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Total no. of page: 88

....From the Desk of Editors

Respected Seniors and My Dear Friends,

We are pleased to present before you DTPA e-Journal for December 2024 for term 2024-2025 which inter alia, contains diversified area of updates on various statutes which we are sure that the readers of our Monthly Journal will find useful in their profession.

The long awaited winter season, a so-called very pleasant season from the angle of fooding and clothing & which, most of we long for, has set-in, giving a sense of relief from hot and sluttery weather. It is the time to relax and enjoy the pleasant weather, which is a GIFT OF NATURE. DTPA has organized a Picnic on 29th instant near Kolkata, the details of which is there inside this issue. Our Association has also organized a Residential Conclave'2025 from 20th March 2025 to 23rd March 2025 at Lucknow and Ayodhya, the details whereof is also inside this issue. We welcome each one of you to join us in these fellowship programs.

Vivad se Vishwas Scheme (VSVS) 2024, which commenced w.e.f. 1st October 2024 is in existence still now and is going to expire on 31st January, 2025. To clear the doubts of We Professionals in giving implementation to the said scheme, Income Tax Department Officials had conducted an Outreach Programme at our DTPA Conference Hall on 11th instant which was attended by a good number of members. Maximum doubts were got cleared by the Learned Deputy Commissioners present thereat and based on the suggestions of We Professionals, very recently, Income Tax Department has come up with a Circular being Circular No. 19 dated 16.12.2024 about Guidance Note 2/2024 on provisions of the Direct Tax Vivad se Vishwas Scheme, 2024 -clarifying doubts in connection with the said Scheme and the said Circular is available on the website of the Income Tax Department.

The GST collection report for November 2024 was released on 1st December 2024 by the GST Network. As per the detailed advisory released on the GST portal, the gross monthly GST collection stands at Rs. 1,82,269 crore as against the GST collections of last month which stood at Rs. 1,87,346 crores.

The DTPA Journal Committee warmly invite accomplished fellow professionals to embrace opportunity to devote their valuable time to craft enlightening articles, enrich the discourse within our esteemed profession and pen down wonderful articles in their areas of expertise as also provide an opportunity to speak on the DTPA Platform.

To quote "The Institute of Chartered Accountants of India (ICAI)"- "By joining tax professional associations, tax professionals can enhance their professional skills, expand their network, and continue to the development of the tax profession."

We wish you all our heartiest Greetings for upcoming Christmas and a very blissful New Year 2025.

Jai Hind!! Jai DTPA!!

With Best Regards

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

Mohan Lal Gupta
Co-Chairman
Journal Sub-Committee, DTPA

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....From the desk of President

Dear Esteemed Members,

As the calendar year draws to a close, we find ourselves in a moment of both reflection and anticipation. December is a time to look back on the achievements and challenges of the past year while preparing to embrace the opportunities and responsibilities of the year ahead.

The year 2024 has been a significant one for the Direct Taxes Professionals' Association. Together, we have accomplished milestones that have further solidified our position as a leading body in the field of taxation. Through our collective efforts, we have hosted numerous insightful seminars, workshops and panel discussions, each aimed at enhancing the knowledge and skills of our members. These initiatives not only deepened our understanding of complex tax issues but also strengthened the camaraderie among professionals in our community.

As we enter the festive season, it is essential to acknowledge the dynamic and ever-evolving nature of direct taxation. The pace of regulatory changes and the introduction of new compliance requirements demand that we, as professionals, remain vigilant and proactive. Staying informed is no longer a choice but a necessity. I urge each of you to invest time in continuous learning and to leverage the resources and platforms offered by the association to stay ahead of the curve.

Looking forward, our association has an exciting array of initiatives planned for 2025. These include advanced training programs, networking events and interactive forums designed to address both current challenges and emerging trends in taxation. Your active participation in these events will not only enhance your professional growth but also contribute to the collective success of our association.

Equally important is our responsibility to nurture the next generation of tax professionals. By sharing our expertise, guiding young professionals and fostering a spirit of mentorship, we can ensure the continued excellence and integrity of our field.

As President, I would like to take this opportunity to express my profound gratitude to the executive committee, the organizing teams and each member who has contributed to our success this year. Your unwavering dedication and commitment have been the bedrock of our achievements.

On behalf of the Direct Taxes Professionals' Association, I extend my warmest wishes to you and your families for a joyous holiday season and a prosperous New Year. May the coming year bring us all opportunities for growth, success and meaningful contributions to our profession.

Let us step into 2025 with renewed enthusiasm, a shared vision, and an unwavering commitment to excellence.

Warm regards,

CA Barkha Agrawal

President

20th December, 2024

Glimpses of Study Circle Meeting on Waiver of Interest and Penalty u/s. 128A by CA Swapnil Jain on 21.11.2024 at DTPA Conference Hall



Felicitatation Cermony of Shivani Agarwalla for winning her sixth Gold at International Kettlebell Championship on 25.11.2024 at DTPA Conference Hall



Compliance Calendar for December, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th December 2024	Nov-24	Due date for deposit of Tax deducted/collected for the month of November, 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 December 2024	Nov-24	Issuance of TDS certificate for Tax deducted under Section 194-IA, 194-IB, 194M	
	15th December 2024	AY 2025-26	Advance Tax Payment for Q3- FY 24-25	
	30th December 2024	Nov-24	Furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC) and 194M	
	31st December 2024	FY 2023-24	All belated and revised returns u/s 139(4) and 139(5) respectively of the Income Tax Act 1961	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th December 2024	Nov-24	GSTR-7	Monthly Return by Tax Deductors For November 2024
	10th December 2024	Nov-24	GSTR-8	Monthly Return by E-Commerce Operators For November 2024
	11th December 2024	Nov-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 December 2024	Nov-24	IIF	Details of outward supplies in first two months of the quarter (M1 and M2), by the dealers who have chosen for QRMP Scheme.
	13th December 2024	Nov-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th December 2024	Nov-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th December 2024	Nov-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th December 2024	Nov-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of November, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year
	31st December 2024	FY 23-24	GSTR-9 and GSTR-9C	Annual returns for regular taxpayers above Rs. 2 crores (GSTR-9) and reconciliation statements for those above Rs. 5 crores (GSTR-9C)
Statute	Due dates	Compliance Period	Details	
Prof. Tax on Salaries	10th December 2024	Nov-24	Professional Tax (PT) on Salaries for November 2024	
ESI & PF	15th December 2024	Nov-24	Provident Fund (PF) & ESI Returns and Payment for November 2024	

Compliance Calendar for January, 2025

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th January 2025	Dec-24	Due date for deposit of Tax deducted/collected for the month of December, 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	
	07th January 2025	Dec-24	Declaration in Form 27C under sub-section (1A) of section 206C of the Income-tax Act, 1961 to be made by a buyer for obtaining goods without collection of tax for declarations received in the month of December, 2024	
	07th January 2025	Oct-Dec 24	Due date for deposit of TDS for the period October 2024 to December 2024 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H	
	14th January 2025	Dec-24	Due date for issue of TDS certificate for Tax Deduction in Form 16B 16C, 16D and 16E under Section 194-IA, 194-IB, 194M respectively for the month of November 2024	
	15 th January 2025	Dec-24	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2024	
	15 th January 2025	Dec-24	Quarterly statement of TCS deposited for the quarter ending December 2024 in Form 27EQ	
	15 th January 2025	Dec-24	Due date for furnishing of Form 15G/15H declarations received during the quarter ending December 2024	
	30 th January 2025	Dec-24	Quarterly TCS certificate in Form 27D in respect of tax collected for the quarter ending December 2024	
	30th January 2025	Dec-24	Due date of furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC), 194M (Form 26QD) and 194S (Form 26QE)	
	31 st January 2025	Oct-Dec 24	Quarterly statement of TDS deposited in Form 24Q/26Q/27Q for the quarter ending December 31, 2024	
	31 st January 2025	Oct-Dec 24	Quarterly return of non deduction at source in Form 26QAA by a banking company from interest on time deposit in respect of the quarter ending December 31, 2024	
	31 st January 2025	Oct-Dec 24	Quarterly statement of tax deposited in relation to transfer of virtual digital asset under section 194S to be furnished by an exchange for the quarter ending December 30, 2024	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th January 2025	Dec-24	GSTR-7	Monthly Return by Tax Deductors For December
	10th January 2025	Dec-24	GSTR-8	Monthly Return by E-Commerce Operators For December
	11th January 2025	Dec-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 January 2025	Oct-Dec 24	GSTR-1	Furnishing of details of Outward Supplies for the period October 2024 to December 2024
	13th January 2025	Dec-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th January 2025	Dec-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	18th January 2025	Oct-Dec 24	GST CMP-08	Furnishing of Statement of Quarterly Payment of Tax for the period October 2024 to December 2024
	20th January 2025	Dec-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th January 2025	Dec-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of December, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year

	22th January 2025	Oct-Dec 24	GSTR-3B (Specified States)	Furnishing of Consolidated Summary Return of Inward and Outward Supplies for the period October to December 2024
	24th January 2025	Oct-Dec 24	GSTR-3B (Specified States)	Furnishing of Consolidated Summary Return of Inward and Outward Supplies for the period October to December 2024
Statute	Due dates	Compliance Period	Details	
Prof. Tax on Salaries	10th January 2025	Dec-24	Professional Tax (PT) on Salaries for December 2024	
ESI & PF	15th January 2025	Dec-24	Provident Fund (PF) & ESI Returns and Payment for December 2024	

Feedback and suggestions are Invited:

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

Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Barkha Agrawal
President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

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

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

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

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

Thanks and Regards,

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Direct Taxes Professionals' Association

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*Save the
Date*



DTPA Residential Conclave' 2025
Ayodhya & Lucknow
Date - 20th to 23rd March, 2025



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WOFA PROGRAM HIGHLIGHTS

**DAY 1****31st January 2025, Friday**

Time	Session
12:00 Onwards	Registration
15:00 - 16:30	Inaugural Session
16:30 - 17:00	Break
17:00 - 18:00	Plenary Session
18:00 - 19:00	Keynote Addresses
19:00 - 20:00	Networking & Exhibition Break
20:00 - 22:00	Vasudhaiva Kutumbakam - Showcasing India Heritage Culture

**DAY 2****1st February 2025, Saturday**

Time	Session	Awards
08:30 - 09:00	Exhibition & Breakfast	 06:00 Onwards Institutional Awards ICAI Awards for Excellence in Financial Reporting ICAI Sustainability Reporting Awards Best Presented Financial Statements for Local Bodies
09:00 - 11:00	Plenary Sessions	
11:00 - 13:00	Live Budget	
13:00 - 14:00	Exhibition & Lunch	Individual Awards ICAI Awards CA Women Excellence Awards
14:00 - 15:00	Special session on Union Budget	
15:00 - 16:00	Concurrent Sessions	
16:00 - 16:30	Break	
16:30 - 17:00	Keynote Address	
17:00 - 18:00	Panel Session	

**DAY 3****2nd February 2025, Sunday**

Time	Session
08:30 - 09:00	Exhibition & Breakfast
09:00 - 11:00	Keynote Addresses
11:00 - 11:30	Break
11:30 - 12:30	Concurrent Sessions
12:30 - 13:30	Plenary Session
13:30 - 14:30	Exhibition & Lunch
14:30 - 15:30	Concurrent Sessions
15:30 - 16:30	Plenary Session
16:30 - 17:00	Closing Ceremony
17:00 Onwards	ICAI Award Ceremony (Overseas Chapters, Regional Councils, Branches, Students Associations & Rank Holders)

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DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 No Sec. 194N TDS on cash withdrawal by foreign representations approved by Ministry of External Affairs: CBDT - **Notification No. S.O. 5121(E), Dated 28-11-2024**

Editorial Note: The CBDT has notified that the provisions of section 194N shall not apply to Foreign Representations duly approved by the Ministry of External Affairs of the Government of India, including Diplomatic Missions, agencies of the United Nations, International Organizations, Consulates and Offices of Honorary Consuls which are exempt from paying taxes in India.

- 1.2 Cabinet approves PAN 2.0 Project of Income Tax Department - **Press Release, Dated 25-11-2024**

Editorial Note: The Cabinet Committee on Economic Affairs (CCEA) has approved the PAN 2.0 Project of the Income Tax Department. The PAN 2.0 Project enables a technology-driven transformation of Taxpayer registration services. It has significant benefits, including ease of access, speedy service delivery with improved quality, a single source of truth and data consistency, eco-friendly processes and more.

- 1.3 CBDT Notifies 'SKAN Research Trust' for the purpose of Section 35 Relief -

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified 'SKAN Research Trust' under the category of 'Research Association' for 'Scientific Research' for the purposes of section 35(1)(ii).

- 1.4 CBDT specifies monetary limits for reduction or waiver **Notification No. S.O. 5054(E), Dated 25-11-2024** of interest paid or payable under section 220(2) - **Circular No. 15/2024, Dated 04-11-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has specified the monetary limits for the income-tax authorities for the reduction or waiver of interest paid or payable under section 220(2) of the Income-tax Act, 1961.

- 1.5 CBDT extends Circular No. 13/2023 applicability to AY 2023-24 for condonation of delay in filing ITR with Sec. 80P claim - **Circular No. 14/2024, Dated 30-10-2024**

Editorial Note: The board has received applications from co-operative societies claiming deduction under section 80P for the AY 2023-24, regarding condonation of delay in furnishing the return of income. The delay was caused due to the delay in getting the accounts audited under the respective State Laws. In exercise of its powers conferred under section 119, the board extends the applicability of Circular No. 13/2023 dated 26.07.2023 to AY 2023-24, subject to the conditions stipulated therein.

- 1.6 CBDT mandates electronic submission of Form 3CEDA and Form 3C-O - **Notification No. 5/2024, Dated 30-10-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has specified that Form 3CEDA and Form 3C-O shall be furnished electronically w.e.f., 31-10-2024. Form 3CEDA is filed for making an application for a rollback of an Advance Pricing Agreement, and Form 3C-O is filed for making an application for approval under section 35CCC(1).

- 1.7 CBDT notifies 'Petroleum and Natural Gas Regulatory Board' for Sec. 10(46A) exemption - **Notification No. S.O. 4895(E), Dated 12-11-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified the "Petroleum and Natural Gas Regulatory Board" for the purposes of section 10(46A). This notification shall be effective from the assessment year 2024-25.

- 1.8 CBDT authorises Pr. CIT/CIT to admit and deal with applications for condonation of delay in filing of Form 10-IC/ID - **Circular No. 17/2024, Dated 18-11-2024**

Editorial Note: The CBDT has authorized officers to handle applications for condoning delays in filing Forms 10-IC or 10-ID for Assessment Years 2020-21, 2021-22, and 2022-23. Pr. CITs/CITs will manage delays of up to 365 days, while Pr. CCITs/CCITs/DGITs will handle delays exceeding 365 days.

- 1.9 CBDT specifies authorities to deal with applications for condonation of delay in filing Forms 9A, 10, 10B & 10BB - **Circular No. 16/2024, Dated 18-11-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has authorized Pr. Commissioners of Income Tax (Pr. CITs)/Commissioners of Income Tax (CITs) to condone delays of up to 365 days in filing Forms 9A/10/10B/10BB for AY 2018-19 and later years. Delays exceeding 365 days will be handled by the Chief Commissioners of Income Tax (CCsIT)/Director Generals of Income Tax (DGsIT).

- 1.10 CBDT notifies electronic filing of Forms 42, 43 & 44 - **Notification No. 06/2024, Dated 19-11-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified that the following forms shall be furnished electronically and verified in the manner prescribed under sub-rule (1) of Rule 131: a) Form 42: Appeal against refusal to recognize or withdrawal of recognition from a provident fund; b) Form 43: Appeal against refusal to approve or withdrawal of approval from a superannuation fund; and c) Form 44: Appeal against refusal to approve or withdrawal of approval from a gratuity fund.

- 1.11 CBDT notifies 'National Aviation Security Fee Trust' & 'District Legal Service Authority' for Sec. 10(46) exemption - **Notification Nos. S.O. 4983(E) & S.O. 4982(E), Dated 19-11-2024**

Editorial Note: The Central Board of Direct Taxes (CBDT) has notified 'National Aviation Security Fee Trust' & 'District Legal Service Authority' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The notification shall be effective from the AY 2024-25 to AY 2029-30 subject to the certain conditions.

- 1.12 CBDT sets up Taxpayers' Lounge at IITF 2024 to raise awareness about taxpayer services - **Press Release, Dated 18-11-2024**

Editorial Note: A Taxpayers' Lounge has been set up by the Income Tax Department in India International Trade Fair, 2024 at Pragati Maidan, New Delhi being held from 14th to 27th November, 2024. It offers various assistance in Aadhaar PAN Linking, PAN related queries, TDS and e-filing related queries, International Taxation, Faceless Assessment, appeal related matters and e-Nivaran Grievances etc.

- 1.13 Transfer of capital asset from 'NLCIL' to 'NIRL' shall not be treated as transfer for purpose of capital gains: CBDT - **Notification No. S.O.5074 (E), Dated 27-11-2024**

Editorial Note: Section 47(viiaf) exempts certain transfers of capital assets by public sector companies from being treated as transfers, including those to a notified public sector company or to the Central/State Government. The CBDT has notified the transfer of assets from NLC India Limited (NLCIL) to NLC India

- 1.14 CBDT releases FAQs on PAN 2.0 project; PAN/TAN services shall be completely paperless - **Press Release, Dated 26-11-2024**

Editorial Note: The Cabinet Committee on Economic Affairs (CCEA) has approved the IT Dept. PAN 2.0 Project. Currently, PAN-related services are spread across three platforms: the e-Filing Portal, UTITSL Portal, and Protean e-Gov Portal. With the implementation of PAN 2.0, all these services will be integrated into a single, unified portal. This helps to handle all PAN/TAN-related matters, including application, updates, corrections, Aadhaar-PAN linking, re-issuance requests, and even online PAN validation

2. SUPREME COURT

SECTION 28(i) OF INCOME-TAX ACT, 1961 - BUSINESS INCOME - ALLOWABILITY OF

- 2.1 **Interest on FDs:** Where assessee-company had short term fixed deposit accounts with bank, since for previous assessment year matter regarding treatment of interest income earned on such fixed deposits as business income or income from other sources had been remanded by Tribunal for consideration by bearing in mind nature of business of assessee and purpose for which short term fixed deposit accounts were opened by assessee in bank, following same, matter was to be remanded for relevant year also - **XL India Business Services (P.) Ltd. v. Income-tax Officer - [2024] 167 taxmann.com 583 (SC)**

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

- 2.2 **Applicability of:** Where relationship between vendor and vendee was that of mother and son, reference to circle rate, which might be relevant for purpose of execution of a sale deed/gift deed, had no relevance to invoke section 50C - **Mahendra Gala v. Income-tax Officer - [2024] 168 taxmann.com 363 (SC)**

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

- 2.3 **Deposits in foreign bank account:** SLP dismissed against order of HC that where addition was made to assessee's income on account of huge amount deposited in his foreign bank account in Geneva, since there was no material on record to show that said amount was deposited by assessee and justifiable explanation was given by assessee that said account belonged to his nephew residing in U.K who had got his signatures on some papers when he was in India, assessee being an agriculturist and only having a small holding of land apparently could not be in possession of such huge amounts which were also in foreign currency and, thus, impugned addition was unjustified - **PCIT v. Joginder Singh Chatha - [2024] 167 taxmann.com 734 (SC)**

SECTION 80DD OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - MEDICAL TREATMENT OF HANDICAPPED DEPENDENT

- 2.4 **General:** Amendment made by Finance Act, 2022 to section 80DD could not be applied retrospectively to policies taken prior to 2014 as it was not in interest of disabled persons - **Ravi Agrawal v. Union of India - [2024] 168 taxmann.com 320 (SC)**

SECTION 92D OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - MAINTENANCE AND KEEPING OF INFORMATION AND DOCUMENT BY PERSONS ENTERING INTO AN INTERNATIONAL TRANSACTION

- 2.5 **Illustrations:** SLP dismissed against HC ruling that where assessee failed to produce requisite documents u/s. 92D(3) in response to notice issued by TPO, in view of fact that said event of default occurred in March, 2014 i.e. prior to amendment dated 1-10-2014, when power to impose penalty u/s. 271G was with AO impugned penalty order passed by TPO being without Jurisdiction, deserved to be set aside - **Addl. CIT v. Ericsson India (P.) Ltd. - [2024] 168 taxmann.com 93 (SC)**

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

- 2.6 **Opportunity of hearing:** SLP dismissed against HC ruling that where no reasonable opportunity had been provided before transferring case of assessee and officer of Bangalore had sent notice and Asst. order to assessee who was a resident of Delhi, it was in total violation of section 127 - **DCIT v. Sunil Kumar Sharma - [2024] 168 taxmann.com 77 (SC)**

SECTION 148A OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - PROCEDURE BEFORE ISSUE OF NOTICE

- 2.7 **Personal hearing:** SLP was to be dismissed against order of High Court that where assessee had specifically requested for personal hearing at stage of section 148A(b) and provisions of section 148A(b) clearly states opportunity of hearing, same would mean personal hearing and thus, impugned order passed under section 148A(d) without granting such hearing was to be quashed - **Income-tax Officer v. Nikhil Chandrakant Dharla - [2024] 168 taxmann.com 41 (SC)**

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

- 2.8 Sanctioning Authority:** SLP was to be dismissed against order of HC that where AO issued reopening notice within period of three years, however application for approval stated section 149(1)(b) would be applicable, since recommendation and grant of approval by Principal Commissioner had been made mechanical and without application of mind, impugned reopening notice was to be set aside - *ITO v. Nikhil Chandrakant Dharja* - [2024] 168 taxmann.com 41 (SC)

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

- 2.9 Recovery of loose sheets of paper:** SLP dismissed against HC ruling that loose sheets of paper/diaries found during search containing typed entries, not shown to form part of books of account regularly maintained by assessee or his business entities, did not constitute material evidence and thus, impugned notices issued u/s. 153C to assessee based on material contained in diaries/loose sheets, were required to be set aside, being void and illegal - *DCIT v. Sunil Kumar Sharma* - [2024] 168 taxmann.com 77 (SC)

- 2.10 General principles:** SLP dismissed against HC ruling that satisfaction note is required to be recorded u/s. 153C for each Asst year and hence, a consolidated satisfaction note recorded for different assessment years, would vitiate entire assessment proceedings - *Deputy Commissioner of Income-tax v. Sunil Kumar Sharma* - [2024] 168 taxmann.com 77 (SC)

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

- 2.11 General:** SLP was to be dismissed against order of High Court that where State Government as a payer of salary under Income-tax Act, is not bound by any religious tenets or provisions of Canon Law; hence salaries in form of Grant-in-aid received by Nuns, Sisters or Missionaries working as teachers in religious institutions, from State Government, are taxable - *Institute of the Franciscan Missionaries of Mary v. Union of India* - [2024] 168 taxmann.com 191 (SC)

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

- 2.12 Advance tax:** SLP dismissed owing to low tax effect against High Court ruling that if payer, who was required to make payments to non-resident, had deducted tax at source from such payments, question of payment of advance tax by payee would not arise and, therefore, it would not be permissible for revenue to charge any interest under section 234B - *Director of Income-tax International Taxation v. Texas Instruments Incorporated* - [2024] 168 taxmann.com 167 (SC)

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

- 2.13** SLP dismissed against order of High Court that where Appellate Authority vide a conditional stay order had directed assessee to pay only 20% of total tax demand raised for various assessment years and had also granted instalments to effect said payment of 20% of said tax amount, said order needed no interference, however, considering assessee's financial difficulties, said order would be modified to permit payment in seven monthly instalments and any default in payment would result in entire tax demand becoming immediately due, and benefits of stay order would be lost - *Covenant Stones (P.) Ltd. v. Commissioner of Income-tax Appeals* - [2024] 167 taxmann.com 640 (SC)

3. HIGH COURT

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

- 3.1 Agricultural land:** Where Assessing Officer accepted assessee's claim that land in question sold by her was agricultural land, without verifying records, in view of facts that Tehsildars certificate relied upon by assessee did not mention distance of land from nearest municipal limits, which was a critical requirement under section 2(14)(iii) and also assessee had not declared any agricultural income from said land during relevant year, Principal Commissioner rightly exercised his jurisdiction under section 263 - *Pr. Commissioner of Income-tax Delhi -11 v. Ms. Sangeeta Jain* - [2024] 168 taxmann.com 276 (Delhi)

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

- 3.2 Excise duty refund:** Excise duty refund does not fall in definition of income as envisaged under section 2(24)(xviii) and, thus, amount of excise duty refund received by assessee was not an income but a capital receipt not taxable under provisions of Income-tax Act - *Principal Commissioner of Income Tax v. Gravita Metal Inc.* - [2024] 168 taxmann.com 379 (Jammu & Kashmir)

**SECTION 4 OF THE PROHIBITION OF BENAMI
PROPERTY TRANSACTIONS ACT, 1988 - PROHIBITION
OF RIGHT TO RECOVER PROPERTY HELD BENAMI**

- 3.3 Fiduciary capacity:** Where plaintiff claimed joint ownership of suit property on ground that substantial contribution towards sale consideration was paid by plaintiff's father and property was purchased in name of defendant's father in a fiduciary capacity, in absence of documents evidencing existence of a fiduciary relationship and existence of corpus of funds made available by plaintiff from his/her known sources to defendant, plaintiff could not invoke proviso (ii) of section 2(9)(A) and thus, plaintiff's claim of ownership was barred under section 4 - *Paramjit Singh v. Ms Gagan Singh @ Mannu* - [2024] 168 taxmann.com 140 (Delhi)

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

3.4 Where assessee-company was formed by members of an industrial association to reduce pollution being generated by them by running water effluent treatment plant of Gujarat Industrial Development Corporation for treatment of waste water and it received contribution from its members for services to be provided for treatment of effluent, since assessee was formed pursuant to directions/suggestions made by HC so as to reduce pollution which was in public interest, form in which company was incorporated was irrelevant and income/surplus of assessee would not be liable to tax on principle of mutuality - **CIT v. Vapi Waste and Effluent Management Co Ltd** - [2024] 168 taxmann.com 518 (Gujarat)

3.5 Reassessment: Where AO issued notice u/s. 148A(b) proposing to initiate reassessment proceedings on ground that assessee had not disclosed interest income in its return of income and further passed reassessment order without considering assessee's response that interest income was included in its total income and had already been assessed to tax, impugned reassessment order was to be set aside and matter was to be remanded to AO for considering assessee's reply afresh and to pass a reasoned order - **Vivek Kumar v. ITO** - [2024] 168 taxmann.com 370 (Delhi)

3.6 Rental income: Where assessee and other co-owners purchased a property in their names and let out said property to a Government agency and received rent, since rent was being paid by Government agencies jointly in hands of co-owners treating them as a single land lord, said rental income was to be assessed in hands of co-owners as income of an AOP and not in hands of assessee as income from house property under section 22 - **Y. S. & Co-owners v. ITO** - [2024] 167 taxmann.com 585 (Punjab & Haryana)

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

3.7 General: Recording of entries in books of account is not conclusive to determine income under provisions of Act, and as such, no tax can be charged on an amount which is not actually earned - **PCIT v. Gravita Metal Inc.** - [2024] 168 taxmann.com 379 (Jammu & Kashmir)

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

3.8 Penny stock: Where AO issued reopening notice against assessee on ground that assessee reflected income as capital gains from transactions in penny stocks, since there was no material or evidence to suggest that transactions in penny stocks were bogus, impugned reopening notice was not valid - **Harsh Vardhan Bansal v. Assistant Commissioner of Income-tax** - [2024] 168 taxmann.com 188 (Delhi)

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

3.9 Objects of trust: Where Commissioner (Exemption) rejected assessee-trusts application for registration u/s. 12A on ground that its objects were for benefit of a particular religious community or caste and, accordingly, assessee was not entitled for exemption in terms of section 13(1)(b), since section 13(1)(b) was not relevant at stage of registration u/s. 12A but rather comes into play at time of assessment when determining exemption u/s. 11, impugned rejection of registration application was unjustified - **CIT(E) v. Jamiatul Banaat Tankaria** - [2024] 168 taxmann.com 35 (Gujarat)

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

3.10 Cancellation of registration: Where Commissioner (Exemption) rejected application for registration u/s. 12AA on ground of non-compliance, since Commissioner (Exemption) passed ex parte order without giving an opportunity to assessee to present its case in detail, Tribunal was justified in setting aside order of rejection and remanding matter for fresh consideration - **CIT(E) v. Rajkot Chamber of Commerce and Industry** - [2024] 168 taxmann.com 366 (Gujarat)

3.11 Scope of provision: Where assessee charitable society was established with object of imparting education and whatever earnings it received were also utilised for purpose of advancement of education, assessee was entitled to registration u/s. 12AA - **CIT v. Yadvindra Public School Association** - [2024] 167 taxmann.com 584 (Punjab & Haryana)

3.12 Sub-section (2): Section 12AA(2) does not recognize any deeming fiction, that an application for registration u/s. 12A is deemed to be granted, if it is not disposed of within six months - **CIT-IV, Pune v. Dr. Kasliwal Medical Care & Research Foundation** - [2024] 168 taxmann.com 91 (Bombay)

**SECTION 32 OF THE INCOME-TAX ACT, 1961 -
DEPRECIATION - ADDITIONAL DEPRECIATION**

3.13 General: Where plant and machinery were purchased in less than 180 days in earlier year and 50 per cent of additional depreciation in respect of said plant and machinery was allowed in immediate preceding year, balance 50% additional depreciation, i.e., 10% of aforesaid amount was to be allowed during year under consideration - **PCIT 3 v. Banaskantha Dist Co. Op Milk Producers Union Ltd.** - [2024] 168 taxmann.com 154 (Gujarat)

3.14 General: Where assessee was a society engaged in processing and manufacturing of milk and milk products, since activity carried out by assessee was not only processing of milk but involved detailed technical machineries and manufacturing different kind of milk products, assessee was entitled to additional depreciation on plant and machinery purchased during previous year under section 32(1)(iia) - **PCIT 3 v. Banaskantha Dist Co. Op Milk Producers Union Ltd.** - [2024] 168 taxmann.com 154 (Gujarat)

3.15 Electrical fittings: Electrical fittings were to be considered as integral part of plant and machinery and assessee was eligible for depreciation and additional depreciation on these items - **Principal Commissioner of Income-tax 3 v. Banaskantha Dist Co. Op Milk Producers Union Ltd.** - [2024] 168 taxmann.com 154 (Gujarat)

3.16 Plinths: Where assessee purchased property and thereafter constructed godowns and plinths, plinths constructed by assessee could not be treated as building and income received for letting out plinths could not be treated as income from house property, accordingly, depreciation could not be allowed on cost of plinths - **Y. S. & Co-owners v. Income-tax Officer** - [2024] 167 taxmann.com 585 (Punjab & Haryana)

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

3.17 Question of law: Where Tribunal following its order passed in assessee's own case for earlier assessment year allowed advertisement expenditure incurred by assessee during year as revenue expenditure, since appeal filed by revenue against order of Tribunal pertaining to earlier assessment year was dismissed by High Court no question of law arose for consideration - **Principal Commissioner of Income-tax v. Tata Chemicals Ltd.** - [2024] 167 taxmann.com 661 (Bombay)

3.18 Question of law: Payments made by assessee to its employees in terms of Voluntary Retirement Scheme was allowable as revenue expenditure - **Principal Commissioner of Income-tax v. Tata Chemicals Ltd.** - [2024] 167 taxmann.com 661 (Bombay)

3.19 Question of law: Advances paid by assessee to a project developer in connection with a project which was subsequently abandoned was allowable as revenue expenses - **Principal Commissioner of Income-tax v. Tata Chemicals Ltd.** - [2024] 167 taxmann.com 661 (Bombay)

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

3.20 Where Assessing Officer issued reopening notice on ground that assessee had failed to deduct TDS/deducted less TDS than specified rates on payments of certain amount and thus same was to be added to assessee's income, since same material was considered during regular assessment and no fresh tangible material was available, impugned reopening notice was to be set aside being mere change of opinion - **Mehsana Urban Co-op Bank Ltd v. Deputy Commissioner of Income-tax Circle** - [2024] 168 taxmann.com 472 (Gujarat)

SECTION 40A(9) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CONTRIBUTION TO EMPLOYEES WELFARE TRUST, ETC.

