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....From the Desk of Editors

Respected Seniors and My Dear Friends,

We are pleased to present before you our 4th (Fourth) Monthly DTPA e-Journal for January 2025 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.

We have entered into a new calendar year 2025 and are in the month of January with new ray of hopes and with a sense of increased responsibility towards our esteemed profession. Our Association has always been on the fore-front in terms of imparting training, education and latest professional updates in the arena of our noble profession as also in terms of spirituality. With this end in view, our association has organized a Residential Conclave'2025 from 20th March 2025 to 23rd March 2025 at Lucknow and Ayodhya, the details whereof, you will find inside this issue. **Our CA Institute is going to celebrate WOFA 2025 Program on and from 31st January 2025 to 2nd February 2025 at Yashobhoomi, New Delhi, the theme where of is Accountability Meets Innovation (AI): For A Sustainable Planet.** We welcome each one of you to join in these programs. Our Union Budget 2025 would be placed before the Parliament on 1st February 2025, which we are hope would try to simplify our complicated Direct Tax Laws.

In the area of Income Tax, the latest statistics show the following:

- | | |
|-----------------|---|
| a) 12.82 crores | Individual Registered Users |
| b) 8.65 crores | No. of returns verified (AY 2024-25) |
| c) 8.81 crores | No. of returns filed (AY 2024-25) |
| d) 8.34 crores | No. of verified ITRs (AY 2024-25) processed |

Without comparing these data with that of earlier years, it is worth noting that in a population of 140 crores of people in our country, only less than 10 per cent are registered under Income Tax Act which is a matter to be thought of seriously. Of course, this 140 crore population include citizen of all age brackets. Even if the citizens below the age bracket of less than 18 years is not considered, even the percentage is very very low and needs serious consideration. The Central Government needs to increase the income tax payers' base, which is the need of the hour.

The GST collection report for December 2024 was released on 1st January 2025 by the GST Network. As per the detailed advisory released on the GST portal, the gross monthly GST collection stands at Rs. 1,76,857 crore as against the GST collections of last month which stood at Rs. 1,82,269 crores, and the same shows a continuous fall in the collection since the month of October 2024.

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 **"James M. Wayne"**- *"The payment of taxes gives a right to protection."*

We wish you all our heartiest Greetings for 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 we step into 2025, I extend my warmest greetings and heartfelt wishes to all members of the Direct Taxes Professional Association. The dawn of a new fiscal year brings with it fresh challenges and exciting opportunities, and this January edition of our Journal provides a timely opportunity to reflect on the transformative budget for 2025.

This year's budget represents a pivotal moment in our nation's economic journey—one that balances fiscal prudence with a commitment to inclusive growth. The government has charted a course that not only prioritizes robust revenue mobilization but also emphasizes critical investments in infrastructure, healthcare, education, and the digital economy. For us as direct and indirect tax professionals, the announced reforms and policy shifts signal both an era of simplification and an enhanced framework for compliance and transparency.

Key Aspects of the 2025 Budget:

- **Direct Tax Reforms:**
The budget introduces a series of progressive amendments aimed at easing compliance burdens while ensuring equity. Revised personal income tax slabs and recalibrated corporate tax rates reflect a commitment to fostering an environment that encourages innovation and entrepreneurship. Special incentives targeted at startups and small businesses further underline the government's vision of a dynamic, forward-looking economy.
- **Fiscal Consolidation and Expenditure Management:**
With a measured approach towards fiscal consolidation, the government has set a clear path to managing the fiscal deficit without compromising essential public services. Strategic allocation of resources is expected to drive economic resilience, enabling the state to meet its long-term commitments while maintaining stability in public finance.
- **Technological Integration and Transparency:**
Embracing digital transformation, the budget outlines initiatives to modernize the tax administration framework. Enhanced data analytics, automated compliance systems, and improved digital interfaces are poised to revolutionize the way direct taxes are monitored and collected. These measures are designed to foster transparency, reduce administrative burdens, and build greater taxpayer confidence.
- **Focus on Sustainable and Inclusive Growth:**
Recognizing the importance of equitable growth, the budget emphasizes social spending and infrastructure development. Investments in green technology, rural development, and digital literacy programs are set to bridge socio-economic gaps, thereby ensuring that the benefits of growth are distributed widely across society.

As direct and indirect tax professionals, our role is more crucial than ever. We stand at the intersection of policy formulation and practical implementation, guiding individuals and businesses through an evolving tax landscape. Our collective expertise is indispensable in interpreting these reforms, advocating for clarity, and ensuring that compliance remains both effective and fair.

In the coming months, our association will be at the forefront of disseminating detailed insights, hosting educational forums, and engaging in dialogue with policymakers. We are committed to equipping our members with the knowledge and tools necessary to navigate these changes, foster professional growth, and contribute constructively to the broader economic discourse.

We are delighted to announce two mega events for 2025 that promise to inspire and engage our professional community. On 1st March 2025, join us at the Park Hotel from 10 AM to 5 PM for Accountech 4.0, our signature event focusing on IT and AI, where a host of special attractions awaits to showcase the latest innovations and trends in technology. Additionally, from 20th to 23rd March 2025, we invite you to be a part of the Residential & Fellowship Conclave' 2025, set against the culturally enriching backdrops of Lucknow and Ayodhya. With seats filling fast, we urge our members to reserve their spots early for what promises to be another classic and grand edition of our annual programs.

I invite you all to actively participate in our upcoming seminars and webinars, where we will delve deeper into the nuances of the 2025 budget and explore its multifaceted impact on our profession. Together, let us embrace this new chapter with a spirit of innovation, collaboration, and unwavering dedication to excellence in the field of direct taxation.

With warm regards and best wishes for a prosperous year ahead,

CA Barkha Agrawal

President

20th January, 2025

**Glimpses of Exclusive Interactive Session with the
Income Tax Department Officials held on 11.12.2024 by
Shri Arijit Chakraborty, DCIT Circle – 1(1), Shri J P Yadav,
DCIT, Circle – 7 and Shri Sandipan Khan, DCIT, Circle - 40
at DTPA Conference Hall**



Glimpses Of SCM On Audit Not Documented Is Audit Not Done – Decoding Standards on Auditing on 12.12.2024 by CA Vivek Agarwal at DTPA Conference Hall



Glimpses Of SCM on Code of Ethics on 23.12.2024 by CA Debayan Patra at DTPA Conference Hall



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	12th January 2025	Dec-24	GSTR-7	Monthly Return by Tax Deductors For December
	12th January 2025	Dec-24	GSTR-8	Monthly Return by E-Commerce Operators For December
	13th 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.
	15th January 2025	Oct-Dec 24	GSTR-1	Furnishing of details of Outward Supplies for the period October 2024 to December 2024
	15th January 2025	Dec-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	15th 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
	22nd 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

	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
	26th 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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Estd. 1982

Direct Taxes Professionals' Association

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*Save the
Date*



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

DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 Central Government notifies special courts under the Income-tax & Black Money Act - **NOTIFICATION S.O. 5327(E) [NO.126 /2024/F. NO. 285/26/2021-IT(INV.V)CBDT], DATED 10-12-2024**

Editorial Note : For the purposes of sec. 280A of Income Tax Act and Sec. 84 of Black Money Act, the Central Government, in consultation with the Chief Justice of the High Court of Madras, designates various courts in the State of Tamil Nadu, as Special Courts in the area of Chennai, Madurai, Coimbatore and Puducherry.

- 1.2 CBDT notifies 'Central Silk Board, Bengaluru' for Sec. 10(46A) Exemption - **NOTIFICATION S.O. 5551(E) [NO. 129/2024/F. NO. 300196/22/2024-ITA-I], DATED 12-12-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'Central Silk Board, Bengaluru' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961

- 1.3 CBDT modifies and issues new FAQs on DTVSV Scheme - **CIRCULAR NO. 19 OF 2024 [F. NO. 370142/22/2024-TPL], DATED 16-12-2024**

Editorial Note : The CBDT released Guidance Note 2/2024 modifying the FAQ on eligibility of cases and incorporating various FAQs on Set-aside appeal, prosecution, Computation of Amount payable, Disputed Penalty, APA/MAP Cases, Taxes paid before filing declaration, TDS related queries etc.

- 1.4 CBDT launches e-Campaign to resolve AIS and ITR mismatch for FY 2023-24 & 2021-22 - **PRESS RELEASE, DATED 17-12-2024**

Editorial Note : CBDT has launched a campaign to address income and transaction mismatches for FY 2023-24 and FY 2021-22. Taxpayers can file revised ITRs for FY 2023-24 by December 31, 2024, and updated ITRs for FY 2021-22 by March 31, 2025. Feedback on AIS data can be provided via the AIS portal.

- 1.5 No TDS on payments to Credit Guarantee Fund Trust for MSEs referred in Sec. 10(46B): CBDT - **NOTIFICATION S.O. 5476(E) [NO. 128/2024/F.NO. 275/77/2024-IT(B)], DATED 18-12-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified that no TDS shall be deducted under Chapter XVII on any payment received by the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE). The notification has been issued in exercise of the powers conferred by section 197A(1F).

- 1.6 CBDT extends due date for DTVSV scheme payment from 31-12-2024 to 31-01-2025 - **Circular No. 20/2024, DATED 30-12-2024**

Editorial Note : The CBDT has extended the due date for determining the amount payable under the Vivad Se Vishwas Scheme from 31st December 2024 to 31st January 2025. The extension is applicable for those cases where the declaration is filed on or before 31st January 2025.

- 1.7 CBDT Notifies 'Sri Paripoorna Sanathana Charitable Trust' for the purpose of section 35 relief - **NOTIFICATION NO. 131/2024, DATED 30-12-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has approved the 'Sri Paripoorna Sanathana Charitable Trust' for its college unit, 'Sri Paripoorna Sanathana Ayurveda Medical College, Hospital and Research Centre' under the category of 'University, college or other institution' for 'Scientific Research' for section 35(1)(ii).

- 1.8 CBDT extends due date for filing belated/revised ITR for AY 2024-25 to 15-01-2025 for resident individuals - **CIRCULAR NO. 21/2024, DATED 31-12-2024**

Editorial Note : The Central Board of Direct Taxes has extended the last date for furnishing a belated return of income or for furnishing a revised return of income for the Assessment Year 2024-25 in the case of resident individuals from 31st December 2024 to 15th January 2025.

- 1.9 Switzerland withdraws India's 'Most Favoured Nation' status, citing Nestle SA ruling

Editorial Note : Switzerland suspended the Most Favoured Nation (MFN) clause in its double taxation avoidance agreement (DTAA) with India, effective January 1, 2025. Following the MFN status suspension, Switzerland will no longer give the benefit of beneficial tax treatment to Indian residents. The Swiss Finance Department announced that an Indian Supreme Court ruling in the Nestle from last year influenced this decision.

2. SUPREME COURT

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

- 2.1 SLP dismissed against High Court ruling that where assessee was following mercantile system of accounting for interest paid on securities and deposits, right to receive interest on Government securities vested in assessee only on due date mentioned in securities, consequently, interest accrued on securities only on due dates and could not be said to have accrued to assessee on any date other than dates stipulated therein - **Income-tax Settlement Commission v. Indusind Bank Ltd. - [2024] 169 taxmann.com 589 (SC)**

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

- 2.2 SLP dismissed against order of High Court that where assessment order under section 143(3) was passed after considering assessee's reply to questionnaire issued by Assessing Officer regarding dividend income and even proceedings under section 263 did not raise issue of

disallowance of expenditure incurred for earning exempt income under section 14A, reopening of assessment for making disallowance under section 14A was not justified - **Deputy Commissioner of Income-tax v. Unitech Ltd.** - [2024] 169 taxmann.com 258 (SC)

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

- 2.3 SLP dismissed against order of High Court that where assessee bank made provision for depreciation on investment and Assessing Officer made addition relating to investments in India and excluded amount pertaining to investment outside India, merely because order of Assessing Officer was passed relying upon order of Tribunal in earlier years which was subsequently reversed by High Court, same could not justify order passed by Commissioner under section 263 in relevant assessment year - **Commissioner of Income-tax LTU v. Canara Bank** - [2024] 169 taxmann.com 318 (SC)

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

- 2.4 SLP dismissed against order of High Court that where Assessing Officer issued a reassessment notice on ground that assessee-company had illegally and fraudulently diverted a loan to its sister concern instead of paying its statutory liabilities and other creditors, Assessing Officer was not disabled from proceeding to examine entire case, including on basis of allegations which formed part of original 'reasons to believe'. - **Alankar Apartments (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2024] 169 taxmann.com 683 (SC)

SECTION 43D OF THE INCOME-TAX ACT, 1961 - PUBLIC FINANCIAL INSTITUTION/PUBLIC COMPANIES

- 2.5 SLP dismissed against order passed by High Court that NPAs to be classified as per section 43D read with Rule 6EB of rules and not by amended guidelines of National Housing Board - **Housing and Urban Development Corporation Ltd. v. Additional Commissioner of Income-tax** - [2024] 169 taxmann.com 442 (SC)

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

- 2.6 SLP dismissed against order of High Court that where assessee-bank credited amount of interest earned on securities to profit and loss account on due basis, since interest would accrue or arise only on date specified in instrument, interest income on securities was to be taxed on due basis and not on accrual basis - **Joint Commissioner of Income-tax v. State Bank of Hyderabad** - [2024] 169 taxmann.com 417 (SC)

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

- 2.7 SLP disposed of against order of High Court that where assessee by way of writ petition challenged order issued under section 148A(d) along with reopening notice issued by Assessing Officer since proceedings initiated were yet to be concluded by a statutory authority, interference by High Court in exercise of jurisdiction under article 226/227 of Constitution at this intermediate stage was not warranted - **Dinesh Verma v. Income-tax Officer** - [2024] 169 taxmann.com 322 (SC)

- 2.8 Where High Court by impugned order rejected writ application filed by assessee and thereby affirmed order passed by revenue under section 148A(d) and revenue itself wanted that impugned order be set aside with liberty to issue a fresh notice under section 148A(b), in view of aforesaid, impugned order passed by High Court was to be set aside and it shall be open for revenue to issue a fresh notice to assessee under section 148A(b) in accordance with law - **Radha Soami Satsang Beas v. National Faceless Assessment Centre Delhi** - [2024] 169 taxmann.com 478 (SC)

- 2.9 Where High Court by impugned order disposed of writ petition reserving all contentions to be taken by legal heirs of assessee before Assessing Officer except contention that initial notice under section 148A(b) was issued to a dead person, said request being reasonable and in accordance with law, legal heirs of assessee were to be permitted to take contention with regard to initial notice being issued in name of a dead person-original assessee being defective. - **Ghanyashyam Anil Dhanani v. Income-tax Officer Ward 17(1)(1)** - [2024] 169 taxmann.com 327 (SC)

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

- 2.10 SLP disposed of as withdrawn against order of High Court that where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment along with reasons recorded by Assessing Officer for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified - **Baldevbhai Bhikhabhai Patel v. Dy. Commissioner of Income-tax** - [2024] 169 taxmann.com 317 (SC)

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

- 2.11 SLP dismissed against order of High Court that where assessee filed multiple writ petitions challenging reassessment orders for relevant years and made various allegations against reassessment orders, if assessee deposited 20 per cent of demand in each case within a period of one month, recovery of balance amount under assessment orders and demand notices issued in aforesaid cases, shall remain in abeyance - **Samir Andrea Kasliwal v. Principal Chief Commissioner of Income-tax** - [2024] 169 taxmann.com 594 (SC)

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

2.12 SLP disposed of against order of High Court that where pursuant to order passed in Writ Petition, Assessing Officer had passed an order observing that he had no power to order refund and assessee sought modification of such order, refund was to be made available by Central Board of Direct Taxes (CBDT) to assessee within a period of two weeks from date of receipt of this order - **Principal Commissioner of Income-tax v. Aditya Eastern (India) (P.) Ltd.** - [2024] 169 taxmann.com 356 (SC)

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

2.13 Where revenue filed an appeal raising two questions of law, however, High Court admitted only first question of law, but, declined to record any findings as regards second question of law regarding applicability of tax exemption rules under section 13(1)(c) relying on Circular No. 387 dated 6-7-1984, High Court was to be asked to look into second question of law as proposed by revenue and answer same along with question of law on which income tax appeal had already been admitted - **Pr. Commissioner of Income-tax (Central) v. Sinhgad Technical Education Society** - [2024] 169 taxmann.com 479 (SC)

SECTION 271AAA OF THE INCOME-TAX ACT, 1961 - PENALTY - WHERE SEARCH HAS BEEN INITIATED

2.14 SLP dismissed against order of High Court that where assessee admitted to have received certain sums as advances but she did not specify how she derived that income and what head it fell in (rent, capital gain, professional or business income out of money lending, source of money, etc.), lower appellate authorities misdirected themselves in holding that conditions in section 271AAA(2) were satisfied by assessee - **Amul Gabrani v. Principal Commissioner of Income-tax 9** - [2024] 169 taxmann.com 504 (SC)

3. HIGH COURT

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

3.1 Where solitary allegation which constituted basis for formation of opinion that income had escaped assessment was an alleged receipt of certain amount by assessee from a cooperative society and revenue themselves had subsequently found that said allegation would not sustain, very edifice on which reassessment action was based stood effaced and thus, impugned notice under section 148 was to be quashed - **Subhash Chander Dabas v. Assistant Commissioner of Income-tax** - [2024] 169 taxmann.com 547 (Delhi)

SECTION 4 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 - FILING OF DECLARATION AND PARTICULARS TO BE FURNISHED

3.2 Where assessee filed a declaration under Vivad Se Vishwas Scheme in respect of its appeal which was confined to issue regarding disallowance of loss claimed by it in respect of trading in derivatives, assessee could confine settlement of dispute to only abovesaid one issue and revenue could not compel assessee to settle disputes which were not subject matter of declaration made by assessee - **Rose Wood Buildwell (P.) Ltd. v. Pr. Commissioner of Income-tax-7** - [2024] 169 taxmann.com 414 (Delhi)

3.3 Where assessee for settlement of disputes under Direct Tax Vivad Se Vishwas Act, 2020 submitted Form 1, however balance tax paid by assessee was short by Rs.1,533/- which was paid by assessee after a delay of twelve days, since short payment was an inadvertent error on part of assessee, Principal Commissioner was to be directed to accept balance payment and issue Form 5 - **Vinod Cotfab (P.) Ltd. v. Principal Commissioner of Income-tax-3** - [2024] 169 taxmann.com 549 (Gujarat)

3.4 Where assessee filed an appeal before Tribunal against order passed by Commissioner (Appeals) which was pending, assessee was entitled to file a declaration under section 4(1) of Vivad Se Vishwas Act, 2020 - **Prayas Buildwell (P.) Ltd. v. Pr. Commissioner of Income-tax-7** - [2024] 169 taxmann.com 691 (Delhi)

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

3.5 Where assessee, a US based company, engaged in business of rendering money transfer services, established a liaison office (LO) in India, since activities undertaken by LO were merely preparatory or auxiliary in character and far removed from core business of assessee, LO would not constitute a PE - **Director of Income-tax Intn'l v. Western Union Financial Services Inc.** - [2024] 169 taxmann.com 461 (Delhi)

SECTION 10(26) OF THE INCOME-TAX ACT, 1961 - SCHEDULE TRIBES

3.6 Where assessee, member of scheduled tribe, claimed exemption from income tax under section 10(26), consequently, assessee filed writ claiming that a stock broker, R9 practised fraud on her by making fake investments, filing returns etc. by forging her signature so as to portray a large income and investment which resulted in income tax and criminal proceedings against her, since assessee filed revision application under section 264, which was alleged to be withdrawn by R9, considering gravity of dispute, withdrawal of application was to be set aside and application was to be treated as pending - **Smt. Ibashisha Rynjah v. Union of India** - [2024] 169 taxmann.com 443 (Meghalaya)

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

3.7 Where assessee-trust filed Form 9A along with revised computation for claiming deduction under section 11, however there was delay in filing form 9A due to change in procedure from manual to electronic filing, since assessee filed form 9A

along with application for delay condonation within three days from date of extension granted to file such Form 9A vide CBDT Circular, same was to be condoned - **Nav Chetna Charitable Trust v. Commissioner of Income-tax - [2024] 169 taxmann.com 543 (Bombay)**

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

- 3.8** Where assessee did not press ground of disallowance made under section 14A before Commissioner (Appeals) and Commissioner (Appeals) partly allowed appeal and later issued notice to assessee seeking to rectify order passed in appeal and assessee objected to proposed rectification, however, Commissioner (Appeals) in an order passed under section 154 rejected objections and made disallowance, since assessee itself had accepted disallowance, it was not a debatable issue and Commissioner (Appeals) rectified error and made disallowance, same was within purview of provisions of Act - **Andhra Bank Financial Services Ltd. v. Commissioner of Income-tax - [2024] 169 taxmann.com 237 (Telangana)**

- 3.9** No disallowance under section 14A was to be made in respect of dividend earned on shares held as stock-in-trade because such shares were held during business activity of assessee (bank) and it was only by a quirk of fate that when investee company declared dividend, those shares were held by assessee, though assessee had to ultimately trade those shares by selling them to earn profits - **Principal Commissioner of Income-tax v. Punjab National Bank - [2024] 169 taxmann.com 620 (Delhi)**

SECTION 36(1)(iv) OF THE INCOME-TAX ACT, 1961 - PROVIDENT FUND, CONTRIBUTIONS TOWARDS RECOGNIZED

- 3.10** Where assessee bank made contributions to 'PNB Employees' Pension Fund', since contributions made by assessee were in respect of Employees' Pension Fund (EPF) and wholly and exclusively related to its business, Tribunal was justified in allowing deduction on account of contributions made to pension fund - **Principal Commissioner of Income-tax v. Punjab National Bank - [2024] 169 taxmann.com 620 (Delhi)**

SECTION 36(1)(viii) OF THE INCOME-TAX ACT, 1961 - FINANCIAL CORPORATION, RESERVE CREATED BY

- 3.11** Securities under HTM category are those that are held till its redemption/maturity and if any premium was paid for acquiring said securities over and above face value or redemption value of those securities, it would be apposite to amortise same during holding period - **Principal Commissioner of Income-tax v. Punjab National Bank - [2024] 169 taxmann.com 620 (Delhi)**

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

- 3.12** Where assessee-bank purchased securities which were held as stock in trade and purchase price of said securities included component of interest for broken period, broken period interest paid by assessee was to be allowed as deduction under section 37(1) - **HDFC Bank Ltd. v. Deputy Commissioner of Income-tax, Spl. Range-15 - [2024] 169 taxmann.com 403 (Bombay)**

- 3.13** Where assessee-company had made a 'rights issue' of Fully Convertible Debentures (FCDs), expenditure incurred by assessee on issue of said FCDs was to be allowed as deduction - **HDFC Bank Ltd. v. Deputy Commissioner of Income-tax, Spl. Range-15 - [2024] 169 taxmann.com 403 (Bombay)**

- 3.14** Where two AMR Group companies had already returned for assessment income resulting out of receipts of aggregate amount of Rs. 40 crores received by them from assessee for taxation, there was no reason to tax same amount in hands of assessee as it would amount to double taxation - **Pr. Commissioner of Income-tax Central-3 v. Onehub (Chennai) (P.) Ltd. - [2024] 169 taxmann.com 475 (Delhi)**

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

- 3.15** Where assessee bank had transferred SLR securities from AFS/HFT category to HTM category during assessment year in question in compliance with direction of RBI regarding maintaining a minimum amount of stock as reserve, loss on account of shifting of securities from AFS/HFT category to HTM category claimed by assessee was not notional and same was not taxable - **Principal Commissioner of Income-tax v. Punjab National Bank - [2024] 169 taxmann.com 620 (Delhi)**

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

- 3.16** Where Assessing Officer issued reassessment notice on ground that there was escapement of income as deduction under section 54B was wrongly claimed by assessee for land sold by his brothers, in view of fact that reasons for reopening clearly indicated that Assessing Officer had reason to believe that income had escaped assessment, reassessment notice issued by Assessing Officer was justified - **Yogesh Kumar Saini v. Union of India - [2024] 169 taxmann.com 418 (Rajasthan)**

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

- 3.17** Where assessee sold a plot of land and used proceeds to purchase two non-adjacent flats, since two flats were constructed and situated physically in a manner that it was not possible to combine them and they could not be used as one single dwelling unit even though they were in a same tower of a residential society, assessee was entitled to exemption under section 54F in respect of only one flat - **Mrs. Kamla Ajmera v. Principal Commissioner of Income-tax - [2024] 169 taxmann.com 119 (Delhi)**

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

- 3.18** Assessing Officer is required to confine to reasons recorded for reopening and he is not authorized to refer to any other reason or fact even if it can be otherwise inferred or gathered from record for purpose of validity of assumption of jurisdiction under Section 147 - **Filco Trade Centre (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 169 taxmann.com 401 (Gujarat)**
- 3.19** Where Assessing Officer reopened assessment of assessee on ground that assessee was one of beneficiaries who had availed/obtained accommodation entries in form of unsecured loans from a company, since Assessing Officer had recorded reasons based upon information made available to him without application of mind and had not referred to nature of accommodation entry availed by assessee, impugned reopening notice issued against assessee was to be set aside - **Filco Trade Centre (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 169 taxmann.com 401 (Gujarat)**
- 3.20** Where assessee filed appeal before Tribunal after delay of 2208 days, since assessee mentioned address of communication of notice etc. in Form No. 35, however, order of Commissioner (Appeals) was not served on aforesaid address and when assessee received order passed by Commissioner (Appeals) it preferred appeal before Tribunal within prescribed period of 60 days, there was no delay on part of assessee to prefer appeal and, thus, Tribunal ought to have condoned delay in preferring appeal by assessee and decide case on merits - **Shilpaben Nileshbhai Gami v. Assistant Commissioner of Income-tax - [2024] 169 taxmann.com 595 (Gujarat)**
- 3.21** Where assessee received loans from two persons and had proved identity of creditors, their creditworthiness and genuineness of loan transactions, no additions could be made to assessee's income under section 68 - **Pr. Commissioner of Income-tax (Central) v. M.K. Rajendran Pillai Rajavalsam - [2024] 169 taxmann.com 668 (Kerala)**
- 3.22** Where pursuant to search conducted at residential and office premises of assessee and his family members/group concerns, Assessing Officer made additions towards credit receipts from 38 bank accounts of Nagaland based entities/concerns, since revenue could not establish, at any stage, that assessee was either de facto owner of Nagaland based bank accounts or owner of bank accounts of various recipients, credit transfer received by other family members and group concerns could not be assumed to be assessee's undisclosed income - **Pr. Commissioner of Income-tax (Central) v. M.K. Rajendran Pillai Rajavalsam - [2024] 169 taxmann.com 668 (Kerala)**

