmann.com 233 (Delhi)

SECTION 208 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONAL - FUNCTIONS AND OBLIGATIONS OF

- 1.4 Where petitioner filed a writ petition seeking a direction to IBBI to take appropriate steps against liquidator and to come up with appropriate guidelines and due process for dealing with actions of insolvency professionals who are suspended by Disciplinary Committee of IBBI, since liquidator guilty only of charge of paying excess fee to a support service and not of other charges, instant Court had not interfered with findings of IBBI on said charge but had modified order of suspension to period undergone, writ petition was to be dismissed - **RK Industries Unit II LLP v. Union Of India** - [2024] 164 taxmann.com 418 (Delhi)

- 1.5 Where petitioner was appointed as liquidator of a corporate debtor, however, on date of appointment, he did not possess valid Authorization for Assignment as per IBBI Regulations, thus, he could not act as a liquidator and order removing him as liquidator was justified - **CA V. Venkata Siva Kumar v. Disciplinary Committee Insolvency and Bankruptcy Board of India** - [2024] 164 taxmann.com 260 (Madras)

SECTION 220 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - DISCIPLINARY COMMITTEE - APPOINTMENT OF

- 1.6 Where petitioner, an insolvency professional, filed a writ petition against order passed by Disciplinary Committee under IBBI, which suspended their registration for one year on ground that said order was invalid because it was issued by a single member Disciplinary Committee, contrary to section 220(1) since, said legal issue had already been adjudicated and a judgment with regard to same was reserved by Roster Bench, instant Court directed respondents to file a counter affidavit within a period of two weeks and matter was directed to be listed on 3-7-2024 - **Anil Goel v. Insolvency and Bankruptcy Board of India** - [2024] 164 taxmann.com 358 (Delhi)

2.NCLAT

SECTION 3(12) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEFAULT

- 2.1 Where appellant filed an application under section 7 against corporate debtor, since appellant was an allottee under a real estate project, it was required to comply with second proviso to section 7(1) as inserted by Amendment Act 1 of 2020, impugned order passed by NCLT rejecting section 7 application was justified - **Rita Malhotra v. Orris Infrastructure (P.) Ltd.** - [2024] 164 taxmann.com 232 (NCLAT- New Delhi)

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - FINANCIAL DEBT

- 2.2 Where petitioner bank sanctioned working capital facilities to respondent No.1, in which corporate debtor, acting as a guarantor and executing loan security



documents, during corporate debtor's liquidation, liquidator sought to evict respondent No.1 and recover unpaid rent, however, petitioner bank claiming exclusive charge over superstructures on corporate debtor's land, sought to be impleaded in main appeal, since petitioner was not a necessary party to appeal, NCLT dismissed their petition, as their involvement as a stakeholder did not warrant their inclusion - **Canara Bank v. Bhagyanagar Hotels (P.) Ltd. - [2024] 164 taxmann.com 202 (NCLAT - Chennai)**

SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- 2.3** Where operational creditor had failed to bring forth any agreement between parties that a default in payment would attract interest and corporate debtor in its reply to section 8 demand notice and reply to section 9 application had clearly and categorically contested levy of any interest amount and also denied to pay any such interest, since claim of interest being disputed, no error had been committed by NCLT in rejecting application u.s. 9 - **Bajrang Steel Trading Company (India) (P.) Ltd. v. Ramkrishna Engineering (P.) Ltd. - [2024] 164 taxmann.com 385 (NCLAT- New Delhi)**
- 2.4** Whereas per lease agreement between less or and corporate debtor, lessee was to use premises for its business of multipurpose food business and, for any commercial activity on said premises, any commercial conversion charges were to be paid by lessee, since rental dues and GST were not paid by corporate debtor to operational creditor as per lease deed, same would be treated as operational debt u.s. 5(21) - **Vaibhav Aggarwal v. Sunil Sachdeva - [2024] 164 taxmann.com 313 (NCLAT- New Delhi)**

SECTION 10A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - SUSPENSION OF INITIATION OF

