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### DISCLAIMER

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

Total no. of page: 80

## ....From the Desk of Editors



Respected Seniors and my Dear Friends,

The current and few upcoming months are the peak time for the brothers and sisters in the profession practicing in the area of Auditing and Taxation. The due date for income tax returns for personal as well as non-audit assessee is approaching fast and thereafter finalization of non-listed corporates and tax audit clients will be in the full swing. In the meantime there will be announcement of full Union Budget on 23<sup>rd</sup> of July by the Hon'ble Union Finance Minister. In fact there are lots of expectations to each one in this 1<sup>st</sup> Budget of Narendra Modi 3.0 Government. On the next day itself on Wednesday, the 24<sup>th</sup> July, 2024 DTPA CA CPE Study Circle of EIRC of ICAI has scheduled a knowledge session on decoding the announcement made in Union Budget at Kala Mandir Auditorium, Kolkata from 3pm onwards.

The awareness about the taxation provisions and growing compliances with the efforts of we professionals the bar of tax collections is taking up higher and higher. This time the provisional figures of Direct Tax collections for the Financial Year 2024-25 (as of 17.06.2024) show that Net collections are at Rs. 4,62,664 crore, compared to Rs. 3,82,414 crore in the corresponding period of the preceding Financial Year (i.e. FY 2023- 24), representing an increase of 20.99%.

In a welcome move, CBDT has directed that the delayed payment of requisite taxes under the Direct Tax Vivad se Vishwas Act, 2020 may be accepted in the cases fulfilling the following conditions - (a) The assessee has made full payment of taxes (including amount payable after due date as prescribed in Form-3) on or before 28.02.2022 and (b) Appeal mentioned in Form-1 has either been withdrawn or has not been decided as on date of full payment of taxes. This has come to a big relief to many who did not able to make payment till the last date due to some technical or financial difficulty and obviously nullify pending litigations in many such cases.

The 53rd GST Council meeting, held on 22nd June, was as significant as a mini budget. Recommendation of waiver of interest and penalties for demand notices issued under Section 73 of the CGST Act (i.e. the cases not involving fraud, suppression or wilful misstatement, etc.) for the fiscal years 2017-18, 2018-19 and 2019-20 has come up as big relief to the taxpayers. Immediately after taking charge, the new government took proactive measures to address key ongoing issues and potentially reduce litigation. The official clarifications/notifications/circulars in respect to many of the resolutions passed in the 53rd GST Council meeting are in public by now. DTPA and DTPA CA CPE Study Circle of EIRC of ICAI are regularly holding knowledge sessions on such subjects and regular updates under the GST Law. Details of such programs are inside this journal.

The ICAI on Thursday, the 11th July 2024 has declared [Results of the Chartered Accountants Final and Intermediate Examinations held in May 2024](#). The results after putting best of the efforts and hard work is the best of the satisfaction for a student. In fact, Clearance of Chartered Accountants Final examination gives wings to fly in the professional world after years of life as a student. I wish a great success in life ahead to each one who has passed in the Final and Intermediate Examinations and at the same time good luck for the next term to those who could not clear this time.

Hope by this time, you must have done your registrations to the biggest event of the Association. Do join us in the **ANNUAL CONFERENCE, 2024** scheduled on **3<sup>rd</sup> of August, 2024 at Taj Bengal, Kolkata** and be part of the one of its kind of experience the unprecedented learning, networking, knowledge sessions and many more.

Wish you all the Very Best.

Jai Hind!! Jai DTPA!!

With Best Regards

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

**Sujit Sultania**  
Co-Chairman  
Journal Sub-Committee, DTPA

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*....From the desk of President*

Dear Esteemed Members,

It is with immense pride and excitement that I address you as the President of our esteemed association. As we navigate an ever-evolving landscape of tax legislation, regulatory changes, and economic fluctuations, our collective expertise and dedication become more crucial than ever.

Our association has always stood as a beacon of knowledge, integrity, and professionalism in the field of direct taxation. We have continuously adapted to new challenges, embraced innovations, and upheld the highest standards of service to our clients and community.

As I address you today, I am filled with a profound sense of pride and gratitude for the wonderful panel discussion that we had on the 53<sup>rd</sup> GST Council Meeting discussion.

On the occasion of this special event dedicated to discussing the recent developments in the Goods and Services Tax (GST) framework on 24<sup>th</sup> June, this gathering provided us with a unique opportunity to delve into the significant changes and advancements that are shaping the future of GST in our country. The recent updates in GST regulations mark a pivotal moment for our profession and the businesses we serve. These changes are designed to enhance the efficiency, transparency, and overall effectiveness of our tax system. I am pleased to highlight some key developments that we explored in depth during this event. During this event, we have arranged for expert-led sessions and panel discussions, to provide you with a comprehensive understanding of these developments. Our goal is to equip you with the knowledge and tools needed to navigate these changes effectively and leverage the opportunities they present.

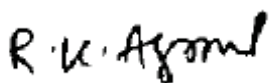
My heartfelt gratitude to all of you for your participation in the recent study circle meeting on "Compliance Challenges under the Companies Act," held at the DTPA Conference Hall on June 28, 2024. We were privileged to have Mr. Anil Dubey, a distinguished Company Secretary, leading the session. His comprehensive insights and expert analysis provided us with a deeper understanding of the complexities and nuances of compliance under the Companies Act. The engaging discussions and practical solutions he shared were invaluable to all who attended. His active participation and thoughtful contributions greatly enriched the meeting. The exchange of ideas and experiences among our members underscored the collaborative spirit that defines our association. Such interactions are crucial as we collectively navigate the evolving regulatory landscape and strive to uphold the highest standards of our profession.

I would like to extend a special thank you to Mr. Anil Dubey for his time and effort in delivering such an enlightening session. His expertise and dedication to our profession are truly commendable.

As we continue to face new challenges and opportunities, I encourage all members to remain engaged and proactive. Your involvement is key to our ongoing success and the advancement of our shared goals. Thank you for your continued dedication and professionalism. Let us move forward with confidence and optimism, embracing these changes as catalysts for growth and innovation.

As we embark on our journey towards the Annual Conference of 2024 to be held on 3<sup>rd</sup> August at Taj Bengal, Kolkata, the theme of which is '**Heading Towards Deemed Taxation Regime**', I request each one of you to join this flagship event and also to share your views and inputs to make it more value creating for all participants.

Warm regards



CA Rajesh Agrawal

President

13<sup>th</sup> July, 2024

# Recent Developments in GST-Way Forward in Hybrid Mode at DTPA Conference hall on 24th June 2024



# Glimpses of Study Circle Meeting – Compliance Challenges under Companies Act by CS Anil Dubey at DTPA Conference Hall on 28th June 2024



### Forthcoming Programs of Direct Taxes Professionals' Association



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

# Annual CONFERENCE 2024

POWERED BY



**CA Ranjeet Kumar Agarwal**  
Chief Guest



**CA (Dr.) Girish Ahuja**  
Speaker



**CA Jatin Christopher**  
Speaker



**Mr. Bharat Shah**  
Speaker



**Mr. Ajay Bagga**  
Speaker



**Mr. Asish Somayya**  
Speaker



**Mr. Sandeep Jain**  
Speaker

**SATURDAY, 3<sup>RD</sup> AUGUST, 2024 | TAJ BENGAL, KOLKATA**

SUPPORTED BY





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

**ANNUAL CONFERENCE 2024**

**SATURDAY, 3<sup>RD</sup> AUGUST, 2024 | TAJ BENGAL, KOLKATA**

HEADING TOWARDS  
**DEEMED  
TAXATION  
REGIME**



**SUPPORTED BY**



# ANNUAL CONFERENCE 2024

## HEADING TOWARDS DEEMED TAXATION REGIME

SATURDAY, 3<sup>RD</sup> AUGUST, 2024 | TAJ BENGAL, KOLKATA

Join us for an immersive experience at the **DTPA Annual Conference 2024**, where experts and enthusiasts converge to explore the latest knowledge treasury and best practices in taxation.



### CONFERENCE HIGHLIGHTS :

- ▶ **Theme:** Over the past decade, we have witnessed greater focus on “Deemed Taxation” – a sign of loss of trust between the Legislature and the Tax Payer. It’s time to ponder whether the step was in the right direction or causing stakeholders’ discomfort and whether this should be discontinued in future from the perspective of both the Legislature and the Tax Payer.
- ▶ **Keynote Speakers:** Engage with thought leaders who will inspire, educate and challenge your perspectives on taxation.
- ▶ **Technical Session:** Deliberation on contentious issues in Income Tax & GST.
- ▶ **Capital Market:** Participation and interaction with experts to get insights on parameters to identify multibaggers along with outlook for markets and beyond.
- ▶ **Quiz:** An interactive brain teasing quiz for the participants.
- ▶ **Networking Opportunities:** Connect with peers, mentors and potential collaborators.

**Special Attraction - Lucky Draw and Prize Distribution**

Don't miss this opportunity to elevate your skills. Expand your network and be part of the DTPA community! Mark your calendar and join us at the DTPA Annual Conference 2024.

**CA Rajesh Kr. Agrawal**  
President

**CA Narendra Kr. Goyal**  
Chairman

**CA D.S. Agarwala**  
Co-Chairman

**CA Mahendra Kr. Agarwal**  
General Secretary

For more information, visit [www.dtpa.org](http://www.dtpa.org) or Contact us at 033 22420638 / 40035451



**ANNUAL CONFERENCE 2024****HEADING TOWARDS  
DEEMED TAXATION REGIME**SATURDAY, 3<sup>RD</sup> AUGUST, 2024 | TAJ BENGAL, KOLKATA**PROGRAMME**

TIME		
9:00 A.M. – 9:45 A.M.	REGISTRATION & TEA	
	INAUGURAL SESSION	
9:45 A.M. – 10:45 A.M.	Chief Guest	CA Ranjeet Kumar Agarwal President- ICAI
	FIRST TECHNICAL SESSION	
10:45 A.M. – 1:15 P.M.	Topic	Deemed Income vis a vis Real Taxes : The Dynamics Of Modern Taxation
	Speaker	CA (Dr.) Girish Ahuja
	Topic	Deemed Supply & Valuation : A Pandora`s Box
	Speaker	CA Jatin Christopher
1:15 P.M. – 2:00 P.M.	LUNCH	
2:00 P.M. – 3:15 P.M.	Brain Teasers - An Interactive Quiz	
	SECOND TECHNICAL SESSION	
3:15 P.M. – 5:00 P.M.	Topic	Identifying Multibaggers with Exit Strategy
	Panel Discussion	Market @ 2030 : India & Abroad
	Speakers & Panelists	Mr. Ajay Bagga & Other Eminent Panelists
5:00 P.M. – 5:30 P.M.	Lucky Draw and Prize Distribution	

# DELEGATE FORM



**DIRECT TAXES PROFESSIONALS' ASSOCIATION**  
**ANNUAL CONFERENCE - 2024**  
**HEADING TOWARDS**  
**DEEMED TAXATION REGIME**

**DIRECT TAXES PROFESSIONALS' ASSOCIATION**

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

Dear Sirs,

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

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

**DELEGATE FEE (Incl. GST):**  
 ₹2500/-

**NO SPOT REGISTRATION**

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

**For Online Payment:**

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

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



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


**DIRECT TAXES PROFESSIONALS' ASSOCIATION**  
 (Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

Dear Sir/Madam,

**Re: Appeal for Articles in Souvenir for Annual Conference 2024**

**Direct Taxes Professionals' Association**, popularly known as **DTPA**, as one of the premier professional associations in Kolkata consisting of more than 1850 members comprising of eminent **Chartered Accountants, Advocates, Company Secretaries, Cost Accountants and Tax Practitioners**. Our Association provides a forum for education, sharing of ideas & knowledge pool, sharpening skill & networking opportunities amongst professionals. It makes regular representations to various regulatory authorities, different departments/Ministries of Govt. of India and Govt. of West Bengal.

DTPA is organising its flagship event – **Annual Conference 2024** on **Saturday 3<sup>rd</sup> August 2024** at **Hotel Taj Bengal, Kolkata**.

The Theme of the Conference is "**Heading Towards Deemed Taxation Regime**" wherein eminent speakers from various parts of our country have been invited to deliberate upon the current issues in taxation. **Around 400 delegates are expected to attend the Annual Conference.**

We invite you to contribute articles **for the Souvenir to be published on the occasion of Annual Conference, 2024 on the given below topics which will be considered for publication, subject to approval by the Editorial Board.**

- Direct Taxes
- International Taxation
- GST & Indirect Taxes
- Accountancy and Audit
- Corporate & Allied Laws
- Insolvency and Bankruptcy
- Information Technology
- Emerging areas of Practice (*viz. RERA, Forensic Audit, Start-up consulting, Valuation, social audit etc.*)

The articles sent for publication in the Souvenir should conform 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 be preferably 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 [conference.dtpa@gmail.com](mailto:conference.dtpa@gmail.com).** For further details, please contact us at:

Mob: 9830255500 (Giridhar Dhelia) / 9831016678 (Sujit Sultania)

Please note that Souvenir Committee has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Souvenir.

Thanks and Regards,

CA. Rajesh Kr. Agrawal

**President**

**DTPA**

Ph. 9007217679

Email: [thinkvisor18@gmail.com](mailto:thinkvisor18@gmail.com)

CA. Narendra Kr. Goyal

**Chairman**

**DTPA-Conference Committee**

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Adv. Giridhar Dhelia

**Chairman**

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Ph. 9830255500

Email: [gdhelia@gmail.com](mailto:gdhelia@gmail.com)

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



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

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

**Email :- dtpacasc@gmail.com**

**RECENT AMENDMENTS IN GST AND  
CIRCULARS ISSUED -  
IMPACT AND ACTION POINTS**



**18 Jul, 2024, Thursday  
04:00 PM - 06:00 PM**



**DTPA Conference Hall  
3 Govt Place, IT Building  
2nd Floor, Kol- 01**

**" 2 CPE HOURS "**

**PARTICIPATION CHARGES:**

**RS. 200/-**



**CA Anuj Lohia  
SPEAKER**



**CA Adv Shreya Mundhra  
SPEAKER**

**CA Rajesh Kumar Agrawal  
Convenor**

**CA Shyam Agarwal  
Deputy Convenor**



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

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

**Email :- dtpacasc@gmail.com**

# **BUDGET SEMINAR**

**24th Jul, 2024, Wednesday**

**Venue : Kala Mandir,  
48 Shakespeare Sarani**

**Time : 3 PM to 7 PM**

**“4 CPE Hours”**

**Participation Charges -**

**Rs. 200/-**



**Adv K. Vaitheeswaran  
Chennai**



**Prof (Dr) Suman K Mukherjee**



**CA G. S. Prashanth  
Bengaluru**

**CA Rajesh Kr Agrawal  
Convenor**

**CA Shyam Agarwal  
Deputy Convenor**

## Compliance Calendar for July, 2024

Statute	Due dates	Compliance Period	Details	
<b>Income Tax Act, 1961</b>	07th July 2024	Jun-24	Due date for deposit of Tax deducted/collected for the month of May, 2024. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	15th July 2024	Jun-24	Issuance of TDS certificate for Tax deducted under Section 194-IA, 194-IB, 194-M	
	15th July 2024	Apr to Jun-24	Quarterly Statement for TCS (27EQ) for the quarter ending June 2024	
	30th July 2024	Jun-24	Furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC) and 194M	
	30th July 2024	Apr to Jun-24	Issue of TCS certificate (Form 27D) for Quarter 1 of FY 2024-25	
	31st July 2024	Apr to Jun-24	Quarterly Statement for TDS (Form 24Q or Form 26Q) for the quarter ending June 2024	
	31st July 2024	FY 2023-24	Income tax return filing for FY 2023-24 for individuals and entities not liable for tax audit, and who have not entered into any international or specified domestic transaction.	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
<b>GST</b>	10th July 2024	Jun-24	GSTR-7	Return for TDS to filed by Tax Deductor
	10th July 2024	Jun-24	GSTR-8	E - Commerce Operator registered under GST liable to TCS
	11th July 2024	Jun-24	GSTR-1 (MONTHLY)	1. Summary of Outward Supplies where turnover exceeds Rs. 5 Crore during preceding year or have not chosen QRMP scheme 2. Registered person, with aggregate turnover of less than INR 5 Crore during preceding year, opted for monthly filing of return under QRMP.
	13th July 2024	Jun-24	GSTR -1 QRMP monthly	Uploading of outward supplies by quarterly return filers who opted for QRMP Scheme for Q1 of 2024-25
	13th July 2024	Jun-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th July 2024	Jun-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th July 2024	Jun-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	20th July 2024	Jun-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of June, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year

	22nd July 2024	Jun-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of June, 2024 for the taxpayer with Aggregate turnover upto INR 5 crores during previous year and who has opted for Quarterly filing of GSTR-3B <b>(Applicable to Group - A States)</b> Group - A States: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep
	24th July 2024	Jun-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of June, 2024 for the taxpayer with Aggregate turnover upto INR 5 crores during previous year and who has opted for Quarterly filing of GSTR-3B <b>(Applicable to Group - B States)</b> Group - B States: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi
Statute	Due dates	Compliance Period	Details	
<b>Prof. Tax on Salaries</b>	10th July, 2024	Jun-24	Professional Tax (PT) on Salaries for June 2024	
<b>ESI &amp; PF</b>	15th July, 2024	Jun-24	Provident Fund (PF) & ESI Returns and Payment for June 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](mailto:dtpejournal@gmail.com) from you will guide us to move further and motivate in touching new heights in professional excellence.*

**Compliance Calendar for August, 2024**

Statute	Due dates	Compliance Period	Details	
<b>Income Tax Act, 1961</b>	07th August 2024	Jul-24	Due date for deposit of Tax deducted/collected for the month of July, 2024. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	15th August 2024	Jul-24	Issuance of TDS certificate for Tax deducted under Section 194-IA, 194-IB, 194-M, 194S	
	15th August 2024	Jul-24	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of July, 2024 has been paid without the production of a challan	
	15th August 2024	Jul-24	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of July, 2024	
	30th August 2024	Jul-24	Furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC), 194M and 194S	
	31st August 2024	Form 9A	Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on October 31, 2024)	
	31st August 2024	Form 10	Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on October 31, 2024)	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
<b>GST</b>	10th August 2024	Jul-24	GSTR-7	Monthly Return by Tax Deductors For July
	10th August 2024	Jul-24	GSTR-8	Monthly Return by E-Commerce Operators For July
	11th August 2024	Jul-24	GSTR-1 (MONTHLY)	1. Summary of Outward Supplies where turnover exceeds Rs. 5 Crore during preceding year or have not chosen QRMP scheme 2. Registered person, with aggregate turnover of less than INR 5 Crore during preceding year, opted for monthly filing of return under QRMP.
	13th August 2024	Jul-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th August 2024	Jul-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th August 2024	Jul-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th August 2024	Jul-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of July, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year
Statute	Due dates	Compliance Period	Details	
<b>Prof. Tax on Salaries</b>	10th August 2024	Jul-24	Professional Tax (PT) on Salaries for July 2024	
<b>ESI &amp; PF</b>	15th August 2024	Jul-24	Provident Fund (PF) & ESI Returns and Payment for June 2024	



## Speaking Opportunity at DTPA Platform

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

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

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

Regards,

**CA Rajesh Kr. Agrawal**  
President-DTPA

## Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

- Direct Taxes
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- The length of the article should be 2000-2500 words and should preferably be accompanied with an executive summary of around 100 words.
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## DIRECT TAXES

### 1. STATUTORY UPDATES

- 1.1 CBDT amends Form 27Q; added 'Note 7A' for furnishing information about lower or no TDS under section 197A - **Notification No. G. S. R. 2153(E), Dated 31-05-2024**

**Editorial Note** : The Central Government has notified the Income-tax (Sixth Amendment) Rules, 2024. As per the amended norms, an additional note has been inserted in Form No. 27Q. The additional note pertains to the verification section of the form. Taxpayers are now required to write "P" if lower deduction or no deduction is in view of the notification issued u/s 197A(1F).

- 1.2 CBDT notifies 'Real Estate Appellate Tribunal, Punjab' for Sec. 10(46) exemption - **Notification No. S.O. 2208(E), Dated 6-6-2024**

**Editorial Note** : The Central Board of Direct Taxes (CBDT) has notified 'Real Estate Appellate Tribunal, Punjab' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The notification is applicable for assessment years 2023-24 to 2027-28 subject to certain conditions.

- 1.3 CBDT notifies 'Kerala Co-operative Deposit Guarantee Fund Board' for Sec. 10(46) exemption - **Notification No. S.O. 2242(E), Dated 12-06-2024**

**Editorial Note** : The Central Board of Direct Taxes (CBDT) has notified 'Kerala Co-operative Deposit Guarantee Fund Board' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The notification is applicable for assessment years 2019-20 to 2023-24 subject to certain conditions.

- 1.4 Direct Tax collections for the FY 2024-25 register a growth of 20.99% compared to the preceding FY: CBDT - **Press Release, Dated 18-06-2024**

**Editorial Note** : The provisional figures of Direct Tax collections for the Financial Year 2024-25 (as of 17.06.2024) show that Net collections are at Rs. 4,62,664 crore, compared to Rs. 3,82,414 crore in the corresponding period of the preceding Financial Year (i.e. FY 2023- 24), representing an increase of 20.99%.

- 1.5 CBDT allows e-filing for Forms 3CN, 3CS, 3CEC, 3CEFB, 59 and 59A - **Notification No. 01/12024-25, Dated 24-06-2024**

**Editorial Note** : The Central Board of Direct Taxes (CBDT) specified the e-filing of 6 forms under rule 131 of the Income Tax Rules, 1962. These include forms for making applications under section 35AD, pre-filing meetings, Opting for Safe Harbour in respect of Specified Domestic Transactions, etc., namely, Form 3CN, 3CS, 3CEC, 3CEFB, 59, and 59A.

- 1.6 CBDT directs officers to accept delayed payment of taxes under Vivad se Vishwas Act if it was made by Feb 28, 2022 - **Order F No. 173/03/2021-ITA-I, Dated 27-06-2024**

**Editorial Note** : The CBDT has directed that the delayed payment of requisite taxes under the Direct Tax Vivad se Vishwas Act, 2020 may be accepted in the cases fulfilling the following conditions - (a) The assessee has made full payment of taxes (including amount payable after due date as prescribed in Form-3) on or before 28.02.2022 and (b) Appeal mentioned in Form-1 has either been withdrawn or has not been decided as on date of full payment of taxes.

### 2. SUPREME COURT

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

- 2.1 **Adjustments - AMP expenses** : SLP granted against High Court ruling that where TPO had not established that there was an international transaction entered into by assessee by incurring a higher AMP **expenditure**, approach of TPO of determining ALP of such AMP expenditure either on BLT bases or TNMM could not be sustained - **Principal Commissioner of Income-tax v. Yakult Danone India (P.) Ltd. - [2024] 163 taxmann.com 746 (SC)**

#### SECTION 153D OF THE INCOME-TAX ACT, 1961 - PRIOR APPROVAL NECESSARY FOR ASSESSMENT IN CASES OR REQUISITION

- 2.2 **Scope of** : SLP dismissed against order of High Court that where assessment orders passed in case of assessee were totally silent about Assessing Officer having written to Additional Commissioner seeking his approval or of Additional Commissioner having granted such approval, Tribunal was correct in holding that such approval was granted mechanically without application of mind by Additional Commissioner resulting in vitiating assessment orders - **A. Commissioner of Income-tax v. Serajuddin and Co. - [2024] 163 taxmann.com 118 (SC)**

### 3. HIGH COURT

#### SECTION 4 OF THE INCOME-TAX ACT, 1961 - INCOME - CAPITAL OR REVENUE RECEIPTS

- 3.1** Where subsidies received by assessee-company from industrial projects was clearly linked to establishment of new units same would be treated as capital expenditure – *Pr. Comm. of Income-tax v. Pepisco India Holding (P.) Ltd.* - [2024] 163 taxmann.com 412 (Delhi)
- 3.2** Once a company is dissolved u.s. 560(5) of Companies Act, it ceases to exist and, therefore, no order of assessment could be validly passed against it under Income Tax Act and if it is passed, it would be a nullity - *Rainawari Finance & Investment Co. (P.) Ltd. v. ITO* - [2024] 163 taxmann.com 83 (Jammu & Kashmir)
- 3.3 Interest** : Receipt of interest against principal amount deposited by assessee pursuant to an auction sale, which was eventually nullified by court, was liable to be characterized as a capital receipt - *Principal Commissioner of Income-tax-4 v. INS Finance & Investment (P.) Ltd.* - [2024] 163 taxmann.com 107 (Delhi)

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

- 3.4 Royalties/ Fees for technical services - Software** : Where assessee challenged assumption of jurisdiction by lower authorities to issue reopening notice claiming that monies received from sale/resale of shrink-wrapped software would not amount to royalty so as to be taxable, since lower authorities had clearly failed to deal with objections which struck at very root of assumption of jurisdiction, notice issued u.s. 148(b) and order passed u.s. 148A(d) were to be quashed - *Componentsource Company Ltd. v. Assistant Commissioner of Income-tax* - [2024] 163 taxmann.com 537 (Delhi)
- 3.5** Reassessment against foreign co. quashed as its WOS in India was treated as its Service PE, Fixed place PE & DAPE without sufficient reasons/material - *Progress Rail Locomotive Inc. v. Deputy Commissioner of Income Tax, (IT)* - [2024] 163 taxmann.com 52 (Delhi)

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

- 3.6 Application of income** : Where assessee-trust made donations to other charitable trusts out of accumulated income, since said donations were in any case reversed and had been advanced only for an extremely short duration, same would not be hit by provisions of Explanation 2 to section 11(1) as same applies only to amounts credited or paid to certain categories of institutions - *Commissioner of Income-tax (Exemptions) v. Jamnalal Bajaj Foundation* - [2024] 163 taxmann.com 77 (Delhi)

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

- 3.7 Reassessment** : If assessments concluded are not in accordance with law, it is not change of opinion, but it is a valid reason for reopening assessments; thus where Assessing Officer has ignored mandatory provision of section 14A and Circular No. 5/14 while completing assessments, reopening of assessment was justified - *T.K. Salim v. Union of India* - [2024] 163 taxmann.com 385 (Kerala)

#### SECTION 17 OF THE INCOME-TAX ACT, 1961 - SALARIES - PERQUISITE

- 3.8 Stock option** : Where stock options were not exercised by assessee and amount in question was one-time voluntary payment made by employer to all option holders in lieu of disinvestment of a business and loss in value of options, same could not be treated as perquisite u.s. 17(2)(vi) - *Sanjay Baweja v. Deputy Commissioner of Income-tax* - [2024] 163 taxmann.com 116 (Delhi)

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

- 3.9 Question of law** : Where Assessing Officer had made due inquiries and allowed assessee's claim by treating undisclosed income found during survey as assessee's business income, Commissioner erred in initiating revision proceeding on basis that disclosed amount must be taxed u.s. 115BBE rather than being shown as business income - *Principal Commissioner of Income-tax v. Dharti Estate* - [2024] 163 taxmann.com 179 (Gujarat)

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

- 3.10 Revision** : Where Pr. Commissioner on basis of observation made by audit party that during assessment proceedings no proper verification of purchase of new assets by assessee and depreciation claimed on assets had been made by AO set aside assessment order, Since assessee had not claimed depreciation in tax audit report for Income-tax Act purpose as new assets so purchased were not put to use, Tribunal rightly set aside revision order on basis that assessment order was neither erroneous nor prejudicial to interest of revenue - *Principal Commissioner of Income-tax v. Maheshwari Logistics Ltd.* - [2024] 162 taxmann.com 579 (Gujarat)

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

- 3.11 Reassessment** : Where a reopening notice was issued for reason that assessee purchased certain plant and machinery by way of import for certain amount and custody duty was paid on import of capital assets and that assessee had not booked imported machine in block of fixed assets, therefore, expenditure incurred by assessee was of capital in nature, since during course of original scrutiny proceedings, entire books of accounts, bills and vouchers had been duly perused by then AO who had formed a view that parts imported were used in manufacturing of product, therefore, assessee had rightly booked revenue expenditure, impugned reopening

after 4 years was unjustified - **J.B.J. Perfumes (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 163 taxmann.com 740 (Himachal Pradesh)**

- 3.12 Reassessment** : Where AO issued on assessee a notice u.s. 148 before expiry of four years from end of relevant asst year seeking to reopen its assessment completed u.s. 143(3) on ground that assessee wrongly claimed and allowed loan processing charges and other expenses, since there was no final determination of tax liability of assessee in impugned order rejecting objection of assessee against notice issued u.s. 148, writ petition deserved to be dismissed - **Express Infrastructure (P.) Ltd. v. Income-tax Officer - [2024] 162 taxmann.com 565 (Madras)**

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

- 3.13** Where assessee sold a residential property and reinvested the capital gains in a new property, and CIT initiated proceedings u.s. 263, alleging a violation of Section 54, however, Tribunal found that AO had thoroughly examined all relevant documents, once basic conditions of Section 54(1) were met, Tribunal considered procedural requirements u.s. 54(2) redundant, leading to dismissal of Commissioner's proceedings - **Principal Commissioner of Income-tax v. Ms. Sarita Gupta - [2024] 163 taxmann.com 8 (Allahabad)**

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

- 3.14 Share premium** : Where assessee did not receive any consideration for allotment of shares in previous year relevant to current asst year, section 56(2)(viib) would not be applicable to such transaction - **Principal Commissioner of Income-tax v. I.A. Hydro Energy (P.) Ltd. - [2024] 163 taxmann.com 408 (Himachal Pradesh)**
- 3.15 Share premium, Valuation of shares** : Where assessee has exercised option of DCF valuation method as per rule 11UA, AO has no jurisdiction to substitute NAV method of valuation of share - **Principal Commissioner of Income-tax v. I.A. Hydro Energy (P.) Ltd. - [2024] 163 taxmann.com 408 (Himachal Pradesh)**

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

- 3.16 Bank deposits** : Where an asst order was passed making addition of Rs. 85.84 lakhs to income of assessee on account of cash deposited in its bank account, since a statement from bank to effect that amount received in bank account was Rs.42.92 lakhs and not Rs.85.84 lakhs was submitted by assessee as an attachment to reply to show cause notice which was

not considered, impugned order was not sustainable and same was to be set aside and matter was to be remanded for reconsideration - **Coonor Sri Thanthi Mariamman Kerala Seva Sangam v. Assessment Unit - [2024] 163 taxmann.com 631 (Madras)**

- 3.17 Scope of provision** : Where assessee-company raised funds through Foreign Currency Convertible Bonds (FCCB), since nature and source of funds of FCCB was fully explained by assessee, addition made under section 68 was not valid - **Principal Commissioner of Income-tax v. Reliance Natural Resources Ltd. - [2024] 163 taxmann.com 176 (Bombay)**
- 3.18** Where assessee purchased shares of a company listed on Bombay Stock Exchange through a D-mat account, with payments made via banking channels and Security Transaction Tax paid, fulfilling all conditions for exemption under Section 10(38), Assessing Officer could not question genuineness of those shares or treat them as bogus to make an addition under Section 68 - **Chief Commissioner of Income-tax v. Nilesh Jain (HUF) - [2024] 163 taxmann.com 229 (Madhya Pradesh)**
- 3.19 Reassessment** : Where reopening notice under section 148A(b) was issued upon assessee on ground that an information was received with respect to deposits made by an entity through a person, since such vital information which was relied upon by revenue was not furnished to assessee, and further, assessee had earlier faced scrutiny assessment for same assessment year, wherein he claimed to have disclosed all bank accounts with respect to which reassessment had been drawn, impugned reopening notice and further order passed under section 148A(d) was to be set aside - **Mahesh Kumar Verma v. Union of India - [2024] 163 taxmann.com 228 (Allahabad)**
- 3.20 Share application money** : Where Tribunal deleted addition made on account of bogus share application money received by assessee-company noticing that Commissioner (Appeals) had duly recorded its satisfaction relating to identity, genuineness and creditworthiness of amounts received along with confirmations, address, cheque number and PAN, Tribunal's order required no interference - **Principal Commissioner of Income-tax (Central) v. GTM Builder and Promoters (P.) Ltd. - [2024] 163 taxmann.com 75 (Delhi)**
- 3.21 Share application money** : Where assessee purchased shares of a company when trading of said company was suspended and sold same and claimed exemption under section 10(38), in absence of any material brought on record to suggest that purchase and sale of said shares was bogus, Assessing Officer was not justified in making addition of sale proceeds of shares under section 68 - **Principal Commissioner of Income-tax v. Shri Ambalal Chimmanlal Patel - [2024] 162 taxmann.com 892 (Gujarat)**

- 3.22 Bogus LTCG** : Where Tribunal set aside order passed under section 263 on ground that Commissioner had invoked his jurisdiction solely based upon a proposal received from Assessing Officer, however, it was found that Principal