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

- 3.23** Where Assessing Officer received information that assessee had made bogus purchases from certain parties and issued reopening notice, since there were transactions on papers and commodities were purchased by assessee from a firm and on same date, those commodities were sold to said parties, Assessing Officer had proper reasons to believe that these were only paper transactions and thus, impugned reopening notice issued against assessee was valid - **Abhishek Mittal v. Union of India - [2024] 169 taxmann.com 538 (Gauhati)**
- 3.24** Where Assessing Officer reopened assessment on basis of report of Investigation Wing that cash deposits appearing in bank account of assessee were unexplained money under section 69A and that assessee had made cash sales without keeping proper documentary evidence and identity of customers, since reasons recorded for reopening did not disclose any nexus between information received from Investigation Wing and formation of belief that income had escaped assessment, impugned reopening notice was to be set aside - **J.K. Bullions (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 169 taxmann.com 590 (Gujarat)**

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

- 3.25** Where during a search conducted at residential premises of assessee's husband, he recorded statements on oath that total investment in construction of residential-cum-shopping complex made by assessee was Rs. 15 lakhs whereas only a sum of Rs. 7 lakhs was accounted for, since assessee had failed to discharge burden to establish that admission made in statements was either incorrect or wrong and no attempt was made by assessee to explain such an admission, Tribunal was right in making addition in hands of assessee on account of undisclosed investment - **Smt. Konda Sanjeeva Rani v. Assistant Commissioner of Income-tax - [2024] 169 taxmann.com 591 (Telangana)**

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

- 3.26** Where on basis of information received from DIT (Inv.) that assessee was one of beneficiary of bogus purchase bills provided by one PJ Group, Assessing Officer reopened case of assessee and made addition of entire purchases in hands of assessee treating same as bogus purchases, since High Court had confirmed addition of 6% of purchases in number of similarly situated assessee who had been found taking accommodation entries from PKJ, in order to maintain consistency, addition be restricted to 6 per cent as estimated by Tribunal - **Dilkhush Annraj Babel v. Income-tax Officer Ward 2(3)(7) - [2024] 169 taxmann.com 472 (Gujarat)**

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

- 3.27** Where Tribunal had not adjudicated upon assessee's challenge to adjustment on account of purchase of finished goods and had proceeded on basis that since matter was remanded to TPO, assessee's challenge to adjustment on

account of purchase of finished goods would also be considered afresh, matter was to be remanded to Tribunal to consider grounds raised by assessee regarding transfer pricing adjustment in respect of transactions pertaining to purchase of finished goods - **Luxottica India Eyewear (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2024] 169 taxmann.com 510 (Delhi)

- 3.28 Where Tribunal remanded matter to TPO to pass fresh order under section 92CA(3) and, thereafter, Assessing Officer passed final order under section 143(3) without considering provisions of section 144C, said order would not be sustainable in law - **Mavenir India (P.) Ltd. v. Deputy Commissioner of Income-tax Officer** - [2024] 169 taxmann.com 412 (Punjab & Haryana)

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

- 3.29 Where assessee-company due to technical issues with Income tax website could not file Form 10IC at time of filing return, since assessee had already opted for a reduced rate of tax while filling return of income which was permitted to be regularised by condoning delay in filing Form 10IC as per rule 21AE by CBDT, Principal Commissioner was required to permit assessee to file a fresh Form 10IC and condone delay in filing such Form by moulding prayer made by assessee - **Surat Smart City Development Ltd. v. Principal Commissioner of Income-tax** - [2024] 169 taxmann.com 222 (Gujarat)

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

- 3.30 Where modification by revenue in utility for filing income tax returns online with effect from 5-7-2024 unilaterally disabled assessee from claiming rebate under section 87A, procedural changes could not override substantive right to rebate under section 87A and CBDT was to be directed to issue requisite notification under section 119 and extend due date for e-filing returns in relation to assessee who were required to file a return by 31-12-2024, at least to 15-1-2025 - **Chamber of Tax Consultants v. Director General of Income-tax** - [2024] 169 taxmann.com 506 (Bombay)

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

- 3.31 Where assessee challenged assessment order on ground that statutory notices under sections 143(2) and 142(1) were not served to her at her registered email address, as mandated under section 282, but were sent to an unregistered email address, thereby depriving her of a fair opportunity to respond, violating principles of natural justice, impugned assessment order being bad in law was to be set aside - **Neha Bhawsingka v. Union of India** - [2024] 169 taxmann.com 669 (Calcutta)

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

- 3.32 Where an objection has been filed and was pending before DRP, Order passed in ignorance of said objections was required to be set-aside - **Jackson Square Aviation Ireland Ltd. v. Assistant Commissioner of Income-tax Circle INT Tax 2(1)(2)** - [2024] 169 taxmann.com 616 (Delhi)

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

- 3.33 Where Commissioner (Appeals) deleted addition made by Assessing Officer on account of interest received by assessee on ground that assessee was not a company and interest could not be assessed on accrual basis, since aforesaid finding of fact recorded by Commissioner(Appeals) was based on material available on record, same could not have been reversed by Tribunal without assigning any reasons - **Konda Ramesh v. Asstt. Commissioner of Income-tax** - [2024] 169 taxmann.com 688 (Telangana)

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

- 3.34 Explanation 3 to section 147 cannot be interpreted to mean that Assessing Officer could assess other incomes of assessee even in cases where no addition is made on account of reasons for which reassessment was initiated - **Pr. Commissioner of Income-tax -7 v. Sunlight Tour and Travels (P.) Ltd** - [2024] 169 taxmann.com 673 (Delhi)
- 3.35 Where assessee-firm had already been dissolved several years ago, it could not be assessed on account of misuse of its PAN in subsequent years; therefore, impugned reassessment proceedings initiated against dissolved assessee-firm were to be set aside - **Rajni Goel v. Income-tax Officer** - [2024] 169 taxmann.com 179 (Delhi)

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

- 3.36 Where Assessing Officer issued notice under section 148A(b) on basis of audit objections which suggested that assessee's claim of depreciation on goodwill was in violation of provisions of Income-tax Act and consequently, issued reopening notice, however Assessing Officer had not taken into consideration reply filed by assessee and had reiterated to what was stated in audit objections, impugned reopening notice was to be set aside - **Songwon Specialty Chemicals India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 169 taxmann.com 184 (Gujarat)

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

- 3.37 Decision of HC dismissing revenue's appeal against order of Tribunal could not be read as findings and directions within meaning of section 150, to permit revenue to issue notices u/s. 148 beyond period stipulated u/s. 149(1), hence impugned notice issued beyond period as stipulated u/s. 149(1) was to be set aside - **Sanjay Singhal v. ACIT** - [2024] 169 taxmann.com 622 (Delhi)

SECTION 150 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - ASSESSMENT IN PURSUANCE OF AN ORDER OF APPEAL, ETC.

- 3.38** Where none of orders of Tribunal or Coordinated Benches of High Court contained any finding or direction that undisclosed income of Rs. 7 crores was required to be assessed to tax in hands of assessee, conditions set out in section 150 were not fulfilled, and thus, no notice under section 148 was warranted - **Pr. Commissioner of Income-tax - Central -1 v. Capital Power Systems Ltd.** - [2024] 169 taxmann.com 469 (Delhi)

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

- 3.39** Where satisfaction note was recorded by Assessing Officer on 23-10-2019, then 10 years would be computed applying provision of section 153C and read with section 153A and proviso and explanation thereto and 1st Assessment Year to be reopened would be Assessment Year 2018-19 and 10th Assessment year would be 2009-10, and, therefore, impugned notice under section 153C issued for Assessment Year 2009-10 to 2014-15 would not be time barred - **Bhavin Kishorebhai Zinzuwadia v. Assistant Commissioner of Income-tax Central Circle 2(3)** - [2024] 169 taxmann.com 505 (Gujarat)

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

- 3.40** Where certain refunds were granted to assessee for assessment years 2008-09 and 2017-18 and revenue adjusted said refunds against balance outstanding demand in respect of assessment year 2015-16, which was stayed, revenue's decision to adjust refund due to assessee against outstanding demand in respect of stayed assessment order was arbitrary - **Nokia Solutions and Networks India (P.) Ltd. v. Joint Commissioner of Income-tax** - [2024] 169 taxmann.com 544 (Delhi)

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

- 3.41** When assessee was entitled to refund and when there were no proceedings against assessee in that regard intended to be taken by revenue, refund of tax amount if any, ought to be immediately granted to assessee as delayed payment of refunds not only burdens public exchequer with such interest amounts being required to be paid, but it also brings about a situation that assessee is deprived of these amounts causing them serious prejudice - **Bloomberg Data Services (India) (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 169 taxmann.com 468 (Bombay)

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

- 3.42** Where demand was raised as outstanding, assessee's stay application could not be considered as premature on basis that dismissed by Tribunal on ground that no coercive or precipitative steps had been taken by revenue, thus assessee's stay application was to be restored before Tribunal for consideration on merits - **Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 169 taxmann.com 219 (Delhi)

SECTION 281 OF THE INCOME-TAX ACT, 1961 - CERTAIN TRANSFERS TO BE VOID

- 3.43** Where properties of deceased assessee were attached and sold for realization of tax payable under Kerala General Sales Tax Act, 1963 and properties were subsequently purchased by assessee, Income-tax Department could not proceed against said properties lawfully in possession of petitioner for realizing arrears payable by deceased P under Income-tax Act - **Job G.Oommen v. Union of India** - [2024] 169 taxmann.com 407 (Kerala)

4. TRIBUNAL

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

- 4.1** Gain on sale of crypto currency held by assessee for more than 3 years was to be taxed under head capital gain and not under head income from other sources - **Raunaq Prakash Jain v. ITO** - [2024] 169 taxmann.com 298 (Jodhpur - Trib.)

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

- 4.2** Where assessee trust was ameliorating credit guarantee to small venture and supporting for development of business/livelihood, assessee was not contravening provisions of section 2(15) and was liable for exemption u/s. 11 - **Credit Guarantee Fund Trust for Micro and Small Enterprises v. DCIT(E)-1(1)** - [2024] 169 taxmann.com 471 (Mumbai - Trib.)

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

- 4.3** Where assessee, non-resident employee of an Indian company, was sent to Indonesia for rendering services and he received foreign assignment allowances for services rendered in Indonesia, since assessee was a non-resident and services were rendered outside India, said allowances were not taxable in India - **Manab Chandra Ghosh v. ACIT** - [2024] 169 taxmann.com 449 (Kolkata - Trib.)
- 4.4** Expenditure incurred towards purchase of off-the-shelf software products is not in nature of 'Royalty' for use of copyright in software and, thus, not liable for withholding tax under section 195 - **Newgen Imaging Systems (P.) Ltd. v. DCIT, International Taxation** - [2024] 169 taxmann.com 511 (Chennai - Trib.)
- 4.5** Payment received by assessee, a foreign entity, for grant of software license to its Indian AEs could not be treated as

royalty - **Shell Global Solutions International B.V. v. ACIT, International Taxation - [2024] 169 taxmann.com 513 (Ahmedabad - Trib.)**

4.6 Where assessee provided Computational Fluid Dynamics (CFD) modelling of temperature effects on Hazira sea water outflow and also provided marine biological advice and further, assessee had also provided desktop quality review of Shell Reliability Centre Maintenance done by recipient company's site team, since there was nothing to suggest that condition of 'make available' had been satisfied, consideration received by assessee for these services did not qualify as fee for technical services u/s. 9(1)(vii) - **Shell Global Solutions International B.V. v. ACIT, International Taxation - [2024] 169 taxmann.com 513 (Ahmedabad - Trib.)**

4.7 Where assessee, a non-resident, entered into an agreement with its subsidiary in India to provide Global P&T Functional Services which included providing strategy support services, human resources services, legal services, providing advice relating to environmental health and safety matters and provision of IT services etc., since services rendered by assessee did not make available technology to recipient, consideration received for same would not qualify as fee for technical services - **Shell Global Solutions International B.V. v. ACIT, International Taxation - [2024] 169 taxmann.com 513 (Ahmedabad - Trib.)**

SECTION 10(10B) OF THE INCOME-TAX ACT, 1961 - RETRENCHMENT COMPENSATION

4.8 Where assessee received compensation on voluntary retirement from a loss making Central Government PSU, since money had been earmarked under budgetary support by Government of India to HMT for payment of outstanding salary/wages and other employee related dues and also for closure of HMT Tractor Division by offering attractive VRS/VSS, assessee was eligible for exemption u/s. 10(10B) on whole of amount received - **Dayal Singh v. ITO - [2024] 169 taxmann.com 539 (Chandigarh - Trib.)**

SECTION 10(23G) OF THE INCOME-TAX ACT, 1961 - INFRASTRUCTURE CAPITAL FUNDS/COMPANY, ETC.

4.9 Where assessee banking company had made investments or had advanced loans to companies engaged in business of infrastructure development, assessee was eligible for claiming exemption u/s. 10(23G) - **DCIT v. ICICI Bank Ltd. - [2024] 169 taxmann.com 368 (Mumbai - Trib.)**

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

4.10 Where AO denied exemption u/s. 11 to assessee-trust on ground that assessee had extended benefits to specified persons, since in assessee's own case for

earlier assessment years, exemption u/s. 11 was allowed by revenue in assessments framed u/s. 143(3), revenue could not take a different stand in assessee's own case for current year in absence of any material differences between the facts of relevant year and those of the earlier assessment years - **DCIT, Circle- 1 v. CMR Jnanadhara Trust - [2024] 169 taxmann.com 661 (Bangalore - Trib.)**

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

4.11 Where assessee had sufficient interest free funds available for making investments earning tax free incomes, it was to be presumed that interest free funds had been utilized for making such investments - **DCIT v. ICICI Bank Ltd. - [2024] 169 taxmann.com 368 (Mumbai - Trib.)**

4.12 Where assessee company had shown dividend income of certain amount during year, disallowance under rule 8D(2)(iii) was to be made at rate of 0.5 per cent of dividend yielding investments - **IDFC Ltd. v. JCIT - [2024] 169 taxmann.com 665 (Chennai - Trib.)**

4.13 Where assessee company was in possession of mixed funds which included its own funds in sufficient quantity, a presumption was to be drawn that its own funds were utilized for investments which yielded exempt income - **IDFC Ltd. v. JCIT - [2024] 169 taxmann.com 665 (Chennai - Trib.)**

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

4.14 Where loss claimed by assessee on sale of non-banking assets was in ordinary course of business and similarly, loss on cash backs offered to credit card customers were also not in dispute that same were for business purposes, impugned claims of loss made by assessee were to be allowed - **DCIT v. ICICI Bank Ltd. - [2024] 169 taxmann.com 368 (Mumbai - Trib.)**

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

4.15 Where three companies in which assessee was a director allotted shares to assessee at par as against allotment of shares to a third party at a premium, since alleged benefit to assessee was not arisen from business or profession of assessee or from exercise of profession of assessee, then same could not be brought to tax under provisions of section 28(iv) - **DCIT v. Prakash Nimmagadda - [2024] 169 taxmann.com 455 (Hyderabad - Trib.)**

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

4.16 Where value of patented technology had been accepted by HC as part of scheme of amalgamation and assessee had declared same as value of its asset which stood accepted u/s. 143(3), impugned disallowance of depreciation on patented technology made by AO was not justified - **DCIT v. United Drilling Tools Ltd. - [2024] 169 taxmann.com 678 (Delhi - Trib.)**

**SECTION 35(2AB) OF THE INCOME-TAX ACT, 1961 -
EXPENDITURE ON SCIENTIFIC RESEARCH**

- 4.17** Where assessee claimed weighted deduction on research and development expenditure, since assessee had demonstrated that expenses incurred at R&D Centre were recognised and approved, such expenses should be considered - *Intas Pharmaceuticals Ltd. v. ACIT* - [2024] 168 taxmann.com 527 (Ahmedabad - Trib.)

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

- 4.18** Where there was delay on part of assessee in depositing employees contribution towards PF and ESI, delay in deposit of same would attract disallowance u/s. 36(1)(va) - *DCIT v. United Drilling Tools Ltd.* - [2024] 169 taxmann.com 678 (Delhi - Trib.)

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

- 4.19** Where assessee-bank had written off and claimed an amount as bad and doubtful debts, since being in business of banking, assessee had advanced/loaned/lent money in its ordinary course of business and debts had been actually written off in books of accounts, claim of assessee was to be allowed - *DCIT v. ICICI Bank Ltd.* - [2024] 169 taxmann.com 368 (Mumbai - Trib.)

- 4.20** Where assessee-company had debited provision of doubtful debt from profit and loss account, balance sheet and written off income, it amounted to write off of debt and, thus, assessee was eligible for deduction on account of provision for doubtful debts - *Goldiam Jewellery Ltd. v. ACIT* - [2024] 169 taxmann.com 509 (Mumbai - Trib.)

- 4.21** Where assessee-bank held fixed deposits with a bank (MMCB) whose license was cancelled by RBI and during year under consideration, assessee wrote off FDs held with MNCB, deposits held by assessee-bank could not be treated as capital asset and they formed part of stock-in-trade and, thus, write off of such loss would be a loss arising in course of carrying on banking business which was allowable as deduction u/s. 37 - *Surat National Co.op Bank Ltd. v. ACIT* - [2024] 169 taxmann.com 624 (Surat-Trib.)

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

- 4.22** Amount credited by bank to reserve for bad and doubtful debts towards standard assets is not deductible u/s. 36(1)(viii), as it is not akin to provision for bad and doubtful debts - *Surat National Co.op Bank Ltd. v. ACIT* - [2024] 169 taxmann.com 624 (Surat-Trib.)
- 4.23** Standard assets for which provision was made as per policy and prudential norms of Reserve Bank of India (RBI), which permitted onetime restructuring of

infrastructure loans, was allowable under section 36(1)(viii)(c) - *IDFC Ltd. v. JCIT* - [2024] 169 taxmann.com 665 (Chennai - Trib.)

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

- 4.24** Where assessee incurred club membership fees for its executives so that they could establish and maintain business contacts which was in long-term interest of assessee's business, same was to be allowed as business expenditure - *DCIT v. ICICI Bank Ltd.* - [2024] 169 taxmann.com 368 (Mumbai - Trib.)
- 4.25** Where assessee-trust was settled by Government of India and Small Industries Development Bank of India for providing credit guarantee to small and medium businesses, since nature of settlement of claim and payment made by assessee was only to support small and medium businesses, deduction claimed by assessee under 'provision of guarantee claims' was allowable expenses - *Credit Guarantee Fund Trust for Micro and Small Enterprises v. DCIT(E)-1(1)* - [2024] 169 taxmann.com 471 (Mumbai - Trib.)

- 4.26** Where assessee-company, engaged in business of money lending, issued retail bonds, since retail bonds were issued for purpose of money lending business of assessee and proceeds realized from issue of such bonds was undisputedly for 'infrastructure lending', impugned expenses incurred for issuance of retail bonds was allowable as revenue expenditure u/s. 37(1) - *IDFC Ltd. v. JCIT* - [2024] 169 taxmann.com 665 (Chennai - 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**

- 4.27** Where AO made disallowance of commission expenses to non-resident agents u/s. 40(a)(i), since this issue had not been categorically verified in context of non-resident agents and resident agents, same was to be remanded back to file of AO for proper verification and adjudication - *Intas Pharmaceuticals Ltd. v. ACIT* - [2024] 168 taxmann.com 527 (Ahmedabad - Trib.)

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

- 4.28** Payment made in excess of limit prescribed u/s. 40A(3) are to be examined keeping in view exigencies of business run by assessee and in case such expenses are must for running business and Revenue has no doubt about identity of payee and genuineness of transactions, disallowance on such occasion is not required - *Munish Arora v. ACIT* - [2024] 169 taxmann.com 458 (Chandigarh - Trib.)

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

- 4.29** Where AO made addition u/s. 41(1) on ground that sundry creditors were outstanding for more than three years and assessee had not been able to provide either confirmation

from sundry creditors or latest financial statement of said creditors, since assessee had written off credit balance of said parties which was supported by financials produced by assessee, impugned addition made u/s. 41(1) was to be deleted - **DCIT v. United Drilling Tools Ltd.** - [2024] 169 taxmann.com 678 (Delhi - Trib.)

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

- 4.30 Second proviso to section 48, which grants indexation benefit, does not distinguish between assets held in India and in foreign countries; hence, assessee could not be denied benefit of cost inflation index in respect of shares of foreign company sold by it - **Dy. CIT v. Aarav Fragrances and Flavors (P.) Ltd.** - [2024] 169 taxmann.com 201 (Mumbai - Trib.)

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

- 4.31 Where assessee sold an immovable property and invested capital gain into a residential property purchased in his wife's name, assessee was to be allowed deduction u/s. 54F, as, for purpose of section 54F, new residential house need not be purchased by assessee in his own name - **Vidjayane Durairaj - Vidjayane Velradjou v. ITO** - [2024] 169 taxmann.com 625 (Chennai - Trib.)

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

- 4.32 Where assessee claimed interest expenditure against income from other sources, since connection between expenditure and earning of income need not be direct, and even an indirect connection could prove nexus between expenditure incurred and income, impugned interest expenditure claimed by assessee u/s. 57 was to be allowed - **Ashwin S. Mehta v. ACIT** - [2024] 169 taxmann.com 359 (Mumbai - Trib.)

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

- 4.33 Where AO treated entire deposits in bank account of assessee as unexplained income u/s. 68, but there were equivalent withdrawals giving a credit balance and immediate transfers to another entity, proper course would be to either consider withdrawals or apply a net profit rate to deposits, as taxing entire deposit amount would not be justified - **Pankaj Pyarelal Khemka v. ITO** - [2024] 169 taxmann.com 690 (Mumbai - Trib.)

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

- 4.34 Where Asst. order was passed in case of assessee by AO u/s. 153C r.w.s. 143(3) making addition of certain amount u/s. 69B on 21-4-2021 for AY 2016-17, since Asst. order was ought to be passed on 31.12.2020, thus, there was delay of 111 days, impugned order was

barred by limitation - **Chintankumar Rameshbhai Patel v. DCIT/ACIT** - [2024] 169 taxmann.com 470 (Rajkot - Trib.)

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

- 4.35 Where assessee admitted in statement u/s. 132(4) that amount recorded towards sundry creditors was in effect fictitious liability by way of bogus purchases, entries found recorded in books as a result of creative accounting towards unexplained liabilities was nothing but undisclosed income as defined in section 271AAB and thus, penalty u/s. 271AAB was rightly imposed - **DCIT v. Subhash Tyagi** - [2024] 169 taxmann.com 623 (Delhi - Trib.)

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

- 4.36 Where AO opined that assessee had adopted 'colourable device' of selling shares at loss having anticipated reduction in price due to issuance of bonus shares and reducing her tax liability on account of LTCG derived on sale of shares of another company, since there was no evidence to doubt genuineness of transactions and there was no doubt regarding nature of loss, being capital, STCL derived by assessee could not be prevented from being set off against LTCG - **ACIT v. Ranu Vohra** - [2024] 169 taxmann.com 297 (Mumbai - Trib.)

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

- 4.37 CSR expenditures are done without any reciprocal commitment from beneficiary and thus, expenditure on CSR could not be denied merely on ground that same was mandatory and not voluntary in nature - **Cheil India (P.) Ltd. v. DCIT** - [2024] 169 taxmann.com 507 (Delhi - Trib.)
- 4.38 There is no correlation between suo-moto disallowance in section 37(1) and claim of deduction u/s. 80G, thus, expenditure incurred on CSR would be allowed under section 80G - **Cheil India (P.) Ltd. v. DCIT** - [2024] 169 taxmann.com 507 (Delhi - Trib.)

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

- 4.39 Where AO observed that some expenses were shifted from hands of partnership firm to assessee-company and accordingly disallowed deduction u/s. 80-IC, since assessee-company had not incurred any expenditure due to policy making and business models in certain categories and assessee-company made GP of 48 per cent on products purchased for trading from partnership as compared to GP of 46 per cent on trading of products purchased from third party, observation of AO was not justifiable - **Intas Pharmaceuticals Ltd. v. ACIT** - [2024] 168 taxmann.com 527 (Ahmedabad - Trib.)