- 2.5** Where operational creditor challenged NCLTs on ground that it had filed an application u.s. 9 for an unpaid amount but, NCLT dismissed said application, citing section 10A, which provides protection for default occurred during a specific period, since operational creditor had not placed any evidence on record to show how default on third invoice dated 24-3-2020 did not arise during section 10A prohibited period, impugned order passed by NCLT holding that said invoice was hit by section 10A and rejecting section 9 application was to be upheld - **Manishaas Infratecho Solutions (P.) Ltd. v. Bhonu Hulshi Real Estate (P.) Ltd. - [2024] 164 taxmann.com 641 (NCLAT- New Delhi)**
- 2.6** Section 10A mandates that no application can be filed for defaults committed during 10A period i.e., from 25-3-2020 to 24-3-2021, since appellant filed an application under section 7 against corporate debtor, cited date of default as 5-9-2020, which fell within prohibited period u.s. 10A, NCLT did not commit any error in rejecting application of appellant for change in date of default - **Inakshi Sobti v. Starlight Systems (I) (P.) Ltd. - [2024] 164 taxmann.com 335 (NCLAT- New Delhi)**

SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- 2.7** Where CoC had approved resolution plan with 100 per cent voting share after considering its feasibility and viability, such decision of CoC was a commercial decision and commercial wisdom of CoC in approving resolution plan was not to be interfered in exercise of jurisdiction of judicial review either by NCLT or NCLAT and, thus, NCLT was justified in approving resolution plan of successful resolution applicant (SRA) - **Madhukar Shetty Ex-Director of Genesis Resorts (P.) Ltd. v. Bank of Baroda - [2024] 164 taxmann.com 290 (NCLAT- New Delhi)**
- 2.8** Where appellant-resolution professional filed an application before NCLT seeking directions for respondents to contribute Rs.1.56 crores with interest to corporate debtor's assets since, resolution plan had already been approved by NCLT, RP became functus officio and he had no locus standi to file any application on behalf of corporate debtor - **Regen Powertech (P.) Ltd. v. Veeral Controls (P.) Ltd. - [2024] 164 taxmann.com 91 (NCLAT - Chennai)**
- 2.9** Where CoC had approved a resolution plan, which directed haircut to financial creditors and decided to handover units to Home-buyers and, appellants-dissenting financial creditors were entitled to receive payments as per section 30 (2) (b), since amounts offered to dissenting financial creditors was in accordance with said provision, there was no infirmity in NCLT's order approving resolution plan - **Beacon Trusteeship Ltd. v. Jayesh Sanghrajka, Resolution Professional of Radius Estates & Developers (P.) Ltd. - [2024] 163 taxmann.com 777 (NCLAT- New Delhi)**

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF - LIQUIDATION OF CORPORATE DEBTOR

- 2.10** Where corporate debtor had only one valuable asset i.e. immovable property, in such case, sale of corporate debtor as going concern could not be accepted and liquidator was to proceed to sell assets of corporate debtor and fix reserve price as per average of two valuation reports received during CIRP process and, therefore impugned order passed by NCLT liquidating corporate debtor was to be upheld - **Amit Ahirrao v. Anagha Anasingharaju - [2024] 164 taxmann.com 63 (NCLAT- New Delhi)**
- 2.11** Where appellant challenged NCLT's order on ground that NCLT without any reason passed a non-speaking order, granting an ex-post facto approval however, only asset of corporate debtor was bonds held by appellant and, in interest of corporate debtor to maximize value during liquidation, liquidator's application was allowed since, adequate reasons were given by NCLT for



granting ex-post factor approval, impugned order passed by NCLT was justified - ***Slimline Realty (P.) Ltd. v. Jigar Bhatt*** - [2024] 164 taxmann.com 35 (NCLAT- New Delhi)

SECTION 35 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - POWERS AND DUTIES OF

- 2.12** Regulation 9(C) of Liquidation Regulations mandates cooperation from relevant persons for conducting liquidation and if such cooperation is not provided, Liquidator can seek relief from NCLT; where CIRP petition led to a liquidation order, after which liquidator sought to evict appellant from corporate debtor's premises and recover unpaid rent, appellant's occupation post-lease expiration was unlawful, impugned order passed by NCLT ordering appellant to vacate and pay arrears was justified - ***Canara Bank v. Bhagyanagar Hotels (P.) Ltd.*** - [2024] 164 taxmann.com 202 (NCLAT - Chennai)

SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

- 2.13** Where appellant filed instant appeal seeking condonation of delay of 3 days, however, appellant did not apply for a Certified Copy before 30-day limitation period expired, it could not benefit from an extension of this period, since there was a dereliction and lack of diligence on part of appellant to procure a Certified Copy, no exclusion of Limitation could be granted -

State Bank of India v. India Power Corporation Ltd.
- [2024] 164 taxmann.com 362 (NCLAT - Chennai)

SECTION 238 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - OVERRIDING EFFECT OF CODE

- 2.14** Where appellant Financial creditor filed a petition under section 7 to initiate Corporate Insolvency Resolution Process (CIRP) against respondent but NCLT rejected said application on ground that issues in petition were substantially similar to those pending in DRAT however, proceedings under section 19 of Recovery of Debts due were for purpose of recovery dues, while proceedings under section 7 of IBC were for insolvency resolution of corporate debtor, since both proceedings covers entirely different field and rejection of proceedings under section 19 by DRT could not operate as any bar for application under section 7, NCLT committed error in rejecting section 7 application - ***State Bank of India v. Abhijeet Ferrotech Ltd.*** - [2024] 164 taxmann.com 449 (NCLAT- New Delhi)

3. NCLT

SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR

- 3.1** NCLT cannot refer a CIRP plea u/s 9 of IBC for arbitration - ***Board of Control For Cricket In India v. Think & Learn (P.) Ltd.*** - [2024] 164 taxmann.com 390 (NCLT-Beng.)



ACCOUNT AND AUDIT UPDATES

1.1 ICAI seeks members' views on SEBI's Initiatives: Ease of Business and Mutual Fund Disclosure

Editorial Note : The Committee on Financial Markets and Investors Protection (CFMIP) of ICAI, actively seeks the valuable perspectives of its diverse members regarding the consultation paper released by the Securities and Exchange Board of India (SEBI) on disclosure of Risk-Adjusted Return by mutual funds and facilitating the ease of doing business and harmonization of the provisions of ICDR and LODR Regulations.

1.2 Implementation guide on revision in Form No 3CD and 3CEB issued by ICAI

Editorial Note : Tax audit under section 44AB of the Income-tax Act, 1961 is a significant compliance requirement aimed at ensuring transparency and fairness in tax assessments. The Central Board of Direct Tax (CBDT) has amended Form No. 3CD and Form 3CEB vide notifications issued in March 2024. The Direct Tax Committee of ICAI has issued an implementation guide on revision in Form No 3CD and 3CEB.

1.3 ICAI's Quality Review Board issues guidance on observed non-compliances

Editorial Note : Review of the quality of audit services performed by audit firms is an important mechanism to improve audit quality. In this regard, the role performed by the QRB over the years is significant. Now, the QRB of ICAI has issued guidance on non-compliance (Volume 2). The guidance note is classified into 2 parts, Part 1 contains the observations related to Engagement and Quality Control Standards. Part 2 contains the observations related to CARO and internal financial controls.

1.4 ICAI invites member's comments on the exposure draft for Audit Quality Maturity Model (AQMM) version 2.0

Editorial Note : The AQMM is instrumental in evaluating firm quality and enhancing competencies. Effective from April 1, 2023, AQMM v-1 consists of three sections that assess audit quality based on scores received in each section. Recently, the ICAI's Center for Audit Quality Directorate issued an exposure draft for the proposed AQMM v-2.0. This advanced version includes more clauses in each section to improve the quality assessment.

1.5 ICAI invites public comments on the exposure draft of SA for Less Complex Entities

Editorial Note : The AASB of ICAI has issued an exposure draft for Standard on Auditing of Less Complex Entities (LCE). This standard shall be applicable on the audit of entities which satisfies the condition to be LCE as per Part A of the exposure draft. Before finalizing exposure draft, ICAI seeks stakeholder's comments to make the standard more effective and useful. Read to know the detailed ICAI's notification and last date for submission of comments.

1.6 ICAI Introduces temporary exception in AS 22 for Pillar Two Income Taxes

Editorial Note : The ICAI has introduced a temporary exception in AS 22 to defer the recognition and disclosure of deferred tax assets and liabilities related to the OECD/G20's Pillar Two Model Rules. These amendments, effective from April 1, 2024, also include targeted disclosure requirements for affected entities.