3.21 Question of law: Expenses incurred by assessee-company towards workmen and staff welfare was allowable as deduction - **Principal Commissioner of Income-tax v. Tata Chemicals Ltd.** - [2024] 167 taxmann.com 661 (Bombay)

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

3.22 General: Section 41(1)(a) would apply to a situation where an allowance or deduction has been made in respect of loss, expenditure; or trading liability - **Commissioner of Income-tax v. Johnson Lifts (P.) Ltd.** - [2024] 168 taxmann.com 130 (Madras)

3.23 General: Where assessee received certain amount as advance from M against project to be carried out but said project could not be implemented and amount was not returned by assessee due to financial constraints, since assessee never received any benefit or enjoyed money that it had received as an advance, provisions of section 41(1) would not be applicable - **Principal Commissioner of Income-tax 1 v. Ideal Data Electronic Application Ltd.** - [2024] 168 taxmann.com 189 (Gujarat)

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

3.24 Revision: Where assessee sold immovable property for a sum of Rs. 6.5 crores and received a sum of Rs. 5.05 crores and balance amount of Rs. 1.45 crores was not received as cheques for said amount were dishonoured, since Assessing Officer did not examine details regarding dishonour of cheques, Principal Commissioner rightly held that assessment order was passed without making necessary inquiries and verification and thus, in terms of clause (a) of Explanation 2 to section 263, assessment order was erroneous - **M.R Apparels (P.) Ltd. v. Principal Chief Commissioner of Income-tax - 6** - [2024] 168 taxmann.com 197 (Delhi)

3.25 Non-existent entity: Where Assessing Officer passed assessment order in name of assessee-company determining long term capital gain in its hands even after its merger, it could not be held that Assessment Order passed by Assessing Officer was a nullity since there had been no effective hearing to transferee company whereby claim for long term capital was assessed to income and said aspect had not been considered by Tribunal - **Commissioner of Income-tax v. Shaw Wallace Properties Ltd.** - [2024] 167 taxmann.com 747 (Madras)

SECTION 49 OF INCOME-TAX ACT, 1961 - CAPITAL GAINS - COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION

3.26 Acquisition by family arrangement: Where assessee's father acquired a property prior to 1-4-1981 and after his death said property was given to assessee by way of family settlement in 2003 and subsequently assessee had sold

property in 2007, while computing capital gain, indexed cost of acquisition was to be worked out with reference to 1-4-1981 and not with reference to date on which assessee acquired property by family arrangement, i.e., in 2003 - **Rajiv Mehra v. Commissioner of Income-tax** - [2024] 168 taxmann.com 273 (Punjab & Haryana)

SECTION 51 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 - OFFENCE AND PROSECUTION

- 3.27** Prosecution under section 51 cannot be dependent on completion of assessment, as offence, if proved, stands completed as soon as conditions as required under section 51(3) are fulfilled, irrespective of return of income - **Sanjay Bhandari v. Income-tax Office** - [2024] 168 taxmann.com 389 (Delhi)

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

- 3.28** Where assessee, an 84-year-old non-resident in New Zealand, filed a belated return for assessment year 2022-23 claiming a section 54 deduction and her e-verification was delayed due to technical issues, since in her application under section 119(2)(b), assessee provided reasons for delayed filing and her non-resident status and absence from India justified delay, in such circumstances, delay for e-verification of return deserved to be condoned - **Santoshkumari Darshanlal Chopra v. Commissioner of Income-tax (IT and TP)** - [2024] 168 taxmann.com 277 (Gujarat)

SECTION 54B OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSFER OF LAND USED FOR AGRICULTURAL PURPOSES

- 3.29** Where Assessing Officer issued reopening notice on ground that assessee sold agricultural land as non-agricultural land and, thus, was not entitled to exemption under section 54B, since very same transaction which was subject matter of reasons recorded was subject matter of scrutiny during regular assessment by Assessing Officer and entire details were placed on record by assessee during course of regular assessment, impugned reopening notice was to be quashed - **Rameshchandra Purushottamdas Patel v. Assistant Commissioner of Income-tax** - [2024] 168 taxmann.com 475 (Gujarat)

SECTION 54EC OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - NOT TO BE CHARGED ON INVESTMENT IN CERTAIN BONDS

- 3.30 Revision:** Where assessee invested advances received from purchasers of its business in bonds issued by NABARD, merely because said advances were initially deposited in mutual funds and out of maturity amounts, investment in bonds had been made, exemption under section 54EC could not be denied to assessee - **Commissioner of Income-tax v. Y. Jagan Mohan** - [2024] 168 taxmann.com 332 (Madras)

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

- 3.31 Valuation of property:** Where assessee purchased an immovable property and claimed that sale consideration received represented FMV, however, Assessing Officer treated difference between sale consideration and guideline value as income from other sources under section 56(2)(x), since said order proceeded on basis that guideline value of relevant immovable asset represented real MV without awaiting valuation report from DVO, assessee was entitled to an interim stay of coercive action pending disposal of statutory appeal - **N Amudha v. Income-tax Officer** - [2024] 168 taxmann.com 410 (Madras)

- 3.32 Share premium:** Where Assessing Officer issued reopening notice against assessee on ground that there was huge difference between projected cash flow value and actual cash flow value of shares and, thus, DCF method adopted by assessee was not acceptable, as assessee had exercised option for DCF method of valuation during course of regular assessment, Assessing Officer could not have assumed jurisdiction to reopen assessment on ground that assessee did not fulfil projected growth as per DCF method in subsequent year - **Akash Ceramics (P.) Ltd. v. Income-tax Officer** - [2024] 168 taxmann.com 407 (Gujarat)

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

- 3.33** Where Assessing Officer issued reopening notice on ground that assessee had received accommodation entries from paper/dummy company, since ledger account of said company showed that assessee had repaid concerned amount and there was no transaction of assessee with said company, impugned reopening notice was to be set aside - **Spectrum Corporation v. Income-tax Officer** - [2024] 168 taxmann.com 477 (Gujarat)

- 3.34 Share capital:** Where assessee-company raised share capital from its holding company and Assessing Officer treated amount received by assessee as unexplained cash credit on ground that assessee had failed to establish identity, genuineness and creditworthiness of share subscribers, since both companies were having common directors and share subscribing/holding company was interested in business of assessee and investing company had sufficient funds, addition made under section 68 with respect to share capital received by assessee was to be deleted - **Principal Commissioner of Income-tax v. Snowwhite Infrastructure (P.) Ltd.** - [2024] 168 taxmann.com 368 (Calcutta)

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

- 3.35** Where assessee-firm was issued notice u/s. 148 in respect of unexplained investment in property, onus was on assessee to show that amount which was sought to be treated as unexplained investment of assessee was that of partners and since assessee failed to discharge said onus, addition u/s. 69 was proper - **K.P.S. Enterprises v. Principal Commissioner of Income-tax** - [2024] 167 taxmann.com 498 (Madras)

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

- 3.36** Where AO pursuant to Pr. Commissioner's order had made an addition treating unsecured loans as unexplained money u/s. 69A, since petitioner had failed to furnish details of unsecured hand loans and confirmations from creditors, order of AO could not be construed as without jurisdiction or in violation of principles of natural justice that would require Court to interfere under article 226 of Constitution of India and, therefore, writ petition filed by petitioner could not be entertained - **Venu Ramaiah v. Union Of India** - [2024] 167 taxmann.com 169 (Andhra Pradesh)

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

- 3.37 Condonation of delay:** Where assessee, a doctor, who had claim of carry forward of LTCL, was involved in Covid-19 duty and faced various problems due to Covid-19 pandemic, delay in filing return of income by assessee was to be condoned - **Smita Dilip Ghule v. CBDT** - [2024] 168 taxmann.com 309 (Bombay)

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

- 3.38 Interest from co-operative bank:** Deduction u/s. 80P(2)(d) is available to cooperative societies on income earned as interest on investment made with cooperative bank which in turn, is a cooperative society itself - **PCIT 1 v. Ashwinkumar Arban Co Operative Society Ltd.** - [2024] 168 taxmann.com 314 (Gujarat)

SECTION 86 OF THE INCOME-TAX ACT, 1961 - EXEMPTION - SHARE INCOME, AS MEMBER OF AOP/BOI

- 3.39 Scope of provision:** Where assessee an individual had formed various syndicates/groups with different persons for carrying out business of liquor for a definite share of profit, income derived by various syndicates, in which assessee was one of members, was required to be assessed in hands of syndicates only and direct assessment in hands of assessee could not have been made in respect of income derived by syndicates - **Principal Commissioner v. Ramesh Chandra Rai** - [2024] 168 taxmann.com 43 (Madhya Pradesh)

SECTION 92BA OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - DOMESTIC TRANSACTION, MEANING OF

- 3.40** Clause (i) of section 92BA having been omitted by Finance Act, 2017 with effect from 1-4-2017 and resultant effect is that it had never been passed and to be considered as a law never been existed and thus, reference made by Assessing Officer to the TPO for specified domestic transaction mentioned in clause (i) of section 92BA was not valid - **Pr. Commissioner of Income-tax-2 v. TT Steel Service India (P.) Ltd.** - [2024] 168 taxmann.com 515 (Karnataka)

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

- 3.41** Adjustment which is mandated in terms of Chapter X is only in respect of International Transaction and not transactions entered into by assessee with independent unrelated third parties - **Pr. Commissioner of Income-tax-2 v. TT Steel Service India (P.) Ltd.** - [2024] 168 taxmann.com 515 (Karnataka)

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

- 3.42** Where assessee-company in substance had exercised option for lower rate of tax under section 115BAA which was clear from computation of income assessee could not be deprived of lower rate of tax and delay in filing Form 10-IC ought to have been condoned as per CBDT Circular No. 19/2023 - **V M Procon Pvt Ltd v. Assistant Director of Income-tax** - [2024] 168 taxmann.com 517 (Gujarat)

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

- 3.43 Condonation of delay:** Where assessee co-operative society sought condonation of delay in filing return of income on ground that delay was occurred due to delay in receipt of audit report and COVID outbreak, since audit report was available on 2-7-2019 and COVID outbreak occurred in March 2020 but return was filed only on 3-6-2020, reasons for delay provided by assessee did not justify delay and, thus, delay could not be condoned - **No.9074 Neermullikuttai Primary Agricultural Co-operative Credit Society Ltd. v. Chief Commissioner of Income-tax** - [2024] 168 taxmann.com 268 (Madras)

- 3.44 Condonation of delay:** Where assessee filed an application under section 119(2)(b) to condone delay in filing return of income on ground that his father suffered heart attack and due to continuous sickness and ill-health of his father all family members were occupied with his treatment, since assessee had preferred an application to condone delay to get refund to which he was entitled to, considering cause of illness of father of assessee, revenue ought to have condoned delay - **Dhruvin Pradipbhai Shah v. Chief Commissioner of Income-tax-1** - [2024] 168 taxmann.com 352 (Gujarat)

- 3.45 Condonation of delay:** Where assessee filed its return with a delay of one day as on earlier day, return could not be uploaded on account of technical issue, since delay in filing return being only of one day was bona fide, delay was to be condoned under section 119(2)(b) - **Tardeo Everest Premises Co-operative Society Ltd. v. Principal Commissioner of Income-tax** - [2024] 168 taxmann.com 78 (Bombay)

**SECTION 139 OF THE INCOME-TAX ACT, 1961 -
RETURN OF INCOME - GENERAL**

- 3.46 Condonation of delay:** Where assessee filed its return of income for relevant assessment year and Form 10-IC with a delay of two days due to technical difficulties on Income-tax portal and an incident of fire at office of Chartered Accountant leading to stoppage of electricity supply to entire building, since delay was only of two days and it appeared to be wholly bonafide, in interest of justice, same was to be condoned - **Neumec Builders (P.) Ltd. v. Central Board of Direct Taxes - [2024] 167 taxmann.com 739 (Bombay)**

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

- 3.47 Prescribed authority under sub-section (2) of section 143:** Where petitioner challenged notice issued under section 143(2) on ground that it was issued by an officer, who was not a prescribed income-tax authority, since CBDT had issued a notification in exercise of powers under rule 12E and had authorised Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax (International Taxation) to act as prescribed income-tax authority for purpose of issuance of notice under section 143(2), impugned notice issued by Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax (International Taxation) was valid - **Ambience Towers (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 168 taxmann.com 312 (Delhi)**
- 3.48 Issue of notice:** Where assessee challenged notice issued under section 143(2) on ground that it was issued by an officer, who was not a 'prescribed income-tax authority', since CBDT had issued a notification in exercise of powers under rule 12E and had authorised Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax (International Taxation) to act as 'prescribed income-tax authority' for purpose of issuance of notice under 143(2), impugned notice issued by said authority was valid - **Nutan Gehlot v. Assistant Commissioner of Income-tax - [2024] 168 taxmann.com 232 (Delhi)**
- 3.49 Notice under section 143(2):** Where assessee raised additional ground before Tribunal challenging jurisdiction of Assessing Officer to pass assessment order under section 143(3), since said issue went to root of matter, Tribunal rightly held that passing of assessment order under section 143(3), without issuing notice under section 143(2) was bad in law - **Principal Commissioner of Income-tax v. Weedo Ventures (P.) Ltd. - [2024] 167 taxmann.com 614 (Calcutta)**

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

- 3.50 Compliance of SOP:** Where assessee challenged validity of assessment order on ground that show cause notice issued to it had directed furnishing of reply within

two days which was inadequate time and despite reply being made within short period of time, prejudice had been caused as reply was made hurriedly, assessee was to be afforded an opportunity for a personal hearing to explain its reply - **Healthcare Global Enterprises Ltd. v. Assessment Unit - [2024] 168 taxmann.com 128 (Karnataka)**

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

- 3.51 Passing of assessment order:** Where assessee uploaded form 35A on portal and sent e-mails to revenue on 18-4-2023, which was a day earlier than specified period of 30 days, assessee had filed objections within 30 days as specified under provision of section 144C(2)(b) and, thus, Assessing Officer was not justified in passing impugned assessment order without considering objections of assessee invoking provisions of section 144C(3) - **Shobhna Doshi v. Assistant Commissioner of Income-tax, International Taxation - [2024] 168 taxmann.com 73 (Gujarat)**

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

- 3.52 Annual maintenance charges:** Where assessee follows mercantile system of accounting, such an assessee will be required to recognize income as having accrued even if no amount is received for service provided and if amount is received, assessee cannot stagger recognition of income to a future date merely because service is to be provided in future during ensuing financial year - **Commissioner of Income-tax v. Johnson Lifts (P.) Ltd. - [2024] 168 taxmann.com 130 (Madras)**

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

- 3.53 General:** Where assessee being an unlettered and also a non-tax payer was totally unaware of reassessment proceedings being initiated by Department and he could not be expected to view Portal after a lapse of 8 eight years, impugned reassessment notice issued to him was in violation of principles of natural justice and same was to be set aside - **Smt. Pavithra Sugichandran v. Office of the Deputy Commissioner of Income-tax - [2024] 168 taxmann.com 413 (Madras)**
- 3.54** Pursuant to initiation of Corporate Insolvency Resolution Process (CIRP) and approval of resolution plan, no person would be entitle to initiate or continue any proceedings in respect of any claim for any dues relating to period prior to approval of resolution plan; therefore, impugned reassessment proceeding initiated against assessee after approval of resolution plan was to be set aside - **GSL Nova Petrochemicals Ltd. v. National Faceless Assessment Centre - [2024] 168 taxmann.com 187 (Gujarat)**

- 3.55** Where Assessing Officer reopened assessment in case of assessee on basis of survey conducted by Enforcement Branch of Trade & Taxes Department at premises of assessee, in view of fact that on date when notice under

section 148 had come to be issued, there were no outstanding demands or orders of assessment on basis of survey which had been originally conducted, impugned reassessment proceedings were not valid - **PCIT -4 v. Hari Steels & General Industries Ltd - [2024] 168 taxmann.com 127 (Delhi)**

3.56 Cash payments: Where assessee was a partner in a partnership firm and AO issued reopening notice on ground that assessee had entered into financial transactions exceeding taxable limits, since assessee and partnership firm had disclosed deposit made in bank and this fact was further fortified from reply to summons u/s. 133(1A), AO could not have assumed jurisdiction to issue reopening notice on basis of information available, without there being any fresh tangible material to show that income had escaped assessment - **Damodar Fulchand Bansal v. Asst. CIT - [2024] 168 taxmann.com 13 (Gujarat)**

3.57 Sanction: Where assessee filed instant writ petition praying for quashing of assessment order on ground that sanction for issue of notice under section 151 was not granted by appropriate authority as specified under said provision, since assessee had already filed an appeal as well as revision application against impugned assessment order, it would be appropriate that assessee pursues such pending proceedings and writ petition should not be entertained - **Dennis Charles John Das v. Income-tax Officer - [2024] 168 taxmann.com 123 (Bombay)**

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

3.58 Jurisdiction to issue reopening notice: Where notice issued under section 148A(b) and section 148 were all issued by JAO and not by a FAO, as was required by provisions of section 151A, proceedings initiated under section 148 would not be sustainable - **Eureka Forbes Ltd. v. Deputy Commissioner of Income-tax - [2024] 168 taxmann.com 222 (Bombay)**

3.59 Period of limitation: Reopening notice issued under section 148A for assessment year 2017-18 on 1-5-2024 was barred by limitation as prescribed in first proviso to section 149(1) and thus, same was to be set aside - **Sheetal International (P.) Ltd. v. Chief Commissioner of Income-tax - [2024] 168 taxmann.com 308 (Delhi)**

3.60 Validity of notice: Where JAO issued reopening notice in name of company and assessee-directors claimed that name of said company was struck off from register of companies, furthermore impugned notice was not issued in a faceless manner in terms of section 151A, since jurisdictional issue had been raised, instant writ petition was to be heard upon exchange of affidavits and impugned notice was required to be stayed till December, 2024 or until further orders whichever was earlier - **Prasanta Prasad v. Income-tax Officer - [2024] 168 taxmann.com 318 (Calcutta)**

3.61 Scope of provision: Where AO issued on assessee a notice u/s. 148 seeking to reopen assessment and assessee did not file any return of income but instead filed instant writ petition taking for first time defence that notice u/s. 148 was not signed by AO, assessee should have raised issue of non signing of notice in its reply and could have informed AO that it shall not file return as notice was invalid being unsigned - **ZF Steering Gear (India) Ltd. v. Asst CIT - [2024] 167 taxmann.com 663 (Bombay)**

3.62 Procedure: After introduction of 'Faceless Jurisdiction of Income Tax Authorities Scheme, 2022' and 'e-Assessment of Income Escaping Assessment Scheme, 2022', it becomes mandatory for revenue to conduct/initiate proceedings pertaining to reassessment u/s. under sections 147, 148 and 148A in a faceless manner - **Uppariguda Primary Agricultural Cooperative Society Ltd. v. Assessment Unit, ITD - [2024] 167 taxmann.com 613 (Telangana)**

3.63 Validity of: Where AO issued reopening notice on basis of information received from DDIT (Investigation) that assessee was involved in large scale tax evasion and money laundering through brokers (Euro Asia and Twenty20) in National Spot Exchange Ltd (NSE) and assessee filed objections stating that assessee never had any trade through said brokers but had carried out transactions with broker K.R., but said objection was brushed aside by AO without considering same in detail, impugned notice issued u/s. 148 was not tenable as AO had failed to form a reason to believe that income had escaped assessment without considering objections raised by assessee - **Chandrika Dhansukhlal Gandhi v. Asst. CIT - [2024] 167 taxmann.com 638 (Gujarat)**

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

3.64 Income of co-operative societies: Where Assessing Officer issued a notice under section 148A(d) which culminated in an order passed under section 148A(d) and a notice under section 148 to assessee-society, though assessee had neglected by not filing of return and had not participated in proceedings, however they did deserve one more opportunity to vent out their grievances in reassessment proceedings and, therefore, cases were remitted back to the revenue to pass fresh orders on merits - **N.N.625 V. Pudur Primary Agricultural Co-operative Credit Society v. Assessment Unit, Income-tax Department - [2024] 168 taxmann.com 234 (Madras)**

3.65 Resolution plan: Pursuant to approval of resolution plan under Insolvency and Bankruptcy Code, 2016, no person would be entitled to initiate or continue any proceedings or even reassessment proceedings in respect of any claim for any dues relating to period prior to approval of resolution plan; after Resolution plan was approved in case of petitioner-company, issuance of notice under section 148A(b) by revenue to petitioner and initiation of reassessment proceedings for assessment year 2018-19 was not called for - **Perfect Boring (P.) Ltd. v. Assessment Unit, Income-tax Department - [2024] 168 taxmann.com 98 (Gujarat)**

3.66 Validity of proceeding: Where Assessing Officer issued notice under section 148A(b) requiring assessee to furnish information with respect to source, genuineness and creditworthiness of persons who gave loans to assessee just after its incorporation, since said notice was issued for verification on part of Assessing Officer, same was not in accordance with provisions of section 148A and therefore, impugned notice would fail - **Onir Infraspace (P.) Ltd. v. Income-tax Officer - [2024] 168 taxmann.com 21 (Gujarat)**

3.67 Personal hearing: Where assessee had specifically requested for personal hearing at stage of section 148A(b) and provisions of section 148A(b) clearly states opportunity of hearing, same would mean personal hearing and thus, impugned order passed under section 148A(d) without granting such hearing was to be quashed - **Nikhil Chandrakant Dharja v. Income-tax Officer - [2024] 168 taxmann.com 40 (Bombay)**

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

3.68 Monetary limit: Where income in respect of which Assessing Officer had information to suggest that it had escaped assessment was below threshold limit of ₹ 50 lakhs, re-assessment proceedings could not have been initiated beyond period of three years from end of relevant assessment year - **Acropolis Realty (P.) Ltd v. Income-tax Officer - [2024] 168 taxmann.com 406 (Delhi)**

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

3.69 General: Where appeal and revision proceedings were already pending before Commissioner (Appeals) and Principal Commissioner against impugned order passed under sections 147, 144 read with section 144B, writ petition filed by assessee challenging impugned order on ground that it was covered by decisions of High Court in regard to applicability of section 151 as sanction had not been granted by appropriate authority as specified under said provision, was not to be entertained - **Satish Hassanand Bachani v. Principal Chief Commissioner of Income-tax - [2024] 168 taxmann.com 419 (Bombay)**

3.70 Sanctioning Authority: Where Assessing Officer issued reopening notice within period of three years, however application for approval stated section 149(1)(b) would be applicable, since recommendation and grant of approval by Principal Commissioner had been made mechanical and without application of mind, impugned reopening notice was to be set aside - **Nikhil Chandrakant Dharja v. Income-tax Officer - [2024] 168 taxmann.com 40 (Bombay)**

SECTION 158BB OF THE INCOME-TAX ACT, 1961 - BLOCK ASSESSMENT IN SEARCH CASES - UNDISCLOSED INCOME, COMPUTATION OF

3.71 General: Asst order u/s. 158BC is required to be made both on basis of result of search as well as post search enquiry and other proceedings which are in nature of consequences of evidence found as a result of search - **Mange Ram Mittal v. Commissioner of Income-tax - [2024] 168 taxmann.com 306 (Punjab & Haryana)**

3.72 General: Where during search conducted at residential premises of assessee, incriminating material was found in form of unaccounted sales from liquor vends and statements of various persons were recorded who stated that they were salesmen working in those vends and assessee was real owner, thus, inference could be drawn that undisclosed income was earned by assessee through ghost and benami companies which were running on properties taken on rent by him - **Mange Ram Mittal v. CIT - [2024] 168 taxmann.com 306 (Punjab & Haryana)**

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

3.73 Subsidy: Where NHAI disbursed capital grant subsidy to a concessionaire who was awarded project work on Build-Own-Operate-Transfer (BOOT) basis, since said subsidy could not possibly have been construed as payment made for a work undertaken by contractor, NHAI was not liable to deduct tax at source u/s. 194C on capital grant subsidy released to its concessionaires - **CIT (TDS) - 2 v. National Highway Authority of India - [2024] 168 taxmann.com 267 (Delhi)**

SECTION 194LA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS OF TAX AT SOURCE - ACQUISITION OF IMMOVABLE PROPERTY

3.74 Compensation: Section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 applies only to awards or agreements made under provisions of said Act and, thus, compensation awarded for land acquired under provisions of Karnataka Highways Act, 1964 would not be exempt from income tax in terms of section 96 of 2013 Act - **CIT (TDS) v. Tushira Industries - [2024] 168 taxmann.com 169 (Karnataka)**

3.75 Reimbursement: Where State Government had agreed to reimburse income tax component in respect of compensation payable to land-losers, exemption from levy of income tax could not be claimed on ground that State Government had agreed to reimburse tax - **CIT (TDS) v. Tushira Industries - [2024] 168 taxmann.com 169 (Karnataka)**

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

3.76 bank employees unions: Where assessee who were union, representing bank employees, challenged double taxation of salary arrears contributed to a pension fund, arguing that those amounts should not be subject to tax deduction at source, they were directed to apply for a nil or lower tax deduction certificate u/s. 197 and existing injunction against such tax deductions would be extended until authorities resolve matter. - **Laxshmi Vilas Bank Officers Association v. Union of India - [2024] 168 taxmann.com 382 (Madras)**

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

- 3.77** Where appellant awarded contract to a party for supply of materials and service of erection and deducted TDS from running account bills raised by party and party had not received any credit of TDS so deducted as it was not reflected in Form No. 26AS of party and High Court directed appellant to pay to party withheld amount and also interest on said amount as per Jharkhand State Electricity Regulation Commission, Ranchi (Electricity Supply Code) Regulation, 2015, since direction so passed of casting liability to pay interest was based upon consideration of provisions of Regulation, 2015, same could not be a ground for review of order of High Court - *Jharkhand Bijli Vitaran Nigam Ltd. v. Anvil Cables (P.) Ltd.* - [2024] 168 taxmann.com 469 (Jharkhand)

SECTION 205 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX

- 3.78 TDS:** Where Assessing Officer issued demand notice to petitioners (employees) demanding payment of income tax along with interest on account of non-deposit of TDS amount by their employer, impugned demand notice was in breach of section 205 and same was to be quashed - *Neenad Ashok Kadam v. Income-tax Assessing Officer* - [2024] 168 taxmann.com 364 (Bombay)
- 3.79 Tax deducted at source:** Where KIL, employer of assessee, deducted TDS from assessee's salary but did not deposit same with Income-tax authorities, revenue could not raise demand against assessee - *Satwant Singh Sanghera v. Assistant Commissioner of Income-tax* - [2024] 167 taxmann.com 713 (Delhi)
- 3.80** Where employer of assessee deducted tax at source from salary income of assessee but did not deposit same with Government, Assessing Officer could not have raised any demand against assessee in view of provisions of section 205 read with Instruction No. 275/29/2014 and Office Memorandum F. No. 275/29/2014 - *Gayatri Snehal Rao v. Income-tax assessing officer* - [2024] 168 taxmann.com 466 (Gujarat)

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

- 3.81** Where petitioner filed writ petition against order of Assessing Officer rejecting stay application, since petitioner had paid paltry amount of Rs. 54,794 only, petitioner could not expect any protection from recovery of tax dues confirmed against it without making mandatory pre-deposit of amount as required as per Office Memorandum issued by CBDT from time to time - *Howden Solyvent India (P.) Ltd. v. Income-tax Officer* - [2024] 168 taxmann.com 468 (Madras)

- 3.82 Stay of demand:** Where Assessing Officer passed a non-speaking order directing assessee to remit 20 per cent of demand raised within 7 days of receipt of order and thereafter, stay balance of 80 per cent of disputed demand till disposal of appeal by Commissioner (Appeals), since impugned order was bereft of details, same was to be set aside and case was to be remitted back to Assessing Officer to pass a fresh order - *Rajasekaran v. Chief Commissioner of Income-tax (OSD)* - [2024] 168 taxmann.com 416 (Madras)

- 3.83 Stay of demand:** Where there were more than five lakhs appeals pending across country to be heard by Commissioner (Appeals) in faceless regime and revenue instead of resolving pendency as per directions of High Court by classifying appeals as per issues concerning recurring issues, covered issues, etc., ignored said directions, in view of said fact no recovery should be made from assessee during pendency of appeals - *Om Vision Infraspace (P.) Ltd. v. Income-tax Officer* - [2024] 167 taxmann.com 709 (Gujarat)

SECTION 226 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - OTHER MODES OF RECOVERY

- 3.84 Period of limitation:** Where Assessing Officer raised tax demand in year 2010 and as assessee could not clear outstanding dues, Assessing Officer by an order dated 20-12-2018 attached his immovable property and thereafter issued on 27-3-2019 notice of public auction/proclamation of sale of aforesaid property, in view of provision of rule 68B of schedule II of Income-tax Act, 1961, impugned attachment order and, sale notice were barred by limitation and deserved to be set aside - *Pabitra Kumar Hira v. Union of India* - [2024] 167 taxmann.com 664 (Gauhati)

SECTION 245F OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - POWER AND PROCEDURE OF

- 3.85 Rectification:** Settlement Commission cannot reopen its concluded proceedings by invoking section 154 - *G. Gopalakrishna Pillai v. Income-tax Settlement Commission* - [2024] 167 taxmann.com 642 (Madras)

SECTION 245-I OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - ORDER OF, TO BE CONCLUSIVE

- 3.86 Immunity from penalty and prosecution:** Where assessee had approached Settlement Commission and prayed for immunity from penalty and prosecution under Act and Settlement Commission granted immunity on condition that assessee would pay certain amount within specified time period, however, assessee failed to pay amounts within period provided in Settlement Commissions order, immunity would cease to operate - *Patliputra Builders Ltd. v. Income-tax Settlement Commission* - [2024] 168 taxmann.com 412 (Patna)

SECTION 249 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER (APPEALS) - FORM OF APPEAL AND LIMITATION

3.87 Manual filing of appeal: Where assessee attempted to prefer an appeal online to Commissioner(Appeal), however issues arose with regard to affixing digital signature and, consequently, assessee filed appeal manually, however Commissioner(Appeal) considered same as invalid and was dismissed for statistical purposes, since said manual appeal had not been heard and disposed of on merits, date of filing of manual appeal was to be considered for purposes of calculating and appreciating issue of delay in respect of appeal preferred online - **Electron Volt Renewables (P.) Ltd. v. Income Tax Officer** [2024] 168 taxmann.com 378 (Andhra Pradesh)

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

3.88 General: Where petitioner-company was subjected to insolvency proceedings under Insolvency and Bankruptcy Code, 2016 and a resolution plan was approved, all liabilities of all stakeholders including that of Government/Statutory Authority relating to period prior to approval of resolution plan would stand extinguished after approval of resolution plan, thus, impugned revision notice issued by revenue was to be quashed and set aside - **Jyoti Power Corporation (P.) Ltd. (Now Known as Ausil Corporation (P.) Ltd.) v. Principal Commissioner of Income-tax-I** - [2024] 168 taxmann.com 193 (Gujarat)

3.89 Explanation 2: Explanation 2 to section 263 inserted by Finance Act, 2015 would not apply to proceedings which were initiated in year 2014, i.e., prior to insertion of Explanation 2 in section 263 - **Pr. Commissioner of Income-tax Delhi -11 v. Ms. Sangeeta Jain** - [2024] 168 taxmann.com 276 (Delhi)

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

3.90 Fees: Where assessee filed revision application under section 264 before Commissioner against assessment order and Commissioner rejected same on ground that assessee did not pay requisite fee of Rs. 500 as stipulated under section 264(5) at time of filing of revision application, since assessee paid fees immediately on raising objections by Commissioner, there was sufficient compliance of provisions of section 264(5) and revision application was to be decided on merits rather than dismissing same on technical grounds - **Nirmala Society v. Commissioner of Income-tax (Exemption)** - [2024] 168 taxmann.com 386 (Gujarat)

3.91 Error due to technical glitch: Where assessee-trust filed its return claiming application of income for charitable purpose but due to technical glitch income applied by assessee was not reflected in return and assessee filed revision application under section 264 which was rejected, since assessee had incurred expenditure and applied income/donation received by it

for charitable purpose, assessee was entitled to benefit of same, thus, matter was to be remanded back to Commissioner to pass a fresh de novo order under section 264 on merits - **Gujarat Bhavsar Samaj v. Commissioner of Income-tax (Exemptions)** - [2024] 168 taxmann.com 125 (Gujarat)

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

3.92 Violation of principles of natural justice: Where after almost six months of passing order by Tribunal, Assessing Officer issued notice to assessee to show cause as to why penalty should not be imposed under section 271(1)(c) and without granting sufficient time to assessee, he passed penalty order, since Assessing Officer remained a mute spectator for nearly five months and at eleventh hour, he issued notice upon assessee and then passed order after 5 days which was in violation of principles of natural justice, impugned order was to be set aside and matter was to be remanded back to Assessing Officer for fresh consideration - **Southern Petro Chemical Industries, Corporation Ltd. v. Deputy Commissioner of Income-tax/ACIT** - [2024] 168 taxmann.com 391 (Madras)

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

3.93 Compounding of offences: Where assessee filed application for compounding of offence punishable under section 276B for late payment of TDS to credit of Central Government and revenue declined prayer to compound offence on ground that assessee had committed default of non depositing TDS on habitual basis, since assessee had already deposited outstanding tax interest and late fees, assessee was eligible for compounding and revenue ought to have considered case of assessee in terms of guidelines for compounding offence - **Kiri Industries Ltd. v. Chief Commissioner of Income-tax (TDS)** - [2024] 168 taxmann.com 360 (Gujarat)

4. TRIBUNAL

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

4.1 Agricultural land: Where assessee, agriculturist, did not file return of income claiming that he had no taxable income, however Assessing Officer noted that assessee had sold land and treated sale consideration as LTCG since assessment order was passed ex parte, matter was to be remanded back for fresh consideration - **Dnyaneshwar Baburao Kathe v. ITO** - [2024] 168 taxmann.com 408 (Pune - Trib.)

