

## Editorial Board

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Total no. of page: 107

*....From the Desk of Editors*

Respected Seniors and my Dear Friends,

The General Elections are over, the mandate of public is once again for National Democratic Alliance (NDA), the Government has been formed and so to say it's **Modi 3.0**. The positive out of the same is that the Ministers at the major portfolios such as Home, Defence, Railways, Corporate Affairs and more importantly Finance has been kept intact. This gives a sign of uniformity and continuity in decision making. We extend our hearty Congratulations to the new Government as formed and wish for all success in the interest of the Nation. The next is the Union Budget for the year 2024 which is expected to be tabled on the floor of the Parliament sometime at the last week of July. As this is the first Budget after formation of the new Government there will be expectations for big reforms and at the same time uniformity in policies.

Our Association on 21<sup>st</sup> May has celebrated 42nd Foundation Day and 32nd Library Day. This is in fact an important event for the Association. The success of any organisation lies in its foundation and presence of Members, Office Bearers and Past Presidents in large numbers in such celebrations shows the strength of the Organisation

In our last edition of May we have touched upon provisions of fresh registrations under section 12A of the Income Tax Act as well as approval under section 80G(5) of the Income Tax Act for Charitable Organisations. The CBDT by virtue of Circular 7/2024 dated 25/04/2024 has given the required relief by extension of timeline in compliance to the Charitable Organisations. The said extended timeline is up to 30/06/2024 which is coming up very soon. It is in the interest of all such Charitable Organisation which requires filing such fresh form 10A/ 10AB or otherwise to not to wait for the last minutes and make the suitable application at an early date within the available time.

The Hon'ble Supreme Court recently in the matter of **Deputy Commissioner of Income-tax v. Apple India (P.) Ltd. - [2024] 162 taxmann.com 153 (SC)** dismissed the SLP against order of High Court that where Assessing Officer disallowed claim of warranty provisions and concluded that method followed to create provision was not scientific, however, assessee filed a statement showing that assessee had utilized about 95.5 per cent of total provision, estimate made by assessee was robust and therefore, order passed by Assessing Officer was unsustainable in law. This in particular confirms the acceptance of matching principals in the taxation statute. In generality expense which is incurred in the said year are only allowed on a going concern basis under the taxation statute. However, the Hon'ble Apex court has followed its own decision in one another case **Rotork Controls India (P.) Ltd. v. CIT [2009] 180 Taxman 422/314 ITR 662** wherein it was held that provision is a liability, which can be measured only by using a substantial degree of estimation and it is recognized when: (a) an enterprise has a present obligation as a result of past event; (b) it is probable and an outflow of resources will be required to settle the obligation; and (c) A reliable estimate can be made of the amount of obligation. So to say in such cases, expense which an assessee has obligation in future years as a result of past event can be claimed in the same year of such event subject to a reliable estimate based on some or other scientific way and past experience.

The biggest event of the Association **ANNUAL CONFERENCE, 2024** is approaching fast and scheduled on 3rd of August, 2024 at Taj Bengal, Kolkata. Those who have interest in writing may send their thoughts on professional subjects in the form of Article for publication in the Souvenir to be released on the occasion of Annual Conference, 2024. I urge you to **register soon** and experience the unprecedented learning as well as networking experience.

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,

I wanted to extend my heartfelt thanks to each of you for participating in the events undertaken in the month of May. In this summer your presence and active engagement have been instrumental in making these events a resounding success.

As I write to all of you, I would like to express my sincere gratitude to our esteemed speakers, panellists, and organizers who have worked tirelessly to ensure the success of these events. Your contributions have enriched our understanding and opened new avenues for growth and collaboration. It has been our sincere objective to deliver a valuable event to our participants.

Towards this objective, we had organised Income Tax Workshop from 29th April to 8th May 2024. This 5-day Income Tax Workshop was a resounding success. The sessions were packed with valuable insights and practical knowledge, which will undoubtedly aid the participants in their professional endeavours. I extend my sincere thanks to all the speakers, organizers, and participants who made this workshop a fruitful learning experience.

Following the workshop, our meeting on Recent Judicial Pronouncements, with a special focus on Penny Stocks led by Adv. Kapil Goel on 14th May was incredibly informative. The session provided deep insights into the latest developments in the judicial arena, which are crucial for our ongoing professional development. I am grateful to Adv. Kapil Goel for his expert guidance and to all attendees for their active engagement.

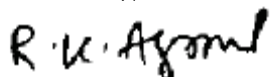
Further, we Celebrated our 32nd Library Day and 42nd Foundation Day on 21st May. It was heartening to see such a large turnout and the enthusiastic participation of our members. These events not only highlight the growth of our association but also reinforce our commitment to continuous learning and community building. I am ever grateful to everyone who contributed to the planning and execution of these celebrations.

The final event of the month, our meeting on Critical Issues and Judicial Pronouncements in GST by Adv. Ankit Kanodia, was equally enlightening. The discussions on GST complexities and recent judicial outcomes were particularly beneficial, helping us navigate the ever-evolving landscape of GST regulations. My sincere thanks to Adv. Ankit Kanodia for his expertise and to all participants for their thoughtful contributions.

Lastly, I want to express my deep appreciation for the dedication and hard work of our event organizers, speakers, and members. Your commitment to professional excellence and continuous learning is what makes our association strong and vibrant. I look forward to your continued support and participation in our future events.

Thank you once again for making May 2024 a memorable and successful month for our association.

Warm regards



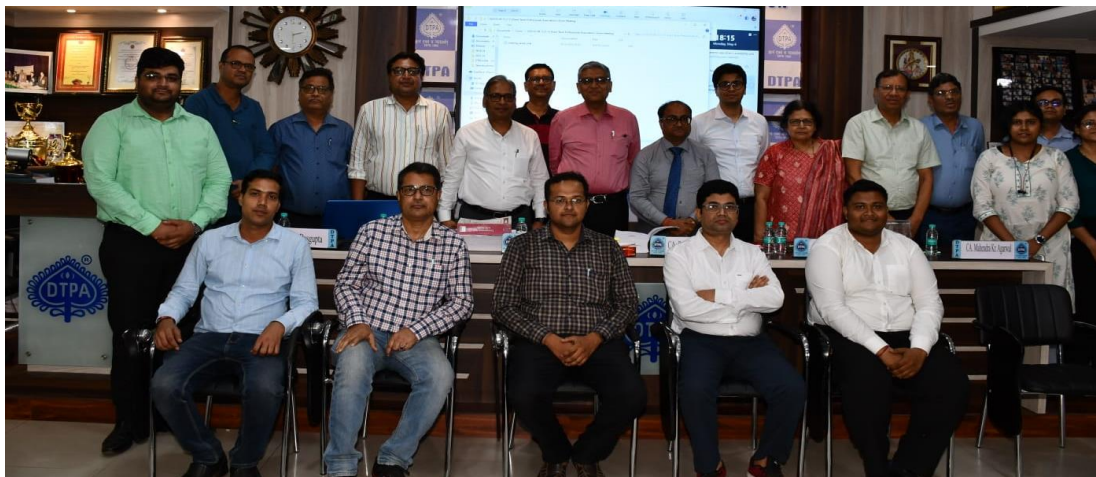
**CA Rajesh Agrawal**

President

11<sup>th</sup> June, 2024



# Glimpses of 3rd day of 5 days IT workshop by CA Sanjay Bajoria & CA Akkal Dudhwewala at DTPA Conference hall on 6th May.2024





# Glimpses of 4th day of 5 days IT workshop by CA. P. R. Kothari & CA. P. K. Himmatsinghka at DTPA Conference hall on 7th May.2024





# Glimpses of 5th day of 5th days IT workshop by CA. N. K. Goyal & Adv. Rites Goel at DTPA Conferencehall on 8th May,2024

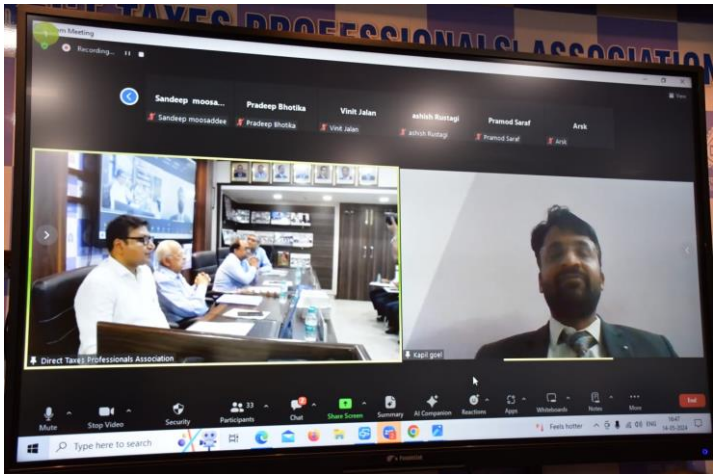








# Glimpses of Study Circle Meeting - Recent Judicial Pronouncements with Emphasis on Penny Stocks by Adv. Kapil Goel and Moderator CA. Anand Kumar Tibrewal at DTPA Conference Hall on 14th May 2024





# Glimpses of DTPA 32nd Library Anniversary & 42nd Foundation day held at DTPA Conference Hall on Tuesday, 21st May 2024









# Glimpses of Study Circle Meeting – Critical Issues and Judicial Pronouncements in GST by Adv. Ankit Kanodia at DTPA Conference Hall on 30th May 2024





Forthcoming Programs of Direct Taxes Professionals' Association

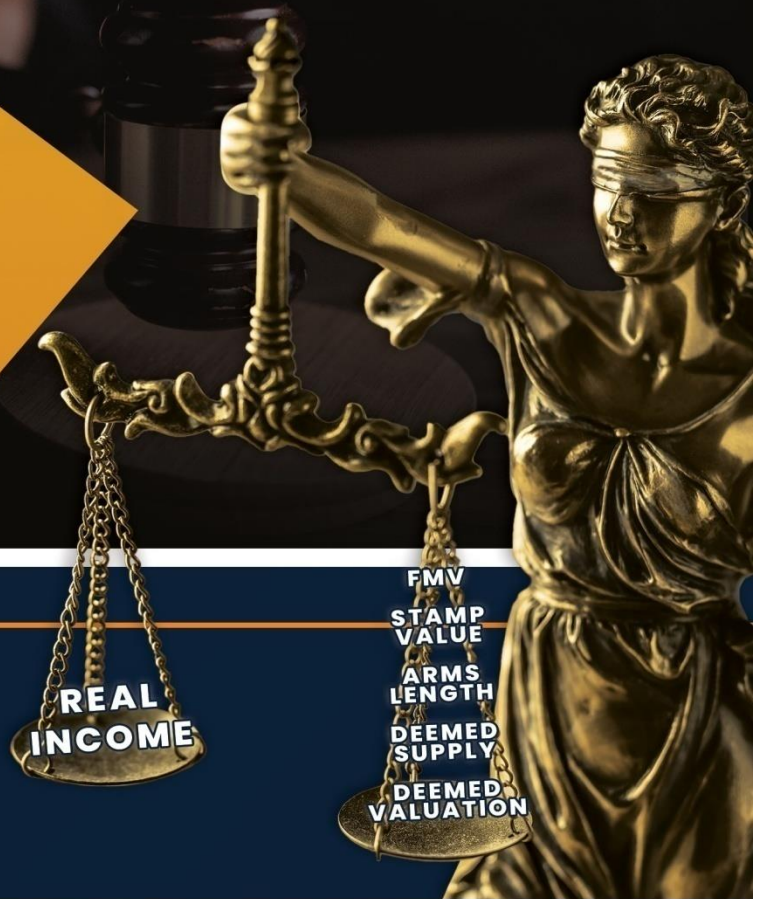


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ANNUAL CONFERENCE 2024

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

HEADING TOWARDS DEEMED TAXATION REGIME



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

## 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.
- **Networking Opportunities:** Connect with peers, mentors and potential collaborators during networking sessions, social events and interactive discussions.

### Special Attraction - Lucky Draw

**Registration:** Early bird registration is open till 15<sup>th</sup> July 2024. Register early to take advantage of discounted rates!