Commissioner had applied its mind and came to prima facie conclusion that Assessing Officer should have treated entire credit as bogus and added back same under section 263 rejecting claim for exemption under section 10(38), therefore, Tribunal committed a manifest error in setting aside order passed under section 263 - **Principal Commissioner of Income-tax v. Bina Gupta - [2024] 162 taxmann.com 895 (Calcutta)**

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

- 3.23 Immovable property :** Where proceedings under section 148 were initiated against assessee in respect of two alleged purchases of immovable property, since assessee had placed on record reply to show cause notice cum draft assessment order and produced list of attachments thereto include I.T. acknowledgment of assessee's mother and father, documents pertaining to sources of income and bank statements, impugned assessment order passed making addition to income of assessee was to be set aside - **Praveen Sanjiv v. Income-tax Officer - [2024] 163 taxmann.com 640 (Madras)**
- 3.24 Reassessment :** Where Assessing Officer issued on assessee-firm, a notice under section 148 and assessee challenged impugned notice on ground that notice was issued on basis of statement of a partner recorded under section 133A and a statement recorded under section 133A could not be relied upon as evidence, since statement of partner was recorded not only under section 133A but also under section 131, no case was made out to interfere with proceedings initiated by Assessing Officer - **New Arcot Plywoods and Glasses v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 180 (Madras)**
- 3.25 Reassessment :** Where assessee in response to show cause notice under section 148A(b) had requested for adjournment to 17-3-2023 and said request was considered, but no date was given for filing response and Assessing Officer passed order before 17-3-2023, in absence of date mentioned for submission of response to show cause notice, assessee had bona fide belief that its request for adjournment to 17-3-2023 was accepted and thus, impugned order deserved to be set aside - **Ply Park v. Income -tax Officer - [2024] 163 taxmann.com 177 (Kerala)**
- 3.26 Bogus purchases :** Where AO received information that assessee received accommodation entries with respect to purchases and disallowed entire purchases as bogus, since AO had not disputed sales made out of such purchases, only profit element embedded in such purchases could be brought to tax and, thus, addition was to be restricted at 12.5 per cent of total amount of bogus purchases - **Principal Commissioner of Income-tax v. Rushail Pharmadin (P.) Ltd. - [2024] 163 taxmann.com 195 (Bombay)**

- 3.27** Where Tribunal deleted addition made by Assessing Officer on account of unexplained investment in property, jewellery etc., by recording finding that there was no material to corroborate such additions, no question of law arose from Tribunal's order - **Principal Commissioner of Income-tax (Central) v. GTM Builder and Promoters (P.) Ltd. - [2024] 163 taxmann.com 75 (Delhi)**
- 3.28** Where assessee received a notice under section 148 for AY 2016-17 alleging that assessee had indulged in sale and purchase of shares of Penny Stock Company/shell companies and assessee failed to provide supporting documents, and faced another notice under Section 148A(b) while first reassessment was pending, since second notice lacked information on two key items already assessed, indicating a lack of application of mind by tax authorities consequently, order under Section 148 was quashed and set aside - **Samiksha Gour v. Income-tax Officer - [2024] 162 taxmann.com 903 (Bombay)**

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

- 3.29 Reassessment :** Where Assessing Officer issued on assessee a notice under section 148A(b) seeking to reopen assessment on ground that it had been provided GST credit by a dummy concern and assessee responded to notice and filed all documentary evidence, since Assessing Officer in order passed under section 148A(d) had reproduced reply filed by assessee and contents thereof were not even referred prima facie to come to conclusion that it was a fit case to reopen assessment, impugned order under section 148A(d) and notice under section 148 required to be set aside - **Kanishka Prints (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 178 (Gujarat)**
- 3.30** Where assessee, a partnership firm engaged in government contracts, received a notice under section 148A(b) on account of significant transactions being undertaken in FY 2018-19 without filing return, since assessee explained that all transactions were accounted for and offered for taxation and AO accepted their explanation, in such circumstances, AO's subsequent suspicion about subcontract work for reopening assessment was not justified - **S V Jadhav v. Income-tax Officer - [2024] 163 taxmann.com 263 (Bombay)**
- 3.31 Writ jurisdiction :** Where AO issued reopening notice upon assessee, and further, passed an order making addition on account of cash payment made by assessee to a person by treating same as unaccounted investment as per section 69A, since assessee participated in assessment proceedings before AO after issuance of reopening notice who considered assessee's reply on merits and passed assessment order, instant writ petition before High Court challenging impugned assessment order could not be entertained and assessee was to be relegated to avail alternative efficacious remedy of preferring appeal before CIT(A) - **Rameshbhaji Jivrajbhai Desai v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 520 (Gujarat)**

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

**3.32 Freight charges** : Where assessee was granted only one day to respond to show cause notice on ground that limitation period was approaching and was required to enclose all supporting documents in respect of freight charges paid, thereafter AO made addition under section 69C on ground that assessee failed to provide documents, since reasonable opportunity was not provided to assessee, impugned assessment order passed was to be set aside and matter was to be remanded - *Imperial Shipping Service v. Assessment Unit, Income Tax Department, National E-Assessment Centre, Delhi* - [2024] 163 taxmann.com 224 (Madras)

**3.33 Reassessment** : Where AO issued reopening notice on ground that 75 vehicles to its dealers as commission for achieving sales targets and incentives being provided thereto was not disclosed by assessee, however said fact came into light only after initiation of proceedings under section 201/201(1A) and said proceedings were initiated much after initiation of reopening notice, said alleged non-disclosure could not have formed part of satisfaction and initiation of reassessment proceedings after a lapse of four years herein, was de hors settled position of law as no new tangible material was available on record - *Principal Commissioner of Income-tax v. Samsung India Electronics (P.) Ltd.* - [2024] 163 taxmann.com 84 (Delhi)

**SECTION 71 OF INCOME-TAX ACT, 1961 - LOSSES – SET OFF OF FROM ONE HEAD AGAINST INCOME FROM ANOTHER**

**3.34 Constitutional validity** : Amendment made in section 71 by inserting sub-section (3A) by Finance Act, 2017 with effect from 1-4-2018, restricting set off of loss under head 'Income from house property' against any other head to an amount of Rs. 2 lakhs for a particular assessment year, is not ultra vires the provisions of the Constitution - *Sanjeev Goyal v. Union of India* - [2024] 163 taxmann.com 122 (Delhi)

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

**3.35** Where there was nothing on record to show that repairs and maintenance charges have a direct nexus with business activity of manufacture and sale of moulds by assessee, profits and gains derived by assessee (industrial undertaking) from repairs and maintenance was not eligible for deduction under section 80IB - *Rajesh Kumar Drolia (HUF) v. Commissioner of Income-tax* - [2024] 163 taxmann.com 300 (Calcutta)

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

**3.36 Reassessment** : Where a reopening notice was issued for reason that assessee had derived income from damaged goods claim and discount and that these incomes had no nexus and were not derived by assessee from manufacturing activities, hence, same could not have been allowed while computing eligible profits for claim of deduction under section 80IC, since there was nothing on record to suggest that sale of damaged stock had not been derived from an industrial activity and, therefore, not admissible for deduction under section 80IC and that all material for reopening had been culled out from assessment record submitted by assessee, impugned reopening after 4 years was unjustified - *J.B.J. Perfumes (P.) Ltd. v. Principal Commissioner of Income-tax* - [2024] 163 taxmann.com 740 (Himachal Pradesh)

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

**3.37 Reassessment** : Where assessee co-operative society filed writ petition challenging reassessment proceedings after reassessment order was passed on ground that deduction under section 80P was rightly allowed in original assessment proceedings, since assessee did not avail alternative statutory remedy of appeal, writ petition was not maintainable - *Telco Co-operative Society Ltd. v. Commissioner of Income-tax* - [2024] 163 taxmann.com 523 (Jharkhand)

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

**3.38 Adjustments – Other** : Where demand was raised for assessment years 2008-09 to 2014-15 on account of ALP adjustment made for assignment of call/put options vested by assessee to its Mauritius based group concern, and assessee filed for blanket unconditional stay for assessment year 2014-15 on ground that assessment year 2008-09 was to be considered as substantive assessment, in view of fact that from assessment year 2011-12, put/call options exercised was 6.01 per cent as compared to 2.03 percent which was exercised earlier, recovery as sought to be made for relevant assessment year couldnot be in nature of protective recovery and conditional stay granted by Tribunal was to be upheld - *Vodafone India Services (P.) Ltd. v. Assistant Commissioner of Income-tax* - [2024] 163 taxmann.com 580 (Bombay)

**3.39 Comparability factors - Internal comparable** : Size of internal comparable does matter in entity level comparison because scale of operations substantially vary and so does underlying profitability factor, but in a transaction level comparison within same entity, mere difference in size of uncontrolled transactions does not render transaction incomparable - *Commissioner of Income-tax (International Taxation) v. Lummus Technology Heat Transfer BV* - [2024] 163 taxmann.com 411 (Delhi)

**3.40 Adjustments - Others** : WDV as may be reflected in books would not be liable to be taken into consideration while answering issue of ALP - *Principal Commissioner of Income-tax v. Sarens Heavy Lift India (P.) Ltd.* - [2024] 163 taxmann.com 447 (Delhi)

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

**3.41 Instruction and risk parameters :** Where assessee challenged reference made by Assessing Officer to Transfer Pricing Officer under section 92CA on ground that Assessing Officer had failed to bear in mind Instruction No. 3/2016, there was no justification for continuing with writ petition, particularly when assessee had efficacious and adequate remedies under Act - **Infonox Software (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 410 (Delhi)**

**SECTION 95 OF THE INCOME-TAX ACT, 1961 -  
GENERAL ANTI-AVOIDANCE RULE -  
APPLICABILITY OF**

**3.42 Bonus stripping :** Where assessee set off STCL incurred on sale of shares of REFL against LTCG made on sale of shares in another company, revenue contended that assessee purchased shares of REFL and subsequently, there was fall in share price due to bonus share declaration which resulted in business loss when assessee sold same shares in a short span of time, since issuance of bonus shares was evidently an artificial avoidance arrangement and was primarily designed to sidestep tax obligations, provisions of General Anti-Avoidance Rules (GAAR) under Chapter X-A would become applicable - **Ayodhya Rami Reddy Alla v. Principal Commissioner of Income-tax - [2024] 163 taxmann.com 277 (Telangana)**

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

**3.43 Reassessment :** Where Assessing Officer while passing original assessment order under section 143(3) was totally silent on liability of assessee to tax under section 115JB, neither noticed provisions of section 115JB nor formed any opinion with regard to liability to tax of assessee on book profit, assessment order was non-speaking and cryptic and, therefore, reassessment proceedings initiated by Assessing Officer under section 147 was not based on change of opinion - **Principal Commissioner of Income-tax v. I.T.C. Ltd. - [2024] 163 taxmann.com 294 (Calcutta)**

**SECTION 117 OF THE INCOME-TAX ACT, 1961 -  
INCOME-TAX AUTHORITIES**

**3.44 Charge memo :** Where petitioner (Union of India) issued a charge memo to respondent [Commissioner (Appeals)] on 11-6-2014 on ground that five of appeals decided by him between 13-5-2003 and June, 2007 were wrongly decided by ignoring material facts and Central Administrative Tribunal quashed charge memo on ground of inordinate delay in issuance of charge memo, since petitioner had not been able to furnish any justifiable reason for inordinate delay in issuance of charge memo, there was no infirmity in order of Tribunal - **Union of India v. Pavan Ved - [2024] 162 taxmann.com 567 (Delhi)**

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

**3.45** Where assessee, a joint venture between Tata Autocomp and GOTION CHINA filed an application for condoning delay if any in filing Form 10ID to avail beneficial rate of 15% under section 115BAB which was rejected by CBDT, since impugned order was not signed by Member who conducted personal hearing and Field Authorities' report was not provided to assessee, matter would be remanded back to CBDT for fresh consideration - **Tata Autocomp Gotion Green Energy Solutions (P.) Ltd. v. Central Board of Direct Taxes - [2024] 163 taxmann.com 643 (Bombay)**

**3.46 Condonation of delay :** Where assessee could not file its return of income under section 139(1) for reason that accountant of assessee fell ill and subsequently on account of such illness had to resign due to which books of accounts could not be finalized which resulted in delayed filing of return, delay did not appear to be on account of any negligence or malafide of assessee as illness and subsequent resignation of accountant was an entirely unforeseen event which amounted to genuine hardship, therefore, delay in filing of return was to be condoned in terms of section 119(2)(b) - **Anmol Feeds (P.) Ltd. v. Union of India - [2024] 163 taxmann.com 407 (Calcutta)**

**3.47 Condonation of delay :** Where assessee requested to condone delay in filing return due to COVID-19 pandemic, in view of fact that financials for relevant year were duly finalized and signed on 31-7-2020, however return of income was filed on 30-3-2021, furthermore assessee was regularly filing belated return, recital of said facts clearly demolished any assertion of financial constraints that may have befallen assessee, and thus, impugned order refusing to condone delay for late filing of return was justified - **International Ltd. v. Central Board of Direct Taxes - [2024] 163 taxmann.com 148 (Delhi)**

**SECTION 124 OF THE INCOME-TAX ACT, 1961 -  
ASSESSING OFFICER - JURISDICTION OF**

**3.48** Where assessee filed a writ petition seeking to lift attachment on a bank account maintained in Wayanad, within jurisdiction of Kerala High Court, since attachment was executed by Income Tax authority in Ooty, under jurisdiction of Madras High Court, consequently, Kerala High Court lacked territorial jurisdiction and therefore, writ petition was rightly dismissed - **Manaf Alihassan v. National Faceless Assessment Centre - [2024] 163 taxmann.com 377 (Kerala)**

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

**3.49 Transfer of files :** Where pursuant to an order passed by Commissioner under section 127, file of assessee was transferred to ACIT, Chennai, Assessing Officer in Kolkata had no jurisdiction to pass assessment order on same - **Principal Commissioner of Income-tax v. Ojasvi Motor Finance (P.) Ltd. - [2024] 163 taxmann.com 80 (Calcutta)**

**SECTION 142 OF THE INCOME-TAX ACT, 1961 AND ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950 - SPECIAL AUDIT**

- 3.50 General :** Where Assistant Commissioner had passed an order under section 142(2A) approving special audit of books of accounts of petitioner by a nominated Accountant, since petitioner had no defence to object to a special audit under section 142(2-A) and no serious prejudice had been caused to petitioner on account of violation of rules of natural justice, impugned order could not be interfered - *Mongia Steel Ltd. v. Union of India* - [2024] 163 taxmann.com 149 (Jharkhand)

**SECTION 143(1)(a) OF THE INCOME TAX ACT, 1961 - ASSESSMENT – PRIMA FACIE ADJUSTMENT**

- 3.51** Section 143(1A) applies only to adjustments made under section 143(1)(a) and not to those resulting from scrutiny assessments under section 143(3) - *Khandelwal Rubber Products (P.) Ltd. v. Commissioner of Income-tax* - [2024] 162 taxmann.com 897 (Allahabad)

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

- 3.52 Eligible assessee :** Though non-intimation of objections filed before DRP to Assessing Officer under section 144C (2)(b)(ii) is a lapse on part of assessee, but once such objections are filed before DRP and till decision is taken by DRP regarding directions to be passed, Assessing Officer ought not to proceed further and assessment order passed disregarding objections filed requires to be interefered with - *ZoomRx Healthcare Technology Solutions (P.) Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax* - [2024] 163 taxmann.com 747 (Karnataka)

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

- 3.53 Scope of provision :** So long as assessment proceedings in respect of certain income subsists, income could not be said to have escaped assessment and, therefore, reassessment proceedings were void - *Sahana Dwellers (P.) Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer/National Faceless Assessment Centre, Delhi* - [2024] 162 taxmann.com 578 (Bombay)
- 3.54 Opportunity of hearing :** Where Assessing Officer issued on assessee a notice under section 148 seeking to reopen his assessment and passed assessment order without disposing of objections raised by assessee, Tribunal rightly quashed reopening of assessment - *Principal Commissioner of Income-tax v. Sanjay Mehta* - [2024] 162 taxmann.com 577 (Calcutta)

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

- 3.55** Where reason for reopening was recorded only on borrowed information from Directorate of Revenue Intelligence (DRI) and there was no independent application of mind on part of AO to come to his own conclusion that income escaped assessment, reopening of assessment was not permissible - *Balaji Mines and Minerals (P.) Ltd. v. Assistant Commissioner of Income-tax* - [2024] 163 taxmann.com 37 (Bombay)
- 3.56** Where reasons for re-opening clearly went to show that AO, except borrowing information from third report of Justice M.B. Shah Commission, failed to record independently to his own satisfaction any reason so as to direct re-opening of assessment, reopening was not permissible - *Balaji Mines and Minerals (P.) Ltd. v. Assistant Commissioner of Income-tax* - [2024] 163 taxmann.com 37 (Bombay)

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

- 3.57 Writ remedy :** Where assessee filed writ petition challenging reassessment proceedings on ground that AO had failed to give sufficient time to assessee, since assessee had alternative statutory remedy of filing appeal, writ petition was not maintainable - *Preet Remedies Ltd. V. National Faceless Assessment Centre* - [2024] 163 taxmann.com 443 (Punjab & Haryana)

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

- 3.58 Faceless assessment :** Where in notice u.s. 148 issued upon assessee, name of Income Tax Officer who was AO had been reflected, impugned notice reflecting name of concerned ITO was contrary to provisions of section 151A and schemes framed thereunder, whereby Income Tax Authority was required to undertake these proceedings in a 'faceless' manner, and accordingly, department would withdraw impugned notice and issue fresh notices if permissible under law as per scheme read with section 151A - *Ram Narayan Sah v. Union of India* - [2024] 163 taxmann.com 478 (Gauhati)
- 3.59 Reassessment :** Where limitation under Act (erstwhile section 149) for reopening assessment for asst year 2013-14 expired on 31-3-2020, impugned reopening notice issued in June 2021 in case of assessee for reason that certain quantum of earnings/transactions escaped assessment of income was barred by limitation - *Gajlaxmi Steel (P.) Ltd. v. Income-tax Officer* - [2024] 163 taxmann.com 259 (Bombay)

- 3.60 Cross-examination :** Mere making of a statement in response that order u.s. 148A(d) is passed without affording assessee right to cross-examine third party, without applying for issuance of summons for production of such person cannot vitiate entire assessment order on such ground - *Dinesh Khaitan v. Union of India* - [2024] 163 taxmann.com 39 (Calcutta)



**3.61 General** : Where assessee was given very short notice period with respect to show cause notice issued under section 148A(b) and thereafter, submit response portal was kept open for extended period, however there was no communication from revenue extending time for assessee to upload their response, assessee were denied reasonable opportunity to appropriately respond to show cause and thus, impugned order passed under section 148A(d) as well as consequential notice issued under section 148 were to be set aside - **Skipper Infrabuilders (P.) Ltd. v. Union of India** - [2024] 163 taxmann.com 10 (Calcutta)

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

**3.62 Approval** : Where order of approval under section 153D for relevant assessment year was granted to assessee by Addl. Commissioner who had granted approval for 43 cases on a single day without perusing draft assessment orders at all and without an independent application of mind, impugned assessment order was rightly declared to be illegal by Tribunal - **Principal Commissioner of Income-tax v. Shiv Kumar Nayyar** - [2024] 163 taxmann.com 9 (Delhi)

#### SECTION 154 OF THE INCOME-TAX ACT, 1961 - RECTIFICATION OF MISTAKES - APPARENT FROM RECORD

**3.63** If it could be established with accuracy and precision that amount of tax is paid beyond permissible limit, it falls within ambit of error apparent on face of record - **BSCPL Infrastructure Ltd. v. Union of India** - [2024] 163 taxmann.com 470 (Telangana)

#### SECTION 224 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - VALIDITY OF CERTIFICATE AND CANCELLATION AND AMENDMENT THEREOF

**3.64 General** : TRO has power even to cancel recovery certificate on being informed that payment had been made by concerned defaulter - **Gokal Chand Rattan Chand v. Union of India** - [2024] 163 taxmann.com 222 (Punjab & Haryana)

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

**3.65 Auction proceedings** : Where the assessee had objected to the imposition of tax by reassessment after period of seventeen years and out of the total demand raised, part amount had already been paid before the auction was conducted and information in that regard was given to the TRO but it proceeded to ignore and confirm the sale in favour of auction purchaser, since entire basis of auction was based on fictitious demand, entire auction proceedings were held to nullity in eyes of law - **Gokal Chand Rattan Chand v. Union of India** - [2024] 163 taxmann.com 222 (Punjab & Haryana)

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

**3.66 Review petition** : Where Tribunal had categorically recorded in order that no substantial arguments had been advanced in support of cross-objection by assessee and, therefore, appeals had been dismissed for relevant assessment year, there was no error apparent on face of record and thus there was no reason to review/recall order of Tribunal - **Essence Commodities (P.) Ltd. v. Assistant Commissioner of Income-tax (Central)** - [2024] 163 taxmann.com 473 (Madhya Pradesh)

**3.67 Condonation of delay** : Where no reason was given for delay of 102 days in filing appeals against Tribunal's order, such delay could not be condoned and, thus, application filed seeking condonation of delay was to be dismissed - **Principal Commissioner of Income-tax - 7 v. SH Tech Park Developers (P.) Ltd.** - [2024] 163 taxmann.com 55 (Delhi)

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

**3.68 Scope of provision** : Where subject matter of reassessment is distinct and different, relevant date for purpose of determination of period of limitation for exercising powers under section 263 will be date of original assessment order - **Jainsons Agrochem Industries v. Principal Commissioner of Income-tax** - [2024] 163 taxmann.com 76 (Rajasthan)

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

**3.69 Opportunity of hearing** : Where Commissioner rejected revision preferred by petitioner under section 264 without affording petitioner opportunity of hearing, impugned order being passed in violation of principles of natural justice was to be set aside and matter was to be remanded for reconsideration - **Joseph Kutty v. Commissioner of Income-tax (International Taxation)** - [2024] 163 taxmann.com 226 (Kerala)

#### SECTION 269SS OF THE INCOME-TAX ACT, 1961 - DEPOSITS - MODE OF TAKING /ACCEPTING

**3.70 Pawn** : Where amount disclosed through search and seizure as additional income was through pawning, it was correctly treated as being in violation of section 269SS, and penalties under section 271D were applicable as transactions did not comply with Section 269SS - **R.K. Jewellers v. Commissioner of Income-tax** - [2024] 163 taxmann.com 44 (Punjab & Haryana)

**3.71 Share application money** : Where AO levied penalty under section 271D/271E on ground that assessee had received shares application money of Rs. 20,000 or more from persons otherwise than by an account payee cheque or by account payee bank draft, since share application money was neither a loan nor a deposit, provisions of section 269SS would not attract and no penalty could be levied - **Commissioner of Income-tax v. Vamshi Chemicals Ltd.** - [2024] 162 taxmann.com 906 (Calcutta)

**SECTION 270AA OF THE INCOME-TAX ACT, 1961 -  
PENALTY - IMMUNITY FROM IMPOSITION OF**

**3.72 General** : Where Assessing had issued show cause notices under section 270A for initiating consequential penalty proceedings and application filed by petitioner to avail of statutory remedy as codified under section 270AA was also rejected, since impugned notices in terms of which action under section 270A came to be initiated failed to specify whether petitioner was being tried on an allegation of under-reporting or misreporting, same could not be rejected and, therefore, impugned orders in terms of which application under section 270AA came to be rejected and notices were liable to be quashed - **GE Capital US Holdings Inc. v. Deputy Commissioner of Income-tax (International Taxation)** - [2024] 163 taxmann.com 146 (Delhi)

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

**3.73 Procedure for imposition of** : When Assessing Officer had recorded in assessment order particulars of concealed income/undisclosed income of assessee and on that basis initiated penalty proceeding under section 271(1)(c) then consequential notice under section 274 issued by Assessing Officer to assessee to afford him opportunity of hearing, was specifically a notice for penalty for concealment of particulars of income/undisclosed income; such a notice complied with principles of natural justice and was a valid notice under section 274 - **Principal Commissioner of Income-tax v. Thakur Prasad Sao & Sons (P.) Ltd.** - [2024] 163 taxmann.com 449 (Calcutta)

**3.74** Honesty of assessee in disclosing mistake and paying differential tax before assessment would negate grounds for imposing a penalty under section 271(1)(c) - **Principal Commissioner of Income-tax v. Ambady Krishna Menon** - [2024] 163 taxmann.com 141 (Kerala)

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

**3.75 Reasonable cause** : Where assessee-education institute deducted TDS but deposited same belatedly, since 90 per cent of students admitted by assessee were on fee reimbursement scheme and due to delay in grant of fee reimbursement by State Government, assessee failed to remit TDS within time, in view of fact that assessee established reasonable cause in view of section 278AA, criminal prosecution against assessee was not warranted - **Aditya Institute of Technology and Management v. State of Andhra Pradesh** - [2024] 163 taxmann.com 738 (Andhra Pradesh)

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

**4.1 Agricultural land** : Where agricultural land was sold by the assessee, distance from municipal limits should be reckoned as per notification dated 6.1.1994 issued under section 2(14)(iii)(b) and any subsequent expansion of municipal limits without fresh notification by Central Government should not be taken into consideration - **Ashish Gupta v. Income-tax Officer** - [2024] 163 taxmann.com 739 (Delhi - Trib.)

**4.2 Agricultural land** : Where assessee had admitted to have entered into a sale-cum-GPA for purchase of certain land and immediately sold said land to different parties and offered short-term capital gains to tax, however, assessee later submitted that he sold only part of land, since as per registered sale deed, assessee was not owner of entire land but only part of land, no addition could be made for entire land in hands of assessee - **Assistant Commissioner of Income-tax v. Narendra Kumar Kamaraju** - [2024] 163 taxmann.com 200 (Hyderabad - Trib.)

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

**4.3 Proviso** : Where assessee, charitable trust was engaged in activities for upliftment of poor, providing training and skill development to poor in rural areas and Assessing Officer had not brought on record any evidences which would suggest that activities of assessee were carried out with profit motive, proviso of section 2(15) was not applicable and, thus, assessee could not be denied exemption under section 11 during year - **Income-tax Officer (Exemption) v. Professional Assistance for Development Action** - [2024] 163 taxmann.com 573 (Delhi - Trib.)

**4.4 Scope of provision** : Where assessee-trust claimed exemption under section 11 and Assessing Officer having found that trust was only running Kalyan Mandapam on commercial lines by charging fees and cess denied exemption, since assessee was a general public utility trust and gross receipt from said activities was in excess of prescribed limit provided under second proviso to section 2(15), Assessing Officer had rightly denied exemption - **Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT** - [2024] 163 taxmann.com 175 (Chennai - Trib.)

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

**4.5 Royalties/Fees for technical services-Others** : Where a Double Taxation Avoidance Agreement (DTAA) does not make a reference for taxability of Fees for Technical Services (FTS), as separate item, then Article 22 which vests residuary powers, cannot be invoked - **Denso (Thailand) Co. Ltd. v. Assistant Commissioner of Income-tax (International Taxation)** - [2024] 163 taxmann.com 257 (Delhi - Trib.)

- 4.6 Income from employment - Others :** Where assessee, resident in India, received salary from USA, since conditions mentioned in clause (a), (b) and (c) to article 16(2) were not attracted in case of assessee, salary income of assessee was not taxable in India as per DTAA between India and USA - **Rajat Dhara v. Deputy Commissioner of Income-tax (International Taxation)** - [2024] 162 taxmann.com 902 (Kolkata - Trib.)
- 4.7 Royalties/Fee for technical services – Make available :** Where assessee, a global pharmaceutical company, made foreign remittances to various parties against clinical trial services, since services provided by non-residents did not involve any transfer of technology and it was not even case of Assessing Officer that assessee was enabled to perform these services on its own without any future recourse to service provider, said payment was not for technical services and, hence, not liable for TDS - **Deputy Commissioner of Income-tax (International Taxation) v. Zydus Lifescience Ltd.** - [2024] 163 taxmann.com 48 (Ahmedabad - Trib.)
- 4.8 Royalties/fees for technical services - Telecom or transmission services :** Payments received by assessee, a tax resident of Hong Kong, towards interconnectivity utility charges (IUC) from Indian entity could not be considered as royalty to be brought to tax in India under section 9(1)(vi) - **Globe Teleservices Ltd. v. Deputy Commissioner of Income-tax (International Taxation)** - [2024] 163 taxmann.com 73 (Bangalore - Trib.)
- 4.9 Royalties fees for technical services - Telecom and transmission services :** Where assessee, a Hong Kong based company, received reimbursement from AE, its Indian subsidiary, for provision of connectivity services for international communication, since assessee paid for connectivity services which were ancillary to enabling provision of inter-connect services and part of processing product, same could not be treated as FTS under section 9(1)(vii) - **Huawei International Co. Ltd. v. Assistant Commissioner of Income-tax (International Taxation)** - [2024] 163 taxmann.com 633 (Delhi - Trib.)
- 4.10 Business profits – Commission :** Where assessee-company paid sales commission to foreign entities, since recipient did not have permanent establishment or business connection in India, said commission was not taxable in India, and, accordingly, no TDS under section 195 was required to be deducted on same - **Orbit Bearing India (P.) Ltd. v. Additional Commissioner of Income-tax** - [2024] 163 taxmann.com 112 (Rajkot - Trib.)
- 4.11 Business profits – Commission :** Where assessee had taken part in business fare held in USA and paid to non-resident for providing services in form of stall on rent and other allied expenses of business at USA and these services were provided to assessee outside India,

by a non-resident, who did not have a business connection in India, assessee was not liable for deduction of tax at source and, therefore, disallowance under section 40(a)(ia) was not permissible - **Orbit Bearing India (P.) Ltd. v. Additional Commissioner of Income-tax** - [2024] 163 taxmann.com 112 (Rajkot - Trib.)

- 4.12 Permanent establishment – General :** Where assessee, a Singapore-based company, opted for presumptive taxation under section 44BB and hired rigs on a bareboat basis from DDPL, also a Singapore resident, since DDPL has no PE in India and is not taxable under India-Singapore DTAA, assessee is not liable to deduct any tax in India under section 195 on bareboat charges paid to DDPL and therefore, disallowance made under section 40(a)(i) was to be deleted - **Aban Singapore Pte. Ltd. v. DCIT** - [2024] 163 taxmann.com 140 (Chennai - Trib.)

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

- 4.13 Sub-clause (iiid) :** Where assessee-trust was not existing solely for purpose of education, lower authorities were justified in rejecting assessee's claim of exemption under section 10(23C)(iiid) - **Prahar Foundation v. Deputy Commissioner of Income-tax (Exemptions)** - [2024] 163 taxmann.com 152 (Chennai - Trib.)

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

- 4.14 Accumulation of income :** Where Assessing Officer denied exemption under section 11 to assessee-trust and taxed excess of income over expenditure, issue of accumulation of income by filing Form No. 10 and set off of said income to subsequent years to be applied for charitable purpose became academic in nature and, therefore, Assessing Officer was to be directed to delete separate addition made towards accumulation of income - **Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT** - [2024] 163 taxmann.com 175 (Chennai - Trib.)
- 4.15 Corpus donations :** When trust is not entitled for exemption under section 11 corpus donations received by assessee-trust would fall under definition of income and includable in total income of trust - **Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT** - [2024] 163 taxmann.com 175 (Chennai - Trib.)
- 4.16** Where in assessment made under section 143(1), exemption claimed by assessee under section 11 was denied and during pendency of appeal against that order, regular assessment under section 143(3) was made denying exemption under section 11, order passed u.s. 143(1) merged with assessment order passed under section 143(3) and appeal had become infructuous; therefore Commissioner (Appeals) was not justified in giving finding on allowability of exemption under section 11 in that appeal - **South India Club v. Income-tax Officer** - [2024] 163 taxmann.com 479 (Delhi - Trib.)