4.2 Agricultural land: Where assessee sold her agricultural land situated at Chaksu and claimed that said land was situated beyond 2 km from Municipal limits of Chaksu and Assessing Officer obtained certificate from Tehsildar, Chaksu who stated that land sold by assessee was at distance (aerial distance) of approximately 2 km from outer limit of Municipality of Chaksu,

however, it was verifiable from report of Director, Survey of India that distance of said land from Jaipur Municipal limit was minimum 18.4 km and maximum 19.7 km, thus, land being agricultural land in case of assessee, was beyond 2 km of Municipal limit of Chaksu Tehsil and, accordingly, not a capital asset as per law - **Munni Devi v. Asstt. Commissioner of Income-tax - [2024] 167 taxmann.com 675 (Jaipur - Trib.)**

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

- 4.3** Where assessee trust was running a music school and a library as its main charitable activity and a petrol pump as incidental activity, since assessee had demonstrated that entire surplus from petrol bunk was utilized for main charitable activities of Trust i.e. education, and separate books of accounts had been maintained in respect of such business, view adopted by Assessing Officer allowing exemption claimed under section 11 to assessee was in accordance with law - **Smt. Lingammal Ramaraju Shastra Prathistha Trust v. Asst. Commissioner of Income-tax (Exemptions) - [2024] 168 taxmann.com 476 (Chennai - Trib.)**

SECTION 2(42A) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SHORT-TERM CAPITAL ASSETS/GAINS

- 4.4 Period of holding:** Where assessee received land consequent to liquidation of company, period of holding of land had to be taken from date of previous owner i.e., company held it so as to determine whether asset was a short term capital asset or long term capital asset; therefore, since admittedly land was held by company for more than 36 months, it was correctly claimed as long term capital asset by assessee and was to be charged under head 'long term capital gains' - **Assistant Commissioner of Income-tax v. Venkatesh Meghraj Kathare - [2024] 168 taxmann.com 367 (Chennai - Trib.)**

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

- 4.5 Joint development agreement:** Where assessee entered into a JDA with a developer for development of a land owned by assessee, since said land was stock-in-trade and JDA was not implemented in relevant assessment year, profit from sale in stock-in-trade would arise in year of actual sale to prospective buyer only and there could not have been any revenue merely on basis of valuation by Stamp Valuation Authority - **DCIT v. Ritman Commercial (P.) Ltd. - [2024] 168 taxmann.com 322 (Kolkata - Trib.)**

SECTION 4 OF THE INCOME-TAX ACT, 1961 AND ARTICLE 289 OF THE CONSTITUTION OF INDIA - INCOME - CHARGEABLE AS

- 4.6 Interest:** Where assessee was a special purpose company constituted by Government of Maharashtra to develop Multi-modal International Hub Airport at Nagpur

and aviation infrastructure in State of Maharashtra, assessee was an instrumentality of State and, thus, a surrogate of State or an agent, performing functions of State and/or on behalf of State of Maharashtra within meaning of clause (1) of article 289 of Constitution of India and, thus, interest income earned by it on fixed deposits was not chargeable to tax - **Asst CIT v. Maharashtra Airport Development Co. Ltd. - [2024] 167 taxmann.com 674 (Mumbai - Trib.)**

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

- 4.7** Where assessee-company made payment of freight charges to a Korean company for availing logistics services in connection with shipment of goods from various ports outside India to India, since said payments were mere simplicitor freight charges and assessee-company did not have any place of business/office in India through which business activities of assessee were carried on, impugned payment made by assessee was not in nature of royalty under section 9(1)(vi) - **Deputy Commissioner of Income-tax v. Doosan Power Systems India (P.) Ltd. - [2024] 168 taxmann.com 502 (Chennai - Trib.)**

- 4.8 Royalties/fees for technical services - Make available:** Where assessee, a tax resident of Singapore, was engaged in business of providing technical non-invasive inspection and integrity assessment/scanning of off-shore pipelines under sea or surface and it received certain amount from three Indian companies for rendering of services in India, since said services did not satisfy 'make available clause' provided in article 12(4)(b) of India-Singapore DTAA, receipts fell under article 7 of DTAA and liable to be considered as business income and accordingly, as assessee did not have any PE in India during year, same could not be taxed in India - **DCIT v. Transkor Global Pte Ltd. - [2024] 168 taxmann.com 238 (Delhi - Trib.)**

- 4.9 Capital gains - Immovable property:** Where value of shares sold by assessee, Spanish company, as a percentage of total assets of assessee did not exceed 50 per cent either based on book value or as per Fair Market Value, article-14(4) of India-Spain DTAA could not be applied in assessee's case and therefore, capital gain arising out of transfer of shares could not be taxed in India - **India Opportunity Fund I F.C.R De Regimen Comun v. DCIT - [2024] 168 taxmann.com 190 (Mumbai - Trib.)**

- 4.10 Royalties/Fees for technical services - Make available:** Where assessee, US company, provided centralized IT related services to its Indian sister concern to achieve a standardized IT environment and payment was towards access to developed standard business/engineering applications, data management by providing disaster recovery/back up services, helpdesk support services, such services did not make available any technical knowledge, experience, skills, etc., to recipient and, thus, did not fall within ambit of fee for included services as defined under article 12 of India-US DTAA and hence, not taxable in India - **Visteon Corporation v. DCIT, International Taxation - [2024] 167 taxmann.com 484 (Chennai - Trib.)**

4.11 Royalties/Fee for technical services - Others : Where assessee had paid sales commission to its US subsidiary towards selling and marketing services, since amount received by assessee's US subsidiary towards rendering sales and marketing services would not fall within ambit of FTS as defined under section 9(1)(vii) or under article 12 of DTAA between India and USA, there was no liability to deduct tax towards sales commission paid by assessee to its US subsidiary - **Deputy Commissioner of Income-tax v. Algonomy Software (P.) Ltd. - [2024] 168 taxmann.com 2 (Bangalore - Trib.)**

4.12 Royalties/Fees for technical services - Satellite/transponder, use of: Where assessee, Indian telecom service provider, made remittance towards bandwidth charges to foreign service providers, such bandwidth charges could not be treated as royalty either under treaty provisions or under section 9(1)(vi) - **Bharti Airtel Ltd. v. Assistant Commissioner of Income-tax - [2024] 168 taxmann.com 10 (Delhi - Trib.)**

4.13 Royalties/Fees for technical services – AMC: Where assessee had made remittances to certain foreign entities towards AMC and assessee had never made any substantive argument disputing nature of service as technical service and had taken a stand that since Assessing Officer had treated services as technical in nature, it was incumbent upon him to establish that make available condition was satisfied, issue was to be restored to file of Assessing Officer to factually verify assessee's claim that services rendered did not fall within ambit of technical, managerial or consultancy services - **Bharti Airtel Ltd. v. Assistant Commissioner of Income-tax - [2024] 168 taxmann.com 10 (Delhi - Trib.)**

4.14 Permanent establishment - Agency fee: Where assessee paid agency fee to foreign banks, since Indian branches of said banks had not played any role of facility agent, no part of agency fee could be attributed to Indian Branches, even if they were held as PE - **Bharti Airtel Ltd. v. Assistant Commissioner of Income-tax - [2024] 168 taxmann.com 10 (Delhi - Trib.)**

SECTION 10(10) OF THE INCOME-TAX ACT, 1961 - GRATUITY

4.15 Where assessee, initially employed by MSEB, later transferred to MSETCL, claimed full exemption on retirement gratuity and leave encashment based on his MSEB tenure, but Assessing Officer partially disallowed, limiting exemption for MSETCL period, in view of decision of Co-ordinate Bench of Pune Tribunal in case of Adinath Wandhekar v. ITO in ITA No. 1388/PUN/2023 claim of assessee was held to be valid but matter would be remanded to Assessing Officer for detailed verification of exemption calculations - **Mohan Shriniwas Bhise v. Income-tax Officer - [2024] 168 taxmann.com 409 (Pune - Trib.)**

SECTION 10(23C) OF INCOME-TAX ACT, 1961 - EDUCATIONAL INSTITUTIONS [FOR SUB-SECTIONS (IIIAB), (IIIAD) AND (VI)]

4.16 Substantially financed by Government: Where assessee, a Government-funded educational institution, was allowed exemption u/s. 10(23C)(iiiab) based on prevailing legal framework and facts of case, order of Assessing Officer could not be termed as erroneous or prejudicial to interests of revenue and, thus, same could not be set aside - **Dr. Babasaheb Ambedkar Open University v. CIT - [2024] 168 taxmann.com 92 (Ahmedabad - Trib.)**

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

4.17 Penny stock: Where all characteristics of penny stock existed in present case, however, revenue had not brought on record any materials linking assessee in any of dubious transactions relating to entry, price rigging or exit providers and even in SEBI report, there was no mention or reference to involvement of assessee, impugned reopening of assessment on ground that assessee had earned LTCG on sale of shares through accommodation entries was unjustified - **Archit Gupta v. ACIT - [2024] 168 taxmann.com 219 (Delhi - Trib.)**

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

4.18 Computation of deduction: Deduction u/s. 10AA was to be computed without setting off unabsorbed depreciation and brought forward losses of non-eligible units - Held, yes - Whether thus, claim of assessee was to be allowed - **Media.Net Software Services India P. Ltd. v. DCIT - [2024] 167 taxmann.com 705 (Mumbai - Trib.)**

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

4.19 Denial of exemption: Where assessee had advanced loans to related parties in earlier years without security or interest and same was outstanding for over a period of 8 years, since loans were advanced in earlier years and were not extended during relevant assessment year and advances, being liabilities, did not constitute income of society, invocation of section 13(1)(c) for Asst year 2015-16 was legally untenable - **Sree Raghavendra Educational Society v. ITO (Exemptions) - [2024] 168 taxmann.com 329 (Chennai - Trib.)**

4.20 Denial of exemption: Where assessee society leased out vehicles to a company for transportation of school children, since after deducting operating expenses and agreed amount of lease charges to assessee, net income of company from transportation fees was very nominal and there was no evidence that assessee conferred an undue benefit to said company, denial of exemption u/s. 11 on ground that vehicles of assessee were used by interested parties during year without adequate compensation, was not justified - **Sree Raghavendra Educational Society v. ITO (Exemptions) - [2024] 168 taxmann.com 329 (Chennai - Trib.)**

4.21 Form-9A: Where assessee-trust delayed in filing Form 9A due to hospitalization of trustee handling tax matters, delay was to be condoned and assessee was to be granted exemption under section 11 - **Seth Chagan Mall Hira Lall Dugar Charitable Trust v. ITO - [2024] 168 taxmann.com 326 (Kolkata - Trib.)**

4.22 Where assessee had given advances to another trust having common object and also registered under section 12AA though having common trustees, there was no violation of provisions of section 13 - **Income-tax Officer v. Rajasthan Vikas Sansthan - [2024] 168 taxmann.com 157 (Jodhpur - Trib.)**

4.23 Form No. 10: Where Form 10 had been filed physically before due date, benefit of section 11(2) could not be denied merely for non-filing of form 10 electronically - **Deputy Commissioner of Income-tax Exemption v. Maneckji Cooper Education Trust - [2024] 167 taxmann.com 704 (Mumbai - Trib.)**

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

4.24 Withdrawal of registration: Conditions of specified violation inserted under section 12AB(4) with effect from 1-4-2022 by Finance Act, 2022, would not apply retrospectively - **Centre for Development Communication Trust v. Commissioner of Income-tax, Exemption - [2024] 168 taxmann.com 90 (Jaipur - Trib.)**

4.25 Objects of trust: Where Commissioner (Exemption) rejected application for registration under section 12A to assessee on ground that assessee was operating as a welfare association for its members and was not functioning as a public charity but as a service provider for its members, Commissioner (Exemption) should confine his examination to charitable objects and not speculate about potential benefits to members at stage of registration under section 12A and same could only be verified during assessment - **Jito Bhavnagar Chapter Foundation v. CIT (Exemption), Ahmedabad - [2024] 167 taxmann.com 646 (Ahmedabad - Trib.)**

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

4.26 Illustrations: Where Commissioner (Exemption) rejected application of assessee-trust seeking registration under section 12AA on ground that certain objects as available in MAO/deed of assessee related to activities which were commercial/business in nature, since on perusal of statements of income and expenditure account for certain period, it was found that no such activity as mentioned in objects in question was carried out by assessee, impugned rejection of application for registration was unjustified - **Baba Balaknath Seva Sansthan v. CIT-Exemption - [2024] 167 taxmann.com 716 (Jaipur - Trib.)**

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

4.27 Denial of: Where CIT (Exemption) denied registration under sections 12AB and 80G to assessee-trust on ground that assessee could not prove any charitable activity and source of funds were not verifiable, since CIT (Exemption) had not come up with any clarity in his order as to how activities of assessee did not fall within scope of charitable purpose and abovesaid allegation to deny registration to assessee was not confronted to assessee, matter was to be remanded back to CIT (Exemption) to reconsider application of assessee for grant of registration under sections 12AB and 80G - **Sri Sultanmal Sajna Bai Charitable Trust v. Commissioner of Income-tax - [2024] 168 taxmann.com 327 (Raipur - Trib.)**

4.28 Cancellation of: Where Commissioner (Exemption) rejected application for grant of registration under section 12A on ground that assessee trust did not furnish any explanation/submission to notice issued by him requesting assessee to upload certain information/clarification, since assessee submitted that given an opportunity, it was in a position to file requisite details as called for by Commissioner (Exemption), matter was to be remanded back to Commissioner (Exemption) to give one more opportunity to assessee to substantiate its case by filing requisite details - **Indus Foundation v. CIT (Exemption) - [2024] 168 taxmann.com 129 (Pune - Trib.)**

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

4.29 Rule 8D: Disallowance under section 14A cannot exceed exempt income - **DCIT v. Welspun Steel Ltd - [2024] 167 taxmann.com 720 (Mumbai - Trib.)**

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

4.30 Capital reserve: Capital reserve cannot be treated as an Income under section 28(iv) and provisions of section 28(iv) were not applicable to case where assessee-company received assets worth Rs. 149.29 crores as a result of amalgamation - **Dy. Commissioner of Income-tax v. Samagra Wealthmax (P.) Ltd. - [2024] 168 taxmann.com 325 (Mumbai - Trib.)**

4.31 Assets: Where assessee was captive service provider undertaking software development services exclusively for its AEs and certain articles such as network equipments, printers and accessories, SD cards and data storages were given to assessee by its AEs free of cost for purpose of testing and calibration of software on to actual hardware and to check compatibility of software modules vis-a-vis existing hardware and these assets were either returned or destroyed by assessee, no addition could be made under section 28(iv) - **Samsung R & D Institute India -Bangalore (P.) Ltd. v. JCIT - [2024] 168 taxmann.com 106 (Bangalore - Trib.)**

**SECTION 36(1) OF THE INCOME-TAX ACT, 1961 -
BAD DEBTS, IN CASE OF BANKS**

- 4.32 Revision:** Where Assessing Officer allowed deduction under section 36(1)(viiia) in respect of provisions made towards standard assets, since Assessing Officer had raised a specific query on same and assessee had filed relevant reply for same, it could not be stated that Assessing Officer had not made enquiry into issue of allowability of claim of deduction on standard assets under section 36(1)(viiia) and, thus, order of Assessing Officer could not be treated as erroneous or prejudicial to interest of revenue under section 263 - **National Bank of Agriculture and Rural Development v. DCIT** - [2024] 168 taxmann.com 97 (Mumbai - Trib.)

**SECTION 36(1)(viiia) OF THE INCOME TAX ACT, 1961 -
BAD DEBTS, IN CASE OF BANKS**

- 4.33** Cooperative banks are entitled to claim deduction under section 36(1)(viiia) even without rural branches or advances - **ACIT v. Citizens Co-Operative Bank Ltd.** - [2024] 167 taxmann.com 703 (Rajkot - Trib.)

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

- 4.34 Architect and professional fees:** Where assessee claimed deduction on account of architect and professional fees but during assessment proceedings assessee did not furnish complete information regarding payment of architect and professional fees, since assessee submitted that it had wrongly furnished PAN details of assessee company instead of architect and, subsequently rectified its mistake by providing all possible details pertaining to transactions carried out with architect, issue was to be remanded back to Assessing Officer for decision afresh - **ITO v. Reliable Builders & Developers** - [2024] 168 taxmann.com 388 (Mumbai - Trib.)
- 4.35 Reversal of provision:** Where assessee-company, engaged in trading of ophthalmic lenses, created provision for inventory written off due to obsolescence/bad stock in earlier year and offered same to tax, reversal of said provision in relevant year was an allowable deduction - **Essilor India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 168 taxmann.com 186 (Bangalore - Trib.)
- 4.36** Where Assessing Officer disallowed part of assessee's bad debt claim, treating it as capital in nature, and assessee appealed, arguing those were actually business expenses deductible under section 37(1), but Commissioner (Appeals) upheld disallowance without reviewing that alternative claim, matter would be remanded to Commissioner (Appeals) to verify and consider said claim - **Aarav Fragrances and Flavors (P.) Ltd. v. ACIT** - [2024] 168 taxmann.com 119 (Mumbai - Trib.)

- 4.37** Where Assessing Officer applied an ad hoc 20% disallowance on staff welfare, marketing, conveyance, travel, and miscellaneous expenses, though expenses lacked strong evidence beyond self-made vouchers, AO's 20% disallowance was found to be excessive and therefore, disallowance was reduced to 10%. - **Aarav Fragrances and Flavors (P.) Ltd. v. ACIT** - [2024] 168 taxmann.com 119 (Mumbai - Trib.)

- 4.38 Revision:** Where Principal Commissioner invoked revisionary proceedings on ground that assessee had claimed deduction of capital expenditure and same was not verified by Assessing Officer since Principal Commissioner himself noted that expenses in dispute had already been capitalized by assessee in its books of account and were not claimed in its profit and loss account, same could not be held as prejudicial to interest of revenue and thus, revisionary order was to be quashed - **Kool Home Builders v. Principal Commissioner of Income-tax** - [2024] 168 taxmann.com 36 (Cochin - Trib.)

- 4.39 Commission:** Where assessee claimed to have paid commission to its related parties, since aforesaid commission expenses had been allowed as deduction in preceding three years and in fact had also been allowed by Assessing Officer while framing scrutiny assessment in his case for immediately succeeding year, impugned disallowance of commission expenses was unjustified - **Vivek Nathani v. Assistant Commissioner of Income Tax** - [2024] 168 taxmann.com 79 (Raipur - Trib.)

- 4.40 Interest on late payment of TDS:** Interest paid by assessee on late payment of TDS was not shown to be incurred wholly and exclusively for purpose of business of assessee, therefore, same could not be allowed as deduction - **Media.Net Software Services India P. Ltd. v. DCIT** - [2024] 167 taxmann.com 705 (Mumbai - Trib.)

- 4.41 ESOP expenses:** Discount on issue of Employee Stock Option Plans (ESOPs) is not a contingent liability but is an ascertained liability and, therefore, assessee would be entitled to claim deduction in respect of same - **Deputy Commissioner of Income-tax v. Algonomy Software (P.) Ltd.** - [2024] 168 taxmann.com 2 (Bangalore - Trib.)

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

- 4.42 Software:** No disallowance could be made under section 40(a)(i) towards depreciation on computer software on ground that no TDS was deducted on payments made towards computer software - **Samsung R & D Institute India - Bangalore (P.) Ltd. v. JCIT** - [2024] 168 taxmann.com 106 (Bangalore - Trib.)

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

4.43 Denial of exemption: Where AO denied claim of exemption u/s. 11 along with certain disallowances u/s. 40(a)(ia) due to non-furnishing of details during assessment proceedings, since assessee was not given opportunity to substantiate its claim with documentary evidence, matter was to be remanded back to Assessing Officer for fresh examination - **Sree Raghavendra Educational Society v. ITO (Exemptions)** - [2024] 168 taxmann.com 329 (Chennai - Trib.)

4.44 Transporter: Where assessee claimed deduction on account of transportation charges paid to transporters and AO disallowed said claim u/s. 40(a)(ia) due to failure of assessee to provide documentary evidence that said transporters were assessed to tax u/s. 44AE, since documents submitted by assessee qua transporters appeared to be essential and important for adjudication of issue involved, matter was to be remanded back to AO to decide issue afresh - **ITO v. Reliable Builders & Developers** - [2024] 168 taxmann.com 388 (Mumbai - Trib.)

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

4.45 Scope of provision: Where assessee-firm paid salary to an employee after deduction of tax at source and claimed deduction of same and AO having found that employee was relative of a partner treated amount of salary as bogus salary expenses and disallowed same by invoking provisions of section 40A(2)(b), since none of order passed by authorities doubted doubled services so rendered by employee nor alleged to have been paid salary excessive or unreasonable, disallowance made u/s. 40A(2) was bad in law - **M S Hostel v. DCIT** - [2024] 167 taxmann.com 735 (Ahmedabad - Trib.)

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

4.46 Where assessee disclosed sundry creditors in balance sheet, acknowledging them as liabilities, in such circumstances, no remission or cessation of liability under section 41(1) could be assumed, and if any discrepancy was found with confirmation and balance sheet of those sundry creditors, suitable action should be taken in hands of those sundry creditors and no adverse inference could be drawn on assessee - **Golden Moment (P.) Ltd. v. ACIT** - [2024] 168 taxmann.com 467 (Delhi - Trib.)

SECTION 44B OF THE INCOME-TAX ACT, 1961 - NON-RESIDENT - SHIPPING BUSINESS OF

4.47 GST: While computing deemed income under section 44B, GST cannot be included as section 44B only pertains to specified amount mentioned in sub-section (2) of section 44B - **Orient Overseas Container Line Ltd. v. Deputy Commissioner of Income-tax** - [2024] 168 taxmann.com 269 (Mumbai - Trib.)

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

4.48 Business profits: Income received by assessee, a non-resident, out of hire/lease equipments used or to be used in extraction/exploration of mineral oils, was covered under provisions of section 44BB and taxable on gross basis at rate of 10 per cent - **UMW Sher (I) Ltd. v. Assessing Officer** - [2024] 168 taxmann.com 239 (Delhi - Trib.)

SECTION 47 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSACTIONS NOT REGARDED AS TRANSFER

4.49 Firm, transfer of capital asset by to company as a result of succession: Where assessee-firm was converted into assessee-company, since succession had taken into effect from 27-3-2017 and all assets and liabilities of firm relating to business of firm immediately before succession i.e. on 26-3-2017 became assets and liabilities of assessee company and there was no evidence available to show that partners had received consideration at time of succession, there was no violation of conditions laid down in section 47(xiii), proviso (a) or (c) and assessee was entitled for exemption under section 47(xiii) - **Atria Wind (Kadambur) (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 168 taxmann.com 8 (Bangalore - Trib.)

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

4.50 Cost of improvement: Where assessee sold immovable property and purchased new property and assessee claimed cost of improvement on sold property and declared nil LTCG, Assessing Officer disallowed said benefit on ground that property sold was commercial in nature and would qualify for STCG, since it was noted from receipt of property tax that 2 units of impugned property were used for residential purposes, 50 per cent cost of improvement would be eligible for indexation cost while calculating capital gain - **Kumar Madhavanpillai S. Chandra Press & Book Depot v. Income-tax Officer -1(4)** - [2024] 168 taxmann.com 381 (Cochin - Trib.)

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

4.51 Once a reference was made under section 50C for valuation of capital asset, Assessing Officer was obliged to complete assessment in conformity with estimate made by DVO - **Lalit Kumar Jalan v. Income-tax Officer** - [2024] 168 taxmann.com 529 (Cuttack - Trib.)

4.52 Applicability of: Where assessee received land as a result of liquidation of company, same could not result into transfer of any capital asset within meaning of section 50C - **Assistant Commissioner of Income-tax v. Venkatesh Meghraj Kathare** - [2024] 168 taxmann.com 367 (Chennai - Trib.)

4.53 Revision: Where property was transferred by assessee in assessment year 2017-18 and revenue had accepted same by framing an assessment order under section 143(3), there should be no addition on account of stamp duty value of said property in assessment year 2018-19 - *Anjuman-E-Shiateali v. CIT(Exemption)* - [2024] 168 taxmann.com 120 (Mumbai - Trib.)

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

4.54 Construction of new house: Exemption under section 54 could be allowed based on amount utilised by assessee out of sale consideration towards construction of new house property even if construction was not complete - *DCIT v. Bagalur Krishnaiah Shetty Vijay Shanker* - [2024] 168 taxmann.com 153 (Bangalore - Trib.)

SECTION 54B OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - TRANSFER OF LAND USED FOR AGRICULTURAL PURPOSES

4.55 Illustrations: Where assessee sold two pieces of agricultural land and purchased a new agricultural land and a residential house, assessee was entitled to benefit of exemption/deduction under section 54B and 54F in respect of investments made in purchase of agricultural land and residential house, particularly when Assessing Officer found claim of assessee to be correct - *Munni Devi v. Asstt. Commissioner of Income-tax* - [2024] 167 taxmann.com 675 (Jaipur - Trib.)

SECTION 54EC OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - NOT TO BE CHARGED ON INVESTMENT IN CERTAIN BONDS

4.56 Scope of provision: Where assessee sold three properties and invested Rs. 1.5 crores in REC bonds during 2010-11 out of long-term capital gain, since investment in REC bonds was much before insertion of second proviso to section 54EC(1) by Finance (No. 2) Act, 2014, with effect from 1-4-2015, assessee was entitled to deduction under section 54EC of Rs. 1.5 crores - *Rajendra Harjivandas Prajapati v. Deputy Commissioner of Income-tax* - [2024] 167 taxmann.com 662 (Ahmedabad - Trib.)

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

4.57 Partly commercial and partly residential: Where part of property purchased by assessee was indeed notified as commercial in nature but property primarily as a whole was used for purpose of residential purpose alone and property marked as commercial was never used for any commercial activity, thus, assessee had made investment in residential property and same was eligible for exemption under section 54F - *Kumar Madhavanpillai S. Chandra Press & Book Depot v. Income-tax Officer -1(4)* - [2024] 168 taxmann.com 381 (Cochin - Trib.)

4.58 Withdrawal from CGAS: Where assessee had sold a capital asset on 29-7-2015 on which he had earned long-term capital gain (LTCG) and had deposited a sum in his bank account opened under Capital Gain Account Scheme (CGAS) and had claimed exemption under section 54F and during year under consideration he had made withdrawals from CGAS account, as per mandate of 1st proviso to section 54F(4), unutilized amount lying in assessee's CGAS account that was withdrawn by him in immediately succeeding year, could have only be brought to tax in assessment year 2019-20, not in relevant assessment year 2018-19 - *Digamber Madhav Chaudhary v. Deputy Commissioner of Income-tax* - [2024] 168 taxmann.com 64 (Raipur - Trib.)

4.59 Stock-in-trade: Where exemption under section 54F was denied to assessee on ground that assessee owned more than one residential house property on date of sale of original asset, since one of alleged residential house was shown as stock-in-trade by assessee and did not qualify as residential houses in terms of section 54F, in absence of a valid basis revisionary order was to be set aside - *Kirankumar Rasiklal Sanghvi v. Principal Commissioner of Income-tax* - [2024] 168 taxmann.com 18 (Ahmedabad - Trib.)

4.60 Agricultural land: Where exemption under section 54F was denied to assessee on ground that assessee owned more than one residential house property on date of sale of original asset, since one of alleged residential house were small houses constructed on agricultural land and there was absence of a valid basis with Principal Commissioner for finding property qualifying as residential house for purpose of section 54F, revisionary order was to be set aside - *Kirankumar Rasiklal Sanghvi v. Principal Commissioner of Income-tax* - [2024] 168 taxmann.com 18 (Ahmedabad - Trib.)

4.61 Term 'net consideration as per section 54F does not make any reference to deemed sale consideration of property, i.e., value adopted or assessed or assessable by any authority of State Government for purpose of payment of stamp duty in respect of such transfer, as provided in section 50C - *Naresh Kumar Shrivastava v. Income-tax Officer* - [2024] 167 taxmann.com 676 (Raipur - Trib.)

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

4.62 Immovable property: Where Commissioner (Appeals) upheld addition made by Assessing Officer under section 56(2)(vii)(b) on account of difference between sale consideration and stamp duty valuation of property sold by assessee, since detailed submissions filed by assessee were not considered by Commissioner (Appeals) nor agreement and deed placed reliance upon by assessee were considered by Commissioner (Appeals), matter was to be remanded back to Commissioner (Appeals) for fresh adjudication - *Girish Shivram Pawar v. Income-tax Officer* - [2024] 168 taxmann.com 237 (Mumbai - Trib.)

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

- 4.63** Where assessee provided comprehensive evidence of lender's identity, transaction genuineness, and creditworthiness, along with confirmation and proof of regular banking channel, lender's failure to respond to summons alone did not warrant adverse action against assessee and thus, addition under section 68 deserved to be deleted - **Golden Moment (P.) Ltd. v. ACIT - [2024] 168 taxmann.com 467 (Delhi - Trib.)**
- 4.64 Gift:** Where assessee had shown receipt of gift of Rs.3.00 lakhs from her elder son as cash deposits in their joint bank account and had filed confirmation letter obtained from son of assessee, in which he had furnished his PAN number also and said contribution had been declared as gift, there was no reason to disbelieve gift transaction - **Rashida Shakil Bhati v. ITO - [2024] 168 taxmann.com 274 (Mumbai - Trib.)**
- 4.65 Gift:** Where assessee had deposited certain cash in a joint bank account along with her sons, since assessee had explained sources for making deposits in years relevant to Asst years 2015-16 and 2016-17, addition made in those years was to be deleted - **Rashida Shakil Bhati v. ITO - [2024] 168 taxmann.com 274 (Mumbai - Trib.)**
- 4.66 Bank deposits:** Where assessee, agriculturist, did not file return of income claiming that he had no taxable income, however AO noted that assessee had made substantial deposits in his bank account and passed order making additions, since Asst order was passed ex parte, matter was to be remanded back for fresh consideration - **Dnyaneshwar Baburao Kathe v. ITO - [2024] 168 taxmann.com 408 (Pune - Trib.)**
- 4.67 Reassessment:** Where AO sought to reopen assessment on basis of an information received from Investigation Wing that shares of SRDL were used as accommodation entries to provide bogus LTCG to various beneficiaries and that assessee was also found to be one of beneficiaries, in view of facts that assessee held shares for more than a year and sold it in open market through registered share broker by suffering STT and due reduction of shares was made from DEMAT statement of assessee to extent of sales made by assessee, very basis of formation of belief of Assessing Officer that income had escaped assessment in reasons recorded was fallacious and, accordingly, impugned reassessment was to be quashed - **Subhash Chand Gupta v. ACIT - [2024] 168 taxmann.com 76 (Delhi - Trib.)**
- 4.68** Where assessee duly proved genuineness of sale transaction by bringing on record contract notes of sale and purchase, bank statement of broker and demat account showing transfer in and out of shares, AO was not justified in bringing to tax capital gain arising from sale of shares as unexplained cash credit. - **Pinki Jatanlal Daga v. Income-tax Officer - [2024] 168 taxmann.com 69 (Surat-Trib.)**

4.69 Bogus capital gain: Where assessee sold shares of a company 'U' and Assessing Officer having found that company 'U' was used for generating bogus long-term capital gain held that transactions entered into by assessee were sham transactions and added amount of sale consideration to assessee's income invoking provisions of section 68, since assessee had miserably failed to establish genuineness of credit entry appearing in his account books, addition as made by Assessing Officer deserved to be confirmed - **Income-tax Officer v. Neetaben Snehal Kumar Patel - [2024] 167 taxmann.com 660 (Ahmedabad - Trib.)**

4.70 Where assessee, an NBFC issued equity shares with a premium and Assessing Officer treated share capital as unexplained cash credits under section 68 due to concerns over low revenue, since assessee demonstrated identity, creditworthiness, and genuineness of 13 share applicants, who had sufficient net worth, and were registered with MCA, and filed tax returns and Assessing Officer having made no independent inquiries, in such circumstances, addition was to be deleted - **Shankar Traders & Distributors (P.) Ltd. v. Income-tax Officer - [2024] 167 taxmann.com 746 (Kolkata - Trib.)**

4.71 Reassessment: Where Assessing Officer issued reopening notice on ground that information was received by Assessing Officer from office of DDIT(Inv.) that assessee had received Rs. 35 lakhs from one TDPL which was found to be a paper concern involved in providing accommodation entries, since issue of reopening was examined in scrutiny assessment proceedings, reasons recorded for reopening of assessment were not valid and, therefore, impugned reassessment based on such invalid reason was to be quashed - **Team Global Logistics (P.) Ltd. v. DCIT - [2024] 167 taxmann.com 749 (Mumbai - Trib.)**

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

4.72 Where assessee invested in mutual funds and Assessing Officer added income under Section 69 for unexplained sources and Commissioner (Appeals) reduced this addition despite assessee's bank statements showing deposits, since assessee requested an opportunity to provide full documentation, it was deemed fit to remand issue to Assessing Officer for verification, with instructions to delete sustained addition if verified - **Mohan Shrinivas Bhise v. Income-tax Officer - [2024] 168 taxmann.com 409 (Pune - Trib.)**

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

4.73 Cash deposits: Where assessee made frequent deposits and cash withdrawals in his bank account, looking at pattern of deposits and withdrawals, assessee should not be denied benefit of peak credit and thus, only peak shortage could be considered as unexplained income - **Kamal Chand Sisodiya v. Income-tax Officer - [2024] 167 taxmann.com 671 (Indore - Trib.)**

4.74 Where assessee had provided a copy of Form 26-AS showing that total salary amount matched what was reported, with no discrepancies, AO was not justified in making an addition based on a supposed difference in salary income. - ***Pinki Jatanlal Daga v. Income-tax Officer*** - [2024] 168 taxmann.com 69 (Surat-Trib.)

4.75 Cash: Where assessee deposited cash of Rs. 2.52 crores in bank account during demonetization period, since on entering into fresh agreement in June, 2016, assessee had made huge sales in cash which eventually stood deposited in bank account and entire cash sales made by assessee were duly reflected in VAT returns of assessee, addition made by Assessing Officer under section 69A was rightly deleted by Commissioner (Appeals) - ***Subhash Chand Gupta v. ACIT*** - [2024] 168 taxmann.com 76 (Delhi - Trib.)

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

4.76 Purchase of property: Where Assessing Officer made addition under section 69B on ground that assessee had made unexplained investment in purchase of property, since proper opportunity of being heard was not extended to assessee to explain its case or to substantiate its contentions, matter was to be remanded back to Assessing Officer to adjudicate same afresh - ***Sardar Mahendra Singh Bhatia v. Commissioner of Income-tax (Appeals)*** - [2024] 168 taxmann.com 19 (Raipur - Trib.)

SECTION 70 OF THE INCOME-TAX ACT, 1961 - LOSSES - INTRA SOURCE SET OFF

4.77 Capital gains/loss: Where Assessing Officer had disallowed capital loss claimed by assessee treating it as artificial loss created on paper, since transactions leading to loss were supported by commercial rationale and sale consideration agreed upon between related parties was supported by independent valuation report, Commissioner (Appeals) was justified in deleting impugned addition - ***DCIT v. Welspun Steel Ltd*** - [2024] 167 taxmann.com 720 (Mumbai - Trib.)

SECTION 72 OF THE INCOME-TAX ACT, 1961 - LOSSES - CARRY FORWARD AND SET OFF OF BUSINESS LOSSES

4.78 Where Assessing Officer restricted set off of business loss to Rs. 15.95 crores as per assessment records for earlier year, since amount of claim of business loss was dependent on adjudication process of appeal of assessee for earlier years, issue was to be remanded back to Assessing Officer - ***Media.Net Software Services India P. Ltd. v. DCIT*** - [2024] 167 taxmann.com 705 (Mumbai - Trib.)

SECTION 72AB OF THE INCOME-TAX ACT, 1961 - PROVISIONS RELATING TO CARRY FORWARD AND SET OFF OF ACCUMULATED LOSSES AND UNABSORBED DEPRECIATION ALLOWANCE IN BUSINESS REORGANIZATION OF CO-OPERATIVE BANKS

4.79 Where assessee-Co-operative Bank merged with Shatabdi Mahila Shakti Bank Ltd. and claimed deduction under Section 72AB for carrying forward accumulated losses and unabsorbed depreciation from predecessor bank, since assessee had fulfilled conditions mentioned under section 72AB hence, it would be eligible to claim set-off of accumulated loss and un-absorbed depreciation - ***ACIT v. Citizens Co-Operative Bank Ltd.*** - [2024] 167 taxmann.com 703 (Rajkot - Trib.)

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

4.80 Time limit for applying for regular approval: Where assessee received provisional approval under section 80G(5) which was valid till assessment year 2024-25 and thereafter, assessee applied for regular approval on 26/09/2023, since assessee was to apply for regular approval before six months of expiry of provisional registration as per section 80G(5), impugned application filed by assessee was well within prescribed time limit - ***Shree Koteswardeo Vishwasth v. Commissioner of Income Tax (Exemption)*** - [2024] 168 taxmann.com 74 (Pune - Trib.)

4.81 Time limit for filing application: Where assessee-trust filed an application for approval under section 80G and Commissioner (Exemption) rejected same on ground that same was filed after due date, since vide a subsequent CBDT circular, time for filing of suchlike applications was extended, matter was to be remanded to Commissioner (Exemption) for decision on application under section 80G afresh in accordance with law - ***Baba Balaknath Seva Sansthan v. CIT-Exemption*** - [2024] 167 taxmann.com 716 (Jaipur - Trib.)

4.82 Time limit for applying for regular registration: Where assessee-trust had provisional approval under section 80G(5) upto assessment year 2024-25 and it had made application in form 10AB within six months before expiry of provisional approval, said application was within prescribed time limit and Commissioner (Exemption) was to be directed to verify assessee's eligibility as per Act - ***Chopade Charitable Trust v. Commissioner of Income-tax (Exemption)*** - [2024] 167 taxmann.com 702 (Pune - Trib.)