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

- 4.40** Transactions between foreign enterprise and its PE in India can be considered as international transaction for purpose of section 92B and, accordingly, be subject to 'arm's length price' adjustment - **TBEA Shenyang Transformer Group Company Ltd. v. DCIT, International Taxation - [2024] 169 taxmann.com 145 (Ahmedabad - Trib.) (SB)**
- 4.41** Where Head Office (HO), situated in China had complete control over funds of assessee-PE and its revenue were determined by agreement signed by HO and furthermore assessee-PE was incurring loss, such an arrangement was subject matter of transfer pricing - **TBEA Shenyang Transformer Group Company Ltd. v. DCIT, International Taxation - [2024] 169 taxmann.com 145 (Ahmedabad - Trib.) (SB)**

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

- 4.42** Where TPO made upward adjustment towards charging of notional interest for 19 days excess credit period for realization of export sale proceeds from AEs, since working capital adjustment given by assessee while fixing sale price takes into account impact of outstanding trade receivable on profitability and this aspect was not verified by TPO, matter was to be remanded back to TPO for proper adjudication - **Intas Pharmaceuticals Ltd. v. ACIT - [2024] 168 taxmann.com 527 (Ahmedabad - Trib.)**
- 4.43** Where assessee paid management fee for services availed from its AE and TPO held that assessee failed to furnish evidence in respect of cost incurred by AE for providing said management services to assessee and made upward adjustment, since it was for assessee to determine as to whose services it desired to avail and, therefore, whether decision was commercially sound or not was not relevant and only question was whether transaction which was entered into, was bona fide or not, impugned addition must be deleted - **Otis Elevator Company (India) Ltd. v. Assessment Unit, Income-tax Department - [2024] 169 taxmann.com 476 (Mumbai - Trib.)**
- 4.44** Where assessee had given corporate guarantee on behalf of AE and made voluntary adjustment of 0.94 per cent, considering smallness of amount, addition made by AO by taking corporate guarantee rate at arm's length price at 2.22 per cent was to be deleted - **TBO TEK Ltd. v. ACIT - [2024] 169 taxmann.com 677 (Delhi - Trib.)**
- 4.45** Where assessee had already settled its dispute with competent authority under MAP and had also accepted adjustments made by TPO, protective addition made by AO was not tenable and same deserved to be deleted - **LM Wind Power Blades (India) (P.) Ltd. v. DCIT - [2024] 169 taxmann.com 371 (Bangalore - Trib.)**

- 4.46** There would be no base erosion by ALP adjustment in income of non-resident in respect of its transactions with Indian AEs - **Shell Global Solutions International B.V. v. ACIT, International Taxation - [2024] 169 taxmann.com 513 (Ahmedabad - Trib.)**

**SECTION 115U OF THE INCOME-TAX ACT, 1961 -
VENTURE CAPITAL COMPANIES/FUNDS, TAX ON**

- 4.47** Income derived from investment in VCFs has to be offered to tax by unit-holders alone under section 115U - **IDFC Ltd. v. Joint Commissioner of Income-tax - [2024] 169 taxmann.com 665 (Chennai - Trib.)**

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

- 4.48** Where assessment order was passed on 1-7-2022, since DRP order was uploaded on ITBA portal on 26-5-2022, in terms of section 144C(13) assessment was to be completed on or before 30-6-2022 and, thus, assessment order passed on 1-7-2022 was null and void and was to be set aside being barred by limitation - **Hyundai Rotem Company Indian Project Offices v. ACIT International Taxation - [2024] 169 taxmann.com 367 (Delhi - Trib.)**

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

- 4.49** Where search was conducted before amendment made under section 153C and also satisfaction note for assessee, being a non-searched party was drawn in assessment year 2018-19, order passed under section 153C for assessment year 2011-12 was beyond permissible period of six years and was to be quashed - **Rupesh Kantilal Savla v. Assistant Commissioner of Income-tax - [2024] 169 taxmann.com 621 (Mumbai - Trib.)**

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

- 4.50** Where assessee-company, engaged in shipping business, had deducted TDS on salaries of employees for period when vessel was in Indian waters, but in respect of period when vessels were deployed in foreign waters, assessee was unable to determine at start of financial year as to which of floating staff would be non-resident and which staff would become resident during financial year on account of their stay in Indian water or on Indian soil, and, thus, there was a short deduction of tax at beginning of financial year which was adjusted in later months, interest was not chargeable for mere short deduction in initial months - **Great Eastern Shipping Co. Ltd. v. DCIT - [2024] 169 taxmann.com 402 (Mumbai - Trib.)**

**SECTION 193 OF THE INCOME-TAX ACT, 1961 -
DEDUCTION OF TAX AT SOURCE - INTEREST ON
SECURITIES**

- 4.51** Where assessee, a NBFC, purchased NCD, ICD and term loans portfolio from PEL, a related entity of assessee and AO treated assessee as assessee-in-default for non-deduction of tax in respect of purchase consideration in respect of NCD,

ICD and term loans u/s. 193 and section 194A, since provisions of section 193/194A had already been triggered and complied with at time of credit of interest income to account of PEL in books of accounts of borrowers, question of assessee committing default in complying with same did not arise - **Piramal Capital and Housing Finance Ltd. v. ACIT - [2024] 169 taxmann.com 512 (Mumbai - Trib.)**

SECTION 194A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES

- 4.52** Where group to which assessee company belonged took loan from bank and assessee had borrowed a sum of money from its group entities and paid interest on same, interest paid by assessee was merely reimbursement of interest to principal borrower (its group entities) who had paid interest to bank after deducting TDS, therefore, assessee was under no statutory obligation to deduct TDS u/s. 194A - **KD Lite Develpers (P.) Ltd. v. DCIT - [2024] 169 taxmann.com 540 (Mumbai - Trib.)**

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

- 4.53** Where assessee and his wife sold an immovable property and capital gain arising out of such sale was offered in equal proportion by assessee and his wife, merely because property was jointly owned by assessee and his wife and capital gain arising on sale of property was equally shared by joint owners, that could not be sole reason for disallowing assessee's claim in respect of TDS credit - **Rahul Dinesh Bajpai v. DDIT - [2024] 169 taxmann.com 456 (Mumbai - Trib.)**

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

- 4.54** Where no order or notice of demand was ever issued for relevant assessment year, assessee would not have any liability with regard to levy of interest under section 220(2) - **Great Eastern Shipping Co. Ltd. v. Deputy Commissioner of Income-tax - [2024] 169 taxmann.com 402 (Mumbai - Trib.)**

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

- 4.55** Interest liability under section 234B should be computed after reducing amount of tax deductible at source on income earned - **Ashwin S. Mehta v. ACIT - [2024] 169 taxmann.com 359 (Mumbai - Trib.)**

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

- 4.56** Where assessee-firm received interest on income tax refund and treated same in its profit and loss account as income under head 'business income' instead of

'income from other sources', since assessee had paid tax on said interest income at same rate, even though under different heading, additions could not be made merely because interest could not be treated as part of 'business income' - **Singhal Builders v. ACIT - [2024] 169 taxmann.com 415 (Jaipur - Trib.)**

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

- 4.57** Where Commissioner (Appeals) made addition on account of personal withdrawals, since said addition was neither subject matter of assessment nor source of income which was considered expressly or impliedly by Assessing Officer, Commissioner (Appeals) had transgressed its power of enhancement granted under section 251 while making addition on account of personal withdrawals, and therefore impugned addition was to be deleted - **Ashwin S. Mehta v. ACIT - [2024] 169 taxmann.com 359 (Mumbai - Trib.)**

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

- 4.58** Where issue of disallowance of payment made towards transport charges and outward transport charges under section 40(a)(ia) was subject matter of pending adjudication before National Faceless Appeal Panel (NFAP), Principal Commissioner could not revise order of National Faceless Assessment Centre (NFASC) - **Krishnan Saravanan v. Principal Commissioner of Income-tax - [2024] 169 taxmann.com 592 (Chennai - Trib.)**
- 4.59** Where revision proceedings under section 263 were initiated by Principal Commissioner solely on recommendations of Assessing Officer without application of mind, order passed under section 263 was liable to be quashed - **Kotari Srinivasa Rao v. Principal Commissioner of Income-tax - [2024] 169 taxmann.com 445 (Visakhapatnam - Trib.)**

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

- 4.60** Where assessee, a charitable trust, claimed depreciation on assets, however, later on, voluntarily conceded that depreciation was erroneously claimed and withdrew ground raised against disallowance of said depreciation, penalty under section 271(1)(c) was not leviable on said inadvertent claim of depreciation - **Mumbai Educational Trust v. DCIT (Exemptions)-2 - [2024] 169 taxmann.com 689 (Mumbai - Trib.)**

SECTION 271AAB OF THE INCOME-TAX ACT, 1961 - PENALTY WHERE SEARCH HAS BEEN INITIATED

- 4.61** Where assessee failed to specify manner of deriving undisclosed income despite admission at time of search itself, he got trapped by higher penalty at rate of 30 per cent under clause (c) owing to admission at time of search and, thus, penalty was correctly imposed under section 271AAB(1)(c) instead of section 271AAB(1)(a) - **DCIT v. Subhash Tyagi - [2024] 169 taxmann.com 623 (Delhi - Trib.)**

GST & INDIRECT TAXES

1. STATUTORY UPDATES

- 1.1** CBIC issued instruction for systemic improvement with respect to mapping / de-mapping of the officers on GSTN portal - **INSTRUCTION NO. 4/2024-GST [F. NO.: CBIC-20016/26/2024-GST], DATED 04-10-2024**

Editorial Note : The CBIC has noted that GST officer, mapped in the GSTN portal, was not de-mapped with immediate effect after his relieving from the charge, which resulted into fraudulent sanction of refund by the officer. Therefore, the CBIC has issued instruction to provide that officers should be immediately de-mapped and clear responsibility and accountability of the concerned jurisdictional officers, responsible for mapping / un-mapping of the officers on the GSTN portal, may be ensured.

- 1.2** Govt. empowers more Additional/Joint Commissioners for adjudication of SCN issued by the officers of DGGI - **CIRCULAR NO. 239/33/2024-GST [F. NO. CBIC-20016/2/2022-GST], DATED 04-12-2024**

Editorial Note : The CBIC has empowered more number of Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of DGGI. In this regard, amendment has been made in Circular No. 31/05/2018-GST, dated 9th February, 2018 on 'Proper officer under sections 73 and 74'.

- 1.3** CBIC extends due date of filing GSTR-3B for October 2024 for Murshidabad, West Bengal: Notification - **NOTIFICATION NO. 30/2024 - CENTRAL TAX [F. NO. CBIC-20001/10/2024-GST], DATED 10-12-2024**

Editorial Note : The CBIC has issued notification to extend the due date of filing of GSTR-3B for the registered persons whose principal place of business is in the district of Murshidabad in the state of West Bengal for month of October 2024 till December 11th, 2024.

- 1.4** GSTN advisory on mandatory Sequential Filing of GSTR-7 Returns as per Notification No. 17/2024

Editorial Note : The GSTN has issued an advisory to inform that GSTR-7 filing has been made sequential from the October tax period. Hence, GSTR-7 return is to be filed in chronological order, beginning with the return period of October 2024. It is pertinent to mention that for a month in which no deduction have been made, deductors need to file Nil return for the same month.

- 1.5** Biometric-Based Aadhaar Authentication and Document Verification implemented in Haryana, Manipur, Meghalaya and Tripura: GSTN

Editorial Note : The GSTN has issued advisory to inform that biometric-based aadhaar authentication and document verification for GST registration applicants of Haryana, Manipur, Meghalaya and Tripura has been rolled out on 7th December 2024. The feature of booking an appointment to visit a designated GSK is now available for the applicants of Haryana, Manipur, Meghalaya and Tripura.

- 1.6** GSTN issued new advisory on difference in value of Table 8A and 8C of Annual Returns FY 23-24

Editorial Note : The GSTN has noted that several concerns have been raised regarding possible mismatch between the values of table 8A and 8C of Form GSTR-9 for FY 23-24. Now, the GSTN has issued an advisory to inform that for FY 22-23 in table 8A of Form GSTR-9, values were getting auto populated from GSTR-2A however for FY 23-24 same are being auto populated from GSTR-2B. Therefore, to some extent, in Form GSTR-9 of FY 23-24, values in Table 8A will be inflated.

- 1.7** Multi-Factor Authentication on E-Invoice and E-Way Bill portals will be mandatory for all taxpayers & users from 1st April 2025: GSTN

Editorial Note : The GSTN has issued an update to inform that starting 1st January 2025, Multi-Factor Authentication (MFA) will become mandatory for taxpayers with AATO exceeding Rs 20 Crores, from 1st February 2025 for those with AATO exceeding Rs 5 Crores, and from 1st April 2025 for all other taxpayers and users.

- 1.8** GSTN issued advisory for RR No./eT-RRs Entry in the EWB System

Editorial Note : The GSTN has issued an advisory to inform that the FOIS of Indian Railways has now been integrated with the E-Way Bill (EWB) system via Application Programming Interfaces (APIs). Therefore, the taxpayers transporting goods via the Indian Railways FOIS must ensure the correct entry of the number or RR No./eT-RRs in the EWB system. The format for entering RR No./eT-RRs has been standardized to ensure consistency and accuracy.

- 1.9** Recommendations of 55th GST Council Meeting: Press Release

Editorial Note : The 55th GST Council meeting has been held under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in Rajasthan today. In this press release, all recommendations relating to changes in GST tax rates, relief to individuals, measures for facilitation of trade and measures for streamlining compliances in GST are compiled.

- 1.10 GSTN issued guidelines for accurate entry of Receipt Numbers in the E-Way Bill (EWB) System for Leased Wagons

Editorial Note : The GSTN has issued an update to provide guidelines for accurate entry of Receipt Numbers in the E-Way Bill (EWB) System for Leased Wagons. The taxpayers transporting goods via Leased Wagons must prefix Receipt Numbers with the identifier "L" when entering them into the EWB system. In case of discrepancies such as mismatched or missing numbers, taxpayers will receive an alert and must correct the entry promptly.

- 1.11 GST SPL 02 is made available in the GST portal: GSTN Update

Editorial Note : The GSTN has issued an advisory to inform that Form GST SPL 02 is made available in the GST portal and Form GST SPL 01 will be available soon in the GST portal. Under the waiver scheme, for a demand notice or statement or order which has been issued under Section 73 for the tax periods between July 2017 & March 2020, the taxpayers are required to file an application either in FORM GST SPL-01 or SPL-02 in GST portal accordingly.

2. SUPREME COURT

SECTION 2 OF THE CENTRAL EXCISE TARIFF ACT, 1985 - DUTIES SPECIFIED IN THE FIRST SCHEDULE AND THE SECOND SCHEDULE TO BE LEVIED

- 2.1 Pure coconut oil packaged and sold in small quantities ranging from 5 ml to 2 litres as 'edible oil' being fit for human consumption is classifiable under Heading No. 1513 unless suitable for use as hair oil and packaged for retail sale for such use with labels, literature or other indications that it is intended for use as cosmetic or toilet preparation where same can be classified as 'hair oil' under Heading No. 3305 - **Commissioner of Central Excise, Salem v. Madhan Agro Industries (India) (P.) Ltd. - [2024] 169 taxmann.com 448 (SC)**

3. HIGH COURT

SECTION 2(22) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - CESS

- 3.1 Where petitioners, engaged in manufacturing and marketing chewing tobacco, challenged Orders-in-Original imposing 160% Compensation Cess under Notification No. 1/2017 by classifying their products under Heading 2403 99 10 as "Chewing Tobacco", since petitioners had previously classified their products as "Chewing Tobacco" under Heading 2403 during Central Excise regime and their activities amounted to manufacturing, and test reports supported classification, instant writ petition was to be dismissed as there was no merit in challenge to impugned Orders-in-

Original - **Haji K.P.M. Abdul Kareem v. Assistant Commissioner, Office of the Assistant Commissioner of GST & Central Excise - [2024] 169 taxmann.com 328 (Madras)**

SECTION 2(84) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PERSON

- 3.2 Since appellant's units were operational, producing specified goods, and fulfilling eligibility criteria under Budgetary Support Scheme(BSS) before GST regime, impugned order passed by learned Single Judge, denying benefits of BSS to appellants on ground appellant's units changed their names post introduction of GST, was to be set aside as procedural changes such as obtaining a new GST registration do not alter fundamental eligibility of unit under scheme - **Zyduz Wellness Products Ltd. v. Union of India - [2024] 169 taxmann.com 341 (SIKKIM)**

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

- 3.3 Where petitioner was involved in procuring hardware required for purpose of IT education in government schools and impugned adjudication order was passed holding that petitioner was liable to pay GST for same, since there was nothing in impugned order to indicate that petitioner received any consideration for alleged supply, impugned order was to be set aside and fresh order was to be passed - **Kerala Infrastructure and Technology for Education v. Union of India - [2024] 169 taxmann.com 293 (Kerala)**

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

- 3.4 Where order while referring to section 9 of Central Goods and Services Tax Act, 2017 concluded that liability which was created ultimately was with reference to Integrated Goods and Services Tax and Cess leviable, such order was to be stayed and matter was to be listed - **Kone Elevator India (P.) Ltd. v. Commissioner, Central Tax Delhi West - [2024] 169 taxmann.com 444 (Delhi)**
- 3.5 Writ petition challenging a GST show cause notice on ground that GST was not leviable on import of services was to be dismissed as no violation of natural justice was found, and tax levability issue was not to be addressed at this stage - **Barmenco Indian underground Mining Services LLP v. Deputy Commissioner - [2024] 169 taxmann.com 271 (Rajasthan)**
- 3.6 Where petitioner sought direction to respondent public works department to make payment of difference amount of GST due change in rate of tax from 12 percent to 18 percent, since during proceedings before high court, difference amount was paid to petitioner, instant petition was to be disposed of - **Dharmendra Kumar v. State of U.P. - [2024] 169 taxmann.com 320 (Allahabad)**
- 3.7 Where SCN was not prima facie for a GST demand on sale of alcoholic liquor for human consumption and neither question of bar under CGST Act 2017 nor of Constitution would be involved and as per said SCN, petitioner allegedly paid IGST

on 'production overhead charges' received from one party while avoided paying in case of another party, matter required factual investigation; writ petition in presence of alternative statutory appellate remedy was not maintainable - **Blossom Industries Ltd. v. Union of India** - [2024] 169 taxmann.com 481 (Bombay)

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

- 3.8 Where petitioner was constructing a school under government contract and demand of GST was raised against petitioner for payment of GST, since such demand was non-speaking in as much as it did not make any reference to any of notification taking away exemption and/or petitioner not fulfilling requirement of exemption notification, such demand was to be set aside - **Smt Angoori Devi Educational and Cultural Society (Regd.) v. Union of India** - [2024] 169 taxmann.com 515 (Allahabad)

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

- 3.9 Where assessee was compelled to reverse ITC in summon proceedings and same was deducted again from electronic credit ledger when assessee filed refund claim, amount being deducted twice from electronic credit ledger, respondent authority was to be directed to restore same within a period of four weeks - **Hilti Manufacturing India (P.) Ltd. v. Union of India** - [2024] 169 taxmann.com 292 (Gujarat)
- 3.10 Where on receipt of IGST paid inward supplies from outside State, in Form GSTR-3B, appellant inadvertently showed IGST component as nil and added bifurcated CGST and SGST components of IGST to existing figures showing eligible CGST and SGST credit, resulting in mismatch between Form GSTR-2A and Form GSTR-3B, in view of fact that there was no wrong avilment of credit and only a technical mistake was committed by appellant, order demanding tax was to be set aside - **Rejimon Padickapparambil Alex v. Union of India** - [2024] 169 taxmann.com 152 (Kerala)
- 3.11 Where assessee had produced documents such as e-way bill, tax invoice, payment of market cess etc. to show that transactions were genuine and not fictitious, but same were not considered in impugned order, assessee was to be granted one final opportunity to produce all related documents; impugned order was to be set aside - **Senthil Kumaran Traders v. Deputy State Tax Officer (ST)** - [2024] 169 taxmann.com 153 (Madras)
- 3.12 Order under Section 73(9) challenged by assessee on ground that retrospective insertion of Section 16(5) allows ITC claims for FY 2017-18 to 2020-21 in returns

filed by 30th November 2021, was to be stayed until next hearing as Assessee had been able to make out a prima facie case - **Diamond Timber Industries v. Superintendent of CGST & CX** - [2024] 169 taxmann.com 206 (Calcutta)

- 3.13 Denial of input tax credit for delayed claim during December 2018 to March 2019 requires reconsideration under newly inserted Section 16(5) of CGST Act, which permits belated credit claims for FY 2017-18 to 2020-21 - **SJB Automobiles (P.) Ltd. v. Assistant Commissioner of GST & Central Excise** - [2024] 169 taxmann.com 376 (Madras)
- 3.14 Where impugned order was passed confirming demand for discrepancies in GSTR 3B and GSTR 2A/2B return, since reply of assessee to show cause notice was considered by authority and part of plea taken therein was allowed, also alternate remedy of appeal was available to assessee, writ petition filed by assessee was to be dismissed - **Laxmi Telecom v. State of U.P.** - [2024] 169 taxmann.com 550 (Allahabad)
- 3.15 Where assessee challenged validity of Rule 36(4) in writ petition as same could not be raised before appellate authority, matter required considerations, thus, writ petition was to be admitted and matter was to be listed - **High Tech Ecogreen Contractors LLP v. Joint Director** - [2024] 169 taxmann.com 484 (Gauhati)
- 3.16 Where show cause notice was issued to assessee demanding tax and penalty under section 74 and assessee challenged same vide instant writ petition, same was to be dismissed as show cause notice issued to assessee was merely initiation of an adjudication process and assessee failed to demonstrate that same was issued without jurisdiction - **Jyoti Tar Products (P.) Ltd. v. Deputy Commissioner, State Tax, Shibpur, WBGST** - [2024] 169 taxmann.com 520 (Calcutta)

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

- 3.17 Where no input tax credit shall be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples and petitioner-assessee claimed Input Tax Credit on goods viz., 'Gold Coins' and 'T-shirts' purchased by petitioner-assessee for sales promotion which falls under expression 'gifts and free samples', therefore, petitioner-assessee was not entitled to avail input tax credit under Section 17; impugned orders were to be upheld and writ petitions were to be dismissed - **ARS Steels and Alloy International (P.) Ltd. v. State Tax Officer** - [2024] 169 taxmann.com 270 (Madras)
- 3.18 Telecommunication towers does not qualify test of permanency, they are not 'attached to earth', they can be dismantled and moved and are never erected with an intent of conferring permanency and their placement on concrete bases was only to enable those towers to overcome vagaries of nature, they can be considered as moveable property eligible for ITC - **Bharti Airtel Ltd. v. Commissioner, CGST Appeals-1, Delhi** - [2024] 169 taxmann.com 390 (Delhi)

- 3.19** Where impugned order issued with demand for tax for ITC availed based on invoices raised by supplier as blocked credit under section 17(5) of CGST Act, assessee had in regular course of business purchased inputs from registered persons inside State which were under cover of tax invoices, matter was to be remanded treating impugned order as show cause notice subject to assessee depositing 25% of disputed taxes - *Finevo Solutions v. Deputy State Tax Officer-II* - [2024] 169 taxmann.com 600 (Madras)

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

- 3.20** Where application for amendment of registration was rejected before petitioner could respond to notice requiring additional documents, such rejection order was to be quashed - *Ridhi Siddhi Enterprises v. Commissioner DSGST* - [2024] 169 taxmann.com 182 (Delhi)

SECTION 28 OF THE CUSTOMS ACT, 1962 - RECOVERY OF 2[DUTIES NOT LEVIED OR NOT PAID OR SHORT-LEVIED OR SHORT-PAID] OR ERRONEOUSLY REFUNDED.