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



# 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):

₹2200/- (till 15<sup>th</sup> July) | ₹2500/- (from 16<sup>th</sup> July)

### 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)

Scan  
QR Code  
To Pay



3, Govt. Place (West), Income Tax Building, Ground Floor, Kolkata - 700 001  
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**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**

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**Chairman**

**DTPA – Souvenir Sub Committee**

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## Compliance Calendar for June, 2024

Statute	Due dates	Compliance Period	Details	
<b>Income Tax Act, 1961</b>	07th June, 2024	May-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	
	14th June, 2024	Apr-24	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of April, 2024	
	15th June, 2024	May'24	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2024, has been paid without production of a challan	
	15th June, 2024	FY 24-25	First instalment of advance tax for the financial year 2024-25	
	15th June, 2024	Mar'24	Form 16A - Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2024	
	15th June, 2024	FY 23-24	Certificate of TDS to employees in respect of salary paid and tax deducted during the Financial Year 2023-2024.	
	30th June, 2024	May'24	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of May, 2024	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
<b>GST</b>	10th June, 2024	May-24	GSTR-7 (MONTHLY)	Return for TDS to filed by Tax Deductor
	10th June, 2024	May-24	GSTR-8 (MONTHLY)	E - Commerce Operator registered under GST liable to TCS
	11th June, 2024	May-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 June, 2024	May-24	GSTR-1 (QRMP)	Uploading of outward supplies by quarterly return filers opting for the Invoice Furnishing Facility (IFF) under the QRMP Scheme
	13th June, 2024	May-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	13th June, 2024	May-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	20th June, 2024	May-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services







## 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
	11th 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>
	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>
<b>Statute</b>	<b>Due dates</b>	<b>Compliance Period</b>	<b>Details</b>	
<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.*



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

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

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

For further details, please contact us at: [dtpejournal@gmail.com](mailto:dtpejournal@gmail.com) and at Mob: 9830255500 / 9831016678

Thanks and Regards,

**CA. Rajesh Kr. Agrawal**

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# DIRECT TAXES

## 1. STATUTORY UPDATES

- 1.1 CBDT excludes 'RBI' from list of specified persons for higher tax deduction/collection u/s 206AB and 206CCA - **Notification No. S.O. 2106(E) AND S.O. 2107(E), Dated 27-05-2024**

**Editorial Note** : Section 206AB/206CCA provides that the higher TDS and TCS do not apply to the persons who are not required to furnish the return of income and is notified by the Central Government in the Official Gazette on this behalf. Exercising the power, the CBDT has notified the Reserve Bank of India (RBI) to whom TDS/TCS provisions under section 206AB/206CCA are not applicable.

- 1.2 CBDT notifies 'Mathura Vrindavan Development Authority' for Sec. 10(46A) exemption - **Notification No. S.O. 2121(E), Dated 29-05-2024**

**Editorial Note** : The Central Board of Direct Taxes (CBDT) has notified 'Mathura Vrindavan Development Authority' for the purposes of clause (46A) of section 10 of the Income-tax Act, 1961. The Notification is effective from the assessment year 2024-25, subject to the condition that it continues to be an authority constituted under the Uttar Pradesh Urban Planning Development Act, 1973.

- 1.3 CBDT releases guidelines for compulsory selection of returns for complete scrutiny during FY 2024-25 - **Notification F.No.225/72/2024IITA-II, Dated 03-05-2024**

**Editorial Note** : The CBDT has released guidelines for compulsory selection of returns for Complete Scrutiny during the financial year 2024-25. The board has also notified the procedure for compulsory selection which are similar to guidelines issued for FY 2023-24.

- 1.4 CBDT notifies 'Tamil Nadu Water Supply and Drainage Board, Chennai' for Sec. 10(46) exemption - **Notification SO No. 2076, Dated 22-05-2024**

**Editorial Note** : The Central Board of Direct Taxes (CBDT) has notified 'Tamil Nadu Water Supply and Drainage Board, Chennai' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The notification is applicable for assessment years 2024-25 to 2027-28 subject to certain conditions.

- 1.5 CBDT notified '363' Cost Inflation Index (CII) for Financial Year 2024-25 - **Notification S.O. No. 2103(E), Dated 24-05-2024**

**Editorial Note** : The CBDT vide Notification No. 44/2024, dated 24-05-2024 has notified 363 the Cost Inflation Index for the Financial Year 2024-25.

## 2. SUPREME COURT

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

- 2.1 **Proviso** : SLP dismissed against order of High Court that 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 - **Commissioner of Income-tax v. Professional Assistance for Development Action - [2024] 162 taxmann.com 802 (SC)**

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

- 2.2 **sub-clause (e)** : SLP dismissed against High court ruling that trade advances which were in nature of commercial transactions would not fall within ambit of word 'advance' in section 2(22)(e) - **Principal Commissioner of Income-tax v. Dwarka Prasad Aggarwal - [2024] 161 taxmann.com 813 (SC)**

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

- 2.3 **Royalties/fee for technical services - Computer software** : SLP dismissed against order of High Court that where assessee, a US based company, earned revenue from sale of software to its Indian clients, since grant of right to install and use software did not include providing copyright of said software to clients, revenue earned from said sale would not be taxable in hands of assessee as royalty in India - **Commissioner of Income-tax (International Taxation) v. MOL Corporation - [2024] 162 taxmann.com 799 (SC)**

- 2.4 **Royalties/fee for technical services - Subscription fees** : SLP dismissed against order of High Court that where assessee, a US based company, provided cloud computing infrastructure to its Indian clients through subscription agreement and even though cloud based services were based on patents/copyright but subscribers did not get any right of reproduction, thus, subscription fee was merely a consideration for online access of cloud computing services and would not be taxable as royalty in India - **Commissioner of Income-tax (International Taxation) v. MOL Corporation - [2024] 162 taxmann.com 799 (SC)**

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

- 2.5 **Illustrations** : SLP dismissed against order of High Court that where Assessing Officer denied exemption claimed by assessee under section 10(38) on long term capital gain on sale of shares on basis of statement of entry operators under





**2.16 Reassessment - Opportunity of hearing :** SLP disposed of as infructuous against order of HC that where Assessing Officer passed reassessment order making addition on account of an amount received by assessee from a party holding that said transaction had escaped assessment, since assessee elected not to furnish information related to this transaction as required by Assessing Officer in reopening notice, assessee could not contend that she was denied opportunity of hearing and, thus, impugned reassessment order was valid - **Saroj Chandna v. Income-tax Officer - [2024] 162 taxmann.com 101 (SC)**

**2.17 Reassessment:** SLP dismissed against order of High Court that where a reopening notice was issued on ground that an information was received from DDIT (Investigation) that certain material was recovered which showed that assessee had entered into certain financial transactions and made some potential cash borrowings from several parties, since reopening was resorted to by Assessing Officer without independent application of his mind and only on basis of information which stated about 'possible' financial transactions and 'probable' cash borrowals without setting out any particulars, impugned reopening notice was to be set aside - **Principal Commissioner of Income-tax v. Girdhar Gopal Dalmia - [2024] 162 taxmann.com 231 (SC)**

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

**2.18 Waiver of Interest :** Where Supreme Court in Commissioner of Income-tax v. Bharti Hexacom Ltd. [2023] 155 taxmann.com 322 (SC) has laid down that pursuant to new Telecom Policy which commenced from year 1999, appropriate orders may be made with regard to payment of interest on tax demand for period subsequent to commencement of new Telecom Policy of year 1999, since judgement of Supreme Court is dated 16-10-2023 and having regard to Telecom Policy, which commenced from year 1999, payment of interest for period for which tax demand is now to be met in respect of these cases was to be waived - **Commissioner of Income-tax v. Bharti Hexacom Ltd. - [2024] 162 taxmann.com 669 (SC)**

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

**2.19 Enquiry, when to be conducted :** SLP dismissed against order of High Court that where in case of assessee's assessment under section 263, direction requiring Assessing Officer to undertake a fresh exercise of assessment was not preceded by any enquiry, Tribunal rightly set aside said order of Principal Commissioner holding that this was not a case of inadequacy of enquiry, but a case of absence of enquiry - **Principal Commissioner of Income-tax v. Earth Minerals Co. Ltd. - [2024] 162 taxmann.com 273 (SC)**

## 3. HIGH COURT

### SECTION 4 OF THE INCOME-TAX ACT, 1961 - INCOME - ACCRUAL OF

**3.1 Corporate guarantee fees :** Where Assessing Officer issued reopening notice on ground that assessee had received guarantee commission and reduced same from its total income on account of corporate guarantee fees claiming it to be notional income and said reduction was not allowable, however, same had been considered by Assessing Officer while framing assessment and Assessing Officer had no material available to form a reason to believe that income had escaped assessment, impugned reopening notice was to be set aside - **Adani Wilmar Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 832 (Gujarat)**

**3.2 Revision:** Where assessee challenged assessment order by filing revision petition under section 264 but did not place necessary clinching evidence so as to show that there was no income derived by him or to explain alleged expenses, Commissioner was justified in rejecting revision - **Ravikumar Subhash Kalsi v. Commissioner of Income-tax - [2024] 162 taxmann.com 606 (Karnataka)**

**3.3** Where assessee-trustees of a trust, which was subsequently taken over by a church, received certain sum upon relinquishing their trusteeship, consideration received for such relinquishment would not qualify as a capital receipt and would be treated as individual income of assesseees - **Principal Commissioner of Income-tax (Central) v. Gracy Babu - [2024] 162 taxmann.com 116 (Kerala)**

**3.4** Where assesseees had received reimbursements of certain sum for construction expenses, since construction activity was reflected in balance sheet of assesseees which was subjected to TDS, it could be said that payments were indeed made towards construction for establishment of an educational institution - **Principal Commissioner of Income-tax (Central) v. Gracy Babu - [2024] 162 taxmann.com 116 (Kerala)**

**3.5** Where donations were made to trust and not to trustees in their individual names, therefore, same could not be taxed in hands of individual trustees - **Principal Commissioner of Income-tax (Central) v. Gracy Babu - [2024] 162 taxmann.com 116 (Kerala)**

### SECTION 5 OF THE INCOME-TAX ACT, 1961 - INCOME - CONCEPT OF REAL INCOME

**3.6** Where certain quantity of rice exported by assessee during relevant assessment year was returned by buyer and in terms of settlement agreement entered into after date of balance sheet but before settlement of accounts, part payment of sale consideration became irrecoverable, in terms of AS-4 and AS-9, said amount would be deductible in relevant assessment year - **Principal Commissioner of Income-tax v. Bhisansaroop Ram - [2024] 162 taxmann.com 191 (Delhi)**



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

**3.7 Business profits - Penalty** :Where assessee, a Permanent Establishment of an overseas bank, had received an interest from deposits kept with its overseas branches and head office abroad, same would not be taxable in India as branch offices not being separate personalities or juridical entities and that one person could not earn profit from itself -**Commissioner of Income-tax (International Taxation) v. Bank of Tokyo-Mitsubishi UFJ Ltd.** - [2024] 162 taxmann.com 872 (Delhi)

**3.8 Interest - General** :Where assessee provided guarantee to various banks to extend credit facilities to its Indian subsidiaries, guarantee fee charged by it would not fall within expression of 'interest' in article 12 of India UK DTAA -**Johnson Matthey Public Ltd. Co. v. Commissioner of Income-tax** - [2024] 162 taxmann.com 865 (Delhi)

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

**3.9 Condonation of delay in filing Form 10B** : Where assessee-trust submitted Form 10B along with an application under section 119(2)(b) seeking condonation of delay in submission of Form 10B, however, Assessing Officer by way of impugned order rejected said application, since impugned order had been passed in a mechanical manner and in process, explanation provided by assessee had not been considered, delay on part of assessee in submitting Form 10B was to be condoned and matter shall stand remitted back to Assessing Officer to pass appropriate orders on merits -**Global Organisation for Development v. Commissioner of Income-tax (Exemption)** - [2024] 162 taxmann.com 633 (Telangana)

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

**3.10 Cancellation of registration** :Commissioner had no jurisdiction to cancel the registration certificate once granted by him to assessee under section 12A till 1-10-2004 -**Commissioner of Income-tax, Patiala v. Young Scholar's Educational Society** - [2024] 162 taxmann.com 806 (Punjab & Haryana)