4.83 CSR expenditure: Where assessee-company incurred Corporate Social Responsibility (CSR) expenditure as mandatorily required under section 135 of Companies Act, 2013 and out of total CSR expenditure, certain expenditure was made by way of donations to eligible institutions under section 80G, assessee was not barred from claiming deduction under section 80G in respect of donations made to approved institutions even though same was made in discharge of CSR obligation - ***L & T Finance Ltd. v. DCIT*** - [2024] 167 taxmann.com 503 (Kolkata - Trib.)

SECTION 80-IE OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - SPECIAL PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS IN NORTH-EASTERN STATES

4.84 Scope of provision: Where assessee was engaged in manufacturing pharmaceutical products and products developed in research and development centres were completely unrelated to products manufactured in Sikkim unit which was eligible for deduction u/s. 80-IE, allocation of research and development expenditure to Sikkim unit was wrong - **DCIT v. Macleods Pharmaceuticals Ltd.** - [2024] 167 taxmann.com 737 (Mumbai - Trib.)

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

4.85 Where assessee claimed deduction u/s. 80JJAA but had not filed audit report in Form 10DA along with return of income, however, filed same before final order of assessment was made, assessee was entitled to claim deduction u/s. 80JJAA - **Tarasafe International (P.) Ltd. v. DDIT** - [2024] 168 taxmann.com 514 (Kolkata - Trib.)

SECTION 80P OF THE INCOME-TAX ACT, 1961 - COMMISSIONER (APPEALS) - DEDUCTIONS - INCOME OF CO-OPERATIVE SOCIETIES

4.86 Personal hearing: Where Commissioner (Appeals) upheld order of Assessing Officer disallowing deduction under section 80P on interest earned from bank by assessee due to non-submission of copy Bye laws, registration certificate, since assessee had asked for personal hearing before Commissioner (Appeals) which was not provided, matter was to be remanded back to Commissioner (Appeals) for de novo adjudication after granting opportunity of virtual hearing as asked by assessee - **Atpadi Education Societys Employee Sahkari Path Mandal Ltd. v. Income-tax Officer** - [2024] 168 taxmann.com 7 (Pune - Trib.)

SECTION 90 OF INCOME-TAX ACT, 1961 - DOUBLE TAXATION RELIEF

4.87 Where assessee, a resident of UAE, received capital gains in India on sale of mutual funds, since assessee was a resident of UAE, it was only UAE which had a right to tax capital gain and not India and that article 13 of agreement for avoidance of double taxation between India and UAE provided an exemption from capital gains tax in India to residents of UAE - **Saket Kanoi v. DCIT** - [2024] 168 taxmann.com 418 (Delhi - Trib.)

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

4.88 Lending or borrowing/capital financing: With introduction of explanation to section 92B by Finance Act, 2012 if there was any delay in realization of credit arising from sale of goods or services rendered in course of carrying on business, it was liable to be visited with transfer pricing adjustment on account of interest income short charged/uncharged - **OSI Systems (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 168 taxmann.com 22 (Hyderabad - Trib.)

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

4.89 Adjustments - Technical services fee: TPO/DRP/AO cannot disallow genuine expenses on ground that no benefits have been received by an assessee - **Toshiba Transmission & Distribution Systems (India) (P.) Ltd. v. ACIT** - [2024] 168 taxmann.com 168 (Hyderabad - Trib.)

4.90 Adjustments - Royalty: Where assessee entered into international transactions of payment of royalty to its non-UK based Associated Enterprises (AEs) and submitted that it had entered into Advance Pricing Agreement (APA) for Asst. years 2018-19 to 2022-23 which covered royalty transaction with UK entities and arm's length of royalty in agreement at 5 per cent be applied to non-UK entities, since Asst. year 2017-18 was not covered within APA period, issue in dispute was to be remitted to file of AO/TPO for fresh consideration - **JCB India Ltd. v. DCIT** - [2024] 168 taxmann.com 94 (Delhi - Trib.)

4.91 Adjustments - Interest: Where assessee had remitted share application money to its AE in UAE which was to be utilized for setting up a manufacturing plant, however, there was delay in allotment of shares due to non-receipt of approval from SAIF Zone Authority, TP addition proposed by TPO treating share application money as interest free loan/advance to AE and charging interest thereon could not be sustained - **Aries Agro Ltd. v. Assessment Unit, NFAC** - [2024] 168 taxmann.com 28 (Mumbai - Trib.)

4.92 Adjustments - Interest: Interest chargeable on delayed recovery of export receivables from AEs should be taken at LIBOR rates at rate prevailing in country where loan is received/consumed by AE - **Microchip Technology (India) (P.) Ltd. v. DCIT** - [2024] 168 taxmann.com 38 (Hyderabad - Trib.)

4.93 Advertising, marketing and promotion expenses: In case of distribution business, where there was no ALP adjustment made by TPO, separate AMP adjustment was uncalled for - **Sony India (P.) Ltd. v. DCIT** - [2024] 167 taxmann.com 550 (Delhi - Trib.)

4.94 Comparables, functional similarity - Software consultancy/development services: A company engaged in both software development as well as ITes could not be considered as comparable to assessee being characterized as a routine software development service provider - **Sony India (P.) Ltd. v. DCIT** - [2024] 167 taxmann.com 550 (Delhi - Trib.)

4.95 Comparables, functional similarity - Software consultancy/development services: A full-fledged IT consulting organization and provided services in nature of technical consulting, design and development of software, maintenance, systems integration, implementation, testing and infrastructure management services, could not be selected as a comparable for assessee providing software development services - **Sony India (P.) Ltd. v. DCIT** - [2024] 167 taxmann.com 550 (Delhi - Trib.)

4.96 Comparability factors - Intangible assets: A giant company in terms of risk profile, nature of services, number of employees, ownership of branded products and brand related profits, etc. could not be compared with assessee, a captive software development services provider, not owning any branded products with no expenditure of its own on R&D etc. - **Sony India (P.) Ltd. v. DCIT - [2024] 167 taxmann.com 550 (Delhi - Trib.)**

4.97 Comparables, functional similarity - Software consultancy/development services: Where selected company was involved in software development, software products and marketing, in absence of segmental data, said company could not be included in list of comparables to assessee providing software development services - **Sony India (P.) Ltd. v. DCIT - [2024] 167 taxmann.com 550 (Delhi - Trib.)**

4.98 Comparability factors - turnover filter: Turnover is a relevant criteria for choosing companies as comparables in determining the ALP in transfer pricing cases and application of tolerance range of turnover of ten times on both sides of assessee's turnover was proper - **OSI Systems (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 168 taxmann.com 22 (Hyderabad - Trib.)**

4.99 Comparability factors - Functional similarity - Information technology enabled services: A company providing outsourced publishing services was functionally comparable to assessee, engaged in provision of IT enabled services - **OSI Systems (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 168 taxmann.com 22 (Hyderabad - Trib.)**

4.100 Adjustments - Benefits from transaction/allowability of expenditure: TPO is not empowered to apply benefit test while computing ALP - **KH Facility Solutions India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 168 taxmann.com 17 (Hyderabad - Trib.)**

4.101 Adjustments - Interest: TPO should adopt LIBOR+200 basis point for benchmarking interest receivable on outstanding receivables from AEs - **KH Facility Solutions India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 168 taxmann.com 17 (Hyderabad - Trib.)**

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

4.102 Communication of assessment order: Assessment order and demand notice issued under section 156 without any DIN number mentioned were unsustainable - **Mohd. Shafiq Cement Store v. ITO - [2024] 168 taxmann.com 72 (Amritsar - Trib.)**

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

4.103 Conditions precedent: Where AO determined assessed income as nil against returned income of assessee, said action of AO was against Circular No. 549 dated 31-10-1989 issued by CBDT, wherein it is stated that assessed income should not be less than returned income - **Rashida Shakil Bhati v. ITO - [2024] 168 taxmann.com 274 (Mumbai - Trib.)**

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

4.104 Period of limitation: Where AO received order of DRP on 6-4-2022, final assessment order passed on 30-5-2022 was within time limit and legally valid - **Haier Appliances India (P.) Ltd. v. ACIT - [2024] 168 taxmann.com 126 (Delhi - Trib.)**

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

4.105 Project completion method: Where assessee-firm, engaged in real estate business, consistently followed project completion method, since beginning of project under consideration, and even during assessment year under consideration assessee had not reached minimum threshold to recognize revenue as per percentage completion methods action of AO in rejecting project completion method and applying percentage completion method was unsustainable - **ITO v. Reliable Builders & Developers - [2024] 168 taxmann.com 388 (Mumbai - Trib.)**

4.106 Accounting system: Where assessee-firm, engaged in business of real estate, had been consistently following project completion method, and AO made additions on account of difference between sales turnover shown in GST return and ITR, since assessee in compliance to terms of GST Act had shown amount received or receivable as per construction schedule difference between turnover shown in both returns had been properly reconciled by assessee, addition made by AO was to be deleted - **ITO v. Reliable Builders & Developers - [2024] 168 taxmann.com 388 (Mumbai - Trib.)**

4.107 Where AO rejected trading results of assessee on basis of purchase entry bills which revealed higher profit rates and made a consequential addition, since basis adopted by AO for determining gross profit addition was not supported by any concrete basis, AO was directed to restrict addition by adopting overall gross profit rate of assessee - **Vivek Nathani v. Asst. CIT - [2024] 168 taxmann.com 79 (Raipur - Trib.)**

4.108 Estimation of profit: Where explanation of assessee-contractor regarding decline in net profit was evasive and there were various defects in books of account of assessee, rejection of books of account was proper; however, in absence of any comparative instances of similar assessee in same line of business, it was appropriate to estimate profit at a percentage worked out on basis of preceding three years profit of assessee herself - **Nanda Agrawal v. Income-tax Officer - [2024] 167 taxmann.com 707 (Raipur - Trib.)**

**SECTION 145A OF THE INCOME-TAX ACT, 1961 -
METHOD OF ACCOUNTING IN CERTAIN CASES**

- 4.109 Valuation of inventory:** Where assessee had applied inclusive method of valuation of inventories in compliance with section 145A as well as Income Computation and Disclosure Standards II Valuation of Inventories and made adjustment of VAT therein, and overall impact of adjustments made on assessee's income was nil, addition of Value Added Tax (VAT) component on Closing Inventory to returned income made on account of incorrect application of ICDS-II could not be sustained - *Sri. Arunkumar Puthige v. Income-tax Officer Ward 1* - [2024] 168 taxmann.com 166 (Cochin - Trib.)

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

- 4.110 Approval:** Where quantum of income which had escaped assessment as mentioned in approval and quantum as stated in recorded reasons were at great variance with each other, impugned notice issued under section 148 was to be quashed and set aside as statutory approval was granted in a mechanical manner and without application of mind - *Mohd. Shafiq Cement Store v. ITO* - [2024] 168 taxmann.com 72 (Amritsar - Trib.)

**SECTION 156A OF THE INCOME-TAX ACT, 1961
AND SECTION 14 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 - DEMAND AND
RECOVERY**

- 4.111 Applicability of:** Where assessee-company was admitted to be corporate debtor under IBC, 2016, in view of fact that resolution plan was yet to be finalized, it was necessary to remand appeal to Assessing Officer as per newly inserted provisions of section 156A to take necessary steps/action before NCLT - *Manz Retail (P.) Ltd. v. DCIT* - [2024] 168 taxmann.com 199 (Mumbai - Trib.)

**SECTION 189 OF THE INCOME-TAX ACT, 1961 -
FIRM - ASSESSMENT AFTER DISSOLUTION**

- 4.112** Where a corporate entity voluntarily opted for discontinuance of business and prefers to get name of company struck off and dissolve company, after distributing its assets, provisions of section 176 might become applicable and without informing Assessing Officer of discontinuance of business, erstwhile company cannot claim that assessment order was passed against non-existing entity - *Boopendradas (Vikash) Sungker v. DCIT* - [2024] 167 taxmann.com 532 (Delhi - Trib.)

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

- 4.113 Proper opportunity of hearing:** Where Assessing Officer disallowed certain business expenses claimed by assessee and assessee's appeal was dismissed by

Commissioner (Appeals) due to non-response to various notices, since Commissioner (Appeals) did not provide sufficient details about notices sent to assessee and did not make a decision on merits, matter was to be remanded back to Commissioner (Appeals) to decide case afresh on its merits - *Alpha Chemie Trade Agencies (P.) Ltd. v. CIT (Appeals)-22* - [2024] 168 taxmann.com 257 (Mumbai - Trib.)

**SECTION 251 OF THE INCOME-TAX ACT, 1961 -
COMMISSIONER (APPEALS) - POWERS OF (APPEALS) -
POWERS OF**

- 4.114 General:** Commissioner (Appeals) is not vested with any power to summarily dismiss appeal for non-prosecution - *Avdesh Jain v. ITO* - [2024] 167 taxmann.com 730 (Raipur - Trib.)

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

- 4.115** Decision of jurisdictional HC would have higher precedence value on Tribunal than decision of non-jurisdictional HC. - *Pinki Jatanlal Daga v. ITO* - [2024] 168 taxmann.com 69 (Surat-Trib.)

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

- 4.116 Circular No. 5/2024, dated 15-3-2024:** Circular No. 5/2024, dated 15-3-2024, issued by CBDT under section 268A is applicable prospectively - *Asst. CIT v. Pradipkumar Chandulal Bhuva* - [2024] 167 taxmann.com 741 (Rajkot - Trib.)

- 4.117 Monetary limits:** Where AO made addition u/s. 69A on account of unexplained money based on information received from state police department and Tribunal dismissed revenue's appeal on account of low tax effect, since addition was not made on basis of enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligences (DGGI), which was mentioned in exhaustive list of modified Circular No. 3/2018, dated 11-7-2018 (modified on 20-8-2018), said circular would not be applicable and claim of revenue, to recall order of Tribunal, and to hear same on merit, was misconceived - *Asst. CIT v. Pradipkumar Chandulal Bhuva* - [2024] 167 taxmann.com 741 (Rajkot - Trib.)

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

- 4.118** Where penalty order imposed by AO u/s. 271(1)(c) did not mention specific charge of default committed by taxpayer i.e. whether taxpayer had concealed its particulars of income or furnished inaccurate particulars of such income, impugned penalty order was contrary to law and was to be quashed - *DCIT v. Lakhani Arman Shoes (P.) Ltd.* - [2024] 167 taxmann.com 672 (Delhi - Trib.)

- 4.119 Capital gains:** Where assessee did not declare capital gain earned from sale of properties in original return and filed revised return only after AO confronted assessee for

transactions reported in AIR, penalty imposed by Assessing Officer qua capital gain was to be upheld - **Rajaram Patidar v. Income-tax Officer - [2024] 167 taxmann.com 743 (Indore - Trib.)**

4.120 Undisclosed interest income: Where assessee received interest income and same was disclosed in revised return, since it was culled out from assessment-order that assessee received sale-proceeds of immovable properties through cheques in his bank account and impugned interest income was also from bank accounts, it could be discerned that when Assessing Officer, questioned assessee to explain transactions of sale of immovable properties, assessee had to declare not only capital gain but also interest from banks in revised return and thus, penalty imposed qua interest income was to be upheld - **Rajaram Patidar v. Income-tax Officer - [2024] 167 taxmann.com 743 (Indore - Trib.)**

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

4.121 Applicability of: Where assessee trust running educational institutions received security deposits in cash from employees, since assessee had filed various documents including notarized affidavit to prove that said deposits were genuine and would not attract provisions of section 269SS and there was no unaccounted money or some false entries in books of account, impugned penalty under section 271D imposed on assessee was not justified - **Indira Gandhi Memorial Trust v. Joint Commissioner of Income-tax (Exemption) - [2024] 168 taxmann.com 226 (Cochin - Trib.)**

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

4.122 Repayment of deposits: Where assessee-trust received deposits from its employees by way of security

and same were returned back to employees when they left service, since assessee had established that in order to reduce genuine hardships of its ex-employees, it repaid their deposits in cash at time of their retirement or resignation, no penalty under section 271E was to be imposed - **Indira Gandhi Memorial Trust v. Joint Commissioner of Income-tax (Exemption) - [2024] 168 taxmann.com 226 (Cochin - Trib.)**

5. SAFEMA

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

5.1 Locker: Where during search conducted at premises of SVPL, two lockers were found whose locker holders could not be identified and later on it was claimed by assessee that lockers were opened in name of SD which was his alias, since assessee failed to disclose source of acquisition of gold and silver which was found in lockers and also failed to prove that lockers belonged to him, impugned attachment of locker and its contents was justified - **Shiv Narayan Baheti v. Initiating officer, Kolkata - [2024] 168 taxmann.com 390 (SAFEMA - New Delhi)**

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

5.2 General: Where during search conducted at premises of SVPL, two lockers were found whose locker holder, SD could not be identified and later assessee himself claimed to be SD, since notice under section 24(1) was sent in name of SD at address of assessee, compliance of section 24(1) was made and otherwise assessee made representation of his case, thus, attachment followed by reference could not be held to be illegal - **Shiv Narayan Baheti v. Initiating officer, Kolkata - [2024] 168 taxmann.com 390 (SAFEMA - New Delhi)**

Vivad se Vishwas, 2024 (VsV 2.0)

-Legal Provisions and select special situations



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Introduction:

The **Vivad Se Vishwas Scheme, 2024** (DTVsV Scheme, 2024) (VSV 2.0) is successor of the Vivad Se Vishwas Scheme, 2020 (VSV 1.0) however this scheme is not exactly similar to the earlier one. It was announced by Finance Minister Nirmala Sitharaman in the Union Budget 2024-25 and was introduced vide the Finance (No. 2) Act, 2024. Further, this scheme was notified by the Government of India on 20th September, 2024 to resolve pending appeals in case of income tax disputes. The objective of the Scheme is to, inter alia, reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process.

Applicability:

Disputes/appeals, including writs and special leave petitions (Appeal[s]), whether filed by the taxpayer or the tax authorities are pending as on 22 July 2024 before the following forums:

- The Supreme Court, High Court, Income Tax Appellate Tribunal, Commissioner/Joint Commissioner (Appeals)
- The Dispute Resolution Panel (DRP) or where DRP directions have been issued but the final assessment order is awaited
- Revision petitions pending before the Commissioner of Income Tax
- The disputes relating to taxes determined under the provisions relating to Tax Deducted at Source (TDS) and Tax Collected at Source (TCS).

Ineligible persons/disputes

- i. In respect of disputed tax, interest, penalty, or fee relating to:
 - Tax year in respect of which an assessment or reassessment has been made on the basis of search.
 - Tax year in respect of prosecution has been instituted

- Any undisclosed income from a source located outside India or undisclosed asset located outside India
 - An assessment/reassessment made basis information received pursuant to tax information exchange agreements
- ii. A person in respect of whom a detention order is passed under The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and such detention order is not revoked or set aside by a higher authority
- iii. A person in respect of whom prosecution has been instituted or he has been convicted under the provisions of Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Property Transactions Act, 1988, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002
- iv. A person in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of the Bharatiya Nyaya Sanhita, 2023 or for the purpose of enforcement of any civil liability under any law for the time being in force
- v. A person who has been convicted of any offence punishable under Bharatiya Nyaya Sanhita, 2023
- vi. A person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

Amount Payable To Settle Dispute: -

The amount to be paid by taxpayers opting to settle their disputes is:

Sl. no	Nature of tax arrears.	Amount payable Under this scheme for declaration made on or before the 31st day of January, 2025	Amount payable Under this scheme for declaration made on Or after the 1st day of February, 2025 but on or before the last date*
(i)	Where the tax in arrears is the aggregate of, (i) Disputed tax (ii) Interest chargeable/ charged, (iii) Penalty leviable/levied		
1.	Appeal is filed after 31/01/2020 but on or before 22/07/2024. (New Appellant)	Amount of the disputed tax	Amount of disputed tax + 10% of disputed tax
2.	Appeal is pending at same forum on or before 31/01/2020. (Old Appellant)	Amount of disputed tax + 10% of disputed tax	Amount of disputed tax + 20% of disputed tax

(ii) Where the tax in arrears relates to, (i) Disputed interest or (ii) Disputed Penalty or Disputed fee			
3.	Appeal is filed after 31/01/2020 but on or before 22/07/2024. (New Appellant)	25% of the disputed Amount	30% of the disputed Amount
4.	Appeal/ revision petition pending at same forum on or before 31/01/2020. (Old Appellant)	30% of the disputed Amount	35% of the disputed Amount
The amount payable would be reduced to 50% in the following cases: <ul style="list-style-type: none"> Where the taxpayers Appeal related to an issue, which has been decided in its favour by the Income Tax Appellate Tribunal / High Court (and not reversed by the High Court or the Supreme Court, as the case maybe) The Appeal has been filed by the tax authorities. 			

* Last date to be notified

- If the tax payable under VsV 2.0 is less than the amount already paid during litigation, the excess will be refunded (without any interest).

Adjustment of resulting Minimum Alternate Tax (MAT)

Where settlement results in reduction of Minimum Alternate Tax (MAT)/Alternate Minimum Tax (AMT) credit or losses or depreciation, the taxpayer can opt for either of the following:

- Include tax related to reduction of MAT/AMT credit or loss or depreciation in the disputed tax; or
- Carry forward the reduced MAT/AMT credit or loss or depreciation (as may be prescribed) without payment of disputed tax

Application/ Settlement process:

The Direct Tax Vivad Se Vishwas (DTVSV) Scheme, 2024, has four specific forms to facilitate the settlement process:

- Form for Declaration and Undertaking by the Declarant (Form-1):** Taxpayers must submit an application in Form 1 to declare their intention to settle the tax dispute and provide an undertaking to withdraw any pending legal proceedings. An appeal, writ petition, or special leave petition related to the same order, can be submitted in a single Form-1.
- Form for Certificate to be issued by Designated Authority (Form-2):** The designated authority issues the Certificate in Form-2 containing particulars of the tax arrears and the amount payable after such determination.

- iii. **Form for Intimation of Payment by the Declarant (Form-3):** The declarant must use Form-3 to inform the designated authority about the successful payment of the settlement amount. This intimation should be accompanied by petition, or claim related to the dispute has been withdrawn.
- iv. **Order for Full and Final Settlement of tax arrears by Designated Authority (Form-4):** The final order is issued by the designated authority in Form-4, confirming the full and final settlement of the tax dispute.

Select Special situations:

i. Appeal is pending as on 22.7.2024 but subsequently disposed off

Circular No. 12/2024 dated 13th October, 2024 in FAQ 8 under has dealt a situation where a taxpayer is eligible to apply for DTVSV Scheme, 2024 as his appeal is pending as on 22.7.2024. But subsequently before the taxpayer could file declaration under the DTVSV Scheme, 2024, his appeal has been disposed off. Can such a taxpayer still file declaration under the Scheme?

The Clarification has been given that where a decision has been given prior to the taxpayer filing a declaration, there is no dispute pending unless the taxpayer or the Department again prefers an appeal. Therefore, where an appeal is pending as on 22.7.2024 but is not pending as on the date of making declaration under the Scheme, such cases shall not be eligible for the Scheme. However, it is understood that on disposal of the appeal subsequent to the cut off date being 22.07.2024 and within the period of the running of the scheme, if the taxpayer immediately prefers an appeal against such disposal the said appeal is very much eligible for settlement under VsV 2.0.

ii. Time limit to file an appeal /Special Leave Petition had not expired on 22nd July or appeal is filed with Condonation of Delay against the Order passed before 22.07.2024 :

<p>FAQ no. 9</p> <p>Extant provisions of DTVSV Scheme, 2024 does not cover cases where taxpayer would have received orders but the time limit to file an appeal /Special Leave Petition had not expired on 22nd July is there any possibility that such cases can be covered in the Scheme ?</p>	<p>As per section 89(1) of the Scheme, it is clear that the appeal has to be pending as on the specified date i.e. 22.07.2024 for an appellant to be eligible for the Scheme. The definition of appellant also covers cases where the DRP has issued directions u/s 144C(5) but the AO has not completed the assessment u/s 144C(13).</p> <p>Therefore, the Scheme does not provide for eligibility of those cases where an appeal is not pending as on 22.7.2024 except for DRP cases referred above</p>
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In relation to above FAQ no.9 two situations may come up and the same are discussed herein below:

- (i) Where the time limit to file an appeal /Special Leave Petition **had not expired** on 22nd July, 2024

In this case recently Hon'ble Delhi High Court in the matter of **NAVEEN KUMAR AGGARWAL Vs. CENTRAL BOARD OF DIRECT TAXES & ANR** [W.P.(C) 17014/2024 and CM APPLs. 72115-16/2024] [09.12.2024] has ordered as follows:

“2. According to the petitioner, the same does not take into account a person who intends to file an appeal and the time for filing the appeal has not expired. It is pointed out that this is in contrast with Section 2(1)(a) of the Direct Tax Vivad Se Vishwas Act, 2020. It is contended that the definition of the term ‘Appellant’ thus **discriminates between a person who has filed an appeal before the specified date and a person who is in process of filing an appeal. Prima facie, we find it difficult to accept that differentiating between assesseees on the basis whether they have filed an appeal before the specified date or thereafter could be dispositive of the assessee’s right to claim benefit under the Direct Tax Vivad Se Vishwas Scheme, 2024.** We also note that in respect of the Finance Act, 2020 the Central Board of Direct Taxes (hereafter CBDT) had issued a comprehensive circular to clarify that a case where an appeal is not filed but the time for filing the same has not expired would also be included in the scheme.

3. In the aforesaid circumstances, we consider it apposite to direct the CBDT to consider the anomaly pointed out by the petitioner in the present petition and to examine whether it would be apposite to issue a circular in the said regard. Since 31.12.2024 has been fixed as a cut off date for availing the maximum benefit, we request the CBDT to consider the present petition as a representation as expeditiously as possible, and preferably within a period of two weeks from date.”

[Emphasis Supplied]

As discussed above, the CBDT may be issuing a clarification whereby the cloud over the discrimination between a person who has filed an appeal before the specified date and a person who is in process of filing an appeal may be cleared and the appeal for which time was available in the statute for filing the same before the respective forum upto 22.07.2024 may be allowed to be covered under VsV 2.0.

- (ii) where the time limit to file an appeal /Special Leave Petition had already expired on 22nd July, 2024 but department /assessee has preferred it with along with an application for condonation of delay and said condonation of delay is being accepted:

The above case is being considered by Hon'ble Calcutta High Court in the matter of **Principal Commissioner of Income Tax-1, Kolkata vs. Asish Kumar Ghosh**, WPA 18282 of 2021 by judgment dated 1st April, 2022 in relation to VsV 1.0 which is discussed hereunder.

“One important issueThe question would be as to what is the effect of the condonation of the delay in filing the appeal. The last date for filing the appeal was 13th December, 2019 but the appeal was filed only on 8th January, 2021. Consequently, there was a delay of 400 days. By virtue of the order passed by this Court on 20th January, 2021 condoning the delay, it is deemed that the appeal filed by the revenue for all purposes was within time, that is, as if the appeal had been presented not later than 13th December, 2019. This would be the correct interpretation of the legal provisions and the effect of an order of a court condoning the delay. This is as a result of deeming fiction which is created by condoning the delay committed by the revenue and treating the appeal as if it had been presented within time. Our view is also supported by the decision of the Division Bench of the High Court of Kerala in the case of S.V. Suhasini Devi & Anr. vs. Padmanabhan Madhavan, reported in AIR 1989 Kerala 314, wherein the Court had observed that the delay having been condoned by the Court, the appeal should therefore be deemed to have been filed within the time allowed by law. Thus, by applying the deeming fiction to the facts of the case, we have to necessarily hold that the appeal filed by the revenue before this Court for all purposes should be treated to have been an appeal filed not later than 13th December, 2019.

In such circumstances, the petitioner/assessee was well within his right to have chosen to avail the benefit of the VSV Act and the declaration filed by the assessee has to be treated to be a valid declaration and has to be processed in accordance with the provisions of the VSV Act.”

However, during VsV 1.0, the same was clarified by the revenue in its Question no.59 as contained in the Circular No.21/2020, dated 4th December, 2020, issued by the CBDT with regard to the applicability of the provisions of the VSV Act with a condition that the in application for condonation is filed before the date of issue of the said circular No. 21/2020 and appeal is admitted by the appellate authority before the date of filing of the declaration but there no such clarification till now in terms of VsV 2.0 by the CBDT.

In any case The Hon'ble Calcutta High Court once again in relation to VsV 2.0 has very recently followed the same in the matter of **Principal Commissioner of Income Tax, Central-1, Kolkata Vs Nalanda Builders Pvt. Ltd** [ITAT/232/2024] by judgment dated 8th November, 2024.

iii. **Coverage of Miscellaneous Appliation (MA) or review petitions:**

FAQ no. 29 Whether Miscellaneous Application (MA) pending as on 22.7.2024 will also be covered by the Scheme?	No. MA is not an appeal. Therefore, there is no pending appeal as on 22.7.2024
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The Hon'ble Delhi High Court very recently in the matter of **NRA Iron and Steel (P.) Ltd. vs. Income-tax Department [2024] 169 taxmann.com 85 (Delhi)[22-11-2024]** in relation to VsV 1.0 has decided in favour of assessee regarding maintainability of review petition before the Hon'ble Supreme court pending on the cut off date. Though Reply to Question No. 61 provides that even if the Miscellaneous Application [“MA”] in respect of an appeal which was dismissed in limine was pending on before 31st January 2020, such MA is eligible specifically made MA eligible in VsV 1.0 however the same in above FAQ no. 29 is specifically denied under VsV 2.0 still one can take the route of the court and there a high reasons that court may consider the specific cases.

Delhi High Court in the matter of NRA Iron and Steel (P.) Ltd. vs. Income-tax Department (Supra)

- It is apparent from the CBDT Circulars that pendency of arbitration proceedings and miscellaneous applications in certain cases, as on cutoff date would meet the requirement of Section 2(1)(j), even though no Appeal, Writ Petition or Special Leave Petition may be pending in any Appellate Forum in terms of Section 2(1)(j).[Para 16]
- Even though, the scope of review is limited and statutorily different from an appeal, the jurisdiction of the Court extends to the power to modify, review or recall its own order and that being so, the SLP cannot be said to have attained finality since the review petition was still pending on the cutoff date.[Para 18]
- One must not forget that DTVSV Act is a beneficial legislation enacted with a definite purpose for the benefit of both the assessee and the department whereby the legislature has provided a mechanism under which pending income tax litigation is sought to be reduced as also ensuring that the revenue is generated in a timely manner for the Government. The DTVSV Act, in a sense, provides for a deviation from the strict application of tax laws towards achieving this purpose. If the provision in Section 2(j) and the Board Circular is to be construed in a restrictive manner as is contended by the respondent, the same will run contrary to the scheme of the Act of 2020. [Para 20]
- Review petition has since been dismissed by the Supreme Court but one has to consider the right of the petitioner as on the cutoff date, when admittedly, the review petition was still pending. As on the cutoff date, the possibility of reaching a different conclusion could not have been ruled out.[Para 21]
- Therefore the scheme cannot be confined to only such cases where an Appeal, Writ Petition or Special Leave Petition were pending. Petition for review against the orders passed in the SLP would also be covered in the definition of “Disputed Tax” under Section 2(1)(j), thereby, making them eligible to take benefit of “Vivad Se Vishwas Scheme”. [Para 22]

Conclusion:

In conclusion, the VsV 2.0 offers a significant opportunity for taxpayers to resolve long-standing tax disputes in a simplified, cost-effective manner. By providing a chance to settle disputes with reduced tax liabilities, penalties, and interest, the scheme not only helps in easing the financial burden on taxpayers but also promotes quicker resolution, allowing them to move forward without the burden of ongoing litigation. Despite its limitations, such as eligibility criteria and time-bound applications, the scheme represents a positive step towards simplifying the tax dispute resolution process and fostering a more cooperative relationship between taxpayers and tax authorities. For that matter VsV 1.0 and this scheme as well is making a balance between the assessee and departments in relation to pending litigations. In most of the cases assessee are beneficial and in few of the cases department, in cases wherein tax rates are coupled with section 115BBE @ 60% plus surcharge and cess etc. So to say nothing is full proof and each case has its own merits and demerits which requires critical analysis. Finally to conclude VsV 2.0 not only aids in resolving disputes but also enhances overall taxpayer confidence in the fairness and efficacy of the tax system.

GST & INDIRECT TAXES

1. STATUTORY UPDATES

1.1 Form GST DRC-03A is now available on GST portal: GSTN Update

Editorial Note: The GSTN has issued an advisory to inform that it has developed the new Form GST DRC-03A on GST portal which is available now to adjust the paid amount through DRC-03 against the corresponding demand order. Therefore, it is advised to the taxpayers to use the DRC-03A form to link the payment made vide DRC-03 with the demand order.

1.2 Time Limit of 30 days for reporting e-Invoice on IRP Portal for taxpayers with AATO of 10 crores and above: GSTN Update

Editorial Note: The GSTN has issued an advisory to inform that from 1st April 2025, taxpayers with an AATO of 10 crores and above would not be allowed to report e-Invoices older than 30 days from the date of reporting on IRP portals. This restriction would apply to all document types (Invoices/Credit Notes/Debit Notes) for which an IRN is to be generated.

1.3 GSTN Update: Form GST SPL-01 and Form GST SPL-02 are under development; would be available from January 2025

Editorial Note: The GSTN has issued an update to inform that Form GST SPL-01 and Form GST SPL-02 are under development and same will be made available on the common portal tentatively from the first week of January 2025. As per the waiver scheme, the taxpayers are required to file an application in FORM GST SPL-01 or FORM GST SPL-02, respectively on the common portal within three months from notified date, which is 31.03.2025.

1.4 GSTN issued advisory on registration applications for 'Other Territory' pertaining to continental shelf and exclusive economic zone

Editorial Note: The GSTN has issued an advisory for the applicants applying for new registration application and selecting the category of 'Other Territory' pertaining to the continental shelf and exclusive economic zone contiguous to the eastern and western coast of India in the tab of State/UT in Part-A of GST registration form.

1.5 GSTN Advisory regarding IMS during initial phase of its implementation

Editorial Note: The GSTN has issued an update to inform that the recipient can change the action on the IMS in respect of an invoice/record and can recompute his GSTR-2B at any time till the filing of GSTR-3B for the corresponding tax period. Even if taxpayer fails to correct then he can edit such wrongly populated

ITC/liability in their GSTR-3B, to correctly avail ITC or pay correct tax liability as per the documents/records available.

1.6 GSTN Update: Supplier View of IMS has also been made available on portal

Editorial Note: The GSTN has issued an update to inform that the Supplier View of IMS has also been made available where the action taken by their recipients on the records/invoices reported in GSTR-1/1A/IFF, will be visible to the suppliers in 'Supplier View' functionality. This will help a supplier taxpayer to see the action taken on their reported outwards supplies and will help to avoid any wrong action taken by the recipient taxpayer.