- 3.21** Mechanical, casual and frequent placing of matters in call book, their retrieval and transfer defied logic and it was without application of mind; despite legislature validating all action DRI initiated before 6-7-2011, department abstained from effective steps to conclude proceedings; statutory flexibility to conclude proceedings could not sanction lethargy to keep matters unresolved for years; department had to establish genuine impediment in resolving dispute with reasonable speed and dispatch - *Vos Technologies India (P.) Ltd. v. Principal Additional Director General* - [2024] 169 taxmann.com 491 (Delhi)

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

- 3.22** Where petitioner did not file return for a continuous period of six months and appeal against order of cancellation of registration was filed after delay of 1 year and 20 days which was beyond period of three months prescribed under section 107(1), there was no necessity for interference with appellate order rejecting appeal - *Marang Buru Trust v. State of Jharkhand* - [2024] 169 taxmann.com 450 (Jharkhand)
- 3.23** Where after cancellation of assessee's registration on ground of non-filing of returns, assessee had paid all revenue due and further agreed to pay any other due, registration was to be restored - *Fusion Realtyinfra (P.) Ltd. v. Deputy Commissioner of State Tax* - [2024] 169 taxmann.com 167 (Calcutta)
- 3.24** Where assessee's registration cancelled for business premises found non-existent during field verification, application for revocation declined and appeal against

cancellation rejected, no details with respect to inspection in show cause notice or order of cancellation, date and time of inspection not revealed in report or photographs, inspection report not supplied to assessee, orders passed were to be set aside - *Singodwala Warehousing and Logistics (P.) Ltd. v. State of Bihar* - [2024] 169 taxmann.com 375 (Patna)

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

- 3.25** Delay in filing GST registration revocation application under Rule 23 can be condoned subject to payment of all dues and compliance with prescribed formalities - *Rajesh Kumar Choudhury v. Additional Commissioner of CGST & Central Excise* - [2024] 169 taxmann.com 374 (Orissa)
- 3.26** Where assessee was ready and willing to pay tax, interest, late fee, penalty and any other sum required to be paid for return form of assessee to be accepted by department, delay in invoking proviso to rule 23 of OGST Rules was to be condoned - *Gajalaxmi Agency (KSK) v. Principal Commissioner of Central Goods and Service Tax* - [2024] 169 taxmann.com 633 (Orissa)
- 3.27** Where registration of assessee was cancelled for non-filing of return and assessee was willing to pay taxes and penalty, in view of judgement in Sunil Sah v. Union of India [2024] 167 taxmann.com 477 (Uttarakhand), assessee was to be granted liberty to file application for revocation of cancellation of registration - *Deltaadefence Academy (OPC) (P.) Ltd. v. Assistant Commissioner, State Goods & Service Tax* - [2024] 169 taxmann.com 361 (Uttarakhand)
- 3.28** Where registration of assessee was cancelled, delay in invoking provisions of rule 23 in time was to be condoned subject to assessee paying tax, interest and penalty - *Maa Tarini Enterprises v. Union of India* - [2024] 169 taxmann.com 410 (Orissa)
- 3.29** Where registration of assessee was cancelled and assessee was ready to pay interest tax and penalty, delay in invoking provisions of rule 23 was to be condoned and assessee was to be granted liberty to file application for revocation of cancellation of registration - *Matrubhumi Shelters (P.) Ltd. v. Commissioner of Commercial Taxes and Goods and Services Tax* - [2024] 169 taxmann.com 411 (Orissa)
- 3.30** Where registration of assessee was cancelled, delay in invoking provisions of rule 23 in time was to be condoned subject to assessee paying tax, interest and penalty with liberty to assessee to file revocation application - *Anil Kumar Sadangi v. State Tax Officer* - [2024] 169 taxmann.com 438 (Orissa)
- 3.31** Where registration of assessee was cancelled, delay in invoking provisions of rule 23 was to be condoned subject to assessee paying tax, interest and penalty and assessee was to be granted liberty to file revocation application - *Manoj Kumar Pradhan v. Commissioner of (C.T. & G.S.T.)* - [2024] 169 taxmann.com 551 (Orissa)

- 3.32** Where registration of assessee was cancelled, delay in invoking provisions of rule 23 was to be condoned subject to assessee paying tax, interest and penalty with liberty to assessee to file application for revocation of cancellation of registration - **Chitrasen Sahu v. Principal Commissioner, CGST and Central Excise** - [2024] 169 taxmann.com 659 (Orissa)

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

- 3.33** Where GST registration cancellation appeal is filed beyond prescribed limitation period of 3 months under Section 107(1) coupled with non-compliance of regulations, no relief can be granted on grounds of delay and laches - **Pragati Bio & Renewable Energy v. Principal Commissioner, CGST** - [2024] 169 taxmann.com 635 (Jharkhand)

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

- 3.34** Transitional CENVAT credit carried forward should be considered as opening balance in electronic credit ledger from 01.07.2017 for refund purposes of unutilized input tax credit on zero-rated supplies during initial GST months - **Ford India (P.) Ltd. v. Union of India** - [2024] 169 taxmann.com 601 (Gujarat)

- 3.35** Where refund claim of assessee was rejected and assessee challenged same on grounds of violation of principles of natural justice, since despite sufficient opportunity, assessee chose not to appear for personal hearing, assessee could not now complain about failure of natural justice; Writ petition was to be disposed of with direction to avail alternative remedy of appeal - **Finorion Pharma India (P.) Ltd. v. State of Maharashtra** - [2024] 169 taxmann.com 482 (Bombay)

- 3.36** Where petitioners, importers under CIF contracts, were required to pay service tax on ocean freight under Notification No. 2/2017-ST, despite transportation being arranged by overseas suppliers, judicial precedents declared said levy unconstitutional and Supreme Court's COVID-19 extension of limitation periods protected petitioners' refund claims, directing revenue authorities to process refunds forthwith - **Tavrur Oils and Fats (P.) Ltd. v. Commissioner CGST** - [2024] 169 taxmann.com 524 (Delhi)

- 3.37** Where refund claim of assessee was not processed on grounds that assessee had not submitted relevant documents, and said communication issued to assessee was challenged vide instant writ petition, since relevant documents were now submitted, respondent authority was to be directed to consider same - **Centrans Logistics (P.) Ltd. v. Chief Commissioner, Central Goods and Service tax** - [2024] 169 taxmann.com 631 (Delhi)

- 3.38** Where assessee exporting goods under LUT, was paid refund of unutilized accumulated ITC as per Rule 89(4) before insertion of Explanation (c) to Rule 89(4) of CGST Rules, during pendency of petition, clarification issued on manner of calculation of Adjusted Total Turnover consequent to Explanation (c) inserted, refund application was to be reconsidered - **Kashi Exports v. Union of India** - [2024] 169 taxmann.com 667 (Gujarat)

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

- 3.39** Where despite directions issued to respondent authority, refund amount was not disbursed to assessee within 60 days, assessee was entitled to interest on refund amount and respondent authority was to be directed to disburse interest on refund - **TATA Aldesa (J.V.) v. State of UP** - [2024] 169 taxmann.com 309 (Allahabad)

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

- 3.40** Where assessee challenged demand order on ground that neither show cause notices nor impugned order of assessment had been served by tendering to assessee or by registered post, instead it was uploaded in common portal under head 'Additional Notices and Orders' tab, since assessee was ready and willing to pay 10 per cent of disputed tax, he may be granted one final opportunity to put forth their objections to proposal - **Hotel Southern Comfort v. State Tax Officer (ST)** - [2024] 169 taxmann.com 366 (Madras)

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

- 3.41** Where petitioner-assessee was not provided with an opportunity of hearing to explain alleged discrepancies, therefore, impugned assessment order was to be set aside and petitioner-assessee should deposit 25% of disputed tax - **Tvl. Karthiga Traders v. State Tax Officer** - [2024] 169 taxmann.com 331 (Madras)

- 3.42** Where petitioner-assessee was not provided with an opportunity of hearing to explain alleged discrepancies, therefore, impugned assessment order was to be set aside and petitioner-assessee should deposit 25% of disputed tax - **M.M. Car Accessories v. Deputy Commissioner (ST)** - [2024] 169 taxmann.com 447 (Madras)

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

- 3.43** Where Show Cause Notice (SCN) was issued it could not be, challenged in writ petition on ground that data relied upon was extracted from electronic devices without complying with procedure under section 145 as petitioner had right to raise issue of admissibility of evidence in adjudication proceedings - **Jindal Metal Co. v. Directorate General of GST Intelligence Delhi Zonal Unit** - [2024] 169 taxmann.com 170 (Delhi)

3.44 Where pursuant to search conducted at premises of petitioner, cash Rs. 62.40 was seized by authority, same was to be returned as authority had no power to cease cash found during search conducted u/s. 67(1) - **Anshul Jain v. Commissioner of CGST - [2024] 169 taxmann.com 439 (Delhi)**

SECTION 69 OF THE CGST ACT, 2017 - SEARCH, SEIZURE, ETC. - POWER TO ARREST

3.45 Where accused was arrested for generating fake invoices and availing ITC, and lower court while granting bail to accused, completely ignored incriminating material collected against accused and did not consider gravity of offences and enlarged accused on bail mis-constructing facts and legal position, bail granted to accused was to be cancelled - **Union of India v. Gautam Garg - [2024] 169 taxmann.com 325 (Rajasthan)**

3.46 Where a complaint was registered against applicant based on statements of co-accused indulged in creation of fake firms and issuing fake invoices, and co-accused having more serious role had already been released on bail, applicant having no criminal history was to be released on bail - **Dheeraj Saini v. Union of India - [2024] 169 taxmann.com 321 (Allahabad)**

3.47 Where accused persons allegedly involved in issuance of fake invoices to pass on fraudulent ITC without actual supply of goods and services were granted anticipatory bail by session court, when trial court was convinced that presence of accused persons could be secured by imposing stringent conditions and granted bail, there were no justifiable reason to cancel same - **Matrix Engineering and Services v. State of Karnataka - [2024] 169 taxmann.com 486 (Karnataka)**

3.48 Where accused persons were arrested in complaint alleging issuance of fake invoices without supply of goods or services and trial court granted bail imposing condition of depositing Rs. 1 crore; same was liable to be relaxed and instead, accused persons were to be directed to deposit passport before Trial Court - **Naqeeb Najeed Mulla v. Superintendent of Central Tax - [2024] 169 taxmann.com 453 (Karnataka)**

3.49 Where impugned assessment order was issued in case of assessee without mentioning DIN number, following decision of Supreme court in Pradeep Goyal v. Union of India [2022] 141 taxmann.com 64 (SC) and circular No.128/47/2019-GST, dated 23-12-2019, wherein it was held that order which does not contain a DIN number would be non-est invalid, impugned order was to be set aside - **Khaja Peer Shaik v. Assistant Commissioner (ST) - [2024] 169 taxmann.com 521 (Andhra Pradesh)**

SECTION 73 OF THE CGST ACT, 2017 - DEMANDS AND RECOVERY - TAX OR ITC DUE NOT INVOLVING FRAUD, MISSTATEMENT, OR SUPPRESSION

3.50 Where petitioner-assessee had not been given opportunity of hearing by respondent no.1-department and respondent no.1-department failed to consider reasons submitted by petitioner-assessee before rejecting application for rectification u/s. 161, therefore, impugned order dated 04.06.2024 rejecting application of petitioner-assessee for rectification alone was to be set aside and matter was to be remitted back to respondent no.1-department for passing a fresh order after considering reasons - **Ayappa Pharma v. Deputy State Tax Officer - [2024] 169 taxmann.com 396 (Madras)**

3.51 Where mandatory Form GST DRC-01A not served before passing assessment order and order contained contradictory late fee demands, impugned orders set aside and matter remanded with direction to provide personal hearing after payment of 10% disputed tax - **Tvl. Srirenakambal Milk Centre v. State Tax Officer - [2024] 169 taxmann.com 91 (Madras)**

3.52 Service tax authorities cannot assume jurisdiction merely on Form 26AS data without verifying actual nature of services and applicable exemptions - **Nimeshbhai Gunvantbhai Patel v. Union of India - [2024] 169 taxmann.com 175 (Gujarat)**

3.53 Where reminder and orders impugned came to be uploaded on 'Additional Notices and Orders' Tab of GST Portal, impugned demand order issued u/s. 73 of CGST Act was to be set aside, AO was to be directed to issue fresh notice and based on said notice, to take further proceedings - **Raj Infra Structure v. State of U.P. - [2024] 169 taxmann.com 216 (Allahabad)**

3.54 Where registration was cancelled without assigning any reason, said order was to be set aside and registration was to be restored - **Padma Thakuria v. Union of India - [2024] 169 taxmann.com 487 (Gauhati)**

3.55 Where special audit was conducted and assessee filed detailed reply raising various objections denying additional tax demand, but demand order was passed without dealing with objections raised by assessee, matter was to be remanded back for fresh examination - **Mitsubishi Electric India (P.) Ltd. v. Union of India - [2024] 169 taxmann.com 209 (Delhi)**

3.56 Where order issued u/s. 73 did not provide any adequate reasons for rejecting assessee's detailed reply to SCN and confirmed demand with interest, same was to be set aside and matter was remanded back as such a non-speaking order violates principles of natural justice, as revenue did not fulfill its duty to record reasons for its conclusions - **Rajdhani Trading Co. v. Union of India - [2024] 169 taxmann.com 218 (Delhi)**

3.57 Where SCN was issued and demand was raised by uploading same on common portal and assessee contended that it was unable to access common portal and participate in adjudication proceedings, in view of judicial precedents, impugned order was to be set aside and objections were to be filed - **Aruna Clothing Company v. Deputy State Tax Officer-II - [2024] 169 taxmann.com 358 (Madras)**

- 3.58** Where pursuant to approval of resolution plan, respondent authority confirmed demand against corporate debtor relying on order of NCLT whereby it was held that approval of resolution plan shall not be construed as any waiver of statutory obligation, since said order was modified in appeal and claim of respondent authority stood extinguished after approval of resolution plan, impugned order was to be set aside and matter was to be remanded for fresh order on merits - **Parimal Capital & Housing Finance Ltd. v. Union of India** - [2024] 169 taxmann.com 553 (Bombay)
- 3.59** Where assessee had failed to furnish required documents, even after lapse of more than a month after furnishing reply to SCN but later on submitted that if assessee was provided with an opportunity, they would be able to explain alleged discrepancies in ITC claim and assessee was ready and willing to pay 10 per cent of disputed tax, matter was to be readjudicated - **Tvl. SKB Construction v. Assistant Commissioner (ST)** - [2024] 169 taxmann.com 559 (Madras)
- 3.60** Where in reply to SCN, assessee specifically made a prayer for affording an opportunity of hearing, it was incumbent upon authorities to provide an opportunity of hearing and therefore, Asst. order passed on same day of filing of reply to SCN was against principles of natural justice - **Gannon Dunkerley & Co. Ltd. v. Joint Commissioner Corporate** - [2024] 169 taxmann.com 115 (Allahabad)
- 3.61** Where assessee's appeal against adjudicating order rejected on ground of delay for which assessee explained that there was delay due to negligence of former tax consultant and lack of prior knowledge about adjudicating proceedings, in view of S. K. Chakraborty & Sons Vs. Union of Indian [2024] 159 taxman.com 259 (Calcutta) where it was held that statutory provisions on limitation should be interpreted liberally in cases where genuine hardships are demonstrated, instant writ petition was to be allowed and appellate order was to be quashed - **Anand Kumar Hirawat v. Senior Joint Commissioner of Commercial Taxes & WBGST** - [2024] 169 taxmann.com 480 (Calcutta)
- 3.62** Where assessee was issued demand order u/s. 73 of CGST Act for excess availed ITC for November, 2017-2018, in view of Notification No. 22/2024-Central Tax, dated 8-10-2024, for rectification of order, assessee was to be advised to avail of special procedure as per provided in said notification - **ITI Ltd. v. Union of India** - [2024] 169 taxmann.com 329 (Meghalaya)
- 3.63** Adjudicating order issued by revenue without providing opportunity of hearing leads to violation of natural justice, thus order passed by revenue without providing opportunity of hearing to assessee could not be sustained and same was to be set aside - **Soumyendu Bikash Jana v. Union of India** - [2024] 169 taxmann.com 672 (Calcutta)

- 3.64** Where assessee challenged impugned order in original on grounds of violation of principles of natural justice, however allegations made by assessee were vague and instant petition was filed a year after impugned order was made, same could not be entertained and was to be dismissed - **Apex Iron (India) (P.) Ltd. v. State of Maharashtra** - [2024] 169 taxmann.com 357 (Bombay)
- 3.65** Where assessee could not participate in demand proceeding due to hospitalization, and assessee's right to appeal had also lapsed due to efflux of time, said assessment order was to be set aside and matter was to be remanded - **Hemanta Kumar Sharma v. Principal Commissioner, GST and Central Excise Commissionerate** - [2024] 169 taxmann.com 404 (Orissa)
- 3.66** Where documents relied upon by department in impugned order were neither referred to in show cause notice nor copies of such documents were supplied to assessee, there had been a failure of natural justice, thus, matter was to be remanded for fresh decision - **Surinderpal Chamanlal Aggarwal HUF v. State of Maharashtra** - [2024] 169 taxmann.com 603 (Bombay)
- 3.67** Where demand was raised upon assessee after cancellation of its registration and notice was published on official website of department and not served on assessee though any other means e.g. E-mail or Mobile number, order creating demand was to be quashed - **Tiger Structure (P.) Ltd. v. Assistant Commissioner** - [2024] 169 taxmann.com 604 (Uttarakhand)
- 3.68** Mere claim of demand being without jurisdiction does not warrant waiver of statutory pre-deposit requirement for filing appeal against GST order - **Supreme Construction & Developers (P.) Ltd. v. State of Maharashtra** - [2024] 169 taxmann.com 555 (Bombay)
- 3.69** Where respondent no.3-department issued summary of show cause notice to petitioner-assessee, however, summary of show cause notice in Form GST DRC-01 could not substitute statutory requirement of issuing show cause notice under Section 73(1), therefore, impugned order dated 31.12.2023 passed on basis of aforesaid summary of show cause notice was to be set aside - **Vinit Kumar Jain v. State of Assam** - [2024] 169 taxmann.com 560 (Gauhati)
- 3.70** Where show cause notice, which culminated into impugned order in original, recorded wrong address of assessee and respondent authority failed to show proof of service of notice to correct address of assessee, impugned order in original was to be quashed in interest of justice and matter was to be remanded - **Champions Steel Industries (P.) Ltd. v. Union of India** - [2024] 169 taxmann.com 632 (Bombay)

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

- 3.71** Petitioner challenged a show cause notice alleging improper ITC claims, contending it was based solely on CAG

observations without jurisdiction, however, as per revenue's affidavit CAG had neither directly nor indirectly conducted any audit on records of assessee nor have they visited assessee's offices for conducting the audit, CAG had merely asked revenue to submit relevant documents to ascertain correctness of revenue realized from assessee and then notice discrepancies, thus, instant writ petition was to be dismissed - **Vertiv Energy (P.) Ltd. v. Union of India** - [2024] 169 taxmann.com 126 (Bombay)

3.72 Where petitioner-assessee was not provided with an opportunity of hearing to explain alleged discrepancies, therefore, impugned assessment order was to be set aside and petitioner-assessee should deposit 25% of disputed tax - **Muzamil N v. Deputy State Tax Officer -I** - [2024] 169 taxmann.com 451 (Madras)

3.73 Where plea raised by assessee in reply to show cause notice issued under section 74(5) that on account of some family dispute, assessee being unaware of issuance of notice, could not attend said hearing, only points of notice under section 74(5) reproduced in notice under section 74(1) of UPGST Act, assessee's reply not considered, demand order was to be set aside - **Kashi Vishwanath Mfg v. State of U.P.** - [2024] 169 taxmann.com 280 (Allahabad)

3.74 Where respondent-department segregated liability of petitioner-assessee for entire period between January-2018 and August-2022 in a consolidated show cause notice, instead of issuing separate show cause notices, therefore following decision of W.P.No.15810/2024, impugned show cause notice issued by respondent-department was to be set aside - **Albatross Builders and Developers LLP v. Assistant Commissioner of Central Tax (A.E.)** - [2024] 169 taxmann.com 598 (Karnataka)

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

3.75 Where respondent no.1-department passed assessment order against petitioner-assessee without providing an opportunity of hearing to petitioner-assessee, therefore, impugned order not only suffered from violation of principles of natural justice, but also, same was against provisions contemplated under Section 75(4), hence, impugned order was to be set aside and matter was to be remanded back to respondent no.1-department - **Swamikannu Logistics (P.) Ltd. v. Deputy Commercial Tax Officer** - [2024] 169 taxmann.com 92 (Madras)

3.76 Writ petition involving disputed questions of fact regarding grant of personal hearing opportunities cannot be entertained in writ jurisdiction, relegating assessee to statutory appellate remedy - **Manish Benimadhab Singh v. Union of India** - [2024] 169 taxmann.com 602 (Gujarat)

3.77 Order passed in a mechanical manner without considering various contentions raised by assessee in its reply to show cause notice and without affording personal hearing as sought for by assessee was to be quashed - **Rays Power Infrastructure (P.) Ltd. v. Assistant Commissioner of Commercial Taxes** - [2024] 169 taxmann.com 151 (Karnataka)

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

3.78 Where order for recovery of interest was passed against assessee under section 75(12) read with section 79 of UPGST Act, assessee's reply to notice not considered, order impugned was to be set aside - **Jeet Security and HR Services v. State of U.P.** - [2024] 169 taxmann.com 279 (Allahabad)

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

3.79 When there was self-assessment made by filing returns in Form GSTR-1, but Form GSTR-3B was not filed and tax was not paid, request for payment of tax in instalments was to be rejected when petitioner had not paid any amount towards tax liability even two years after passing of order during pendency of writ petition - **PKP Spintex Mills (P.) Ltd. v. Commissioner, Office of the Commissioner of GST & Central Excise** - [2024] 169 taxmann.com 523 (Madras)

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

3.80 Where electronic credit of assessee was blocked in excess to amount available vide impugned order, following decision in Best Crop Science (P.) Ltd. v. Principal Commissioner, CGST Commissionerate, Meerut [2024] 166 taxmann.com 654 (Delhi), impugned order was to be set aside - **Kings Security Guard Services (P.) Ltd. v. Deputy Director, Directorate General of GST Intelligence** - [2024] 169 taxmann.com 409 (Delhi)

SECTION 93 OF THE FINANCE ACT, 1994 - POWER TO GRANT EXEMPTION FROM SERVICE TAX

3.81 Where an association filed writ petition challenging notifications affecting its members, but members who were served notices were not directly before Court, writ petition was to be disposed of directing affected members to approach Adjudicating Authorities - **Mumbai & Nhava-Sheva Ship Agents Association v. Union of India** - [2024] 169 taxmann.com 334 (Bombay)

SECTION 98 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - PROCEDURE ON RECEIPT OF APPLICATION

3.82 Where during pendency of advance ruling application filed by assessee pre-show cause notice issued under section 73(5) of MGST, question raised in application not already pending or decided in any proceedings in case of assessee under any

of provisions of CGST/SGST Act, subsequent issue of pre-show cause notice was not a bar in deciding application on merits - **General Motors India (P.) Ltd. v. State of Maharashtra** - [2024] 169 taxmann.com 483 (Bombay)

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

- 3.83** Appeal dismissed solely on ground that signatory lacked authority without verifying GST portal to confirm authorization invalidates dismissal and warrants fresh consideration with proper hearing - **Tata Consumer Products Ltd. v. Union of India** - [2024] 169 taxmann.com 93 (Bombay)
- 3.84** Where assessee's Advocate did not file appeal even after assurance and appeal was filed after a delay by another Advocate, such delay was due to circumstances beyond assessee's control, Appellate Authority should consider application for condonation of delay on merits - **Pramod Kumar Jaiswal v. State of West Bengal** - [2024] 169 taxmann.com 488 (Calcutta)
- 3.85** Where assessee filed an appeal against demand order within 108 days from date of order and same was rejected as time barred, as per section 107, appeal was instituted within condonable period thus, impugned order rejecting appeal was to be set aside - **Melstar Metals v. Union of India** - [2024] 169 taxmann.com 552 (Bombay)
- 3.86** Where impugned order passed under section 74 of CGST Act demanding payment of interest and penalties, Show Cause Notice issued without providing opportunity for a personal hearing, notice went unnoticed due to assessee's reliance on accountant and health issue, application for condonation of delay of 72 days in filing appeal under section 107 of CGST Act was to be considered on merits - **Snehasish Paul v. Assistant Commissioner of State Tax** - [2024] 169 taxmann.com 377 (Calcutta)
- 3.87** Where assessee filed writ petition against order in original on grounds of violation of principles of natural justice, all such contentions, whether on merits or alleged ground of failure of natural justice, could always be raised before Appellate Authority, thus, writ petition could not be entertained and assessee was to be relegated to alternate remedy of appeal - **Pepperfry (P.) Ltd. v. Union of India** - [2024] 169 taxmann.com 554 (Bombay)
- 3.88** Alleged non-consideration of some of documents by Adjudicating Authority could not be considered a complete breach of principles of natural justice; matters were to be examined by Appellate Authority - **Trade Concepts Corporation v. State of Maharashtra** - [2024] 169 taxmann.com 605 (Bombay)

3.89 Where assessee impugned orders passed by authorities alleging tax was demanded on items for which tax had already been paid, simply alleging violation of natural justice or claiming that judgments of Courts are not considered was insufficient, petition was to be rejected with liberty to assessee to challenge impugned orders by instituting appeals before Appellate Authority - **Zoomcar India (P.) Ltd. v. State of Maharashtra** - [2024] 169 taxmann.com 562 (Bombay)

3.90 Where averments in petition were misleading that no remedy was available to assessee, assessee in fact had alternate remedy of appeal to Commissioner (Appeals), court was not to depart from practice of exhaustion of alternate remedies, petition was not to be entertained and petitioner was to be relegated to alternate remedy of appeal - **Hitachi Astemo FIE (P.) Ltd. v. Additional Commissioner Central GST** - [2024] 169 taxmann.com 405 (Bombay)

3.91 Where assessee impugned orders in original and Notification No. 9 of 2023-Central Tax, dated 31-3-2023, purporting to extend limitation for passing final order in respect of Assessment Year 2017-18, assessee had alternate remedy of appeal, if assessee succeed, there would be no occasion to challenge impugned Notification, if statutory remedies fail, assessee could challenge impugned notification, petitioner was to be relegated to alternate remedy of appeal - **Alkem Laboratories Ltd. v. Joint Commissioner of CGST and Central Excise** - [2024] 169 taxmann.com 627 (Bombay)

3.92 Where writ petition of assessee was allowed by single judge directing assessee to pre-deposit Rs. 3 lakhs, which was over and above statutory amount of 10 percent, such order was to be modified in intra-court appeal and assessee was to be directed to deposit only 10 percent of disputed tax amount for preferring appeal - **Shaikh Sons & Co. v. Union of India** - [2024] 169 taxmann.com 636 (Calcutta)

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

3.93 Where assessee was aggrieved by order passed by first appellate authority and wanted to file appeal against said order before Tribunal, however same had not been constituted, impugned order was to remain stayed on payment of 10 percent of disputed tax amount - **DNC Infrastructure (P.) Ltd. v. State Tax Officer, CT and GST Circle BBSR-1** - [2024] 169 taxmann.com 323 (Orissa)

3.94 Where demand was created against assessee by order of Appellate Authority and assessee wanted to challenge same before Tribunal, however, Tribunal had not yet been constituted, no coercive measures were to be taken against assessee and recovery proceedings were to be stayed - **Bum Bum Corporation v. State of Madhya Pradesh** - [2024] 169 taxmann.com 360 (Madhya Pradesh)

SECTION 127 OF THE SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019 - ISSUE OF STATEMENT BY DESIGNATED COMMITTEE