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

**3.11 Reassessment** : Where issue of disallowance under section 14A read with rule 8D was thoroughly scrutinized by Assessing Officer during original assessment proceedings, in **absence** of any fresh tangible material for reopening, impugned reopening notice on ground that assessee had claimed exempt

income of certain amount on account of dividend and, thus, disallowance was to be made under section 14A read with rule 8D was to be set aside -**BharatbhaiRatanshi Shah v. Assistant Commissioner of Income-tax** - [2024] 162 taxmann.com 760 (Gujarat)

**3.12 Applicability of rule 8D** :Rule 8D is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008-09 -**Commissioner of Income-tax (II) v. U.P. State Industrial Development Corporation Ltd.** - [2024] 162 taxmann.com 126 (Allahabad)

**3.13 Applicability of amendment** :Amendment made by Finance Act, 2022 in section 14A is applicable prospectively from assessment year 2022-23 -**Principal Commissioner of Income-tax v. Ketri Construction Ltd.** - [2024] 162 taxmann.com 278 (Madhya Pradesh)

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

**3.14 Rental income** : Where assessee-company's main object was business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing shopping mall and it derived rental income by letting out properties in mall, same was to be taxed as income from business and not as income from house property -**Principal Commissioner of Income-tax v. M.P. Entertainment and Developers (P.) Ltd.** - [2024] 162 taxmann.com 6 (Madhya Pradesh)

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

**3.15 Agricultural income** :Where assessee-company had acquired a land for business purposes by taking loan however, there was no evidence to show that said land was used for purposes of business of assessee and, on contrary, it was used for agricultural purposes, which yielded agricultural income, interest paid in respect of loan borrowed for purchasing said land could not be allowed as a deduction under section 36(1)(iii) -**Mini Muthoottu Credit India (P.) Ltd. v. Commissioner of Income-tax** - [2024] 162 taxmann.com 46 (Kerala)

**SECTION 37(1) OF THE INCOME-TAX ACT, 1961 -  
BUSINESS EXPENDITURE - YEAR IN WHICH  
DEDUCTIBLE**

**3.16 Provision for salary and wages**: Where assessee-company debited a certain amount representing provision for salary and wages arising out of Justice Palekar Award for period 1-1-1986 to 30-6-1986 on basis of memorandum of settlement between management and employees signed on 8-5-1987 and claimed deduction of same as expenditure in assessment year 1987-88, since services were rendered by employees during relevant previous year, liability for salary and wages was allowable as expenditure in assessment year in question - **Indian Express Newspapers (Bombay) Ltd. v. Commissioner of Income-tax** - [2024] 161 taxmann.com 567 (Bombay)

**3.17 Exgratiabonus** :Where assessee (employer) paid exgratia bonus over and above eligible bonus under payment of Bonus Act, 1965, such exgratia bonus was allowable as expenditure under section 37(1) -**Indian Express Newspapers (Bombay) Ltd. v. Commissioner of Income-tax - [2024] 161 taxmann.com 567 (Bombay)**

**3.18 Illustrations** :Where assessee (Market Committee) paid certain amount to Agricultural Board, since receipt issued by Board showed that amount was paid for development works and board had incurred expenditure on development works on account of assessee, such payment was allowable as application of income -**Market Committee v. Assistant Commissioner of Income tax - [2024] 161 taxmann.com 568 (Punjab & Haryana)**

**3.19 Prior period expenses** : Where Assessing Officer reopened assessment on ground that as assessee was following mercantile system of accounting, prior period expenses claimed in profit and loss account was not allowable, since said basis for reopening to disallow prior period of expenses was assessment order for AY 2010-11, which was set aside by Commissioner (Appeals) and revenue had accepted said order, it could not be said that there was any tangible material to reopen assessment for AY 2008-09 -**Kirloskar Ferrous Industries Ltd. V. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 867 (Bombay)**

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

**3.20 Interest on bad debts** : Where assessee, a State Financial Corporation, claimed deduction in respect of interest on bad debts on cash basis which was rejected by Assessing Officer, in face of statutory scheme allowing assessee to account for recovery of interest on bad debts on cash basis, no substantial question of law arose from order of Tribunal allowing benefit to assessee to account for interest on bad debts on cash basis - **Commissioner of Income-tax (II) v. U.P. State Industrial Development Corporation Ltd. - [2024] 162 taxmann.com 126 (Allahabad)**

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

**3.21** Where assessee and his brother surrendered their tenancy rights for a new flat, claiming deduction under Section 54F, however, Assessing Officer treated stamp duty value of new flat as unexplained investment under Section 69 without issuing a proper show cause notice, order of the AO could not be sustained - **Vivek Jaisingh Asher v. Income-tax Officer - [2024] 162 taxmann.com 127 (Bombay)**

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

**3.22 Sub-section (2)(viib)** : Where Assessing Officer rejected valuation report of assessee under section 56(2)(viib) on basis of actual figures, correctness of DCF valuation method adopted by assessee was to be tested on basis of a legitimate and valid assessment -**Principal Commissioner of Income-tax v. Abhirvey Projects (P.) Ltd. - [2024] 161 taxmann.com 814 (Delhi)**

#### SECTION 68 OF THE INCOME TAX ACT, 1961 – CASH CREDITS

**3.23** Allotment of shares to a company in settlement of an existing liability did not involve cash transactions and therefore, this conversion of liability into share capital and premium could not be treated as unexplained cash credits under section 68 - **Principal Commissioner of Income-tax v. Abhijeet Enterprise Ltd. - [2024] 162 taxmann.com 859 (Calcutta)**

**3.24 Loans** : Where assessee had received unsecured interest bearing loans from three corporate entities and had furnished necessary acknowledgement of return, balance sheet, profit and loss account, etc., to prove identity, creditworthiness and genuineness of transaction of unsecured loan taken by it, addition under section 68 was not warranted -**Principal Commissioner of Income-tax v. Anshika Consultants (P.) Ltd. - [2024] 162 taxmann.com 792 (Allahabad)**

**3.25 Revision** : Where Commissioner invoked revisionary proceedings on ground that assessee had raised loans from relatives and there was huge rotation of money amongst relatives without payment or receipt of interest, since AO had not made any enquiries and/or verification in order to ascertain claim of assessee regarding source and details of introduction of capital in first assessment order, invoking of revisionary proceedings was justified -**Principal Commissioner of Income-tax v. Smt. Manju Devi Chourasia - [2024] 161 taxmann.com 809 (Jharkhand)**

**3.26 Opportunity of hearing** :Where assessee sought adjournment after issuance of show cause notice but Assessing Officer made addition under section 68 in hands of assessee without granting reasonable/sufficient opportunity of hearing to assessee, impugned order was to be set aside - **Dinamalar v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 804 (Madras)**

**3.27 Loans** : Where assessee-company was engaged in real estate business and it had entered into certain transactions with a person 'M' which were duly disclosed by assessee in assessment proceedings, Assessing Officer was justified in reopening assessment of assessee on ground that said transactions had escaped assessment, merely because said transactions were a part of loan transactions between assessee and 'M' which had been done via cheque/RTGS method of banking -**BDR Builders and Developers (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 64 (Delhi)**



**3.28 Opportunity of hearing :** Where Assessing Officer issued on assessee a show cause notice stating that during year it had taken fresh loan from 22 persons and in assessment order he stated that assessee had taken loan from 28 persons and mentioned names of five new persons in order and invoking provisions of section 68 added amount of loan advanced by said five persons to assessee's income, since assessee was not put to notice in respect of transactions of aforesaid five persons, addition was not in accordance with law - **Nirmala Trust v. Addl./Jt./Dy./Asstt. CIT/Income-tax Officer, National E-Assessment Centre, New Delhi - [2024] 161 taxmann.com 576 (Kerala)**

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

**3.29 Opportunity of hearing :** Where assessee filed an instant writ assailing an order under section 153C passed making addition on account of unexplained money paid by assessee to purchase a property on fulcrum of inordinate delay, since when assessee was provided with an opportunity of hearing, it chose not to reply to notice in initial stage, and further, instant was not case where principles of natural justice was not met or Assessing Officer had not duly applied his mind before passing impugned order, extraordinary powers under article 226 of Constitution could not be exercised - **Sunita Goel v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 740 (Delhi)**

**3.30 Reassessment :** Where a reopening notice was issued upon assessee on ground that as per information flagged under risk management strategy (RMS) formulated by CBDT, revenue had been noticed that assessee had supplied goods/services of certain amount to a company which was not doing any actual business activities and was involved in receiving and giving bogus contracts/sub-contracts and raising invoices without delivery of any actual goods/services, impugned reopening on basis of said information was justified - **Rahul Sachan v. Income-tax Officer - [2024] 162 taxmann.com 738 (Allahabad)**

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

**3.31** Where in final assessment order proposed additions were mistakenly calculated by revenue on total purchases instead of just cash purchases which resulted in enhanced addition, said error was significant enough to invalidate assessment order, and was to be set aside - **Ziyauddin Traders v. Assessment Officer, National Faceless Assessment Centre - [2024] 162 taxmann.com 708 (Allahabad)**

**3.32 Imports :** Where Assessing Officer made addition to assessee's income under section 69C on account of alleged undisclosed purchases merely on basis of information received from CBIC that assessee had made purchases for higher value than as declared and assessee was not provided details of such expenditure,

impugned order being passed in violation of principles of natural justice was to be set aside - **Bausch and Lomb India (P.) Ltd. v. Assessment Unit, National Faceless Assessment Centre - [2024] 162 taxmann.com 597 (Delhi)**

#### SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKING OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKING

**3.33 Condition precedent:** Where assessee filed return of income beyond due date claiming deduction under section 80-IB (10) which was denied for late filing of ROI, since High Court condoned delay in filing return and directed income tax authority to consider claim of assessee in accordance with law, Assessing Officer was to be directed to pass fresh assessment order - **Bhatewara Associates v. Income-tax Appellate Tribunal - [2024] 162 taxmann.com 834 (Bombay)**

**3.34** Where claim of deduction under section 80-IB(10) was subject matter of appeal before CIT(A), reopening of assessment alleging escapement of income involving same subject was not permissible in view of 3rd proviso to Section 147 - **Poonam Builders v. A. Commissioner of Income-tax - [2024] 162 taxmann.com 238 (Bombay)**

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

**3.35** Where there was no conflict between provision of DTAA between India and Netherlands and Income Tax Act, 1961 in regard to non-discrimination and there was no ambiguity in classification and rates of tax, assessee, which was not a 'domestic company', was liable to tax at rates prescribed for a company 'other than a domestic company' - **Royal Bank of Scotland N.V. v. Commissioner of Income-tax - [2024] 162 taxmann.com 780 (Calcutta)**

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

**3.36 Adjustment – AMP expenses :** Bright Line Test (BLT) could not be applied for benchmarking AMP expenses - **Principal Commissioner of Income-tax v. PepsiCo India Holding (P.) Ltd. - [2024] 162 taxmann.com 724 (Delhi)**

**3.37 Methods for determination of - Most appropriate method, determination of :** Where TPO rejected TNMM adopted by assessee for benchmarking export of rice to AE and made addition to assessee's income on account of TP adjustment and DRP accepted contention of assessee that there were mistakes in computation made by TPO and rates prevailing on date of entering into agreement should be compared and not rates that prevailed on date of invoice, since rectification resulted in an adjustment, impugned addition was to be deleted - **Principal Commissioner of Income-tax v. Phoenix Comtrade (P.) Ltd. - [2024] 162 taxmann.com 99 (Bombay)**

**3.38 Adjustments - General :** Where TPO rejected CUP method adopted by assessee for benchmarking its import transactions of coal and minerals and made addition to assessee's income on account of TP adjustment on ground that assessee had made arbitrary adjustment to index prices with intention to bring same to tolerance level of +/- 5 per cent, since assessee had compared its import rates of coal imported from a country against indices published by agencies of same country and rates were generally declared for a particular quality available in that country and same quality should have been imported by assessee and it cannot be presumed that price quoted did not take into account ash and moisture content, TPO was not justified in rejecting CUP method - **Principal Commissioner of Income-tax v. Phoenix Comtrade (P.) Ltd.** - [2024] 162 taxmann.com 99 (Bombay)

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

**3.39 Time limit for completing assessment :** Where in case of assessee a reference was made to TPO and TPO had passed a transfer pricing order and remanded matter back to Assessing Officer, however, Assessing Officer made a fresh reference to TPO, since TPO had already taken all consequential steps in terms of order of Tribunal, no fresh reference was warranted and, thus, second reference which Assessing Officer proceeded to frame was clearly superfluous and clearly unwarranted and in any case could not be viewed as conferring a fresh lease of life to power to assess - **New Delhi Television Ltd. v. Dispute Resolution Panel 2** - [2024] 162 taxmann.com 692 (Delhi)