1.7 CBIC extends due date of filing GSTR-3B for October 2024 till 21st November, 2024 for Maharashtra and Jharkhand - Notification No. 26/2024-Central Tax, Dated 18-11-2024

Editorial Note: The CBIC has issued notification to extend the due date for furnishing the return in FORM GSTR-3B for the month of October, 2024 till 21st November, 2024 for the registered persons whose principal place of business is in the state of Maharashtra and Jharkhand.

1.8 GSTR-2B will not be generated if taxpayers haven't filed their previous period GSTR-3B: GSTN Update

Editorial Note: The GSTN has observed that GSTR-2B for October-2024 period has not been generated for few taxpayers and now it has issued advisory to inform that in case the taxpayer has not filed their previous period GSTR-3B, GSTR-2B will not be generated by the system. Such taxpayers need to file their pending GSTR-3B in order to generate GSTR-2B on demand.

1.9 CBIC extends due date of filing GSTR-3B of October 2024 till 30th November for the State of Manipur: Notification - Notification No. 29/2024-CENTRAL TAX, Dated 27-11-2024

Editorial Note: The CBIC has issued notification to extend the due date for furnishing the return in FORM GSTR-3B for the month of October, 2024 till 30th November, 2024, for the registered persons whose principal place of business is in the State of Manipur.

1.10 CBIC notifies districts forming the jurisdiction of the State Benches of the Goods and Services Tax Appellate Tribunal - Notification No. 5063(E), Dated 26-11-2024

Editorial Note: The CBIC has issued notification to notify the districts forming the jurisdiction of the State Benches of the Goods and Services Tax Appellate Tribunal.

1.11 GSTN issued advisory for reporting TDS deducted by scrap dealers in October 2024 but granted registration in November 2024

Editorial Note: The GSTN has issued an advisory to inform that taxpayers who were granted registration in November 2024, but deducted TDS in October 2024, are hereby advised to report the consolidated amount of TDS deducted for the period from 10.10.2024 to 30.11.2024 in the GSTR-7 return to be filed for the month November 2024.

2. SUPREME COURT

RULE 2(k) OF CENVAT CREDIT RULES, 2004 - INPUT

- 2.1 Mobile service providers (MSPs) who pay excise duties on various items for setting up their business, more particularly for erection of mobile towers and peripherals like pre-fabricated buildings (PFBs) etc. can take benefit of CENVAT Credit under CENVAT Credit Rules, 2004 for purpose of payment of service tax on output services rendered by them - **Bharti Airtel Ltd. v. Commissioner of Central Excise** - [2024] 168 taxmann.com 489 (SC)

SECTIONS 2(34) OF THE CUSTOMS ACT, 1962 - PROPER OFFICER

- 2.2 In Section 28 of Customs Act, 1962 "the proper officer" for refers to person conferred powers to discharge functions by notification u/s. 5, and it is not related to "proper officer" referred u/s. 17 for duty assessment; hence, DRI officers designated as "the proper officer" by Notification No. 44/2011-Cus.N.T. dated 06.07.2011 were competent to issue SCNs u/s. 28, and contrary view of three judge SC bench in Canon India 2021 (376) E.L.T. 3 (S.C.) reviewed as it was found to have several errors - **Commissioner of Customs v. Canon India (P.) Ltd.** - [2024] 168 taxmann.com 221 (SC)

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

- 2.3 ITC availed on fictitious transactions with purchasing goods from non-existent supplier and assessee failing to prove actual movement of goods, demand and penalty sustainable - **Shiv Trading v. State of Uttar Pradesh** - [2024] 167 taxmann.com 748 (SC)

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

- 2.4 Supreme Court refuses to intervene against High Court order refusing to invoke writ jurisdiction by directing assessee to avail appeal remedy against adjudication order passed against petitioner assessee allegedly without supply of relied upon documents and without grant of hearing - **Simla Gomti Pan Products (P.) Ltd. v. Commissioner of State Tax U.P.** - [2024] 168 taxmann.com 542 (SC)

ARTICLE 137 OF CONSTITUTION OF INDIA, 1950 - REVIEW OF JUDGMENTS OR ORDERS BY THE SUPREME COURT

- 2.5 Supreme Court judgment disposed of without regard to provision of law amounts to error analogous to one apparent on face of record sufficient to bring case within purview of Order XLVII Rule 1 of Code of Civil Procedure, 1908, and be reviewed as per incuriam - **Commissioner of Customs v. Canon India (P.) Ltd.** - [2024] 168 taxmann.com 221 (SC)

3. HIGH COURT

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

- 3.1 IGST cannot be levied separately on ocean freight where transaction involves import of goods on FOB value - **BLA Coke (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 29 (Gujarat)

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

- 3.2 SCN issued by revenue against assessee in relation to GST tax payable u/s. 74 "on printing services" was to be stayed as said notice was without jurisdiction as there was no specific allegation with regard to wrongful availment or short payment of tax "by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, which is a required condition for invoking Section 74 - **Pitambra Books (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 270 (Allahabad)

- 3.3 Instant writ petition challenging GST notifications on ground that no GST on could not be levied on Royalty paid by a Mineral Concession Holder for any mining concession granted by State was to be dismissed as in Mineral Area Development Authority & anr. vs. M/s Steel Authority of India & anr [2024] 164 taxmann.com 806 (SC) it was held that royalty was not a tax and revenue was well within their rights to levy GST on royalty - **Lakhwinder Singh Stone Crusher v. Union of India** - [2024] 168 taxmann.com 196 (Himachal Pradesh)

- 3.4 Fly Ash Bricks with less than 90% fly ash content would be taxable at rate of 5% GST (2.5% CGST + 2.5% SGST) - **Shree Mahalaxmi Cement Products through Its Director Mr. Dipakkumar Ramjibhai Patel v. State of Gujarat** - [2024] 168 taxmann.com 75 (Gujarat)

- 3.5 Press Release dated 15-7-2020 purporting to classify alcohol-based hand sanitisers and antiseptics as 'disinfectants' (and not as 'medicaments') attracting a GST rate of 18 per cent, was to be set aside - **Schulke India (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 236 (Bombay)

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

- 3.6 Where no opportunity of personal hearing was provided before passing order due to failure of communication between consultant and assessee, order set aside and matter remanded for fresh consideration after providing hearing opportunity, subject to payment of 10% disputed tax - **Ganesa Engineering Enterprises v. Deputy State Tax Officer** - [2024] 167 taxmann.com 643 (Madras)

- 3.7 Where applicant unable to submit online application for GST Concession Certificate due to website errors, authorities directed to resolve issue or accept and process paper application - **Nandan Mukherjee v. Union of India** - [2024] 167 taxmann.com 647 (Delhi)

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

- 3.8** Where assessee challenged, Circular No. 212/6/2024-GST, dated 26-6-2024 and SCN pertaining guarantee commission and service tax liability, aspect of discounts and section 15(3)(b) of CGST Act, petition raised issues which warranted further consideration, respondents could continue with proceedings forming part of impugned SCN, however, were to desist from ruling on discounts, section 15(3)(b) and guarantee commission till final decision - **JSW Steel Ltd. v. DG Of GST Intelligence** - [2024] 168 taxmann.com 16 (Delhi)
- 3.9** Where foreign affiliate provided certain services to related domestic entity and recipient domestic entity was eligible full ITC, if no invoice was raised by domestic entity with respect to service provided by foreign affiliate though payments were made, value of such services was to be deemed to be declared as Nil and said Nil value may be deemed as open market value - **Metal One Corporation India (P.) Ltd v. Union of India** - [2024] 168 taxmann.com 20 (Delhi)

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

- 3.10** Where assessee was unable to access GSTIN portal and, hence, could not participate in adjudication proceedings as assessee was not adapted to e-mechanism after introduction of GST, one final opportunity was to be granted to assessee to put forth their objections before Adjudicating Authority - **S. Sesappan v. Deputy State Tax Officer-2** - [2024] 167 taxmann.com 419 (Madras)
- 3.11** Input Tax Credit in respect of delayed returns filed for FY 2019-20 was to be allowed; interest and penalty levied were to be refunded with 6 per cent interest - **Shri Sai Super Market v. Union of India** - [2024] 168 taxmann.com 540 (Jharkhand)
- 3.12** Where ITC claim of assessee was rejected vide impugned order on grounds of difference in GSTR 3B and GSTR 2A returns, since procedure laid down in Circular No. 183/15/2022-GST, dated 27-12-2022, for adjudication of such matters was not followed while passing impugned order, same was to be set aside and matter was to be remanded for fresh consideration - **Rekha Industries v. Asst. Commissioner of Commercial Taxes** [2024] 167 taxmann.com 102 (Karnataka)
- 3.13** Asst. order denying claim of input tax credit on ground that claims had been lodged beyond period prescribed u/s. 16(4) was to be set aside in view of amendment brought into GST Acts and that Section 16(5) has now been inserted vide Section 118 of The Finance (No. 2)

ACT, 2024, which allows taxpayers to claim ITC for FYs 2017-18 to 2020-21 in returns filed up to 30th November 2021 - **Sri Vinayaga Trading Enterprises v. Deputy State Tax Officer** - [2024] 168 taxmann.com 420 (Madras)

- 3.14** In respect of any invoice or debit note for supply of goods or services or both pertaining to FYs 2017-18, 2018-19, 2019-20 and 2020-21, a registered person shall be entitled to take input tax credit in any return u/s. 39 which is filed upto 30-11-2021 - **Kiron Medhi v. Union of India** - [2024] 168 taxmann.com 250 (Gauhati)
- 3.15** In respect of any invoice or debit note for supply of goods or services or both pertaining to FYs 2017-18, 2018-19, 2019-20 and 2020-21, a registered person shall be entitled to take input tax credit in any return u/s. 39 which is filed upto 30-11-2021 - **KD Construction v. Union of India** - [2024] 168 taxmann.com 298 (Gauhati)
- 3.16** Filing of belated reply to show cause notice before signing of impugned order warrants fresh opportunity of hearing subject to payment of costs - **Pepperfry Ltd. v. Union of India** - [2024] 168 taxmann.com 316 (Bombay)
- 3.17** Where GST authorities had confirmed demand vide impugned order in respect of period which was also included in proceeding initiated by DGCI against assessee, simultaneous proceedings could not proceed, and therefore, impugned order confirming demand was to be set aside - **DLF Home Developers Ltd. v. Sales Tax Officer Class II Avato Ward 107 Special Zone 12 Delhi** - [2024] 167 taxmann.com 98 (Delhi)
- 3.18** Where while submitting return, assessee inadvertently entered ITC in column 4(A)(3) instead of Section 4(A)(5) and submitted that column 4(A)(3) was related to reverse charges and during relevant period assessee had no liability on reverse charge, since Asst. order was passed without considering reply of assessee and merely stating that authority was not satisfied with assessee's reply, such order was to be set aside - **Tvl. Annai Abirami Electricals v. Commissioner of Commercial Taxes** - [2024] 167 taxmann.com 621 (Madras)
- 3.19** Subsequent SCNs by State GST authorities regarding ITC matters quashed when Central GST authorities had already initiated proceedings, as Section 6(2)(b) of KGST Act bars parallel proceedings - **Toyota Kirloskar Motor (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 49 (Karnataka)
- 3.20** Where notice for blocking electronic credit ledger under Rule 86A of GST Rules is issued by incompetent authority and order passed by competent authority without hearing assessee, it is prima facie violation of principles of natural justice - **Sumetco Alloys (P.) Ltd. v. Deputy Commissioner** - [2024] 167 taxmann.com 689 (Rajasthan)
- 3.21** SCN demanding reversal of input tax credit on seconded employees and GST on external commercial borrowings to be decided in light of recent beneficial circulars and judicial precedents - **Volvo Group India (P.) Ltd. v. State of Karnataka** - [2024] 167 taxmann.com 693 (Karnataka)

3.22 Constitutionality of GST ITC time limit challenged; impugned order quashed for reconsideration in light of retrospective amendment allowing extended ITC claim period - **Singh Construction Company v. State of Jharkhand** - [2024] 167 taxmann.com 685 (Jharkhand)

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

3.23 Where GST was paid on purchase of land and also on constructions done thereon, in view of decision of SC in Chief Commissioner of CGST & Ors. V. M/s Safari Retreats Pvt. Ltd. & Ors. reported in 2024 INSC 756 (SC) upholding vires of section 17(5)(c) & (d) by holding that by using functionality test, a building could be held to be a plant - **Compucom Software Ltd. v. Union of India** - [2024] 168 taxmann.com 295 (Rajasthan)

3.24 Where assessee had filed WP challenging SCN proposing to deny ITC in respect of goods used in construction of building on their own land for giving it on lease to a society for running a school and adjudication order was passed subsequently in said SCN, such WP was to be dismissed with liberty to them to avail appellate remedy against adjudication order by filing appeal thereagainst before Appellate Authority and to rely upon decision of SC in (2023) 23 Centax 62 (S.C.) - **Chirantan Enterprises LLP through Partner Mr. Prem Sethia v. Commissioner CGST and Central Excise** - [2024] 168 taxmann.com 61 (Madhya Pradesh)

3.25 Where no ITC was available in ledger, blocking of Electronic Credit Ledger under Rule 86A and insertion of negative balance in ledger would be wholly without jurisdiction and illegal - **Maa Sharda Endeavour (p.) Ltd. v. State of Jharkhand** - [2024] 167 taxmann.com 736 (Jharkhand)

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

3.26 Order cancelling assessee's GST registration alleging that it was obtained by fraud was to be set aside as revenue had not provided all details and circumstances which were considered for drawing inference about alleged fraud and thus, whole exercise undertaken by revenue was contrary to principles of natural justice and violative of fundamental right guaranteed under Article 19(1)(g) of the Constitution of India - **Maharashtra Scrap v. Union of India** - [2024] 168 taxmann.com 198 (Bombay)

3.27 Where proceedings were initiated for cancellation of registration by issuing SCN in Form GST REG-31 instead of in Form GST REG-17 as required under CGST Rules, impugned orders cancelling registration were to be set aside - **Riosis (P.) Ltd. v. Superintendent** - [2024] 168 taxmann.com 275 (Kerala)

3.28 Cancellation of GST registration order without recording any reasons is non-speaking, liable to be set aside with direction for fresh consideration after giving opportunity to reply - **Kirti Engineering and Traders v. Union of India** - [2024] 168 taxmann.com 195 (Rajasthan)

3.29 GST registration cancellation based on cryptic show cause notice lacking specific allegations set aside for violating principles of natural justice; registration ordered to be restored - **Ravi v. Avato Ward 84 State Goods and Services Tax** - [2024] 168 taxmann.com 99 (Delhi)

3.30 Non-payment of tax dues for three months is not prescribed ground for cancellation of GST registration under Section 29 of CGST Act or Rule 21 of CGST Rules, making such cancellation illegal - **Subhana Fashion v. Commissioner Delhi Goods and Service Tax** - [2024] 168 taxmann.com 107 (Delhi)

3.31 Where assessee's GST registration was cancelled as consent letter/NOC from landlord for additional place of business had not been produced, for adding another place of business there is no requirement under Rule 19 of CGST Rules, impugned show cause notice cum order was to be set aside - **Crystal Beverages v. Superintendent, Range 2, Rohtak** - [2024] 168 taxmann.com 62 (Punjab & Haryana)

3.32 Cancellation of GST registration order containing contradictory statements about assessee's reply to show cause notice quashed for lack of application of mind; matter remanded for fresh consideration after allowing assessee to file reply and granting hearing opportunity - **Shiv Kumar Sanjeev Kumar v. State of U.P.** - [2024] 167 taxmann.com 681 (Allahabad)

3.33 Cancellation of GST registration based on vague show cause notice and order citing unmentioned grounds violates principles of natural justice, warranting restoration of registration - **Saluja Electronics v. Commissioner of CGST and Central Excise Delhi East Commissionerate** - [2024] 167 taxmann.com 711 (Delhi)

3.34 Where assessee challenged order of Appellate Authority under section 107 of CGST Act whereby order of cancellation of registration upheld and appeal dismissed on ground of limitation, respondent authorities not be able to exercise revisional power under section 108, impugned order of Appellate Authority and order of cancellation of registration were to be set aside - **Yuvraj Corporate Club v. Joint Commissioner Appeals** - [2024] 168 taxmann.com 26 (Gujarat)

3.35 GST registration suspended for violation of Rule 86B cannot continue after deposit of required amount, as suspension has wide adverse ramifications for business and requires due consideration - **Ujjwal Garg v. Commissioner, Department of Trade and Taxes** - [2024] 168 taxmann.com 50 (Delhi)

3.36 Where GST registration was cancelled without providing reasons in order except mentioning show cause notice and its reply, such order is not sustainable as officers must give

reasons while exercising administrative functions that adversely affect party - **Vijaynath Roof and Wall Cladding Systems (P.) Ltd. v. State of Goa** - [2024] 168 taxmann.com 51 (Bombay)

3.37 Show cause notice issued for cancellation of registration, assigning solitary reason as 'others' without any further elaboration was not sustainable - **S N Polymers v. Pr. Commissioner of SGST Delhi** - [2024] 167 taxmann.com 745 (Delhi)

3.38 Where assessee filed contempt petition regarding cancellation of GST registration, petition was dismissed as premature since four week's time granted vide order dated 28.08.2024 was yet to expire - **J.M.D Traders v. Manish Mohan Govil** - [2024] 168 taxmann.com 15 (Delhi)

3.39 Registration suspension for non-existence at declared business place permitted opportunity to furnish proof of functioning within one week with direction for passing order after hearing - **MD Wazid Raza v. Superintendent Range-108 Central Goods and Service Tax** - [2024] 168 taxmann.com 25 (Delhi)

3.40 Where after cancellation of registration, assessee had filed returns and paid tax amount along with interest, revenue was to be directed to renew GST licence of assessee within 10 days - **Sai Carriers v. State of U.P.** - [2024] 167 taxmann.com 489 (Allahabad)

3.41 Fact that subsequent to cancellation of earlier registration, appellant had obtained a new registration, was not a material fact for purpose of determining lis between parties regarding maintainability of writ petition against order of cancellation of registration; appeal against order passed in writ to be allowed - **Genius Ortho Industries v. Union of India** - [2024] 167 taxmann.com 488 (Allahabad)

3.42 Where cancellation of registration has no effect on liability of taxpayer for any acts of commission/omission committed before or after date of cancellation, therefore, respondent-department was to consider petitioner-assessee's application seeking cancellation of its GST registration bearing in mind that cancellation ought not to be withheld on account of any assessment proceedings or any proceedings for recovery of any statutory dues from tax payers - **Pihu Enterprises v. Principal Commissioner of Department of Trade and Taxes GNCTD** - [2024] 167 taxmann.com 650 (Delhi)

3.43 Application for GST registration cancellation due to business discontinuation cannot be withheld for pending assessment as cancellation does not absolve tax, interest, penalty liabilities or statutory non-compliance consequences - **Guru Enterprises v. Principal Commissioner of Department of Trade and Taxes** - [2024] 167 taxmann.com 670 (Delhi)

3.44 Where assessee could not reply to show cause notice proposing to cancel registration as matter was in pre-covid period, also appeal of assessee was dismissed on grounds of limitation, following directions in *Subhankar Golder v. Assistant Commissioner of State Tax* [2024] 163 taxmann.com 99 (Calcutta), order cancelling registration of was to be set aside - **Biswajit Basu v. Superintendent of Central Goods and Services Tax & Central Excise** - [2024] 167 taxmann.com 551 (Calcutta)

3.45 Application for voluntary cancellation of registration having been accepted by cancelling GST registration, revocation of voluntary cancellation of registration without issuance of any show cause notice and without supplying documents based on which such revocation was ordered, being contrary to principles of natural justice, could not be sustained - **Om Impex v. State of Maharashtra** - [2024] 167 taxmann.com 740 (Bombay)

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

3.46 Where pursuant to issuance of notices to assessee on common portal, which assessee did not take advantage of, adverse order was passed for mismatch between GSTR-1 and GSTR-3B, in view of fact that assessee had sought one opportunity to explain case and establish that there was no mismatch, matter was to be remitted back for fresh order on merits - **Umesh Electricals v. Commercial Tax Officer** - [2024] 167 taxmann.com 490 (Madras)

SECTION 41 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RETURNS - INPUT TAX CREDIT - CLAIM AND PROVISIONAL ACCEPTANCE

3.47 Where assessee was denied certain input tax credit for year 2017-18 since assessee had while filing annual return mistakenly and inadvertently marked place of supply as 'other territory' instead of 'Kerala', alleged mistake was in year immediately after introduction of GST, respondent authority was to be directed to permit assessee to resubmit annual return for year 2017-18 by correcting mistakes - **Ancheril Agencies v. Deputy Commissioner** - [2024] 168 taxmann.com 5 (Kerala)

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

3.48 Date of fresh application for refund filed after rectification of deficiencies pointed out in respect of first application cannot be considered for purposes of determining period of limitation for filing application for refund - **Sali P. Mathai v. State Tax Officer** - [2024] 168 taxmann.com 538 (Kerala)

3.49 Where refund claim was allowed but consequential benefits denied, revenue demand was stayed and right to claim interest for interregnum period was protected while permitting fresh refund application - **Hindalco Industries Ltd. v. Union of India** - [2024] 168 taxmann.com 225 (Madhya Pradesh)

3.50 Where no reasonable opportunity to be heard was given to petitioner-assessee by respondent no.3-department, therefore, refund rejection orders dated 25.04.2024 were to be set aside and matter was to be remanded back to Respondent No.3-department - **Credit Agricole CIB Services (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 351 (Bombay)

3.51 Refund application filed within limitation period for zero-rated supplies to SEZ unit cannot be rejected on limitation grounds where department delayed processing and issuing deficiency memo - **Regal Engineers & Contractors (P.) Ltd. v. Assistant Commissioner of CGST & CE** - [2024] 168 taxmann.com 321 (Madras)

3.52 Where petitioner had erroneously paid GST on account of inbound courier services and filed three applications seeking refund of GST paid, but said applications had not been processed, and respondents submitted that said applications would be processed within one month, respondents were bound down to their statement to process refund applications - **Fedex Express Transportation and Supply Chain Services India (P.) Ltd. v. Assistant Commissioner GST** - [2024] 167 taxmann.com 99 (Delhi)

3.53 Where assessee's claim for refund was approved by appellate authority, refund not processed as Deputy Commissioner was of opinion that Order-in-Appeal not legally sustainable, Order-in-Appeal neither questioned nor assailed by respondents, assessee was to be allowed refund along with statutory interest - **Bawa International v. Joint Commissioner Central Goods and Service Tax** - [2024] 168 taxmann.com 9 (Delhi)

SECTION 56 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REFUND - DELAYED REFUNDS, INTEREST ON

3.54 Where assessee's claim for refund was approved by appellate authority, application for refund pursuant to appellate order not processed within sixty days of filing application, assessee was to be paid interest @ 9% per annum as per section 56 of CGST Act - **Bawa International v. Joint Commissioner Central Goods and Service Tax** - [2024] 168 taxmann.com 9 (Delhi)

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

3.55 Where assessee had been mulct with huge tax liability vide impugned assessment order and assessee challenged same on grounds that impugned order of 105 pages was passed on same date on which case was heard, which was technically impossible, High Court came to rescue of assessee by setting aside impugned order and remitting case back to pass fresh order - **SS Traders v. Joint Commissioner (ST) (Intelligence)** - [2024] 166 taxmann.com 712 (Madras)

3.56 Where assessee inadvertently claimed Input Tax Credit in 'RCM' column instead of 'All other ITC' column in GSTR-3B returns, demand order passed without properly considering assessee's reply cannot be sustained - **Revathi Industrial Enterprises v. Deputy State Tax Officer** - [2024] 168 taxmann.com 102 (Madras)

3.57 Where petitioner was ready and willing to pay 25 per cent of disputed tax and requested for one final opportunity to present objections to proposal, assessment order passed on basis of show cause notice was to be set aside - **Manickam Company Firm v. State Tax Officer** - [2024] 167 taxmann.com 624 (Madras)

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

3.58 Where impugned show cause notices were issued by respondent- authority under section 65(7) read with section 74 of CGST Act, assessee submitted that audit was concluded beyond period prescribed under section 65(4) of CGST Act, thus impugned notices were without jurisdiction, proceedings pursuant to impugned notices were to continue but no final order was not to be passed without permission of Court - **Hubergroup India (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 65 (Gujarat)

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

3.59 Whereas a second FIR was based on different set of facts being come to light after filing of first FIR and these facts were not covered in first FIR, scope of both FIRs being different and only background facts in two FIRs, which traced history of dispute, were common; mere fact that there was some over-lap between two FIRs did not mean that they arose out of same cause of action, second FIR was maintainable - **Pawan Kumar Ahluwalia v. State of NCT Delhi** - [2024] 168 taxmann.com 387 (Delhi)

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

3.60 Where accused was charged for issuing fake invoices in names of nine firms which led to evasion of GST but department had not come out with a fact that these firms were not in existence nor were their registration cancelled and investigation against other person who received double benefit amount, was still not concluded, accused was to be released on bail - **Manoj Kumar Jain v. Union of India** - [2024] 168 taxmann.com 253 (Rajasthan)

3.61 Where accused was granted bail by Sessions Court in GST fraud case involving fake invoices worth Rs. 175.88 crores, bail was cancelled on grounds that proper procedures under GST Act were followed during arrest, and considering risk of accused fleeing country and tampering with evidence - **State Rep by Senior Intelligence officer v. M. Premraja** - [2024] 168 taxmann.com 262 (Madras)

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

- 3.62** Where petitioner wanted to examine official from concerned GST Office to show that no ITC with respect to invoices in question passed on to him, GST Department informed that details in question not available with them, petitioner's request to summon official declined by Trial Court, Trial Court was to be directed to give petitioner opportunity to take steps for summoning GST official - **Kanwar Enterprises (P.) Ltd. v. Jaswinder Singh Bhatia** - [2024] 168 taxmann.com 194 (Delhi)

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

- 3.63** Considering, assessee was unwell and under medical treatment at time notices regarding his appeal were served upon him, appellate order demanding liability of unpaid tax and consequent penalty was to be set aside and quashed only on ground that assessee had been prevented from prosecuting his appeal - **Ganni Ajay Dora v. Chief Commissioner of CT and GST** - [2024] 168 taxmann.com 223 (Orissa)
- 3.64** Where assessee impugned Order-in-Original on ground natural justice, show cause notice and impugned order served at assessee's registered address, assessee wrote to respondent seeking documents on a letterhead containing same address, respondents were not intimated about change in address, not a case of "no notice" but of "no adequate notice", no violation of natural justice, assessee was to be relegated to alternate remedy of appeal - **Dezy Sagar Agarwal v. Union of India** - [2024] 168 taxmann.com 63 (Bombay)
- 3.65** Assessee contends that revenue did not have jurisdiction to issue order since Directorate General of GST Intelligence had already initiated proceedings with a notice in Form GST DRC-01A, notice was issued and ad-interim relief granted, pending further hearing - **Kamlesh kumar Shyamlal Shah v. Assistant Commissioner Ghatak** - [2024] 168 taxmann.com 359 (Gujarat)
- 3.66** Notification extending time limit u/s. 73(10) based on GST Council's recommendation, once accepted by Government, cannot be challenged by assessee - **Sahaj Construction v. Union of India** - [2024] 168 taxmann.com 324 (Karnataka)
- 3.67** Where petitioner-assessee was unable to respond to show cause notices and impugned order as there were technical glitches on common portal, therefore, impugned order was to be set aside and petitioner-assessee was to be directed to deposit 25% of disputed tax within given period - **Tvl. Aaradhanaa Shipping Agencies v. State Tax Officer** - [2024] 168 taxmann.com 311 (Madras)

- 3.68** Where it could not be held that impugned show cause notice issued against petitioner-assessee by respondent no.4-department was ex-facie without jurisdiction and warranting interference at threshold stage, therefore, writ petition was to be dismissed and petitioner-assessee was directed to file reply to impugned show cause notice - **Prakash Raghunath Autade v. Union of India** - [2024] 168 taxmann.com 317 (Bombay)
- 3.69** Where it had been specifically held in M/s Yadav Steels Vs. Additional Commissioner & Another, that delay in filing appeal could not be condoned beyond prescribed period of limitation, therefore, following aforesaid judgement, this court did not find any merit in writ petition filed by petitioner-assessee against order passed by respondent-department - **Raj Trade House v. Union of India** - [2024] 168 taxmann.com 319 (Allahabad)
- 3.70** Where appeals against GST assessment orders are filed beyond statutory period of 3 months plus 30 days condonable delay under Section 107, statutory authorities cannot condone delay beyond prescribed period, though Constitutional Courts can condone delay in exceptional circumstances - **Multi Trading Agencies v. Union Territory of Jammu & Kashmir through Commissioner** - [2024] 168 taxmann.com 266 (Jammu & Kashmir)
- 3.71** Challenge to show-cause notice under Section 73 of CGST Act for erroneous IGST refund dismissed when notice issued within three year limitation period from date of refund - **Enaltec Labs (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 185 (Madhya Pradesh)
- 3.72** Order passed before expiry of time given in show cause notice for filing reply violates principles of natural justice warranting setting aside of such order - **Elsy Joy v. Deputy Commissioner of State Tax** - [2024] 168 taxmann.com 184 (Kerala)
- 3.73** Summary of show cause notice in Form GST DRC-01 cannot substitute statutory requirement of show cause notice under Section 73(1) of GST Act; attachment containing tax determination details to DRC-01 does not constitute valid show cause notice - **Construction Catalysers (P.) Ltd. v. State of Assam** - [2024] 168 taxmann.com 183 (Gauhati)
- 3.74** Where it had been specifically held in M/s Yadav Steels Vs. Additional Commissioner & Another, that delay in filing appeal could not be condoned beyond prescribed period of limitation, therefore, following aforesaid judgement, this court did not find any merit in writ petition filed by petitioner-assessee against respondent-department - **New Vijay Traders v. Union of India** - [2024] 168 taxmann.com 230 (Allahabad)
- 3.75** Where assessee contends no mismatch between GSTR-3B and GSTR-1 and has materials to prove, impugned order set aside and matter remanded for fresh consideration, subject to payment of 20% of disputed tax amount - **Ram Enterprises v. Assistant Commissioner (ST)** - [2024] 168 taxmann.com 160 (Madras)

- 3.76** Where order demanding GST, interest and penalty passed without providing reasons and failing to address detailed response to show cause notice, impugned order set aside and matter remanded for fresh adjudication with speaking order - **Bhansali Industries v. Union of India** - [2024] 168 taxmann.com 181 (Bombay)
- 3.77** Once GST registration is cancelled, mere uploading of show cause notice on GST portal without service through alternative means violates principles of natural justice, as assessee not obligated to check portal post registration cancellation - **Ahs Steels v. Commissioner of State Taxes** - [2024] 168 taxmann.com 150 (Allahabad)
- 3.78** Where discrepancy in reported turnover arose from inclusion of pre-GST period in Form 26AS, impugned order set aside and matter remanded for fresh consideration upon payment of 10% demand, granting opportunity to establish correct turnover - **Rajkumar v. Deputy Commercial Tax Officer** - [2024] 168 taxmann.com 159 (Madras)
- 3.79** Where bank account was attached for alleged ITC reversal, same was to be lifted on deposit of 25 per cent of disputed tax after adjusting amount already paid, and impugned order was to be treated as show cause notice and objections were to be filed by assessee; if deposit was not made or objections were not filed within stipulated period, impugned order was to be revived - **Jegatheeswaran v. Assistant Commissioner (State Taxes)** - [2024] 167 taxmann.com 623 (Madras)
- 3.80** Alleged mismatch between GSTR-3B and GSTR-2A, assessment order quashed and matter remanded for reconsideration after providing opportunity of personal hearing to assessee - **Rice Lake Weighing Systems India Ltd. v. State Tax Officer** - [2024] 168 taxman.com 104 (Madras)
- 3.81** Where adjudication order demanding tax and imposing penalty was challenged for lack of personal hearing, proceedings after reply to show cause notice were set aside, directing opportunity of hearing be provided within three months - **Rean Watertech (P.) Ltd. v. State of Madhya Pradesh** - [2024] 168 taxmann.com 100 (Madhya Pradesh)
- 3.82** Where assessee raised a clear case that there were sufficient materials/documents to substantiate defence of assessee to effect that there was no mismatch between outward supplies turnover declared in GSTR-1 and outward supplies arrived in GSTR-3B, without going into merits of matter, order imposing demand was to be set aside and matter was to be remanded back to GST authority for fresh consideration - **Tvl.sewa TOJI Electronics v. Deputy Sales Tax Officer** - [2024] 167 taxmann.com 699 (Madras)
- 3.83** Non-speaking order rejecting detailed submissions without proper consideration cannot sustain; fresh adjudication directed with six-month timeline, failing which proceedings to lapse - **Gujarat Co-Operative Milk Marketing Federation Ltd. v. Sales Tax Officer** - [2024] 167 taxmann.com 669 (Delhi)
- 3.84** Where petitioner-assessee did not choose to reply either to notice issued under Section 61 or to notice issued under Section 73, despite, opportunity of hearing was given to petitioner-assessee by respondents-department, therefore, no interference was needed in procedure followed by respondents-department; Writ petition was disposed of - **Shree Sai Nath Construction Company v. Union of India** - [2024] 167 taxmann.com 710 (Allahabad)
- 3.85** Where appeal against GST demand was time-barred but appellant had pre-deposited 10% tax and claimed exemption due to customs duty paid on Nepal imports, matter remanded for fresh consideration being initial GST period - **Delta Goods (P.) Ltd. v. Union of India** - [2024] 167 taxmann.com 641 (Calcutta)
- 3.86** Where orders under Section 73 of CGST/DGST Act were unreasoned and passed without considering responses to show cause notices, such orders were set aside and remanded for fresh adjudication within six months, requiring reasoned speaking orders after review of show cause notices - **Mohinder Kumar v. Pr. Commissioner of Delhi Goods and Services Tax** - [2024] 167 taxmann.com 738 (Delhi)
- 3.87** Summary order issued without accompanying detailed order under Sections 73/74 of GST Act is void ab-initio where no detailed order exists on record - **Genus Power Infrastructures Ltd. v. Assistant Commissioner of State Tax** - [2024] 168 taxmann.com 14 (Gujarat)
- 3.88** Where proceedings under GST Act were initiated against a deceased person and order was passed in his name after his death, impugned order was quashed and subsequent revenue recovery proceedings, directing fresh adjudication against legal heir within six months - **Sheena Sajithan v. State of Kerala** - [2024] 167 taxmann.com 715 (Kerala)
- 3.89** Where sufficient materials exist to prove no mismatch between GSTR-2A and GSTR-3B input tax claims but couldn't be presented due to consultant's unavailability, order can be set aside and matter remanded for fresh consideration on payment of 10% disputed tax - **ARS Irons v. Assistant Commissioner (ST) (FAC)** - [2024] 167 taxmann.com 633 (Madras)
- 3.90** Where assessee claimed inability to respond due to consultants ill health and possession of evidence to disprove alleged GSTR-2A and GSTR-3B mismatch, impugned order set aside and matter remanded for fresh consideration, subject to payment of 10% of disputed tax amount - **Tvl. Mohamed Hanifa Ebrahim v. State Tax Officer** = [2024] 167 taxmann.com 718 (Madras)