- 3.95** Where declaration filed under Sabka Vishwas (Legacy Dispute Resolution) Scheme was rejected on ground that redemption fine was not covered by Scheme, redemption fine is akin to penalty and once assessee's application under SVLDR Scheme accepting payment of excise duty was accepted, benefit of scheme extended to redemption fine also, rejection of declaration was to be set aside - **Juice Electricals (P.) Ltd. v. Union of India** - [2024] 169 taxmann.com 330 (Bombay)

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

- 3.96** During period from 1-2-2018 to 31-3-2018, requirement of E-way Bill under UP GST Act was not enforceable; where on 18.3.2018, Central E-way bill under GST Act was available and only E-way Bill 01 under UP GST Act was not available with goods in question however before passing of penalty order, same was produced detention and seizure of goods and imposition of penalty was not justified - **Manas Enterprises v. State of U.P.** - [2024] 169 taxmann.com 171 (Allahabad)
- 3.97** Non-filing of part of E-way Bill would not ipso facto trigger proceedings under section 129 in facts of instant case when is physical inspection of goods tallied with goods declared in E-way Bill and for non filing of some part of E-way Bill no intent of tax evasion was made out - **Monotech Systems Ltd. v. State of U.P.** - [2024] 169 taxmann.com 211 (Allahabad)
- 3.98** Where an irregularity was committed by petitioner-assessee by not having invoice and e-way bill amended to correspond with goods that were loaded on vehicle and petitioner-assessee failed to produce all records to substantiate case before respondent-department, therefore, impugned order was to be upheld and writ petition was to be dismissed - **Balamurugan Steels v. State Tax Officer - 1 (Intelligence)** - [2024] 169 taxmann.com 599 (Madras)
- 3.99** Where goods and vehicle of assessee were detained and adjudication order was passed imposing tax and penalty, which was also confirmed by appellate authority, since discrepancy between description of goods mentioned in invoices and on physical verification was significant, orders passed by Adjudicating Authority as well as Appellate Authority were justified - **Ashok Sharma v. State of West Benal** - [2024] 169 taxmann.com 516 (Calcutta)

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

- 3.100** Writ jurisdiction against order of confiscation of goods and vehicles and imposition of penalty was not maintainable when alternate remedy of appeal was

available; order, if not served, was to be deemed to have been served on assessee when uploaded on GST portal - **Windals Precision (P.) Ltd. v. Assistant Commissioner State Tax** - [2024] 169 taxmann.com 607 (Uttarakhand)

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

- 3.101** Since arrest procedures, including furnishing written grounds and meaningful communication, were not followed as per Section 69(2), assessee's arrest was illegal and remand order was to be set aside - **Kshitij Ghildiyal v. Director General of GST Intelligence, Delhi** - [2024] 169 taxmann.com 446 (Delhi)

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

- 3.102** Where assessee claimed transitional credit of excise duty under Section 140(3), through Credit Transfer Document (CTD) via TRAN-3 form, without submitting TRAN-1 within stipulated period under Rule 117 and said claim was rejected as non-filing of TRAN-1 within stipulated period under Rule 117 constituted a violation of substantive requirement; instant writ petition was to be dismissed - **Dharnia Motors v. Union of India** - [2024] 169 taxmann.com 362 (Rajasthan)

SECTION 148 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SPECIAL PROCEDURE FOR CERTAIN PROCESSES

- 3.103** Where input tax credit for financial year 2018-19 was disallowed on delay in filing of return, assessee claimed that section 16(5) of CGST Act extended time for filing of return for financial year 2018-19 up to 30-11-2021, assessee's return filed on 30-11-2019, in view of Circular No. 237/31/2024-GST dated 15-10-2024 assessee was to be directed to apply for rectification under section 148 - **City Ply and Hardware v. Union of India** - [2024] 169 taxmann.com 274 (Orissa)

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

- 3.104** Where Department levied tax on basis of very same discrepancies between GSTR-7 and GSTR-3B, which had been dropped on two earlier occasions, impugned order suffered from error apparent on face of record; matter was to be readjudicated - **Tvl. V.G. Senthilkumar v. Deputy State Tax Officer-1** - [2024] 169 taxmann.com 606 (Madras)
- 3.105** When an application for rectification was made at instance of assessee, if such application is sought to be rejected, it is imperative that assessee should be put on notice and reasons should be assigned for such rejection - **Suriya Cement Agency v. State Tax Officer** - [2024] 169 taxmann.com 675 (Madras)

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

3.106 Where impugned order of assessment was passed in case of assessee without mentioning DIN number, following decision of supreme court in Pradeep Goyal v. Union of India [2022] 141 taxmann.com 64 (SC), wherein SC held that order which does not contain a DIN number would be non-est and invalid, impugned order of assessment was to be set aside - **Sri Hanuma Enterprises v. Assistant Commissioner of State Tax** - [2024] 169 taxmann.com 364 (Andhra Pradesh)

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

3.107 Where assessment order issued by respondent authority in Form GST DRC-07 to assessee did not contain DIN number, order issued was non-est and invalid and thus was to be set aside - **Dish TV India Ltd. v. State of Andhra Pradesh** - [2024] 169 taxmann.com 400 (Andhra Pradesh)

4. FOREIGN COURT

ARTICLE 36 OF COUNCIL DIRECTIVE 2008/118/EC - DISTANCE SELLING

4.1 Vendor of excise goods, who recommends and facilitates use of particular transport company for dispatch and/or transport of goods to another Member State, can be regarded as being indirectly involved in dispatch and/or transport of excise goods to Member State of destination and as being, consequently, liable for excise duty in that Member State, despite vendor's contention that it did not directly organise transport,

court focused on substance over form of transaction - **B UG v. Veronsaajien oikeudenvalvontayksikkö** - [2024] 169 taxmann.com 517 (ECJ)

ARTICLE 168 OF COUNCIL DIRECTIVE 2006/112/EC - DEDUCTIONS - ORIGIN AND SCOPE OF RIGHT OF DEDUCTION

4.2 Tax authority cannot refuse right to deduct input VAT paid by taxable person when acquiring services from other taxable persons belonging to same group of companies on grounds that those services were supplied at same time to other companies in group and that purchase of such services was necessary or appropriate, where it is established that those services are used by that taxable person for purposes of its own taxed output transactions - **Weatherford Atlas Gip SA v. Agenția Națională de Administrare Fiscală - Direcția Generală de Soluționare a Contestațiilor** - [2024] 169 taxmann.com 388 (ECJ)

5. AAAR

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

5.1 Services of rental vehicles without operator provided by applicant-assessee falls under Sl. No. 17 (viii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and attracts GST at rate of 18% - **Indus Motor Co. (P.) Ltd., In re v.** - [2024] 169 taxmann.com 232 (AAR - KERALA)

Rule 86A of CGST Rules: **An Analysis of Interpretations and Controversies**



CA Swapnil Jain

Introduction

Rule 86A of the Central Goods and Services Tax (CGST) Rules, 2017, was introduced as a measure to tackle the issue of fraudulent input tax credit (ITC) claims, especially those arising from fake invoices. This rule empowers tax authorities to block the use of ITC in a taxpayer's electronic credit ledger (ECL) under specific circumstances. However, the interpretation and application of Rule 86A have resulted in considerable legal challenges and divergent views among various High Courts. This article examines the key aspects of Rule 86A, including the conditions for its invocation, its consequences, and the major points of contention that have emerged, drawing from recent case law.

Background of Rule 86A

The GST Council recommended the insertion of Rule 86A to control the fraudulent availment of ITC and to block ineligible credits. Consequently, the Central Board of Indirect Taxes and Customs (CBIC) implemented the rule via notification no. 75/2019-Central Tax, effective from December 26, 2019.

Conditions for Invoking Rule 86A

Rule 86A(1) authorizes a Commissioner or an officer (not below the rank of Assistant Commissioner) to block the debit of ITC from the ECL. This action can be taken if the officer has "reasons to believe" that the input tax credit available in the ECL has been fraudulently availed or is ineligible. The reasons for this belief must be based on specific conditions outlined in the rule, including but not limited to:

- The credit has been availed on the strength of tax invoices or debit notes issued by a registered person who is non-existent or not conducting business from the declared place.
- The credit has been availed without the actual receipt of goods or services.
- The recipient is not in possession of a valid tax invoice or other required documents.

Key Requirements

Several key conditions must be met before Rule 86A can be invoked:

- **Availability of Credit:** Input tax credit must be available in the electronic credit ledger on the date the competent authority decides to invoke Rule 86A.
- **Reason to Believe:** The authority must have a genuine reason to believe that the credit has been fraudulently availed or is ineligible. This reason must be based on credible information and not mere suspicion.

- **Recording of Reasons:** The reasons for such belief must be recorded in writing.
- **Provisional Nature:** The action taken under Rule 86A is provisional and temporary, pending further investigation.

Consequences of Invoking Rule 86A

If the conditions for invoking Rule 86A are met, the competent authority can disallow the debit of an amount equivalent to the fraudulently availed or ineligible credit from the ECL. This restriction prevents the taxpayer from using the blocked credit to discharge any liability under Section 49 or claim any refund.

Controversies and Interpretations

The implementation of Rule 86A has led to significant disputes, primarily centered on the following issues:

- **Negative Blocking of ECL:** A major point of contention is whether Rule 86A permits the creation of a negative balance in the ECL if the ITC is not available or has already been utilized. **Several High Courts have ruled against negative blocking, holding that it is beyond the scope of Rule 86A and illegal.** These courts emphasize that the rule is intended to block available credit, not create a liability for future credit. The power under Rule 86A is to disallow debit of an amount equivalent to available credit, not to recover tax.
- **The meaning of "Available":** Courts have debated the meaning of "available" in the context of Rule 86A(1). Some argue that "available" refers only to the credit existing in the ECL at the time of the order, while others contend it includes credit that was previously available but has since been utilized.
- **Provisional vs. Recovery:** It is well established that Rule 86A is a provisional measure for protecting revenue, not a mechanism for recovery of tax dues. Tax recovery proceedings are governed by Sections 73 and 74 of the CGST Act.
- **Opportunity of Hearing:** Some courts have held that a post-decisional or remedial hearing should be granted to the affected party. This is to ensure the principles of natural justice are upheld, especially given the potential impact on business operations.
- **Guidelines for Invocation:** Several High Courts have emphasized the need for the government to establish clear guidelines for invoking Rule 86A to prevent misuse and ensure fairness. The power should not be exercised in a mechanical manner but rather based on a careful examination of the facts.
- **Reliance on Borrowed Satisfaction:** Authorities cannot rely on the satisfaction of other officers but must independently assess material before blocking the ECL.

Judicial Interpretations

Several High Courts have interpreted Rule 86A, and some of the key rulings are:

- **Gujarat High Court:** In *Samay Alloys India Pvt. Ltd. v. State of Gujarat* [2022 (61) G.S.T.L. 421 (Guj.)] and *PMW Metal and Alloys Pvt. Ltd. v. Union of India* [2024 (23) Centax 317 (Guj.)], the court held that blocking of ECL is not permissible when there is no balance in the credit ledger. It also held that the rule does not allow making debit entries in the ECL, and doing so amounts to a recovery. The court has also held that the right to utilize validly availed ITC is a vested right.

- **Delhi High Court:** In *Best Crop Science Pvt. Ltd. v. Principal Commissioner* [2024 (9) TMI 1543 (Delhi)] and *Karuna Rajendra Ringshia v. Commissioner of Central Goods and Service Tax* [2024 (12) TMI 1513 (Delhi)], the court held that Rule 86A does not allow for the creation of a negative balance in the ECL. The court also clarified that Rule 86A is not a recovery provision, but a temporary measure.
- **Karnataka High Court:** In *K-9-Enterprises v. State of Karnataka* [2023 (8) TMI 170 (Karnataka)] and *M/s Klassic Traders v. The Secretary to Government Department of Revenue* [2025 (1) TMI 251 (Karnataka)], the court emphasized that the authorities must have 'reasons to believe' that ITC was fraudulently availed, supported by material evidence, and not borrowed satisfaction. The court also highlighted the importance of a pre-decisional hearing.
- **Telangana High Court:** In *Laxmi Fine Chem v. Asstt. Commissioner* [2024 (87) G.S.T.L. 197 (Telangana)], the court followed the Gujarat High Court's ruling in *Samay Alloys*, stating that blocking an ECL with a nil balance is impermissible.
- **Jharkhand High Court:** In *Maa Sharda Endeavour Pvt. Ltd. v. State of Jharkhand* [2024 (23) Centax 440 (Jhar.)], the court ruled that if no ITC is available in the ECL, blocking it under Rule 86A and inserting a negative balance would be without jurisdiction.
- **Calcutta High Court:** In *S.S. Enterprise v. State Tax Officer* [2022 (64) G.S.T.L. 311 (Cal.)], the court noted that credit which was not availed cannot be blocked until a final order is passed.
- **Madras High Court:** In *Tvl. Skanthaguru Innovations Private Limited v. Commercial Tax Officer* [Writ Petition No. 29872 of 2024 dated November 28, 2024], the court held that if there is no credit of input tax available in the ECL, one of the necessary conditions for passing an order under Rule 86A(1) would not be satisfied.

Conclusion

Rule 86A of the CGST Rules is an important tool to prevent fraudulent ITC claims. However, its implementation requires careful adherence to the stipulated conditions and principles of natural justice. The ongoing debates and varying interpretations across High Courts highlight the need for clear guidelines, proper application of mind, and a balanced approach by tax authorities. It is imperative for authorities to recognize that Rule 86A is a provisional measure and not a substitute for proper assessment and recovery proceedings under the CGST Act. Furthermore, the courts have consistently held that **a negative blocking of the ECL is not permissible under Rule 86A.**

As the saying goes, "*With great power comes great responsibility.*" Therefore, it is crucial for the revenue department to exercise the powers granted under Rule 86A judiciously and only in cases where it is absolutely necessary.

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

- 1.1** SEBI mandates merchant bankers to subscribe to securities of body corporate before allotment finalization - **NOTIFICATION F. NO. SEBI/LAD-NRO/GN/2024/214, DATED 29-11-2024**

Editorial Note : SEBI has notified the SEBI (Merchant Bankers) (Amendment) Regulations, 2024. As per the amended norms, a merchant banker, when called upon pursuant to an agreement for underwriting to subscribe to the securities of a body corporate, must subscribe to the said securities before finalizing the basis of allotment. Further, the merchant banker must inform the Board of any changes in the information submitted while seeking registration within 7 working days of such change.

- 1.2** SEBI mandates every depository participant to provide nomination facility to beneficial owners - **NOTIFICATION F. NO. SEBI/LAD-NRO/GN/2024/213, DATED 03-12-2024**

Editorial Note : SEBI has notified the SEBI (Depositories and Participants) (Third Amendment) Regulations, 2024. A new regulation 60A w.r.t nomination has been inserted. It states that every participant must provide an option to the beneficial owner to nominate a person to whom the securities held by him must vest in the event of his death. Further, the depository and participant must not be liable for any action taken on the basis of nomination made by the beneficial owner.

- 1.3** Brokers may share contact details for family or authorized persons in SMS/email alerts under exceptions, SEBI clarifies - **CIRCULAR NO. SEBI/HO/MIRSD/MIRSD-POD1/P/CIR/2024/169, DATED 03-12-2024**

Editorial Note : SEBI has amended guidelines for SMS and email alerts to investors by stock exchanges. It has been clarified that under exceptional circumstances, the brokers may, upload the same mobile number/Email address for more than 1 client provided such client belong to one family (in case of individual clients) or such client is the authorised person of an HUF, Corporate, Partnership or Trust (in case of non-individual clients). The provisions of this circular shall come into force with immediate effect.

- 1.4** SEBI issues updated Master Circular for Depositories - **MASTER CIRCULAR SEBI/HO/MRD/MRD-PoD-1/P/CIR/2024/168, DATED 03-12-2024**

Editorial Note : SEBI has issued an updated master circular for Depositories. This master circular covers the relevant applicable circulars/communications

pertaining to depositories issued by SEBI up to September 30, 2024. It enables the users to have access to all applicable circulars/directions at one place. The master circular consists of four sections, i.e. (a) beneficial Owner (BO) Accounts, (b) Depository Participants (DP) Related, (c) Issuer related and (d) Depositories Related.

- 1.5** A regulated entity can associate with or through a digital platform that is not a 'Specified Digital Platform': SEBI clarifies - **PRESS RELEASE NO. 31/2024, DATED 04-12-2024**

Editorial Note : Various queries have been raised in multiple news articles about obligation of digital platforms to get recognition as a Specified Digital Platform (SDP). In this regard, SEBI has clarified that it is not obligatory for any digital platform to be notified as SDP. A regulated entity can associate with or through a digital platform that is not an SDP. An SDP is a digital platform approved by SEBI with mechanisms to prevent and address prohibited activities such as unregulated advice or claims.

- 1.6** SEBI amends the prohibition of Insider Trading norms; widens the definition of a connected person - **NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/215, DATED 04-12-2024**

Editorial Note : SEBI has notified the SEBI (Prohibition of Insider Trading) (Third Amendment) Regulations, 2024. The amended norms modifies the definition of the connected person. Now, a firm or its partner or its employee in which a connected person is also a partner shall deemed to be connected persons. Further, a person sharing household or residence with a connected person shall also be deemed a connected person.

- 1.7** SEBI amends Intermediaries Regulations; Introduces 'Summary Proceedings' - **NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/216, DATED 04-12-2024**

Editorial Note : SEBI has amended the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Board has introduced summary proceedings for specific non-compliant intermediaries. These proceedings cover stock brokers, clearing members, depository participants, and others failing to meet obligations or violating securities laws. The amendment mandates the issuance of notices, submission of responses with documentary evidence, and the subsequent passing of orders.

- 1.8** Stock exchanges introduces 'Document Repository Platform' for merchant bankers to manage public issue records - **CIRCULAR NO. SEBI/HO/CFD/CFD-TPD-1/P/CIR/2024/170, DATED 05-12-2024**

Editorial Note : To enhance the efficient management of records used by merchant bankers during due diligence for public issues, stock exchanges have introduced an online Document Repository platform. The Document

Repository platform is intended to facilitate easier access to documents related to the public issue process. Merchant bankers shall ensure that the documents uploaded are relevant, complete and legible. This circular shall be applicable for the draft offer documents filed on or after 01.01.2025.

1.9 SEBI warns public against unregistered platforms offering unlisted debt securities - *PRESS RELEASE NO. 32/2024, DATED 05-12-2024*

Editorial Note : SEBI has urged public to exercise caution about unregistered online platforms offering unlisted debt securities, which lack regulatory oversight and investor protection. These activities violate various regulations, including the Companies Act and SEBI Regulations, and could lead to legal action. Investors are advised to use SEBI-registered Online Bond Platforms operated by BSE/NSE. Further, public is urged to report unregistered entities offering unlisted debt securities via the MI portal.

1.10 SEBI updates Investor Charter to enhance protection, transparency, & the right to exit at fair terms from market products - *PRESS RELEASE NO.33/2024, DATED 06-12-2024*

Editorial Note : SEBI has updated its 'Investor Charter' to enhance investor protection, market transparency, and trust and confidence among investors. Key updates includes ensuring confidentiality of investor information and providing the right to exit at fair and reasonable terms from the securities market related products or services. SEBI has strengthened the grievance redressal mechanism and alternative dispute resolution mechanism with the launch of SCORES 2.0 & SMART Online Dispute Resolution.

1.11 SEBI cautions investors not to undertake investment/trading activities via un-registered web applications/e-platforms - *PRESS RELEASE NO. 34/2024, DATED 09-12-2024*

Editorial Note : SEBI has noticed that certain electronic platforms or websites are facilitating transactions in unlisted securities of public limited companies. SEBI cautions investors not to conduct any transactions on such electronic platforms or share any sensitive personal details as these platforms are neither authorized nor recognized by SEBI. SEBI further informed that benefits like investor protection under SEBI/ Exchange(s) Jurisdiction, online dispute resolution mechanism shall not be available.

1.12 SEBI revises guidelines for capacity planning and real-time performance monitoring of Market Infrastructure Institutions - *CIRCULAR NO. SEBI/HO/MRD/TPD/CIR/P/2024/171, DATED 10-12-2024*

Editorial Note : SEBI has revised guidelines for capacity planning and real-time performance monitoring framework of Market Infrastructure Institutions (MIIs). Under the revised guidelines, MIIs have been directed to develop future-ready frameworks to estimate capacity needs based on trends, historical data, transaction growth, and business changes. Further, all MIIs must ensure adequate system capacity in place to handle high volumes to ensure a high level of service availability.

1.13 SEBI expands optional T+0 settlement cycle to top 500 scrips by market capitalization - *CIRCULAR NO. SEBI/HO/MRD/MRD-POD-3/P/CIR/2024/172, DATED 10-12-2024*

Editorial Note : Earlier, SEBI vide Circular dated 21.03.2024 introduced the beta version of T+0 rolling settlement cycle on optional basis in addition to the existing T+1 settlement cycle in Equity Cash Markets, for a limited set of 25 scrips. Now, to increase the efficiency of optional T+0 settlement cycle, SEBI has decided to increase the number of eligible scrips for trading under optional T+0 settlement cycle to top 500 scrips in terms of market capitalization as on 31.12.2024.

1.14 SEBI amends NCS Regulations; insert norms relating to 'Issuance of Environment, Social & Governance Debt Securities' - *NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/217, DATED 11-12-2024*

Editorial Note : SEBI has notified the SEBI (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2024. A new regulation 12A relating to 'Issuance of Environment, Social and Governance Debt Securities' has been inserted. It states that an issuer desirous of issuing and listing of Environment, Social and Governance Debt Securities (ESG Debt Securities) must comply with conditions as may be specified by the Board. Further, the term 'ESG Debt Securities' has been defined.

1.15 SEBI introduces significant changes to LODR norms enhancing governance and transparency of listed entities - *NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/218, DATED 12-12-2024*

Editorial Note : SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024. The major changes include: (a) mandating secretarial audits to be conducted by a secretarial auditor who must be a peer-reviewed CS, (b) making publication of financial results optional, (c) introducing detailed norms governing the eligibility, qualifications, & disqualifications of secretarial auditors, and (d) prescribing a cooling-off period for secretarial auditors.

1.16 SEBI relaxes ISIN limits for listing of unlisted debt securities outstanding as on Dec 31, 2023 - *CIRCULAR NO. SEBI/HO/DDHS/DDHS-POD-1/P/CIR/2024/173, DATED 13-12-2024*

Editorial Note : Earlier, the SEBI has provided the specific provisions pertaining to maximum number of ISINs that can mature in a financial year in respect of private placement of debt securities. Now, in order to encourage the listing of Unlisted ISINs has specified that the Unlisted ISINs outstanding as on Dec 31, 2023 which are converted to listed ISINs shall be excluded from the maximum limit of ISINs to mature in a financial year.

- 1.17** Corporate Debt Market Development Fund (CDMDF) will be classified as Category-1 AIF, SEBI clarifies - **CIRCULAR NO. SEBI/HO/IMD/POD2/P/CIR/2024/174, DATED 13-12-2024**

Editorial Note : Earlier, SEBI had received representation to provide clarity on the classification of CDMDF under one of the defined categories under the AIF Regulations. Though SEBI has laid down a separate framework for Corporate Debt Market Development Fund (CDMDF). Now SEBI has clarified the Corporate Debt Market Development Fund (CDMDF) will be categorized as the Category-1 AIF.

- 1.18** No Pro-Rata Rights for defaulting AIF investors: SEBI - **CIRCULAR NO. SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/175, DATED 13-12-2024**

Editorial Note : Earlier, the SEBI had notified the norms w.r.t pro-rata and pari-passu rights of investors of AIFs. Now, SEBI has specified that the investors that has defaulted on providing his/her pro-rata contribution for the said investment will not be eligible for pro-rata rights. Further, the requirement of maintaining pro-rata rights of investors shall not be applicable to the extent returns or profit on the investments is shared by an investor with the manager or sponsor of the AIF.

- 1.19** SEBI introduces 'Specialized Investment Funds' under Mutual Funds Regulations with a minimum investment of Rs. 10 lakh - **NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/221, DATED 16-12-2024**

Editorial Note : SEBI has notified amendment in SEBI (Mutual Funds) Regulations, 1996, introducing chapter VI-C i.e., Specialized Investment Fund. The provisions of this Chapter shall apply to a Specialized Investment Fund fulfilling eligibility criteria as prescribed by the board. A Specialized Investment Fund shall not accept from an investor, an investment amount less than ten lakh rupees across all investment strategies. Also, SEBI has introduced 'Mutual Fund Lite' under Chapter XI.

- 1.20** SEBI mandates Investment Advisers to disclose use of 'AI Tools' to clients in providing investment advice - **NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/219, DATED 16-12-2024**

Editorial Note : SEBI has notified SEBI (Investment Advisers) (Second Amendment) Regulations, 2024. New sub-regulations have been inserted to regulation 18 relating to 'disclosures to clients'. It states that an investment adviser must disclose to the client the extent of use of 'Artificial Intelligence tools' in providing investment advice. Also, an investment adviser who provides advisory services in respect of products or services that are outside the purview of the Board, must disclose the same to client.

- 1.21** SEBI mandates non-individual research analysts to ensure client-level segregation for research & distribution services - **NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/220, DATED 16-12-2024**

Editorial Note : SEBI has notified SEBI (Research Analysts) (Third Amendment) Regulations, 2024. A new regulation 26C relating to 'Client level segregation of research services and distribution activities' has been inserted. It states that an individual research analyst must not provide distribution services. Further, a non-individual research analyst or research entity must have client-level segregation at the group level for research services and distribution services.