**SECTION 115A OF THE INCOME-TAX ACT, 1961 - FOREIGN COMPANIES - TAX ON DIVIDENDS, ROYALTY AND TECHNICAL SERVICES**

**3.40 Capital account transaction :** Where assessee company, a resident of Singapore, made investment in shares in its Indian subsidiary, said investments could not be treated as income as same was in nature of capital account transaction not giving rise to any income - **Telenor South Asia Investment Pte. Ltd. v. Deputy Commissioner of Income-tax** - [2024] 162 taxmann.com 51 (Delhi)

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

**3.41 Reassessment :** Where assessee filed Form No. 29B required u/s.115JB disclosing all material facts including reduction of unabsorbed depreciation or business loss, as reduction under item-(iii) of proviso to Section 115JB at time of regular assessment, impugned reopening notice issued under section 148 on ground that assessee wrongly reduced certain amount as reduction under item (iii) of proviso to section 115JB while computing book profit, was without jurisdiction - **Italia Ceramics Ltd. v. Deputy Commissioner of Income-tax** - [2024] 162 taxmann.com 733 (Gujarat)

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

**3.42 Opportunity of hearing :** Where opportunity of hearing was not granted to assessee, impugned order passed under section 119(2)(b) was to be quashed and set aside and matter was to be remanded back to Commissioner (Exemptions) to pass a fresh de novo order in accordance with law after giving opportunity of hearing to assessee - **Akhand Jyot Charitable Trust v. Commissioner of Income-tax (Exemptions)** - [2024] 162 taxmann.com 860 (Gujarat)

**3.43 Condonation of delay :** An order passed under section 119(2)(b) which is devoid of any reasoning or rationale would be de hors legislative mandate prescribed under beneficial scheme of section 119 - **Ramesh Kumar Shokeen v. Principal Commissioner of Income-tax** - [2024] 162 taxmann.com 803 (Delhi)

**3.44** Where assessee-trust belatedly submitted Form No.10B along with return on account of oversight by their Chartered Accountant, and filed application for condonation of said delay, since assessee had been filing its returns and Form 10B for subsequent years within due dates, delay ought to be condoned as it was due to human error lacking any malafide intention - **Al Jamia Mohammediyah Education Society v. Commissioner of Income-tax (Exemptions)** - [2024] 162 taxmann.com 114 (Bombay)

**SECTION 132 OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - GENERAL**

**3.45 Freezing of bank accounts :** Where pursuant to search and seizure operation conducted in case of certain persons, bank accounts of assessee were debit frozen to avoid leakage of revenue, perpetuation of freezing of bank accounts beyond 60 days was completely unsustainable and de hors provisions, hence, there was to be a direction to immediately defreeze concerned bank accounts of assessee - **Pooja Trading Co. v. Deputy Director of Income-tax (Inv.)** - [2024] 162 taxmann.com 737 (Delhi)

**SECTION 139A OF THE INCOME-TAX ACT, 1961 - PERMANENT ACCOUNT NUMBER**

**3.46 Application for allotment of :** Where due to mistake of Income-tax Department, same PAN was allotted to assessee and another person, as ambiguity arose due to erroneously assigning same PAN number to two persons, Income-tax Department was to be directed to forward a letter to Credit Information Bureau (India) Ltd. (CIBIL) informing about issuance of same PAN number to assessee as well as CIBIL and clarifying position - **Sushil Kumar Verma v. Union of India** - [2024] 162 taxmann.com 10 (Madhya Pradesh)

**SECTION 142 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - INQUIRY BEFORE ASSESSMENT**

**3.47 Opportunity of hearing :** Where proposed variation in relation to credits in bank statement of assessee was made for first time in show cause notice and only six days were



granted to assessee to respond to such show cause notice, since sufficient time was not given to assessee to respond meaningfully to show cause notice, impugned assessment order was to be set aside and matter was to be remanded for reconsideration - **General Commercial Agencies v. Assessment Unit, Income Tax Department, National e-Assessment Centre, Delhi - [2024] 162 taxmann.com 762 (Madras)**

#### SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - ISSUE OF NOTICE

**3.48** When show cause notice though titled as show cause notice was really not in realm of show cause notice but one where it suffered from vice of pre-determination, it was bad in law and accordingly assessment order stood vitiated - **Varadarajaperumal Pradeepkumar v. Income-tax Officer - [2024] 162 taxmann.com 609 (Madras)**

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

**3.49** Where inability and omission on part of assessee to submit its reply and contest proceedings was due to bona fide reason as it was first year of introduction of E-assessment Scheme 2019 and accountant of assessee was not used to online proceedings of income-tax department, in order to provide one more opportunity to assessee impugned assessment order passed under section 144 was to be set aside and matter was to be remanded back to AO for reconsideration - **ChokkadiVyavasaya Seva Sahakari Bank Niyamitha v. Income-tax Officer - [2024] 162 taxmann.com 155 (Karnataka)**

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

**3.50 Opportunity of hearing** :Where gross violation of essential principles of natural justice had been committed by assessing authority as assessment order had been passed five days after last date fixed that too without conducting any proceeding involving assessee, assessment order was to be set aside -**GHH India Mining and Tunnelling Equipment (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 162 taxmann.com 763 (Allahabad)**

**3.51 Principles of natural justice** :Assessing Officer can make addition on account of unexplained expenditure only after apprising himself as to details of such expenditure and providing assessee necessary opportunity to explain same -**Bausch and Lomb India (P.) Ltd. v. Assessment Unit, National Faceless Assessment Centre - [2024] 162 taxmann.com 597 (Delhi)**

**3.52 Draft assessment order** : Where show cause notice was issued upon assessee, seeking for an explanation on draft assessment order forwarded to assessee under

section 144C, however, time limit for response was only three days which was extended by another two days, proceedings drawn by revenue authorities apparently seemed to be in a hasty manner without a reasonable opportunity being given to assessee and, therefore, impugned order was to be set aside and matter was to be remanded back for fresh consideration - **A. Jaipal Reddy Amireddy v. Union of India - [2024] 162 taxmann.com 103 (Telangana)**

**3.53 Opportunity of hearing** :Under scheme of Income Tax Act, specifically after faceless assessment was brought into force, a request has to be made for an oral hearing and unless request is made - **R.K. Traders v. Assessment Unit, Income-tax Department - [2024] 162 taxmann.com 158 (Patna)**

**3.54 Opportunity of hearing** :Where request for video conferencing was made by assessee, it was mandatory for Assessing Officer to accede to same as per section 144B(6)(viii); an opportunity to be heard is an important facet of natural justice, thus, before passing an adverse order, a reasonable opportunity of hearing was required to be afforded to assessee -**Global Vectra Helicorp Ltd. v. Assessment Unit, National Faceless Assessment Centre - [2024] 162 taxmann.com 274 (Delhi)**

**3.55 Opportunity of hearing** :Where request for video conferencing was made by assessee, it was mandatory for Assessing Officer to accede to same as per section 144B(6)(viii); an opportunity to be heard is an important facet of natural justice, thus, before passing an adverse order, a reasonable opportunity of hearing was required to be afforded to assessee -**Global Vectra Helicorp Ltd. v. Assessment Unit, National Faceless Assessment Centre - [2024] 162 taxmann.com 274 (Delhi)**

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

**3.56 Passing assessment order** : Where TPO passed assessment order determining TP adjustment to which assessee filed an application in Form No. 35-A manually before DRP as well as Assessing Officer and due to technical glitches and on account of bonafide reasons, unavoidable circumstances and sufficient cause assessee could not e-file acknowledged copy of Form No.35-A, impugned order was to be set aside and matter was to be remitted back for reconsideration afresh -**Himalaya Wellness Company v. Assessment Unit, National Faceless Assessment Centre - [2024] 162 taxmann.com 732 (Karnataka)**

**3.57 Passing assessment order** : Where objections filed by assessee against draft assessment order were pending before DRP, issuance of impugned assessment order while objections of assessee were pending before DRP caused great prejudice to assessee and, thus, impugned order was quashed -**Multicoreware India (P.) Ltd. v. Assessment Unit, Income-tax Department, National E-assessment Centre, Delhi - [2024] 162 taxmann.com 638 (Madras)**

**3.58 Passing assessment order** :Matter remanded back to AO, when assessee had raised objection before DRP but AO had passed final assessment order without taking into account said objections -**Altair Engineering India (P.) Ltd. V. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer - [2024] 162 taxmann.com 1 (Karnataka)**

**3.59 Passing of assessment order** :Even in partial remand proceedings from Tribunal, Assessing Officer is obliged to pass a draft assessment order under section 144C(1) -**ExxonMobil Company India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 93 (Bombay)**

**3.60 Draft assessment order** : Where assessee in his revised return claimed status of non-resident and thereafter, during draft assessment proceedings under section 144C, revenue upon considering material categorically held that assessee was a resident, however, despite said finding draft assessment order was passed, revenue could not distance itself from its own finding merely because assessee claimed as non resident in his revised returns, thus assessee would not be eligible assessee as defined under section 144C(15) and draft assessment order was to be set aside -**Aldrin Alberto Araujo Soares v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 186 (Bombay)**

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

**3.61** If opening stock for AY 2017-18 is valued as per LIFO, the assessee is not required to value closing stock as per FIFO/WAC in conformity with ICDS-II - **P.A. Jose v. Union of India - [2024] 162 taxmann.com 849 (Kerala)**

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

**3.62 Non-filing of return** : Where Assistant Commissioner had issued various notices directing assessee to file its returns, but there was no response and Assistant Commissioner had passed ex-parte assessment order and demand notice was also issued, only to afford one more opportunity to assessee of being heard, assessment order and demand notice were to be quashed and assessee was to be directed to file income tax returns within 30 days -**Ashok Logistics Systems v. Principal Commissioner of Income-tax - [2024] 162 taxmann.com 3 (Karnataka)**

**3.63 Tangible material** : Where reassessment notice was issued upon assessee, engaged in export of iron ore, seeking to reopen assessment on basis of Report of Justice Shah Commission on ground that invoices issued by assessee were below international price, since Report was wholly subjective and there was no material in that regard, re-assessment proceedings being initiated without any tangible material to form any

“reason to believe” as to escapement, impugned reassessment proceedings were liable to be quashed -**Mudra Exports v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 811 (Allahabad)**

**3.64 Service of notice** :Where despite department being aware of change of address, notice under section 148 had been served by affixing in old address, order passed under section 148 and consequential proceedings were to be set aside and matter was to be restored to Assessing Officer -**Poddar Real Estates (P.) Ltd. v. Income Tax Officer - [2024] 162 taxmann.com 47 (Calcutta)**

**3.65 Validity of notice** :There is no question of concurrent jurisdiction of both FAO or JAO with respect to issuance of notice under Section 148; it is only FAO which can issue notice under Section 148 and not JAO - **Hexaware Technologies Ltd. v. Assistant Commissioner of Income-tax, Circle 15(1)(2) - [2024] 162 taxmann.com 225 (Bombay)**

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

**3.66 Scope of provision** : Where Assessing Officer issued on assessee a notice under section 148A(b) calling upon it to submit its response within a period of six days and said notice had not been digitally/physically signed, in view of judicial precedents on subject impugned notice and consequential proceedings, orders, notices, etc. deserved to be quashed - **Panjos Builders (P.) Ltd. v. Income-tax Officer - [2024] 161 taxmann.com 573 (Karnataka)**

**3.67 Opportunity of hearing** :Where assessee challenged reassessment proceeding on ground that notices issued under sections 148A(b) and 148 and order passed under section 148A(d) had not been received by him, matter required to be remitted back to Assessing Officer for reconsideration afresh from stage of issuance of notice under section 148A(b) -**Rizwan Ali Khan v. Income-tax Officer - [2024] 161 taxmann.com 575 (Karnataka)**

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

**3.68 Period of limitation** :Question of a correctness of claim of deduction under Section 80JJA cannot represent escapement of income in form of an asset -**Hexaware Technologies Ltd. v. Assistant Commissioner of Income-tax, Circle 15(1)(2) - [2024] 162 taxmann.com 225 (Bombay)**