**4.17 Delay in filing Form No. 10B :** A trust registered u.s. 12A could not be denied exemption u.s. 11 merely on bar of limitation in furnishing Form No. 10B - **Rajasthan Medical Relief Society v. ITO - [2024] 162 taxmann.com 568 (Jaipur - Trib.)**

**4.18** Since March, 2022, country was passing through COVID-19 Pandemic and due dates for filing of return of income as well as compliance made by assessee also falls during that period, in such circumstances, delay caused in filing of Form No. 10 was to be condoned and Commissioner (Appeals) was justified in allowing assessee to claim exemption u.s. 11 - **ITO v. P K Krishnan Educational Trust - [2024] 162 taxmann.com 899 (Mumbai - Trib.)**

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

**4.19 Withdrawal of application for registration :** Where assessee filed an application for registration u.s. 12A(1)(ac)(iii) and Commissioner (Exemption) on assessee's request to withdraw aforementioned application rejected application for registration, since Commissioner (Exemption) had not taken any advantage of ignorance of assessee, appeal before Tribunal requesting to restore aforesaid application before Commissioner (Exemption), deserved to be dismissed - **Dharohar Charitable Foundation v. CIT (Exemption) - [2024] 163 taxmann.com 173 (Jodhpur - Trib.)**

**4.20 Final registration :** Where assessee filed an application for final registration on Form No. 10AB selecting by mistake wrong section 12A(1)(ac)(iv) and subsequently it filed a revised Form No. 10AB selecting correct section 12A(1)(ac)(iii) and Commissioner (Exemption) had not considered revised Form No. 10AB and rejected application as non-maintainable, issue was to be restored to file of Commissioner (Exemption) with a direction that final registration should be granted as per revised application filed by assessee - **People For Animals v. CIT - [2024] 162 taxmann.com 571 (Kolkata - Trib.)**

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

**4.21 Service of notice :** Where Commissioner (Exemption) issued questionnaire electronically requesting assessee to furnish relevant documents to verify objects of trust/foundation and rejected registration u.s. 12AB on grounds of non-submission, since assessee was not served with proper notice of hearing and information about date of hearing was only uploaded on Income Tax Portal, same would not be an effective service of notice as per provisions of section 282 and thus, matter was to be remanded for reconsideration - **Idream Social Edtech Foundation v. CIT (Exemptions) - [2024] 163 taxmann.com 539 (Chandigarh - Trib.)**

**4.22 Denial of registration :** Where on perusal of objects of society it was apparent that society had charitable objects, request of society for grant of registration u.s. 12AB could not be denied on basis of assessment of activities which had actually been carried out by assessee society - **Swayam Siddha Foundation Society v. Commissioner of Income-tax (Exemption) - [2024] 159 taxmann.com 1634 (Raipur - Trib.)**

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

**4.23 Sub-section (2) :** Where difference between rent received by assessee from 'specified persons' covered u.s. 13(3) and rental value adopted by Assessing Officer was less than 10 per cent, rent received by assessee could not said as inadequate u.s. 13(2)(b), so as to deny exemption u.s. 11 to assessee - **Deputy Commissioner of Income-tax (Exemption) v. Indian Grameen Services - [2024] 163 taxmann.com 409 (Delhi - Trib.)**

**4.24** Where assessee trust made large payment of salaries to certain persons who were in occupation with educational institutes run by trust, since these persons were either having much higher educational qualification or they were having much experience in service, salaries paid by assessee was not found to be excessive of what be reasonably paid to specified persons u.s. 13(3), thus, provisions u.s. 13(3)(c), 13(2)(c) r.w.s. 13(2)(g) were not attracted and assessee had rightly claimed exemption u.s. 11 - **Deputy Commissioner of Income-tax (Exemption) v. Catholic Education Society - [2024] 163 taxmann.com 334 (Mumbai - Trib.)**

**4.25** Where assessee had made payment of large amount of rent, since in order to justify payment of rent paid, assessee furnished Market Rental Report prepared by a Government Approved Registered Valuer, who computed market rent of certain amount, rent paid by assessee could not be considered as excessive of what be reasonably paid to specified persons u.s. 13(3), thus, provisions u.s. 13(3)(c), 13(2)(c) r.w.s. 13(2)(g) were not attracted in instant case and assessee had rightly claimed exemption u.s. 11 - **Deputy Commissioner of Income-tax (Exemption) v. Catholic Education Society - [2024] 163 taxmann.com 334 (Mumbai - Trib.)**

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

**4.26** Where AO denied exemption u.s. 11 to assessee-trust for making interest free advance to 'specified person' within meaning of section 13(3) and on appeal before Tribunal, assessee produced certain documents to support its case that transaction took place on commercial expediency, in view of fact that documents were not available at time of proceedings before lower authorities and these were very much required for fair adjudication of dispute between parties, entire issue was remitted to AO to readjudicate issue considering said documents - **Society for Human Transformation & Research v. Income-tax Officer - [2024] 163 taxmann.com 11 (Delhi - Trib.)**

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

**4.27 Rule 8D** : Where AO had summarily carried out disallowance of administrative/other expenses u.s. 14A, as per methodology provided in rule 8D(2)(ii), without satisfying statutory requirement of first arriving at a satisfaction regarding incorrectness of assessee's claim that no part of administrative/other expenses claimed by it as a deduction were incurred in relation to the income which did not form part of its total income, disallowance u.s. 14A could not be sustained - **SRS Industries (P.) Ltd. v. Income-tax Officer - [2024] 163 taxmann.com 480 (Raipur - Trib.)**

**SECTION 15 OF THE INCOME-TAX ACT, 1961 -  
SALARIES - CHARGEABLE AS**

**4.28 Revision** : Where AO had allowed assessee's claim of exemption in respect of salary income, since there was huge difference in salary as per Form No. 16 and salary as disclosed in ITR and enquiry made by Pr. Commissioner from employer revealed that annuity amount paid to LIC was not made by employer rather this payment was made on request of employees out of VRS amount and was part of their taxable income and, therefore, same was shown as part of salary in Form No. 16, Assessing Officer's order was rightly treated as erroneous and pre-judicial to interest of revenue - **Mafatbhai Bhikhabhai Parmar v. Principal Commissioner of Income-tax - [2024] 163 taxmann.com 187 (Ahmedabad - Trib.)**

**SECTION 17(2) OF THE INCOME-TAX ACT, 1961 -  
SALARIES - PERQUISITES**

**4.29 Revision** : Where assessee's claim of exemption u.s. 10(10CC) and 10(10B) was accepted by AO, however, enquiry made by Pr. Commissioner from employer revealed that neither any perquisite was paid to assessee nor employer had made any disallowance u.s. 40(a)(v), therefore, claim of exemption u.s. 10(10CC) and 10(10BB) was wrong and incorrect, since AO had not conducted proper inquiries in respect of claims made by assessee, same order was rightly treated as erroneous and pre-judicial to interest of revenue - **Mafatbhai Bhikhabhai Parmar v. Principal Commissioner of Income-tax - [2024] 163 taxmann.com 187 (Ahmedabad - Trib.)**

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

**4.30 Amount disclosed at survey** : Where during course of survey, assessee surrendered receivables of certain amount from debtors and offered same to tax as business income, however, AO treated said surrendered amount as unexplained investment u.s. 69, since source of income of assessee was from its business of money lending, amount surrendered by assessee during survey could not be brought to tax under deeming provisions of sections 69 - **Kailash Rameshlal v. Income-tax Officer - [2024] 163 taxmann.com 379 (Chennai - Trib.)**

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

**4.31 Fixed assets** : Where assessee-trust had been denied exemption u.s. 11, income of trust required to be computed under normal commercial accounting principles and further depreciation, if any, required to be allowed as per provisions of Act - **Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT - [2024] 163 taxmann.com 175 (Chennai - Trib.)**

**SECTION 32AC OF THE INCOME-TAX ACT, 1961 -  
INVESTMENT IN NEW PLANT OR MACHINERY**

**4.32** Where AO failed to inquire about assessee's eligibility for section 32AC deduction and significant difference between deduction claimed and the audit report indicated non-application of mind, in such circumstances, PCIT correctly set aside assessment for re-examination and adjudication in accordance with law - **Apollo Tyres Ltd. v. Principal Commissioner of Income-tax - [2024] 163 taxmann.com 35 (Cochin - Trib.)**

**SECTION 32AD OF THE INCOME-TAX ACT, 1961 -  
INVESTMENT IN NEW PLANT OR MACHINERY IN  
NOTIFIED BACKWARD AREAS**

**4.33 Scope of provision** : Where assessee had set up power plants in notified backward area subsequent to 1-4-2015 and new asset was acquired and installed during period between 1-4-2015 and 31-2-2016, since new assets had been acquired and installed during period beginning from 1-4-2015 from which date section 32AD was introduced, assessee was entitled for deduction under section 32AD - **Maheswari Mining & Energy (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 574 (Hyderabad - Trib.)**

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

**4.34 Scope of provision** : Where Assessing Officer disallowed assessee's claim for weighted deduction under section 35(2AB) and assessee pleaded before Tribunal that actual expenditure incurred for in-house research and development facility which was not disputed by revenue and which was certified by Ministry of Science and Technology should be allowed during impugned assessment year without any weighted deduction, Assessing Officer was to be directed to allow actual expenditure incurred by assessee - **Arddy Engineering Innovations (P.) Ltd. v. Assistant Commissioner of Income tax - [2024] 162 taxmann.com 564 (Visakhapatnam - Trib.)**

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

**4.35 Personal expenses** : Where assessee-trust had given a Bhawan at free of cost to family members of trustees and it spent certain amount towards maintaining Bhawan out of income of trust and claimed allowance of same, expenditure was in nature of personal expenses and disallowance of expenses was correct - **Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT - [2024] 163 taxmann.com 175 (Chennai - Trib.)**

**4.36 Donation paid by a trust to other trust :** Where AO had denied exemption u.s. 11 and computed income as per provisions of section 2(15) and proviso provided therein, in commercial lines after denying exemption, any expenditure incurred towards earning of income including donations, if any, paid in course of carrying on activities needed, to be allowed as deduction - **Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT - [2024] 163 taxmann.com 175 (Chennai - Trib.)**

**4.37 ESOP :** Where assessee company claimed expense of certain amount on account of Employee Stock Option (ESOP) and supporting invoices from assessee's parent entity were also placed on record by assessee to substantiate that expenses were actually incurred by assessee, impugned ESOP expenses incurred by assessee could not be disallowed as deduction u.s. 37(1) holding same to be notional and contingent in nature - **Deputy Commissioner of Income-tax v. CBRE South Asia (P.) Ltd. - [2024] 163 taxmann.com 256 (Delhi - Trib.)**

**SECTION 43B OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CERTAIN DEDUCTIONS TO BE ALLOWED ONLY ON ACTUAL PAYMENT - EMPLOYER'S/EMPLOYEE'S CONTRIBUTION (TCS)**

**4.38** Where assessee had collected TCS on sales of scrap, however, amount so collected was not deposited with Government, therefore, an addition was made for violation of provisions of section 43B, since TCS amount was not a sum payable by assessee, it was income tax of buyers, collected and retained by assessee which could not be debited in profit and loss account and claimed as a deduction, assessee was not hit by provisions of section 43B and impugned addition made was to be deleted - **Aay Kay Manufacturing Co. v. Income-tax Officer - [2024] 163 taxmann.com 333 (Amritsar - Trib.)**

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

**4.39 Cost of extra work :** Where assessee had provided sufficient evidence to show that expenditure was incurred by her for additional work in flat sold and she had given bank statement to prove source of expenditure, such expenditure was to be allowed while computing capital gain on sale of said flat - **Prabha Pradeep Biyani v. Income-tax Officer - [2024] 163 taxmann.com 378 (Surat-Trib.)**

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

**4.40 Land and building :** Where assessee sold a piece of land and DVO estimated its value at higher than sale consideration by Rs. 1.53 crores, since DVO had not accepted entire factors of assessee's case while determining value of properties and, further, considering

that determination of fair market value, after all, is an estimate only, an addition to extent of Rs. 50 lakhs was to be sustained in hands of assessee - **Sanjay Jayantilal Shah v. ACIT - [2024] 159 taxmann.com 1616 (Surat-Trib.)**

**SECTION 54 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - EXEMPTION OF, PROFITS OR SALE OF RESIDENTIAL HOUSE PROPERTY**

**4.41 Purchase of new property :** Where assessee sold a property and invested sale consideration in new residential property, since assessee had given details along with sale deed and purchase deed which was a registered document including registration fee as well as payment of Municipal Tax in assessee's name, there was considered to be a valid transfer took place within meaning of section 2(47), assessee was to be granted relief under section 54 in respect of purchase of new residential property - **Umesh Sumanlal Shah v. Income-tax Officer - [2024] 163 taxmann.com 578 (Ahmedabad - Trib.)**

**4.42 Purchase of new residential house :** Where assessee invested LTCG earned on sale of her residential flat in an under construction residential house, however on expiry of three years from date of sale of original asset, said residential flat was not constructed by builder, purchase of an under-construction flat by assessee will tantamount to investing money in construction of a residential house for purpose of section 54, since since assessee had only utilised half amount out of LTCG, balance amount should be charged to tax under section 45 in year under consideration - **Sheela Ramchand Uttamchandani v. Income-tax Officer - [2024] 163 taxmann.com 265 (Mumbai - Trib.)**

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

**4.43 Revision :** Where assessee sold a land and claimed deduction under section 54B in respect of capital gain arising from sale of land and Assessing Officer completed assessment under section 143(3) without making any addition and subsequently Pr. Commissioner having found that assessee had himself not shown in his return of income agricultural income earned by him opined that assessee was not entitled to claim deduction under section 54B and treated assessment order to be erroneous and prejudicial to interest of revenue, since it was not requirement of section 54B that assessee had to show agricultural income in his return of income, assessment order could not be termed as erroneous and prejudicial to interest of revenue - **Pareshbhai Parsottambhai Patel v. Principal Commissioner of Income-tax - [2024] 162 taxmann.com 573 (Surat-Trib.)**

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

**4.44** Where JDA was entered into by assessee on 31.5.2016 for development of a land and assessee contended that there was a dispute arose between partners of developer in 2021 and, therefore, construction of new residential villa was completed only in November 2023, since dispute among

partners of developers arose in 2021 which was beyond period of 3 years from date of transfer of capital assets which happened pursuant to JDA on 31.5.2016 and that, admittedly, there was a delay of more than 7 years in completing construction, no exemption under section 54F could be granted to assessee - **Smt. Lekha Reddy Mettu v. ACIT - [2024] 163 taxmann.com 303 (Hyderabad - Trib.)**

- 4.45** Where AO denied exemption under section 54F to assessee for reason that assessee failed to produce evidence with regard to investment in house property out of LTCG on sale land, since while submitting additional evidence, assessee had furnished documents like valuation report by approved valuer, personal capital account and statement of affair from Municipal Corporation, claim of exemption could not be denied without considering relevant documents, matter was to be restored back to CIT(A) for fresh adjudication - **Satish Agrawal v. Income-tax Officer - [2024] 162 taxmann.com 871 (Raipur - Trib.)**

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

- 4.46** Where A.O. had not made any addition as regards very basis, on which proceedings u/s. 147 were initiated in case of assessee, i.e. source of investment in subject property, therefore, he was divested of his jurisdiction from making an independent addition u/s 56(2)(vii)(b) - **Neetu Bhoi v. Income-tax Officer-1, Raigarh - [2024] 163 taxmann.com 190 (Raipur - Trib.)**
- 4.47 Valuation of shares :** Where assessee made investment in shares at lower price than market value however, he did not furnish any reliable basis of valuation of such shares as per methods contemplated under rules, Assessing Officer was justified to carry on valuation on basis of NAV method and make additions on account of difference between value of shares determined by him and total purchase consideration of shares received by assessee in light of provision of section 56(2)(vii)(a) - **Brawny Nivesh (P.) Ltd. v. ACIT - [2024] 163 taxmann.com 38 (Delhi - Trib.)**
- 4.48 Sub-section (2) :** Where Assessing Officer made addition under section 56(2)(vii) on account of difference between stamp value and consideration for property purchased by assessee and assessee could not furnish evidence to support his claim that due to location of property in under-valued area fair market value of plot was much less than jantri value, addition made by Assessing Officer was to be sustained - **Prabha Pradeep Biyani v. Income-tax Officer - [2024] 163 taxmann.com 378 (Surat-Trib.)**
- 4.49 Sub-section 56(2)(vii)(b) :** Where amount of purchase consideration for transferring immovable property was fixed as per terms of agreement to purchase executed between assessee's late father and D in year 1991 at Rs.92,000 (including development charges), which was

paid vide cheques/drafts by assessee's late father over period 27-6-1991 to 12-9-1992 and assessee had acquired title of property during year under consideration and had paid only development charges, stamp duty value as on date of agreement should only be compared with actual consideration for purpose of section 56(2)(vii)(b) - **Deputy Commissioner of Income-tax v. Ravi Shankar Gupta - [2024] 163 taxmann.com 338 (Raipur - Trib.)**

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

- 4.50 Illustrations :** Where assessee-firm received certain amount from customers as advance for sale of flat and same had been duly reflected in books of account as per accounting system followed by assessee under head sales, advance and booking amount returned, impugned addition made under section 68 by Assessing Officer on account of said amount received from customers was rightly deleted by Commissioner (Appeals) by admitting additional evidence adduced by assessee before him - **Income-tax Officer v. Raj Maitry & Eskon Developer - [2024] 163 taxmann.com 43 (Mumbai - Trib.)**
- 4.51 Reassessment :** Where Assessing Officer on basis of information received from DDIT that assessee had borrowed cash loan through a party issued on assessee a notice under section 148 seeking to reopen his assessment on ground that he had reasons to believe that amount of cash loan had escaped assessment, since Assessing Officer had accepted cash loan (very basis on which reasons had been recorded), which was not considered as income, there could not be escapement of income - **Premji Bhuralal Gala v. National Faceless Appeal Centre, New Delhi - [2024] 162 taxmann.com 570 (Mumbai - Trib.)**
- 4.52 Provisions of IBC overriding effect :** Where assessee-company underwent a CIRP under IBC, 2016 and consequently, AO resorted to reopening assessment and made additions under section 68 on account of unexplained cash credits representing bogus purchases, by virtue of provisions of section 238 of IBC, 2016, Income-tax Department is bound by terms of resolution plan, as approved by NCLT and Income-tax Department was precluded from undertaking any action with respect to any issue/transaction prior to date of commencement of insolvency process in case of assessee, thus, reassessment order was to be set aside - **SEL Manufacturing Co. Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 904 (Chandigarh - Trib.)**
- 4.53 Revision :** As per sub-clause (c) of section 263 if any order, which is subject matter for revision under section 263 is challenged in appeal, then, on items which are subject matter of appeal, no power under section 263 could be exercised by Commissioner - **Rajesh Kumar Jalan v. Principal Commissioner of Income-tax - [2024] 163 taxmann.com 574 (Kolkata - Trib.)**

**4.54 Share dealing :** Where assessee, a foreign portfolio investor, sold shares of an Indian company and claimed same as exempt under Indo-Mauritius DTAA, since assessee had acquired said shares and had been holding same for almost 10 years from date of acquisition which was purchased by assessee, and had furnished all relevant details of transactions, impugned sale of shares could not be treated as bogus and, accordingly, addition made u.s. 68 was to be deleted - **Elara India Opportunities Fund Ltd. v. DCIT (International Taxation) - [2024] 163 taxmann.com 566 (Mumbai - Trib.)**

**4.55** Where assessee had placed on record enough documentary evidence, including confirmation letters, PAN details, bank statements, and board resolutions, to prove legitimacy of share application money received, AO was not justified in treating same as unaccounted money u.s. 68 and making addition without proper enquiry - **ITO-4(1) v. Shree Banke Bihari Infracon (P.) Ltd. - [2024] 163 taxmann.com 344 (Raipur - Trib.)**

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

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

**4.57 Bogus sundry debtors :** Where assessee had shown sundry debtors of certain amount, since same was created from fictitious sale made during which had no worth but was only book entry, and further, basic features of commercial activities were absent, additions made on account of such bogus debtors was justified - **Brawny Nivesh (P.) Ltd. v. ACIT - [2024] 163 taxmann.com 38 (Delhi - Trib.)**

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

**4.58** Where Assessing Officer reopened assessment for 2010-11 based on AIR information about deposits in a J&K Bank account allegedly belonging to assessee, and assessee challenged this by submitting a certificate from J&K Bank stating account was not his, which was not considered by Commissioner (Appeals), assessment order was to be quashed as void ab initio due to reopening based on incorrect facts - **Lateef Ahmad Gujree v. Income-tax Officer - [2024] 163 taxmann.com 742 (Amritsar - Trib.)**

**4.59 Revision :** Where Pr. CIT found that AO had omitted to add share of profit of assessee-partner in his hands while making addition on account of unexplained money u.s. 69A in hands of firm, since no evidence was produced on record to show that proposed share of profit of assessee was assessed in hands of firm being part of total income, Pr. CIT rightly held that assessment order was erroneous and prejudicial to interest of

revenue - **Ramasamy Sathyan v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 519 (Chennai - Trib.)**

**4.60 Cash seized during search :** Where during search conducted at premises of assessee, cash amount of certain amount was found and seized, since assessee in his written submissions had disclosed source of said cash having been accumulated/received from relatives on various occasions as well as by family members of assessee which assessee had also recorded in his books of account, impugned addition u.s. 69A made on account of said amount seized was to be deleted - **Hemant Samarataji Lohar v. Commissioner of Income-tax (Appeals-54) - [2024] 163 taxmann.com 292 (Mumbai - Trib.)**

**4.61** Where assessee, engaged in embroidery for over 40 years and earning below taxable limit, deposited cash during demonetization, explained deposits as partly from fixed deposit maturity and partly from her brother's funds, no addition could be made u.s. 69A - **Sakina Ahmedali Kantavala v. Income-tax Officer - [2024] 163 taxmann.com 115 (Ahmedabad - Trib.)**

**4.62** Cash deposited during demonetization period : Where assessee educational trust had shown accumulated cash on hand and had deposited same in bank during demonetization period, since assessee had fully explained that such cash deposits was fees from students related to event as well as study tour, Assessing Officer was not justified in making addition of said cash deposits in bank account by assessee during demonetization period by invoking section 69A - **Amikrupa Education Trust v. Income-tax Officer - [2024] 159 taxmann.com 1658 (Ahmedabad - Trib.)**

**4.63 Double taxation :** Where assessee, a partner in a firm, had withdrawn certain amount from firm and Assessing Officer disallowed aforesaid amount in hands of firm and added same in its income, since 20 per cent of amount had been subjected to tax in hands of firm, same amount could not be taxed in hands of assessee on protective basis - **Shyam Sundar Polisetty v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 576 (Visakhapatnam - Trib.)**

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

**4.64 Commission :** Where assessee had already disclosed gross profit on bogus sales which had been accounted for in its books of account, commission paid on such bogus purchases and sales would be duly covered by quantum of gross profit already offered to tax and, thus, no separate addition could be made in respect of such commission paid - **Seo Lehenga House v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 668 (Chandigarh - Trib.)**

**4.65 Bogus purchases :** Where AO added entire amount of purchases to assessee's income u.s. 69C, since source of purchases had been debited in books of account and corresponding quantity of material purchased had also been recorded and corresponding quantity of sales had also been



accepted, at most it could be a case of purchases made from hawala dealers for inflating cost and suppressing GP rate, addition was to be restricted by estimating GP rate at 12.5 per cent - **Income-tax Officer v. Rajesh Amulakhrai Sanghvi** - [2024] 163 taxmann.com 518 (Mumbai - Trib.)

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

**4.66 Approval under sub-section (5)** : Application for final approval under clause (iii) of first proviso to section 80G(5) could not be rejected on ground that institution had already commenced its activities prior to grant of provisional approval and date of commencement of activity will be counted when an activity was undertaken after grant of provisional approval either under clause (i) or clause (iv) of first proviso to section 80G(5) - **Divine Life Foundation v. Commissioner of Income tax** - [2024] 163 taxmann.com 181 (Kolkata - Trib.)

**4.67 CSR** : Mandatory nature of CSR expenditure does not justify disallowance of same under section 80G, if other conditions of section 80G are fulfilled - **Interglobe Technology Quotient (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2024] 163 taxmann.com 542 (Delhi - Trib.)

**4.68** Where assessee, a Bar Association existing since 1924, had been granted provisional approval under section 80G(5)(iv), since though assessee had applied for grant of registration under section 80G quite late but its activities were found to be charitable in nature and there was no change in those activities, also time limit to make an application for grant of regular registration under section 80G(5)(iii) was still available to assessee, assessee was to be granted registration under section 80G(5)(iii) - **Income-tax Bar Association Calcutta v. Commissioner of Income-tax (Exemption)** - [2024] 163 taxmann.com 541 (Kolkata - Trib.)

**4.69** Expenditure towards CSR activities are an allowable deduction u/s. 80G. - **Alubond Dacs India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 163 taxmann.com 536 (Mumbai - Trib.)

**4.70 Approval under sub-section (5)** : Where assessee-trust was performing an important role by recycling post-consumer MLP waste, which otherwise would have polluted environment, merely because assessee had earned revenue from entire activity could not lead to conclusion that recycling of plastic waste did not fall within purview of preservation of environment and thus was not a charitable activity; assessee was entitled to grant of approval under section 80G(5) - **Huhtamaki Foundation v. Commissioner of Income-tax (Exemption)** - [2024] 163 taxmann.com 174 (Mumbai - Trib.)

**4.71 Approval under sub-section (5)** : Where assessee filed an application on Form No. 10AB for final approval

under clause (iii) of first proviso to section 80G(5) on 27-5-2023 and Commissioner (Exemption) opined that last date to file such application was 30-9-2022 and dismissed application as non maintainable, since from perusal of Circular No. 6 of 2023, dated 24-5-2023 it would be clear that extended time provided for filing fresh application on Form No. 10AB was 30-9-2023, Commissioner (Exemption) was to be directed to admit assessee's application and decide it on merits - **People For Animals v. Commissioner of Income-tax (Exemption)** - [2024] 162 taxmann.com 571 (Kolkata - Trib.)

**4.72 Approval under section 80G(5)** : Where application of assessee-trust for registration under section 80G(5) was rejected by Commissioner (Exemptions) on ground that despite issuing show cause notice, assessee neither filed any submission nor sought any adjournment, however, it was noted that alleged notice was not served upon assessee due to technical glitch as seen in ITBA Portal, matter was to be remanded back to Commissioner (Exemptions) to consider case of assessee on merit and examine object and activities of assessee and pass order in accordance with law - **Arsala Education & Charitable Trust v. CIT (Exemptions)** - [2024] 162 taxmann.com 894 (Surat-Trib.)

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

**4.73 Credit society** : Where assessee, a state-level non-banking co-operative credit society, lend loans to its members, nominal members, and its employee as a staff welfare measure, since Karnataka Co-operative Societies Act, 1959 defines Members to include nominal / associate members u/s. 2(f), assessee qualified for deduction u/s. 80P(2)(a)(i) in respect of interest earned by assessee from credit facilities extended to members - **Karnataka State Co-operative Agriculture and Rural Development Bank Ltd. v. Income-tax Officer** - [2024] 162 taxmann.com 905 (Bangalore - Trib.)

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

**4.74 Scope of** : Section 90 does not bar in any manner operation of relevant provision of DTAA in respect of income earned by assessee in other country, with whom Central Government had entered into a DTAA - **Rajat Dhara v. Deputy Commissioner of Income-tax (International Taxation)** - [2024] 162 taxmann.com 902 (Kolkata - Trib.)

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

**4.75 Interest** : Interest on outstanding receivables is an international transaction, and it certainly requires separate benchmarking - **ValueMomentum Software Services (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2024] 163 taxmann.com 14 (Hyderabad - Trib.)

**SECTION 92BA OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - DOMESTIC TRANSACTIONS**

**4.76 Scope of provisions :** Where TPO reduced claim for deduction u.s. 80-IA by considering ALP for transfer of power from eligible unit to non-eligible unit at rate at which power generating company supplied power to power distribution company, since ALP of power should be market rate at which State Electricity Board supplied power to consumers in open market, impugned order of AO could not be concurred with - **Bhagwati Power and Steel Ltd. V. ACIT - [2024] 163 taxmann.com 253 (Raipur - Trib.)**

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

**4.77 Methods of determination of - Resale price method :** Where assessee was merely a reseller of solar goods purchased from its AE in India without any value addition, assessee had rightly adopted Resale Price Method as most appropriate method to benchmark transaction of purchase of solar goods - **D Light Energy (P.) Ltd. v. Assessing Officer, National Faceless Assessment Centre - [2024] 163 taxmann.com 565 (Delhi - Trib.)**

**4.78 Adjustments - Interest :** Where assessee provided guarantees in nature of performance, financial and lease for and on behalf of its various AEs, in view of various judicial precedents, Assessing Officer was to be directed to charge guarantee commission @ 0.5 per cent per annum both on performance/lease guarantee as well as financial guarantee - **Tata Consultancy Services Ltd. v. DCIT - [2024] 163 taxmann.com 671 (Mumbai - Trib.)**

**4.79 Comparability factors - Segmental results :** Where TPO made adjustment in respect of engineering services segment and DRP granted part relief to assessee and assessee assailed assessment order and directions of DRP, since no material was filed to controvert findings of DRP, impugned asst. order was to be upheld - **Inabensa Bharat P. Ltd. v. DCIT - [2024] 163 taxmann.com 540 (Delhi - Trib.)**

**4.80 Methods for determination of - Most appropriate method, determination of :** Where assessee had paid royalty at rate of 5 per cent of net sales of products to its Singapore AE, external CUP method was most appropriate method for determining arm's length price of royalty payment - **DCIT v. Invida India (P.) Ltd. - [2024] 163 taxmann.com 510 (Ahmedabad - Trib.)**

**4.81 Adjustments - Management fee :** Where TPO made TP adjustment on account of payment of management fee to AE, in view of fact that as per supporting evidences produced by assessee, mark up of 15 per cent was given as per actual cost incurred by assessee while providing services and similar payment was accepted by revenue in earlier three years, Commissioner (Appeals) had rightly deleted TP adjustment - **Deputy Commissioner of Income-tax v. Invida India (P.) Ltd. - [2024] 163 taxmann.com 510 (Ahmedabad - Trib.)**

**4.82 Adjustments - Reimbursement of expenses :** Where assessee had reimbursed expenses to its AE and in certificate given by AE had given details of services provided by AEs and also reimbursement expenses incurred by assessee and paid to AE, Assessing Officer was not justified in making TP adjustment - **DCIT v. Invida India (P.) Ltd. - [2024] 163 taxmann.com 510 (Ahmedabad - Trib.)**

**4.83 Methods for determination of - Most appropriate method, determination of :** Where assessee had both AE as well as non-AE transactions, operating profit and operating cost relating to AE transactions alone ought to be considered for arriving at ALP - **Satyam Venture Engineering Services (P.) Ltd. v. ACIT - [2024] 163 taxmann.com 448 (Hyderabad - Trib.)**

**4.84 Adjustment - Interest:** In view of amendment to section 92B by way of Finance Act, 2012 with retrospective effect from 1-4-2002, interest on outstanding receivables is an international transaction requiring separate benchmarking by applying LIBOR interest rates applicable to currency concerned in which loan has to be repaid - **Satyam Venture Engineering Services (P.) Ltd. v. ACIT - [2024] 163 taxmann.com 448 (Hyderabad - Trib.)**

**4.85 Methods for determination of - Most appropriate method, Determination of :** Where assessee rendered broking services to its AEs and third party FIIs clients, since functions performed by assessee were same for foreign as well as domestic institutional clients, location of service recipient would not be relevant and furthermore as difference between weighted average brokerage rate earned by assessee from AEs as compared with rate earned by third party FIIs after making sales cost adjustment was of .01 per cent, no adjustment was required to be made - **Bofa Securities India Ltd. v. ACIT - [2024] 163 taxmann.com 374 (Mumbai - Trib.)**

**4.86 Adjustments - Guarantee commission :** Corporate bank guarantee given by assessee on behalf of its AE is an international transaction as per Explanation to section 92B and addition of 0.53 per cent on amount guaranteed would be appropriate benchmark to determine ALP - **Hetero Labs Ltd. v. ACIT - [2024] 163 taxmann.com 293 (Hyderabad - Trib.)**

**4.87 Adjustments - Interest :** Where payments were due to assessee-company beyond credit period of 60 days, same being international transaction was required to be benchmarked by considering short-term deposit interest rate - **Hetero Labs Ltd. v. ACIT - [2024] 163 taxmann.com 293 (Hyderabad - Trib.)**

**4.88 Comparability factors - Profit margin/profit level indicator :** Where Commissioner (Appeals) had determined ALP of comparable companies after excluding interest, tax, R&D expenditure, head office and marketing office expenses without affording any opportunity to AO/TPO and without confronting annual report of comparable, matter was to be remanded to file of AO/TPO for passing a fresh order - **Hetero Labs Ltd. v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 293 (Hyderabad - Trib.)**

**4.89 Adjustment- Interest :** Where TPO proposed an adjustment in respect of interest receivable on delayed payment and assessee contended that in view of judicial precedents, interest rate on similar foreign currency receivables/advances as LIBOR + 200 points should be adopted, ends of justice would be met by accepting interest rate on similar foreign currency receivables/advances as LIBOR + 200 points - **ValueMomentum Software Services (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 14 (Hyderabad - Trib.)**

**4.90 Comparables, functional similarity- Technical support services :** Where TPO erred in characterizing services rendered by assessee as being in nature of Information Technology enabled services (ITeS) instead of IT support services, matter was to be remanded back for fresh consideration - **Ingersoll-Rand (India) Ltd. v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 2 (Bangalore - Trib.)**

**4.91 Adjustments - International transactions with AEs :** Where assessee, a captive service provider to its AEs, also provided certain services to third-party clients and did not maintain any separate segmental for revenue generated or cost incurred from third-party clients, however TPO while making TP adjustments only excluded third-party revenue and failed to proportionately exclude expenses related to third-party, matter was to be remanded for recomputation - **McKinsey Knowledge Centre India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 188 (Delhi - Trib.)**

**4.92 Adjustments - Interest :** Where assessee had outstanding receivables from its AEs, since assessee had not borrowed any fund for its business activity and it being a debt free company, adjustment made on account of interest on receivables was to be deleted - **McKinsey Knowledge Centre India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 188 (Delhi - Trib.)**

**4.93 Adjustments - Management fee :** Where TPO made adjustment to assessee's income on account of payment of management service fee to associated enterprises by determining arm's length price of said international transaction at nil without carrying out any exercise relating to determination of ALP with reference to method adopted by assessee, matter was to be restored back to file of TPO for determination of ALP as per scheme of Act - **Naturex India (P.) Ltd. v. National Faceless Assessment Centre, Delhi/Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 150 (Mumbai - Trib.)**

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

**4.94 Time limit for completing assessment :** Where time limit for passing TP order was 31-10-2019, transfer

pricing order having been passed on 1-11-2019 was barred by limitation by one day and, therefore, same was to be treated as invalid and non est in eyes of law - **Zyodus Lifesciences Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 349 (Ahmedabad - Trib.)**

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

**4.95 General :** Where impugned assessment order was passed by Additional Commissioner and it was found that no separate order was passed u.s. 120(4)(b) authorising Additional Commissioner (TDS) to perform functions and exercise powers of an Assessing Officer and also no order was passed transferring jurisdiction u.s. 127 to Additional Commissioner, impugned assessment order was to be set aside as being passed without jurisdiction - **Tata Steel Ltd. v. Additional Commissioner of Income-tax - [2024] 163 taxmann.com 345 (Mumbai - Trib.)**

#### SECTION 124 OF THE INCOME-TAX ACT, 1961 - ASSESSING OFFICER - JURISDICTION OF

**4.96** Where notice u/s 143(2) was issued by ITO who was not vested with valid jurisdiction over case of assessee, therefore, assessment framed on foundation of such invalid notice was liable to be struck down - **Assistant Commissioner of Income-tax v. Rajdhani Jewellers and Gems (P.) Ltd. - [2024] 163 taxmann.com 444 (Raipur - Trib.)**

**4.97** Where ITO who issued mandatory notice u/s 143(2) for initiating assessment proceedings was not vested with valid jurisdiction over case of assessee, therefore, assessment framed on foundation of such invalid notice was liable to be struck down - **Aananda Devcon (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 372 (Raipur - Trib.)**

**4.98** Assessee can challenge or call in question jurisdiction of A.O within specified time frame as required by section 124 and not beyond that time limit - **Income-tax Officer-4(1) v. Shree Banke Bihari Infracon (P.) Ltd. - [2024] 163 taxmann.com 344 (Raipur - Trib.)**

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

**4.99** When assessee had filed return of income and responded to notice of AO, conditions for invoking Section 144 were not met and therefore, assessment made by AO u/s.144, would not sustain - **Sakina Ahmedali Kantavala v. Income-tax Officer - [2024] 163 taxmann.com 115 (Ahmedabad - Trib.)**

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

**4.100 Passing of assessment order :** After 1-10-2009, AO is statutorily required to pass draft assessment order u.s. 144C(1), if he makes any addition before passing final assessment order u.s. 144C(3) - **Deputy Commissioner of Income-tax v. ADM Agro Industries Kota & Akola (P.) Ltd. - [2024] 163 taxmann.com 630 (Delhi - Trib.)**

**4.101 Limitation period** : Where date of uploading DRP order on ITBA portal was 27-4-2022, assessment being completed on 30-6-2022 was time barred, null and void - **Honda R & D (India) (P.) Ltd. v. Assistant Commissioner of Income-tax** - [2024] 163 *taxmann.com* 147 (Delhi - Trib.)