3.91 Issuing advisory letters for voluntary tax payments without statutory notices is impermissible; such procedure is unknown to law and amounts to pressure tactics - **Shree Kunj Bihari Infracon (P.) Ltd v. State of U.P.** - [2024] 167 taxmann.com 683 (Allahabad)

3.92 Where assessee contended non-receipt of SCN under GST law, impugned order set aside granting opportunity to reply and directing fresh adjudication after hearing - **Satish Chand Mittal v. Sales Tax Officer SGST** - [2024] 167 taxmann.com 712 (Delhi)

3.93 Where appeal against GST order was rejected due to delay despite medical reasons and pre-deposit, delay was condoned and appellate authority directed to hear appeal on merits - **P.G. Exim (P.) Ltd. v. Assistant Commissioner of Revenue** - [2024] 167 taxmann.com 649 (Calcutta)

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

3.94 Assessment order issued by revenue against assessee without considering assessee's reply to show cause notice was to be set aside as it was passed without providing an opportunity of personal hearing to assessee - **Kandasamy Sivaprakash v. Assistant Commissioner (ST)** - [2024] 168 taxmann.com 227 (Madras)

3.95 Where petitioner manufacturer-exporter took benefit of advance authorizations scheme and imported raw material without payment of customs duty as well as IGST from 13-10-2017 onwards and manufactured pharmaceutical products which were exported, amount quantified by revenue to be wrongly refunded for period prior to 9-10-2018 towards alleged erroneous refund would not survive as Notification No. 54 of 2018 which had done away with retrospective amendment of rule 96(1), denying such refund of tax, would apply prospectively with effect from 9-10-2018 only - **Otsuka Pharmaceutical India (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 233 (Gujarat)

3.96 Where in replies to show cause notices, assessee had provided detailed explanations and reconciliations, but without considering same, demands under section 74 were confirmed vide impugned order, same was to be set aside and matter was to be remanded - **J.P. Polymers (P.) Ltd. v. State Tax Officer** - [2024] 167 taxmann.com 101 (Madras)

3.97 Where show cause notice was served for a particular tax period and proceedings ultimately culminated in passing of final order, a second order passed pertaining to same tax period again order was to be quashed - **Jain Cement Udyog v. Sales Tax Officer Class-II/ Avato Ward 201 Zone 11 Delhi** - [2024] 168 taxmann.com 245 (Delhi)

3.98 SCN pre-determining tax demand without hearing are invalid and liable to be quashed - **Maheshwari Logistics Ltd. V. State of Gujarat** - [2024] 168 taxmann.com 384 (Gujarat)

3.99 Where in petition filed by assessee against order under 142 of CGST Rules on ground that determination of tax made without service of order passed under section 74 of CGST Act, on earlier occasion, writ court granted specific relief extending limitation time to file appeal, which assessee did not avail, writ petition impugning same order again on ground of validity was to be dismissed - **Radhey Traders v. State of UP** - [2024] 168 taxmann.com 272 (Allahabad)

3.100 Where parallel proceedings are initiated by State and Central GST authorities, authority which first initiated and completed assessment for particular year shall have jurisdiction, precluding other authority from conducting assessment for same period - **S. G. Plastic Industries v. Principal Commissioner** - [2024] 168 taxmann.com 323 (Allahabad)

3.101 GST eligibility on annuity payments received for road construction challenged when demand raised through SCN and circular clarifying non-exemption of such payments - **Mapex Infrastructure (P.) Ltd. v. Additional Director** - [2024] 168 taxmann.com 264 (Calcutta)

3.102 WP challenging demand order and ITC block notice for wrongful refund claims not maintainable when statutory appeal remedy available, however appeal filing permitted without pre-deposit if frozen accounts contain sufficient funds - **Rasidul Hoque v. State of Assam** - [2024] 168 taxmann.com 163 (Gauhati)

3.103 Denial of personal hearing despite specific written request violates Section 75(4) of MGST Act which mandates opportunity of hearing when requested in writing or where adverse decision is contemplated - **ATV Projects India Ltd. v. Assistant Commissioner of State Tax** - [2024] 168 taxmann.com 180 (Bombay)

3.104 Recovery of amounts during GST investigation without adjudication, even if claimed as voluntary self-ascertainment u/s. 74(5), is contrary to law and Article 265 when coercion is established through timely retraction - **Kesar Colour Chem Industries v. Intelligence Officer** - [2024] 168 taxmann.com 132 (Karnataka)

3.105 SCN issued to deceased taxpayer instead of legal representative is non-est in law, though fresh notice can be issued to legal representative carrying on business under Section 93 of CGST Act - **Smt. Usha Gupta v. Commissioner of CGST** - [2024] 168 taxmann.com 48 (Delhi)

3.106 Allegations of unauthorized data access during GST raid and subsequent show cause notice require processing of complaint by police, consideration by GST authorities, and adjudication of SCN with opportunity for assessee's reply and personal hearing - **R.K. Jain and Sons Hospitality Services (P.) Ltd. v. Union of India** - [2024] 167 taxmann.com 742 (Delhi)

3.107 Where assessee did not avail opportunity of personal hearing nor submitted explanation clarifying discrepancies pointed out in show cause notice, order passed under section 74 was justified; writ petition was not maintainable on ground that efficacious remedy of appeal was available to assessee - **Max Hair Clinic (P.) Ltd. v. State Tax officer - [2024] 167 taxmann.com 553 (Madras)**

3.108 Show cause notice for multiple years GST demands set aside; separate notices for each year directed to enable availing of upcoming Amnesty scheme - **Uno Minda Ltd. v. Joint Commissioner of GST and Central Excise - [2024] 167 taxmann.com 719 (Madras)**

3.109 Summary orders in FORM GST DRC-01 and consequent recovery actions have no legal validity in absence of detailed assessment order under Section 74 of GST Act - **Bhikshu Metals (P.) Ltd. v. State of Gujarat - [2024] 167 taxmann.com 636 (Gujarat)**

3.110 Clubbing/consolidation of multiple assessment years in single show cause notice under Section 74 of CGST Act is impermissible; separate notices must be issued for each assessment year - **Chimney Hills Education Society v. Additional Commissioner of Central Tax - [2024] 168 taxmann.com 12 (Karnataka)**

3.111 Where assessee contended lack of notice and awareness of proceedings for belated GSTR-3B filing, impugned interest order set aside and matter remanded for fresh hearing, subject to 10% payment of demand - **Tvl.MKPO Metal Fabricators (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 167 taxmann.com 717 (Madras)**

3.112 Order passed under Section 74 of UP GST Act quashed where proper opportunity of personal hearing was denied before passing adverse adjudication order - **Saptagirisha Engineers and Contractor v. State of U.P. - [2024] 168 taxmann.com 47 (Allahabad)**

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

3.113 Where impugned order was passed by respondent-department against petitioner-assessee without providing opportunity of hearing to petitioner-assessee, therefore, impugned order came to be passed in violation of principles of natural justice, hence, same was liable to be set aside - **RGE Constructions and Development (P.) Ltd. v. Dy Commissioner of GST & Central Excise - [2024] 168 taxmann.com 103 (Madras)**

3.114 Personal hearing mandatory u/s. 75(4) before passing order under Section 73 and 122 of GST Act; non-compliance warrants order to be set aside and matter remanded - **Anmol Traders v. Deputy Commissioner Auraiya - [2024] 167 taxmann.com 632 (Allahabad)**

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

3.115 Where Competent Authority issued notice to bank of assessee for recovery of outstanding interest payable by assessee while assessee challenged said notice contending that it noted principles of natural justice apart from being vitiated on account of non-following of prescribed procedure in law prior to issuing notice, in order to provide one more opportunity was to be given to assessee to submit his reply to alleged demand made in notice - **SJR Prime Corporation (P.) Ltd. v. Superintendent of Central Tax Eed-8 Range Division-8 - [2024] 168 taxmann.com 544 (Karnataka)**

3.116 Orders passed based on SCN uploaded only on GST portal without physical service to assessee whose GST registration stood cancelled, set aside for violation of natural justice principles - **Tvl.Arun Medicals v. Assistant Commissioner (ST) - [2024] 168 taxmann.com 59 (Madras)**

SECTION 81 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES

3.117 Section 81 of CGST Act declaring certain transactions void cannot be invoked without proper determination by competent authority regarding nature of transactions in cases of property attachment and auction for recovery of vendor's tax dues - **Velagala Lakshmi v. State of Andhra Pradesh - [2024] 168 taxmann.com 398 (Andhra Pradesh)**

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

3.118 Order blocking electronic credit ledger was to be quashed same being passed without providing pre-decisional hearing and order contained independent or cogent reasons to believe - **Prince Steel v. State of Karnataka - [2024] 168 taxmann.com 533 (Karnataka)**

3.119 Order blocking electronic credit ledger without recording reasons to believe and without granting pre-decisional hearing is not sustainable - **Royal Steel v. State of Karnataka - [2024] 168 taxmann.com 537 (Karnataka)**

3.120 Where no pre-decisional hearing was provided/granted by respondent-authorities before blocking Electronic Credit Ledger and there was no independent or cogent reason to believe except reports of Enforcement authority, impugned blocking order was impermissible in law as same was based on borrowed satisfaction - **Theos Metals Trada (P.) Ltd. v. Assistant Commissioner of Central Tax - [2024] 168 taxmann.com 109 (Karnataka)**

3.121 Where order was passed against a deceased person and petitioner's bank account was freezed, impugned order passed against a dead person was to be set aside, an opportunity was to be provided to petitioner to establish his case on merits being only legal heir, respondent authorities were to be directed to instruct bank to release attachment and de-freeze bank account of petitioner - **S.R.Steels v. Deputy State Tax Officer - [2024] 168 taxmann.com 23 (Madras)**

- 3.122** Where no pre-decisional hearing was provided/granted by respondent-authorities before blocking Electronic Credit Ledger and there was no independent or cogent reason to believe except reports of Enforcement authority, impugned blocking order was impermissible in law as same was based on borrowed satisfaction - **Ekaa Engineers and Infrastructure (P) Ltd. v. Assistant Commissioner of Commercial Taxes - [2024] 168 taxmann.com 31 (Karnataka)**

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

- 3.123** Blocking of Input Tax Credit (ITC) under Rule 86A without indicating proper satisfaction and before expiry of time granted for document production necessitates expeditious disposal of unblocking application with opportunity of hearing - **Sugandha Metal Industries (P.) Ltd. v. State of UP - [2024] 168 taxmann.com 330 (Allahabad)**

RULE 92 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - ORDER SANCTIONING REFUND

- 3.124** Refund application partially rejected without mandatory show cause notice and hearing under Rule 92(3) of CGST Rules requires fresh consideration after following due procedure - **Haren Textiles (P.) Ltd. v. Deputy Commissioner of State Tax - [2024] 168 taxmann.com 356 (Bombay)**

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

- 3.125** Where appeal was rejected by appellate authority for advance ruling as incomplete, not maintainable, as appellant-assessee had deposited Rs. 10,000 instead of Rs. 20,000 required as fee, appeal not to be rejected on account of fee as not maintainable, appellate authority was to be directed to hear appeal on merits - **Imaging Solutions (P) Ltd. v. State of Haryana - [2024] 168 taxmann.com 66 (Punjab & Haryana)**

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

- 3.126** No provision exists under Section 107(8) of CGST Act to dismiss appeal for want of prosecution without providing opportunity of hearing - **Gobind Ram and Sons Barabanki Thru v. State of U.P. - [2024] 168 taxmann.com 224 (Allahabad)**
- 3.127** Where appeal against recovery of GST interest demand was dismissed on maintainability despite earlier judicial direction to avail remedy under Section 107, appellate order set aside and matter remanded for merits consideration - **New Okhla Industrial Development Authority v. Union of India - [2024] 168 taxmann.com 229 (Allahabad)**

- 3.128** Where assessee could not file appeal against demand order within prescribed period of limitation, it was for Appellate Forum to decide if appeal was within time or if delay needed to be condoned; writ petition was to be disposed of with liberty to assessee to approach Appellate Authority - **Amtech Engineers v. Commissioner of State Tax - [2024] 167 taxmann.com 210 (Uttarakhand)**

- 3.129** Since appellate authority rejected assessee's appeal against order passed under section 73 on ground of delay of 53 days in filing appeal, without considering application for condonation of delay, it would be necessary to scrutinize records and determine factual issues in order to test out order passed by proper officer on merits, therefore matter was remanded back to appellate authority for reconsideration - **Big Bull Trader (P.) Ltd. v. Assistant Commissioner of State Tax - [2024] 168 taxmann.com 350 (Calcutta)**

- 3.130** Where assessee's appeal was dismissed by appellate authority on ground that authorised signatory of assessee did not sign appeal and board resolution was not produced, proper material produced by assessee to show that signatory on appeal memo authorised to sign same, impugned order was to be set aside - **SBI General Insurance Company Ltd. v. Union of India - [2024] 168 taxmann.com 278 (Bombay)**

- 3.131** Where appellate authority decided appeal ex-parte on merits in absence of appellant, authority could only dismiss appeal for non-prosecution as per Order XLI Rule 17 CPC and not decide on merits, accordingly impugned order set aside and matter remanded back for fresh consideration - **Archita Tour And Travels v. State of U.P. - [2024] 168 taxmann.com 313 (Allahabad)**

- 3.132** Where reasons assigned by petitioner-assessee for non-filing of appeal within prescribed time appeared to be genuine, therefore, delay in filing appeal by petitioner-assessee was to be condoned - **NRC. Spin Tex v. Assistant Commissioner (ST) - [2024] 168 taxmann.com 315 (Madras)**

- 3.133** Appeal filed beyond prescribed limitation period under GST law cannot be condoned as neither appellate authority nor courts have power to condone delay beyond statutorily prescribed period - **Maa Vindhyavasini Impex v. State of Up - [2024] 168 taxmann.com 135 (Allahabad)**

- 3.134** Pending Supreme Court decision, 10% pre-deposit for GST appeal may be paid from Electronic Credit Ledger; no insistence on payment from Electronic Cash Ledger - **Raiyan Traders v. State of Bihar - [2024] 168 taxmann.com 156 (Patna)**

- 3.135** Where appeal filed beyond condonable limitation period was dismissed but assessee was not given opportunity before passing assessment order on GSTR returns mismatch, delay was condoned and matter remanded for hearing on merits - **Ramu Medical Foundation v. Deputy Commissioner (ST) (GST) Appeal - [2024] 168 taxmann.com 161 (Madras)**

3.136 Recovery proceedings impermissible after filing appeal and payment of 10% pre-deposit under Section 107 of CGST Act during pendency of appeal - **S K S Traders v. Assistant Commissioner of State Tax - [2024] 168 taxmann.com 105 (Andhra Pradesh)**

3.137 Delay in filing GST appeal condoned where assessee unaware of notices uploaded on GST portal; appellate authority directed to decide appeal on merits after giving opportunity - **Selvam Hardwares v. Deputy Commissioner (ST), Chennai - [2024] 167 taxmann.com 714 (Madras)**

3.138 Appellate Authority should consider application for condonation of delay in filing appeal on merits - **Jharna Seal v. Additional Commissioner, State Taxes, Directorate of Commercial Taxes & SGST, Siliguri Circle - [2024] 167 taxmann.com 733 (Calcutta)**

3.139 Where assessee paid 10 percent pre-deposit amount from electronic credit ledger for maintenance of appeal and same was dismissed vide impugned order on grounds that amount was to be paid from electronic cash ledger, order passed in appeal was to be set aside and appeal was to be directed to be decided on merit - **Raiyan Traders v. State of Bihar - [2024] 167 taxmann.com 554 (Patna)**

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

3.140 Where against appellate order passed under section 107, assessee wanted to file appeal before Tribunal, but it was not yet constituted, on payment of 'ten per cent' of tax amount in dispute, assessee would be entitled to stay of recovery till GST Tribunal would be constituted and made functional - **Maa Sunaina Construction (P.) Ltd. v. Union of India - [2024] 168 taxmann.com 251 (Patna)**

3.141 Where GST Tribunal not functioning, assessee allowed to avail remedy upon its constitution, with interim direction for quantum deposit and preservation of department's right to proceed if appeal not filed within prescribed time after Tribunal's reconstitution - **Rasmi Ranjan Sahoo v. Commissioner of Commercial Taxes and Goods and Services Tax - [2024] 168 taxmann.com 164 (Orissa)**

3.142 Where assessee paid entire GST amount with interest but failed to respond to penalty proceedings due to administrative vacancy, penalty order was set aside with liberty to file objections within stipulated time - **Kulithalai Municipality v. Superintendent of Central GST and Central Excise - [2024] 168 taxmann.com 37 (Madras)**

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

3.143 Where goods of petitioner were being transported and due to accident of vehicle mentioned in e-way bill, vehicle was changed, however, without considering same, goods were detained and penalty was imposed, which was also affirmed by Appellate Authority in impugned order, since assessee had no intention to evade tax and contentions of assessee were not considered while passing impugned order, same was to be set aside and matter was to be remanded to pass fresh orders - **Govindarajan M.P. v. State of Kerala - [2024] 167 taxmann.com 100 (Kerala)**

3.144 Order imposing tax and penalty on detention of goods in transit was not sustainable when there was no finding regarding intention to evade tax - **Banaras Industries v. Union of India - [2024] 168 taxmann.com 244 (Allahabad)**

3.145 Section 129(1)(b) penalty imposition contrary to CBIC clarification prescribing Section 129(1)(a) penalty warrants reconsideration under correct provision - **Madhav Trader v. State of U.P. - [2024] 168 taxmann.com 263 (Allahabad)**

3.146 Where notice for seizure of goods and penalty under GST law was issued within 7 days and served on driver transporting goods, such notice held valid and proper - **RSL Overseas LLP v. State of Odisha - [2024] 168 taxmann.com 46 (Orissa)**

3.147 Where assessee impugned levy of penalty under section 129(1)(b) on ground that, in terms of clarification, dated 31-12-2018 issued by CBIC, GST Policy Wing and judgment in Margo Brush India & Ors., Writ Tax No. 1580 of 2022, decided on 16-1-2023 penalty could have been levied under section 129(1)(a), respondent authority did not dispute, impugned order was to be set aside - **A. Fashion v. State of U.P. - [2024] 168 taxmann.com 56 (Allahabad)**

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

3.148 Where after cancellation of registration petitioner sold expired/nearly expired stocks without any documents, proceedings under section 130 were correctly initiated as mere fact of cancellation of registration does not absolve him of liability to comply with provisions of GST laws - **Sarath B.S. v. State of Kerala - [2024] 168 taxmann.com 539 (Kerala)**

3.149 Where in impugned order, assessee's specific request to fix a new date on account of counsel's health problem, was mentioned but order recorded no reaction to said prayer; it was to be held that prayer was not even adverted to and, thus, order imposing penalty and fine under section 130 was passed in violation of principle of natural justice; impugned order was to be set aside - **R.K. Tanners v. Union of India - [2024] 168 taxmann.com 271 (Allahabad)**

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

3.150 Where investigation was complete, complaint had been filed and trial had commenced, anticipatory bail was to be granted

subject to conditions and sureties - **Deepak Mittal v. Directorate General of Goods and Service Tax Intelligence** - [2024] 167 taxmann.com 697 (Punjab & Haryana)

- 3.151 Where prosecution relied on statements of persons not made witnesses in complaint and investigation remained incomplete regarding actual beneficiaries and quantum of ITC evasion, bail was granted in GST fraud case considering compoundable nature of offense and lack of evidence for witness tampering - **Pankaj Aggarwal v. Union of India** - [2024] 167 taxmann.com 602 (Rajasthan)

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

- 3.152 Challenge to transition credit order under Section 140(7) of CGST Act addressed by retrospective amendment through Finance (No.2) Act 2024, appeal if filed within 4 weeks to be considered on merits without limitation bar - **Lekar Pharma Ltd. v. Union of India** - [2024] 168 taxmann.com 361 (Bombay)

- 3.153 Transitional CENVAT credit claimed on inter-branch transfers under centralized registration requires verification of registration coverage and demonstration of duty payment through supporting documents - **Kalyan Jewellers India Ltd. v. Joint Commissioner Gstappeals** - [2024] 168 taxmann.com 131 (Andhra Pradesh)

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

- 3.154 Any press release or executive instruction cannot change product classification which is function of a judicial or quasi-judicial authority - **Schulke India (P.) Ltd. v. Union of India** - [2024] 168 taxmann.com 236 (Bombay)

SECTION 168A OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - POWER OF GOVERNMENT TO EXTEND TIME LIMIT IN SPECIAL CIRCUMSTANCES

- 3.155 Where in view of Notification No. 56/2023-CT issued by CBIC, extending time to pass orders for up-to Assessment Year 2019-20, impugned assessment order was passed in case of assessee for Assessment Year 2018-19, since prima facie said notification was not in consonance with provisions of section 168A, as there was no recommendation from GST council, notice was to be issued to revenue and meanwhile no coercive action was to be taken against assessee in respect of impugned order - **Krishna Gas Service v. Union of India** - [2024] 167 taxmann.com 552 (Gauhati)

- 3.156 Where assessee challenged ex-parte GST assessment order for Assessment Year 2017-18 due to lack of opportunity to respond, impugned orders set aside and matter remanded for fresh consideration after affording opportunity to assessee - **New Tea Exports (P.) Ltd. v. Assistant Commissioner (ST)** - [2024] 167 taxmann.com 648 (Madras)

SECTION 174 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REPEAL AND SAVING

- 3.157 Appeal returned for non-compliance of mandatory pre-deposit; petition disposed with liberty to approach Appellate Authority after making required pre-deposit - **Richa Constructions v. Union of India** - [2024] 168 taxmann.com 45 (Madhya Pradesh)

4. AAR

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

- 4.1 Where vouchers qualify to be considered as "goods" not "money" and appellant-assessee is engaged in trading of vouchers/coupons and getting commission in form of discount, on such services which are taxable, therefore, GST is applicable on commission/discount earned in trading of vouchers/coupons by appellant-assessee and time of supply will be determined as per Section 12(4) - **Payline Technology (P.) Ltd., In re** - [2024] 168 taxmann.com 451 (AAR-UTTAR PRADESH)

5. AAR

SECTION 2(31) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - CONSIDERATION

- 5.1 Where there is no transfer of business involved, therefore, concession fee paid to applicant-assessee by concessionaire is a consideration for supply and is taxable, however, it is not consideration for transfer of business - **Airports Authority of India, In re** - [2024] 168 taxmann.com 374 (AAR - KERALA)

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

- 5.2 Hydrated lime (slaked lime) intended to be manufactured by assessee is classifiable under heading no. 2522000 and is taxable at rate of 5 percent - **Balveer Singh., In re** - [2024] 168 taxmann.com 375 (AAR- RAJASTHAN)

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

- 5.3 Where transaction between applicant-assessee and concessionaire is not transfer of business, but, merely operating lease, however, concessionaire is supplying service of developing airport of applicant-assessee and applicant-assessee is supplying service of manpower, leasing etc., to concessionaire, therefore, both constitutes supply under Section 7 - **Airports Authority of India, In re** - [2024] 168 taxmann.com 374 (AAR - KERALA)

5.4 Where neither applicant-assessee nor any of its verticals have been 'transferred' to concessionaire either through Slump Sale, lease or in any other discernible manner, so, as to enable concessionaire to carry out business of concern independently, therefore, transaction involved herein cannot be treated as a 'transfer as going concern' - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

5.5 Where there is no transfer of asset by applicant-assessee, but, only operating lease, therefore, impugned question of classification of transfer of asset is void-ab-initio - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

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

5.6 Where place of supply of services shall deemed to be location of supplier and location of applicant-assessee is in India, therefore, impugned services does not amount to export of service and GST is applicable on 'intermediary services' provided by applicant-assessee in India and Sri Lanka - **Alfatek Services, In re - [2024] 168 taxmann.com 397 (AAR - KERALA)**

5.7 Where machines are installed by applicant-assessee in India, therefore, activity does not constitute 'export', as machine is made physically available in India, further, GST is applicable on aforesaid services - **Alfatek Services, In re - [2024] 168 taxmann.com 397 (AAR - KERALA)**

5.8 Where installation services are provided by applicant-assessee in Sri Lanka, therefore, place of provision is outside India, therefore, impugned services falls under definition of 'export of service', subject to satisfaction of all conditions laid down in Section 2(6) and GST is applicable on aforesaid services - **Alfatek Services, In re - [2024] 168 taxmann.com 397 (AAR - KERALA)**

5.9 Where lease is a supply and consideration being concession fee, therefore, supplier is applicant-assessee and recipient of supply is concessionaire, hence, concession fee paid to applicant-assessee by concessionaire is a consideration for supply and is taxable - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

5.10 Where employees of applicant-assessee are supplied to concessionaire for a consideration, in pursuant to agreement, therefore, this service falls under "Other employment and labour supply services nowhere else classified" viz. HSN 998519 and applicable tax rate for this SAC is 9% each towards CGST and SGST as applicable vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

5.11 Where Circular No. 206/18/2023 - GST dated 31.10.2023 states that reimbursement of claimed taxes does not attract GST, therefore, as per aforesaid Circular, reimbursement of claimed taxes, being reimbursement of expenses, do not attract GST, therefore, GST is not applicable on reimbursement of such charges - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

5.12 Where applicant-assessee has not transferred existing assets, aeronautical assets and non- aeronautical assets to concessionaire, therefore, these are still with applicant-assessee and applicant-assessee avails depreciation on them, therefore, impugned question regarding tax imposition on transfer of Existing assets ("RAB"), Aeronautical Assets, non-aeronautical assets and Capital work becomes void-ab-initio and does not merit to be answered - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

5.13 Manufacture of 'tobacco mixed with lime' and supply them after packing in pouches of different units under its brand is classified under Heading no. 2403-Othermanufactured tobacco and manufactured tobacco substitutes and GST is chargeable at rate 28% - **Dindayal Colloids (P.) Ltd., In re - [2024] 167 taxmann.com 754 (AAR- RAJASTHAN)**

5.14 Where under applicant's business model, technology services would be provided for connecting 'suppliers of passenger transportation services' (i.e. drivers of radio-taxi, motorcab, maxicab and motor cycle) with riders/recipients/users on applicant's digital app platform and applicant shall charge a membership/subscription fee from drivers, applicant will be a 'electronic commerce operator' and since supply of 'services by way of transportation of passengers' in proposed commission free monetization model basis by driver of an auto-rickshaw, radio-taxi, motorcab and motor cycle is supplied through applicant, by virtue of section 9(5) applicant is liable to pay tax on supply of services of transportation of passengers - **Uber India Systems (P.) Ltd., In re - [2024] 168 taxmann.com 206 (AAR - KARNATAKA)**

5.15 Packed halwa purchased from an outsourced manufacturer and marketed under assessee's brand name is covered under SI no 101 in schedule 1 heading no 210690 and attracts 5 percent GST - **Halwa Haweli, In re - [2024] 168 taxmann.com 205 (AAR - KERALA)**

5.16 Halwa purchased from a supplier and packed at assessee's facility and marketed under assessee's brand name is covered under SI no 101 in schedule 1 heading no 210690 and attracts 5 percent GST - **Halwa Haweli, In re - [2024] 168 taxmann.com 205 (AAR - KERALA)**

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

5.17 Where applicant-assessee provides services to Municipal Council Kotputli, which is a 'local authority' and Entry No. 3B of Notification No. 13/2017-CT (Rate), dated 28-6-2017

exempts services provided to 'Government Authority' by way of water supply, public health, sanitation conservancy, solid waste management, slum improvement and up gradation, therefore, activity of providing, laying, jointing, testing and commissioning of sewer system and all ancillary works by applicant-assessee to Municipal Council Kotputli, being a local authority is not exempted under Entry 3B of Notification No. 13/2017-CT (Rate), dated 28-6-2017 - **Technocraft Construction (P.) Ltd., In re - [2024] 168 taxmann.com 452 (AAR- RAJASTHAN)**

5.18 Where applicant-assessee is providing services in relation to admission to foreign universities and courses conducted by foreign universities do not fall under conditions specified under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, therefore, activity of applicant-assessee is not exempted under Sl. No. 66 of above said Notification and tax is to be paid by applicant-assessee - **Salve Maria International., In re - [2024] 168 taxmann.com 426 (AAR - KERALA)**

5.19 Since, there is no transfer of business in transaction between applicant-assessee and concessionaire, therefore, impugned question of exemption is void ab initio - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

5.20 Where applicant-assessee provides services to Nagar Nigam Kota, which is a 'local authority' and Entry No. 3B of Notification No. 13/2017-CT (Rate), dated 28-6-2017 exempts services provided to 'Government Authority' by way of water supply, public health, sanitation conservancy, solid waste management, slum improvement and up gradation, therefore, activity of providing, laying, jointing, testing and commissioning of sewer system and all ancillary works by applicant-assessee to Nagar Nigam Kota, being a local authority is not exempted under Entry 3B of Notification No. 13/2017-CT (Rate), dated 28-6-2017 - **Technocraft Construction (P.) Ltd., In re - [2024] 167 taxmann.com 755 (AAR- RAJASTHAN)**

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

5.21 If applicant-assessee has inward supply of goods or services or both, which are used by registered person partly for effecting taxable supplies including zero-rated supplies under this Act, then, reversal is to be made as per Section 17(2), otherwise not - **Airports Authority of India, In re - [2024] 168 taxmann.com 374 (AAR - KERALA)**

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1** SEBI cautions investors against unauthorised virtual trading and gaming platforms - **PR No. 27/2024, Dated 04-11-2024**

Editorial Note: SEBI observed that some apps/web applications/platforms offer virtual trading services, paper trading, or fantasy games to the public based on stock price data of listed companies. Such activities are in violation of the SCRA, 1956, and SEBI Act, 1992, which are laws designed to protect investors. Accordingly, SEBI has cautioned investors against undertaking trading activities via virtual trading or gaming platforms and asked them to deal only through registered intermediaries.

- 1.2** SEBI permits Indian mutual fund schemes to invest in overseas funds with a limit on exposure to Indian securities - **Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/149; Dated 04-11-2024**

Editorial Note: SEBI has permitted Indian Mutual Fund (MF) schemes to invest in overseas mutual funds or unit trusts (UT) that have exposure to Indian securities. The condition is that the total exposure to Indian securities by these overseas mutual funds/unit trusts must not be more than 25% of their assets. The Indian MF schemes must ensure that all investors' contributions to an overseas MF/UT are combined into a single investment vehicle without any side vehicles. The circular shall be effective immediately

- 1.3** Companies with turnover above Rs 250 crore must get onboarded on 'Trade Receivables Discounting Platforms' by 31.03.2025 - **Notification No. S.O. 4845(E), Dated 07-11-2024**

Editorial Note: In line with section 9 of the MSME Development Act, 2006, the Central Government has mandated that all companies registered under the Companies Act, 2013, with a turnover of more than Rs. 250 crores and all Central Public Sector Enterprises (CPSEs) be onboarded on the Trade Receivables Discounting System (TReDS) platforms as notified by the RBI. The onboarding process for these entities must be completed by March 31, 2025.

- 1.4** SEBI releases advisory on communication with 'SEBI Officials'

Editorial Note: SEBI has advised all registered intermediaries / regulated entities implement measures requiring approval/ clarification from SEBI only upon receipt of explicit written approval or written clarification or communication from SEBI. Further, they are also advised to refer to the mechanism provided for under the SEBI (Informal Guidance) Scheme 2003 for seeking interpretive letters/ no action letters from SEBI, if required.

- 1.5** Period of 6 months for contra-trade restriction under PIT norms is calculated from completion date of share acquisition: SEBI Informal guidance

Editorial Note: A listed company sought SEBI's informal guidance on whether the date on which shares have been agreed to be acquired is the relevant date for computing 6 months in relation to contra-trade restriction as per Para 10 of Schedule B under Reg. 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015. SEBI clarified that the relevant date for the computation of 6 months in relation to contra-trade restriction would be the date on which the acquisition/purchase of shares was completed.

- 1.6** SEBI proposes measures towards ease of doing business for Debenture Trustees

Editorial Note: SEBI has released a consultation paper on measures towards ease of doing business for debenture trustees (DTs). The objective is to seek public comments on proposals for reviewing SEBI (Debenture Trustees) Regulations for ease of doing business for DTs. The proposals include (a) specifying activity-based regulation for DTs, (b) including the definition of "cross-default," and aggregating debenture holders across ISINs for voting and decisions and (c) standardisation of Debenture Trust Deed

- 1.7** SEBI issues FAQs for investors on 'scores'; enables investors to lodge securities-related complaints

Editorial Note: SEBI has notified FAQs for investors on 'scores'. SCORES is an online platform designed to facilitate complainants to lodge their complaints pertaining to securities market against listed companies, SEBI registered intermediaries & Market Infrastructure Institutions. In order to enhance ease, speed & accuracy in the redressal of grievance, the complainant may lodge the complaint against the concerned entity on SCORES within a period of 1 year from the date of occurrence of the cause of action.

- 1.8** SEBI proposes a mandatory demat form for issuance and transfer of 'Securitised Debt Instruments'

Editorial Note: SEBI has released a consultation paper on reviewing the SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008. SEBI has proposed making the issuance and transfer of securitised debt instruments (SDI) mandatory in demat form. Further, SEBI has proposed revising the limit on the number of persons to whom an offer or invitation can be made to issue SDI on a private placement basis to 200. Public comments can be submitted by Nov 16, 2024.

- 1.9** SEBI releases a consultation paper on ease of doing business for 'Small and medium Real Estate Investment Trusts'

Editorial Note: SEBI has released a consultation paper on the ease of doing business for 'Small and medium Real Estate Investment Trusts' (SM REITs). SEBI has

proposed bifurcating the scheme offer document, which must be filed in two parts, key information of the trust (KIT) and key information of scheme (KIS). Further, investment manager must file an updated KIT with SEBI and stock exchanges for records within 30 days from the end of half year. Also, SEBI proposes to align provisions for SM REITs and REITs.

- 1.10** SEBI releases consultation paper reviewing LODR corporate governance norms for 'High Value Debt Listed Entities'

Editorial Note: SEBI has notified Consultation paper on review of provisions of LODR Regulations pertaining to corporate governance norms for High Value Debt Listed entities (HVDLEs). Public comments are sought on proposals for HVDLE corporate governance norms, including a dedicated LODR chapter, revised thresholds, sunset clauses, specific committee relaxations, XBRL reporting, voluntary BRSR, limits on directorships, committee roles, and related party transaction norms. Comments may be sent by 15.11.2024.