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

**3.69 Scope of provision** :Where Department had failed to comply with order of Tribunal in passing a fresh assessment order within stipulated time i.e. within 12 months from 24-10-2018, Department was to be directed to remove demands and



penalty reflected in ITBA portal and to refund amount lying with Department alongwith interest - **Sunshine Capital Ltd. V. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 9 (Delhi)**

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

**3.70** An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263 - **Principal Commissioner of Income-tax v. Prakhar Developers (P.) Ltd. - [2024] 162 taxmann.com 48 (Madhya Pradesh)**

**3.71 Conditions precedent** : Where during search and seizure operation conducted against another company, name of assessee-company was mentioned in panchnama, based on name being mentioned in panchnama alone, it could not be concluded that there was authorisation to conduct search against assessee under section 132 and, furthermore, proceedings initiated under section 153A without conducting search against assessee and assessment order passed would be unjustified and was to be quashed - **Misty Meadows (P.) Ltd. v. Union of India - [2024] 162 taxmann.com 702 (Punjab & Haryana)**

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

**3.72 General** : Rectification order passed under section 154 disallowance carry forward of loss incurred for impugned assessment year without providing any opportunity of hearing being provided to assessee, being in violation of statutory provision of section 153(3) was unsustainable - **Apollo Speciality Hospitals (P.) Ltd. V. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 2 (Telangana)**

**3.73 General** : Where Assessing Officer passed an order under section 154 making addition to book profit of assessee and raising a demand, however, however, no communication had been received by assessee with regard to said order and revenue had also informed Court that it had no document to show that any notice was issued under section 154 or even an order was passed under section 154, such demand was to be quashed and set aside - **Bharat Serums and Vaccines Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 102 (Bombay)**

**3.74 Scope of provision** :Where Assessing Officer had failed to do what was required under law at time of passing assessment order and had passed assessment order with such defects, such assessment order could be rectified by Assessing Officer by exercising power under section 154 - **Sabari Alloys & Metals India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 570 (Madras)**

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

**3.75 TDS in MACP compensation cases**: Where different Tribunals were issuing different directions with regard to deduction of TDS on interest awarded by Motor Accident Claims Tribunal, since general directions could not be issued to all Tribunals , petitioner should challenge individual case where direction was contrary to decision of Court as fact of each case would be different - **Magma HDI General Insurance Co. Ltd. v. IlabenPradipbhai Sherathiya - [2024] 162 taxmann.com 837 (Gujarat)**

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

**3.76 Validity of certification** :Where assessee-company questioned validity of certification issued under section 197 for financial year 2023-24, since said financial year had already come to an end, instant writ petition was to be disposed of with liberty to assessee to apply afresh under section 197 for financial year 2024-25 - **AECOM Intercontinental Holdings UK Ltd. v. Income-tax Officer - [2024] 162 taxmann.com 631 (Delhi)**

#### SECTION 205 OF THE INCOME TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - BAR AGAINST DIRECT DEMAND ON ASSESSEE

**3.77** Where employer, which had deducted tax at source from salary of its employee- assessee but had not deposited amount to Central Government's account, in such case Assessing Officer cannot deny benefit of tax deducted at source by employer to assessee and shall give credit of TDS amount to him - **Malay Kar v. Union of India - [2024] 162 taxmann.com 767 (Orissa)**

#### SECTION 220 OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX

**3.78** Reappreciation of entire matter on its merits, is impermissible in review jurisdiction - **Rahul Suri v. Union of India - [2024] 162 taxmann.com 839 (Bombay)**

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

**3.79 Attachment** : Where impugned notice under section 226(3) was issued upon assessee for recovery of outstanding dues of his uncle, merely because assessee was joint account holder, no separate notice was required to be issued to assessee for having joint account as secondary holder in view of provisions of section 226(3)(iii) - **Pratik Chimanbhai Gami v. Union of India - [2024] 162 taxmann.com 801 (Gujarat)**

#### SECTION 234A OF THE INCOME-TAX ACT, 1961 - INTEREST - DELAY IN FILING RETURN

**3.80 Waiver** : Where assessee co-operative society filed its return of income after receipt of statutory audit report by audit department of State Government, since there was only

marginal delay in filing return, interest under section 234A deserved to be waived - **Chandrasekarapuram Co-op. Whole Sale Stores Ltd. v. Chief Commissioner of Income-tax** - [2024] 161 taxmann.com 807 (Madras)

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

- 3.81** Payment of interest on tax payable on date specified in section 211 is axiomatic in sense it has to be paid by due date prescribed under Statute and therefore, there cannot be any waiver - **Chandrasekarapuram Co-op. Whole Sale Stores Ltd. v. Chief Commissioner of Income-tax** - [2024] 161 taxmann.com 807 (Madras)

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

- 3.82 Power to rectify mistake** : Where assessee-company relied on decision of co-ordinate bench of Tribunal in similar case and claimed interest income from staff loan and advances as income from business or profession however, AO held same to be income from other sources, thereafter Tribunal distinguished decision relied upon by assessee and remanded issue to AO, since decision of co-ordinate bench was confirmed by jurisdictional High Court, there was a mistake apparent on record and thus, impugned order passed by Tribunal was to be set aside - **Uttar Gujarat Vij Co. Ltd. v. Income-tax Officer** - [2024] 162 taxmann.com 201 (Gujarat)

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

- 3.83 Tax effect** :Where tax effect in instant appeal against order of Tribunal setting aside order passed by Pr. Commissioner under section 263 is less than Rs. 1 crore, there is no ground to interfere with order passed by Tribunal - **Principal Commissioner of Income-tax v. Prakhar Developers (P.) Ltd.** - [2024] 162 taxmann.com 48 (Madhya Pradesh)

- 3.84 Condonation of delay** :Where assessee had not only delayed in filing instant appeal against order passed by Tribunal without giving any good and sufficient reason that would justify condonation of substantial delay in preferring of instant appeal but had also not participated in course of proceedings before Commissioner (Appeals), same was to be dismissed - **Vidya Shankar Jaiswal Bhagat Singh v. Income-tax Officer** - [2024] 162 taxmann.com 284 (Chhattisgarh)

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

- 3.85 Scope of provision** :Where Assessing Officer disallowed payment made by assessee (Market Committee) to Agricultural Board and imposed penalty upon it under section 271(1)(c), since disallowance made by Assessing Officer was on a wrong reasoning and same had been deleted in quantum appeal, penalty

order was liable to be dismissed - **Market Committee v. Assistant Commissioner of Income tax** - [2024] 161 taxmann.com 568 (Punjab & Haryana)

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

- 3.86** Where assessee belatedly deposited TDS amount along with interest for Financial Year 2019-20 leading to prosecution under section 279(1), since delay was due to factors like I.B. proceeding and COVID-19, and prosecution was initiated after receiving TDS amount, in such circumstances, entire proceedings initiated against assessee was to be quashed - **Sree Metaliks Ltd. v. Union of India** - [2024] 162 taxmann.com 161 (Orissa)

**SECTION 280 OF THE INCOME-TAX ACT, 1961 - OFFENCES AND PROSECUTIONS - DISCLOSURE OF PARTICULARS BY PUBLIC SERVANTS**

- 3.87** Where borrower created mortgage in respect of property, being land and construction thereon, to secure repayment to assessee a finance company and TRO declared mortgage created to be void, since there was no finding in impugned order that mortgage was created after notice of tax or other sum payable by mortgagor-assessee as a result of completion of assessment proceeding in respect of one or more of assessment years referred to in mentioned notices, impugned order was bad for being vague and same was to be set aside - **Bajaj Finance Ltd. v. Tax Recovery Officer** - [2024] 161 taxmann.com 808 (Orissa)



## 4. TRIBUNAL

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

- 4.1 Agricultural land** : Where once assessee is carrying on agricultural activities right up to date of sale, land continues to be agricultural land irrespective of conversion of such land into non-agriculture land prior to date of sale, however, since issue as to whether land sold qualified as agricultural land within meaning of section 2(14) had not been analysed by revenue, matter was to be remanded back for consideration afresh - **TejabhaiNagjibhai Makwana v. Income-tax Officer - [2024] 162 taxmann.com 123 (Ahmedabad - Trib.)**
- 4.2 Banakhat/agreement of sale** :Where assessee via registered sale deed sold a land to a developer through Banakhat (agreement of sale) as a confirming party, right held by assessee as a confirming party in Banakhat was a capital asset within meaning of section 2(14) and thus, gain arising on sale of land was liable to tax as long-term capital gain - **Deputy Commissioner of Income-tax v. Bharatkumar Babubhai Patel - [2024] 161 taxmann.com 395 (Ahmedabad - ITAT)**
- 4.3** Where assessee's declared agricultural income was found to be a long-term capital gain, and AO classified land as a capital asset based on its proximity to municipality however, CIT(A) accepted evidence showing a greater distance without addressing revenue's evidence based on satellite mapping from Google Maps, matter was remanded back to AO to verify land coordinates and reassess distance accurately - **Income-tax Officer v. Babu Chandrathil George - [2024] 162 taxmann.com 596 (Cochin - Trib.)**

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

- 4.4 Profit motive**: Where assessee was registered under section 12A as a charitable society offering services to nation as arm of Govt. of India under Software Technology Park of India (STPI) scheme, Commissioner (Appeals) was justified in holding assessee was eligible for benefit of exemption under section 11 to 13 in respect income from statutory charges, other misc. activities and interest income claimed by assessee - **Software Technology Parks of India v. Deputy Commissioner of Income-tax - [2024] 161 taxmann.com 766 (Delhi - Trib.)**
- 4.5 Objects of general public utility/Chamber of Commerce** : Where receipt from rent by assessee-society was in course of actual carrying out of objects of general public utility and same was below 20 per cent, Commissioner (Appeals) was justified in allowing benefit under section 11 and 12 to assessee - **ACIT v. Shree Maheshwari Samaj - [2024] 162 taxmann.com 804 (Jodhpur - Trib.)**

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

- 4.6 Subsidy** : Incentives under FPS and VKGUY under Foreign Trade Policy of Govt of India, granted by Govt to assessee for exploring potentially new markets from a long-term prospective to enhance India's export potential in intl market and generate employment opportunities , was in nature of capital receipt and not liable to tax - **DCIT v. Patanjali Foods Ltd. - [2024] 161 taxmann.com 815 (Mumbai - Trib.)**

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

- 4.7 Royalties/Fees for technical services - Satellite/transponder, use of**: Receipts from Bandwidth charges are not taxable as royalty income either u.s. 9(1)(vi) or under Article 12(3) of India-Singapore DTAA - **Telstra Singapore Pte. Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 843 (Delhi - Trib.)**
- 4.8 Interest - General** : Where assessee, a Cyprus based company, had complete right to receive interest income on compulsorily convertible debentures (CCDs) and there was no compulsion or contractual obligation to simultaneously pass on same to another entity, assessee was to be held as beneficial owner of interest income on CCDs from Indian entity and, thus, same would be taxed @10 per cent as per Article 11 of India-Cyprus DTAA - **Little Fairy Ltd. v. A. Commissioner of Income-tax, International Tax - [2024] 162 taxmann.com 766 (Delhi - Trib.)**
- 4.9 Business Profit - Commission** : Commission paid to foreign agents with whom assessee had entered into agreements to render services abroad and no part of services was ever rendered in India, provisions of section 195 were not applicable to assessee and, therefore, there was no need for deduction of tax at source from payments made to foreign commission agents - **ITC Ltd. v. ACIT - [2024] 162 taxmann.com 734 (Kolkata - Trib.)**
- 4.10 Royalties/Fees for technical services - Others** : Where assessee made payment to non-resident parties towards shipment clearing and forwarding charges and Assessing Officer treating services rendered by non-resident as consultancy services, made disallowance of said payment under section 40(a)(i) in absence of tax deduction at source by assessee, since said payment was not chargeable to tax in India, impugned disallowance made by Assessing Officer was to be deleted - **A. Commissioner of Income-tax v. LX Pantos India (P.) Ltd. - [2024] 162 taxmann.com 701 (Delhi - Trib.)**
- 4.11 Royalty/Fee for technical services - Others** :Where assessee, a tax resident of USA, received certain amount towards software licence fee cross charged to its affiliates in India, since what had been sold to affiliates was copyrighted article and not any right to use copyright , receipts in dispute could not be taxable as royalty income falling under article 12 - **GE Precision Healthcare LLC v. ACIT, International Taxation - [2024] 162 taxmann.com 699 (Delhi - Trib.)**