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

**4.102 Non-production of evidences** : Where during course of assessment proceedings, assessee did not produce books of account and other documents as sought by Assessing Officer, therefore, Assessing Officer had rightly rejected books of account of assessee under section 145(3) and estimated income at rate of 10 per cent - **Shivam Builders (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 163 *taxmann.com* 196 (Ahmedabad - Trib.)

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

**4.103 General** : Where on date of issuance of notice under section 148, Assessing Officer does not have any information, material or evidence in his possession so as to form a reason to believe that any income of assessee for year under consideration has escaped assessment, reassessment proceedings initiated by Assessing Officer are erroneous - **Santosh Khunteta v. Income-tax Officer** - [2024] 163 *taxmann.com* 416 (Delhi - Trib.)

**4.104 Non-service of notice** : Where notice under section 148 was issued by Assessing Officer just one day prior to expiry of limitation period on e-mail through ITBA portal, but said e-mail was sent to e-mail account which did not belong to assessee and was bounced and, thus, notice under section 148 was never served on assessee within period of limitation, assessment order passed under section 147 without service of notice under section 148 was to be declared as invalid and was to be quashed - **Brett Lee v. Assistant Commissioner of Income-tax, International Taxation** - [2024] 163 *taxmann.com* 71 (Delhi - Trib.)

**SECTION 153 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - TIME LIMIT FOR COMPLETION OF ASSESSMENT**

**4.105 Limitation** : Extended time limit of 12 months for completion of assessment under section 153(4) would be available only in case of where reference under sub section (1) of section 92CA was made, thus, in instant case of assessment of non-resident assessee, AO ought to have completed assessment as per provisions of section 153(2) i.e one year from end of financial year in which notice under section 148 was served - **Syed Gulam Mohiuddin v. Income-tax Officer (International Taxation)** - [2024] 163 *taxmann.com* 234 (Hyderabad - Trib.)

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

**4.106 Conditions precedent** : Additions made by Assessing Officer in absence of any incriminating material found during course of search under section 132 was to be deleted - **Ishtiaq Ahmad Dar v. Assistant Commissioner of Income-tax** - [2024] 163 *taxmann.com* 662 (Amritsar - Trib.)

**4.107 Section 153A vis-a-vis section 153C** : Where Assessing Officer passed assessment order under section 153A making addition under section 69A on account of difference in returned income and income as per CA certificate seized during search carried out at premises of another company, since document relied upon by Assessing Officer was not discovered from premises assessee, assessment proceedings should have been initiated by Assessing Officer under section 153C and, therefore, impugned assessment order was without jurisdiction and liable to be quashed - **Ishtiaq Ahmad Dar v. Assistant Commissioner of Income-tax** - [2024] 163 *taxmann.com* 662 (Amritsar - Trib.)

**4.108 Conditions precedent** : Where AO received information from Investigation Wing with respect to certain bank account maintained by assessee abroad and search was initiated to verify information available with revenue through FT&TR division of CBDT and same was confirmed by assessee by filing revised return and declaring maximum balance in bank account maintained in London during assessment proceedings, thus, material with revenue was to be considered proper and action of AO to accept revised return and proceed to complete assessment would prove that material with revenue could be assessable under section 153A - **Rajinder Kumar v. ACIT** - [2024] 163 *taxmann.com* 445 (Delhi - Trib.)

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

**4.109 Scope of** : For purpose of section 153C date of recording of satisfaction in case of searched person qua other person becomes date of search in case of other person (assessee in instant case); therefore, where a satisfaction note was recorded in respect of searched person on 22-02-2021, impugned assessment under section 153C done for assessment year 2014-15 in case of assessee was beyond block of six A.Ys starting from A.Y 2015-16 and, therefore, assessment could not be framed in respect of assessee - **Rakesh Bansal v. ACIT** - [2024] 159 *taxmann.com* 1632 (Delhi - Trib.)

**4.110 Limitation** : Where assessment in case of assessee was made under section 153C for assessment year 2013-14 on basis of satisfaction note recorded on 26-3-2021 by Assessing Officer of searched person, such assessment being beyond time limit prescribed was void ab initio - **Deputy Commissioner of Income-tax v. Smt. Sandhya Sharma** - [2024] 159 *taxmann.com* 1633 (Delhi - Trib.)

**SECTION 153D OF THE INCOME-TAX ACT, 1961 - PRIOR APPROVAL NECESSARY FOR ASSESSMENT IN CASES OR REQUISITION**

- 4.111** Approval u.s. 153D is a mandatory and not procedural requirement, and approving authority needs to carefully review evidence and documents before granting approval, as mechanical approval without application of mind would vitiate asst. orders - **SMW Ispat (P.) Ltd. v. A. Commissioner of Income-tax - [2024] 163 taxmann.com 119 (Pune - Trib.)**

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

- 4.112** Where assessee, public sector bank, purchased from NBFCs, 90 per cent of their loan and allowed NBFCs to retain part of interest on assessee's portion of assigned loans in absence of any funds borrowed or debt incurred by assessee from NBFC, part interest allowed to be retained back with originating NBFC could not be said to be interest within meaning of section 2(28A) and accordingly, there was no obligation on assessee to deduct tax at source u.s. 194A - **State Bank of India v. DCIT (TDS) - [2024] 163 taxmann.com 266 (Mumbai - Trib.)**

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

- 4.113** Where assessee, public sector bank, purchased from NBFCs, 90 per cent of their loan and allowed NBFCs to retain part of interest on assessee's portion of assigned loans, in view of fact that under separate agreement, assessee was paying service fee to NBFCs for services provided by them, part interest allowed to be retained with NBFC in respect of pool of assets purchased by assessee could not be considered as fees for rendering services by NBFC, requiring assessee to deduct TDS u.s. 194J - **State Bank of India v. DCIT (TDS) - [2024] 163 taxmann.com 266 (Mumbai - Trib.)**

- 4.114 Roaming charges** : Roaming charges paid by assessee to Other Telecom Operators (OTOs) did not require TDS u.s. 194J - **Vodafone Idea Ltd. v. CIT - [2024] 163 taxmann.com 120 (Indore - Trib.)**

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

- 4.115 Scope of provision** : Where assessee-company had obtained two separate TAN for two different locations, however, it had deducted tax at source at rates prescribed in lower TDS certificates for each of suppliers and had complied with necessary requirements of their deposit and filing of returns, merely because certificates had not been issued on subsequent TAN obtained by assessee, assessee could not be treated as assessee in default - **Rotex Manufacturers & Engineers (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 114 (Mumbai - Trib.)**

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

- 4.116 Year of allowance of TDS credit** : Where income corresponding to credit was offered to tax by assessee in year under consideration i.e., assessment year 2020-21, credit of taxes deducted thereon was also to be granted in same year - **Interglobe Technology Quotient (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 542 (Delhi - Trib.)**

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

- 4.117 Scope of provision** : Where assessee contended that he had collected certificates in Form No. 27BA against sale of scrap and other sales related to firewood and iron material did not attract TCS under section 206C, since issue related to nature of firewood and iron material was never discussed by lower authorities and also issue under rule 37J read with Form No. 27BA related to sale of scrap remained untouched, matter required to be remitted back to Assessing Officer to verify issues under purview of section 206C - **Mohd. Javed Belim v. Assistant Commissioner of Income-tax, (TDS) - [2024] 163 taxmann.com 172 (Jodhpur - Trib.)**

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

- 4.118** Where original assessment was set aside for a fresh one, and revenue viewed new assessment as regular one for calculating interest under sections 234A and 234B, while assessee argued that interest should only be charged up to date of original assessment, issue was remanded back to Commissioner (Appeals) for fresh consideration due to legislative changes on said issue - **Santhimadom Ayurnikethan Health Resort & Research Institute Trust v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 117 (Cochin - Trib.)**

**SECTION 234B OF THE INCOME-TAX ACT, 1961 - INTEREST - NOT TO BE CHARGED IN CERTAIN CASES - ASSESSMENT YEAR 2012-13 - ASSESSEE FILED RETURN - DURING SCRUTINY, ASSESSING OFFICER MADE VARIOUS ADDITIONS, DISALLOWANCES AND TP ADJUSTMENTS**

- 4.119** Where AO passed assessment order by making various additions/disallowances and assessee paid demand raised in said order within time limit of 30 days, thereafter AO reopened assessment and passed order holding that there was no variation from original assessment order, since there was no payment pending nor there was any variation in income, interest calculated under section 234B by AO in re-assessment order from date of original assessment order was to be deleted - **Tata Chemicals Ltd. V. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 235 (Mumbai - Trib.)**

**SECTION 244A OF THE INCOME-TAX ACT, 1961 - INTEREST - REFUNDABLE IN CERTAIN CASES**

**4.120 Dividend Distribution Tax** : Where refund of DDT was granted, since interest payment under section 244A was a statutory obligation and non-discretionary in nature, assessee would be entitled to payment of interest on already ordered DDT refund - **Piem Hotels Ltd. v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 82 (Mumbai - Trib.)**

**SECTION 246A OF THE INCOME TAX ACT, 1961 - COMMISSIONER (APPEALS) - APPEALABLE ORDERS**

**4.121** For challenging an intimation under section 143(1) assessee should file an appeal before first appellate authority as required by provisions of section 246A - **Alubond Dacs India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 163 taxmann.com 536 (Mumbai - Trib.)**

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

**4.122 Additional evidence** : Where Commissioner (Appeals) had decided issue solely on basis of registered documents which were admissible in law as they were 'documents in rem' and he had also decided issue on basis of documents available with Assessing Officer, there was no violation of principle of natural justice and rule 46A of IT Rules, 1962 - **Assistant Commissioner of Income-tax v. Narendra Kumar Kamaraju - [2024] 163 taxmann.com 200 (Hyderabad - Trib.)**

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

**4.123 Appeals** : Where AO made additions to assessee's income and CIT(A) had summarily accepted AO's verdict without an independent examination of issues, matter would be remitted back to CIT(A) for fresh adjudication - **Anup Kumar Agrawal v. Income-tax Officer - [2024] 163 taxmann.com 255 (Raipur - Trib.)**

**4.124 General** : Powers of Commissioner (Appeals) under section 251 are co-terminus with that of Assessing Officer and what an Assessing Officer can do, same action can be taken by him also - **Income-tax Officer v. Raj Maitry & Eskon Developer - [2024] 163 taxmann.com 43 (Mumbai - Trib.)**

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

**4.125 Deceased assessee, in case of** : Where Assessing Officer filed appeal in name of dead person without mentioning anything about legal heir and also in incomplete manner, appeal so filed was to be dismissed - **Deputy Commissioner of Income-tax 19(3) v. Ranjeet Kumar Mohanlal Jain - [2024] 163 taxmann.com 104 (Mumbai - Trib.)**

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

**4.126 General** : Non-service of order and unsigned order of Assessing Officer does not make proceedings under section 263 invalid - **Ramasamy Sathyan v. Assistant Commissioner of Income-tax - [2024] 163 taxmann.com 519 (Chennai - Trib.)**

**4.127** Where once order under section 263 had been quashed by Tribunal, then assessment order passed under section 143(3) read with section 263 in pursuance of said 263 order had become infructuous - **Assistant Commissioner of Income-tax v. Tata Housing Development Company Ltd. - [2024] 163 taxmann.com 13 (Mumbai - Trib.)**

**SECTION 270A OF THE INCOME-TAX ACT, 1961 - PENALTY - FOR UNDERREPORTING AND MISREPORTING OF INCOME**

**4.128 Scope** : Where assessee did not file return of income under a bona fide belief that since entire transaction of sale of property had been correctly reported in Form No. 26AS, there was no further requirement to file return of income and disclose such transaction in return of income, it could not be said that assessee had intention to misrepresent or suppress any facts and thus, no penalty under section 270A was to be levied - **Parulben Vijaykumar Patel v. Income-tax Officer - [2024] 163 taxmann.com 191 (Ahmedabad - Trib.)**

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

**4.129 Inaccurate particulars of income** : Where order giving effect (OGE) to MAP Order for assessment year 2012-13 with respect to change in losses carried forward for set off in subsequent years was received by assessee after filing of return was barred by time and AO made disallowance of excess brought forward losses/unabsorbed depreciation and levied penalty under section 271(1)(c), since underlying disallowance had not arisen with respect to furnishing inaccurate particulars of income at time of filing of return and assessee had paid taxes along with interest way before initiation of assessment proceedings, impugned penalty was not justified - **Deputy Commissioner of Income-tax v. Mitsubishi Heavy Industries -VST Diesel Engines (P.) Ltd. - [2024] 163 taxmann.com 189 (Bangalore - Trib.)**

# GST & INDIRECT TAXES

## 1. STATUTORY UPDATES

- 1.1** Clarification on time of supply of services of spectrum usage and other similar services under GST: Circular - **Circular No. 222/16/2024-GST, 26-06-2024**

**Editorial Note** : The CBIC has clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier. However, in cases where deferred payment is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier.

- 1.2** CBIC issued clarification on time of supply of services of construction of road and maintenance under HAM Model - **Circular No. 221/15/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has issued clarification regarding the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years.

- 1.3** Clarification issued in respect of GST liability and ITC availability in cases involving Warranty/ Extended Warranty - **Circular No. 216/10/2024-GST, 26-06-2024**

**Editorial Note** : The CBIC has issued a new circular to provide clarification regarding GST liability and availability of input tax credit (ITC) in respect of cases where goods as such or the parts are replaced under warranty; cases where distributor replaces the parts/goods out of his own stock etc.

- 1.4** ITC allowed to Insurance Companies for repair expenses incurred under reimbursement mode of claim settlement: Circular - **Circular No. 217/11/2024-GST, 26-06-2024**

**Editorial Note** : The CBIC has clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.

- 1.5** Clarification on taxability of loans granted between related person or by an overseas affiliate to its Indian affiliate: Circular - **Circular No.218/12/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has issued circular to clarify that in cases where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or

credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided and there is no question of levy of GST on the same.

- 1.6** Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables: Circular - **Circular No. 219/13/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has provided clarification that availment of input tax credit is not restricted in respect of ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

- 1.7** CBIC's clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors - **Circular No 220/14/2024-GST, 26-06-2024**

**Editorial Note** : The CBIC has clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered u.s. 13(8)(a) of the IGST Act. Therefore, the place of supply of such services has to be determined as per sub-section (2) of section 13 of the IGST Act.

- 1.8** CBIC fixed monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court - **Circular No. 207/1/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has issued circular and fixed the monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of CGST Act.

- 1.9** CBIC issued clarification on several issues related to special procedure for the manufacturers of Pan masala & Tobacco - **Circular No.-208/2/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has issued circular to clarify that make and model number of machine are optional in Table 6 of FORM GST SRM-I. It is also clarified that special procedure as notified vide Notification No. 04/2024-CT dated 05.01.2024 is not applicable to the manufacturing units located in Special Economic Zone. The circular also provides clarification on several issues pertaining to special procedure for the manufacturers of the specified commodities.

- 1.10** CBIC issued clarification on POS for supply of goods to an unregistered person where delivery address is different from billing address - **Circular No.209/3/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has clarified that in case of supply of goods to an unregistered person, where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the place of supply of goods shall be address of delivery of goods recorded on the invoice.

- 1.11** CBIC issued clarification on valuation of supply of import of services by a related person: Circular - **Circular No.210/4/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has circular to clarify that in cases where full ITC is available to the recipient and the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

- 1.12** Clarification issued on time limit u/s 16(4) for supplies received from unregistered persons & taxable under RCM: Circular - **Circular No. 211/5/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has clarified that in case of supplies received from unregistered suppliers where tax has to be paid by the recipient under reverse charge mechanism (RCM), the relevant financial year for calculation of time limit for availment of ITC u.s. 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient.

- 1.13** CBIC provides mechanism for providing evidence of reversal of ITC on discount by the recipient - **Circular No.-212/6/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has clarified that till the time a functionality/ facility is made available on the common portal, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier.

- 1.14** Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company - **Circular No.213/07/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has clarified that no supply of service would take place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis.

- 1.15** No requirement of ITC reversal on Life Insurance premium not included in value as per Rule 32(4): Circular - **Circular No. 214/8/2024-GST, Dated 26-06-2024**

**Editorial Note** : The CBIC has clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit.

- 1.16** CBIC issued circular clarifying taxability of supply of salvage/ wreckage by general insurance companies - **Circular No. 215/9/2024-GST, 26-06-2024**

**Editorial Note** : The CBIC has clarified that in cases where general insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreckage, the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer.

- 1.17** Recovery proceedings under Section 79 can be initiated before 3 months only in exceptional cases, detailed Instructions issued by CBIC - **Instructions No. 01-2024, Dated 31-5-2024**

**Editorial Note** : The CBIC observed that some field formations are initiating recovery proceedings before the stipulated 3-month period without explicit orders for early payment. Consequently, the CBIC has issued detailed instructions providing the proper procedure for initiating early recovery, applicable only in exceptional cases.

- 1.18** Gross GST revenue collection of Rs. 1.73 lakh crores in month of May 2024: Press Release

**Editorial Note** : The Gross GST Revenue for the month of May 2024 stood at Rs.1.73 lakh crores with 10% year-on-year growth. The gross GST collections in the FY 2024-25 till May 2024 stood at Rs. 3.83 lakh crores. This represents an impressive 11.3% year-on-year growth, driven by a strong increase in domestic transactions.

- 1.19** Copy of Central Excise Bill, 2024

**Editorial Note** : The CBIC has prepared a draft 'Central Excise Bill, 2024.' Once enacted, the Bill shall replace the Central Excise Act, 1944. The Bill aims to enact a comprehensive modern central excise law with an emphasis on promoting ease of doing business and repealing old and redundant provisions.

- 1.20** Form GST SRM-II is now available on the portal for manufacturers of Pan Masala and Tobacco taxpayers: GSTN Update

**Editorial Note** : The GSTN has issued an update to inform that Form GST SRM-II is also available on the portal. The taxpayers dealing in the manufacture of Pan Masala and Tobacco products can now report the details of inputs and outputs procured and consumed for the relevant month.

- 1.21** Recommendations of 53rd GST Council Meeting: Press Release

**Editorial Note** : The 53rd GST Council met under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in New Delhi today. The Council has made several recommendations such as reduction of the quantum of pre-deposit, monetary limit for filing of appeals by the Department, waiver of interest and penalties for demand notices issued u.s. 73 etc. In this regard, a press release has been issued.



## 2. SUPREME COURT

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

- 2.1 Notice issued in SLP against common order of High Court in Gobinda Construction v. Union of India [2023] 154 taxmann.com 311 (Patna) that sub-section (4) of section 16 of CGST/BGST Act is constitutionally valid and not violative of article 19(1)(g) and article 300-A of Constitution of India - **Shanti Motors v. Union of India** - [2024] 163 taxmann.com 369 (SC)

## 3. HIGH COURT

### CLASSIFICATION OF GOODS

- 3.1 Malabar Parota and Whole Wheat Malabar Parota : High Court in a writ appeal granted a stay of operation of impugned judgment for a period of two months, wherein it was held that Classic Malabar Parota and Whole Wheat Malabar Parota are classified under Heading No. 1905 and are liable to be taxed at the rate of 5 percent as per S.I. No. 99A of Notification No. 1/2017-Central Tax (Rate) - **State of Kerala v. Modern Food Enterprises (P.) Ltd.** - [2024] 163 taxmann.com 563 (Kerala)

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

- 3.2 Where show cause notice was issued to proprietor by Commissionerate at Panchkula, there was no error in issuing a separate notice in name of proprietorship concern by Superintendent Commissionerate at Rohtak where proprietorship firm was situated - **Shashank Garg v. Proper Officer cum Additional Commissioner (Anti-Evasion)** - [2024] 163 taxmann.com 66 (Punjab & Haryana)
- 3.3 Where assessee's premises inspected by State Tax Officer (ST) (Inspn.) and impugned show cause notice issued by him, no embargo under GST Acts on inspecting officer to issue show cause notice and to adjudicate issue as long as such officer satisfies definition of a "proper officer" as per section 2(91) of respective GST enactments, no merits in challenge to impugned show cause notice and impugned Circular No.13/2022-TNGST dated 8-11-2022 - **Rasathe Garments v. State Tax Officer (ST) (Inspn.)** - [2024] 163 taxmann.com 641 (Madras)

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

- 3.4 Where order-in-original was passed concluding that assessee was liable to pay GST on ocean freight, issue being covered in favour of assessee in terms of

decision of Supreme Court in Union of India v. Mohit Minerals (P.) Ltd. [2022] 138 taxmann.com 331 (SC) demand towards IGST on ocean freight was to be set aside in favour of assessee - **Shri Narayan Corporation v. Union of India** - [2024] 163 taxmann.com 166 (Madras)

### SECTION 5 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - GST AUTHORITIES AND ADMINISTRATION - POWERS OF

- 3.5 Where assessee/petitioner challenged assessment order claiming assessing officer ignored CBIC press release about input tax credit not being reversed due to seller's non-remittance, High Court dismissed petition, affirmed compliance with natural justice, and left assessee/petitioner to pursue statutory remedies - **Engineering Projects India Ltd. v. Additional Commissioner** - [2024] 163 taxmann.com 145 (Madras)

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

- 3.6 Where Tax proposal arose as a result of petitioner committing an inadvertent error while filling up Form GSTR 3B and pertains entirely to non payment of tax under reverse charge mechanism, since assessee was unaware of proceedings culminating in an order of tax proposal as part time Accountant engaged by assessee had not informed assessee about these proceedings, impugned order was to be set aside and GST Authorities were to be directed to provide a reasonable opportunity to assessee - **Tvl. Kwatra Karteek v. Assistant Commissioner (ST)(FAC)** - [2024] 163 taxmann.com 317 (Madras)
- 3.7 Where Competent Authority had issued a show cause notice on assessee for levy of GST on transfer of leasehold property of Gujarat Industrial Development Corporation, notice was to be issued to said authority and authority could adjudicate show cause notice, however no final order was to be passed without permission of instant court during pendency of instant petition challenging show cause notice - **AGI Greenpac Ltd. v. Assistant Commissioner of State Tax** - [2024] 162 taxmann.com 407 (Gujarat)

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

- 3.8 Where assessee challenged vires of provisions of section 16(2)(c) of CGST Act as; purchaser of goods for seeking entitlement for Input Tax Credit was imposed with discharging burden that seller was registered under CGST Act and that he actually paid tax on goods supplied by him; in respect of such supply seller actually paid GST for which Input Tax Credit was admissible, case was to be heard with Special Civil Application No.15188 of 2020, no coercive steps was to be taken against assessee during pendency of instant petitions - **Pravinbhai Mohanbhai Vadi v. Deputy Commissioner of State Tax, Enforcement Division** - [2024] 163 taxmann.com 611 (Gujarat)

- 3.9** Where assessee/petitioner contended it had submitted all documents to justify input tax credit availed on purchases from supplier, but revenue denied credit on ground that supplier had not filed returns and paid taxes, High Court dismissed writ petition challenging order, holding assessee/petitioner can avail statutory remedy as order is appealable - **Vijay Impex v. State Tax Officer - [2024] 163 taxmann.com 550 (Madras)**
- 3.10** Where assessee was unable to produce clear copy of tax invoices on basis of which ITC was availed by assessee, writ petition of assessee against order denying ITC was to be dismissed as assessee was unable to prove that subject invoice was reflected in auto populated GSTR-2A - **Shri Narayan Corporation v. Union of India - [2024] 163 taxmann.com 166 (Madras)**
- 3.11** Where assessee was denied input tax credit as registration of supplier had been cancelled retrospectively, adjudicating authority had not caused any verification of genuineness at supplier's end, assessee was to be directed to prove movement of goods through documentary evidence, thereafter adjudicating authority was to be directed to cause verification at supplier's end - **Biswajit Kundu v. Superintendent of Central Tax - [2024] 163 taxmann.com 716 (Calcutta)**
- 3.12** Time limit for furnishing return for month of September is to be treated as 30th November in each financial year with effect from 1-7-2017; assessees who had filed their returns for month of September on or before 30th November, their claim for ITC should be processed, if they are otherwise eligible for ITC - **M. Trade Links v. Union of India - [2024] 163 taxmann.com 218 (Kerala)**
- 3.13** Where show cause notice was issued to assessee for under declaration of output tax; tax on outward supplies under declared on reconciliation of data in GSRT-09; excess claim of ITC; scrutiny of ITC reversals etc. and a detailed reply was furnished by assessee giving response under each of heads with supporting documents, however impugned order was passed raising demand and penalty against assessee recording that reply was not properly replied/filed, same could not be sustained - **Future Generali India Insurance Co. Ltd. v. Goods and Service Tax Officer (GSTO) - [2024] 163 taxmann.com 27 (Delhi)**
- 3.14** Where a show-cause notice (SCN) was issued to assessee stating that working of excess ITC was appended to notice as annexure B, however no such annexure was supplied to assessee, and impugned order was passed ex-parte, one opportunity was needed to be granted to assessee to respond to show cause notice, accordingly, impugned order was to be set aside and show cause notice was to be remitted - **Shree Padma Industries v. Union of India - [2024] 163 taxmann.com 31 (Delhi)**

- 3.15** Where show cause notice was issued to assessee on grounds i.e. under declaration of output tax; reconciliation of GSTR-01 with GSTR-09; Reconciliation of E-way bill turnover with GSRT-01; excess claim of Input Tax Credit etc. and a detailed reply was furnished by assessee giving response under each of heads with supporting documents, however impugned order was passed raising demand and penalty against assessee recording that reply was not properly filed/explained, same could not be sustained - **Mitsubishi Electric India (P.) Ltd. v. Union of India - [2024] 163 taxmann.com 28 (Delhi)**

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

- 3.16** Where Competent Authority had issued a show cause notice proposing a demand against assessee on ground that ITC was availed from suppliers whose registration was cancelled and assessee had filed a detailed reply, but Competent Authority did not take into consideration reply submitted by assessee and passed a cryptic order, matter was to be remitted to Competent Authority for readjudication - **RPJ Polymers v. Union of India - [2024] 162 taxmann.com 343 (Delhi)**
- 3.17** Where assessee failed to respond to notice issued u.s. 73, impugned order passed u.s. 73 was to be set aside and case was to be remitted back to authority to pass fresh order on merits - **Ramesh Agency v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 336 (Madras)**

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

- 3.18** Where assessee availed IGST credit and subsequently used same for payment of CGST and SGST, on utilization of IGST for payment of SGST, tax had flown to State of West Bengal and, therefore, asst. order passed against assessee was to be set aside - **Cosyn Ltd. v. Assistant Commissioner of State Tax - [2024] 162 taxmann.com 411 (Calcutta)**

**RULE 21A OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - SUSPENSION OF REGISTRATION**

- 3.19** Where show cause notice for GST registration cancellation lacked issuing officer's name, designation, supporting documents, and was digitally signed by GSTN instead of proper officer, High Court quashed notice as defective - **Rajkumar Singhal v. Goods and Services Tax Network - [2024] 163 taxmann.com 231 (Delhi)**

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

- 3.20** Where GST registration of assessee was cancelled on ground that it had not made any cash deposit towards tax for output supplies made in excess of Rs. 15 lakhs, since assessee had made a deposit of Rs. 4.48 lakhs towards tax dues, order cancelling registration was to be set aside and matter was to be remitted for re-adjudication - **Hari Enterprises v. Superintendent - [2024] 163 taxmann.com 131 (Delhi)**