- 1.22** SEBI amends Mutual Fund Regulations; insert norms relating to 'Specialized Investment Fund' - **NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/221, DATED 16-12-2024**

Editorial Note : SEBI has notified SEBI (Mutual Funds) (Third Amendment) Regulations, 2024. A new chapter VI-C relating to 'Specialized Investment Fund' has been inserted. It states that a specialized investment fund must not accept from an investor, an investment amount of less than Rs 10 lakh across all investment strategies in the manner as may be specified by the Board. A 'specialized investment fund' means a mutual fund as defined under regulation 2 and subject to specified conditions.

- 1.23** FPIs must issue ODIs exclusively through a separate FPI registration ensuring no proprietary investments: SEBI - **CIRCULAR NO. SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/176, DATED 17-12-2024**

Editorial Note : SEBI has issued measures to address regulatory arbitrage regarding Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios. An FPI must issue ODIs only through a separate dedicated FPI registration with no proprietary investments. Such registration must be in the name of the FPI with 'ODI' as a suffix under the same PAN. Also, SEBI has mandated additional disclosures by ODI subscribers that fulfil certain objective criteria.

- 1.24** SEBI Board approves SME IPO norm changes; mandates 'Rs. 1 crore' operating profit in 2 of 3 preceding years for DRHP filing - **PRESS RELEASE NO. 36/2024, DATED 18-12-2024**

Editorial Note : SEBI Board, in its 208th Board Meeting, approved several amendments to regulations, including measures to enhance ease of doing business related to Business Responsibility & Sustainability Reporting, a review of the SME framework under ICDR Norms, review of Merchant Bankers Regulations, etc. Board has approved amendment to mandate issuer to have operating profit of Rs. 1 crore from operations for any 2 out of 3 previous financial years at the time of filing of its draft red herring prospectus.

- 1.25** SEBI extends suspension of trading in derivative contracts in 7 agro commodities to January 31, 2025 - **PRESS RELEASE NO. 37/2024, DATED 18-12-2024**

Editorial Note : Earlier, SEBI issued directions to stock exchanges with a commodity derivatives segment to suspend trading in derivative contracts for 7 agro commodities for a period of one year. Subsequently, the suspension was extended beyond December 20, 2023, to December 20, 2024. Now, SEBI has further extended the suspension of trading in these contracts to January 31, 2025.

- 1.26** FPIs are barred only from issuing ODIs with derivatives as underlying; cash-market ODIs remain unaffected; SEBI clarifies - **PRESS RELEASE NO. 35/2024, DATED 18-12-2024**

Editorial Note : SEBI has clarified that FPIs have only been barred from issuing Overseas Derivative Instruments (ODIs) with derivative instruments as the underlying. As on date, there are no ODIs with derivative instruments as the underlying. Further, it is also clarified that ODIs referencing cash market securities can continue to be issued.

- 1.27** SEBI introduces a uniform data-sharing policy for Stock Exchanges, CCs and Depositories for research/analysis purposes - **CIRCULAR NO. SEBI/HO/DEPA-II/DEPA-II_SRG/P/CIR/2024/178, DATED 20-12-2024**

Editorial Note : SEBI has introduced a uniform policy for Stock Exchanges, Clearing Corporations, and Depositories to share data separately for only research/research publications undertaken by accredited academic institutions. However, data shared with vendors for commercial purposes must not fall under this policy. This policy is aimed at balancing data accessibility for research with privacy and confidentiality concerns, ensuring transparency and protection in the securities market.

- 1.28** SEBI reduces timeline for uploading of 'Scheme Information Document' on its website to 8 working days for public comments - **CIRCULAR NO. SEBI/HO/IMD/IMD-RAC-1/P/CIR/2024/179, DATED 20-12-2024**

Editorial Note : As per the SEBI's Master Circular dated June 27, 2024, AMCs are required to submit a soft copy of the draft Scheme Information Document (SID) to SEBI, which is made available on its website for 21 working days from the date of filing to receive public comments. SEBI has now reduced the timeline for uploading SID on its website from 21 working days to at least 8 working days to receive public comments on the adequacy of disclosures made in the offer document.

- 1.29** Listed entities to follow industry standards on reporting of 'Business Responsibility and Sustainability Report' Core: SEBI - **CIRCULAR NO. SEBI/HO/CFD/CFD-POD-1/P/CIR/2024/177, DATED 20-12-2024**

Editorial Note : In order to facilitate ease of doing business and to bring about standardisation in implementation, the Industry Standards Form (ISF) has formulated industry standards for effective implementation of the requirement to disclose 'Business Responsibility and Sustainability Report' (BRSR) Core under LODR norms. The listed entities must follow the standards to ensure compliance with SEBI requirements on disclosure of BRSR Core. The circular shall be applicable for FY 2024-25 and onwards.

- 1.30** SEBI withdraws recognition of 'Indian Commodity Exchange Limited' as a stock exchange - **NOTIFICATION NO. SEBI/LAD-NRO/GN/2024/222, DATED 24-12-2024**

Editorial Note : SEBI has notified the withdrawal of recognition granted to the 'Indian Commodity Exchange Limited' as a stock exchange. This follows the exchange's request to relax certain regulatory provisions or voluntary surrender of the recognition granted. Accordingly, vide an Order dated December 10, 2024, the SEBI permitted the exit of the Indian Commodity Exchange Limited as a stock exchange and the consequent withdrawal of recognition granted to it.

- 1.31** Trading window restrictions under PIT norms shall not apply for subscription to non-convertible securities: SEBI - **Circular No. SEBI/HO/ISD/ISD-PoD-2/P/CIR/2024/180, DATED 30-12-2024**

Editorial Note : SEBI has clarified that trading window restrictions under PIT Regulations shall not apply to the subscription in the issuance of non-convertible securities, provided the transactions comply with the norms specified by SEBI. Earlier, the exemption applied to certain transactions such as acquisition by subscribing to rights issue, preferential allotment or tendering of shares in a buy-back offers, open offer, delisting offer, Offer for Sale and Rights Entitlements Transactions, etc.

- 1.32** SEBI issues Master Circular consolidating directions for Stock Exchanges and Clearing Corporations till October 31, 2024 - **Master CIRCULAR SEBI/HO/MRD-PoD2/CIR/P/2024/00181, DATED 30-12-2024**

Editorial Note : SEBI has been issuing various circulars/directions to Stock Exchanges and Clearing Corporations. In order to enable the users to have

access to all the applicable circulars/directions at one place, SEBI has prepared 'Master Circular for Stock Exchanges and Clearing Corporations' covering the relevant circulars/communications pertaining to Stock Exchanges and Clearing Corporations issued by SEBI up to October 31, 2024.

- 1.33** SEBI proposes online monitoring of system audits of stock brokers on a concurrent basis to enhance audit quality

Editorial Note : SEBI has released a consultation paper on online monitoring of system audit of stock brokers. The objective is to seek public comments on the proposal to create an online monitoring and supervision mechanism by stock exchanges to monitor the system audit process of stock brokers on a concurrent basis. The proposed framework aims to enhance the quality of audit and to make the auditor more responsible for system audit. Comments may be submitted by Dec 26, 2024.

- 1.34** Debenture Trustees can start new business verticals with RBI consent, ensuring no conflict with trusteeship: SEBI

Editorial Note : A company sought informal guidance on whether a SEBI-registered Debenture Trustee (DT) can start a new business vertical for marketing CASA deposits, retail loans, and engaging DSAs for its parent company. SEBI clarified that a DT can start a new business vertical. However, they must report to SEBI every half-year, ensuring they don't conflict with debenture trusteeship. DTs must also obtain NOC/consent from the RBI for these activities and submit it to SEBI before commencing.

- 1.35** SEBI proposes 'MITRA platform' for investors to trace inactive, unclaimed Mutual Fund folios

Editorial Note : SEBI has proposed MITRA (Mutual Fund Investment Tracing and Retrieval Assistant), a platform developed by RTAs to help investors locate inactive or unclaimed Mutual Fund folios. This will allow investors to identify overlooked investments, encourages investor's KYC compliance, reduces unclaimed mutual fund folios, and mitigates against fraud risks. Public comments are invited on the draft Circular latest by January 07, 2025.

2. SUPREME COURT

SECTION 62 OF THE COMPANIES ACT, 2013 - SHARE CAPITAL - FURTHER ISSUE OF

- 2.1** Where appellant company applied for listing of certain equity shares to Bombay Stock Exchange (BSE) but application was rejected as appellant had not taken in principle approval from Stock Exchange and had not even taken approval of shareholders for allotment of shares to Asset Reconstruction Company (RARE), no error or illegality had been

committed either by BSE or Securities Appellate Tribunal in refusing to accept request of appellant company for listing of shares at Stock Exchange. - *Jyoti Ltd. v. BSE Ltd.* - [2024] 169 taxmann.com 713 (SC)

3. HIGH COURT

REGULATION 6 OF THE SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018 - REJECTION OF APPLICATION

- 3.1** Where petitioner's settlement application was fairly considered and rejected by SEBI by impugned communication on ground that documents submitted by petitioner were deficient, there was no arbitrariness involved and petitioner was given ample opportunities and, therefore, no case had been made to interfere with impugned communication - *First Overseas Capital Ltd. v. Securities and Exchange Board of India* - [2024] 169 taxmann.com 462 (Bombay)

SECTION 8A OF THE INDIAN STAMP ACT, 1899 - SECURITIES DEALT IN DEPOSITORY NOT LIABLE TO STAMP DUTY.

- 3.2** Where petitioner and ACIPL were wholly owned subsidiaries of a common parent company H, scheme of amalgamation and merger order were **squarely** covered under the Notification No. 13 dated 25.12.1937 which exempts said instruments from payment of stamp duty under Indian Stamp Act, 1899 - *Ambuja Cement Ltd. v. Collector of Stamps, Delhi* - [2024] 169 taxmann.com 127 (Delhi)

SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - POWER TO ISSUE DIRECTIONS¹ AND LEVY PENALTY

- 3.3** Where pursuant to a complaint received from shareholders of petitioner, SEBI issued show cause notice to petitioner calling upon them to show cause as to why suitable directions should not be issued and/or penalty, as deemed fit, should not be imposed upon them under sections 11, 11B and 15HA, extraordinary jurisdiction of High Court could not be invoked to stall or delay proceedings by quashing impugned show cause notice - *Nalwa Sons Investments Ltd. v. Securities and Exchange Board of India* - [2024] 169 taxmann.com 226 (Bombay)

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

- 3.4** Where Trial Court discharged accused persons for alleged fraud of transfer of shares and removal of petitioner-director, in view of fact that material placed by Investigating Officer along with chargesheet filed before Trial Court was not considered by Trial Court, instant petition against impugned order passed by Trial Court was to be allowed - *Shiv Raj Singh v. State of NCT of Delhi* - [2024] 169 taxmann.com 262 (Delhi)

SECTION 96 OF THE COMPANIES ACT, 2013 - ANNUAL GENERAL MEETING

- 3.5 Shareholders cannot challenge order of RoC granting extension of time to company to hold its Annual General Meeting (AGM), as companies act did not mandate that shareholders to be heard before RoC considers and decides on an application for extension instead, they could have seek remedies u/s. 241 by approaching Tribunal for mismanagement or oppression by directors or shareholders, or for removal of any director or person in charge of regulating company's affairs - **M.B. Finmart (P.) Ltd. v. Registrar of Companies, National** - [2024] 169 taxmann.com 259 (Delhi)

SECTION 292 OF THE COMPANIES ACT, 2013 - WINDING UP BY TRIBUNAL - EXERCISE AND CONTROL OF COMPANY LIQUIDATOR'S POWERS

- 3.6 Where assets of company in liquidation were auctioned by secured creditor/IFCI and said auction was subsequently set aside and IFCI was directed to refund amount deposited by applicant-successful bidder, and though IFCI declined to refund same on ground that sale consideration had been submitted with Official Liquidator, IFCI had failed to provide proper account of bifurcation of amount deposited with Official Liquidator, IFCI was directed to make payment/refund of said amount to applicant along with interest - **Lord Krishna Bank Ltd. v. Koshika Telecom Ltd.** - [2024] 168 taxmann.com 712 (Delhi)

SECTION 326 OF THE COMPANIES ACT, 2013 - WINDING UP - OVERRIDING PREFERENTIAL PAYMENTS

- 3.7 Commission paid to Government u/s. 451(2) is essentially fee payable on Official Liquidator being appointed and is in nature of an expense for liquidating assets and winding up company, thus, said payment is not covered under Sections 529, 529A and 530 of Act, which refers to order of priority for payment of dividends on liquidation of a company - **Pankaj Kapoor v. Weston Electronics Ltd.** - [2024] 169 taxmann.com 260 (Delhi)

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

- 3.8 Where appellant-buyers filed winding up petition on failure of respondent-company to pay back amount which was invested by appellant-buyers for allotment of commercial unit in its project, pursuant to said petition respondent deposited said amount payable to appellants, meanwhile other creditor also filed winding up petitions and same was admitted, since appellants failed to take steps for seeking release of amount deposited by company with Registry of HC, appellants were not entitled to any preferential payment - **Mrs. Usha Jain v. Vigneshwara Developwell (P.) Ltd.** - [2024] 169 taxmann.com 101 (Delhi)

4. SAT**SECTION 4 OF THE FORWARD CONTRACTS (REGULATION) ACT, 1952 - FUNCTIONS OF THE COMMISSION**

- 4.1 Where appellant, MD of online multi-commodity exchange i.e. NMCE, misused his position and passed on unlawful benefits to related party and also failed to explain that expenses incurred on foreign/local travel, interior work of flats, purchases of electronic items etc. were for legitimate purposes, order passed by SEBI declaring appellant as not 'fit and proper person' to hold any position in management and Board of any association/commodities exchange recognized or registered by Government of India/FMC/SEBI was justified - **Kailash Ramkishan Gupta v. Securities & Exchange Board of India** - [2024] 169 taxmann.com 464 (SAT - Mumbai)

SECTION 12 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - REGISTRATION OF STOCK BROKERS, SUB-BROKERS, SHARE TRANSFER AGENTS, ETC.

- 4.2 Regulation 5 mandatorily provide for charging of interest at rate of 15 per cent on outstanding dues of annual turnover fee and there exists no discretion in hands of SEBI for calculating interest deviating from said regulation - **ICAP IL India (P.) Ltd. v. Securities & Exchange Board of India** - [2024] 169 taxmann.com 567 (SAT - Mumbai)

5. NCLAT**SECTION 8 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - POWER TO REFER PARTIES TO ARBITRATION WHERE THERE IS AN ARBITRATION AGREEMENT**

- 5.1 Where appellant filed an application u/s. 8 of Arbitration and Conciliation Act before NCLT praying for dropping of company petition proceedings u/s. 241 of Companies Act after submission of first expression of objection to proceedings before NCLT, said application was not maintainable - **Al-Sami Agro Products (P.) Ltd. v. Mrs. Duan Hongli** - [2024] 169 taxmann.com 563 (NCLAT - Chennai)

SECTION 232 OF THE COMPANIES ACT, 2013 - AMALGAMATION

- 5.2 Where three transferee company, D Ltd., N Ltd. and HT Mobile Ltd. and one transferor company, HT media filed first motion application seeking approval of a composite scheme of amalgamation, however scheme was approved by majority shareholders and creditors of only HT Mobile Ltd. And HT media, since NCLT is duly vested with sufficient powers under companies Act, 2013 to partly sanction scheme of amalgamation, NCLT's order dismissing second motion application for sanction of scheme without discussing whether scheme of amalgamation was separable was to be set aside - **HT Mobile Solutions Ltd. v. Regional Director, MCA** - [2024] 169 taxmann.com 421 (NCLAT- New Delhi)

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

- 5.3 Where appellant, member of respondent club, was suspended from club and NCLT denied him grant of waiver u/s. 244(1)(b), sought by him, on ground that out of 900 members of club, no other member except for appellant had raised any grievances against act of mismanagement and oppression, and furthermore, he had already instituted two civil suits on same subject matter, thus, waiver was rightly rejected by NCLT - **Lieutenant Colonel Sandeep Dewan v. Ootacamund Club** - [2024] 169 taxmann.com 640 (NCLAT - Chennai)

**SECTION 424 OF THE COMPANIES ACT, 2013 -
TRIBUNAL AND APPELLATE TRIBUNAL -
PROCEDURE BEFORE**

- 5.4 Where on basis of SFIO interim investigation report, NCLT impleaded appellant as respondent in company petition filed under sections 241 and 242 against certain companies and restrained appellant from dealing with movable and immovable properties owned by him including dealing with securities in any company but subsequent SFIO final report, name of appellant was not included as part of coterie of individuals controlling 'will and mind' of said companies name of appellant from list of party respondents in company petition could be removed and restraint/freeze of assets also be vacated - **Pradeep Puri v. Union of India** - [2024] 169 taxmann.com 63 (NCLAT- New Delhi)

6. NCLT**SECTION 8 OF THE ARBITRATION AND
CONCILIATION ACT, 1996 - POWER TO REFER
PARTIES TO ARBITRATION WHERE THERE IS
AN ARBITRATION AGREEMENT**

- 6.1 Where applicant filed application in company petition filed u/s. 241 of Companies Act, 2013 to refer parties to arbitration on basis of arbitration clause incorporated in SHA, arbitrator contemplated in SHA would not be competent or empowered to decide dispute raised in company petition and in deciding propriety of allotment of equity shares and, therefore, parties in instant company petition could not be referred to arbitration - **Al-Sami Agro Products (P.) Ltd. v. Mrs. Duan Hongli** - [2024] 169 taxmann.com 380 (NCLT - Hyd.)

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

- 6.2 Where appellant, legal heir of shareholder of respondent company, sought transmission of shares in his name on basis of Will along with required documents as outlined in SEBI's Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/65 dated 18.05.2022, which simplifies norms for

transmission of shares, refusal of RTA of company to register transmission of shares in question for want of Probate of Will or succession certificate was to be declared invalid - **Vijay Data v. Reliance Industries Ltd.** - [2024] 169 taxmann.com 497 (NCLT - Mum.)

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

- 6.3 Where shares of applicant in respondent-company had been fraudulently transferred in name of other shareholders and company had been squarely at fault in effecting registration of transfer in name of other shareholder, respondent-company was directed to pay price of impugned shares to applicant - **Ramkishore Boob v. Mishtann Foods Ltd.** - [2024] 168 taxmann.com 685 (NCLT - Ahd.)
- 6.4 Where pursuant to police detention of appellant-member on grounds of involvement in corrupt practice of collecting bribe/motive by using club premises, managing committee of respondent-club suspended membership of appellant, such conscious decision of other members to terminate membership of appellant could not be said to be an error and would not be covered by provisions of section 59, thus, appeal filed by appellant under section 59 was not maintainable - **Radhey Shyam Yadav v. Benares Club Ltd.** - [2024] 169 taxmann.com 495 (NCLT - Allahabad)

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

- 6.5 Where reduction of share capital was unanimously approved by shareholders by way of a special resolution and none of creditors objected to it, since necessary compliance of requirements of section 66 was made by company, instant petition filed for reduction of share capital was to be confirmed - **Ferrero India (P.) Ltd., In re v.** - [2024] 169 taxmann.com 608 (NCLT - Mum.)

**SECTION 90 OF THE COMPANIES ACT, 2013 -
BENEFICIAL OWNERSHIP OF SHARES IN CERTAIN
CASES - INVESTIGATION OF**

- 6.6 Where applicant company filed application that respondent no. 1 company which was its investment vehicle be directed to disclose details of each of significant beneficial owners, who were holding shares of/exercising control over Respondent No. 1 company which are necessary disclosures in terms of section 90 of Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules 2018, relief as prayed for by applicant was to be granted - **New Tirupur Area Development Corporation Ltd. (NTADCL) v. Aidqua Holdings (Mauritius), Inc.** - [2024] 169 taxmann.com 130 (NCLT- Chennai)

**SECTION 232 OF THE COMPANIES ACT, 2013 -
AMALGAMATION**

- 6.7 Where shareholders of one of transferor company had rejected proposed scheme of amalgamation, same could not be sanctioned - **HT Mobile Solutions Ltd. v. HT Media Ltd.** - [2024] 169 taxmann.com 100 (NCLT - New Delhi)

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

- 6.8 Where petitioners filed petition u/s. 397 and 398 of Companies Act, 1956 alleging that respondent company was mismanaged and their rights as shareholders were oppressed, respondent company being a closely held family company, it would be in fitness of things, if respondents were ordered to buy out shareholding of petitioners at a fair value to be determined by an independent registered valuer - **Shridhar Vasudeo Bedekar v. V.P. Bedekar and Sons (P.) Ltd.** - [2024] 168 taxmann.com 713 (NCLT - Mum.)
- 6.9 Where petitioners, shareholders, of R1 company filed instant petition alleging that R1 had taken unsecured loan and advances from its related party without obtaining prior consent of shareholders, and thus, created huge fraud, in view of fact that petitioners had earlier also filed similar petition wherein NCLT directed respondents to convene an EGM in order to sort out their disputes, however respondents failed to convene an EGM, thus, impugned transactions were violative u/s. 180 (1) (c) and declared as non-est - **S. Radha Krishna v. Hyderabad Pollution Controls Ltd.** - [2024] 169 taxmann.com 27 (NCLT - Hyd.)

**SECTION 388B OF THE COMPANIES ACT, 1956 -
REFERENCE TO TRIBUNAL OF CASES AGAINST
MANAGERIAL PERSONNEL**

- 6.10 Before referring a case to Tribunal under section 388B(1)(a) of Companies Act, 1956 it is necessary for Central Government to form an opinion based on circumstances that there is fraud, misfeasance, persistent negligence, or breach of trust by persons involved in management of a company. - **Union of India v. Maytas Properties Ltd.** - [2024] 169 taxmann.com 528 (NCLT - Hyd.)

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

- 6.11 Where while hearing an application against termination of applicant - employee of respondent club, Single Member (Judicial) of NCLT acting singly passed an interim order directing club to freeze new memberships, applicant filed an application seeking to recall said order on grounds of lack of proper judicial process, since there was no procedural error committed by Single Member, recall application was to be dismissed and cost was to be imposed on applicant - **Union of India (Ministry of Corporate Petitioner Affairs) v. Delhi Gymkhana Club Ltd.** - [2024] 168 taxmann.com 430 (NCLT - New Delhi)

COMPETITION LAW

1. CCI

SECTION 2(h) OF THE COMPETITION ACT, 2002 - DEFINITIONS

- 1.1 Where OPs organised/conducted Table Tennis (TT) tournaments, distributed prize money, trophies, medals, certificates to TT players, conducted coaching camps, selected players to represent respective District/State/Country respectively and received sponsorships and donations, royalty and advertising revenue, besides collecting yearly subscription fees, activities discharged by OPs brought them within purview of term 'enterprise' as defined in section 2(h) - ***TT Friendly Super League Association, In re v. - [2024] 169 taxmann.com 467 (CCI)***

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

- 1.2 Where informants had filed information alleging contravention of provisions of Act by OP-real estate company on ground that in spite of receiving a considerable amount towards total consideration, OP had allotted a disputed land and failed to deliver possession of same to Informants within stipulated time period, in view of fact that issues agitated by informant did not raise any competition concern, matter was to be closed and informants were at liberty to raise such issues before an appropriate forum - ***Anurag Gupta v. Greenbay Infrastructure (P.) Ltd. - [2024] 169 taxmann.com 96 (CCI)***

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

- 1.3 Where there existed several astrology online applications/platforms available in India in relevant market of 'sale of astrology related products and services provided by online platform for selling astrology related solutions in India', OP, an App-based astrology platform, was not dominant in relevant market and had not contravened sections 3 and 4 by allegedly poaching informant's consultants and employees by offering them higher remuneration - ***InstaAstro Technology (P.) Ltd. v. Astrotalk Services (P.) Ltd. - [2024] 169 taxmann.com 312 (CCI)***
- 1.4 Where informant accused OP of unfair and anti-competitive behaviour by concealing country of origin on their products specifically Chinese Android head units sold on its e-commerce website and using misleading advertisements creating a false impression that products were of Indian Origin, since said allegations appeared to be a consumer issue for which remedy lay elsewhere, no prima facie case of contravention of provisions of section 4 was made out against OP - ***XYZ v. Woodman Electronics India (P.) Ltd. - [2024] 169 taxmann.com 681 (CCI)***
- 1.5 Where OP society, affiliated with State Body, responsible for conducting open district ranking tournaments in Mumbai Suburban jurisdiction to select players to represent State and to promote table tennis in its jurisdiction, addressed players/parents/coaches/clubs in its WhatsApp groups and restricted them from joining any unaffiliated organisation and from playing any unaffiliated organisation's table tennis matches, conduct of OP violated provisions of sections 3 and 4 - ***TT Friendly Super League Association, In re v. - [2024] 169 taxmann.com 467 (CCI)***

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 RBI directs banks to take urgent steps to reduce inoperative/frozen accounts and simplify activation process - **CIRCULAR NO. DOS.CO.PPG.SEC.12/11.01.005/2024-25, DATED 02-12-2024**

Editorial Note : RBI has directed banks to take necessary steps urgently to bring down the number of inoperative/frozen accounts and make the process of activation of such accounts smoother and hassle-free. This includes enabling seamless updation of KYC through mobile/internet banking, non-home branches, Video Customer Identification Process, etc. Further, RBI has directed banks to organise special campaigns for facilitating the activation of inoperative/frozen accounts.

- 1.2 Govt. permits 'Aditya Birla Sun Life Mutual Fund' to perform Aadhaar authentication for client verification u/s 11A of PMLA - **NOTIFICATION NO. S.O. 5211(E) [F. NO. P-12011/3/2022-ES CELL-DOR], DATED 03-12-2024**

Editorial Note : The Ministry of Finance has permitted the reporting entity, namely 'Aditya Birla Sun Life Mutual Fund', to perform authentication under the Aadhaar Act, 2016. The permission is granted only for the purpose of Aadhar authentication as required u/s 11A of the Money Laundering Act, 2002. Section 11A requires the verification of the identity of reporting entities' clients and beneficial owners by way of aadhaar authentication.