**4.12 Royalty/Fee for technical services - Others :**Where assessee, a non-resident corporate entity, sublicensed certain standard commercial software licenses to its Indian affiliates, receipts from such sublicensing of software licenses could not be brought to tax under residuary clause of other income as provided under section 56(1) -**GE Precision Healthcare LLC v. ACIT, International Taxation - [2024] 162 taxmann.com 699 (Delhi - Trib.)**

**4.13 Royalties or fees for technical services - Computer software :**Payments received by assessee for providing various IT facilities to Indian group entities for running their business operations were in nature of FTS as defined under article 12(3)(b) of India-Sweden DTAA, hence, taxable -**Volvo Information Technology Abv v. Deputy Commissioner of Income-tax (International Taxation) - [2024] 162 taxmann.com 679 (Delhi - Trib.)**

**4.14 Business profits – others :**Interest paid by Indian branch/PE of assessee, a French bank, to its head office (a foreign company) would not be taxable in India under India France DTAA since branch had borrowed from overseas head office and debt claim of head office was connected to PE branch in India - **BNP Paribas v. Assistant Commissioner of Income Tax (IT) - [2024] 162 taxmann.com 671 (Mumbai - Trib.)**

**4.15 Royalties/Fee for technical services - Advertisement service :**Revenue received by assessee, US company, engaged in providing hotel related services, from its Indian customers on account of centralized services in form of marketing and advertising services being incidental to main service was not taxable as FTS/FIS in terms of section 9 as well as article 12 of India US DTAA -**A. Commissioner of Income-tax (International Taxation) v. Westin Hotel Management L.P. - [2024] 162 taxmann.com 644 (Delhi - Trib.)**

**4.16 Royalty/Fees for technical services - Business support services :**Where assessee, tax resident of Czech Republic, received fees towards rendering business support services for Information System/Information Technology system infrastructure and DRP directed AO to complete assessment through a speaking and reasoned order being of view AO had not illustrated, how IT infrastructure was maintained and was beneficial to Indian group entities in terms of acquiring right to use same, however, AO passed final assessment order holding that receipts were towards equipment royalty, since AO had failed to implement directions of DRP, impugned assessment order being wholly without jurisdiction was liable to be quashed - **Home Credit International v. Assistant Deputy Commissioner of Income-tax, International Taxation - [2024] 162 taxmann.com 634 (Delhi - Trib.)**

**4.17 Interest :**As per article 12 of DTAA between India and Korea, interest was taxable in hands of AE and since DTAA is silent on taxability of interest income i.e.,

whether on accrual basis or receipt basis, thus, as per provisions of section 195, payee was responsible for deducting tax at time of credit or payment, whichever was earlier -**LS Automotive India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 600 (Chennai - Trib.)**

**4.18 Royalty/fees for included services – Legal services :**Where AO held that legal professional expenses incurred by assessee was FTS as per article 12 of DTAA taxable in India, however, assessee contended that said expenses did not qualify as FTS, but were in nature of Independent personal services, covered under article 14 of DTAA with concerned countries or in alternate they qualify as business income as per article 7 of DTAA, since said arguments raised by assessee against taxability of said expenses in India were never raised before lower authorities, issue was to be remanded to AO to adjudicate issue of their taxability in India both as per domestic law and as per DTAA with respective countries - **Cadila Pharmaceuticals Ltd. v. ACIT - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)**

**4.19 Royalty/fees for included services – Legal services :**Where assessee had made payments to USA residents towards legal professional services in relation to registration of products in foreign countries, since said services did not involve any technical knowledge, skill or know-how, therefore, same was not liable to tax in India - **Cadila Pharmaceuticals Ltd. v. ACIT - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)**

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

**4.20 Additional evidence :**Where assessee, an educational society, failed to furnish details/information to substantiate its claim u.s. 10(23C)(iiiad) before AO, however, assessee sought permission to submit additional evidence before Commissioner (A) who failed to record any finding either accepting or rejecting additional evidence so submitted by assessee, since said additional evidence was critical and germane for deciding matter and given that assessment of assessee was completed u.s. 144, additional evidence was to be admitted and matter was to be remanded to Commissioner (A) to examine matter a fresh after providing reasonable opportunity to assessee -**Baba Kishan Dass Education & Charitable Society v. Income-tax Officer (Exemptions) - [2024] 159 taxmann.com 1619 (Chandigarh - Trib.)**

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

**4.21 Denial of application of income :**Where assessee-trust filed its return in Form 5, which was meant for business income, however, it was a charitable trust working for promotion of education, culture and philosophy, since returning income in a wrong Form could not result in converting loss into income, Assessing Officer was to be directed to consider assessee's return as a rectification petition -**Kathikode Charitable Trust v. Income-tax Officer - [2024] 162 taxmann.com 866 (Cochin - Trib.)**



- 4.22 Business support services :** Where AO disallowed business support services paid by assessee-trust to a sister concern on ground that said sister concern was an entity covered under section 13(3), in view of fact that Assessing Officer nowhere demonstrated as to how business support expenses incurred by assessee-trust was not commensurate with market value of services availed from said sister concern, impugned disallowance would not be sustainable - **Shri Balaji Human Resources Development Trust v. ITO- [2024] 162 taxmann.com 805 (Delhi - Trib.)**
- 4.23 Computer expenses :**Where assessee-trust, engaged in field of education, incurred expenses on purchase of computers for free distribution to students and assessee had filed copies of invoice, quotations and student wise list, disallowance of said expenses was not justified - **Shri Balaji Human Resources Development Trust v. ITO- [2024] 162 taxmann.com 805 (Delhi - Trib.)**
- 4.24 Depreciation :** Where assessee-trust claimed depreciation in its return of income and submitted that as there was application of income of more than 85 per cent of total income before depreciation, there would not be any tax liability, even if, depreciation was inadvertently claimed in return , looking into entire conspectus of section 11(6), it is necessary to set aside issue to file of AO to look into application of income by trust afresh -**Dharma Naidu Educational and Charitable Trust v. DCIT (Exemption) - [2024] 162 taxmann.com 794 (Chennai - Trib.)**
- 4.25 Corpus donation :**Where donation received by assessee-society were with specific direction and also utilized for construction of fixed assets i.e. bhavans only, same was corpus donation exempted under section 11(1)(d) -**ACIT v. Shree Maheshwari Samaj - [2024] 162 taxmann.com 804 (Jodhpur - Trib.)**
- 4.26 Form 10B :** Where assessee, a charitable trust, had filed Form 10B along with return of income, however, no exemption u.s. 11 was claimed rather assessee had claimed exemption u.s. 10(23C), since there was a common column for claim of exemption u.s. 10(23C)(iv) and section 11 in audit report in Form 10B, therefore, CPC might have made a query as to under which section deduction was claimed before disallowing claim of assessee -**Shri R V Shah Charitable Trust v. Dy Director of Income-tax - [2024] 161 taxmann.com 810 (Ahmedabad - Trib.)**
- 4.27 Application of income :**Assessee trust necessarily has to apply 85 per cent of it's income for **charitable** purposes during relevant year, except where an option is specifically exercised in its respect, hence, where assessee-trust did not apply 85 per cent of its income for charitable purpose during relevant year, income of trust was to be limited to 85 per cent of its total income - **MahakaviEdasseriSmaraka Trust v. ITO (Exemptions) - [2024] 162 taxmann.com 44 (Cochin - Trib.)**
- 4.28** Where return of income was filed by assessee-trust within time provided u/s 139(1) and Form No. 10 was also filed manually before filing of return before Territorial Jurisdictional A.O, therefore, delay even if at all caused in electronically filing Form-10 for rectification, should have been condoned - **Shri BhidbhanjanParshwnath Jain Derasar v. Dy. CIT - [2024] 162 taxmann.com 8 (Jodhpur - Trib.)**
- 4.29** Income derived by Indian Chamber of Commerce from organizing meetings, conferences and seminars for promoting and protecting trade, commerce, and industry would be eligible for exemption under section 11 - **Indian Chamber of Commerce v. DCIT - [2024] 162 taxmann.com 43 (Kolkata - Trib.)**
- 4.30** Accumulation u/s 11(1)(a) has to be computed on gross receipts of assessee and not on net receipt - **Indian Chamber of Commerce v. DCIT - [2024] 162 taxmann.com 43 (Kolkata - Trib.)**
- 4.31 Violation of provisions of FCRA :**Where certificate granted to assessee trust was in force, exemption claimed under section 11 could not be denied on ground that assessee violated provisions of section 17 of FCRA 2010 -**Society of the Franciscan Borthers v. Income-tax Officer (Exemption) - [2024] 162 taxmann.com 160 (Ranchi-Trib.)**
- 4.32 Scope of provision :**Even in case of violation of section 13 exemption under section 11 could not be entirely refused and it had to be limited to extent of excess payment only -**St. Francis Education Society v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 394 (Raipur - Trib.)**
- SECTION 12A OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - REGISTRATION PROCEDURE**
- 4.33 Condonation of delay :**Where application of assessee-trust seeking registration under section 12A was rejected on grounds of delay, however, delay in filing appeal was neither intentional nor deliberate and there was no inordinate delay in filing this appeal, same was to be condoned - **Shree Mahalakshmi Welfare & Charitable Trust v. Commissioner of Income-tax (Exemptions) - [2024] 162 taxmann.com 841 (Surat-Trib.)**
- 4.34 Denial of registration :** Where application of assessee-trust seeking registration under section 12A was rejected on grounds that in response to show cause notice, assessee had neither filed any submission nor sought any adjournment, however, it was found that prima facie, assessee had furnished certain details to substantiate object and activities, Commissioner (Exemption) was to be directed to provide assessee with one more opportunity for considering their case on merit and examine object and activities of assessee and pass order in accordance with law - **Shree Mahalakshmi Welfare & Charitable Trust v. Commissioner of Income-tax (Exemptions) - [2024] 162 taxmann.com 841 (Surat-Trib.)**

- 4.35 Approval under sub-section (5)** :Where CBDT in its recent Circular No. 7, dated 25-4-2024 had extended time limit for filing application u.s. 80G(5) upto 30-6-2024, such relaxation would also be allowed to assessee -**Shree Mahalakshmi Welfare & Charitable Trust v. CIT (Exemptions) - [2024] 162 taxmann.com 841 (Surat-Trib.)**
- 4.36 Illustrations** : Where assessee-trust had been granted registration u.s. 12AB for five years and it had applied for final registration after grant of provisional registration and Commissioner (Exemption) rejected application as not maintainable being premature, since there was no bar in moving application at earliest possible event, matter was to be restored to Commissioner (Exemptions) to consider application of assessee for final registration and grant same, if same was otherwise so admissible to assessee -**Rajbalhat Cultural Circle v. CIT (Exemptions) - [2024] 162 taxmann.com 769 (Kolkata - Trib.)**
- 4.37 Denial of registration** : Where assessee-trust while filing application for registration u.s. 12A/12AB in Form 10AB selected section 12A(1) (ac)(iv) instead of section 12A(1)(ac)(iii) and Commissioner (Exemptions) rejected application on ground that he had no power to change or rectify application filed in Form-10AB, as mistake in filing entry was not fatal, Commissioner (Exemptions) was to be directed to treat application of assessee u.s. 12A(1)(ac)(iii) and to consider case on merits -**Shree Swaminarayan Gadi Trust v. CIT (Exemptions) - [2024] 162 taxmann.com 772 (Surat-Trib.)**
- 4.38 Withdrawal of registration** :Where all issues which CIT(E) has raised in show cause notice for purpose of cancellation of registration u/s. 12A have already been decided by Appellate Authority in favour of assessee and same has also reached finality, order passed by CIT(E) cancelling registration granted to assessee was to be quashed -**People Forums v. CIT (Exemptions) - [2024] 162 taxmann.com 673 (Cuttack - Trib.)**
- 4.39** Where assessee-trust applied for final registration u.s. 12A(1)(ac)(iii) after being provisionally registered u.s. 12AB, but CIT(Exemptions) rejected application as premature, citing existing provisional registration's validity until A.Y 2026-27, since there was no bar on applicant to move an application before period of six months from expiry of provisional registration CIT(E) was directed to reconsider application -**MallarpurNaisuva v. CIT (Exemptions) - [2024] 162 taxmann.com 120 (Kolkata - Trib.)**
- 4.40** Where CIT(E) rejected application of assessee-trust, citing section 13(1)(b) due to trust's objectives being limited to benefiting a specific religious community, since provisions of section 13 can be invoked only at time of assessment and not at time of grant of registration u.s. 12A, therefore, matter would be restored to file of CIT (exemptions), for de novo consideration - **Bhojalram Leuva Patel Seva Samaj Trust v. Commissioner of Income-tax (Exemptions) - [2024] 162 taxmann.com 270 (Ahmedabad - Trib.)**