- 3.21** Where GST registration of assessee was cancelled vide impugned order on ground that it did not conduct any business from declared place of business, same was to be set aside as GST Authorities did not disclose any reason for cancellation of assessee's registration - **Siddha Mahajan (P.) Ltd. v. State of U.P.** - [2024] 163 taxmann.com 67 (Allahabad)
- 3.22** Where registration of assessee was cancelled for non-filing of returns, since it was not case of revenue that petitioner had been adopting dubious process to evade tax, said order was to be set aside subject to condition that assessee filed its returns for entire period of default and paid requisite amount of tax, interest, fine and penalty - **Subhashis Mojumder v. State of West Bengal** - [2024] 163 taxmann.com 558 (Calcutta)
- 3.23** Where assessee's registration cancelled for not filing returns for six months and non reply by assessee to show cause notice, show cause notice issued by respondent in Form GST-REG-31 and not in Form GST-REG 17 as required under Rule 22 of CGST Rules, impugned order without jurisdiction and was to be set aside - **Kunhalavi N. v. State Tax Officer** - [2024] 163 taxmann.com 636 (Kerala)
- 3.24** Where petitioner-firm was prevented from making payment of GST on time because its proprietor's wife was suffering from cancer, GST Authorities were directed to restore GSTIN of petitioner after all necessary dues under GST law were duly paid - **Som Traders v. State of Rajasthan** - [2024] 163 taxmann.com 465 (Rajasthan)
- 3.25** Where registration of assessee was cancelled on ground that it did not conduct any business from declared place of business, however, on joint inspection carried out at said place, it appeared that entity was in existence and carrying out business, order cancelling registration was to be set aside and registration of assessee was to be restored - **Lohum Cleantech (P.) Ltd. v. Assistant Commissioner of Revenue** - [2024] 163 taxmann.com 164 (Calcutta)
- 3.26** Where registration of assessee was cancelled after issuing show cause notice to assessee, however assessee did not respond to same, it could not be said that there was violation of principles of natural justice and writ petition filed by assessee against order of cancellation was to be dismissed - **Manimala International v. Assistant Commissioner of State Tax** - [2024] 163 taxmann.com 165 (Andhra Pradesh)
- 3.27** Where tax liability against assessee was computed on best judgement basis by drawing on particulars available in auto-populated GSTR-2A, since said exercise was carried out without hearing assessee in person, it was just and necessary that assessee be provided an opportunity to contest tax proposal on merits, therefore tax demand orders and notices were set aside and matter was to be remanded for reconsideration - **Annalakshmi Stores v. Deputy State Tax Officer** - [2024] 163 taxmann.com 469 (Madras)
- 3.28** Where assessee's GST registration cancelled, she had no access to GST portal and thus she had little reason to monitor portal, assessee not heard, assessee agreed to remit 10% of disputed tax demand as a condition for remand, to be provided an opportunity to contest tax demand, impugned order was to be quashed - **Chettiar Stores v. Deputy State Tax Officer** - [2024] 163 taxmann.com 185 (Madras)
- 3.29** Where a writ petition challenged an order passed by the tax authorities imposing GST demand and penalty u.s. 73 without considering the petitioner's request for time to file a reply, the court set aside the impugned order and directed the petitioner to file a reply within two weeks, requiring the tax authorities to re-adjudicate the show cause notice after providing an opportunity of personal hearing - **Mrishi Marcndey India Ltd. v. Sales Tax Officer** - [2024] 162 taxmann.com 910 (Delhi)
- 3.30** Where a writ petition sought direction for disposal of an application for cancellation of GST registration, the court directed the respondent to dispose of the application within four weeks, clarifying that all rights and contentions of the parties were reserved to avail further remedies - **L G Trading House v. Principal Commissioner of Department of Trade And Taxes** - [2024] 162 taxmann.com 909 (Delhi)
- 3.31** Where registration of petitioner was cancelled retrospectively without giving proper reasons or opportunity, High Court set aside the cancellation order and modified it to treat the cancellation as prospective from the date of the order, permitting revenue to take steps for recovery of dues after issuing proper show cause notice - **S.S. Enterprises v. Commissioner of Delhi Goods and Service Tax** - [2024] 163 taxmann.com 415 (Delhi)
- 3.32** Where assessee's/petitioner's GST registration was cancelled without reasons or opportunity to object, High Court set aside order, restored registration, and clarified authorities must follow due process for tax, penalty, or interest recovery - **Visiontek Engineers v. Commissioner of SGST** - [2024] 163 taxmann.com 387 (Delhi)
- 3.33** Where registration of assessee was cancelled retrospectively without giving proper reasons or opportunity, and assessee did not wish to continue business, HC modified cancellation order to treat it as prospective cancellation, permitting revenue to take steps for recovery after following due process - **Udayraj Yadav v. Sales Tax Officer Class II/AVATO** - [2024] 163 taxmann.com 201 (Delhi)
- 3.34** Where petitioner-assessee applied for cancellation of GST registration and reply had been submitted by petitioner-assessee to query raised by respondent-department, therefore, petition was disposed of directing respondent-department to dispose of application of petitioner-assessee seeking cancellation of GST registration - **Air Pro Styles v. Principal Commissioner of Department of Trade & Taxes** - [2024] 163 taxmann.com 18 (Delhi)

- 3.35** Where on assessee's registration was cancelled by impugned order subsequent to issuance of a show cause notice, since show cause notice did not mention factual backdrop of breach, on strength of which, conclusion of fraud or misstatement or suppression of facts was drawn, order for cancellation of registration was to be set aside and registration of assessee was to be restored - *T S R Exports v. Superintendent, GST* - [2024] 162 taxmann.com 415 (Hyderabad)

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

- 3.36** Where registration of assessee was cancelled and assessee could not file returns in time on account of ill-health, registration shall stand revived on payment of tax, penalty and uploading of returns - *Jayakumar Plumbing Electrical and Civil Engineering Works v. Deputy Commissioner (ST)* - [2024] 163 taxmann.com 316 (Madras)

**SECTION 37 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RETURNS - OUTWARD SUPPLIES, FURNISHING DETAILS OF**

- 3.37** Where an inadvertent error was committed by assessee while reporting outward supplied and ITC, however same was rectified both in Form GSTR 9 and in the GSTR 3B return, in interest of justice, assessee was to be provided another opportunity to contest tax proposal and matter was to be remanded - *Vaji Motor v. Assistant Commissioner (ST)* - [2024] 162 taxmann.com 418 (Madras)

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

- 3.38** Where assessee's applications for refund for financial years 2017-2018, 2018-2019 & 2020-2021 filed through e-mail rejected being not filed in Form RFD-01 and filed manually placing reliance on Circular No. 125/44/2019-GST, dated 18-11-2019, Rule 97A of CGST Rules specifically permits manual filing of applications, a circular cannot go contrary to rule framed, impugned order was to be set aside - *AMN Life (P.) Ltd. v. Union of India* - [2024] 163 taxmann.com 715 (Himachal Pradesh)
- 3.39** Assessee's applications for refund for financial years 2017-2018, 2018-2019 & 2020-2021 were rejected on ground of assessee not registered person at relevant point of time, assessee got registered in October, 2020 pursuant to acquisition of a business undertaking, section 54(1) of CGST Act permits any person to make an application for refund of tax, respondent authority could not have refused to entertain applications for refund - *AMN Life (P.) Ltd. v. Union of India* - [2024] 163 taxmann.com 715 (Himachal Pradesh)

- 3.40** Where assessee/petitioner sought direction for issuance of refund and guidelines for timely processing

of refund applications, High Court disposed of petition with direction to proper officer to decide assessee/petitioner's refund application within two weeks in accordance with Section 54 of CGST Act and CBIC Circular - *Smartadmedia v. Commissioner of Delhi Goods and Service Tax* - [2024] 163 taxmann.com 153 (Delhi)

- 3.41** Where assessee's refund claim rejected on ground that taxpayer failed to meet deadline of two years for submitting application, deficiency memo issued with advice that a fresh refund application may be filed after removal of deficiencies, relevant date' requires determination to arrive a conclusion that on what date ship in which goods were loaded left India, not appropriate for Court to determine such disputed question of fact, writ petition was to be dismissed - *Cherish India Exports v. Assistant Commissioner of State Tax* - [2024] 163 taxmann.com 144 (Andhra Pradesh)

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

- 3.42** Where assessee's refund claim for double payment of tax was rejected by revenue without providing reasons and while a conclusion was drawn by revenue that there was no excess payment, assessee's reply in such regard, wherein specific details were set out, was not engaged with and proper reasons were not assigned for conclusion that there was no excess payment, therefore impugned order rejecting refund claim of assessee was to be set aside and matter was remanded for reconsideration - *Manohar v. Assistant Commissioner of GST & Central Excise* - [2024] 163 taxmann.com 476 (Madras)
- 3.43** Where petitioner sought to file refund claim for unutilized ITC under "Any Other" category on GST portal due to computational error, HC allowed writ petition directing revenue to permit petitioner to manually file refund applications, subject to scrutiny by revenue authorities in accordance with law - *Shree K R Engineering Works v. Union of India* - [2024] 162 taxmann.com 896 (Rajasthan)

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

- 3.44** Where assessee contended that receipts shown in Form 26AS pertained to pre-GST period and not entire amount was attributable to GST period, High Court quashed impugned assessment order and remanded matter back to assessing officer to provide reasonable opportunity, including personal hearing, and thereafter issue fresh assessment order in accordance with law - *K.R. Contractor v. Deputy State Tax Officer-II* - [2024] 163 taxmann.com 513 (Madras)

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

- 3.45** Where assessee/applicant was arrested u.s. 69 of CGST Act for offences u.s. 132(1)(b) and (c) without proper tax liability assessment, High Court granted bail, noting that continued detention was unjustified as custodial interrogation was not sought and investigation was at advanced stage - *Deepanshu Srivastava v. Union of India* - [2024] 163 taxmann.com 186 (Allahabad)

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

**3.46** Where search was carried out on premises of assessee u.s. 67 and no reasons to believe were noted in INS-01, entire proceedings were to be quashed - **Excellentvision Technical Academy (P.) Ltd. v. State of U.P.** - [2024] 163 taxmann.com 555 (Allahabad)

**3.47** Where assessee/petitioner sought copies of documents seized during search by revenue authorities, alleging search was illegal as he had no concern with the company against whom search authorization was issued, HC directed revenue to decide petitioner's representation seeking copies as per law within 2 weeks- **Savinder Sharma v. Director General, Directorate of Revenue Intelligence** - [2024] 163 taxmann.com 343 (Delhi)

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

**3.48** Where proceedings were initiated by SGST authorities against assessee and CGST authorities had issued summons to petitioner u.s. 70, petitioner should respond to said summons and raise all contentions, including contention that proceedings against it cannot be initiated by CGST Department - **Shree Sai Hanuman Smelters (P.) Ltd. v. Senior Intelligence Officer, Directorate General of Goods and Service Tax** - [2024] 163 taxmann.com 436 (Madras)

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

**3.49** Where impugned order of demand was issued u.s. 73 of SGST/CGST Act, assessee submitted only a summary of SCN issued and no show-cause notice was issued which was contrary to provisions mandated under section 73 of GST Act and Rule, 142 of GST Rules and no personal hearing was afforded, till next date fixed, impugned order of demand was to remain stayed - **Veerprabhu Auto (P.) Ltd. v. State of Assam** - [2024] 163 taxmann.com 549 (Gauhati)

**3.50** Where assessee dealt in sanitary ware, respondent authority applied Notification No. 5/2020-Central Tax (Rate), dated 16-10-2020 which was applicable to satellite launch services and not to sanitary ware, assessee's request for adjournment rejected, tax proposal confirmed without considering assessee's response on merits, impugned order was to be set aside and matter to be remanded - **Shashi Bala v. Commercial Tax Officer (ST)** - [2024] 163 taxmann.com 639 (Madras)

**3.51** Where assessee/petitioner challenged order demanding payment for erroneous refund without providing sufficient particulars, HC quashed impugned order and remanded matter, directing respondents to issue fresh show cause notice with relevant details to enable assessee/petitioner to respond meaningfully - **Tvl. Orange Sorting Machines (India) (P.) Ltd. v. Assistant Commissioner** - [2024] 163 taxmann.com 672 (Madras)

**3.52** Where impugned order demanded ineligible ITC in terms of section 73(9) of CGST Act read with section 20 of IGST Act alongwith interest and penalty, extension of period of limitation vide Notification No.09/2023, dated 31-3-2023 challenged by assessee in instant writ being contrary to provisions of section 168(A) of CGST Act, till respondents complete their instructions and file necessary affidavit, no coercive action was to be initiated against assessee - **Debadib Das v. Union of India** - [2024] 163 taxmann.com 538 (Gauhati)

**3.53** Where assessee's/petitioner's registration was retrospectively cancelled, preventing GST portal access to reply to show cause notices, High Court set aside impugned orders, restored proceedings, and granted assessee/petitioner opportunity to reply, directing revenue to re-adjudicate show cause notices - **Polytec Industries v. Commissioner, Delhi Goods and Services Tax** - [2024] 163 taxmann.com 477 (Delhi)

**3.54** Where assessee was not served with show cause notice by GST Authorities as it had shifted to a new address and same was returned by postal authority with remark "no such person in the address", GST Authorities were to be directed to serve a copy of show cause notice on assessee at new address and thereafter pass fresh assessment order - **C. Ekambaram v. Assistant Commissioner of GST & Central Excise** - [2024] 163 taxmann.com 314 (Madras)

**3.55** Where show cause notice alleging mismatch between GSTR 3B returns and GSTR 1 statement as well as between GSTR 3B returns and auto-populated GSTR 2A issued, assessee replied explaining discrepancy and relevant documents, explanation and documents not taken into consideration before issuing impugned order, impugned order bereft of reasons was to be set aside - **Perfect Assayers (P.) Ltd. v. State Tax Officer (ST)** - [2024] 163 taxmann.com 486 (Madras)

**3.56** Where assessee/petitioner contended that detailed reply with documents was ignored by proper officer, High Court set aside the cryptic order and remitted matter for re adjudication, allowing further reply and fresh consideration - **Sethia Enterprises v. Commissioner, Delhi Goods and Service Tax** - [2024] 163 taxmann.com 381 (Delhi)

**3.57** Where assessee paid tax and interest as per its show cause notice reply, but assessment order demanded incorrect tax and imposed penalty without hearing, High Court quashed order and remanded for reconsideration with reasonable opportunity - **Tvl. Vikram Corporation v. Assistant Commissioner (ST)** - [2024] 163 taxmann.com 422 (Madras)

- 3.58** Where assessee/petitioner contended that amount towards alleged stock variation and wrongful input tax credit was recovered during search operation without statutory demand, High Court held deposit involuntary and directed refund towards alleged stock variation with interest and towards alleged wrongful input tax credit without interest - **Sushil Kumar v. Delhi State GST Govt. NCT of Delhi - [2024] 163 taxmann.com 419 (Delhi)**
- 3.59** Where assessing officer passed assessment order without considering assessee's contention that services were exempt, High Court quashed order, requiring assessee to deposit 10% of disputed tax and allowing submission of additional documents to support exemption claim - **Tvl. Shree Vijayalakshmi Container Services v. Deputy State Tax Officer-I - [2024] 163 taxmann.com 268 (Madras)**
- 3.60** Where assessment order under Section 73 did not consider detailed reply filed by assessee to show cause notice and instead recorded that no reply was filed, High Court set aside order and remitted matter for re-adjudication after providing opportunity to assessee - **Jai Optical v. Government of NCT of Delhi - [2024] 163 taxmann.com 260 (Delhi)**
- 3.61** Where assessee submitted detailed replies to show cause notice with supporting documents, but officer issued cryptic order without merit consideration, High Court set aside the order, remanding for re-adjudication with opportunity for further reply and hearing - **Future Generali India Insurance Co. Ltd. v. Goods and Service Tax Officer (GSTO) - [2024] 163 taxmann.com 258 (Delhi)**
- 3.62** Where assessee/petitioner challenged assessment orders issued without providing reasonable opportunity, High Court quashed orders subject to condition of assessee/petitioner remitting 10% of disputed tax demand and permitted assessee/petitioner to file reply to show cause notice, directing revenue to provide reasonable opportunity after receiving reply - **Amnet Systems (P.) Ltd. v. State Tax Officer - [2024] 163 taxmann.com 142 (Madras)**
- 3.63** Where summary order under Section 73 was passed without issuing show cause notice to assessee due to mistake in email address, High Court quashed order and remitted matter back to Tax Officer to pass fresh order after giving opportunity to assessee - **Maa Chintpurni Steel v. State of Jharkhand - [2024] 163 taxmann.com 109 (Jharkhand)**
- 3.64** Where assessee/petitioner challenged CGST/TNGST adjudication orders without evidence opportunity, High Court directed filing statutory appeals, permitting evidence submission before appellate authority to address the deficiency in writ petitions - **Ayishanasrin Metal Alloys (P.) Ltd. v. Deputy Commissioner (ST) - [2024] 163 taxmann.com 138 (Madras)**
- 3.65** Where proper officer passed an order u.s. 73 of CGST/WBGST Act, 2017 without affording reasonable opportunity of hearing to petitioner, HC set aside order and remanded matter for fresh decision, ensuring petitioner is heard and documents considered - **Basanta Kumar Shaw v. Assistant Commissioner of Revenue Commercial Tax & State Tax - [2024] 163 taxmann.com 70 (Calcutta)**
- 3.66** Where assessment order is based on subsequent year's financial statement instead of relevant year, breaching natural justice principles, High Court requires reconsideration and mandates assessee/petitioner to remit Rs. 10 lakhs towards disputed tax u.s. 73 of CGST Act before fresh assessment - **K.A. & Co. v. State Tax Officer - [2024] 163 taxmann.com 79 (Madras)**
- 3.67** Where Proper Officer passed order u.s. 73 of CGST Act without considering detailed reply and supporting documents filed by assessee, HC set aside order as non-speaking and remanded matter back to Proper Officer for fresh adjudication after giving opportunity of hearing to assessee - **Ethos Ltd. v. Sales Tax Officer - [2024] 163 taxmann.com 93 (Delhi)**
- 3.68** Where asst. order was passed by respondent-department against petitioner-assessee without providing opportunity of hearing as required u.s. 75(4), therefore, impugned order was to be set aside and matter was to be remanded - **Techno Scientific Company v. State of West Bengal - [2024] 163 taxmann.com 87 (Calcutta)**
- 3.69** Where SCN proposing demand of tax was issued by respondent-department and a detailed reply was submitted by petitioner-assessee to said SCN, but, impugned asst. order was passed without taking into consideration said reply, therefore, matter was to be re-adjudicated - **Wellness Marketing Exi (P.) Ltd. v. Union of India - [2024] 163 taxmann.com 56 (Delhi)**
- 3.70** Where assessee submitted detailed reply to SCN u.s. 73 giving full disclosures under each of heads, impugned order recorded that reply was not duly supported by adequate documents, not clear and not satisfactory, proper officer had not applied his mind to reply, if further details were required, same could have been specifically sought from assessee, impugned order was to be set aside - **Jullundur Motor Agency Delhi Ltd. v. Union of India - [2024] 163 taxmann.com 42 (Delhi)**
- 3.71** Where respondent-department passed an asst. order against petitioner-assessee in which it was unclear as to basis for imposing GST on total trade payables and how liability was imposed with regard to employee benefit expenses incurred by petitioner-assessee, therefore, impugned order was to be set aside and matter was to be remanded for reconsideration - **Universal Relocations India (P.) Ltd. v. State of Tamil Nadu - [2024] 163 taxmann.com 47 (Madras)**
- 3.72** Where petitioner missed SCN uploaded under "Additional Notices" on GST portal, HC set aside consequent order to grant opportunity to respond - **ACE Cardiopathy Solutions (P.) Ltd. v. Union of India - [2024] 163 taxmann.com 17 (Delhi)**

- 3.73** Where assessee had purchased a commercial vehicle for business purposes and ITC was availed in respect thereof and Adjudicating Authority passed an order u.s. 73 on ground that assessee had wrongly availed ITC, assessee was to be provided an opportunity to contest tax demand, thus impugned order was to be set aside and matter was to be remanded for passing fresh order after hearing assessee - **Sri Uma Plastics v. Deputy State Tax Officer - [2024] 162 taxmann.com 416 (Madras)**
- 3.74** Where SCN and Asst order were uploaded under 'View Additional Notices and Orders' tab instead of 'View Notice' tab on GST portal, matter was remanded for fresh order after assessee/petitioner claimed they had not noticed them, ruling in favor of assessee/petitioner - **Panjacharam Kumaravel v. Deputy State Tax Officer-I - [2024] 162 taxmann.com 900 (Madras)**
- 3.75** Where assessee submitted that a notice u.s. 46 had not been given, proper officer could not have proceeded u.s. 73 or 74 while passing impugned order, since assessee had filed nil return, there was no requirement to give notice u.s. 46 to assessee; there being no violation of natural justice, writ petition filed against Asst. order was not to be entertained - **B.R. Construction Company v. Deputy Director, Directorate of Goods and Services Tax Intelligence - [2024] 162 taxmann.com 409 (Rajasthan)**
- 3.76** Where assessee contended that turnover reported in GSTR-1 was erroneously higher due to double entries, HC quashed impugned Asst. order and remanded matter to revenue authorities to provide opportunity to assessee to establish correct turnover after considering replies and supporting documents - **Exim Ink Co. v. Deputy State Tax Officer-I - [2024] 162 taxmann.com 908 (Madras)**
- 3.77** Where against SCN issued proposing to create demand of GST of Rs. 14.45 lakhs, Adjudicating Authority passed impugned order creating demand of Rs. 16.50 lakhs, demand arising under adjudication order could not exceed demand for which SCN was issued, thus impugned order was to be set aside - **Kalidas Medical Store v. State of U.P. - [2024] 162 taxmann.com 413 (Allahabad)**
- 3.78** Where impugned Asst. order was passed without giving sufficient opportunity to assessee to substantiate case, assessee was to be granted fresh opportunity to file reply to notice issued u.s. 74(1) - **Janani International (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 412 (Madras)**
- 3.79** Where assessee/petitioner challenged Asst. order alleging lack of opportunity to contest tax demand, HC quashed order and remanded matter for fresh adjudication after providing opportunity to assessee/petitioner, subject to petitioner remitting 10% of disputed tax demand - **Raw Enterprises v. State Tax Officer - [2024] 163 taxmann.com 194 (Madras)**
- 3.80** Where adjudicating authority issued unreasoned order under Section 73 of UP GST Act, 2017, ignoring assessee's/petitioner's explanation and arbitrarily applying highest tax rate, High Court set it aside and remanded for fresh reasoned order with proper hearing - **Vikas Varyani v. State of U.P. - [2024] 163 taxmann.com 162 (Allahabad)**
- 3.81** Where assessee challenged show cause notice and order passed thereon without considering its detailed reply, High Court set aside order and remitted show cause notice to proper officer for re-adjudication after providing opportunity to assessee to file further reply and for personal hearing - **Samsung India Electronics (P.) Ltd. v. Union of India - [2024] 163 taxmann.com 339 (Delhi)**
- 3.82** Where petitioner-assessee did not respond to show cause notice or participate in personal hearing and order demanding outstanding tax against petitioner-assessee issued by respondent-department was passed without providing any opportunity of hearing to petitioner-assessee, therefore, for interests of justice, impugned order was to be set aside and matter was to be remanded for reconsideration by respondent-department - **Jinvar Trading Company v. Commercial Tax Officer - [2024] 163 taxmann.com 512 (Madras)**
- 3.83** Where petitioner was unaware of proceedings culminating in impugned order proposing tax demand on ground of mismatch between GSTR 3B returns and auto-populated GSTR 2A as petitioner had engaged services of an accountant to handle GST compliances and such accountant did not inform petitioner about these proceedings, interest of justice warranted that assessee be provided an opportunity to contest tax demand on merits - **Stem Infrastructure v. Assistant Commissioner (GST) - [2024] 163 taxmann.com 321 (Madras)**
- 3.84** Where assessee missed show cause notice as it was posted under "Additional Notices" tab on GST portal instead of "View Notices" tab, and order was passed without giving opportunity, High Court set aside order directing revenue to allow assessee to file reply and re-adjudicate after providing personal hearing - **Udayraj Yadav v. Sales Tax Officer - [2024] 163 taxmann.com 347 (Delhi)**
- 3.85** Where High Court directed GST Council and CBIC to consider extending time limit notification for filing appeals against orders under Sections 129 and 130 of CGST Act, similar to extension granted for Sections 73 and 74 - **Tenet Networks (P.) Ltd. v. GST Council - [2024] 163 taxmann.com 306 (Allahabad)**
- 3.86** Where High Court quashed assessment order, remanding case for reconsideration after finding officer erroneously claimed reconciliation statements were not submitted, despite assessee's assertion of submission, allowing assessee to file additional documents - **Subasri Realty (P.) Ltd. V. Assistant Commissioner (ST) - [2024] 163 taxmann.com 233 (Madras)**

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

- 3.87** Where assessee developer availed benefit of Notification No. 03/2019–Central Tax (Rate) dated 29-3-2019 and paid GST at 1%, respondents issued impugned order levying GST at 5%, assessee expressly requested for personal hearing in reply to notice, personal hearing not granted, however since impugned orders preceded by both an intimation and notice and assessee's replies also taken into consideration, orders impugned were to be set aside subject to assessee remitting 5% of disputed tax demand - **Tvl. Town & City Developers v. State Tax Officer (I)** - [2024] 163 taxmann.com 547 (Madras)
- 3.88** Where assessee filed a writ petition challenging an order passed u.s. 74 and contended that said order had not been uploaded in 'view notices and orders' section of portal, since assessee failed to disclose as to when assessee came to learn with regard to factum of uploading of notices/order, writ petition was to be dismissed - **Probir Ghosh v. State of West Bengal** - [2024] 163 taxmann.com 169 (Calcutta)
- 3.89** Where petitioner was unaware of proceedings culminating in impugned order proposing tax demand on ground of mismatch between GSTR 3B returns and auto-populated GSTR 2A as notice and impugned order were uploaded in "View Additional Notices and Orders" tab on GST portal and not communicated to petitioner through any other mode, interest of justice warranted that assessee be provided an opportunity to contest tax demand on merits - **Crystal Granites v. Assistant Commissioner (ST)** - [2024] 163 taxmann.com 315 (Madras)
- 3.90** Where SCN and impugned order, proposing tax on basis of mismatch between ITC claimed in GSTR 3B and auto-populated GSTR 2A, were uploaded on "view additional notices and order tab of GST portal" and not communicated to petitioner through any other mode, petitioner being deprived of a reasonable opportunity of being heard on account of not being aware of SCN, impugned Asst. order was to be set aside - **Sri Amman Agency v. Assistant Commissioner (ST)** - [2024] 163 taxmann.com 313 (Madras)
- 3.91** Where petitioner was unaware of proceedings culminating in impugned order for tax proposal pertaining to mismatch between GSTR-3B returns and auto-populated GSTR-2A as notice and impugned order were uploaded in "View Additional Notices and Orders" tab on GST portal and not communicated to petitioner through any other mode, petitioner was to be provided an opportunity to contest tax demand on merits and therefore, impugned order was to be set aside and matter was to be remanded for reconsideration - **Tvl. Rana Granites v. Assistant Commissioner (ST)** - [2024] 163 taxmann.com 319 (Madras)

- 3.92** Where assessing officer disregarded assessee's documents and passed order without a fair hearing, High Court quashed assessment order and remanded case for reconsideration with opportunity to submit additional documents - **Jai Bhairav Stones v. State Tax Officer (ST)** - [2024] 163 taxmann.com 225 (Madras)
- 3.93** Where assessee/petitioner was not granted opportunity of personal hearing before passing order under Section 74(9) of the CGST Act, in violation of Section 75(4) of the Act, the High Court set aside impugned order and remitted the matter back to assessing authority to pass a fresh order after granting personal hearing to assessee/petitioner - **NS Agro and Engineering Products v. State of U.P.** - [2024] 163 taxmann.com 151 (Allahabad)
- 3.94** Where proceeding initiated by invoking extended period as provided under section 74 of CGST Act, show cause notice and order, clearly spelt out basis for invocation of extended period, including suppression of fraudulent avilment of input tax credit by way of wilful misstatement, correctness of findings and sufficiency/proof of such allegations could not be called in question by invoking extra-ordinary writ jurisdiction of Court - **Haldia Nirman Project (P.) Ltd. v. Additional Commissioner of CGST & CX** - [2024] 163 taxmann.com 106 (Calcutta)
- 3.95** Where assessee/petitioner contended that inspection by second respondent and consequent pre-show cause notice issued by second respondent demanding tax payment were without jurisdiction, High Court dismissed the writ petition, holding that second respondent was the proper officer to issue pre-show cause notice under CGST Act - **Famina Shopping Mall (P.) Ltd. v. Assistant Commissioner of GST & Central Excise** - [2024] 163 taxmann.com 72 (Madras)
- 3.96** Where show cause notice and intimation was issued to assessee proposing tax liability with regard to sales suppression, whereas impugned order imposing tax and penalty did not proceed on basis of sales suppression, if authority intended to modify tax proposal, a fresh show cause notice was to be issued to assessee, thus impugned order was to be set aside - **Vela Agencies v. Assistant Commissioner, State Tax** - [2024] 162 taxmann.com 419 (Madras)

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

- 3.97** Where adjudication was completed and ex-parte order was issued without proper notice to assessee, in view of objective of section 75(4), requirement of providing an opportunity wherever adverse order was sought to be passed, it would be appropriate to permit assessee to participate in adjudication process and therefore said order and recover proceedings initiated by revenue were to be set aside - **Breakbounc India (P.) Ltd. v. Commissioner of Commercial Taxes** - [2024] 163 taxmann.com 602 (Karnataka)



- 3.98** Where demand created on account of claim of ITC from cancelled dealer, detailed reply furnished by assessee giving full disclosures under each of heads, impugned order recorded reply not satisfactory and vague, non application of mind by proper officer to reply, impugned order was to be set aside - **Sri Radha Krishna International v. Union of India - [2024] 163 taxmann.com 418 (Delhi)**
- 3.99** Where assessee impugned orders that disposed of show cause notices, impugned orders passed solely on ground that reply had not been submitted by assessee, opportunity was to be granted to assessee to file reply to show cause notice, impugned orders were to be set aside - **Rohan Book Company (P.) Ltd. v. Union of India - [2024] 163 taxmann.com 262 (Delhi)**
- 3.100** Where assessing officer did not provide mandatory personal hearing before issuing assessment order reversing input tax credit, High Court quashed impugned assessment order and remanded matter for re-consideration after providing opportunity of personal hearing to assessee/petitioner - **Sree Nagammal Shipping and Allied Services v. The Commissioner - [2024] 163 taxmann.com 383 (Madras)**
- 3.101** Where assessee/petitioner contended that opportunity of personal hearing was not provided in accordance with Section 75(5) of CGST Act, High Court quashed impugned order and directed respondents to re-adjudicate matter after providing last opportunity of personal hearing - **Pinky Marbles v. Director General of Goods and Service Tax Intelligence - [2024] 163 taxmann.com 192 (Rajasthan)**
- 3.102** Where order under Section 73 of WBGST Act was set aside due to non-compliance with Section 75(4) for not affording hearing opportunity to assessee, matter was remanded for fresh order after proper hearing, decided in assessee's favour - **Oliya Steel (P.) Ltd. v. State of West Bengal - [2024] 163 taxmann.com 6 (Calcutta)**
- 3.103** Where assessee has submitted relevant documents explaining mismatch between GSTR-3B and GSTR-2A which were not considered by authorities, principles of natural justice warrant remanding matter for reconsideration after providing opportunity to assessee - **AP Studio Enterprises v. Assistant Commissioner (ST)(FAC) - [2024] 162 taxmann.com 907 (Madras)**
- 3.104** Where assessee could not respond to show cause notice due to lack of opportunity, principles of natural justice warrant providing another opportunity to assessee for contesting tax demand, subject to condition of making partial pre-deposit - **Prosign Communications v. Deputy State Tax Officer - [2024] 162 taxmann.com 878 (Madras)**

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

- 3.105** Where impugned orders issued without hearing assessee, impugned orders related only to interest, assessee had placed on record payment receipt pertaining to payments of interest, assessee to be provided an opportunity to contest interest liability on merits, impugned orders were to be set aside - **Marson Industries v. Deputy Commercial Tax Officer - [2024] 163 taxmann.com 5 (Madras)**

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

- 3.106** Where assessee/petitioner challenged provisional attachment of bank account under Section 83 of Central Goods and Services Tax Act, 2017, High Court allowed petition holding that provisional attachment ceased to have effect after expiry of one year from date of order - **Seema Gupta v. Principal Commissioner of GST - [2024] 163 taxmann.com 380 (Delhi)**

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

- 3.107** Where assessee's input tax credit was blocked under Rule 86A of CGST Rules, period of 12 months elapsed from order, blocking of ITC and blocking of electronics credit ledgers were to be set aside - **Padmavathi Electrometals (P.) Ltd. v. Assistant Commissioner of Commercial Taxes - [2024] 163 taxmann.com 744 (Karnataka)**

**RULE 96 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - REFUND OF INTEGRATED TAX PAID ON GOODS OR SERVICES EXPORTED OUT OF INDIA**

- 3.108** Where high Court directed that no coercive action be taken against assessee/petitioner challenging Rule 96(10) of CGST Rules, 2017, regarding IGST refund on exports under Advance Authorization Scheme, without issuing show-cause notice and following statutory requirements - **Reliance Chemotax Industries Ltd. v. Union of India - [2024] 163 taxmann.com 301 (Rajasthan)**

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

- 3.109** Where assessee's appeal against rejection of refund of ocean freight rejected, appeal filed within time prescribed by statute but hard copy of impugned order not filed within seven days of presentation of appeal, non-production of hard copy of order only technical defect, appeal filed in time was to be processed - **Indian Potash Ltd. v. Deputy Commissioner (ST) - [2024] 163 taxmann.com 634 (Madras)**