- 1.3 RBI raises limits for small value offline UPI Lite transactions to Rs. 1,000 per payment - **CIRCULAR NO. CO.DPSS.POLC.NO.S908/02-14-003/2024-25, DATED 04-12-2024**

Editorial Note : RBI has revised the framework for small value digital payments in offline mode under UPI Lite. Earlier, the framework prescribed an upper limit of Rs. 500 for offline digital payment transaction, and a total limit of Rs. 2,000 for a payment instrument at any point in time. Now, the offline framework has been updated and the enhanced limits for UPI Lite will be Rs. 1,000 per transaction, with Rs. 5,000 being the total limit at any point in time. This circular shall come into effect immediately.

- 1.4 Central Govt. notifies pension fund schemes as 'financial products' under IFSCA Act, 2019, effective immediately - **NOTIFICATION NO. S.O. 5241(E)[F. NO. 3/15/2022-EM-PART (1)], DATED 05-12-2024**

Editorial Note : The Central Government, exercising its powers under Section 3(1)(d)(vi) of the IFSCA Act, 2019, has notified schemes operated by pension funds as 'financial products' for the purposes of the Act. This notification, shall be effective from the date of its publication in the Official Gazette.

- 1.6 IFSCA renews recognition of 'India International Bullion Exchange' as Bullion Exchange & Clearing Corp till 08.12.2025 - **NOTIFICATION NO. IFSCA-PMTS/9/2023-PRECIOUS METALS, DATED 05-12-2024**

Editorial Note : The International Financial Services Centres Authority (IFSCA), has renewed recognition of 'India International Bullion Exchange IFSC Limited, Gujarat' as Bullion Exchange and Bullion Clearing Corporation for one year, commencing on the 9th day of December 2024 and ending on 8th day of December 2025.

- 1.7 RBI releases Statement on Developmental and Regulatory Policies; reduces Cash Reserve Ratio (CRR) by 50 bps - **PRESS RELEASE NO. 1648/24-2025, DATED 06-12-2024**

Editorial Note : The RBI has released a Statement on Developmental and Regulatory Policies. The key measures includes reduction in the cash reserve ratio (CRR) of all banks by 50 bps, increase the interest rate ceilings on Foreign Currency Non-Resident Bank (FCNR(B)) deposits. RBI further proposes to launch a programme named 'Connect 2 Regulate' to provide an opportunity to the stakeholders to share their ideas and inputs in the form of case studies/ concept notes, etc. on the topics announced by the RBI.

- 1.8 RBI keeps Repo Rate unchanged at 6.50 per cent - **PRESS RELEASE NO. 1647/2024-25, DATED 06-12-2024**

Editorial Note : On the basis of an assessment of the current and evolving macroeconomic situation, the RBI's Monetary Policy Committee (MPC), in its meeting, has decided to keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 %. Further, the standing deposit facility (SDF) rate also remains unchanged at 6.25 per cent and the marginal standing facility (MSF) rate and the Bank Rate at 6.75 per cent.

- 1.9 RBI reduces Cash Reserve Ratio for all banks by 50 bps in two tranches - **CIRCULAR NO. DOR.RET.REC.52/12.01.001/2024-25, DATED 06-12-2024**

Editorial Note : The RBI has announced a reduction in the Cash Reserve Ratio (CRR) for all banks by 50 basis points in two equal tranches of 25 basis points each. The CRR will be maintained at 4.25% of Net Demand and Time Liabilities (NDTL) from the reporting fortnight beginning December 14, 2024, and at 4.00% from the fortnight beginning December 28, 2024.

- 1.10** RBI raises interest rate ceilings on Foreign Currency (Non-resident) Accounts (Banks) deposits effective from 06.12.2024 - **CIRCULAR NO. DOR.SPE.REC.NO.51/13.03.00/2024-25, DATED 06-12-2024**

Editorial Note : RBI has raised the interest rate ceilings on Foreign Currency (Non-resident) Accounts (Banks) [FCNR(B)] deposits for banks, effective from December 06, 2024, until March 31, 2025. For deposits with a maturity of 1 year to less than 3 years, the ceiling is the Overnight Alternative Reference Rate (ARR) of the respective currency plus 400 basis points. For deposits with a maturity of 3 years to 5 years, the ceiling is ARR plus 500 basis points.

- 1.11** RBI hikes the limit for collateral free agricultural loans from 1.6 Lakh to 2 Lakh per borrower - **CIRCULAR NO. FIDD.CO.FSD.BC.NO.10/05.05.010/2024-25, DATED 06-12-2024**

Editorial Note : RBI has decided to raise the limit for collateral free agricultural loans including loans for allied activities from the existing level of Rs. 1.6 lakh to Rs. 2 lakh per borrower. This decision is taken by considering the overall inflation and rise in agriculture input cost over the years. Further, banks are advised to waive collateral security and margin requirements for agricultural loans, including loans for allied activities up to Rs. 2 lakh per borrower.

- 1.12** Central Government appoints Mr. Sanjay Malhotra as RBI's Governor for 3 years - **NOTIFICATION S.O. 5298(E) [F.NO. 1/1/2024-BO.I], DATED 09-12-2024**

Editorial Note : The Central Government has appointed Mr. Sanjay Malhotra Secretary, Department of Revenue as Governor, Reserve Bank of India. The appointment is made for a period of 3 years from 11.12.2024.

- 1.13** Govt. permits 4 reporting entities to perform Aadhaar authentication for client verification u/s 11A of PMLA - **NOTIFICATION S.O. 5371(E) [F. NO. P-12011/11/2021-ES CELL-DOR-PART(1)], DATED 12-12-2024**

Editorial Note : The Ministry of Finance has permitted 4 reporting entities to perform authentication under the Aadhaar Act, 2016. The permission is granted only for the purpose of Aadhaar authentication as required u/s 11A of the Money Laundering Act, 2002. Section 11A requires the verification of the identity of reporting entities' clients and beneficial owners by way of aadhaar authentication.

- 1.14** Govt. urges for swift response to queries on FCRA portal for registration/renewal to avoid denial of applications - **PUBLIC NOTICE NO. II/21022/23(04)/2024/FCRA-II, DATED 13-12-2024**

Editorial Note : The government has issued a directive regarding the prompt response to clarifications sought for registration, renewal, or prior permission applications under the Foreign Contribution (Regulation) Act, 2010. Applications are processed exclusively through the FCRA portal, & any deficiencies in information will result in queries raised on the portal. Applicant associations are advised to regularly check their FCRA portal & email accounts to respond promptly to avoid denial of their applications.

- 1.15** RBI forms a committee to develop the Framework for Responsible and Ethical Enablement of AI in the financial sector - **PRESS RELEASE NO. 1779/2024-25, DATED 26-12-2024**

Editorial Note : The RBI has set up a Committee on Framework for Responsible and Ethical Enablement of Artificial Intelligence in the financial sector. Dr. Pushpak Bhattacharyya will be the Chairperson of the committee. The committee will assess the current level of adoption of AI in financial services, globally and in India, & review regulatory and supervisory approaches on AI with focus on financial sector globally. Further, the Committee will submit its report within 6 months from the date of its 1st meeting.

- 1.16** RBI introduces beneficiary bank account name look-up facility for RTGS and NEFT Systems - **Circular no. RBI/2024-25/99 CO.DPSS.RPPD.No.S987/04.03.001/2024-25;, DATED 30-12-2024**

Editorial Note : Earlier, RBI proposed the introduction of beneficiary account name look-up facility for Real-Time Gross Settlement (RTGS) system and National Electronic Funds Transfer (NEFT) System. The RBI has now decided to put a similar facility that would enable a remitter to verify the beneficiary bank account name before initiating a transaction using RTGS or NEFT system. Accordingly, the National Payments Corporation of India has been advised to develop the facility and on-board all banks.

- 1.17** Lok Sabha passes 'Banking Laws (Amendment) Bill, 2024', amending RBI Act, Banking Regulation Act, SBI Act, and more

Editorial Note : The Lok Sabha has passed Banking Laws (Amendment) Bill, 2024 to amend the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949, the State Bank of India Act, 1955, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Now, it has been proposed to amend definition of 'substantial interest' under section 5(ne) of Banking Regulation Act.

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** Right of borrower to redeem secured asset would be available only till date of publication of notice under Rule 9(1) of Security Interest (Enforcement) Rules, 2002 and

not till completion of the sale or transfer of secured asset in favour of auction purchaser - **Celir LLP v. Sumati Prasad Bafna** - [2024] 169 taxmann.com 381 (SC)

SECTION 21A OF THE BANKING REGULATION ACT, 1949 - RATES OF INTEREST CHARGED BY BANKING COMPANIES NOT TO BE SUBJECT TO SCRUTINY BY COURTS

- 2.2 A policy decision pertaining to rate of interest, and trade practices carried out by banks across country, is a regulatory function within specific statutory domain of Reserve Bank of India and cannot come under purview of judicial scrutiny by National Consumer Disputes Redressal Commission (NCDRC) - **Hongkong and Shanghai Banking Corp. Ltd. v. Awaz** - [2024] 169 taxmann.com 610 (SC)

SECTION 45 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCES TO BE COGNIZABLE AND NON-BAILABLE

- 2.3 Where appellant, a former State Education Minister, was arrested by ED for alleged corrupt practices in recruitment of primary school teachers, considering his prolonged detention of over two years, unlikelihood of trial commencement in near future and no immediate prospect of trial conclusion, appellant was to be released on bail subject to certain conditions including non-interference with witnesses, mandatory presence at trial, and restrictions on holding public office during trial - **Partha Chatterjee v. Directorate of Enforcement** - [2024] 169 taxmann.com 313 (SC)

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

- 2.4 It is drawer company which must be first held to be principal offender under Section 138 of Negotiable Instruments Act before culpability can be extended, through a deeming fiction, to other directors or persons in-charge of and responsible to company for conduct of its business; in absence of liability of drawer company, there would naturally be no requirement to hold other persons vicariously liable for offence committed under Section 138 - **Bijoy Kumar Moni v. Paresh Manna** - [2024] 169 taxmann.com 565 (SC)

3. HIGH COURT

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

- 3.1 Where petitioner companies engaged in overseas investments were denied NOC by ED for remittance of funds to their wholly owned subsidiaries abroad, mere issuance of summons under section 37(1) of

FEMA, without any finding of contravention under section 4 could not be a valid ground for denial of NOC and, thus, petitioners were free to approach Authorised Dealer for remittance of investment abroad. - **Times Internet Ltd. v. Directorate of Enforcement** - [2024] 169 taxmann.com 496 (Delhi)

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

- 3.2 Where respondent bank failed to disclose relevant encumbrances and conducted inadequate due diligence while auctioning property in question, writ of mandamus was to be issued thereby quashing sale certificate issued in favor of petitioner - auction purchaser of said property and directing respondent bank to refund amount paid by petitioner for purchase of property along with interest to petitioner - **Pawan Kumar Taneja v. Karur Vyasa Bank Ltd.** - [2024] 169 taxmann.com 261 (Delhi)
- 3.3 Where on failure of petitioner to repay loan, respondent bank issued a notice under section 13(2) and thereafter filed application under section 14 to take physical possession of secured property, since respondent submitted all transactions history between petitioners and bank, which was based on documentary evidence and had also given detailed description of secured asset, merely non-furnishing of solemn affirmation/affidavit with application under section 14 was procedural defect, which could be cured by filing additional affidavit and thus, application was maintainable - **Shailesh Traders v. Union Bank of India** - [2024] 169 taxmann.com 642 (Bombay)

SECTION 14 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - CHIEF METROPOLITAN MAGISTRATE OR DISTRICT MAGISTRATE TO ASSIST SECURED CREDITOR IN TAKING POSSESSION OF SECURED ASSET

- 3.4 Once an order has been passed directing Court Commissioner to take and deliver possession of secured asset to authorised officer of banks/financial institution within 90 days, and if said process of taking possession and handing over within 90 days could not be achieved, a further extension of date of commission shall be made for which, a fresh application under section 14 need not be filed by such banks/financial institution. - **Dombivali Nagari Sahakari Bank Ltd. v. State of Maharashtra** - [2024] 169 taxmann.com 493 (Bombay)

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

- 3.5 Where despite of order passed by Single Judge directing respondent-lender to not proceed with complaints against petitioner-borrower once deposits were made, however lender continued with a complaint u/s. 138 of Negotiable Instrument Act, 1881, since onus upon respondent-lender was merely to communicate concerned SHO/IO about said order and specific directions which was already communicated, contempt petition filed on grounds of lender continuing said complaint was to be disposed - **Sat Priya Mehamia Memorial Educational Trust v. Samresh Agarwal** - [2024] 169 taxmann.com 345 (Delhi)

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

- 3.6 Where on basis of FIR of CBI, ED arrested petitioner for committing fraud and at stage of arrest more investigation was required and there was a potential of tampering of evidence, arrest of petitioner was justified - **Arvind Dham v. Union of India** - [2024] 169 taxmann.com 564 (Delhi)

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

- 3.7 Where mortgaged property of petitioner - guarantor was subject to action under SARFEASI act, petitioner filed a petition praying that said property was agricultural in nature and thus exempted from dragnet of SARFAESI Act in terms of section 31(i), however, said plea was to be addressed before DRT which was competent forum for now, therefore, DRT was to be directed to consider objections raised by petitioners - **Demas Developers (P.) Ltd. v. Indian Overseas Bank** - [2024] 169 taxmann.com 97 (Delhi)

SECTION 35A OF THE BANKING REGULATION ACT, 1949 - POWER OF THE RESERVE BANK TO GIVE DIRECTIONS

- 3.8 Where petitioner became victim of cyber fraud and despite being aware of fraud, bank failed to take immediate measures to take up issue with other entities to whom online payment had been remitted, bank was liable to compensate petitioner for incurred loss - **Hare Ram Singh v. RBI** - [2024] 169 taxmann.com 128 (Delhi)

SECTION 45 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - OFFENCES TO BE COGNIZABLE AND NON-BAILABLE

- 3.9 Where investigation qua petitioner was complete and documentary evidence on which case rested was in custody of ED, there was no scope for petitioner to tamper with evidence and, therefore, in view of observation of SC with regard to right to speedy trial under Article 21 of Constitution as well as prolonged incarceration, petitioner was to be released on bail subject to stringent conditions - **Kuntal Ghosh v. ED Kolkata Zonal Office-II** - [2024] 169 taxmann.com 62 (Calcutta)

- 3.10 Where petitioner was in custody for about 24 months for his involvement in illegal appointment of ineligible candidates in TET conducted by West Bengal Board of Primary Education in lieu of extraneous consideration and there was remote chance of conclusion of trial in near future, petitioner being first-time offender was to be released on bail subject to stringent conditions - **Santanu Banerjee v. Enforcement Directorate** - [2024] 169 taxmann.com 314 (Calcutta)

- 3.11 Where petitioner - accused was arrested by ED for generating proceeds of crime, since role of petitioner was to collect funds and deposit same to accountant, however, control over generation of alleged proceeds of crime was not of petitioner, twin conditions of section 45 was met, and thus, petitioner was to be released on bail subject to furnishing a personal bond - **Parvez Ahmed v. Directorate of Enforcement** - [2024] 169 taxmann.com 612 (Delhi)

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

- 3.12 Where impugned order summoning petitioner for offence under section 138 of Negotiable Instruments Act was passed in year 2020 and instant petition challenging said order was filed in year 2023, i.e., after a lapse of almost three years, filing of instant petition at such a belated stage was a futile exercise and waste of judicial time and, therefore, same was to be dismissed. - **H. S. Oberoi Buildtech (P.) Ltd. v. MSN Woodtech** - [2024] 169 taxmann.com 342 (Delhi)
- 3.13 Where cheque issued by petitioner-director on behalf of company was dishonoured but company was neither made accused nor was any notice served upon it and petitioner who signed and issued cheque had been made an accused, in absence of company being arraigned as an accused, conviction of petitioner for offence under section 138 of Negotiable Instruments Act was to be set aside. - **Paresh Manna v. State of West Bengal** - [2024] 169 taxmann.com 525 (Calcutta)

4. SAFEMA

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

- 4.1 Where properties of appellant, wife of main accused in money laundering cases, were attached for being purchased from proceeds of crime, since amount earned out of crimes was infused in bank account of appellant and appellant failed to prove business transactions which would generate sufficient funds for purchase of said property, appeal filed against order confirming said attachment was to be dismissed - **Bibha Devi v. Deputy Director, Directorate of Enforcement** - [2024] 169 taxmann.com 188 (SAFEMA - New Delhi)

- 4.2 Where attachment order was passed during Covid-19 period and confirmation order was passed beyond 180 days, in view of decision of Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020* decided by order dated 10-01-2022, period of Covid-19 would be excluded while computing period of 180 days and, therefore, attachment could not be declared to have lapsed. - ***Sunkalp Creations (P.) Ltd. v. Deputy Director, Directorate of Enforcement, Ahmedabad - [2024] 169 taxmann.com 383 (SAFEMA - New Delhi)***
- 4.3 Relevant date to find out proceeds of crime would not be date when FIR was lodged but time of operation of crime because FIR may be registered after finding an offence, which may be in operation for substantial period and, thus, properties acquired prior to commission of crime can also be attached - ***Smt. Shanti Devi Chaurasia v. Deputy Director, Directorate of Enforcement, Raipur - [2024] 169 taxmann.com 643 (SAFEMA - New Delhi)***
- 4.4 Where order of provisional attachment of property of appellant - accused of money laundering was passed on 31-3-2021 and order confirming same was passed on 6-12-2021 i.e. beyond 180 days of passing of provisional attachment order, however, period from 15-3-2020 till 28-2-2022 was eliminated, hence, appeal filed by appellant challenging order confirming attachment of property was to be dismissed - ***Rakesh Kumar Tandon v. Deputy Director, Directorate of Enforcement - [2024] 169 taxmann.com 670 (SAFEMA - New Delhi)***
- 4.5 Where proceeds out of crime were siphoned off by appellant by diverting it to various group companies and by layering proceeds, property of equivalent value could be attached even if same was purchased much prior to commission of crime - ***Rakesh Kumar Tandon v. Deputy Director, Directorate of Enforcement - [2024] 169 taxmann.com 670 (SAFEMA - New Delhi)***

SECTION 8 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - ADJUDICATION

- 4.6 Where prosecution complaint had not been filed under section 8(3)(a) despite expiry of 365 days from date of passing of order confirming provisional attachment of properties, attachment stood lapsed - ***Goyal Warehouse & Ice Plant (P.) Ltd. v. Deputy Director, Directorate of Enforcement, Mumbai - [2024] 169 taxmann.com 98 (SAFEMA - New Delhi)***

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

- 4.7 Where appellant company failed to explain source of funds of overseas company 'T', which made investment of Rs. 208 crores in appellant's group companies, Adjudicating Authority was justified in imposing penalty on appellants for contravention of section 8(1) of FERA, 1973. - ***Vedanta Ltd. v. Special Director Directorate of Enforcement - [2024] 169 taxmann.com 346 (SAFEMA - New Delhi)***

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

- 4.8 Where appellants imported copper scrap from foreign company and sold same to M, but during course of examination of import consignment by Customs Authorities, all containers were found empty and, thus, appellant contravened section 10(6) by remitting foreign currency without receipt of materials and, penalty was imposed on appellants, since appellants made efforts to recover amount, penalty was to be reduced to 25 per cent of penalty - ***Rajesh Jhanwar v. Special Director Directorate of Enforcement, Mumbai - [2024] 169 taxmann.com 529 (SAFEMA - New Delhi)***

SECTION 26 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - APPEALS TO APPELLATE TRIBUNAL

- 4.9 Appeal can be preferred against order passed by Adjudicating Authority or an order under section 13(2) of Act and not against Provisional Attachment Order - ***Sree Ram Vihar v. Deputy Director, Directorate of Enforcement, Raipur - [2024] 169 taxmann.com 64 (SAFEMA - New Delhi)***

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

- 1.1 IBBI extends due date for filing liquidation and voluntary liquidation forms till 31.12.2024 - **CIRCULAR NO. NO. IBBI/LIQ/79/2024, DATED 02-12-2024**

Editorial Note : After considering representations from liquidators and agencies citing technical difficulties, the Insolvency and Bankruptcy Board of India has extended the deadline for filing liquidation and voluntary liquidation forms to 31.12.2024, previously set at 30.11.2024. Further, it has been clarified that for ongoing liquidation and voluntary liquidation cases, the responsibility for filing all forms shall lie with the Insolvency Professionals currently handling the process.

- 1.2 Govt. appoints 'Shri Vaibhav Chaturvedi' as the ex-officio member in IBBI to represent RBI on Board - **NOTIFICATION NO. 30/03/2016-INSOLVENCY, DATED 03-12-2024**

Editorial Note : The Central Government has appointed Shri Vaibhav Chaturvedi, Chief General Manager, Reserve Bank of India as the ex-officio member in the Insolvency and Bankruptcy Board of India (IBBI) to represent the Reserve Bank of India in the said Board.

- 1.3 IBBI issues guidelines detailing the procedure to prepare a panel of IPs for roles as IRPs, Liquidators, & RPs

Editorial Note : To address administrative delays in appointing Insolvency Professionals (IPs), IBBI has introduced new guidelines providing the procedure for preparing panel of IPs to act as Interim Resolution Professionals (IRPs), Liquidators, Resolution Professionals (RPs) and Bankruptcy Trustees. The IP panel will be effective from 01.01.2025 to 30.06.2025. Further, Board will prepare a common Panel of IPs for appointment as IRP, Liquidator, RP and BT and share the same with the Adjudicating Authority.

2. SUPREME COURT

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

- 2.1 Where as per deed of hypothecation executed in favour of appellant-bank, corporate debtor had undertaken to discharge liability of borrowers (RCom and RTL), DoH had amounted to a guarantee provided by corporate debtor to appellants, thus, appellant was to be classified as financial creditor of corporate debtor - **China Development Bank v. Doha Bank Q.P.S.C. - [2024] 169 taxmann.com 526 (SC)**

SECTION 25 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL- DUTIES OF

- 2.2 Petition dismissed against order of NCLAT that where appellant had failed to make payment of dues of WTGs lying with a corporate debtor, for which arbitration proceedings had already been initiated thus, decision taken by RP not to handover WTGs was in accordance with provisions of IBC Code and did not violate any rights of operational creditor - **Vish Wind Infrastruktire LLP v. Shailen Shah, Resolution Professional of Wind World (India) Ltd. - [2024] 169 taxmann.com 347 (SC)**

SECTION 220 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES - DISCIPLINARY COMMITTEE- APPOINTMENT OF

- 2.3 SLP dismissed against order of High Court that where Disciplinary Committee of IBBI suspended registration of petitioner as Resolution Professional (RP) for one year on ground that RP had failed to perform his duties under Code, since exercise undertaken by IBBI was within its jurisdiction and powers conferred by section 220, no case was made out to interfere in exercise of writ jurisdiction - **Vijendra Kumar Jain v. Insolvency and Bankruptcy Board of India - [2024] 169 taxmann.com 644 (SC)**

3. HIGH COURT

SECTION 11 OF THE ARBITRATION AND CONCILIATION ACT, 1996 - APPOINTMENT OF ARBITRATORS

- 3.1 Where applicant pursuant to purchase agreement made excessive payments to respondent-corporate debtor and later claimed refund for same, however dispute could not be resolved amicably and instant arbitration application was filed, subsequently, CIRP was initiated against respondent, since CIRP plan was approved during pendency of arbitration application, instant arbitration application was to be allowed and Arbitrator was to be appointed and effect of approval of CIRP on claim of applicant company, could be decided by arbitration tribunal, taking into consideration provision of sections 31(1) and 32A on IBC - **PME Power Solutions (India) Ltd. v. Airen Metals (P.) Ltd. - [2024] 169 taxmann.com 465 (Rajasthan)**

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

- 3.2 Decree holder is a separate class of creditor recognized under IBC and claim of a decree holder is subject to rigours of resolution process and has to be satisfied along with other claims in accordance with waterfall mechanism envisaged under section 53; claim of a decree holder would stand extinguished once resolution plan was approved by Adjudicating Authority - **Chetraj N. Khadka v. Dighi Port Ltd.** - [2024] 169 taxmann.com 160 (Bombay)

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

- 3.3 A petition under section 95 against a partnership firm or its directors is not fileable and maintainable before NCLT, jurisdiction against said firm or individuals is clearly before Debt Recovery Tribunal - **Manyata Realty v. Registrar** - [2024] 169 taxmann.com 568 (Karnataka)

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

- 3.4 Where interim-moratorium had been imposed against petitioner, proceeding under section 138 of Negotiable Instruments Act could not be continued against him in view of overriding effect of provisions of IBC - **Surendra Kumar Patwa v. Dharmendra Vohra** - [2024] 168 taxmann.com 445 (Madhya Pradesh)
- 3.5 Where equity shares of corporate debtor-company were delisted pursuant to approval of plan under IBC, instant case would be governed by provisions of IBC and IBC being a complete code containing a non-obstante clause, impugned Regulation, i.e. Regulation 3(2)(b)(i) of SEBI (Delisting of Equity Shares) Regulations, 2021 providing that Delisting Regulations shall not apply in case of delisting of equity shares pursuant to a resolution plan approved under section 31 of IBC could not be regarded as ultra-vires SEBI Act or rules made thereunder - **Harsh Mehta v. Securities and Exchange Board of India** - [2024] 169 taxmann.com 129 (Bombay)