- 1.11** SEBI releases proposals for ease of doing business by 'ESG Rating Providers (ERPs)'

Editorial Note: SEBI has notified proposals for ease of doing business by 'ESG Rating Providers (ERPs)'. The consultation paper addresses sharing draft ESG ratings with issuers under a subscriber-pays model, handling issuer appeals, waiving ESG disclosure requirements to exchanges for subscriber-paid ratings, and implementing Activity Based Regulation for ESG Rating Providers (ERPs). Comments on the Consultation paper (CP) may be sent by 15.11.2024.

- 1.12** SEBI releases consultation paper on business ease and investor protection measures for REITs, SM REITs, and InvITs

Editorial Note: SEBI has released consultation paper seeking public input on proposals for REITs, Small and Medium REITs, and InvITs, covering ease of business and investor protection. The proposals include transferring locked units among sponsors, defining common infrastructure, and permitting hedging with interest rate derivatives. Investor protection measures proposes a review of investments in unlisted equities and liquid mutual funds, and outline trustee roles and responsibilities for these entities.

- 1.13** SEBI proposes to dispense with requirement of uploading 'Scheme Information Documents' on SEBI website at initial stage

Editorial Note: SEBI has released a consultation paper on modifying the requirement of uploading initial draft Scheme Information Documents (SIDs) on SEBI website. SEBI has proposed to dispense with the requirement of uploading 'Scheme

Information Documents' (SIDs) on SEBI website at the initial draft filing stage. Instead, SIDs on which SEBI observations have been issued may be uploaded on the website. Public comments may be submitted by November 20, 2024.

- 1.14** SEBI releases consultation paper on regulatory framework for restricted return InvITs for downside protection

Editorial Note: SEBI has notified consultation paper on introduction of regulatory framework for restricted return InvITs. This framework aims to provide structured returns by setting caps on the upside or offering downside protection on returns. Further, such InvIT with restricted returns should be restricted only to sophisticated investors who are in position to understand the impact of such floors and/or caps on returns. Comments on the Consultation paper (CP) may be sent by 13.11.2024.

- 1.15** SEBI proposes 30-day timeline for AMCs to deploy funds in New Fund Offer as per asset allocation

Editorial Note: SEBI has released a consultation paper specifying timelines for deploying funds collected by AMCs in the New Fund Offer as per asset allocation of the scheme. The objective is to seek comments/suggestions from the public on proposals related to specifying timelines for the deployment of funds collected by Mutual Funds in New Fund Offers (NFO) as per asset allocation of a scheme. AMCs may be mandated to deploy funds garnered in NFO within 30 business days from the date of allotment of units.

- 1.16** SEBI proposes review of framework on alignment of interest of designated employees of AMCs with interest of unitholders

Editorial Note: SEBI has released a consultation paper on a review of the regulatory framework on alignment of the interest of designated employees of an asset management company (AMC) with the interest of unitholders. Currently, AMCs are required to invest 20% of a designated employee's total remuneration, including non-cash compensation, in schemes over which they have oversight. SEBI has now proposed that this requirement may be reduced from 20% and made applicable slab-wise, based on CTC of the employees.

- 1.17** SEBI directs Mutual Funds to disclose expenses, half-yearly returns for direct and regular plans of MF schemes separately - **Circular No. SEBI/HO/IMD/PoD1/CIR/P/2024/150, Dated 05-11-2024**

Editorial Note: SEBI has directed mutual funds (MFs) to disclose expenses, yearly returns, yield, and risk-o-meter of mutual fund schemes for direct and regular plans separately. This move is aimed at increasing transparency, allowing investors to compare the cost and performance of the two types of plans easily. Further, to make risk levels of MF schemes clearer, SEBI has introduced a colour-coded system for the existing risk-o-meter. The circular shall be effective from December 5, 2024.

- 1.18** A person under clause 3(b)(vi) of Schedule II of SEBI (Intermediaries) norms includes juridical persons for winding up: SEBI Informal guidance

Editorial Note: A company sought informal guidance from SEBI regarding clause 3(b)(vi) under Schedule II of the SEBI (Intermediaries) Regulations, 2008, relating to winding up proceedings to understand the purpose and whether this will relate to an individual. SEBI clarified that a person would include both a natural person and a juridical person, and the interpretation of the meaning of person for the purpose of clause 3(b)(vi) would be to a juridical person such as a corporate entity.

- 1.19** SEBI issues updated procedure for reclassifying FPI investments to FDI - **Circular No. SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/152, Dated 11-11-2024**

Editorial Note: SEBI has issued updated procedure for reclassifying FPI investments to FDI. It states that if an investment made by a foreign portfolio investor reaches 10% or more of total paid-up equity capital of a company on a fully diluted basis & FPI intends to reclassify its FPI holdings as FDI, it must follow extant FEMA Rules and circulars. On receiving intent from FPI, Custodian must report it to SEBI and freeze FPI's purchase transactions of company's equity till completion of reclassification.

- 1.20** SEBI mandates Qualified Stock Brokers to offer UPI block mechanism or 3-in-1 trading account facility to their clients - **Circular No. SEBI/HO/MRD-PoD2/CIR/P/2024/153, Dated 11-11-2024**

Editorial Note: Considering the significant changes required to be made in the systems and processes of the Clearing Corporations, Stock Exchanges, Depositories, and Trading Members, SEBI has mandated the Qualified Stock Brokers (QSBs) to provide either the facility of trading supported by blocked amount in the secondary market (cash segment) using UPI block mechanism or the 3-in-1 Trading Account facility, to their clients. The circular will come into effect from 01.02.2025.

- 1.21** SEBI issues updated Master Circular for compliance with provisions of LODR Regulations by listed entities - **Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/0155, Dated 11-11-2024**

Editorial Note: SEBI has issued an updated master circular to ensure compliance with the provisions of LODR Regulations by listed entities. This master circular consolidates all the relevant circulars issued on/before September 30, 2024. The instant master circular supersedes the Master Circular for compliance with the provisions of the LODR Regulations by listed entities dated July 11, 2023. This circular provides a chapter-wise framework for compliance with various obligations under the LODR Regulations.

- 1.22** SEBI issues updated Master Circular for compliance with provisions relating to ICDR Regulations - **Master Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/0154, Dated 11-11-2024**

Editorial Note: SEBI has issued an updated master circular to ensure compliance with the provisions of ICDR Regulations. This master circular consolidates all the relevant circulars issued on/before September 30, 2024. The instant master circular supersedes the Master Circular for compliance with the provisions of the ICDR Regulations dated June 21, 2023. This circular provides a chapter-wise framework for compliance with various obligations under the ICDR Regulations.

- 1.23** SEBI proposes a review of the UPSI definition under insider trading norms to align with LODR norms

Editorial Note: SEBI has released a consultation paper on proposed review of definition of 'Unpublished Price Sensitive Information' (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015. The objective is to seek public comments on proposed amendment to the definition of UPSI to bring greater clarity & uniformity of compliance in the ecosystem. The proposal aims to align definition of UPSI in PIT Regulations with events from Para A and B of Part A of Schedule III as defined under LODR norms.

- 1.24** Nominee shareholders holding 1 share each for minimum membership count as promoter group if ICDR conditions are met: SEBI

Editorial Note: A company sought informal guidance from SEBI on whether nominee shareholders holding 1 share to meet the minimum membership criteria form part of the promoter or promoter group. SEBI clarified that the terms 'promoter' and 'promoter group' are defined under ICDR Regulations 2(1)(oo) and 2(1)(pp) of ICDR Regulations. If nominee shareholders meet the specified conditions in these regulations, they should be considered part of the promoter or promoter group of the listed entity.

- 1.25** SEBI simplifies registration process for certain Foreign Portfolio Investors - **Circular No. SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/156, Dated 12-11-2024**

Editorial Note: SEBI has simplified the registration process for certain foreign portfolio investors (FPIs). FPIs may be provided with an option to fill out the entire Common Application Form (CAF) or an abridged version of CAF, i.e., a version of CAF where applicants fill only those fields that are unique to them. If the applicant opts for this abridged version of CAF, the remaining fields shall either be auto-populated from the information available in the CAF module or disabled, as applicable.

- 1.26** SEBI exempts employee benefit trusts under UBEB scheme from one-year lock-in on units allotted to non-sponsor entities - **Circular No. SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2024/158 & 159, Dated 13-11-2024**

Editorial Note: Earlier, SEBI introduced a framework for the unit-based employee benefit (UBEB) scheme for REITs and InvITs, which included a lock-in requirement for units issued to non-sponsor entities, mandating a one-year lock-in from the date of trading approval. Now, to support employee benefit trusts in acquiring units and subsequently transferring them to employees under the UBEB scheme, SEBI now proposes that these lock-in restrictions will not apply to units allotted to an employee benefit trust.

- 1.27** SEBI proposes amendments w.r.t assigning responsibility for use of artificial intelligence tools by MIs & intermediaries

Editorial Note: SEBI has released a Consultation Paper on proposed amendments to assign responsibility for the use of artificial intelligence tools by Market Infrastructure Institutions (MIs), registered intermediaries, and persons regulated by SEBI. The term "Artificial Intelligence" is understood to focus on executable programmes in machines and computers that can learn, reason and act in ways that would normally require human intelligence. Comments may be submitted by Nov 28, 2024.

- 1.28** SEBI proposes a review of Custodian norms and operational guidelines to ease operations and compliances

Editorial Note: SEBI has released a Consultation Paper on the review of Custodian Regulations, 1996, and operational guidelines for Custodians. SEBI has proposed to increase the net worth requirement for Custodians from Rs 50 crore to Rs 100 crore. Existing custodians who do not meet the revised net worth requirement must be given a period of 3 years to comply with the revised net worth requirement. Comments may be submitted by Nov 28, 2024

- 1.29** SEBI proposes to raise the maximum investment limit for Angel Funds in start-ups from Rs 10 crore to Rs 25 crore

Editorial Note: SEBI has released a Consultation Paper on reviewing the regulatory framework for Angel Funds in AIF Regulations. Angel Funds, a type of Category I AIFs—venture Capital Funds—provide capital to start-ups from Angel Investors. SEBI has proposed raising the maximum investment limit for Angel Funds in start-ups from Rs 10 crore to Rs 25 crore and reducing the minimum investment limit from Rs 25 lakh to Rs 10 lakh. Comments may be submitted by Nov 28, 2024.

- 1.30** 1 in 4 listed companies paid royalties exceeding 20% of net profits to Related Parties over the past decade: SEBI - **PR NO. 29/2024, Dated 14-11-2024**

Editorial Note: SEBI has analyzed royalty payments by 233 listed companies to their Related Parties from FY 2013-14 to FY 2022-23. The study found that 1 in 4 times, royalties exceeded 20% of net profits, with

half of these companies either skipping dividends or paying more royalty than dividends to non-Related Party shareholders. Proxy advisory firms raised concerns, noting a weak correlation between royalty payments & company revenue or profits, highlighting potential corporate governance issues.

- 1.31** AIF scheme investors shall hold pro-rata rights in investments & proceeds distribution based on their commitment: SEBI - **Circular No. SEBI/LAD-NRO/GN/2024/209, Dated 18-11-2024**

Editorial Note: SEBI has notified amendment in SEBI (Alternative Investment Funds) Regulations, 2012, by introducing a new Sub-Regulation 21 to Regulation 20. As per the amended norms, the investors of a scheme of an Alternative Investment Fund shall have rights, pro-rata to their commitment to the scheme, in each investment of the scheme and in the distribution of proceeds of such investment. Further, the rights of investors of a scheme of an Alternative Investment Fund, shall be pari-passu in all aspects.

- 1.32** SEBI revises CRA policies on post-default curing and removes the term 'technical default' from Master Circular - **Circular No. SEBI/HO/DDHS/DDHS-PoD-3/P/CIR/2024/16, Dated 18-11-2024**

Editorial Note: SEBI has notified amendment in Para 15 of the Master Circular for Credit Rating Agencies, removing the term 'technical default' from Para 15.3 & providing clarity on treatment of specific non-payment scenarios caused by factors beyond the issuer's control, such as incorrect investor account details or government-instructions. CRAs shall confirm & verify the availability of adequate funds with the issuer and must also verify issuer funds, reasons for non-payment, and escrow account deposits.

- 1.33** SEBI amends Buy-Back Regulations; excludes shares held by non-participating promoters from entitlement ratio - **Notification No. SEBI/LAD-NRO/GN/2024/210, Dated 20-11-2024**

Editorial Note: SEBI has notified the SEBI (Buy-Back of Securities) (Second Amendment) Regulations, 2024. A new proviso has been inserted to Regulation 4(iv)(a) relating to conditions and requirements for buyback of shares and specified securities. It states that if any member of the promoter/promoter group has declared its intention not to participate in the buy-back, the shares held by such member of the promoter/promoter group must not be considered for computing the entitlement ratio.

- 1.34** SEBI amends Bankers to an Issue Regulations by expanding their scope of activities - **Notification No. SEBI/LAD-NRO/GN/2024/211, Dated 20-11-2024**

Editorial Note: SEBI has notified the SEBI (Bankers to an Issue) (Amendment) Regulations, 2024. As per the amended norms, SEBI has expanded the scope of activities carried out by 'banker to an issue' under Regulation 2(aa). These activities now include providing

escrow services for the purpose of issue management, delisting, buyback and other activities specified by the Board. Further, a person must not act as a banker to an issue unless a certificate of registration has been obtained from the Board.

- 1.35** SEBI removes requirement for No Objection Certificate for release of 1% of Issue Amount under ICDR Regulations - **Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/0161, Dated 21-11-2024**

Editorial Note: Earlier, SEBI removed the requirement for issuers to deposit 1% of the issue size with the stock exchange under ICDR Regulations. Now, SEBI has withdrawn the requirement for a No Objection Certificate for the release of the 1% deposit. However, Exchanges must establish a joint operating procedure for releasing the 1% security deposit deposited by issuers before the amendments to the ICDR Regulations. This circular will be effective immediately.

- 1.36** SEBI reviews SME frameworks under ICDR & LODR Regulations; proposes stricter IPO norms

Editorial Note: SEBI has introduced its Consultation Paper on review of SME framework under SEBI (ICDR) Regulations, 2018, and corporate governance provisions under SEBI (LODR) Regulations, 2015, aiming to enhance SME pre- and post-listing norms. Proposals include increase in minimum application size from 1 lakh rupees per application to 2 or 4 lakh rupees per application, change allocation methodology in NII category of SME IPO and aligning it with allocation methodology used for Main Board IPO, etc.

- 1.37** SEBI introduces mark-to-market basis valuation for repurchase (repo) transactions by Mutual Funds - **Circular No. SEBI/HO/IMD/IMD-I POD-1/P/CIR/2024/163, Dated 26-11-2024**

Editorial Note: SEBI has introduced mark-to-market basis valuation for repurchase (repo) transactions (including tri-party repo, i.e. TREPS) with tenor of up to 30 days by Mutual Funds. This is done to ensure uniformity in the valuation methodology of all money market and debt instruments and address concerns of unintended regulatory arbitrage that may arise due to different valuation methodologies adopted. The circular shall be effective from January 1, 2025.

- 1.38** NFRA recommends 40 Auditing Standards for LLPs, effective from 1 April 2026, upon Central Government approval - **Press Release, Dated 25-11-2024**

Editorial Note: The National Financial Reporting Authority (NFRA), in its 19th meeting, recommended 40 Standards on Auditing (SAs) and Standards on Quality Management (SQMs) for LLP audits under

Section 34A of the LLP (Amendment) Act 2021. These standards, finalized in its earlier meeting, will apply to LLPs on a mutatis mutandis basis. Upon the approval of the Central Government, these Standards are recommended to be effective from 01.04.2026.

- 1.39** SEBI issues guidelines to strengthen governance of Stock Exchanges, Clearing Corporations and Depositories - **Circular No. SEBI/HO/MRD/POD-3/P/CIR/2024/162, Dated 22-11-2024**

Editorial Note: SEBI has issued certain guidelines to Stock Exchanges, Clearing Corporations, and Depositories (MIs). As per the guidelines, MIs must resolve whistleblower complaints within 60 days of receiving them. The Audit Committee must receive and investigate the whistle-blower complaints. Further, MIs must adopt advanced technologies such as Regulatory Technologies (RegTech) and Supervisory Technologies (SupTech) to strengthen their regulatory and supervision mechanisms.

- 1.40** SEBI releases a consultation paper on the process for appointment of specific KMPs of Market Infrastructure Institutions

Editorial Note: SEBI has released a consultation paper on the process for appointing specific KMPs of Market Infrastructure Institutions (MIIs) and the cooling-off period for KMPs. This is done to strengthen the governance framework of MIIs. SEBI has proposed that MIIs must adopt and implement a policy approved by its governing board prescribing a minimum cooling-off period for KMPs (including MD) and their directors before joining a competing MII. Comments may be submitted by December 12, 2024.

- 1.41** SEBI proposes a review of ownership and economic structure of Clearing Corporations operating in equity markets

Editorial Note: SEBI has released a consultation paper seeking public opinion on a proposal to diversify the ownership of Clearing Corporations (CCs) operating in equity markets. This is done to ensure that CCs discharge their vital risk management function independently and in the best public interest and to strengthen the stability of the MII ecosystem. Further, CCs must evolve a fee and operating structure that allows them to operate as self-sufficient entities. Comments may be submitted by 13.12.2024.

- 1.42** SEBI allows NSE and BSE to act as alternative trading venue at the time of outage on one exchange - **Circular No. SEBI/HO/MRD/TPD/P/CIR/2024/167, Dated 28-11-2024**

Editorial Note: SEBI has allowed NSE and BSE to act as an alternative trading venue at the time of outage on either exchange. Both exchanges will have to prepare a joint Standard Operating Procedure (SOP) that would include a plan to be invoked at the time of outage on one exchange and submit to SEBI within 60 days from the date of circular. Further, the SOP must cover changes, if any, in the systems of stock brokers and clearing corporations to implement the measures.

- 1.43 SEBI does away with the requirement of notarised documents to be submitted by Market Intermediaries - **Notification No. F. NO. SEBI/LAD-NRO/GN/2024/212, Dated 28-11-2024**

Editorial Note: SEBI has notified SEBI (Attestation of Documents) (Amendment) Regulations, 2024. Amendments have been made to certain specific regulations, including the SEBI (Custodian) Regulations, 1996, SEBI (CRAs) Regulations, 1999, SEBI (KYC) Regulations, 2011, SEBI (SAST) Regulations, 2011, SEBI (Buy-Back of Securities) Regulations, 2018 and SEBI (Settlement Proceedings) Regulations, 2018. As per the amended norms, the words "attested by an authorised notary" shall be replaced with "self-attestation".

2. HIGH COURT

REGULATION 8 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018 - EFFECT OF PENDING APPLICATION ON SPECIFIED PROCEEDINGS

- 2.1 Where SEBI issued a show-cause notice (SCN) to petitioner company and seven others regarding trading in petitioner's scrip but proceedings in SCN were stalled by petitioner for one reason or another, even application by petitioner seeking settlement of SCN was appeared to have been made only to benefit from provisions of Regulation 8, which required that final order in SCN be kept in abeyance until settlement application was disposed of, settlement division of SEBI rightly rejected petitioners' settlement application - **ABANS Enterprises Ltd. v. Securities and Exchange Board of India - [2024] 168 taxmann.com 279 (Bombay)**

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

- 2.2 Where petitioners sought a finding on interpretation of Non-Compete Agreement and Business Transfer Agreement to determine contractual obligations viz indirect tax (service tax) liability and for payment of damages, which as per said agreements was entirely responsibility of respondent and Arbitral Tribunal passed a 'Nil' award on ground that in view of demand itself having been quashed, exercise of adjudicating upon claims of petitioners had become academic, there being fundamental breach of Indian Law, no merit was found in petition unde - **Naresh Kumar Bajaj v. Bunge India (P.) Ltd. - [2024] 168 taxmann.com 139 (Delhi)**

3. NCLAT

SECTION 236 OF THE COMPANIES ACT, 2013 - COMPROMISE, AMALGAMATION, ETC. - PURCHASE OF MINORITY SHAREHOLDING

- 3.1 Where prayer of respondent - minority shareholder of appellant company to sell his shares to majority shareholders of company was rejected, since respondent could not sell his shares in open market, it being a private company and not a listed one, there was no illegality in order passed by NCLT in directing appellant to purchase shares of respondent - **Atlas Equifin (P.) Ltd. v. Jackie Kakubhai Shroff - [2024] 168 taxmann.com 58 (NCLAT-New Delhi)**

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

- 3.2 Where in a company petition filed by respondent alleging oppression and mismanagement in affairs of appellant company, respondent filed an application seeking to directly place on record an amended petition, impugned order passed by Tribunal allowing said application without giving an opportunity of being heard to appellant did not adhere to principles of natural justice and thus, appeal against said order was to be allowed - **Kochar Sungup Acrylic Ltd. v. Sunny Kochar - [2024] 168 taxmann.com 171 (NCLAT- New Delhi)**

SECTION 244 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT - RIGHT TO APPLY

- 3.3 Section 241 is not intended to address personal grievances of directors, but is meant to protect interests of company and its shareholders against genuine acts of oppression and mismanagement - **Adesh Kumar Gupta v. Liberty Shoes Ltd. - [2024] 168 taxmann.com 1 (NCLAT- New Delhi)**

4. NCLT

SECTION 66 OF THE COMPANIES ACT, 2013 - SHARE CAPITAL - REDUCTION OF

- 4.1 Where petitioner company filed petition under section 66 seeking reduction of its issued, subscribed and paid-up equity share capital by cancelling and extinguishing, in aggregate, 3.87 per cent of total issued, subscribed and paid-up equity share capital of petitioner company held by all equity shareholders of petitioner company other than its group companies, since section 66 provides specific bar and states that nothing in this section shall apply to buy-back of its own securities by a company under section 68, instant petition was to be dismissed - **Philip India Ltd., In re - [2024] 168 taxmann.com 141 (NCLT - Kolkata)**

**SECTION 58 OF THE COMPANIES ACT, 2013 -
TRANSFER OF SHARES-REFUSAL OF
REGISTRATION AND APPEAL THEREAGAINST**

- 4.2** Where shares held by applicant in respondent company had been fraudulently transferred by respondent to another shareholders and in view of dematerialization of shares, identity of shares had been lost and as such question of deleting name of any present shareholder in respect of these shares and to insert name of applicant was not possible, thus, respondent was directed to pay price of impugned shares to applicant and in addition, a cost of Rs. 50 thousand was to be awarded to applicant - **Shardadevi Boob v. Mishtann Foods Ltd.** - [2024] 168 taxmann.com 373 (NCLT - Ahd.)

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

- 4.3** Where petitioner failed to pay treatment charges to respondent company incorporated for carrying out treatment of common effluents discharged from dyeing units owned by its members, equity shares of petitioner were rightly cancelled and re-allotted among existing members who had been discharging their effluents to plant - **Palaniammal Baladhandapani v. Mannarai Common Effluent Treatment Plant (P.) Ltd.** - [2024] 168 taxmann.com 280 (NCLT- Chennai)
- 4.4** Where rental dues claimed by respondent company was not supported by rental/lease agreement which was agreed by shareholder, respondent company had no right to unilaterally sell shares which were in possession of shareholder, without consent and entire acts of company to auction shares appeared to be malafide and with ulterior motives - **K.G.Lekha v. Vyapar Mandir Palarivattom (P.) Ltd.** - [2024] 168 taxmann.com 113 (NCLT - Kochi)

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

- 4.5** Where respondents failed to transfer shares of petitioner's deceased husband and petitioner was ready to exit on payment of fair valuation but petitioner was not paid due amount and same continued to be with respondents throughout and was utilized by them, it would be just and equitable if respondents were made to pay simple interest at 10 per cent per annum on due amount from date of valuation report till date of actual payment - **Prudence Maynard v. Mundhra Container Freight Station (P.) Ltd.** - [2024] 168 taxmann.com 394 (NCLT - Mum.)
- 4.6** Where shareholding of petitioner - director and shareholder in a company was reduced by allotment

of equity shares by respondent - other directors of said company without serving notice, since said allotment was done to usurp absolute control of company by further reducing shareholding of petitioner, an act of oppression against petitioner was established in respect of said allotment and, thus, allotment of said shares was to be set aside - **Girish Prabhudas Lotia v. Rang Sharda Hotels (P.) Ltd.** - [2024] 168 taxmann.com 335 (NCLT - Mum.)

- 4.7** Where there was no material placed on record to corroborate oral understanding, if any, entered into by C group with respondent (A Group) regarding retransfer of shares of respondent No.1 company purchased from L Group, no case of oppression was made out - **Dushyant Chandulal Patel v. Aakash Lavlesh Leisure (P.) Ltd.** - [2024] 168 taxmann.com 201 (NCLT - Mum.)
- 4.8** Where a petition under sections 241 and 242 was filed against respondent company and during pendency of said petition, applicant, shareholder filed instant application to restrain company and its directors from exercising any rights, in respect of 100,300 disputed shares of company, transfer of which was under challenge, till final hearing of main petition, in view of fact that recording of transfer of shares was duly completed as prescribed under provisions of Companies Act, thus, instant application was to be dismissed - **Deepak Kishan Chhabria v. Orbit Electricals (P.) Ltd.** - [2024] 168 taxmann.com 170 (NCLT - Mum.)
- 4.9** Where petitioner - shareholder and director of a company vide a petition, alleged other directors of oppression and mismanagement for non-payment of unsecured loans advanced by petitioner and misappropriation of funds, since petitioner never approached company for repayment of unsecured loans, allegation of petitioner could not be treated as an act of oppression and mismanagement as cause of action of nonpayment of loans had never arisen nor acts of other directors caused prejudice to rights/interest of petitioners or to company and, thus, said petition was to be dismissed - **Shiva Prasad Rao Muvva v. Matrudharani Projects (P.) Ltd.** - [2024] 168 taxmann.com 136 (NCLT - Hyd.)

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

- 4.10** Where appellant company was having required resources for carrying on business and it had been carrying on business at time when its name was struck off and appellant had taken plea that once name of Company was restored, it would file all statutory returns with RoC, name of company was, to be restored in register of companies subject to payment of cost - **PCN Buildcon (P.) Ltd. v. Registrar Companies** - [2024] 168 taxmann.com 414 (NCLT - Allahabad)

COMPETITION LAW

1. CCI

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

- 1.1** Setting tender terms and conditions is largely within domain of procurer and generally does not call for any interference within provisions of Act ; where allegations made by Informant concerning tender process were misconceived, prima facie no case was made out under provisions of Section 3(3) of Competition Act - **Harish Kumar v. S B Telecommunication** - [2024] 168 taxmann.com 393 (CCI)

2. NCLAT

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

- 2.1** Where Informant-travel and tourism association filed information against exclusionary market practices adopted by Department of Expenditure, Government of India in favour of private airlines for closing market and denial of market access to Informant, in view of fact that instant information had previously been agitated against same OPs and CCI after considering information had closed matter, issues could not be reagitated and, therefore, instant appeal was to be dismissed - **Travel Agents Association of India v. Competition Commission of India** - [2024] 168 taxmann.com 336 (NCLAT- New Delhi)

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 IFSC Authority notifies Code of Conduct for 'recognised market infrastructure institution' - **Notification No. IFSCA/GN/2024/011, Dated 29-10-2024**

Editorial Note: The IFSC Authority has amended the IFSC Authority (Market Infrastructure Institutions) Regulations, 2021, introducing a new regulation, 10A, establishing a Code of Conduct for recognized market infrastructure institutions. Also, code for governing board, directors, committee members, and key management personnel has been notified. Additionally, each recognized market infrastructure institution has been mandated to form a Nomination and Remuneration Committee to oversee governance.

- 1.2 RBI directs banks to use only BIS-certified Note Sorting Machines as per IS 18663: 2024 standards for accuracy - **Circular No. RBI/2024-2025/86 DCM (NPD) No. S2193/09.45.000/2024-25, Dated 30-10-2024**

Editorial Note: Effective from 01.05.2024, RBI directed banks to deploy Note Sorting Machines (NSM) models that conform to BIS standards, specifically IS 18663: 2024, published on March 19, 2024. The Bureau of Indian Standards, in consultation with RBI and other stakeholders, established these standards to ensure consistent authentication and sorting of banknotes.

- 1.3 RBI amends KYC norms to align with the Prevention of Money Laundering (Maintenance of Records) Rules, 2015 - **Circular No. RBI/2024-2025/87 DOR.AML.REC.49/14.01.001/2024-25, Dated 06-11-2024**

Editorial Note: The RBI has amended Master Direction on KYC, aligning it with updates to the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. Now, if an existing KYC compliant customer of a Regulated Entity (RE) desires to open another account or avail any other product or service, there shall be no need for a fresh Customer Due Diligence (CDD) exercise. Further, periodic KYC updates must be uploaded to Central KYC Records Registry, with notification of updates to all relevant entities.

- 1.4 RBI issues an operational framework for reclassification of Foreign Portfolio Investment to Foreign Direct Investment - **Circular No. RBI/2024-25/90 A.P. (DIR Series) Circular No. 19, Dated 11-11-2024**

Editorial Note: RBI has issued a framework for reclassifying foreign portfolio Investments (FPI) to foreign direct Investments (FDI). Currently, an investment made by a foreign portfolio investor must be less than 10% of the total paid-up equity capital on a fully diluted basis. Any FPI investing in breach of the prescribed limit can divest their holdings or reclassify such holdings as FDI subject to conditions specified by RBI and SEBI within 5 trading days from date of settlement of trades causing breach.

- 1.5 RBI includes 10-year Sovereign Green Bonds as eligible for non-resident investment under Fully Accessible Route - **Circular No. RBI/2024-25/88 FMRD.FMD.No.06/14.01.006/2024-25, Dated 07-11-2024**

Editorial Note: RBI has designated 10-year Sovereign Green Bonds issued in the second half of FY 2024-25 as eligible for non-resident investment under the Fully Accessible Route (FAR). Through FAR, certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

- 1.6 Govt allows Canara Bank to hold over 30% stake in Canara Robeco AMC & Canara HSBC Life Insurance till Oct 2029 - **Notification No. 5067(E), Dated 26-11-2024**

Editorial Note: The Ministry of Finance, on the recommendation of the Reserve Bank of India, exempted Canara Bank from the provisions of Section 19(2) of the Banking Regulation Act, 1949, allowing it to hold over 30% of the paid-up share capital in Canara Robeco Asset Management Company Limited and Canara HSBC Life Insurance Company Limited. This exemption is valid until October 31, 2029, or until its revocation, whichever is earlier.

- 1.7 RBI amends FEM (Foreign Currency Accounts by a Person Resident in India) Regulations to align it with the updated startup definition - **Notification No. FEMA 10 (R)/(4)/2024-RB, Dated 19-11-2024**

Editorial Note: The Reserve Bank of India has notified Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Fourth Amendment) Regulations, 2024. The amended norms replaces the definition of the startup with the revised definition of startups, which was issued by the Department for Promotion of Industry and Internal Trade in 2019.