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

- 3.110** Where assessee/petitioner filed an appeal under Section 107 of UPGST Act, 2017 beyond prescribed time limit, HC dismissed writ petition holding that Section 5 of Limitation Act, 1963 is not applicable to Section 107 as it is complete code in itself - **Yadav Steels Having Office v. Additional Commissioner - [2024] 163 taxmann.com 651 (Allahabad)**

- 3.111** Where assessee's/petitioner's appeal against original Asst. order was rejected by appellate authority as being filed beyond condonable period, HC set aside appellate order and directed appellate authority to receive and dispose of appeal on merits without going into limitation, considering that delay beyond condonable period was only 21 days and assessee's/petitioner's contention that ingredients of Section 74 were not satisfied - **Sri Shanmuga Motors v. State Tax Officer** - [2024] 163 taxmann.com 546 (Madras)
- 3.112** Where assessee's appeal against an order passed u.s. 73(9) was initially rejected due to a 55-day delay, with Appellate Authority claiming lack of jurisdiction to condone delays beyond one month as per Section 107(4) proviso, however, in case Calcutta HC in S.K. Chakraborty & Sons vs. Union of India [2024] 159 taxmann.com 259 (Calcutta) it was ruled that Appellate Authority can condone such delays, therefore, consequently, order rejecting appeal was to be set aside - **Partha Pratim Dasgupta v. Joint Commissioner of State Tax** - [2024] 163 taxmann.com 545 (Calcutta)
- 3.113** Where in case of assessee's appeal against order passed u.s. 73(9) of CGST Act was dismissed by Appellate Authority on ground of delay, since assessee had sufficiently explained delay in filing appeal, Appellate Authority was directed to hear appeal on merits subject to payment of costs of Rs. 5000 - **Krishna Enterprise v. Commissioner, State Tax, West Bengal** - [2024] 163 taxmann.com 741 (Calcutta)
- 3.114** Where assessee filed appeal electronically against order which was rejected as time-barred for not filing self-certified copy of order, HC quashed rejection order and remanded matter to appellate authority to decide appeal on merits, holding that proviso to Rule 108 of CGST Rules requiring filing of self-certified copy was not applicable when appeal was filed electronically - **Visible Alpha Solutions India (P.) Ltd. v. Commissioner, CGST Appeals** - [2024] 163 taxmann.com 754 (Allahabad)
- 3.115** Where assessee filed appeal challenging order of determination of tax, but same was rejected after long lapse of 11 months due to non-supply of certified copy of order, since assessee was not intimated about defect in appeal, order rejecting appeal was to be set aside and matter was to be remitted - **Nilamadhapa Patra v. Chief Commissioner of CT and GST** - [2024] 163 taxmann.com 167 (Orissa)
- 3.116** Where assessee impugned orders being not digitally signed by authorities, prior to said orders authorities did not issue preliminary/consultative notice, assessee not aware of impugned orders as it were loaded on a new portal of which assessee, assessee did not dispute that it had right to assail impugned orders in appeal, petition was to be dismissed as alternate remedy of appeal available - **Shreehari Realtech (P.) Ltd. v. Union of India** - [2024] 163 taxmann.com 521 (Allahabad)
- 3.117** Where appellate authority rejected appeal solely on ground that it was presented 29 days beyond three months time period, since appeal was presented within condonable period, appellate authority was to be directed to consider and dispose of appeal on merits - **Tvl. Sri Sai Traders v. Deputy Commissioner (ST), Goods and Services Tax Appeals** - [2024] 163 taxmann.com 320 (Madras)
- 3.118** Where assessee's/petitioner's appeals against GST assessment orders were rejected as time-barred, HC quashed these orders and directed authority to dispose of appeals on merits, disregarding limitation period, due to timely filed rectification petitions - **Tvl. SKL Exports v. Deputy Commissioner (ST)(GST)(Appeal)** - [2024] 163 taxmann.com 451 (Madras)
- 3.119** Where assessee's first appeal filed within time prescribed against order passed u.s. 129(3) was dismissed as assessee failed to mention disputed tax amount due to technical glitch, assessee's statutory right of appeal could not be defeated by reason of technical glitches, thus order rejecting 2nd appeal of assessee on grounds of limitation was to be set aside and appeal was to be restored - **Rahul Bansal v. Assistant Commissioner of State Tax** - [2024] 163 taxmann.com 32 (Calcutta)
- 3.120** Where order-in-original passed by Adjudicating Authority demanding tax on ground of wrong avilment/passing of input tax credit was challenged in writ petition, provision for filing appeal u.s. 107 being available to assessee, writ petition was to be dismissed as misconceived - **Nectar Life Sciences Ltd. v. Union of India** - [2024] 163 taxmann.com 30 (Punjab & Haryana)
- 3.121** Where assessee filed appeal with delay stating that delay was caused as matter was being agitated before Writ court, assessee was to be granted liberty to filed application under section 5 of Limitation Act, and delay was to be calculated accordingly - **Emars Mining & Construction (P.) Ltd. v. Commissioner of Central Goods and Service Tax** - [2024] 163 taxmann.com 26 (Calcutta)
- 3.122** Where assessee's/petitioner's appeal against adjudication order passed u.s. 73 of CGST Act, 2017/WBGST Act, 2017 was rejected by Appellate Authority on ground of limitation, HC condoned delay and remanded matter back to Appellate Authority for consideration on merits - **Sushil Kumar Hazra v. State of West Bengal** - [2024] 163 taxmann.com 154 (Calcutta)
- 3.123** Where registration cancellation order cited contradictory statements about receiving reply to SCN, HC quashed orders and granted opportunity to file reply - **Awadh and Co. v. State of Uttar Pradesh** - [2024] 163 taxmann.com 89 (Allahabad)
- 3.124** Where assessee/petitioner's appeal was dismissed for not submitting self-certified copy of order within 7 days per Rule 108(3) of CGST Rules, despite timely electronic filing, HC quashed dismissal and remanded case to appellate authority to decide appeal on its merits - **Enkay Polymers v. State of U.P.** - [2024] 163 taxmann.com 49 (Allahabad)

**3.125** Where the assessee's appeal u.s. 107 of the UPGST Act was dismissed as time-barred, the HC quashed the dismissal due to incorrect calculation of the limitation period, remanding the matter to the first appellate authority to condone the delay and hear the appeal on its merits - **Balaji Coal Traders v. Commissioner, Commercial Tax** - [2024] 163 taxmann.com 36 (Allahabad)

**3.126** Where assessee/petitioner's appeal was rejected by appellate authority citing delay in submission without granting opportunity of hearing, HC quashed appellate order and remanded matter to pass reasoned order after hearing assessee/petitioner - **Bhaiyalal Contractors v. State of UP** - [2024] 163 taxmann.com 19 (Allahabad)

**3.127** Where Competent Authority rejected assessee's application seeking refund and assessee had not exhausted remedy of appeal and filed instant writ petition assailing order of rejection, same was to be dismissed as withdrawn with liberty to assessee to approach Appellate Authority by filing appeal - **BTPL Distribution (P.) Ltd. v. Assistant Commissioner (Central Excise)** - [2024] 162 taxmann.com 410 (Delhi)

#### SECTION 109 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - APPELLATE TRIBUNAL - CONSTITUTION OF, AND BENCHES

**3.128** Where assessee/petitioner was unable to file appeal against order passed under GST Act due to non-constitution of Appellate Tribunal, High Court directed that assessee/petitioner be granted statutory stay benefit on depositing 20% of disputed tax amount, and allowed to file appeal once Tribunal is constituted and functional - **Gajendra Kumar Sahoo v. Additional CT & GST Officer** - [2024] 163 taxmann.com 632 (Orissa)

#### SECTION 122 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PENALTY - FOR CERTAIN OFFENCES

**3.129** Where assessee/petitioner, tobacco dealer, was accused of conspiring with co-accused to transport narcotics using fake invoices prepared with misused GST number, bail application rejected considering incriminating circumstances and statutory restrictions under Section 37 of NDPS Act - **Rajesh Prasad Gupta @ Rajesh Prasad Gupta @ Rajesh Kumar Gupta, In re** - [2024] 162 taxmann.com 456 (Calcutta)

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

**3.130** Where assessee's vehicle was intercepted and detained on ground that no e-way bill was produced for movement of goods, however assessee contended that since consignment value did not exceed Rs.50,000/-,

no e-way bill was required, as per Rule 138, since determination of consignment value should be based on transaction value as per Section 15 and that both proper officer and appellate authority failed to properly consider aforesaid aspect, case was to be remanded back to appellate authority for re-determination - **Gopal Nondy v. Assistant Commissioner of State Tax** - [2024] 163 taxmann.com 568 (Calcutta)

**3.131** Where assessee/petitioner contended that there was a discrepancy in the weight of goods due to part delivery at two locations and provided explanation for expired e-way bill, HC quashed impugned penalty order and appellate order, directing refund of tax and penalty deposited, noting that authorities failed to consider petitioner's explanation and there was no intention to evade tax - **Vishal Pipes Ltd. v. State of U.P.** - [2024] 163 taxmann.com 586 (Allahabad)

**3.132** Where petitioner contended that seizure of goods was made without proper opportunity to explain discrepancy in E-Way bills, HC quashed seizure order and remanded matter to revenue authorities to decide afresh after giving opportunity to petitioner - **Prem Sales Corporation v. State of U.P.** - [2024] 163 taxmann.com 665 (Allahabad)

**3.133** Where HC dismissed contempt appeal against order of Revenue authorities declining to adjudicate representation, holding that Revenue authorities had complied with earlier Court order by passing order on representation - **Purwar Trading Company v. Ravikant, Assistant Commissioner State Tax** - [2024] 163 taxmann.com 337 (Allahabad)

**3.134** Where assessee's goods detained and seized on basis of statement given by driver of vehicle that he was transporting goods for second time with same documents, penalty u.s. 129(3) of GST Act imposed, primary documents being MOV-01, wherein statement of driver recorded, not provided to assessee, respondent authorities not been able to indicate or prove any mens rea for evasion of tax, impugned orders were to be set aside - **K Y Tobacco Works (P.) Ltd. v. State of U.P.** - [2024] 163 taxmann.com 108 (Allahabad)

**3.135** Where goods were accompanied by a tax invoice and an expired e-way bill, and delay was due to vehicle breakdown, HC quashed tax and penalty orders, ruling that merely not extending e-way bill validity is insufficient for a penalty u.s. 129(3) without intent to evade tax - **Prahlad Rai Vijay Kumar v. State of U.P.** - [2024] 163 taxmann.com 193 (Allahabad)

**3.136** Where goods were detained and penalty was levied for minor discrepancies in vehicle registration details in e-way bill, HC set aside penalty order, holding it to be case of unintentional mistake not attracting penalty - **Bmr Enterprises v. State of UP** - [2024] 163 taxmann.com 90 (Allahabad)

**3.137** Where adjudication order, confirming tax and penalty due to vehicle number discrepancy in e-way bill, was challenged by assessee, it was to be set aside. Matter was decided in favour of assessee, as discrepancy was deemed clerical and without intent to evade tax, aligning with circular guidelines allowing minor errors - **Poddar Tyres Ltd. v. State of U.P.** - [2024] 162 taxmann.com 901 (Allahabad)

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

- 3.138** Where assessee/petitioner challenged temporary GST registration granted by revenue for intercepted goods in transit from Gujarat to Andhra Pradesh showing supply from Rajasthan, High Court dismissed petition directing revenue to investigate modus operandi of assessee/petitioner misusing GST provisions by issuing bills showing interstate supply from Rajasthan instead of Gujarat - *Hari Enterprises v. Union of India* - [2024] 163 taxmann.com 570 (Gujarat)

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

- 3.139** Where GST registration of two fake firms using details of informant obtained, participation of some accused surfaced initially on basis of information received through secret informer, subsequently names of accused involved in said work started to be disclosed by accused persons whose complicity surfaced and were arrested, Input Tax Credit availed on forged papers, custodial interrogation of accused required for further investigation, incident an economic offence, anticipatory bail was to be rejected - *Anshul Goyal v. State of U.P.* - [2024] 163 taxmann.com 254 (Allahabad)
- 3.140** Where applicant found involved in creating shelf-companies using someone else's KYC documents and sold them to main accused-DS, used by DS for issuing fake invoices to avail illegal input tax credits without supplying any goods, applicant in jail since 29-3-2024 and investigation reached at an advanced stage, alleged offence punishable with upto 5 years imprisonment, applicant was to be released on bail - *Mohit Kumar v. Union of India* - [2024] 162 taxmann.com 898 (Allahabad)

**SECTION 142 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TRANSITIONAL PROVISIONS - MISCELLANEOUS**

- 3.141** Assessee, who transitioned input tax credit under GST, received a show-cause notice and confirmed penalties for wrongful ITC availment, but since fraud or misstatement wasn't proven by revenue and credit was reversed post-notice, penalties under Section 74 were deemed inappropriate, thus, a token penalty of Rs.10,000/- was to be imposed on assessee instead of higher penalty initially levied - *Greenstar Fertilizers Ltd. v. Joint Commissioner (Appeals)* - [2024] 163 taxmann.com 509 (Madras)

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

- 3.142** Since considering spread of COVID-19 pandemic (i.e., force majeure) during March, 2020 to February, 2022, Notification No. 09/2023-Central Tax (CGST) and Notification No. 515/XI-2-23-9 (47)/17-T.C.215-U.P.Act-1-2017-Order-(273)-2023, (UP State Government) had extended time granted to Adjudicating Authorities to pass adjudication orders with reference to proceedings for financial year 2017-18 upto 31-12-2023, writ petition challenging issuance of impugned notifications must fail - *Graziano Trasmissioni v. Goods and Services Tax* - [2024] 163 taxmann.com 126 (Allahabad)

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

- 3.143** Where assessee/petitioner partnership firm challenged attachment order issued by GST authorities for recovery of tax dues and sought copy of assessment order, High Court quashed attachment order as it was issued under Customs Act provisions instead of applicable CGST Act and directed authorities to provide opportunity to assessee/petitioner to file statutory appeal against assessment order - *Zest Buildtek Promoters v. Deputy Commissioner of GST & Central Excise* - [2024] 163 taxmann.com 644 (Madras)
- 3.144** Where assessee/petitioner claimed entry tax exemption for materials imported for solar power project under renewable energy policy, High Court set aside assessment order and remanded matter for re-adjudication considering exemption notification and its extension - *Sun Pharma Laboratories Ltd. v. State of Bihar* - [2024] 163 taxmann.com 305 (Patna)

## 4. AAAR

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

- 4.1** Where assessee contended that input tax credit (ITC) on air conditioning, cooling, and ventilation systems should be allowed as plant and machinery, Appellate Authority upheld ruling denying ITC, classifying these as blocked under Section 17(5)(c) of CGST Act, 2017 - *Wago (P.) Ltd., In re* - [2024] 163 taxmann.com 395 (AAAR-GUJARAT)

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

- 4.2** Where assessee/appellant manufacturer argued for classifying various flours under HSN 1106 with 5% GST, Gujarat Appellate Authority for Advance Ruling upheld classification under HSN 2106 90 (Others) attracting 18% GST - *Kitchen Express Overseas Ltd., In re* - [2024] 163 taxmann.com 331 (AAAR-GUJARAT)
- 4.3** Where Section 100(2) of CGST Act provides 30 days time limit for filing appeal against AAR order with proviso allowing condonation of delay up to 30 days for sufficient cause, appellant's 27 days delay due to AR's medical issues from 5-3-2024 to 15-3-2024 was condoned as sufficient cause - *Faiveley Transport Rail Technologies (P.) Ltd., In re* - [2024] 163 taxmann.com 125 (AAAR - TAMILNADU)

## 5. AAR

### CLASSIFICATION OF GOODS

**5.1 Bee-prime Feed :** Bee-prime feed exported by applicant merits classification under Heading 1702 as artificial honey and attract GST rate of 18% - **Technocrats Equipments Sales & Service, In re - [2024] 163 taxmann.com 322 (AAR - KARNATAKA)**

**5.2 Electric Ducted Fan (EDF) thrusters :** EDF (Electric Ducted Fan) Thrusters are classifiable under CTH 84145990 and applicable rate of GST on supply of "EDF Thrusters with Battery Pack for Jet Suit" is 18% - **Turbotech Precision Engineering (P.) Ltd., In re - [2024] 163 taxmann.com 323 (AAR - KARNATAKA)**

### SECTION 2(45) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ELECTRONIC COMMERCE OPERATOR

**5.3** Where assessee/applicant sought advance ruling on its status as e-commerce operator under Section 9(5) of CGST Act, 2017, Authority held that applicant qualifies as e-commerce operator and is liable to pay GST on app usage charges and transaction value paid by users for notified services under Section 9(5) - **Balat Enterprises (P.) Ltd., In re - [2024] 163 taxmann.com 424 (AAR - TAMILNADU)**

### SECTION 2(53) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - GOVERNMENT

**5.4** Where service provider was held to be a 'government authority' and not a 'local authority', therefore, following aforesaid ruling, provider of services is not a 'local authority' within meaning and ambit of provisions of CGST/SGST Act - **THDC India Ltd., In re - [2024] 163 taxmann.com 649 (AAR- UTTARAKHAND)**

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

**5.5** Where assessee/applicant sought advance ruling on whether services of renting/leasing passenger buses to Kerala State Road Transport Corporation (KSRTC) are chargeable to GST at 18% or exempt, Authority ruled that such services by way of renting/leasing motor vehicles meant to carry more than 12 passengers to state transport undertaking are exempt from GST - **Maha Voyage LLP., In re - [2024] 163 taxmann.com 455 (AAR - KERALA)**

**5.6** Where assessee/applicant sought advance ruling on GST applicability for sale of goods in a third-party Free Trade Warehousing Zone on "as is where is" basis to a customer clearing them to bonded warehouse under MOOWR Scheme, AAR held that such transactions are not liable to GST under Clause 8(a) of Schedule III of CGST Act, 2017 - **Sunwoda Electronic India (P.) Ltd., In re - [2024] 163 taxmann.com 241 (AAR - TAMILNADU)**

**5.7** Where assessee/applicant contended that nominal salary deductions for canteen facilities in factory premises were not 'supply' under Section 7 of CGST Act, Authority ruled deductions non-supply and allowed input tax credit for costs borne by assessee/applicant for permanent employee's canteen services under Factories Act - **Dormer Tools India (P.) Ltd., In re - [2024] 163 taxmann.com 352 (AAR - GUJARAT)**

**5.8** Where assessee/applicant sought GST and ITC rulings on canteen and transport facilities provided to employees, Authority held GST not leviable on recoveries made, and ITC available on canteen services mandated by Factories Act, restricted to employer's cost - **Zentiva (P.) Ltd., In re - [2024] 163 taxmann.com 276 (AAR - GUJARAT)**

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

**5.9** Where provider of services is not a 'local authority' and work as per referred MOU is a construction service to supply water which is an activity in relation to a function entrusted to a Municipality and Panchayat under Article 243W and Article 243G respectively of Constitution of India, 1950, and is exempted from payment of tax, therefore, applicant being a receiver of services, is not liable to pay GST under Forward Charge Mechanism - **THDC India Ltd., In re - [2024] 163 taxmann.com 649 (AAR- UTTARAKHAND)**

**5.10** Where document issued by transporter hired by applicant for transporting goods, qualifies to be a consignment note, therefore, transporter/contractor qualifies to be a Goods Transport Agency and services provided by transporter for transport of raw materials and finished goods including loading and unloading are liable to GST, as per provisions of CGST Act 2017 and rules made thereunder - **Karnataka Co-operative Milk Producers Federation Ltd., In re - [2024] 163 taxmann.com 236 (AAR - KARNATAKA)**

**5.11** Since development authority denied completion certificate to applicant, therefore, 'first occupation' cannot be said to be taken by applicant; sale of residential units in Phase IV of project by applicant is not sale of immovable property, but, sale of services and GST is leviable - **Savfab Buildtech (P.) Ltd., In re - [2024] 163 taxmann.com 240 (AAR- UTTAR PRADESH)**

**5.12** Since, role of applicant is limited to supervision of installation of electricity lines only, for which it charges supervision fee, therefore, supervision fee is charged at 15% on cost of material and GST would not be applicable on entire amount including material and labour - **Madhvanchal Vidyut Vitran Nigam Ltd., In re - [2024] 163 taxmann.com 205 (AAR- UTTAR PRADESH)**

**5.13** Where applicant-assessee does not qualify to be a "Local Authority", therefore, there is no applicability of RCM as per provisions of Notification No. 13/2017- Central Tax (Rate), dated 28-6-2017 - **Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, In re - [2024] 163 taxmann.com 584 (AAR- UTTARAKHAND)**

**5.14** Where liability to tax under GST vests with service provider-shipping line/freight forwarder, therefore, no further liability lies with applicant in respect of same service, as same is in nature of input services received by applicant; applicant is not liable to pay GST on export freight - *DCW Ltd., In re - [2024] 163 taxmann.com 157 (AAR - TAMILNADU)*

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

**5.15** Where various processes are involved to change 'Raw Green Peas' into 'Frozen Green Peas' by applicant-assessee which changes basic essence and character of product, therefore, it does not fall under agricultural product or vegetable; Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 does not exempt services of storage of processed frozen green peas and applicable GST has to be paid by applicant-assessee - *Stellar Cold Chain Inc., In re - [2024] 163 taxmann.com 559 (AAR- UTTARAKHAND)*

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

**5.16** Where construction of an overhead water tank by applicant-assessee, which is a government authority, is a construction service and pertains to supply of water, which is an activity in relation to a function entrusted to a Municipality and Panchayat under Articles 243W and 243G of Constitution of India, 1950, therefore, same is exempted from payment of tax and question of claiming of ITC does not arise - *Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, In re - [2024] 163 taxmann.com 584 (AAR- UTTARAKHAND)*

**5.17** Where applicant-assessee is engaged in providing transport service and opted to pay GST at 12% under Forward Charge Mechanism, therefore, Input Tax Credit can be admissible to applicant-assessee, subject to fulfilment of conditions and restrictions as specified in Section 16 - *EFC logistics India (P.) Ltd., In re - [2024] 163 taxmann.com 527 (AAR-ODISHA)*

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

**5.18** Where assessee/applicant sought advance ruling on admissibility of input tax credit on goods/services received for construction of airport runway and passenger terminal building, Authority ruled that entire input tax credit is blocked under Section 17(5)(c) of CGST Act as supplies were for construction of immovable property under composite works contract - *Kannur International Airport Ltd., In re - [2024] 163 taxmann.com 430 (AAR - KERALA)*

**5.19** Where Section 17(5)(d) states that term "construction" includes re-construction, renovation, additions or alterations or repairs, to extent of capitalization, to said immovable property and "Rotary Car Parking System" falls under ambit of additions as envisaged in said explanation clause, to immovable property, therefore, Input Tax Credit is not admissible under section 17(5)(d) on Rotary Parking System desired to be installed by applicant-assessee - *Arthanarisamy Senthil Maharaj, In re - [2024] 163 taxmann.com 124 (AAR - TAMILNADU)*

**RULE 32 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES**

**5.20** Where under Rule 32(5) of CGST Rules, 2017, items like Iron Scrap, Lead Acid Batteries, Aluminium utensils, Steel utensils scrap, etc., aren't 'second hand goods,' thus ineligible for Margin Scheme - *Hitesh Gwalani., In re - [2024] 163 taxmann.com 391 (AAR- RAJASTHAN)*

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

**5.21** Where goods are exported on FOB basis with freight arranged by overseas buyer, exporter is not liable for GST on RCM basis, and unrelated queries on shipping line's liability and inter-state supply status were not addressed - *DCW Ltd., In re - [2024] 163 taxmann.com 483 (AAR - TAMILNADU)*

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

**5.22** Where no supply in respect of renting/hiring of vehicles is undertaken or proposed to be undertaken by applicant-assessee, therefore, no ruling can be pronounced in this regard - *EFC logistics India (P.) Ltd., In re - [2024] 163 taxmann.com 527 (AAR-ODISHA)*

**5.23** Where petrol pump dealer sought advance ruling on input tax credit for leasing pumps and equipment for taxable and exempt supplies, Authority ruled proportionate credit is allowed - *Kwality Auto Services, In re - [2024] 163 taxmann.com 454 (AAR - KERALA)*

**5.24** Where second query relating to tax liability of service provider-freight forwarder/shipping line, who is not applicant, therefore, aforesaid query need not to be answered by Authority for Advance Ruling - *DCW Ltd., In re - [2024] 163 taxmann.com 157 (AAR - TAMILNADU)*

**SECTION 97 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - APPLICATION FOR**

**5.25** Where the assessee/applicant sought a ruling on ZLD treated water classification, the Authority for Advance Ruling held it falls under Chapter 2201, taxable at 18% (9% CGST + 9% SGST) per entry no. 24 of Schedule-III of Notification No. 01/2017-CT(R) - *Gujarat Eco Textile Park Ltd., In re - [2024] 163 taxmann.com 353 (AAR - GUJARAT)*

- 5.26** Where question is not in respect of issues covered under Section 97(2), therefore, no ruling is given - **Technocrats Equipments Sales & Service, In re - [2024] 163 taxmann.com 322 (AAR - KARNATAKA)**
- 5.27** Where consultancy services for building works are provided to State Government's Roads and Buildings Department, such activity would not qualifies as exempt supply of "pure service" related to functions under Article 243G or 243W of the Constitution - **Devendra K Patel, In re - [2024] 163 taxmann.com 310 (AAR - GUJARAT)**
- 5.28** Where the applicant sought a ruling on GST for 'Mix Mukhwas' and 'Roasted Til & Ajwain', these products were classified under CTH 12074090 and are subject to 5% GST under entry no. 70, Schedule I, Notification No.1/2017-Central Tax (Rate) - **Bhagat Dhanadal Corporation, In re - [2024] 163 taxmann.com 273 (AAR - GUJARAT)**
- 5.29** Where assessee/applicant classified "Milk food for babies" and "Milk for babies" under HSN 19011090, paying 18% GST, Authority ruled they remain under this HSN, not HSN 04021020 or 04022920, thus retaining 18% GST - **Bebymil International (P.) Ltd., In re - [2024] 163 taxmann.com 332 (AAR - RAJASTHAN)**

- 5.30** Where sleeping bags made of 100% quilted cotton textile material are classified under Heading 9404 30 90 of the GST Tariff, they attract 12% GST per Schedule II, Notification No. 01/2017-Central Tax (Rate) dated 28-6-2017 - **Sureka International., In re - [2024] 163 taxmann.com 274 (AAR - UTTAR PRADESH)**

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

- 5.31** Where the assessee sought an advance ruling on GST applicability for exporting frozen shrimps (HSN 0306) in individual pouches/boxes and master cartons up to 25 kg each, the Authority ruled that such pre-packaged and labelled supplies up to 25 kg attract GST, regardless of whether for domestic or export supply - **Asvini Fisheries (P.) Ltd., In re - [2024] 163 taxmann.com 202 (AAR - TAMILNADU)**

## **Recommendations of the 53rd GST Council Meeting**



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### **I. Exemption from payment of tax on statutory collections made by Real Estate Regulatory Authority**

The 53<sup>rd</sup> GST Council Meeting has clarified that statutory collections made by Real Estate Regulatory Authority (RERA) are exempt from GST as they fall within the scope of Entry No. 4 of Notification No. 12/2017 C.T. (Rate) dated 28.6.2017 (“Services exemption notification”).

Circular with respect to the same is awaited.

#### **My Comments**

The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA) was enacted with effect from 1.5.2017 to regulate the real estate sector.

In order to get a real estate project registered, whether commercial or residential, the promoter is required to make an application to RERA authority along with the prescribed registration fee in terms of Section 4(1) of the RERA Act. Similarly, as per Section 10 of the RERA Act, every real estate agent intending to facilitate the sale or purchase of any plot, apartment or building, is required to be registered with the RERA Authority. Thus, both promoters of real estate projects and real estate agents are required to get themselves registered with RERA by paying specified registration fees.

An ambiguity existed regarding the taxability of such statutory collections by RERA under GST.

Sl. No. 4 of services exemption notification exempts services provided by governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution.



The RERA authority in my view is a regulatory authority set up by the State Government under the RERA Act which is an Act of Parliament. The Chairperson as well as the members of the Authority is appointed by the State Government. Thus, the State Government exercises 90% or more control over RERA.

Article 243W of the Constitution of India empowers the State Government to entrust such powers and functions upon the municipalities as are required for the economic and social development of the State; and power for implementation of schemes in respect of matters entrusted to them.

Further, the Twelfth Schedule of the Constitution lists down the various functions which are entrusted to municipalities under article 243W of Constitution, like town planning, regulation of land use, roads and bridges, fire supply etc. Entry 2 of the Twelfth Schedule to the Constitution, which is the most relevant in the present case, covers '**Regulation of land-use and construction of buildings**'.

Therefore, "regulation of construction of buildings" is specifically covered under the above entry as a function of the Municipality.

On a scrutiny of the RERA Act, some of the important functions being regulated are as under:

- The Act provides that the proposed project necessarily has to be developed as per the sanctioned plans and layouts.
- The Act also specifically provides that after a person agrees to take an apartment, no additions and alterations can be made apart from minor additions and alterations. The Act specifically provides for the meaning of minor additions and alterations. The minor additions and alterations excludes structural change including an addition to the area or change in height, cutting into any wall, partition, column beam etc.
- The Act regulates that a certain percentage of the amount realised from the allottees is to be deposited in separate account in a bank to cover cost of the construction and land cost and shall only be used for that purpose.
- The Act fastens liability on the promoter to pay all outgoings until physical possession of the project is transferred to the allottee including land cost, ground rent, mortgage loan and interest etc.
- The RERA authority under the Act also has the obligation to make recommendations with respect to measures to encourage construction of environmentally sustainable and affordable housing, promoting standardization and use of appropriate construction materials and techniques.

In view of the above, it can be said that functions undertaken by RERA are functions towards regulating construction of building and will qualify as an activity under Article 243W of the Constitution of India.

Thus, in my view RERA authority would qualify as a Governmental Authority carrying out a function under Article 243W of the Constitution of India which is exempt from GST.

The recommendation of the GST Council in this regard is in line with the legal position and brings a welcome clarification on this aspect.

## **II. Availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs)**

The 53<sup>rd</sup> GST Council Meeting has clarified that the ITC of the GST paid on ducts and manhole will not be restricted under Section 17(5) of the CGST Act as the said items will be covered within the ambit of 'plant and machinery' defined under Explanation to Explanation to Section 17(5).

The same has also been clarified by CBIC vide **Circular No. 219/13/2024-GST dated 26.6.2024**. The said circular specifically states that since ducts and manholes are used as part of OFC network for making an outward supply of transmission of telecommunication signals from one point to another, the same would qualify as 'plant and machinery' for the purpose of Section 17(5) of the CGST. Further, the said circular also clarified that the ducts and manholes are not in the nature of land, building or civil structures or telecommunication towers or pipelines laid outside the factory premises.

### **My Comments:**

Section 17(5)(c)/ (d) of CGST Act states that ITC in respect of works contract services and other goods and services availed for construction of immovable property would be disallowed, except where the input or input services received are used for making outward supply of works contract / constructions service. The said disallowance, however, is not applicable in case where the goods and services are used for the construction of 'plant and machinery'.

The definition of “plant and machinery” is provided under Explanation to Section 17(5) of the CGST Act and specifically includes any “structural support” to said plant and machinery within its ambit.

It is pertinent to note that the ducts used in the OFC network are enclosures through which the OFC cables will pass and provide a protective covering for the electrical cables/wires that pass through such duct from cuts, soil erosion, etc. Further, a manhole is a boxlike structure which is made up of four sheets of fibre reinforce plastic and is used to store additional OFC cables which may be required in future for the purpose of an immediate replacement in case any OFC cable is damaged.

Therefore, the duct and manhole provide support to the entire OFC network and would surely be covered within the ambit of the definition of plant and machinery provided under Explanation to Section 17(5) of the CGST Act. Further, since a duct is not used for transporting anything it is not in the nature of a ‘pipeline’.

Accordingly, the aforesaid circular brings a welcome change for the telecom industry by granting relief of availment of ITC of the GST paid on the ducts and manholes and will also put rest to unwarranted litigations in the telecommunication sector for grant of ITC across the country.

### **III. Time Limit under Section 16(4) of CGST Act, 2017 in respect of RCM Supplies received from unregistered persons**

The 53<sup>rd</sup> GST Council Meeting has clarified that the relevant financial year for calculating time limit for availment of input tax credit (‘ITC’) under Section 16(4) of Central Goods and Services Tax Act, 2017 (‘CGST Act’) for invoices issued in case of supply of good/service from an unregistered person will be the financial year in which such invoice is issued by the recipient of good/service.