(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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APPLICATION FOR MEMBERSHIP

**2 Pcs.
Pass Port
Colour
Photographs**

To
The Hony' Secretary,
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place, Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.

I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

1. Name in Full (Mr. / Mrs. / Miss) : _____
(BLOCK LETTERS)
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Qualifications : _____
5. Professional Status (Pls. specify) : ☐ In Practice ☐ In Service ☐ In Business ☐ Others
6. Organisation : _____
8. Mem. No. of CA/CS/ICWAI/Bar Council : _____
9. Blood Group : _____ (Self) _____ (Spouse)
10. Name of Spouse : _____
11. Office Address : _____

12. Residence Address : _____

13. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
Mobile : _____ E-mail : _____
14. Address where Circular etc. should be sent : ☐ Office ☐ Residence
- Enclosed herewith Rs. _____ (Rupees _____)
- by Cash/Cheque No. _____ Dated _____ Drawn on _____
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NOTES : 1. Fee for Life Membership (a) Individual Rs. 7,500/- (G.S.T. Extra @ 18%), (b) If application is made within a period of 5 years of attaining first professional qualification Rs. 5,000/- (G.S.T. Extra @ 18%), (c) Corporate Bodies Rs. 7,500/- (G.S.T. Extra @ 18%).

2. Cheques should be drawn in favour of **"Direct Taxes Professionals' Association"**.

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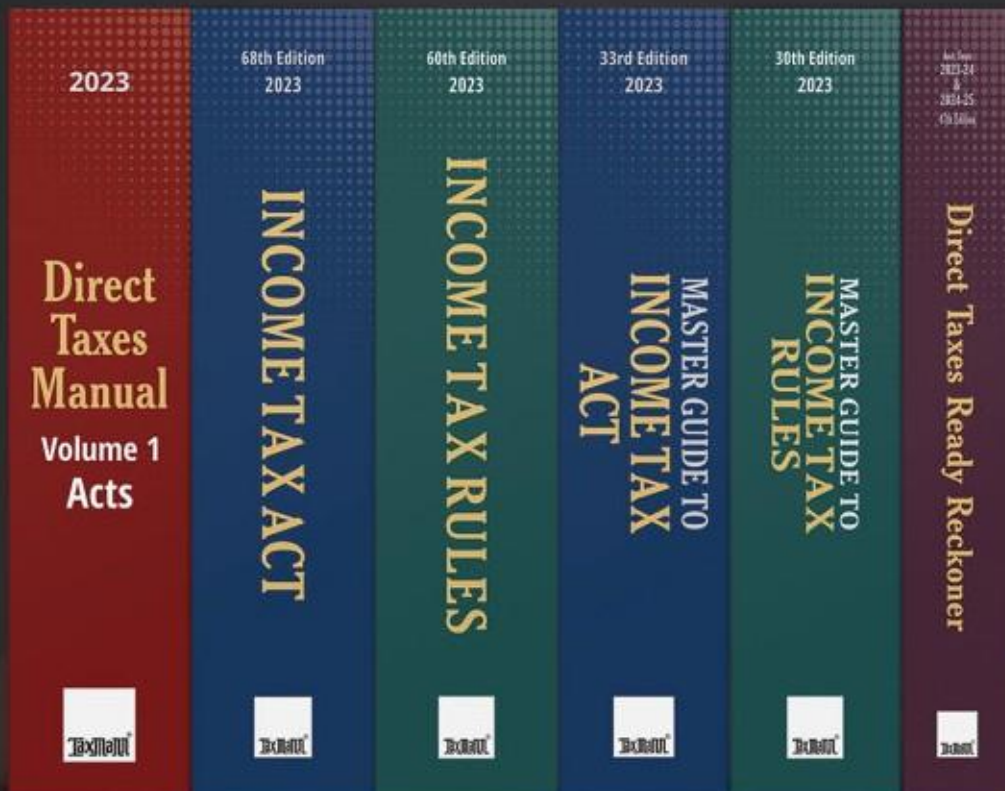
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