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 Where auctioneer-lender bank cancelled a confirmed auction and auction purchaser filed a WP challenging said cancellation, reason for non issuance of sale certificate to purchaser was solely attributable to bank and there was no default on part of purchaser in offering to deposit balance auction amount, since Rule 9(4) will not apply where there was no default or default, if any, lies upon auctioneer, HC had not committed any error of law in directing auctioneer to issue sale certificate to purchaser - **IDBI Bank Ltd. v. Ramswaroop Daliya** - [2024] 167 taxmann.com 750 (SC)

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

- 2.2 Where petitioner was 67 years old and had spent nearly a year and three months in custody for offence punishable u/s. 45(10) of PMLA and based on medical evaluation it was evident that petitioner fulfilled threshold required for being enlarged on bail, petitioner was to be released on interim bail - **Amar Sadhuram Mulchandani v. Directorate of Enforcement** - [2024] 168 taxmann.com 4 (SC)

SECTION 65 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - CODE OF CRIMINAL PROCEDURE, 1973 TO APPLY

- 2.3 In view of section 65 of PMLA, provisions of section 197(1) of CrPC are applicable to a complaint u/s. 44(1)(b) of PMLA and, therefore, prior sanction u/s. 197(1) of CrPC is required for taking cognizance of offence under PMLA against accused public servants - **Directorate of Enforcement v. Bibhu Prasad Acharya** - [2024] 168 taxmann.com 155 (SC)

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

- 2.4 Where in a cheque bounce case legal notice was issued on 30.09.2019 which was received by accused on 01.10.2019 and a reply was given by accused on 16.10.2019 but there was no payment of amount which was stated in cheque which was dishonoured, consequently, within a period of one month from 16.10.2019, appellant had right to maintain complaint, and thus, in instant case, complaint filed on 23.10.2019, was within period of limitation as prescribed in Section 142(1)(b) of N.I. Act and High Court, therefore, fell in error in holding that complaint was premature - **Vijay Veer Singh v. State of Uttar Pradesh** - [2024] 167 taxmann.com 753 (SC)

3. HIGH COURT

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

- 3.1 Where petitioners were arrested in a money laundering case, in view of fact that trial was yet to commence, and main accused and other similarly placed co-accused persons had been enlarged on bail, moreover, no evidence had been led to show that petitioners were a flight risk, petitioners were thus, also to be released on bail subject to them furnishing a personal bond in sum of Rs.1 lakh with one surety of like amount each to satisfaction of concerned Jail Superintendent/concerned Court - **Pankaj Kumar Tiwari v. Enforcement Directorate** - [2024] 168 taxmann.com 68 (Delhi)

- 3.2 Where on acceptance of closure report in FIR No. 163/2018, which was registered on allegation that accused persons in conspiracy with bank misappropriated funds of bank and thus, committed offence of money laundering, registration of ECIR and subsequent FIRs with an proximate connect with proceeds of crime generated and layered, they were capable and therefore, rightly subsumed into said ECIR, which was still alive and kicking - **Amar S. Mulchandani v. Directorate of Enforcement** - [2024] 168 taxmann.com 3 (Bombay)

SECTION 4 OF THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018 - APPLICATION FOR DECLARATION OF FUGITIVE ECONOMIC OFFENDER AND PROCEDURE THEREFOR

- 3.3 A person who invokes jurisdiction of Court under section 482 of CrPC must come with clean hands; where petitioner, accused of tax evasion had fled to UK and was absconding and sought to invoke Court's discretionary power under section 482 of CrPC without disclosing his current whereabouts, petition filed by him for quashing of miscellaneous application filed under section 4 of Fugitive Economic Offenders Act, 2018, summoning order and all proceedings emanating therefrom was to be outrightly rejected - **Sanjay Bhandari v. Directorate of Enforcement** - [2024] 168 taxmann.com 243 (Delhi)

SECTION 25 OF THE RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993 - MODES OF RECOVERY OF DEBTS

- 3.4 Whether petitioner appeared to be a third party who did not participate in auction process and subsequently gave her offer and yet, did not deposit whole amount, petitioner had no locus to file any application or objection to auction sale and, thus, question of whether petitioner had offered a higher price and whether it could be a ground to interdict sale confirmation etc., was inconsequential and held untenable. - **Mrs. Renu Jain v. Union of India** - [2024] 168 taxmann.com 608 (Delhi)

SECTION 26E OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002- PRIORITY TO SECURED CREDITORS

- 3.5 Where petitioner-bank had created a prior charge in year 2011 as against charge created by respondent-State in year 2018 for outstanding dues, petitioner-bank would have a prior charge over property in question which was sold in auction in favour of auction purchaser - **Karur Vysya Bank Ltd. v. State of Gujarat** - [2024] 168 taxmann.com 67 (Gujarat)

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

- 3.6 Where petitioner was arrested by ED on allegation that he was cash handler on behalf of AAP in Goa Elections and he distributed money to vendors, survey workers and volunteers etc. who were working for AAP campaign in Goa elections, in view of fact that petitioner was working as a freelancer for various political parties and merely because he spent certain amount for campaigning events in election of Goa, it could not be said that there was a strong case against petitioner, furthermore, petitioner was having deep roots in society and there was no possibility of him fleeing away from country and tampering of evidence by petitioner if he was granted bail and, therefore, he was to be released on bail - **Chanpreet Singh Rayat v. Enforcement Directorate** - [2024] 167 taxmann.com 668 (Delhi)

SECTION 45-IA OF THE RESERVE BANK OF INDIA ACT, 1934 - REQUIREMENT OF REGISTRATION AND NET OWNED FUND

- 3.7 Where Certificate of Registration (CoR) to carry on business of non-banking financial institution (NBFI) of petitioner - NBFI was cancelled by RBI on grounds of non fulfilment of its directions prescribing to maintain a minimum Net-Owned Fund target amount, since petitioner achieved said target before passing of cancellation order by RBI, matter for restoration of CoR was to be remanded back to RBI for afresh consideration and, thus, writ petition filed by petitioner seeking restoration of CoR was to be disposed - **Hindon Mercantile Ltd. v. Government of India** - [2024] 168 taxmann.com 240 (Delhi)

SECTION 45-ID OF THE RESERVE BANK OF INDIA ACT, 1934 – POWER OF BANK TO REMOVE DIRECTORS FROM OFFICE

- 3.8 Where petitioner company highlighted certain aspects of mismanagement and financial improprieties in respondent No.2-NBFC company and lodged complaints with RBI but no action had been taken, writ petition filed seeking directions to RBI to initiate action against respondent No.2 in terms of provisions contained in Chapter IIIB of RBI Act, 1934 was to be allowed - **Evaan Holdings (P.) Ltd. v. Reserve Bank of India** - [2024] 168 taxmann.com 202 (Delhi)

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

- 3.9 Requirement of giving notice under clause (b) of proviso to section 138 is a statutory obligation and same has to be complied with within 30 days from date of receipt of return memo from bank; period of 30 days as provided under clause (b) of proviso to section 138 cannot be extended - **Shivnath Suryoba Gaonkar v. Bicholim Marchant Urban Cooperative Credit Society (P.) Ltd.** - [2024] 167 taxmann.com 682 (Bombay)

4. SAFEMA

SECTION 2(1)(u) OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - PROCEEDS OF CRIME

- 4.1 Where in a scam involving cornering of IPO shares reserved for retail applicants, applicant used fictitious/benami names to open bank and demat accounts and made applications in excess to corner shares, entire amount involved therein would be considered to be 'proceeds of crime' as money was used for illegal purposes - **Dushyant Natwarlal Dalal v. Deputy Director Directorate of Enforcement** - [2024] 168 taxmann.com 30 (SAFEMA - New Delhi)

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

- 4.2 Where MBS Group represented by 'S' and 'A' were engaged in defrauding, cheating and causing wrongful loss to MMTC and proceeds of crime accrued were invested by 'A' in appellant company, in fact sole purpose of establishing appellant was to hide proceeds of crime and present them as untainted money, as appellant did not explain source of its capital, appellant was rightfully proceeded against under PMLA, 2002 - **Musaddilal Gems & Jewellers India (P.) Ltd. v. Deputy Director Directorate of Enforcement**, - Hyderabad - [2024] 168 taxmann.com 204 (SAFEMA - New Delhi)

SECTION 5 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - CURRENT ACCOUNT TRANSACTIONS

- 4.3 Where respondent company, a subsidiary of company registered in Hong Kong, remitted royalty to its parent company in Hong Kong which was less than 5 per cent of local sales, no approval from Government of India was required and, therefore, there was no contravention of provisions of section 5 and rule 4 of Current Account Transactions Rules, 2000 - **Union of India v. Questnet Enterprises India (P.) Ltd.** - [2024] 168 taxmann.com 415 (SAFEMA - New Delhi)

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

- 4.4 Where properties of appellant - accused of offence of money laundering were provisionally attached by ED

and same was confirmed, however, when proceeds of crime are siphoned off or vanished, in that case, attachment can be of property of equivalent value, appellant failed to justify purchase of said property and total value of proceeds was vanished by appellant, said property was rightly attached by Adjudicating Authority, therefore, appeal filed by appellant against order confirming said attachment was to be dismissed - ***Dinesh Pratap Singh v. Deputy Director, Directorate of Enforcement - [2024] 168 taxmann.com 392 (SAFEMA - New Delhi)***

**SECTION 9 OF THE FOREIGN EXCHANGE
REGULATION ACT, 1973 - RESTRICTIONS ON
PAYMENT**

- 4.5** Where appellant bank opened a current account in its books in name of a non-resident company for which foreign company or bank did not have requisite statutory or regulatory permission from RBI, appellant bank violated provisions of section 9(1)(e) of FERA but penalty imposed upon appellant bank was to be substantially reduced bank itself had brought matter to notice of RBI and ED - ***Indian Bank (formerly Allahabad Bank) v. Special Director Directorate of Enforcement, Delhi - [2024] 168 taxmann.com 241 (SAFEMA - New Delhi)***

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

- 1.1** IBBI notifies discussion paper on Mediation by the Operational Creditors before approaching Adjudicating Authority

Editorial Note: IBBI observed that there are several recurring issues in Section 9 applications, particularly disputes between OC and Corporate Debtor (CD). In most of the OC-initiated insolvency cases, they are more interested in repayment of money claims rather than admission or resolution of the corporate debtor. Thus, IBBI has now proposed that an option of mediation can be exercised by the operational creditors before filing insolvency applications under Section 9 of the IBC.

- 1.2** IBBI partners with Indian Banks Association to list and auction liquidation assets on eBKray platform - **Circular No. IBBI/LIQ/78/2024, Dated**

Editorial Note: The IBBI has collaborated with the Indian Banks' Association (IBA) to facilitate the auction of assets under the liquidation process through the eBKray platform which is presently owned and managed by PSB Alliance Private Limited. eBKray has been conducting auctions for assets mortgaged to public sector banks under the SARFAESI Act for the past 5 years. Accordingly, PSB Alliance has developed a module within the eBKray platform to facilitate the listing and auction of assets under IBC.

- 1.3** IBBI proposes inclusion of land authorities in Committee of Creditors Meetings - **Notification No. IBBI/2024-25/GN/REGxxx, Dated 07-11-2024**

Editorial Note: IBBI has released a discussion paper on the issues related to Real Estate. The proposals outlined in the discussion paper include (a) inclusion of land authorities in Committee of Creditors (CoC) meetings, (b) handling of cancelled land allotments in real estate insolvency cases, (c) empowering CoC to facilitate the participation of associations of allottees as resolution applicants, and (d) streamlining possession handover in real estate projects.

- 1.4** IBBI proposes to extend the timeline for filing grievances or complaints to 30 days to strengthen redressal mechanism

Editorial Note: IBBI has released a discussion paper on reviewing the grievance redressal and enforcement framework and rationalising timelines regarding authorisation for assignment. The IBBI has proposed extending the timelines for filing grievances or complaints to 30 days from the closure of the process by an order of the Adjudicating Authority, Appellate Authority, or Court. Further, IBBI has proposed rationalising timelines regarding the application and processing of AFA by IPAs.

- 1.5** IBBI proposes changes in liquidation regulations to ensure transparency in compromise or arrangement schemes

Editorial Note: IBBI has released a discussion paper proposing various amendments to the liquidation process under the IBBI (Liquidation Process) Regulations, 2016 and IBBI (Voluntary Liquidation Process) Regulations, 2017. Part A proposes changes in liquidation regulations in relation to (a) a review of the auction process and (b) ensuring transparency in compromise or arrangement schemes. Part B proposes changes in voluntary liquidation regulations w.r.t uncalled capital or unpaid capital contributions.

- 1.6** IBBI proposes to strengthen the regulatory framework governing monitoring committees under IBC

Editorial Note: IBBI has released a discussion paper on monitoring committees under CIRP and proposed strengthening the regulatory framework governing monitoring committees under the IBC. While the current framework under Regulation 38 of the CIRP Regulations provides certain basic recognition to monitoring committees, the proposed amendments aim to make their constitution mandatory for the implementation of all resolution plans. Comments may be submitted electronically by December 9, 2024

2. SUPREME COURT

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

- 2.1** Where NCLAT by impugned order rejected appeal filed by appellant-corporate debtor challenging acceptance of certain additional documents, together with a rejoinder affidavit filed by respondent financial creditor, Proceedings being pending before NCLAT, appeal was not to be entertained at instant stage - **Krystal Stone Exports Ltd. v. Stressed Assets Stabilization Fund - [2024] 168 taxmann.com 372 (SC)**
- 2.2** Provisions of rule 50 of NCLT Rules place both free certified copy as well as certified copy which is applied for on payment of fees on same footing and, therefore, appeal filed with free copy within condonable period of 15 days was to be condoned - **State Bank of India v. India Power Corporation Ltd. - [2024] 168 taxmann.com 112 (SC)**

3. HIGH COURT

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

- 3.1 Where resolution plan of corporate debtor was approved by CoC and then by NCLT vide order dated 22-6-2018, which had attained finality, since demands raised against corporate debtor by respondents pertaining to period prior to plan effective date stand automatically extinguished in terms of approved resolution plan, instant Court directed to revise demands by limiting it to period from 22-6-2018 onwards and raise same afresh as against petitioner in accordance with law so as to be satisfactorily discharged - *Orissa Manganese & Minerals Ltd. v. State of Odisha* - [2024] 167 taxmann.com 677 (Orissa)

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL /FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

- 3.2 Stage of filing application u/s. 94 or 95, is too preliminary a stage to perceive and conceive any adjudicatory attribute and, hence, it is not permissible for Registrar, NCLT, to go into merits of petition and/or to decide about maintainability thereof on merits, for, Registrar does not discharge any adjudicatory or judicial function at this stage - *Buoyant Technology Constellations (P.) Ltd. v. Manyata Realty* - [2024] 168 taxmann.com 60 (Karnataka)

SECTION 220 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES-- DISCIPLINARY COMMITTEE-APPOINTMENT OF

- 3.3 Where Disciplinary Committee of IBBI suspended registration of petitioner as RP for one year on ground that petitioner had failed to perform his duties under Code, exercise undertaken by IBBI was within its jurisdiction and powers conferred by section 220 and, therefore, no case was made out to interfere in exercise of writ jurisdiction - *Vijendra Kumar Jain v. Insolvency & Bankruptcy Board of India* - [2024] 168 taxmann.com 52 (Bombay)

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

- 3.4 Where respondent-creditor had failed to submit its claim during CIRP and liquidation of corporate debtor, claim of respondent stood extinguished and it could not seek to recover those claims from successful bidder, who acquired assets of corporate debtor through auction process under IBC - *Maha Mineral Mining and Benefication (P.) Ltd. v. Gram Panchayat, Gowari* - [2024] 168 taxmann.com 203 (Bombay)

4. NCLAT

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

- 4.1 Where appellants-homebuyers filed a petition under section 7 against corporate debtor due to non-refund of amount paid by them for purchase of flats however, appellants were only four in number, whereas total units allotted by corporate debtor were 488 and, thus, in view of second proviso to section 7(1), NCLT did not commit any error in rejecting their application due to non-compliance of section 7, sub-section (1) - *Rahul Gyanchandani v. Parsvnath Landmark Developers (P.) Ltd.* - [2024] 168 taxmann.com 173 (NCLAT- New Delhi)

- 4.2 Where corporate debtor failed to repay advance amount taken from financial creditor and there was no dispute regarding fact that corporate debtor owed money to financial creditor, thus, NCLT rightly admitted section 7 petition against corporate debtor - *Rahul H. Mehta v. Gajendra Investment Ltd.* - [2024] 168 taxmann.com 32 (NCLAT- New Delhi)

SECTION 12A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

- 4.3 Where settlement had been arrived at between operational creditor and corporate debtor before CoC could be constituted, same was to be approved - *Byju Raveendran v. Think & Learn (P.) Ltd.* - [2024] 166 taxmann.com 750 (NCLAT - Chennai)

SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- 4.4 Where resolution plan of corporate debtor was approved by CoC and NCLT, since claim of appellant-Income Tax Department, which was not filed within stipulated period and no objections raised earlier before RP or NCLT, could not be considered at belated stage - *Commissioner of Income-tax (TDS-1) v. Sundarash Bhat* - [2024] 167 taxmann.com 752 (NCLAT- New Delhi)

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

- 4.5 Where appellant had knowledge of CIRP proceedings and resolution plan approved by NCLT, however, appeal against impugned order was filed beyond period of limitation, application for condonation of delay was to be dismissed - *Southern Power Distribution Company of Telangana Ltd. v. Kalvakolanu Murali Krishna Prasad* - [2024] 168 taxmann.com 242 (NCLAT - Chennai)

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

- 4.6 Where interim moratorium applied only to personal guarantee of appellant and, not to partnership firm, since there were no grounds for NCLT to entertain appellant's application to withdraw notice issued under rule 8(6) of Security Interest (Enforcement) Rules or to restrain respondent from auctioning property, impugned order passed by NCLT rejecting appellant's application was justified - **Ramesh Kumar Chugh v. Assets Care & Construction Enterprises Ltd.** - [2024] 168 taxmann.com 44 (NCLAT- New Delhi)

SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 4.7 Mere fact that documents filed by financial creditor in rejoinder application were not referred to in section 7 application would not disentitle financial creditor to bring on record said documents when plea was raised in reply by corporate debtor that application was barred by time - **Krystal Stone Exports Ltd. v. Stressed Assets Stabilization Fund** - [2024] 168 taxmann.com 172 (NCLAT- New Delhi)

SECTION 240A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - MICRO, SMALL AND MEDIUM ENTERPRISES-APPLICATION OF CODE TO

- 4.8 Where CIRP was initiated against corporate debtor and RP got corporate debtor registered as MSME prior to approval of resolution plan, benefit of section 240A would be extended to corporate debtor and ineligibility under section 29A(c) could not be relied upon for declaring successful resolution applicant ineligible - **Ashish Singh v. Raj Kumar Sahani** - [2024] 168 taxmann.com 371 (NCLAT- New Delhi)

5. NCLT**SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT**

- 5.1 Where ex-directors and promoters of corporate debtor were not involved in conducting any fraudulent transaction covered under section 66, SRA had been found to be eligible for resolution plan in view of exemption provided under section 240A for MSME - **Ankit Agrawal v. Baff Engineers (P.) Ltd.** - [2024] 168 taxmann.com 121 (NCLT - Allahabad)
- 5.2 Where account of corporate debtor had become NPA within a period of one year before date of commencement of CIRP and managing director of successful resolution applicant was also promoter of corporate debtor, successful resolution applicant was not eligible to submit resolution plan in terms of section 29A - **Raj Kumar Sahani v. Ashish Singh, Resolution Professional of Vibrant Buildwell (P.) Ltd.** - [2024] 168 taxmann.com 111 (NCLT - New Delhi)

SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- 5.3 Where resolution plan was approved by 100 per cent of voting share of financial creditors after considering its feasibility and viability and other requirements specified by CIRP Regulations since, said resolution plan complies with all provisions of IBC and did not contravene any of provisions of law for time being in force, revised final resolution plan submitted by resolution applicant was to be approved - **State Bank of India v. Vaksh Steels (P.) Ltd.** - [2024] 167 taxmann.com 751 (NCLT - Hyd.)

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

- 5.4 Where resolution plan submitted by SRA was approved by Committee of Creditors (CoC) with 100 per cent voting share, complying with provisions of Code and all requisite Regulations of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, since resolution plan provided for effective implementation, same was to be approved by NCLT - **Sundaresh Bhat Resolution Professional of JBF Petrochemical Ltd., In re** - [2024] 167 taxmann.com 618 (NCLT - Ahd.)

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

- 5.5 Where liquidator issued auction notice for sale of corporate debtor's assets and applicant filed an application seeking to declare auction notice as illegal on ground that liquidator was attempting to encroach upon and sell applicant's land, since liquidator had given details of property in auction notice, which was not applicant's property as described in final decree in suit and had exercised all precautions while issuing auction notice, application filed by applicant was to be dismissed - **Smt. Suvarna v. Suryajyothi Spinning Mills Ltd.** - [2024] 168 taxmann.com 610 (NCLT - Hyd.)

SECTION 42 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - APPEAL AGAINST DECISION OF LIQUIDATOR

- 5.6 Necessity of giving reasons is one of essential requirements of quasi-judicial process and quasi-judicial authority must, therefore, give reasons in support of order which should be speaking one; where order of liquidator as quasi-judicial authority did not specify reasons in support of rejection of applicant's claims, liquidator was directed to pass appropriate order with reasons - **Southern Power Distribution Company of Telangana v. Gonugunta Madhusudhan Rao** - [2024] 168 taxmann.com 579 (NCLT - Hyd.)

The Insolvency and Bankruptcy Code (IBC) 2016 – A Renaissance for Resolution of Distressed Debtors



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The Insolvency and Bankruptcy Code 2016 contains 3 (three) key words:

- 1) Insolvency;
- 2) Bankruptcy; and
- 3) Code.

The aforesaid 3 (three) key-words have their respective following meanings as defined in the Legal Dictionaries:

- 1) **Insolvency**: The condition of a person who is insolvent; inability to pay one's debts; lack of means to pay one's debts. Such a relative condition of a man's assets and liabilities that the former, if all made immediately available, would not be sufficient to discharge the latter. Or the condition of a person who is unable to pay his debts as they fall due, or in the usual course of trade and business.
- 2) **Bankruptcy**: The state or condition of one who is a bankrupt; amenability to the bankrupt laws; the condition of one who has committed an act of bankruptcy, and is liable to be proceeded against by his creditors therefor, or of one whose circumstances are such that he is entitled, on his voluntary application, to take the benefit of the bankrupt laws. The term is used in a looser sense as synonymous with "insolvency."
- 3) **Code**: A collection or compendium of laws. A complete system of positive law, scientifically arranged, and promulgated by legislative authority.

In our motherland, India, till almost mid of the year 2016, there was no single law , which could deal with insolvency and bankruptcy provisions, and there were the following laws to deal with insolvency and bankruptcy provisions by then:

- 1) Sick Industrial Companies (Special Provisions) Act, 1985,
- 2) The Recovery of Debts Due to Banks and Financial Institutions Act, 1993,
- 3) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and
- 4) The Companies Act, 2013,

These aforesaid 4 (four) laws were not effective and efficacious and hence considered to be inadequate.

To have an effective and efficacious framework to deal with insolvency and bankruptcy, the then Central Government in the year 2015 proposed this legislation, entitled, “The Insolvency and Bankruptcy Code, 2015” which was introduced by Minister of Finance Mr. Arun Jaitley in Lok Sabha on 21st December 2015. Thereafter, it was referred to Parliamentary Joint Committee for the recommendations thereof. The Joint Committee submitted its recommendations on 28th April 2016.

The recommendations of Joint Committee as submitted was passed by Lok Sabha on 5th May 2016 and subsequently by Rajya Sabha on 12th May 2016 and then assented by our the then Honourable President of India on 28th May 2016. Since then, it is known as “The Insolvency and Bankruptcy Code, 2016.

Till date, there are 245 sections, 35 rules, 107 regulations, 82 circulars, 77 notifications and 42 guidelines in connection with this legislature.

There are 642 Orders of our Honorable Supreme Court of India, 410 Orders of various High Courts in India, 4569 Orders of National Company Law Appellate Tribunal (NCLAT), 26142 Orders of National Company Law Tribunal (NCLT) and 642 Orders of Insolvency and Bankruptcy Board of India (IBBI).

The Insolvency and Bankruptcy Board of India was established on 1st October, 2016 under the Insolvency and Bankruptcy Code, 2016 (Code). It is a key pillar of the ecosystem responsible for implementation of the Code that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

It is a unique regulator: regulates a profession as well as processes. It has regulatory oversight over the Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities and Information Utilities. It writes and enforces rules for processes, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code. It has recently been tasked to promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other

institutions, in furtherance of the purposes of the Code. It has also been designated as the 'Authority' under the Companies (Registered Valuers and Valuation Rules), 2017 for regulation and development of the profession of valuers in the country.

My personal views about The Insolvency and Bankruptcy Code (IBC) 2016 and its related Rules, Regulations, Guidelines etc. are:

1. The Insolvency and Bankruptcy Code (IBC) 2016 has matured as an exit mechanism for Distressed Corporate Debtors.
2. Under the shelter of the said Code, the Creditors have been able to realize about Rs. 3.50 lakh crores of their dues.
3. The Insolvency and Bankruptcy Code (IBC) 2016 has made its contribution to Vikshit Bharat Campaign (VBC).
4. The resolved companies under the The Insolvency and Bankruptcy Code (IBC) 2016 have contributed to our country's Gross Domestic Product (GDP) which is considered as a barometer to measure the economic progress and growth of a country.
5. The Insolvency and Bankruptcy Code (IBC) 2016 is often criticised for delays and large haircuts to the creditors, which is a factual truth.

I conclude, by quoting a statement:

THE PRIMARY GOAL OF THE INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016 IS RESOLUTION, NOT RECOVERY AND THE KEY WORD "RESOLUTION" SHOULD BE INTERPRETED AS "QUICKER AND FASTER RESOLUTION" ELSE THE VERY PURPOSE OF THIS CODE WOULD LOOSE ITS RELEVANCE, THE MAIN MOTTO FOR WHICH, THE SAME WAS BROUGHT INTO THE STATUTE BOOKS OF OUR COUNTRY.

Supreme Court's Blueprint for a Faster, More Efficient Insolvency Process



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In a recent landmark judgment, the Supreme Court has highlighted crucial reforms needed for India's insolvency tribunals, the NCLT and NCLAT. Here are the key takeaways:

Timeliness Matters:

Delays in insolvency cases undermine the core goal of quick resolution. The Court emphasized that tribunals must adhere to a strict timeline, as every delay erodes asset value and impacts stakeholders. It is seen that asset value erases due to lapse of time say 4 to 5 years and even more in case of liquidation. Plant and Equipment converts into junk and its real value is lost due to lapse of unreasonable time.

Expertise is Essential:

The Court underscored the need for specialized skills in financial and commercial matters for NCLT and NCLAT members, recommending rigorous qualifications and training. Verdict announcement should be faster and in the interest of National growth. Erstwhile promoters or their relatives should not be given any chance to buy back the plant. Section 29A should be simplified and strictly adhered in best interest of maximisation of assets and distribution to same to stakeholders.

Respect for Creditors' Decisions:

NCLT and NCLAT should respect the "commercial wisdom" of creditors, who are best positioned to make financial decisions for distressed companies. Presently Creditors don't get any amount in Resolution Plans or a very negligible amount of say 1 to 5% of their dues to faulty wording of section 53 for waterfall mechanism.

Transparent Appointments & Accountability:

From regular court sittings to performance evaluations, the Court advocated for transparency and accountability to build public trust in these institutions. These recommendations offer a roadmap to transform the NCLT and NCLAT into faster, more efficient institutions that uphold the spirit of the Insolvency and Bankruptcy Code. If implemented, they could reshape India's insolvency landscape and drive economic growth. In other words time extensions should not be granted for completion of entire process.

Supreme Court takes a microscopic look into the IBC framework



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The Apex Court in its latest ruling in the case of Jet Airways¹ has cited and mourned over the issues and concerns under the Insolvency and Bankruptcy law (“IBC/IBC Code”). The appeal before the Hon’ble Supreme Court was filed by the State Bank of India (“SBI”) against the judgment of National Company Law Appellate Tribunal (“NCLAT”) wherein the NCLAT dismissed the appeal and upheld the order dated 13th January, 2023 by the National Company Law Tribunal (“NCLT”). What is interesting about the ruling is the Apex Court being blunt about the process and execution of the IBC Code wherein it makes observations as discussed below.

Timely implementation: Speed is of essence

The Preamble to the IBC as well as the Report of the Bankruptcy Law Reforms Committee, 2015 emphasize on time bound working of the Code. The speed in the dealing, decision, and implementation is essential for 2 reasons being:

- a. During the calm period, it is difficult to take important and significant decisions considering there will not be full clarity on the ownership and leadership and the longer it takes to resolve, the chances of liquidation come closer. The longer it takes for installing effective leadership, the quicker will be the rate of atrophy of the company bringing it closer to liquidation which is not the ultimate intent of the IBC;
- b. Where it is decided to liquidate the concern, the liquidation value tend to go down due to depreciation in the value of assets. Further, even during liquidation is there are delays, the realisation value is lower.

The Apex Court also placed reliance on *Innoventive Industries Limited v. ICICI Bank* and Another reported in (2018) 1 SCC 407. The Court emphasized that while Rule 15 of the NCLT and NCLAT Rules, 2016 grants power to the NCLT and NCLAT respectively, to extend the time limits for doing any act which have been fixed, either by the rules or by an order, as the justice of the case may require, such discretion cannot be exercised to the detriment of the resolution plan and its implementation itself.

Even the SRAs repeatedly approach the Adjudicating Authority or the NCLAT for the grant of reliefs in relation to relaxation of the strict compliance to the terms of the Plan, including the

timelines imposed therein. The NCLT or NCLAT is expected not to accede to such requests which lead to violating the integrity of a CoC approved Resolution Plan by accommodating the incessant requests.

NCLT not be trespasser: COC wisdom not to be questioned

A resolution plan evolves through the process, behaviours and actions of the key participants of the IBC who are central to its design i.e., the Adjudicating Authorities, Corporate Debtor, Resolution Professionals, Committee of Creditors, potential and Successful Resolution Applicants, Approved valuers and Liquidators. The Apex Court observed that “it is the “commercial wisdom of the CoC” that assumes a position of superiority and becomes binding on all the stakeholders.” The Court has remarked that let the specialist do their job and therefore the COC’s commercial wisdom is of paramount status which is non-justiciable. The Court also relied on *K Shashidhar v. Indian Overseas Bank and Ors.* reported in (2019) 12 SCC 150.

The Court has also suggested that the Central Government or the IBBI explore the possibilities of better enforcement of the standards and practices enumerated in the guidelines for the CoC issued by the IBBI on 06.08.2024 through an independent mechanism under the auspices of an oversight committee instead of making them self-regulatory.

Implementation of resolution plan: SRA to act in letter and spirit

The Court has also remarked on the responsibility and obligation of the Successful Resolution Application (“SRA”) wherein the SRA should not take the obligation as an empty formality but is entrusted to restore the corporate debtor to viability. The Court remarked that “The role of Successful Resolution Applicant is thus far more than a transactional duty towards the creditors or stakeholders; it embodies a pivotal responsibility to the distressed entity itself, which must be approached with utmost dedication and an earnest sense of duty.” The Court embarked upon the social and economic value of the SRA in rescuing a distressed company and to rejuvenate a corporate debtor.

While the duty to implement the resolution plan is not on the SRA alone but is also a collective effort of the lenders and creditors who must not impede the implementation process through unnecessary demands, give their vested interest in the Corporate Debtor’s revival.

The Court has also cited regarding the penal provisions under the IBC Code for wilful contravention of the resolution plan u/s 74 (3) of the IBC. The Apex Court has also suggested that the Adjudicating Authority while approving a Resolution Plan under Section 31 of the IBC, 2016, should record the next steps which are to be taken by the respective parties for commencement of implementation of the approved Resolution Plan so that the parties are ad idem about their obligations to be discharged.

Capacity building: Need of the hour for the NCLT and NCLAT benched to gear up

The Court has went on to cite the inefficiencies of the NCLT and NCLAT benches. Various blunt remarks have been made in connection with the timely admission and disposal of applications in regards to the initiation of CIRP, approval of the resolution plan and liquidation. Further, it observed that members often lack the domain knowledge required to appreciate the nuanced complexities

involved in high-stake insolvency matters in order to properly adjudicate such matters.

The Court also observed that the NCLT and NCLAT benches do not have the practice of sitting for full working hours especially where there are vacancies for Bench members, which leads to lacking in the capacity to manage the growing number of cases. The court has also cited the need of urgent mentioning and listings of time sensitive matters to avoid value erosion of the assets of the corporate debtor.

Therefore, while the liquidation of Jet Airways has seen the light of the day after dark and rough nights, the above comments and alarming observations of the Hon'ble Supreme Court are sure to embark on the new changes in the IBC Code for smooth functioning and effective implementation of the Code for which it was laid down.

1 Judgement at: <https://ibbi.gov.in/uploads/order/79e9ec6698159cbeffced995874ba209.pdf>

ACCOUNT AND AUDIT UPDATES

1.1 ICAI announces revised classification criteria of Non-Company Entities for the applicability of Accounting Standards

Editorial Note: The ICAI has revised the classification criteria for Non-Company Entities (NCEs) under the Accounting Standards framework, simplifying the system from four levels to two categories: MSMEs and Large Entities. Large Entities must fully comply with all standards, while MSMEs receive specific exemptions similar to those previously given to Level II, III, and IV entities. Effective from April 1, 2024, this update aims to streamline compliance and enhance clarity for NCEs.

1.2 NFRA proposes updates to SQC1, SQM 1, SQM 2, and SAs aligned with global standards, effective from April 2026

Editorial Note: The National Financial Reporting Authority (NFRA), in its 18th meeting, recommended

updates to auditing and quality control standards, aligning them with international standards. Key revisions include the Standard on Quality Control (SQC1) and Standards on Quality Management (SQM1 and SQM2), as well as SA 600 and adjustments to SA 299 for joint auditors. NFRA also suggested renaming the standards as "IndSAs" and set an effective date of April 1, 2026, pending Central Government approval.

1.3 ICAI releases exposure draft on proposed amendments to IAS 37: Targeted improvements to Provisions

Editorial Note: The Accounting Standards Board (ASB) of ICAI has released an exposure draft proposing amendments to IAS 37, aimed at improving provisions, contingent liabilities, and contingent assets. Key changes include updating the liability definition, revising the present obligation recognition criterion, and replacing IFRIC 6 and IFRIC 21 with illustrative examples.

Direct Taxes Professionals' Association

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

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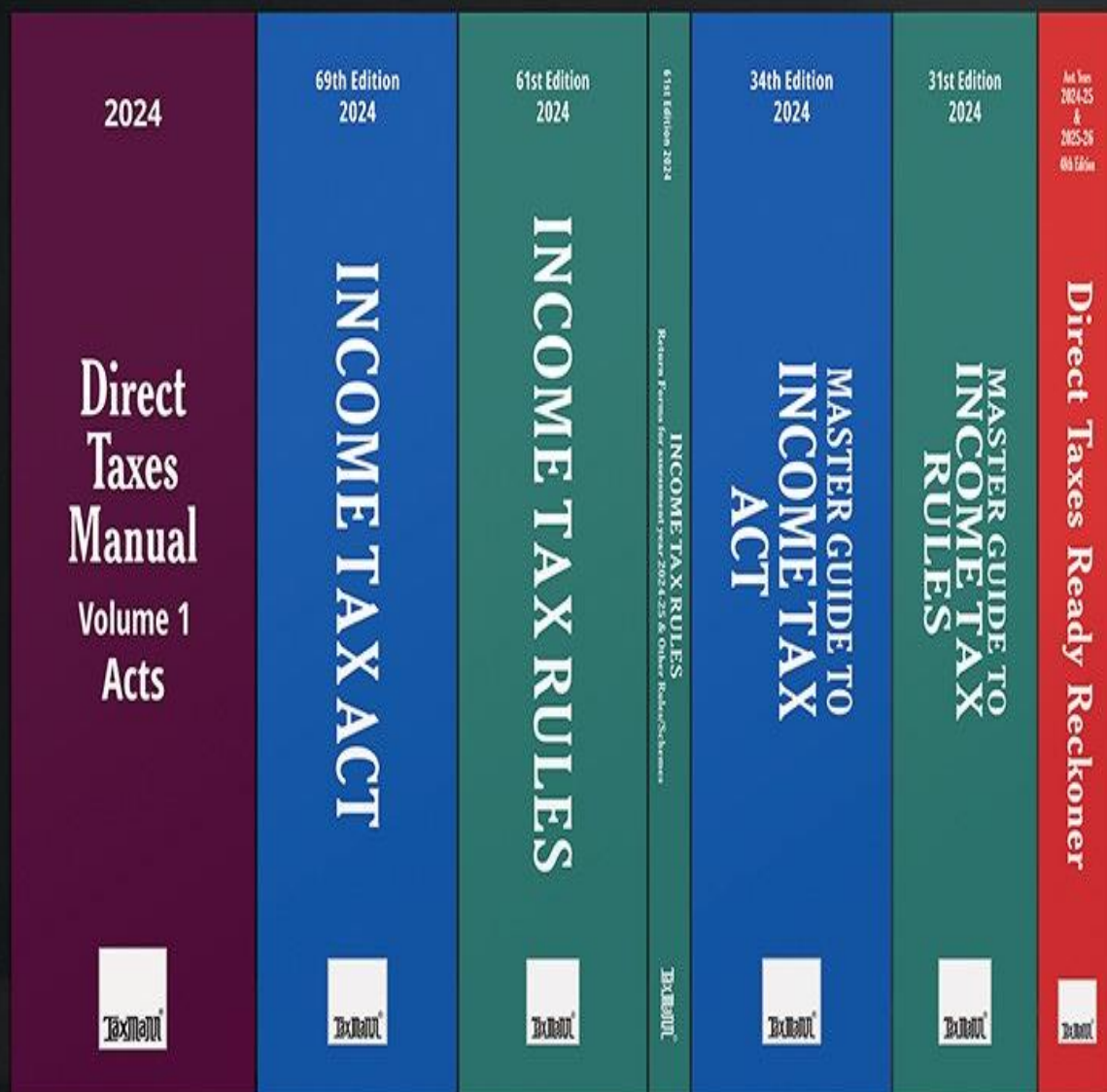
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