The same has also been clarified by CBIC vide **Circular No. 211/5/2024-GST dated 26.6.2024**. The said circular pinpoints that the time limit for availment of ITC under section 16(4) is linked with the financial year to which the invoice or debit note pertains. Since in case of RCM supplies received from unregistered person the invoice has to be issued by the recipient himself,

the relevant financial year for calculating time limit for availment of ITC will be the financial year in which such invoice is issued. Further in case the self-invoice is issued after time of supply has already arisen, the person raising such invoice will be required to pay tax along with interest and penalty.

### **My Comments:**

Section 16(4) of CGST Act provides that a registered person shall not be entitled to avail ITC in respect of any invoice or debit note for supply of goods/services after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

It is pertinent to note that Section 16(4) of the CGST Act specifically uses the term “invoice”. The term invoice is defined under Section 2(66) of the CGST Act to mean a tax invoice referred to in section 31, which specifically covers invoice issued by registered person in case of RCM supplies received from unregistered persons. Accordingly, the scope of the term “invoice” used under Section 16(4) is wide enough to cover an invoice issued in case of RCM supplies received from unregistered persons.

Further, the words used in Section 16(4) of the CGST Act are “*end of financial year to which such invoice....pertains*” and not “*end of financial year to which such supply pertains*”. Thus, in the event a self-invoice under Section 31(3)(f) of the CGST Act is issued in F.Y. 2024-25 for a supply made in F.Y. 2023-24, the time limit for availing ITC pertaining to the said invoice will be the financial year in which such self-invoice is issued i.e., F.Y. 2024-25 only.

Therefore, the aforesaid clarification brings about a positive clarification for the registered person who receives RCM supplies from unregistered persons, especially for supplies received from overseas related parties by putting the ongoing dispute regarding time limit of availing the ITC in respect of RCM supplies received from unregistered persons to rest.

# COMPANY AND SEBI LAWS UPDATES

## 1. STATUTORY UPDATES

- 1.1 SEBI launches "Saarthi 2.0" app with tools, calculators, and modules, offering financial insights to investors - **Press Release No.10/2024, Dated 03-06-2024**

**Editorial Note** : The SEBI has launched "Saarthi 2.0" mobile app, enhancing its user-friendly interface and providing comprehensive financial tools. The app includes financial calculators, modules on KYC procedures, mutual funds, ETFs, and the stock exchange, as well as investor grievance mechanisms and the Online Dispute Resolution platform. It aims to empower investors, especially young ones, with unbiased and essential insights into the securities market, adapting to evolving market conditions.

- 1.2 SEBI issues revised guidelines on composition and functions of committees of Market Infrastructure Institutions - **Circular No. SEBI/HO/MRD/MRD-PoD-3/2024/088; Dated 25-06-2024**

**Editorial Note** : SEBI has issued revised guidelines on composition, functions, and terms of reference (TOR) for various statutory committees of market infrastructure institutions (MIIs). These guidelines are based on recommendations of SEBI's Committee on Strengthening Governance of MIIs. The committees are divided into different categories, such as functional, oversight, & investment. They must include KMPs, non-independent directors, etc. The circular is effective from the 30th day of its issuance.

- 1.3 SEBI amends Insider Trading norms; mandates Compliance Officer to approve/reject trading plan within 2 days of receipt - **Notification No. SEBI/LAD-NRO/GN/2024/184, Dated 25-06-2024**

**Editorial Note** : SEBI has notified the SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2024. As per the amended norms, the compliance officer must approve or reject the trading plan within 2 trading days of receiving it. Further, the compliance officer must notify the approved plan to the stock exchanges on which the securities are listed, on the day of approval. These regulations are effective from the 90th day of publication in the Official Gazette.

- 1.4 SEBI proposes measures to facilitate ease of doing business under LODR and ICDR norms

**Editorial Note** : SEBI has released a Consultation Paper to facilitate ease of business under LODR and ICDR Norms. The objective is to seek comments from the public on the expert committee's recommendation w.r.t ease of doing business under these norms. The expert committee's report is divided into three parts. The first and second parts deal with recommendations for ease of doing business under LODR and ICDR norms. The third part deals with harmonisation of provisions of ICDR and LODR norms.

- 1.5 SEBI prescribes conditions for NRIs/OCIs /resident Indian individuals for making FPI applications - **Notification No. SEBI/LAD-NRO/GN/2024/185, Dated 26-06-2024**

**Editorial Note** : SEBI has notified an amendment to Regulation 4 of SEBI (FPI) Regulations, 2019, w.r.t eligibility criteria of foreign portfolio investor (FPI). SEBI has now notified the conditions for non-resident Indians, overseas citizens of India, or resident Indian individuals to be the constituents of the FPI applicant. Now, the contribution of a single non-resident Indian, overseas citizen of India or resident Indian individual must be below 25% of the total contribution in the corpus of FPI applicant.

- 1.6 Govt. notifies list of goods for the purpose of 'commodity derivatives' u/s 2(bc) of SCRA, 1956 - **Notification No. S.O. 2470(E), Dated 26-06-2024**

**Editorial Note** : The Govt., in consultation with the SEBI, has notified the goods specified in the Schedule as commodity derivatives u/s 2(bc) of the SCRA, 1956. The specified goods are a) Cereals and Pulses b) Oil Seeds, Oil Cakes and Oils, c) Spices d) Fruits & Vegetables, e) Metals f) Precious Metals g) Gems & Stones, h) Forestry i) Fibres, j) Energy, k) Chemicals, l) Sweeteners, m) Plantations, n) Dairy and Poultry, o) Dry Fruits, p) Activities Services, Rights, Interest & Events, and q) Others.

- 1.7 SEBI issues updated Master Circular for 'Bankers to an Issue registered with SEBI' - **Circular No. SEBI/HO/AFD/AFD-PoD-2/P/CIR/2024/72, Dated 30-05-2024**

**Editorial Note** : SEBI has issued an updated master circular for 'Bankers to an Issue registered with SEBI'. This circular compiles all existing circulars issued till date. This is done in order to enable the stakeholders to have access to all the applicable circulars/directions at one place. The master circular contains norms such as registration-related matters for Bankers to an Issue, obligations/responsibilities, reporting requirements and other guidelines.

- 1.8 SEBI amends FPI norms; introduces 30-day grace period for late registration fee payment - **Notification No. SEBI/LAD-NRO/GN/2024/183, Dated 31-05-2024**

**Editorial Note** : SEBI has notified SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2024. New sub-regulations have been inserted to Regulation 7, i.e. certificate of registration. It states that a foreign portfolio investor (FPI) must pay the registration fees as provided in Part A of Second Schedule for every block of 3 years before the beginning of such a block. However, registration fees shall be considered paid if FPI pays fee along with late fee within 30 days from expiry of preceding block.

- 1.9** SEBI modifies FPI Master Circular; aligns it with SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2024 - **Circular No. SEBI/HO/AFD/AFD-PoD-2/P/CIR/2024/76 and 77, Dated 05-06-2024**

**Editorial Note** : SEBI has modified the Foreign Portfolio Investors (FPI) Master Circular. Earlier, in June 2024, SEBI issued the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2024. The amended norms provide flexibility to foreign portfolio investors (FPIs) in dealing with their securities after their registration expires. Similar changes have been carried out in the Foreign Portfolio Investors (FPI) Master Circular.

- 1.10** SEBI mandates direct pay-out of securities by clearing corporation to demat accounts of clients - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75, Dated 05-06-2024**

**Editorial Note** : At present, securities received in payout are pooled by the broker before being credited to the respective client demat accounts. However, the direct payout to client accounts was already made available on a voluntary basis as per the circular dated 01.02.2001. It has now been decided that the process of direct securities payout to client accounts will become mandatory. The provisions of this circular will come into effect on 14.10.2024.

- 1.11** SEBI notifies framework of 'Financial Disincentives for Surveillance Related Lapses' at MII - **Circular No. SEBI/HO/ISD/ISD-PoD-1/P/CIR/2024/73, Dated 06-06-2024**

**Editorial Note** : The SEBI has notified a framework for Surveillance Related Lapses at Market Infrastructure Institutions (MIIs). This shall be applicable to Surveillance Related Lapses emanating from non-adherence to the requisite surveillance activities / decisions. Further, the amount of financial disincentives as per the framework of financial disincentives for Surveillance Related Lapses shall be determined on the basis of total annual revenue of the MII during the previous FY.

- 1.12** SEBI issues guidelines on 'Anti-Money Laundering Standards and Combating Financing of Terrorism' for intermediaries - **Master Circular No. SEBI/HO/MIRSD/MIRSDSECFATF/P/CIR/2024/78, Dated 06-06-2024**

**Editorial Note** : SEBI has issued guidelines on 'Anti-Money Laundering Standards and Combating Financing of Terrorism' for intermediaries. The guidelines set out the essential principles for combating Money Laundering (ML) and Terrorist Financing (TF) and provide detailed procedures and obligations for all registered intermediaries to follow and comply with. Also, intermediaries may require clients to specify additional disclosures to address concerns about ML and suspicious transactions undertaken by clients.

- 1.13** SEBI amends 'Master Circular on KYC norms' for KRAs Integration with Central KYC Records Registry - **Circular No. SEBI/HO/MIRSD/SEC FATF/P/CIR/2024/ 79, Dated 06-06-2024**

**Editorial Note** : The SEBI has notified amendment in 'Master Circular on KYC Norms' with respect to Uploading of KYC information by KYC Registration Agencies (KRAs) to Central KYC Records Registry (CKYCRR). Now, KRAs shall ensure that existing KYC records of legal entities and of individual clients are uploaded on to CKYCRR within a period of 6 months from 01.08.2024 i.e., 01.02.2025. Also, KRAs shall integrate with CKYCRR and start uploading KYC records by 01.08.2024.

- 1.14** SEBI issues updated Master Circular on 'Portfolio Managers' - **Circular No SEBI/HO/IMD/IMD-POD-1/P/CIR/2024/80, Dated 07-06-2024**

**Editorial Note** : SEBI has issued an updated master circular on 'Portfolio Managers'. To have access to all the applicable requirements at one place, the provisions of the previously circulars issued till March 31, 2024 are incorporated in the updated Master Circular for Portfolio Managers.

- 1.15** SEBI proposes allowing mutual funds to buy below investment grade bonds with protection from investment grade CDS issuers

**Editorial Note** : The SEBI has released Consultation Paper on 'Flexibility in Participation by Mutual Funds in Credit Default Swaps (CDS)'. The key proposals include (a) to allow mutual funds to purchase below investment grade bonds along with protection (CDS) bought from investment grade issuer, (b) Mandating the rating of CDS programme for buying of CDS by Mutual Fund, (c) to allow Mutual Fund schemes to sell protection i.e. short CDS as part of synthetic debt security, etc.

- 1.16** SEBI proposes to introduce 'Product Success Framework (PSF) for stock derivatives'

**Editorial Note** : Presently, the 'Product Success Framework' is only applicable to index derivatives. This framework mandates that derivatives on an index should have sufficient turnover, open interest, and widespread participation. Similarly, SEBI has now proposed to introduce additional exit criteria for single stock derivatives, based on performance of derivative contracts. Eligibility criteria for entry/exit of stocks in derivatives segment is proposed along with the proposed range of values for each of the proposed criterion.

- 1.17** Demat and Mutual Fund accounts won't be frozen over non-submission of nomination: SEBI - **Circular no. SEBI/HO/MIRSD/POD-1/P/CIR/2024/81, Dated 10-06-2024**

**Editorial Note** : Earlier, SEBI extended the deadline for submitting the 'choice of nomination' for Demat accounts and mutual fund folios to June 30, 2024. Now, SEBI has

clarified that non-submission will not result in freezing these accounts. Further, security holders with physical securities will receive payments and services even without submitting the nomination. Also, existing investors are encouraged to submit nominations to ensure smooth transmission of securities and prevent unclaimed assets.

- 1.18** SEBI launches free online 'SEBI-Investor Certification Examination' - **Press Release No. 11/2024, Dated 11-06-2024**

**Editorial Note** : The SEBI has launched a free, voluntary online 'SEBI - Investor Certification Examination', developed in collaboration with the National Institute of Securities Markets (NISM). This voluntary certification aims to help investors test their knowledge of markets and investing. It is designed to assist individuals in their journey towards gaining comprehensive knowledge about investing in the Indian securities markets.

- 1.19** SEBI revises 'Offer for Sale' framework, mandates employees to place bids on T+1 at T day's cut-off price - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/82, Dated 14-06-2024**

**Editorial Note** : SEBI has revised the framework for the 'offer for sale' of shares to the employees via the stock exchange mechanism. SEBI now mandates that employees must place bids on T+1 day at the cut-off price of T day. Further, all Market Infrastructure Institutions (MIs) are advised to take the necessary steps to implement the circular. The circular shall be effective from the 30th day of its issuance, i.e., July 14, 2024.

- 1.20** SEBI releases frequently asked questions (FAQs) on 'Small and Medium REITs'

**Editorial Note** : SEBI has released frequently asked questions (FAQs) on 'Small and Medium REITs' (SM REITs). These FAQs provide a simplified explanation/clarification of terms and concepts related to the SEBI (Real Estate Investment Trusts) Regulations, 2014. Some of the FAQs include (a) the basic difference between the framework for an SM REIT and the existing REITs, (b) whether a real estate developer launch its own SM REIT, and (c) if multiple Special Purpose Vehicles (SPVs) jointly own a single property.

- 1.21** MCA to launch third set of company forms including Form MSME, BEN-2, MGT-6, IEPF-1, IEPF-1A on 15.07.2024 on V3 Portal

**Editorial Note** : The MCA is launching third set of Company Forms covering form MSME, BEN-2, MGT-6, IEPF-1, IEPF-1A, IEPF-2, IEPF-4, IEPF-5, and IEPF-5 e-verification report on 15.07.2024 at 12:00 AM. To facilitate implementation of these forms on V3 portal, MCA has decided to disable V3 portal from 13.07.2024 12:00 AM to 14.07.2024 11:59 pm. Further, MCA

advised stakeholders to ensure that there are no pending SRNs in payment/pending for investor details upload/Resubmission status.

- 1.22** SEBI prescribes conditions for participation of NRIs, OCIs, and RI individuals in SEBI-registered FPIs based in IFSCs - **Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/89, Dated 27-06-224**

**Editorial Note** : Earlier, SEBI (FPI) Regulations, 2019 were amended to provide flexibility of having up to 100 % aggregate contribution by NRIs, OCIs & RI individuals in corpus of FPIs based in IFSCs. Now, SEBI has prescribed conditions for NRI, OCIs & RI individual participation in FPIs based in IFSCs. It states that at the time of registration, the applicant must submit a declaration stating its intent to have aggregate contribution of NRIs, OCIs & RI individuals of 50 % or more in its corpus to DDPs.

- 1.23** SEBI introduces a fixed price process as an alternative to reverse book-building process for delisting of companies - **Press Release No. 12/2024, Dated 27-06-2024**

**Editorial Note** : SEBI, in its 206th meeting, has approved a proposal to introduce a fixed-price process as an alternative to Reverse Book-Building process (RBB) for delisting companies whose shares are frequently traded. The fixed price offered by an acquirer must be with at least a 15% premium over the floor price as determined under Delisting Regulations. Also, SEBI has approved a proposal to remove the requirement to disclose the PAN and personal addresses of promoters of issuers in the offer document.

- 1.24** SEBI issues updated 'Master Circular for Mutual Funds' - **Master Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/90, Dated 27-06-2024**

**Editorial Note** : SEBI has been issuing various circulars from time to time to effectively regulate the Mutual Fund Industry. Now, in order to enable the stakeholders to have an access to all the regulatory requirements at one place, SEBI has issued an updated master circular incorporating all subsequent circulars issued till date. The master circular supersedes the master circular for mutual funds dated May 19, 2023.

- 1.25** SEBI directs participants' contribution to 'Core Settlement Guarantee Fund' of Limited Purpose Clearing Corporation - **Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/83, Dated 19-06-2024**

**Editorial Note** : Earlier, SEBI prescribed guidelines for the contributions by various contributors to the Core Settlement Guarantee Fund (SGF) of Limited Purpose Clearing Corporation (LPCC) and its default waterfall. SEBI now directs the contribution of participants who desire direct participation, not through a clearing member, to SGF, subject to a certain condition. The condition is that no exposure must be available on the SGF contribution of any participant and required contributions must be pro-rata based.

- 1.26** SEBI issues updated 'Master Circular for Electronic Gold Receipts (EGRs)' - **Master Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2024/87, Dated 24-06-2024**

**Editorial Note** : SEBI has been issuing various circulars from time to time to specify the framework of Electronic Gold Receipts (EGRs), its risk management, Standard Operating Guidelines for Vault Managers & Depositories, etc. Now, in order to enable the stakeholders to have access to all the provisions mentioned in the earlier issued circulars at one place, SEBI has issued an updated master circular incorporating all subsequent circulars issued on EGRs till May 31, 2024.

- 1.27** SEBI introduces a 'special call auction mechanism' for price discovery of scrips of listed investment companies - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/86; Dated: 20-06-2024**

**Editorial Note** : SEBI has introduced a 'special call auction mechanism for effective price discovery of scrips of listed investment companies (ICs) and investment holding companies (IHCs). SEBI directs that ICs or IHCs must be identified based on uniform industry classifications provided by stock exchanges. Further, scrips of ICs or IHCs must have been listed and available for trading for a period of at least 1 year. The first special call auction must be conducted by stock exchanges in the month of Oct, 2024.

- 1.28** SEBI unveils new framework for 'System Audit of Professional Clearing Members' - **Circular No. SEBI/HO/MRD/TPD/P/CIR/2024/84, Dated 20-06-2024**

**Editorial Note** : SEBI has established a new framework for system audit of professional clearing members (PCMs). As per the framework, PCMs must submit information regarding major and minor non-compliances observed in the system audit in the prescribed format. Also, PCMs are required to maintain a list of all relevant SEBI and clearing corporations (CCs) circulars & directions w.r.t technology and compliance. The framework shall be effective immediately, and the first audit must be conducted for FY 2023-24.

- 1.29** SEBI modifies duration for call auction in pre-open session for IPOs and relisted scrips - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/85, Dated 20-06-2024**

**Editorial Note** : SEBI observed that during the call auction in pre-open session, orders were placed at higher price in large volumes and significant portion of such orders were cancelled just before the closure of session. Now, SEBI has decided to modify the current provisions related to call auction session for IPO & relisted scrips and introduced surveillance measures. Now, the session must close randomly during last 10 minutes of order entry i.e. anytime between 35th & 45th minute of the order entry window.

## 2. HIGH COURT

### SECTION 11 OF THE CONTEMPT OF COURTS ACT, 1971 - POWER OF HIGH COURT TO TRY OFFENCES COMMITTED OR OFFENDERS FOUND OUTSIDE JURISDICTION

- 2.1** Where High Court passed an order directing respondent company to pay a debt amount but it failed to pay same due to failure to arrange funds within stipulated time, however, respondent made efforts to repay outstanding amount, since, said failure was a result of compelling circumstances and outside control of respondent, there was no wilful disobedience to violate said directions and, therefore, contempt petition filed against respondent alleging said failure was to be dismissed - **E and M Specialty Co. Inc. v. Anil Wahal - [2024] 163 taxmann.com 526 (Delhi)**

### SECTION 18 OF THE COMPANIES ACT, 2013 - CONVERSION OF REGISTERED COMPANIES

- 2.2** Where petitioner company filed an application for conversion u.s. 18, subsequently, rules governing said conversion were amended and RoC rejected said application due to negative net worth and non-compliance with amended rules, since, amended rules intended to protect interests of creditors, same would apply to applications which were pending with RoC including application of petitioner, petitioner had no vested right to be granted a certification of conversion to a limited liability company and, thus, writ petition filed by petitioner challenging said rejection was to be dismissed - **Reebok India Co. v. Union of India - [2024] 163 taxmann.com 239 (Delhi)**

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

- 2.3** Where there were only two shareholders/directors in appellant-company namely, HPSC and his mother 'R', holding equal share in paid up capital and after death of 'R', HPSC without appointing second director and without holding any valid meeting had allotted shares to himself such increase was rightly invalidate by CLB - **Vantage Construction (P.) Ltd. v. NPS Chawla - [2024] 163 taxmann.com 585 (Delhi)**

### SECTION 213 OF THE COMPANIES ACT, 2013 - INVESTIGATION - INTO COMPANY'S AFFAIRS IN OTHER CASES

- 2.4** Where instant writ petition in Delhi had been filed by petitioner u.s. 213 and 221 seeking a direction for investigation into affairs of respondent company, in view of fact that respondent had its Regional Office with necessary paraphernalia in State of Karnataka and petitioner had appropriate efficacious remedy to approach Karnataka HC in order to seek appropriate reliefs and there was no averment that any person or authority within territorial jurisdiction of instant Court was substantially affected by affairs of company in question, accordingly, instant writ was to be dismissed - **Meghana T.V. v. Union of India - [2024] 163 taxmann.com 456 (Delhi)**



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

- 2.5 Where respondent company was ordered to be wound up and company had no further assets, either movable or immovable, from which any money could be realized, and therefore, no fruitful purpose would be served in keeping winding up proceedings pending, thus, instant application for dissolution of company was to be allowed - **Bank of India v. Sarvodya Paper Mills Ltd.** - [2024] 163 taxmann.com 21 (Delhi)

**SECTION 290 OF THE COMPANIES ACT, 2013 - WINDING UP BY TRIBUNAL - POWERS AND DUTIES OF COMPANY LIQUIDATOR**

- 2.6 Where CRB, a Non-Banking Finance Company (NBFC) and company MSK agreed to jointly invest in certain projects (Tala land, Gulab Bagh land, RSEB land, Nawab land, Beed Papad land) and only a fraction of total sum was paid by CRB, which was limited to three lands i.e., RSEB, Tala and Gulab Bagh, and thus, on winding of CRB, CRB's rights were limited to only three lands: RSEB, Tala, and Gulab Bagh and CRB was entitled to its share in these lands in proportion to its contributions - **Reserve Bank of India v. CRB Capital Markets Ltd. (Provn. Liqn.) (P.) Ltd.** - [2024] 163 taxmann.com 487 (Delhi)

**SECTION 302 OF THE COMPANIES ACT, 2013 - WINDING UP BY TRIBUNAL - DISSOLUTION OF COMPANY**

- 2.7 Where respondent company was ordered to be wound up and company had no further assets, either movable or immovable, from which any money could be realized, and therefore, no fruitful purpose would be served in keeping winding up proceedings pending, thus, instant application for dissolution of company was to be allowed - **Mitmilan Enterprises v. Ravindra Dyechem (P.) Ltd** - [2024] 163 taxmann.com 530 (Delhi)

**SECTION 318 OF THE COMPANIES ACT, 2013 - VOLUNTARY WINDING UP**

- 2.8 Where affairs were conducted in manner not prejudicial to interest of members, company was to be wound and would be deemed to be dissolved with effect from date of filing petition for its dissolution and Official Liquidator was satisfied that necessary compliance of Section 497 and other relevant provisions of Act had been made and affairs of company have not been conducted in a manner prejudicial to interest of its members or to public interest and said company be dissolved, petitioner company was to be wound up and would be deemed to be dissolved with effect from date of filing petition for its dissolution - **GE Strategic Investments India, In re** - [2024] 163 taxmann.com 204 (Delhi)

**SECTION 434 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - TRANSFER OF CERTAIN PENDING PROCEEDINGS**

- 2.9 Where winding up petition was filed against respondent company before High Court in 2012 and an insolvency petition under IBC, 2016 was also admitted by NCLT against respondent, since, section 434 of companies act, 2013 provided for transfer of proceedings relating to winding up pending before High Courts to NCLT and same proceedings could not simultaneously proceeded between two fora, said winding up proceeding was to be transferred to NCLT - **E and M Specialty Co. Inc. v. Anil Wahal** - [2024] 163 taxmann.com 526 (Delhi)

**3. NCLAT****SECTION 230 OF THE COMPANIES ACT, 2013 - COMPROMISE AND ARRANGEMENT**

- 3.1 Where appellant - copyright society objected to amalgamation scheme of respondent company, claiming that it was an unsecured creditor of respondent due to royalty owed by respondent and NCLT dismissed said objection, observing that appellant had no locus to object as its name was neither listed in audited balance sheets of respondent nor in its unsecured creditor's list, if claimant was not reflected as a creditor in audited financial statements, it was disentitled to object to amalgamation scheme and, therefore, such observation of NCLT was free from any legal infirmity - **Indian Performing Right Society Ltd. v. Novi Digital Entertainment (P.) Ltd.** - [2024] 163 taxmann.com 429 (NCLAT- New Delhi)

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

- 3.2 Where name of appellant company was struck off by RoC from Register of companies and appellant filed an appeal seeking restoration of its name but NCLT passed an order rejecting said restoration, however, there was no illegality committed by NCLT while passing said order as there was no cogent reason to interfere and, therefore, appeal filed by appellant challenging such order was to be dismissed - **R. P. Casting (P.) Ltd. v. Registrar of Companies** - [2024] 163 taxmann.com 680 (NCLAT- New Delhi)

**SECTION 425 OF THE COMPANIES ACT, 2013 - TRIBUNAL AND APPELLATE TRIBUNAL - POWER TO PUNISH FOR CONTEMPT**

- 3.3 Where a contempt application for disobeying directions passed by CLB was filed against appellant company and NCLT passed an order allowing said application, however, Courts/ Tribunal had power to punish in respect of contempt of themselves, CLB had no jurisdiction of issuing order of contempt because power to punish for its contempt was not conferred on it under Companies Act and, therefore, contempt application itself was not maintainable and such order was to be set aside - **Devang Hemant Vyas v. 3A Capital (P.) Ltd.** - [2024] 163 taxmann.com 351 (NCLAT- New Delhi)

# COMPETITION LAW

## 1. NCLAT

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

- 1.1 Where successful tender bidder i.e. 'A' in collusion with rival bidders rigged bids for soil testing tenders wherein appellant company submitted a cover bid on instruction of 'A' and was sub contracted by 'A' for testing work without prior experience of soil testing, however, 'A' completely took over appellant's operations qua soil testing, same amounted to collusive bidding/ bid rigging i.e. cartelization and, thus, order passed by CCI holding appellant guilty under section 3 and imposing penalty was to be upheld, however appellant being only in a supporting role in cartel, penalty was to be reduced - ***Delicasy Continental (P.) Ltd. v. Competition Commission of India - [2024] 163 taxmann.com 581 (NCLAT- New Delhi)***

## 2. CCI

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

- 3.1 Where informant, Senior Executive Secretary of company engaged in ship recycling activities alleged violation of section 3 on ground that OPs were acting as intermediaries in market and trying to manipulate buyebuyers rs and current pricing system by spreading rumors and false rates through Whats App groups, causing adverse effect on sellers and customers, however, having considered evidences submitted by informant, it was not getting established that spreading false rumors was a result of cartelisation or were resulting into cartelisation, there exists no prima facie case and Information filed was directed to be closed forthwith under Section 26(2) - ***Uday B. Bhatt v. Sarfarazbhai Rafique Bhai Ravani - [2024] 163 taxmann.com 324 (CCI)***

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

- 3.2 Provisions of Act do not provide for inquiry into cases of joint / collective dominance - ***Uday B. Bhatt v. Sarfarazbhai Rafique Bhai Ravani - [2024] 163 taxmann.com 324 (CCI)***
- 3.3 Where OP-1 was only competent authority in India entrusted with task of granting license for importing and processing Columbite and Tantalite ore and from a conjoint reading of Section 2(h) and Government of India (Allocation of Business) Rules, 1961, it was amply clear that OP-1 was exempted from purview of 'enterprise' in terms of provisions of Act and accordingly, conduct of OP-1 to not renew off-take agreement of informant with OP2 for disposal of Uranium-bearing Leach Residue generated at Informant's plant and reject Informant's import license application, as well as not approve an alternative disposal plan proposed by Informant, did not invite scrutiny under provisions of Act - ***Metallurgical Products India (P.) Ltd. v. Government of India - [2024] 163 taxmann.com 94 (CCI)***

# FEMA BANKING AND INSURANCE LAWS

## 1. STATUTORY UPDATES

- 1.1 RBI launches PRAVAAH portal for streamlined regulatory approvals and clearances - **Press Release: 2024-2025/393, Dated 28-05-2024**

**Editorial Note** : RBI has introduced 3 major initiatives, namely the PRAVAAH portal, the Retail Direct Mobile App & a FinTech Repository. The PRAVAAH portal will make it convenient for any individual or entity to apply online for various regulatory approvals. This portal will also enhance the efficiency of various processes related to granting of regulatory approvals and clearances. At present, 60 application forms covering different regulatory & supervisory departments have been made available on the portal.

- 1.2 IFSC grants recognition to NSE IFSC Clearing Corporation Limited for one year - **Notification No. IFSCA/2020-21/NICCL/245, Dated 29-05-2024**

**Editorial Note** : The International Financial Services Centres (IFSC) Authority has granted recognition to NSE IFSC Clearing Corporation Limited. Recognition to said Clearing Corporation is granted for one year, commencing on the 29th day of May 2024 to 28th day of May 2025 in respect of contracts in securities.

- 1.3 IFSC grants recognition to NSE IFSC Limited for one year - **Notification No. IFSCA/2020-21/NICCL/245, Dated 29-5-2024**

**Editorial Note** : The International Financial Services Centres (IFSC) Authority has granted recognition to NSE IFSC Limited. Recognition to said Clearing Corporation is granted for one year, commencing on the 29th day of May 2024 to 28th day of May 2025 in respect of contracts in securities.

- 1.4 RBI's Monetary Policy Committee keeps Repo Rate unchanged at 6.50% - **Press Release: 2024-2025/453, Dated 07-06-2024**

**Editorial Note** : The RBI's Monetary Policy Committee (MPC) at its meeting today on 07.06.2024 decided to keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 %. Further, the standing deposit facility (SDF) rate remains unchanged at 6.25 % and the marginal standing facility (MSF) rate and the Bank Rate at 6.75 %. The MPC also decided to remain focused on withdrawal of accommodation to ensure that inflation progressively aligns to the target, while supporting growth.

- 1.5 RBI proposes to set up a 'Digital Payments Intelligence Platform' to mitigate payment fraud risks - **Press Release No. 2024-2025/454, Dated 07-06-2024**

**Editorial Note** : RBI has released a Statement on Developmental and Regulatory Policies. Presently, many frauds occur by influencing unsuspecting victims to make the payment or share credentials. Now, the RBI has proposed to set up a 'Digital Payments Intelligence Platform' which will harness advanced technologies to mitigate payment fraud risks. The RBI has also constituted a committee to examine various aspects of setting up a digital public infrastructure for Digital Payments Intelligence Platform.

- 1.6 Govt. amends SEZ Rules; IFSC units can now import, export, and supply aircraft engines to/from DTA - **Notification No. G.S.R 314(E), Dated 06-06-2024**

**Editorial Note** : The Govt. has notified Special Economic Zones (Third Amendment) Rules, 2024. An amendment has been made to Rule 29A, which relates to the 'procedure for importing, exporting, procuring, or supplying aircraft to the Domestic Tariff Area (DTA) by a unit in IFSC'. As per the amended norms, the govt. has expanded the scope of rule by substituting the word 'aircraft' with the words 'aircraft or aircraft engine'. Now, units in IFSC can import, export, procure or supply aircraft engines to/from DTA.

- 1.7 RBI revises the definition of 'bulk deposits' for all SCBs, Small Finance Banks and Local Area Banks - **Circular No. RBI/2024-25/40 DoR.SPE.REC.No.24/13.03.00/2024-2025, Dated 7-6-2024**

**Editorial Note** : The RBI has decided to revise the definition of bulk deposits for all Scheduled Commercial Banks (excluding RRBs), Small Finance Banks and Local Area Banks. The term 'Bulk Deposit' shall now mean Single Rupee term deposits of Rupees three crore and above for Scheduled Commercial Banks (excluding RRBs) and Small Finance Banks. Also, Single Rupee term deposits of Rupees one crore and above for Local Area Banks as applicable in case of Regional Rural Banks, to be considered as 'bulk deposit'.

- 1.8 IFSC Authority sets norms for bookkeeping, accounting, taxation, and financial crime compliance services for IFSCs - **Notification No. IFSCA/GN/2024/003, Dated 04-06-2024**

**Editorial Note** : The IFSC Authority has notified the IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024. The regulations aim to establish a regulatory framework for the development, registration, and operation of Book-keeping, Accounting, Taxation, and Financial Crime Compliance Services from International Financial Services Centres. The norms provide for registration application, certificate grant procedure, etc.