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

- 4.41** Where object of assessee-trust showed that it did not benefit a particular community and moreover, consideration of community benefit should occur during grant of exemption under section 11, and not during registration under Section 12AA, therefore, matter would be remanded to CIT (Exemptions) to examine if trust genuinely carried out activities eligible for registration under section 12AA - **Parul University Alumni Association v. Commissioner of Income-tax (Exemption) - [2024] 162 taxmann.com 98 (Ahmedabad - Trib.)**

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

- 4.42 Cancellation of registration** :Provisions of section 12AB(4)(ii), which had been introduced by Finance Act, 2022 with effect from 1-4-2022 could not be invoked for cancellation of registration with retrospective effect from assessment year 2018-19 -**Amala Jyothi Vidya Kendra Trust v. Principal Commissioner of Income-tax (Central) - [2024] 162 taxmann.com 41 (Bangalore - Trib.)**
- 4.43** Where CIT (Exemptions) rejected assessee trust's registration application under section 12AB due to a name mismatch, however, trust clarified that difference arose from translating their name from Gujarati to English, maintaining their legal status, in such circumstances, rejection based solely on name mismatch was deemed unwarranted - **Parul University Alumni Association v. Commissioner of Income-tax (Exemption) - [2024] 162 taxmann.com 98 (Ahmedabad - Trib.)**

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

- 4.44 Applicability of** :Provisions of section 13 can be invoked by Assessing Officer while framing assessment and not by Commissioner while considering application for registration under section 12A -**Anjuman E Nusratul Muslimin Tankaria v. Commissioner of Income-tax (Exemptions) - [2024] 162 taxmann.com 42 (Ahmedabad - Trib.)**
- 4.45 Sub-section 2(c)** : Where Assessing Officer observed that assessee society had paid excessive salary to an employee, who was specified person within provisions of section 13(3), and made addition on account of payment in excess of reasonable salary to assessee's income, since salary paid to aforesaid employee in subsequent assessment years had been considered by department as reasonable, which was equal to salary in relevant assessment year, impugned addition deserved to be deleted --**St. Francis Education Society v. Assistant Commissioner of Income-tax - [2024] 161 taxmann.com 394 (Raipur - Trib.)**

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



**4.46 Rule 8D** : Where assessee had sufficient interest free funds for purpose of making investment earning exempt income, no disallowance of interest u.s. 14A was warranted - *Atul Ltd. v. DCIT* - [2024] 162 taxmann.com 862 (Ahmedabad - Trib.)

**4.47 Computation of** : Where assessee invested surplus fund generated from its business activities in shares and securities and thus derived income by way of dividend and tax free interest, non-maintenance of separate books of account evidencing expenditure incurred in relation to non-taxable income could not be a ground to reject assessee apportionment of expenditure incurred in relation to exempt income - *ITC Ltd. v. ACIT* - [2024] 162 taxmann.com 734 (Kolkata - Trib.)

**4.48 Scope of provision** : Where assessee had invested own interest free funds in securities/Joint Ventures which yield exempt income, no disallowance under section 14A read with rule 8D(2)(b) was warranted, as available owned interest free funds with assessee were much higher than investments made by assessee - *ACIT v. M.S.Khurana Engineering Ltd.* - [2024] 162 taxmann.com 7 (Ahmedabad - Trib.)

**4.49 Rule 8D** :Where assessee had not earned any exempt income during year, no disallowance under section 14A read with rule 8D(2) was called for - *Syama Prasad Mookerjee Port v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 122 (Kolkata - Trib.)

**4.50 Computation of** :Following order passed by Tribunal in assessee's own case relating to earlier assessment years, CIT(A) was justified in restricting disallowance under section 14A read with rule 8D to exempt income earned by assessee - *Cadila Pharmaceuticals Ltd. v. ACIT* - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)

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

**4.51 Bad debt** :Where assessee's claim of bad debt related to several parties involving small amounts, assessee's claim that said advances were business advances which became irrecoverable was to be accepted and allowed under section 28 - *Atul Ltd. v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 862 (Ahmedabad - Trib.)

**4.52 Carbon credits** : Income received by assessee on sale of carbon credit units being a capital receipt was not taxable - *ITC Ltd. v. ACIT* - [2024] 162 taxmann.com 734 (Kolkata - Trib.)

**4.53 Excess stock** :Where income surrendered by assessee during survey as excess stock was from business operations, same could not be brought to tax under deeming provisions of section 69B read with section 11BBE - *Gurinder Makkar v. DCIT* - [2024] 162 taxmann.com 731 (Chandigarh - Trib.)

**4.54 Cost of building** :Where assessee had surrender certain amount on account of cost of building during course of survey, since no bills/vouchers have been found during course of survey, Assessing Officer was not justified in invoking deeming provisions of section 69B read with section 115BBE and normal tax rate should be applied - *Gurinder Makkar v. DCIT* - [2024] 162 taxmann.com 731 (Chandigarh - Trib.)

**4.55 Profit on sale of livestock** :Livestock is not a capital asset and is only a stock-in-trade, therefore, profit on sale of livestock is to be taxed as business income - *Super Dairy Farm v. Assistant Commissioner of Income-tax* - [2024] 161 taxmann.com 767 (Hyderabad - Trib.)

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

**4.56 Excess depreciation** : Where assessee claimed depreciation on its written down value without deducting depreciation allowed in an earlier year and Assessing Officer considering such depreciation allowed to assessee disallowed excess depreciation, in view of fact that identical claim of excess depreciation had been disallowed in preceding years by Tribunal, impugned disallowance of excess depreciation was to be confirmed - *Atul Ltd. v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 862 (Ahmedabad - Trib.)

**4.57 Cost of construction** :Once assessee had surrendered amount on account of cost of extension, renovation and same had been brought in books of accounts, same would form part of block of building and assessee would be eligible for claim of depreciation thereon - *Gurinder Makkar v. DCIT* - [2024] 162 taxmann.com 731 (Chandigarh - Trib.)

**4.58** Where assessee was a charitable trust whose income was exempt under section 11, its claim of depreciation could not be said to be double benefit - *Software Technology Parks of India v. Deputy Commissioner of Income-tax* - [2024] 161 taxmann.com 766 (Delhi - Trib.)

**4.59** Where cost of acquisition of fixed assets and subsequent depreciation could be treated as application of income up to AY 2015-16, in view of Supreme Court's ruling in case of CIT v. Rajashthan and Gujrati Charitable Foundation [2018] 402 ITR 441 (SC),AO was directed to allow depreciation on fixed assets as application of income/expenses - *Indian Chamber of Commerce v. DCIT* - [2024] 162 taxmann.com 43 (Kolkata - Trib.)

**4.60** Where an assessee sold an old motor car and purchased a new one, and assessing officer treated entire sale consideration as income, rejecting reduction of sale amount from fixed asset, assessing officer was directed to delete addition, permitting deduction of written-down value from sale consideration - *Indian Chamber of Commerce v. DCIT* - [2024] 162 taxmann.com 43 (Kolkata - Trib.)

**4.61 Motor vehicle** :Where vehicle registered in name of assessee-company was used for business purposes only and

assessee had submitted copy of registration certificate, addition made by Assessing Officer disallowing depreciation on vehicle was to be deleted - **JR Properties (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 94 (Chandigarh - Trib.)**

#### SECTION 32AC OF THE INCOME-TAX ACT, 1961 - INVESTMENT ALLOWANCE - INVESTMENT IN NEW PLANT AND MACHINERY

**4.62 Installation of machinery** :Blending of lube oil tantamount to manufacture or production as contemplated u/s 32AC -**Additional Commissioner of Income-tax v. Idemitsu Lube (P.) Ltd. - [2024] 162 taxmann.com 193 (Delhi - Trib.)**

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

**4.63 Sub-section (2AB)** : Where assessee claimed weighted deduction under section 35(2AB) pertaining to capital and revenue expenditure incurred in respect of R&D, since assessee had furnished evidence of shifting of these items to its R&D facility and impugned capital expenditure was approved by authority specified for said purpose under section 35(2AB), being DSIR, which was evidenced in certificate issued to it in Form No. 3CL, CIT(A) had rightly deleted impugned disallowance made by Assessing Officer - **Cadila Pharmaceuticals Ltd. v. ACIT - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)**

**4.64 Sub-section (2AB)** :Analytical and testing expenditure incurred by assessee in form of R&D expenditure was eligible for weighted deduction under section 35(2AB) - **Cadila Pharmaceuticals Ltd. v. ACIT - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)**

#### SECTION 35D OF THE INCOME-TAX ACT, 1961 - PRELIMINARY EXPENSES

**4.65 Share issue expenses** :Preliminary expenses incurred for increase in authorized capital were capital in nature - **ACIT v. M.S.Khurana Engineering Ltd. - [2024] 162 taxmann.com 7 (Ahmedabad - Trib.)**

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

**4.66 Interest** : Where assessee had earned interest with respect to loans and advances given to one CHPL, a sister concerns of assessee, and on account of share application money to Apollo, since assessee had sufficient owned funds by way of shareholders' fund for making impugned advances both CHPL and Apollo, CIT(A) was justified in deleting disallowance of interest under section 36(1)(iii) made by Assessing Officer - **Cadila Pharmaceuticals Ltd. v. ACIT - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)**

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

**4.67 PF/ESIC** : subsequent judgment of SC in case of Checkmate Services P. Ltd. V. CIT [2022] 143 taxmann.com 178 (SC) that essential condition for deduction of payment towards employees' contribution to PF and ESIC is that same should be deposited on or before due date prescribed under PF and ESIC Acts would not alter finality of judgment of Tribunal which was based on binding precedents of jurisdictional HC and other High Courts - **DCIT v. ANI Integrated Services Ltd. - [2024] 162 taxmann.com 889 (Mumbai - Trib.)**

#### SECTION 36(1)(viiia) OF THE INCOME-TAX ACT, 1961 - BAD DEBTS, PROVISION FOR

**4.68 NBFCs** : Where AO disallowed provision made by assessee-NBFC against standard assets on ground that it was a contingent unascertained liability and hence not allowable as deduction, since Assessing Officer failed to consider provisions of section 36(1)(viiia)(d) introduced with effect from 1-4-2017 allowing NBFCs to make provision for bad and doubtful debts at rate of 5 per cent, matter was to be set aside to Assessing Officer for denovo adjudication - **Shrijeet Finance (P.) Ltd. v. ACIT - [2024] 162 taxmann.com 243 (Pune - Trib.)**

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

**4.69 Prior period expenses** :Where in earlier years, Tribunal had allowed prior period expenses, on identical facts disallowance of prior period expenses was not tenable in relevant assessment year - **Atul Ltd. V. Dy Comm of Income-tax - [2024] 162 taxmann.com 862 (Ahmedabad - Trib.)**

**4.70 Trademark registration fee** : Registration expenses incurred on existing as well as new patents were wholly and exclusively incurred for purpose of business and were revenue in nature - **ITC Ltd. v. ACIT - [2024] 162 taxmann.com 734 (Kolkata - Trib.)**

**4.71 Liquidated damages** : Where assessee received liquidated damages as compensation from suppliers for failure to supply machineries/complete construction of building within the stipulated time, same were capital receipts not to be reduced from cost of fixed assets - **ITC Ltd. v. ACIT - [2024] 162 taxmann.com 734 (Kolkata - Trib.)**

**4.72 Forward exchange contracts** : Exchange fluctuation loss on account of mark to market loss at year end in respect of outstanding forward contracts and foreign currency receivable/payable is eligible for deduction - **ITC Ltd. v. ACIT - [2024] 162 taxmann.com 734 (Kolkata - Trib.)**

**4.73 Design charges** : Where assessee had incurred expenditure on low value items of spares and consumables required for rearrangement of packing material, since same was debited to profit and loss account as per existing Accounting Standards and such expenditure being regular and recurring in nature, was revenue expenditure - **ITC Ltd. v. ACIT - [2024] 162 taxmann.com 734 (Kolkata - Trib.)**



**4.74 Information technology expenses :** Expenditure incurred in respect of payment made to various parties on account of annual maintenance of information technology assets and related consumables was revenue expenditure - *ITC Ltd. v. ACIT* - [2024] 162 taxmann.com 734 (Kolkata - Trib.)