4. NCLAT

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

- 4.1 Personal guarantors who had not made any payment in discharge of their guarantees given to bank could not be accepted as financial creditor of corporate debtor, nor could any voting share be allocated to them in CIRP of corporate debtor - **Suresh Kumar v. Central Bank of India** - [2024] 169 taxmann.com 263 (NCLAT- New Delhi)

SECTION 5(20) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL CREDITOR

- 4.2 Where appellant paid security deposit to corporate debtor for use of leased premises, since payment of security deposit as advance for use of leased premises was clearly included in provision of services, same fell within purview of operational debt, appellant was to be accorded status of an operational creditor - **Corob India (P.) Ltd. v. Birendra Kumar Agrawal** - [2024] 169 taxmann.com 566 (NCLAT- New Delhi)

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

- 4.3 Where appellant, an employee of a corporate debtor, claimed performance pay, which required to be determined based upon analytical criteria and arithmetical analysis, which had variable factors to be adopted and considered, since said performance pay did not fall within definition of 'operational debt' or even a 'debt' as defined under section 3(11), denial of same by NCLT could not be said to be irrational or without an application of mind - **M. Ramakanth v. Nagarjuna Fertiliser and Chemicals Ltd.** - [2024] 169 taxmann.com 494 (NCLAT - Chennai)

SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY FINANCIAL CREDITOR

- 4.4 Where director of financial creditor company was also director of sister company which was struck off on account of default under section 248(1) of Companies Act, 2013, said director was fully competent to file section 7 application and swear affidavit in support of section 7 application - **Cadillac Infotech (P.) Ltd. v. JKM Infrastructure (P.) Ltd.** - [2024] 169 taxmann.com 492 (NCLAT- New Delhi)

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM- GENERAL

- 4.5 As per proviso to section 14 (1) (d), there is a prohibition on recovery of any property by an owner or lessor where such property is occupied by or in possession of corporate debtor, thus, NCLT's order allowing respondent's application to recover property from possession of corporate debtor without considering provisions of section 14(1)(d) was to be set aside and matter was to be remanded back to NCLT - **Chandrakant Khemka v. Santanu Bhattacharjee** - [2024] 169 taxmann.com 658 (NCLAT- New Delhi)

SECTION 25 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL- DUTIES OF

- 4.6 Where appellant-operational creditor entered into an agreement with corporate debtor for supply of Wind Turbine Generators (WTGs) and pursuant to initiation of CIRP, appellant made request to RP to supply said WTGs, since claim of appellant was already admitted in CIRP and there were huge dues payable by appellant for which arbitration proceedings were pending, decision of RP refusing to handover WTGs was in accordance with provisions of IBC Code and did not violate any rights of operational creditor - **Vish Wind Infrastructure LLP v. Shailen Shah, Resolution Professional of Wind World (India) Ltd. - [2024] 169 taxmann.com 131 (NCLAT- New Delhi)**

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

- 4.7 Where e-auction process for sale of corporate debtor as a going concern was completed and successful bidder was now in helm of affairs of corporate debtor, no cause prevailed for consideration of scheme of arrangement or compromise u/s. 230 on Companies Act, 2013 submitted by appellant - shareholder of corporate debtor by NCLT, therefore, appeal filed by appellant against order of NCLT approving said sale was to be dismissed - **Narottamka Trade & Vyapaar (P.) Ltd. v. SPP Insolvency Professionals LLP - [2024] 169 taxmann.com 382 (NCLAT - Chennai)**

SECTION 54 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - CORPORATE DEBTOR, DISSOLUTION OF

- 4.8 Where NCLT passed an order rejecting prayer of RP, requesting dissolution of corporate debtor, on grounds that dissolution u/s. 54 required prior liquidation of assets and directed a transaction audit, but neither there was cash balance nor other assets of corporate debtor and sole financial creditor was not ready to proceed any further, direction by NCLT for transaction audit was unsustainable, therefore, such order was to be set aside - **Janak Jagjivan Shah Resolution Professional Rainbow Infrabuild (P.) Ltd. v. Committee of Creditors - [2024] 169 taxmann.com 463 (NCLAT- New Delhi)**

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

- 4.9 Where corporate debtor had acquired development rights in appellant's subject land consequent to Collaboration Agreement, RP had rightly included same in CIRP of corporate debtor in view of fact that development rights form part of assets of corporate debtor within meaning of section 3(27) and, therefore, application filed by appellant for exclusion of assets from CIRP was rightly rejected by NCLT - **K.H. Khan v. Art Constructions (P.) Ltd. - [2024] 169 taxmann.com 527 (NCLAT- New Delhi)**

5. NCLT

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

- 5.1 Where subsequent to date of default, Comprehensive Reorganisation & Restructuring Plan (CRRP) as a part of Debt Realignment Plan (DRP) was approved by consortium, however scheme of arrangement could not be implemented and amount of default was more than threshold limit of Rs. 1 crore, since corporate debtor failed to pay its dues even after restructuring of loans under Debt Realignment Plan, CIRP application filed by financial creditor was to be admitted - **ICICI Bank Ltd. v. Jaiprakash Associates Ltd. - [2024] 169 taxmann.com 611 (NCLT - Allahabad)**

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

- 5.2 Where pursuant to settlement agreement petition filed u/s. 7 was withdrawn by financial creditor himself, since NCLT had not given any liberty to come up afresh if settlement failed, another petition filed by financial creditor u/s. 7 on ground of default in payment in terms of settlement agreement was not maintainable - **Subham Capital (P.) Ltd. v. Vedic Realty (P.) Ltd. - [2024] 169 taxmann.com 466 (NCLT - Kolkata)**

- 5.3 Where applicant paid security deposit to corporate debtor for taking premises on lease, since said security deposit was not paid for any consideration for time value of money, applicant could not be classified as a financial creditor - **Corob India (P.) Ltd. v. Birendra Kumar Agarwal - [2024] 169 taxmann.com 420 (NCLT - Mum.)**

SECTION 10 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY CORPORATE APPLICANT

- 5.4 Where corporate applicant filed a petition u/s. 10 to initiate CIRP against itself after receiving a notice under SARFAESI Act from financial creditor, since such petition was filed with malicious and fraudulent intent to delay/halt recovery proceedings initiated by financial creditor, same was to be dismissed - **Getz Cables (P.) Ltd. v. Northern ARC Capital Ltd. - [2024] 169 taxmann.com 189 (NCLT - New Delhi)**

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

- 5.5 Where default had occurred during period specified u/s. 10A, any legal notice issued under SARFAESI Act would not alter date of default, and would not revive right to file application under section 7 in view of proviso to section 10A - **State Bank of India v. Vivimed Labs Ltd. - [2024] 169 taxmann.com 28 (NCLT - Bang.)**

SECTION 12A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

- 5.6 An application u/s. 12A cannot be filed during liquidation process as CoC ceases to exist after passing of liquidation order - **Asha Chopra v. Hind Motors India Ltd.** - [2024] 169 taxmann.com 657 (NCLT-Chd.)

SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM- GENERAL

- 5.7 Where advance payment made by applicant to corporate debtor for supply of wind turbines generators (WTGs) was claimed as an operational debt and said claim had already been admitted by RP, same could not be set off during CIRP against any debt that had arisen prior to CIRP - **Vish Wind Infrastruktüre LLP v. Shailen Shah RP of Wind World (India) Ltd.** - [2024] 169 taxmann.com 65 (NCLT - Ahd.)

SECTION 30 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN- SUBMISSION OF

- 5.8 Where CoC in its commercial wisdom accepted resolution plan having a lower value in comparison with liquidation value of corporate debtor as resolution plan was otherwise feasible and viable and had approved resolution plan by requisite per cent of voting share, thus resolution plan met requirements of section 30(2) and was not in contravention of any provisions of section 29A, same was to be approved by NCLT - **Vinit Gangwal, Resolution Professional of Blue Blends (India) Ltd. v. Amit Mahendrabhai Shah** - [2024] 169 taxmann.com 315 (NCLT - Mum.)

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

- 5.9 Sale of corporate debtor as a going concern during liquidation process is a mere sale instead of restructuring, thus, most of stringent provisions that apply to resolution plan are conspicuously absent in case of sale as a going concern - **Union Bank of India v. Spark Green Energy (Satara) Ltd.** - [2024] 169 taxmann.com 530 (NCLT - Mum.)

SECTION 36 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - LIQUIDATION ESTATE

- 5.10 Where corporate debtor - lessee mortgaged its leasehold rights of a leased land, during liquidation of corporate debtor, an e-auction for selling corporate debtor as a going concern was conducted, applicant-lessor challenged e-auction seeking exclusion of leased land from sale, since sale was of leasehold

rights and not of title in respect of personal assets of applicant, inclusion of leasehold rights to be sold / transferred to successful bidder would not contravene provisions of section 36 - **Kamachi Industries Ltd, In re v.** - [2024] 168 taxmann.com 686 (NCLT- Chennai)

SECTION 53 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - ASSETS, DISTRIBUTION OF

- 5.11 Where e-auction for sale of corporate debtor as a going concern was conducted and successful bidders emerged, applicant - shareholder of corporate debtor sought to nullify e-auction alleging non-compliance within 90 days payment by successful bidders under Clause 12, Schedule 1 of Liquidation Process Regulations, successful bidder could not be penalized by vitiating sale due to inadvertent liquidator lapses, therefore, sale of corporate debtor was to be approved and application filed by applicant was to be dismissed - **Kamachi Industries Ltd, In re v.** - [2024] 168 taxmann.com 686 (NCLT- Chennai)

SECTION 54 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - CORPORATE DEBTOR, DISSOLUTION OF

- 5.12 Where CoC sought for early dissolution of corporate debtor without resorting to liquidation process and RP filed application u/s. 54 for same, however only liquidator was empowered to make an application to Adjudicating Authority for dissolution and there was no specific provision that authorized an early dissolution prior to initiation of liquidation, thus, application for dissolution was rejected and RP was to be directed to carry out transaction audit to date of commencement of CIRP - **Janak Jagivan Shah RP of Rainbow Infrabuild (P.) Ltd., In re v.** - [2024] 168 taxmann.com 711 (NCLT - Ahd.)

SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

- 5.13 Where CoC in its commercial wisdom had thought it fit and appropriate that Resolution Plan submitted by successful resolution applicant was better than OTS proposal u/s. 12A given by applicant-promoters and accordingly, proceeded to pass resolution simultaneously by rejecting 12A proposal, instant application seeking direction to CoC to consider OTS submitted by applicants, was to be dismissed - **SBI v. Coastal Energen (P.) Ltd.** - [2024] 169 taxmann.com 161 (NCLT- Chennai)
- 5.14 Director of financial creditor would be competent to file section 7 application even if he was director of sister concern of financial creditor whose name was struck off by RoC for not carrying on business or operations for a period of two immediately preceding financial years and for not obtaining status of dormant company - **JKM Infrastructure (P.) Ltd. v. Cadillac Infotech (P.) Ltd.** - [2024] 169 taxmann.com 283 (NCLT - New Delhi)

5.15 Where application had been filed by applicant with respect to immovable property, which was admittedly not a part of Information Memorandum, RP was to be directed to hand over subject property, if already not handed over - **UCO Bank v. Nandini Impex (P.) Ltd.** - [2024] 169 taxmann.com 60 (NCLT - Kolkata)

5.16 NCLT with territorial jurisdiction over corporate debtor's registered office would be NCLT for insolvency of its personal guarantors also - **Stressed Assets Stabilisation Fund (SASF) v. Anil Rai** - [2024] 169 taxmann.com 613 (NCLT - Allahabad)

5.17 Where in CIRP of corporate debtor, owners of scheduled properties filed an application under section 60 seeking deletion of scheduled properties from CIRP and SRA filed an instant petition under section 60(5) seeking intervention in main application, in view of fact that SRA was major stakeholder in resolution of corporate debtor and resolution plan had been approved by CoC, SRA was permitted to intervene in main application and make submissions - **Edelweiss Asset Reconstruction Company Ltd. v. Adel Landmarks Ltd.** - [2024] 169 taxmann.com 344 (NCLT - New Delhi)

5.18 Where owners of scheduled properties filed instant application for deletion of said properties from CIRP of corporate debtor on ground that they had executed a Collaboration Agreement with corporate debtor for development of scheduled properties and since corporate debtor had failed to perform their obligations, said agreement was terminated, in view of fact that disputes that have arisen in instant case were complex in nature and could not be determined in a summary proceeding under section 60 and had to be determined by a Competent Civil Court having jurisdiction after recording evidence, thus, instant application was to be dismissed - **Edelweiss Asset Reconstruction Company Ltd. v. Adel Landmarks Ltd.** - [2024] 169 taxmann.com 284 (NCLT - New Delhi)

5.19 Where applications were filed under section 60(5) seeking directions for liquidator to comply with provisions of IBBI (Liquidation Process) Regulations, 2016, specifically Regulations 31-35 however, provisions of amended Regulations, with respect to constitution of SCC were applicable to liquidation processes, which commenced on or after 25-7-2019, since liquidation of corporate debtor was commenced on 12-9-2017, provisions of amended Regulations would not be applicable to liquidation process of corporate debtor - **Asha Chopra v. Hind Motors India Ltd.** - [2024] 169 taxmann.com 657 (NCLT - Chd.)

SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

5.20 Where corporate debtor had committed gross default in repayment of credit facilities availed by it and respondent had stood guarantor for repayment of said credit facilities, since deed of guarantee was a conditional guarantee and CDR package, which was condition for enforcement of guarantee had not been implemented, personal guarantee could not be enforced - **Central Bank of India v. Deepen Arun Parekh** - [2024] 169 taxmann.com 61 (NCLT - Mum.)

5.21 Where demand notice was issued to personal guarantor on 10-9-2020 and application under section 95 was filed on 28-3-2023, which was within limitation period of three years as per article 137 of Limitation Act, 1963, application had been filed within limitation period - **Stressed Assets Stabilisation Fund (SASF) v. Anil Rai** - [2024] 169 taxmann.com 613 (NCLT - Allahabad)

5.22 Where Financial creditor filed an application under section 95 seeking an order for initiation of insolvency resolution process against personal guarantor, however, no proof of service of demand notice on personal guarantor was filed along with petition under section 95, since financial creditor failed to establish compliance of section 95(4)(a), application filed under section 95 was to be rejected - **Union Bank of India v. K. Thiloatham Reddy** - [2024] 169 taxmann.com 422 (NCLT - Hyd.)

SECTION 98 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL, REPLACEMENT OF

5.23 Where RP appointed in case of personal guarantor of corporate debtor had previously represented and appeared as counsel of corporate debtor and personal guarantor in execution petition before High Court, due to this RP could be biased and having influence of personal guarantor in personal insolvency resolution process and, therefore, RP was to be removed and new RP was to be appointed - **Technology Development Board v. Prabhat Ranjan Singh** - [2024] 168 taxmann.com 714 (NCLT - New Delhi)

SECTION 217 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES - COMPLAINTS AGAINST

5.24 Adjudicating Authority does not have any jurisdiction to deal with misconduct, if any, of Resolution Professional (RP) and initiate disciplinary proceedings against him; only IBBI would be competent authority to initiate disciplinary proceedings against RP - **Technology Development Board v. Prabhat Ranjan Singh** - [2024] 168 taxmann.com 714 (NCLT - New Delhi)

Poor Data Management & Governance is Costly



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As the historian Robert Nisbet so elegantly puts it: “the ultimate purpose of progress is the greatest possible degree of freedom of the individual” but this progress is at stake when in today’s digital world the organizations who collect, store and manage the personal data of the individuals or regular business data are not doing it adequately.

Key trends across industries highlight the emergence of data as a critical organizational “asset” and the importance of managing, measuring and monetizing this critical asset to ensure business effectiveness. Along with business enterprises, data has taken the center-stage in government organizations as well. Evidence based policy making and strategy formulation is becoming an integral part of governance structures across the world. Major transformational initiatives being progressed at the national/international levels also have data at their core.

Another key trend worth mentioning, is the growth of artificial intelligence. Given the opportunities presented by artificial intelligence to complement and supplement human intelligence and significantly enrich the way people live and work, mankind is embracing it at an unprecedented pace. Data Quality & Data Governance are aspects which will be of critical importance to maximize effective AI outcomes.

Usage of open data is gaining momentum and is enabling people, organizations and communities take better decisions and help economies and societies to thrive. The Objective of Open Government Data Platform India is to facilitate the access to Government owned shareable data and information in both human readable and machine readable forms in a proactive and periodically updatable manner, within the framework of various related policies, Acts and Rules of Government of India, thereby promoting wider accessibility and application of government owned data and unlocking the potential of data for national development.¹

Data sharing and data interoperability are becoming fundamental needs. With this massive proliferation and democratization of data and the emergence of a borderless data ecosystem, it has become extremely important to plan, and hedge associated risks and avoid potential damage. Ethics, Trust, Privacy and Security are aspects that need serious considerations and strategizing in this regard. Managing this transition is an extremely important aspect as well. It can be only achieved through a careful and structured *change management* approach. Studies estimate that poor data quality costs businesses an average of \$3.1 trillion annually. This includes wasted resources on cleaning and correcting data, inaccurate analysis leading to bad decisions, and missed opportunities due to unreliable insights.²

Another example of poor data management practice is the case of Equifax wherein failure of simple TLS certificate of the IT system allowed the attackers to remain in the Equifax system and get access to Personal information of individuals. At the end Equifax had to pay more than USD 700 million to settle the compensation and fines.³

¹ <https://www.data.gov.in/about>

² <https://www.secodata.co/learn/the-impact-of-poor-data-quality>

³ <https://www.csoononline.com/article/567833/equifax-data-breach-faq-what-happened-who-was-affected-what-was-the->

Further, Government needs a more structured approach to understanding, documenting and improving the quality of its data. As such the Government of UK has released the Government Data Quality Framework in 2020.⁴ In India, National data quality forum launched in July 2019 is a multi-stakeholder collaborative platform housed at the Indian council of medical research-National Institute of medical studies for identifying opportunities to build systems for ensuring data quality.⁵

Bureau of Indian Standards has issued a standard on the adequacy of Organizational Data Governance and Management Practices namely IS 18838:2024. This standard specifies a minimal set of practices that are needed for an organization to effectively govern and manage data in digital form under its control. It also specifies the outcomes to be achieved for these practices to be considered adequate and a method of assessment of the practices and processes to be considered adequate. This standard is generic and is intended to be applicable to all organizations, regardless of type, size or nature.⁶

Further, Government of India has come up with The Digital Personal Data Protection Act 2023 which provide for

Sl No.	Practice Group	Practices
(1)	(2)	(3)
i)	Planning and governance	Data governance Data planning
ii)	Data value delivery	Decision management Master and reference data management Document and content management Data integration and interoperability Data storage and operations
iii)	Data protection and risk management	Data classification Data privacy Data confidentiality Data integrity Data availability Data regulatory compliance
iv)	Foundational activities	Metadata management Data quality management

the processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.⁷

As such all the stakeholders need to recognize their roles and responsibilities in ensuring effective data governance and management.

- All public servants should understand why data management is important and feel able to

proactively identify and address data management issues at their respective level of working and roles.

- Business understands that with increased data in the cloud and with no proper data governance and management, in the eventuality of critical business data getting lost, they may fail the test of Going Concern itself.
- Individuals understand that they have the right to provide consent to process their data in the manner they want and can limit the consent based on requirements.

If not done proactively and genuinely, government can have misplaced priorities, business may target the wrong market or launch a unwarranted product or get into compliance issues and individuals can have their life in wary. The cost of poor Data Management can indeed be costly.

ACCOUNT AND AUDIT UPDATES

- 1.1** Accounting Standard Board of ICAI invites comments on IASB's consultative documents for amendments to IAS 29 and IAS 38

Editorial Note : The Accounting Standards Board (ASB) of ICAI invites **comments** from Indian stakeholders on the IFRS Interpretations Committee's tentative agenda decisions for IAS 29 (Hyperinflationary Economies) and IAS 38 (Intangible Assets from Climate-related Expenditure). These decisions clarify the assessment of hyperinflation indicators and the recognition of intangible assets related to climate expenditure. The consultation is open until January 13, 2025.

- 1.2** ICAI to establish 11 centres of excellence to enhance global leadership in accounting and auditing

Editorial Note : ICAI plans to establish 11 Centres of Excellence (CoEs) in three years to boost financial literacy and promote India as a global accounting hub, with two already operational and a third launching in Kolkata by January 2025. The CoEs will focus on areas like AI and International Financial Services. Additionally, ICAI will host the World Forum of Accountants (WOFA) in January 2025, highlighting its commitment to global engagement.

- 1.3** ICAI has issued FAQs on the Peer Review Mandate, detailing phased applicability and compliance requirements for Practice Unit

Editorial Note : ICAI has issued FAQs on the Peer Review Mandate, addressing its phased applicability and essential criteria for Practice Units. The clarifications highlight mandatory Peer Review Certificates for specific statutory audits and attestation services. These FAQs aim to ensure compliance and streamline adherence to peer review requirements.

- 1.4** Accounting Standard Board of ICAI invites comments on exposure draft of IFRS Foundation's Due Process Handbook

Editorial Note : The Accounting Standards Board (ASB) of ICAI invites comments on the IFRS Foundation's Exposure Draft proposing updates to the Due Process Handbook. These changes aim to align processes for the International Sustainability Standards Board (ISSB) and International Accounting Standards Board (IASB), ensuring transparency and rigor in standard-setting.

Direct Taxes Professionals' Association

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

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APPLICATION FOR MEMBERSHIP

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

Dear Sir,

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

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

1. Name in Full (Mr. / Mrs. / Miss) : _____
(BLOCK LETTERS)
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3. Date of Birth : _____
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6. Organisation : _____
8. Mem. No. of CA/CS/ICWAI/Bar Council : _____
9. Blood Group : _____ (Self) _____ (Spouse)
10. Name of Spouse : _____
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12. Residence Address : _____

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Mobile : _____ E-mail : _____
14. Address where Circular etc. should be sent : ☐ Office ☐ Residence
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2. Cheques should be drawn in favour of "Direct Taxes Professionals' Association".

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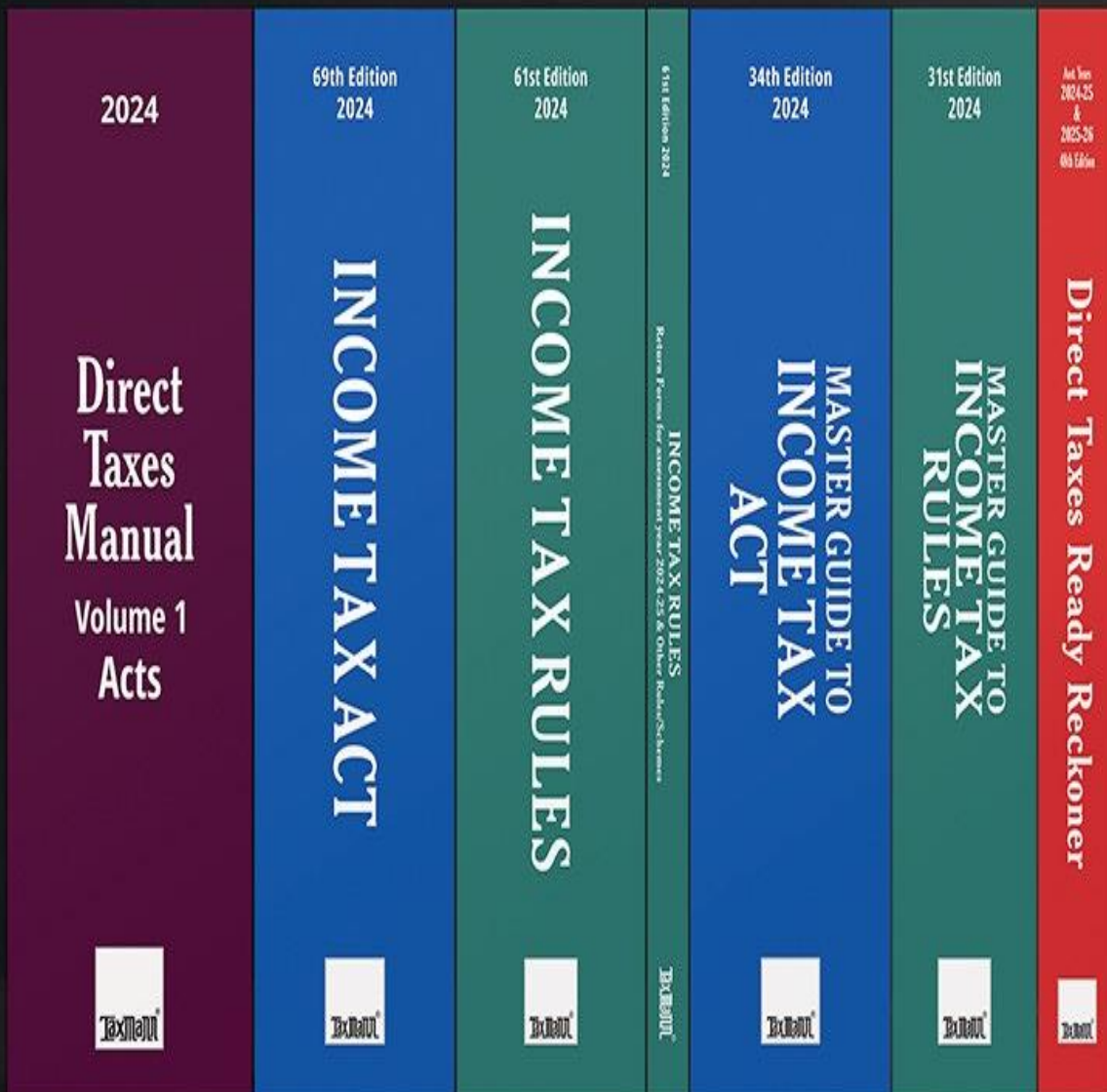
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