- 1.9** RBI expands scope of Overseas Portfolio Investments to include all instruments issued by overseas investment funds - **Circular No. RBI/2024-25/41 A.P. (DIR Series) Circular No. 09, Dated 07-06-2024**

**Editorial Note** : The RBI has notified amendment in Paragraph 1(ix)(e) and Paragraph 24(1) of Foreign Exchange Management (Overseas Investment) Directions, 2022. As per the amended norms, the definition of Overseas Portfolio Investment (OPI) will also include investments in any other instruments (by whatever name called) issued by an investment fund overseas. Earlier, investment was only limited to 'units'

- 1.10** AD Cat-I banks may open additional special current accounts for its constituents to settle export & import transactions - **Circular No. RBI/2024-2025/43 FED Circular No. 11, Dated 11-06-2024**

**Editorial Note** : Earlier, RBI vide circular dated 17.11.2023, permitted AD Category-I banks maintaining Special Rupee Vostro Account on International Trade Settlement in Indian Rupees (INR) to open an additional special current account for its constituents, exclusively for settlement of export transactions. Now, the facility of opening an additional special current account can be extended for settlement of their export as well as import transactions.

- 1.11** Govt. notifies IIFCO Kisan Finance, L&T Finance & Wheels EMI as reporting entities to perform aadhaar authentication - **Notification No. S.O. 2252(E), Dated 12.06.2024**

**Editorial Note** : Central Government, after consultation with the Unique Identification Authority of India and the Reserve Bank of India, has permitted IIFCO Kisan Finance Limited, L&T Finance Limited, and Wheels EMI Private Limited, to perform authentication under the Aadhaar Act for the purposes of section 11A of the Money-laundering Act.

- 1.12** BI revises priority sector lending norms to mitigate regional credit disparities - **RBI/2024-25/44 FIDD.CO.PSD.BC.No.7/04.09.01/2024-25, Dated 21-06-2024**

**Editorial Note** : RBI, with an objective to ensure a more equitable distribution of credit across various districts, decides that the districts shall be ranked based on their per capita credit flow to the priority sector. From FY 2024-25, a higher weight shall be assigned to the incremental priority sector credit in the identified districts where the credit flow is comparatively lower and a lower weight will be assigned for incremental priority sector credit where the credit flow is comparatively higher.

## 2. SUPREME COURT

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

- 2.1** Where petitioner, who was arrested under PMLA, sought bail from Supreme Court due to delays in trial and Solicitor General representing ED assured that investigation would be concluded and final complaint/charge sheet would be filed on or before 3-7-2024 and immediately thereafter, Trial Court would be free to proceed with trial, given these submissions and noting that Supreme Court's previously set period of '6-8 months' for completion of trial had not yet ended, order having not come to an end, instant bail application was to be disposed of with liberty to petitioner to revive his prayer afresh after filing of final complaint/Charge-sheet as assured by Solicitor General - **Manish Sisodia v. Directorate of Enforcement - [2024] 163 taxmann.com 529 (SC)**

## 3. HIGH COURT

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

- 3.1** Where applicant, who was accused in a money laundering case, was granted bail with a condition of seeking permission from Court to travel abroad, however, due to nature of his profession, which required frequent international travel often to multiple countries in short spans, adhering strictly to court's permission became impractical, thus recognizing challenges and to ensure fairness, applicant was allowed to travel abroad without any restrictions during trial period - **Vyomesh Shah v. Directorate of Enforcement - [2024] 163 taxmann.com 275 (Bombay)**
- 3.2 Attachment of property** : Where Trial Court had already acquitted appellant of all charges framed against him and moreover, Court, had quashed ECIR alongwith all consequential proceedings arising therefrom, all proceedings in furtherance of prosecution, including attachment, would also fall and are therefore, liable to be quashed - **Rajiv Channa v. Union of India - [2024] 163 taxmann.com 158 (Delhi)**
- 3.3** Where applicant, arrested in a money laundering case and currently held in Tihar Jail, required physiotherapy treatment in terms of post-epidural care following spinal surgery but jail dispensary was unable to provide adequate treatment, thus, in order to balance prisoner's right to medical care and State's obligation to uphold rule of law, applicants request to receive necessary physiotherapy treatment at Safdarjung Hospital while remaining in custody of Jail Superintendent was to be allowed - **Amandeep Singh Dhall v. Directorate of Enforcement - [2024] 163 taxmann.com 123 (Delhi)**

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

- 3.4 Where based on forensic audit report and supplementary forensic audit report, banks declared loan account of company as fraud and while taking said decision, company had not been offered by bank any opportunity to deal with said reports, there was a violation of principles of natural justice and thus, decision of bank declaring account of company as fraud was to be quashed and set aside - **Amit Dineshchandra Patel v. Reserve Bank of India - [2024] 163 taxmann.com 482 (Gujarat)**

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

- 3.5 Where memorandum was issued in 1996 to petitioner - exporter company for violation of FERA, 1973 and it was convicted with imprisonment in 2001, revision petition filed by petitioner challenging said conviction on grounds that FERA was replaced by FEMA in 1999 wherein all contravention were made civil offences and no imprisonment would be imposed in case of any violation of provisions of FEMA was to dismissed as actions taken against offence committed under repealed act i.e. FERA continued to be effective for a period of two years from date of commencement of FEMA i.e. 1-6-2000 and liability of petitioner under FERA was proved - **Sk. Rustam v. T. K. Datta - [2024] 163 taxmann.com 460 (Calcutta)**

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

- 3.6 Where summon was issued to petitioner by respondent-ED to join investigation on 7-8-2023 at 10:30 a.m, petitioner joined same but he was made to wait in office of ED and his statement was recorded from 10:30 p.m till 3:00 a.m, thereby depriving him of his right to sleep, as guaranteed under Article 21 of Constitution, said practice to be disapproved, and thus, it was appropriate to direct ED to issue a circular/directions, as to timings, for recording of statements, when summons under section 50 were issued - **Ram Kotumal Issrani v. Directorate of Enforcement - [2024] 163 taxmann.com 238 (Bombay)**

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

- 3.7 Where petitioner was acting as a Company Secretary of accused company and nowhere in complaint under section 138, complainant averred that petitioner was in-charge of, and responsible for conduct of business of accused company, neither, was there any averment that offence had been committed with consent or connivance of was attributable to any neglect on part of petitioner, so as to potentially make her liable under

section 141(2), thus, continuation of proceedings against petitioner would be nothing but an abuse of process of law and consequently, criminal complaint under section 138 was to be quashed qua petitioner - **Rashmi Goyal v. Mahalaxmi Fabrics - [2024] 163 taxmann.com 647 (Delhi)**

- 3.8 Where demand notice was issued to trust 'P' alleging dishonor of cheques and complaint was filed under section 138 of NI act against 'P' and its trustees, since there was no requirement for separate notice to be issued to each of trustees to make trustees vicariously liable, all trustees were deemed to be duly served with demand notice, thereby meeting requirement of proviso (b) to section 138 and, thus, petition challenging said complaint and consequent summons was to be dismissed - **Harpreet Sahni v. ShriChand Hemnani - [2024] 163 taxmann.com 676 (Delhi)**

- 3.9 In view of amended section 142 of Negotiable Instrument Act, Courts in India where cheque has been deposited for encashment shall have jurisdiction to adjudicate on complaint for an offence under section 138, even though it is a foreign cheque - **Right Choice Marketing Solutions JLT v. State NCT of Delhi - [2024] 163 taxmann.com 532 (Delhi)**

**SECTION 143A OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - POWER TO DIRECT INTERIM COMPENSATION**

- 3.10 Section 143A empowered Court to pass a direction for payment of interim compensation only against "drawer of cheque" and not other person; exercise of power under Section 143A(1) is "discretionary" - **Prakash Vasant Ajaonkar v. State NCT of Delhi - [2024] 163 taxmann.com 51 (Delhi)**
- 3.11 Where accused under section 138 resisted application filed by complainant under seeking a direction against accused to pay 20 per cent of cheque amount as interim compensation contending, inter alia, that a substantial portion of amount covered by subject cheques was, in fact, paid to complainant in cash and through banking channels and said fact was evidenced by vouchers and extract of bank accounts, order passed by Metropolitan Magistrate rejecting application for interim compensation did not suffer from such legal infirmity as to warrant interference in exercise of revisional jurisdiction - **Bajaj Constructions v. State of Maharashtra - [2024] 163 taxmann.com 675 (Bombay)**

## 4. SAFEMA

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

- 4.1 Where appellant company was charged for under-invoicing imports under FERA, 1973 and using an NRE account for foreign payments along with abetting banks for such acts, Adjudicating Authority passed an order imposing a ₹50 lacs penalty and confiscated funds, however charges of abetment were not established due to lack of evidence, only some charges were established, amount of penalty was not justified and thus, same was to be reduce to Rs. 10 lacs, appeal filed against such order was to be partly allowed - **Shailesh V Shah v. Directorate of Enforcement - [2024] 163 taxmann.com 648 (SAFEMA - New Delhi)**

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

- 4.2 Where date of seizure of properties by ED was 25-11-2021, order was passed by Adjudicating Authority for retention of seized properties, was within a period of 180 days in view of direction made by Supreme Court in *Suo Motu Writ Petition No. 3/2020* to exclude period from 15-3-2020 till 28-2-2022 for termination of proceedings due to COVID-19; member adjudicating matter and passing order as Adjudicating Authority should not be necessarily from field of law, rather it can be from field of Finance, Accountancy and Administration - **Gurmeh Singh Gill v. Deputy Director Directorate of Enforcement - [2024] 163 taxmann.com 750 (SAFEMA - New Delhi)**
- 4.3 Proceedings before Adjudicating Authority are of quasi-judicial and otherwise summary in nature and cross-examination in such proceedings can not be claimed as a rule, this is apart from fact that cross-examination can be allowed when statement is recorded - **Prakash Chandra Yadav v. Special Director, Directorate of Enforcement, Delhi - [2024] 163 taxmann.com 128 (SAFEMA - New Delhi)**
- 4.4 Where as per documents received by respondent, certain deposits of foreign exchanges were made in NRE account which ultimately went to account of appellant, there was a contravention of section 8(1) of FERA and therefore, penalty imposed upon appellant for alleged contravention was justified - **Prakash Chandra Yadav v. Special Director, Directorate of Enforcement, Delhi - [2024] 163 taxmann.com 128 (SAFEMA - New Delhi)**

### SECTION 6 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - CAPITAL ACCOUNT TRANSACTIONS

- 4.5 Where appellant- foreign central bank was obliged to transact only between non-convertible rupees accounts of residents of India and USSR as per banking agreement but it abetted and instructed banks in India to make payments to persons who were not residents in India or USSR without permission of RBI, ED imposed penalty of Rs. 7 crores on appellant, such conduct of appellant revealed instigation to indulge in transactions prohibited under said agreement and, thus, charges of abetment against appellant stood established; amount of penalty was to be substituted with Rs. 75 lacs - **Bank of Foreign Economics Affairs v. Special Director Directorate of Enforcement - [2024] 163 taxmann.com 272 (SAFEMA - New Delhi)**

### SECTION 8 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - ADJUDICATION - INVESTIGATIONS CONDUCTED BY RESPONDENT

- 4.6 Limitation period of 90 days for filing of prosecution complaint under section 8(3) would commence from date when amendment to section came into force, i.e., 19-4-2018 - **Nirved Traders (P.) Ltd. v. Deputy Director Directorate of Enforcement - [2024] 163 taxmann.com 20 (SAFEMA - New Delhi)**

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

- 4.7 Under section 26 any person aggrieved by an order made by Adjudicating Authority under Act, may prefer an appeal to Appellate Tribunal and it cannot be said that merely because none of properties whose attachment has been confirmed belong to appellants, they cannot be aggrieved by impugned order especially in light of conclusions mentioned by Adjudicating Authority - **Nirved Traders (P.) Ltd. v. Deputy Director Directorate of Enforcement - [2024] 163 taxmann.com 20 (SAFEMA - New Delhi)**

# INSOLVENCY AND BANKRUPTCY CODE

## 1. STATUTORY UPDATES

- 1.1 IBBI prescribes guidelines for creating a panel of Insolvency Professionals to serve as IRPs, Liquidators, and RPs

**Editorial Note :** Earlier, the IBBI identified the need to prepare a panel of Insolvency Professionals (IPs) in advance and share it with the Adjudicating Authority (AA) to avoid administrative delays in the appointment of IPs. Now, IBBI has issued the instant guidelines providing the procedure for preparing a panel of IPs to act as IRPs, Liquidators, RPs, and Bankruptcy Trustees. The panel of IPs prepared in accordance with these guidelines will be effective from 01.07.2024, to 31.12.2024.

- 1.2 IBBI issues guidelines for empanelment of Insolvency Professionals as IRP/RP, Liquidators & Bankruptcy Trustees

**Editorial Note :** The Insolvency and Bankruptcy Board of India (IBBI) has issued guidelines stating that Insolvency Professionals can now act as Interim Resolution Professionals (IRPs), Liquidators, Resolution Professionals (RPs), and Bankruptcy Trustees (BTs) for the period from July 1, 2024, to December 31, 2024. With this IBBI aims to streamline the process of empanelment of insolvency professionals. Here, we have discussed the major insights of the guidelines including eligibility criteria for empanelment.

- 1.3 IBBI proposes one valuation estimate for companies up to a certain asset size and for MSME companies

**Editorial Note :** IBBI has issued a discussion paper on amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The various proposals include (a) a registered valuer to submit a valuation report for the corporate debtor as a whole, (b) one valuation estimate for companies up to a certain asset size and for MSME companies, (c) voting by an authorised representative before appointment by the adjudicating authority and (d) release of guarantees in the resolution plan.

- 1.4 IBBI proposes to standardize the liquidation progress report; seeks public comments on the draft format

**Editorial Note :** IBBI regulations mandates the submission of progress reports by the liquidator during the liquidation process. IBBI with an objective to ensure uniformity in the structure of liquidation progress reports has issued a draft format for the progress report. Stakeholders can submit their comments on the same latest by 12th July 2024.

## 2. SUPREME COURT

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

- 2.1 Where corporate debtor failed to adhere to MoU entered between parties for payment of outstanding amount due to operational creditor and cheques issued by corporate debtor were also dishonoured, debt and default had been proved, NCLT rightly admitted application filed under section 9 by operational creditor - *Palaparty Abhishek v. Binjusaria Ispat (P.) Ltd.* - [2024] 163 taxmann.com 237 (SC)

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

- 2.2 Where application for approval of resolution plan submitted by respondent-SRA was pending before NCLT however, NCLT without giving respondent an opportunity to respond, directed CoC to consider settlement proposal filed by appellant-ex-director under section 12A, order passed by NCLAT rejecting such directions was to be upheld - *Pratham Expofab (P.) Ltd. v. One City Infrastructure (P.) Ltd.* - [2024] 163 taxmann.com 206 (SC)

### SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD

- 2.3 Where a Declaration cum Undertaking issued on 29-01-2018 acknowledged debt, thereby extending limitation period and Supreme Court's order in Suo Motu case excluded period from 15-3-2020 to 28-2-2022 from limitation period and therefore, application filed on 10-8-2021 was well within limitation period - *Shrenik Ashokbhai Morakhia v. Reliance Asset Reconstruction Company Ltd.* - [2024] 163 taxmann.com 459 (SC)

### 3. HIGH COURT

#### SECTION 18 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL - DUTIES OF

- 3.1 Expln I to section 30(2)(b) requires CoC to be just, fair and equitable to the operational creditors while approving an RP - **National Sewing Thread Co. Ltd. v. Superintending Engineer TANGEDCO - [2024] 163 taxmann.com 392 (Madras)**

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

- 3.2 Where petitioner challenged NCLT's order, whereby RP was appointed in proceeding initiated under section 95 on ground that it was non-speaking, un-reasoned order, and time barred, and thus, not maintainable, matter was to be remanded back to NCLT to consider various objections raised by petitioners on aspect of limitation period and maintainability of section 95 application - **Samiksha Mahajan v. Indian Bank - [2024] 163 taxmann.com 160 (Delhi)**

### 4. NCLAT

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

- 4.1 Where assignor assigned its debt to assignee and assignee sought substitution in place of assignor in section 7 application through an assignment agreement, appellant challenged said substitution on ground that said Assignment Agreement, however, was not duly stamped under Maharashtra Stamp Act, 1958, since Assignment Agreement was a registered document, assignee was entitled to prosecute section 7 application - **Emta Coal Ltd. v. L&T Finance Ltd. - [2024] 163 taxmann.com 552 (NCLAT- New Delhi)**
- 4.2 Where letter issued by corporate debtor to a financial creditor clearly showed that an advance made beyond a security deposit by financial creditor carried interest, which was compoundable and payable quarterly and, corporate debtor had acknowledged this interest in its financial statements as a long-term borrowing, referring to it as a loan since, financial creditor had proved debt and default, NCLT did not commit any error in admitting section 7 application - **Chintan Jhunjhunwala v. Avani Towers (P.) Ltd. - [2024] 163 taxmann.com 389 (NCLAT- New Delhi)**
- 4.3 Where appellant, ex-director of corporate debtor challenged NCLT's order admitting a section 7 application on ground that said application was invalid because it was filed on 19-7-2019 against a non-existent company as corporate debtor had been struck

off by Registrar of Companies (RoC) however, application was filed when corporate debtor was in existence and subsequently, on 29.10.2019, corporate debtor was struck off by publication of notice u.s. 248(5) and, therefore, there were no valid grounds raised by appellant to interfere with NCLT's order - **Protima Arora v. Maya Gupta - [2024] 163 taxmann.com 54 (NCLAT- New Delhi)**

- 4.4 Where three CDs were part of one common Real Estate Project and applicants of section 7 application were part of said project, they had every right to initiate section 7 application against all three appellants together - **Mist Avenue (Pvt.) Ltd. v. Nitin Batra - [2024] 162 taxmann.com 582 (NCLAT- New Delhi)**

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

- 4.5 Where an agreement was executed and signed by both parties and, acted upon, mere fact that it was not engrossed on stamped papers would have no adverse consequence on claim of operational creditor and, thus, impugned order passed by NCLT rejecting section 9 application on ground that agreement was neither registered nor duly stamped was to be set aside - **Smartworks Coworking Spaces (P.) Ltd. v. Turbot Hq India (P.) Ltd. - [2024] 163 taxmann.com 583 (NCLAT- New Delhi)**
- 4.6 Where appellant sought a refund of a security deposit made under a letter of intent (Lol) for leasing a unit, since security deposit was related to a contractual obligation for executing a leave and license agreement, rather than for provision of goods or services and, therefore, appellant's claim for refund did not constitute an operational debt - **Carestream Health India (P.) Ltd. v. Seaview Mercantile LLP - [2024] 163 taxmann.com 525 (NCLAT- New Delhi)**
- 4.7 Where there was a pre-existing dispute between parties with respect to existence of amount due and payable and quality of goods and services supplied by operational creditor to corporate debtor and, therefore, NCLT did not commit any error in rejecting section 9 application filed by appellant on ground of pre-existing dispute - **East India Udyog Ltd. v. SPML Infra Ltd. - [2024] 163 taxmann.com 426 (NCLAT- New Delhi)**
- 4.8 Where appellant, director of corporate debtor filed a petition to initiate CIRP against corporate debtor claiming outstanding dues amounting to Rs. 40.50 lakh towards salary, however corporate debtor raised a dispute that appellant without prior authorisation had made excess withdrawals aggregating to Rs. 19.33 lakh purportedly on account of tour and travelling without supporting documents to substantiate such withdrawal, since, dispute raised by corporate debtor was not a moonshine dispute or a bluster, and thus, NCLT had rightly dismissed said section 9 application - **Ashish Gupta v. Delagua Health India (P.) Ltd. - [2024] 163 taxmann.com 309 (NCLAT- New Delhi)**



**SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS**

- 4.9 All applicants who have joined section 7 application need not to have fulfilled threshold individually nor claim of all applicants individually has to be within time in event there is default of more than Rs. 1 crore and default of Rs. 1 crore on basis of which application is filed is well within time - ***Mist Avenue (Pvt.) Ltd. v. Nitin Batra*** - [2024] 162 *taxmann.com* 582 (NCLAT- New Delhi)

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

- 4.10 Where NCLT had dismissed appellant-operational creditor's application filed under section 9 due to a pre-existing dispute and corporate debtor alleged that there was a change in management of company and all invoices pertaining to period post-change of management were fully paid, since corporate debtor's defense, based on internal management changes, was deemed invalid for wiping off past liabilities and, therefore, impugned order passed by NCLT was to be set aside - ***Shah Paper Mills Ltd. v. Shree Rama Newsprint & Paper Ltd.*** - [2024] 163 *taxmann.com* 752 (NCLAT- New Delhi)

**SECTION 12 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - TIME-LIMIT FOR COMPLETION OF**

- 4.11 Where appellant-Resolution Professional sought 90 days extension for completing CIRP, which NCLT allowed and CIRP was extended for further period of 90 days with effect from 10-5-2023 however, NCLT did not exclude period from 09-05-2023 to 27-07-2023 spent resolving extension application, making extension ineffective and, therefore, impugned order passed by NCLT was to be set aside - ***Kiran Martin Gulla RP of Varadharaja Foods (P.) Ltd. In re*** - [2024] 163 *taxmann.com* 619 (NCLAT - Chennai)

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

- 4.12 Where during moratorium period, respondent-Income-tax Department adjusted corporate debtor's tax refund against its outstanding tax demands, such adjustment amounted to a sort of recovery, violating moratorium and, therefore, respondent was liable to return or pay adjusted amount to corporate debtor - ***Devarajan Raman Liquidator of Kotak Urja (P.) Ltd v. Principal Commissioner Income-tax*** - [2024] 163 *taxmann.com* 92 (NCLAT- New Delhi)

**SECTION 29A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE**

- 4.13 Where NCLT had rejected resolution plan on ground that it did not meet requirements of section 30, since there was no evidence or material to support finding of non-compliance with section 30(2), impugned order was to be set aside - ***Sumeet Industries Ltd., In re*** - [2024] 163 *taxmann.com* 394 (NCLAT- New Delhi)

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

- 4.14 Where financial creditors filed an application before NCLT to delete a clause in approved resolution plan of appellant-SRA, which provided for release of personal guarantee of promoters however, appellant alleged that NCLT has no jurisdiction to send back resolution plan for reconsideration at request of financial creditor, since appellant itself had consented to sending matter back to CoC for reconsideration of resolution plan, impugned order passed by NCLT was justified - ***Noble Marine Metals Co WLL v. Kotak Mahindra Bank Ltd.*** - [2024] 163 *taxmann.com* 727 (NCLAT- New Delhi)
- 4.15 Where appellant, a suspended director of corporate debtor challenged approval of a resolution plan on ground that a settlement agreement entered into between parties, in which a third party (R3) was supposed to pay corporate debtor's dues since, admission of section 7 application based on debt and default had already been finalized and, appellant could not argue during plan approval process that corporate debtor owed no debt, thus, debt was to be paid by R3 was fallacious and could not be accepted - ***Protima Arora v. Maya Gupta*** - [2024] 163 *taxmann.com* 54 (NCLAT- New Delhi)
- 4.16 NCLAT upholds RP for Jaypee Infratech but directs 79% of additional farmers' compensation be paid to YEIDA on par with other secured creditors - ***Yamuna Expressway Industrial Development Authority v. Monitoring Committee of Jaypee*** - [2024] 162 *taxmann.com* 913 (NCLAT- New Delhi)

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

- 4.17 Where appellant challenged NCLT's order, in which NCLT rejected its application seeking unpaid dues and interest from corporate debtor, but NCLT rejected said application as non-maintainable due to an approved resolution plan, since claims which were not included in resolution plan were extinguished upon its approval, and further no individual was permitted to initiate or

continue any proceedings, in regard to a 'claim', which was not part of the Resolution Plan NCLT's order rejecting appellant's claim was neither irregular nor illegal - *Africa Power Co. CC v. Jyoti Structures Ltd.* - [2024] 163 taxmann.com 646 (NCLAT- New Delhi)

- 4.18 Where claim of appellant-financial creditor was never admitted as it had been filed after approval of resolution plan by CoC and, therefore, claim had rightly not been accepted by RP - *Protima Arora v. Maya Gupta* - [2024] 163 taxmann.com 54 (NCLAT- New Delhi)

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

- 4.19 Where in liquidation proceedings of a corporate debtor, respondent-sub contractor sought a refund of bank guarantee amount by filing a claim, NCLT vide impugned order directed liquidator to accept respondent's claim, leading to an appeal by liquidator on ground that respondent defaulted and caused project delays, justifying invocation of bank guarantee, since there was no evidence of unresolved work or quality issues from respondent, respondent was entitled to a refund of bank guarantee paid by it - *Avil Menezes Liquidator of Sunil Hitech and Engineers Ltd. v. Tata Consulting Engineers Ltd.* - [2024] 163 taxmann.com 312 (NCLAT- New Delhi)

**SECTION 43 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - PREFERENTIAL TRANSACTION AND RELEVANT TIME**

- 4.20 Application filed by administrator under sections 43, 44 and 46 subsequent to approval of resolution plan could very well be prosecuted by SRA - *Nippon Life India Asset Management Ltd. v. Piramal Capital & Housing Finance Ltd.* - [2024] 163 taxmann.com 355 (NCLAT- New Delhi)

**SECTION 60 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSONS ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY**

- 4.21 Where corporate debtor was not only aware of assignment of debt but had accepted and acknowledged this fact by sending OTS proposal to assignee, corporate debtor's objection to assignment agreement's admissibility due to insufficient stamp duty, raised after main petition hearing concluded and

matter was reserved for orders, was unjustified and, thus, impugned order passed by NCLT admitting application under section 7 against corporate debtor was to be upheld - *Loramitra Rath v. JM Financial Asset Reconstruction Co. Ltd.* - [2024] 163 taxmann.com 485 (NCLAT- New Delhi)

**SECTION 61 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSONS ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE TRIBUNAL**

- 4.22 Where appellant did not appear before NCLT despite being served notice, hence, it would be treated that it was duly served and appellant's claim that order was ex-parte and that limitation period to file an appeal should start only when they became aware of order was invalid and, thus, application for condonation of delay in filing appeal was to be rejected - *Sciknow Techno Solutions Ltd. v. Dinesh Kumar Gupta (Liquidator of Jarvis Infratech (P.) Ltd.)* - [2024] 163 taxmann.com 702 (NCLAT- New Delhi)

**SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD**

- 4.23 Where appellant-corporate debtor alleged that a cheque issued on 10-11-2015 led to three-year limitation period ending on 10-11-2018, thus, petition filed on 13-12-2018 was barred by limitation, respondent, financial creditor also argued that payment was made in year 2015 and Memo of dishonoured cheque was dated 18.12.2015, since question of Limitation was a mixed question of law and fact, it requires evidence from both parties, impugned order was to be set aside and case was remanded to NCLT to decide question of limitation - *Paradise Consumer Products Ltd. v. J. Maheshkumar Petrochemicals (P.) Ltd.* - [2024] 162 taxmann.com 912 (NCLAT- New Delhi)

**SECTION 238A OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - LIMITATION PERIOD**

- 4.24 Where corporate debtor had acknowledged accounts on 1-4-2013 and thereafter acknowledged that interest was due in financial statements for financial years 2013-14, 2014-15, 2017-18, application filed under section 7 against corporate debtor on 30-9-2019 was within limitation period - *Chintan Jhunjunwala v. Avani Towers (P.) Ltd.* - [2024] 163 taxmann.com 389 (NCLAT- New Delhi)

## ACCOUNT AND AUDIT UPDATES

- 1.1** ICAI seeks opinion on retaining/revising the existing limit of 60 tax audit assignment by June 9, 2024

**Editorial Note** : The members of ICAI are required to adhere to the Council Guidelines for conducting the tax audit under the provisions of the Income-tax Act, 1961 which lays down the limit of 60 tax audit assignments per member in an assessment year. ICAI is seeking opinion on retaining/revising the existing limit of 60 tax audit assignment by June 9, 2024.

- 1.2** ICAI invites member's opinions on amendment proposed by IASB on IFRS 9 and IFRS 7

**Editorial Note** : Considering the challenges faced in the accounting of renewable electricity IASB has proposed amendment in IFRS 9 and IFRS 7. The amendment discusses about the factors to be considered by entity when applying the provision of IFRS 9 in respect of renewable electricity contracts and also about its hedge accounting requirements. Thus, to adhere with the exposure draft issued by IASB, ICAI invites its member to provide their opinion on the proposed amendment by July 8, 2024.

- 1.3** IBBI proposes to simplify and optimize CIRP forms, reducing compliance burden for Ips

**Editorial Note** : The IBBI has issued Discussion Paper on reducing compliance by review of CIRP Form submitted by Insolvency Professionals (IPs). Through this discussion papers, it has been proposed to simplify & optimize the CIRP forms, reducing the compliance burden on IPs while ensuring the availability of accurate information for effective decision making. Further, it has also been proposed to simplify the compliance process by combining various reporting system on IPA & IBBI site into a single website.

- 1.4** ICAI seeks Member's comment on the draft implementation guide regarding amendments in Form No. 3CD and 3CEB

**Editorial Note** : The Direct Tax Committee of Institute of Chartered Accountants of India (ICAI) had proposed amendments in Form No.3CD and Form No. 3CEB through draft implementation guide in March, 2024. Now, it is in the process of finalizing the amendments. Thus, before such finalization, ICAI invites its members to comment their views on the proposed amendments by June 17, 2024.

- 1.5** ICAI invites public comments on CIPFA's International Non-Profit accounting guidance exposure draft

**Editorial Note** : Financial statement preparation is crucial for accountability, decision-making, and building trust in non-profit organizations (NPOs). Unlike the private and public sectors, NPOs face a lack of standardized international accounting norms. Addressing this, the Chartered Institute of Public Finance and Accountancy (CIPFA) has released the exposure draft of International Non-Profit Accounting Guidance. ICAI is now inviting public feedback on this exposure draft.

- 1.6** ICAI invites member's comment on exposure draft issued by International Federation of Accountants

**Editorial Note** : International Panel on Accountancy Education (IPAE) has recently proposed revisions to IES 2, 3, and 4 and has explained the same through the exposure draft. ICAI, being a member of IFAC, considers these proposed amendments as pivotal and hence invites its members to comment on the exposure draft issued by IPAE. Members are encouraged to submit their response/reply by 10th July 2024.

## Direct Taxes Professionals' Association

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

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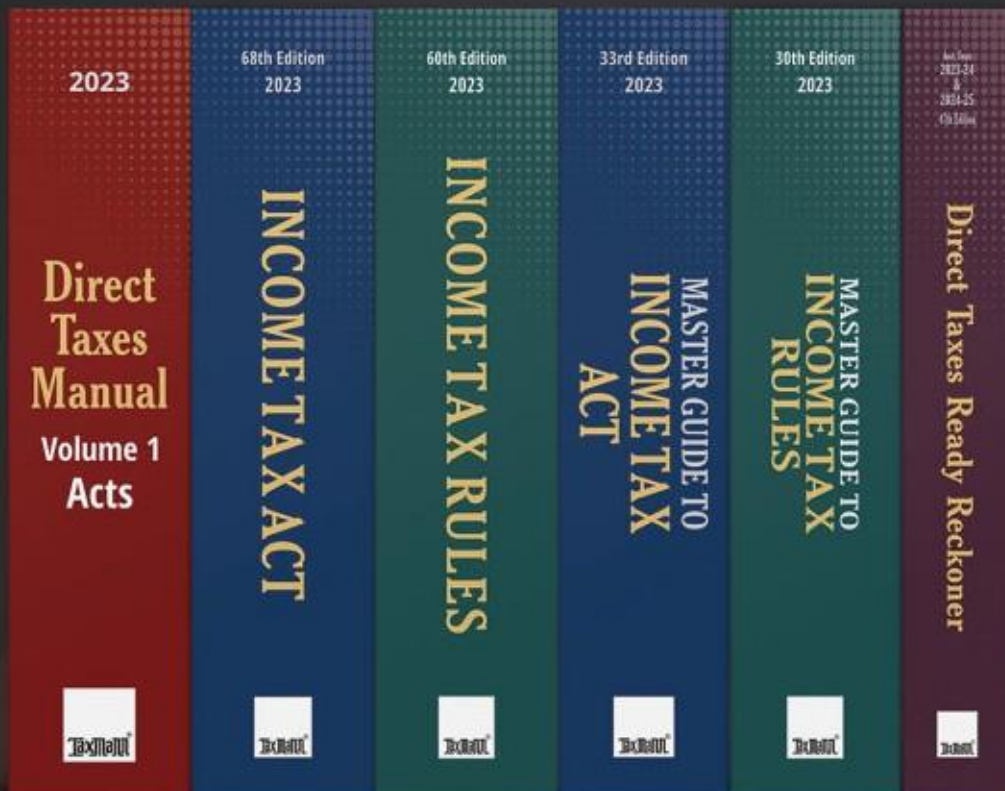
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