**4.75 Advances written off :** Advances given to farmers against supply of materials/crops in ordinary course of business being in nature of trade advances were allowable under section 37(1) - *ITC Ltd. v. ACIT* - [2024] 162 taxmann.com 734 (Kolkata - Trib.)

**4.76 Interest payment :** Where Assessing Officer had disallowed assessee's claim as regards interest payment to Hyderabad Mutual Benefit Society (HMBS), since certificate from HMBS, ledger account of interest and bank statement of G.S. Bakers were not available with Assessing Officer which have been relied upon by assessee before Tribunal, matter was to be remanded to Commissioner (Appeals) for afresh consideration - *Super Dairy Farm v. Assistant Commissioner of Income-tax* - [2024] 161 taxmann.com 767 (Hyderabad - Trib.)

**4.77 Purchase of fodder :** Where assessee was in business of selling dairy products, expenditure incurred by assessee for maintaining and feeding livestock was revenue expenditure - *Super Dairy Farm v. Assistant Commissioner of Income-tax* - [2024] 161 taxmann.com 767 (Hyderabad - Trib.)

**4.78 Product registration expenses :** Following order passed by High Court in assessee's own case relating to earlier assessment years, it was to be held that product registration expenses incurred by assessee were revenue in nature - *Cadila Pharmaceuticals Ltd. v. ACIT* - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)

**SECTION 40A OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - CASH PAYMENTS EXCEEDING PRESCRIBED LIMIT**

**4.79 Amount surrender during survey :** Where expenditure had been held disallowable in terms of section 40A(3) which means that certain expenditure had been incurred, accounted for in books of accounts and had been found to be incurred in cash in violation of section 40A(3), question of unexplained expenditure or unaccounted expenditure did not arise for consideration, and hence, action of Assessing Officer in invoking deeming provisions of section 69B read with section 115BBE in this regard was to be set-aside - *Gurinder Makkar v. DCIT* - [2024] 162 taxmann.com 731 (Chandigarh - Trib.)

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

**4.80 Illustrations :** Liability standing in the books is sine qua non before proceedings to examine the transactions under section 41(1) - *Syama Prasad Mookerjee Port v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 122 (Kolkata - Trib.)

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

**4.81 Scope of provision :** Deduction for statutory liability relating to items subscribed under clause (a) to (g) of section 43B is to be allowed in year of its claim if it is paid either (i) in year of claim, i.e., previous year or (ii) within due date prescribed under section 139(1) or (iii) within extended due date prescribed under section 139(1) and if it is paid otherwise than in aforesaid time limit (i) or (ii) or (iii) then is entitled to deduction in year of its actual payment irrespective of year in which expenditure/liability towards was incurred - *Sharp Aluminium v. Assistant Commissioner of Income-tax* - [2024] 162 taxmann.com 74 (Pune - Trib.)

**SECTION 43CA OF THE INCOME-TAX ACT, 1961 - SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSETS IN CERTAIN CASES**

**4.82 Applicability of :** Where assessee-firm, engaged in business of builders and land developers, sold certain plots and consideration received by assessee was less than value assessed by stamp valuation authority, assessee would be entitled for benefit of provision of section 43CA(3) in respect of plots booked in financial years 2009-10, 2010-11 and 2013-14 - *ACIT v. Rajul Constructions* - [2024] 159 taxmann.com 1261 (Jabalpur - Trib.)

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

**4.83 Share transactions :** Where assessee had consistently shown shares as investments and not as stock-in-trade in its books and returned income therefrom under head 'income from capital gains', AO was not justified in treating income earned from trading activity in shares as business income merely on ground that assessee had returned said income under head 'business income' in immediately preceding year - *Income-tax Officer v. Jhaveri Sandeep Bipinchandra (HUF)* - [2024] 162 taxmann.com 796 (Ahmedabad - Trib.)

**4.84 Capital loss :** Where assessee, 50 per cent owner of an immovable property, had received Rs. 50 lakhs as its share of sale consideration on sale of said property and Registered Valuer had estimated fair market value of property at Rs. 54.09 lakhs and had calculated cost of property as on 1-4-1981 at Rs. 10 lakhs applying reverse method of indexation, since indexed cost of acquisition of Rs. 54 lakhs was higher than sale consideration, it would result into a long-term capital loss and, therefore, addition made by AO on account of LTCG was to be deleted - *Millie Dey v. Income-tax Officer* - [2024] 162 taxmann.com 45 (Kolkata - Trib.)

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

**4.85 General :** Where assessee had sold a flat and had booked new under construction flat which was handed over to assessee on completion of construction, date of possession of new flat should be considered as date of its acquisition for assessee's claim of deduction under section 54 -**Sunil Amritlal Shah v. Income-tax Officer (International Taxation) - [2024] 162 taxmann.com 676 (Mumbai - Trib.)**

**4.86 Interiors expenses :**Where assessee paid certain amount for interior decoration of new house property, since said payment was not disputed by revenue and assessee had submitted all relevant documents in support of said payment, assessee was eligible to claim deduction under section 54 on such payment -**Sapna Hemanshu Shah v. Deputy Commissioner of Income-tax - [2024] 160 taxmann.com 1194 (Bangalore - Trib.)**

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

**4.87 Conditions precedent :** Where assessee sold immovable property and claimed deductions under section 54B and section 54F on ground that sale proceeds were reinvested by assessee in constructing a residential house and purchasing agricultural land, Commissioner (Appeals) having already directed Assessing Officer to allow claim of deduction under section 54B/54F after due verification about fulfillment of conditions contained therein, there was no infirmity in order of Commissioner (Appeals) to call for interference -**TejabhaiNagjibhai Makwana v. Income-tax Officer - [2024] 162 taxmann.com 123 (Ahmedabad - Trib.)**

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

**4.88 Investment :** Where assessee had fulfilled basic condition for claiming exemption under section 54F of having invested net consideration received on sale of original asset, in a new asset/residential house within prescribed period of two years from sale of original asset, there could be no case for denying exemption under section 54F merely for not having deposited balance unutilized amount in Capital Gains Accounts Scheme before due date of filing of return under section 139(1) -**Income-tax Officer v. Jhaveri Sandeep Bipinchandra (HUF) - [2024] 162 taxmann.com 796 (Ahmedabad - Trib.)**

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

**4.89 Sub-section (2)(b) :** Where assessee had acquired certain number of shares of a company without payment and on basis of his holding original shares, since

assessee had not paid any price for acquiring shares, specific provision relating to acquisition of financial asset under section 55(2)(aa)B(iia), without any cost would be applicable and therefore, cost of acquisition of shares which became property of assessee prior to 1-4-2001 was to be taken as nil -**Zash Traders v. A. Commissioner of Income-tax - [2024] 162 taxmann.com 244 (Bangalore - Trib.)**

**4.90 Issue of Shares at premium :**Where assessee had received share premium, since assessee got its share valued from a prescribed expert as per rule 11UA(2)(b) and arrived value of each share at certain sum calculating same as per Discount Cash Flow Method, said valuation done by assessee as per prescribed method could not be rejected -**Shanta Blankets (P.) Ltd. v. Income Tax Officer - [2024] 162 taxmann.com 97 (Delhi - Trib.)**

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

**4.91 Interest :** Where assessee had taken loan which was directly advanced further to an entity and quantum of interest income equated quantum of interest expenditure and, therefore, assessee had shown net interest income at NIL, however, Assessing Officer made addition on account of interest income, since in subsequent year same transaction had been accepted, there was no merit in sustaining addition so made in impugned assessment year and, thus, same was to be deleted -**Charanjeet Kaur v. Deputy Commissioner of Income-tax - [2024] 159 taxmann.com 1625 (Chandigarh - Trib.)**

**4.92 Sub-section (2)(vii)(b) :**Amendment to section 56(2)(vii)(b) made by Finance Act, 2013 with effect from 1-4-2014 whereby difference between stamp duty value and actual sale consideration was made liable for addition as income from other sources is not clarificatory in nature and would be applicable only with effect from 1-4-2014 and not for assessment year 2012-13 -**Pooja Dipen Joshi v. Income-tax Officer - [2024] 162 taxmann.com 768 (Ahmedabad - Trib.)**

**4.93 Sub-Section (2)(vii) :**Where differential amount on account of variation in valuation of two agricultural lands purchased by assessee as compared to their actual purchase price was within statutory tolerance margin of 10 per cent, impugned additions made under section 56(2)(vii)were to be deleted -**Mahesh Ramkrishna Bhingare v. Joint Commissioner of Income-tax - [2024] 162 taxmann.com 608 (Nagpur - Trib.)**

**4.94 Loan :** Where assessee received loan from seven loan creditors and Assessing Officer treated entire loan credit as unexplained cash credit in hands of assessee on protective basis since substantive additions had been made by department in case of 4 loan creditors, out of which, 3 loan creditors had already paid tax on due taxes on their unaccounted income and source of LTCG stood explained, protective additions in hands of assessee were not sustainable in eyes of law and same were to be deleted -**Dev Darshan Designs (P.) Ltd. v. Income-tax Officer - [2024] 162 taxmann.com 793 (Kolkata - Trib.)**



- 4.95 Loan** : Where assessee had taken loan from two parties, since assessee had discharged its initial onus by showing identity and creditworthiness of lenders along with genuineness of transaction by producing confirmation, Ledger, bank statement of lender and income tax returns and assessee had also produced evidence of repayment of loan, impugned addition under section 68 made on account of loan amount received by assessee was not justified -**Deputy Commissioner of Income-tax v. Hetal Nitin Shah - [2024] 159 taxmann.com 1618 (Mumbai - Trib.)**
- 4.96 Unexplained loans** :Where addition under section 68 made by Assessing Officer on account of unsecured loan received by assessee while framing assessment under section 153C was not based on any seized documents or materials impounded in course of search or requisition, no such addition could have been made - **ACIT v. Enpro Telecom (P.) Ltd. - [2024] 162 taxmann.com 620 (Delhi - Trib.)**
- 4.97 Purchases** : Where assessee had furnished details comprising number of goods received, copies of invoices and delivery challans, photograph of products purchased which were given as free along with food products, copies of bank statements reflecting payment made in respect of miscellaneous purchases, addition made under section 68 with reference to Investigation Wing report without carrying on any further investigation was rightly deleted by Commissioner (Appeals) - **ITC Ltd. v. ACIT - [2024] 162 taxmann.com 734 (Kolkata - Trib.)**
- 4.98 Others** : Where cash deposit in bank on account of cash sales and cash realizations from debtors was a normal feature of assessee's business and that cash deposit figures of October and November were a little higher due to cyclic variations, mainly on account of festivals and marriage season in Northern India during that time and cash deposits in November mainly came from opening cash in hand balances on every first day of preceding months of financial year which was maintained by assessee throughout year, impugned addition made under section 68 would not be sustainable -**Rachit Aggarwal (Prop.), Ashok Kumar Gupta & Co. v. Income-tax Officer - [2024] 162 taxmann.com 49 (Chandigarh - Trib.)**
- 4.99 Bank deposits** :Where Assessing Officer had made an addition on account of advance received by assessee under section 68 without considering copy of ITRV, copy of bank account statement and copy of account of V in books of company submitted by assessee before Assessing Officer and Commissioner (Appeals), impugned addition was to be deleted - **JR Properties (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 94 (Chandigarh - Trib.)**
- 4.100 Cash deposits** :Addition made by Assessing Officer on account of cash deposits was to be deleted as it included an amount which was withdrawn and re-deposited by company and amount which was already declared by company as income in its Profit and Loss Account - **JR Properties (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 94 (Chandigarh - Trib.)**
- 4.101 Bank deposits** : Where Assessing Officer had made an addition of amount credited in bank account of assessee-company under section 68, since Assessing Officer did not make any adverse findings in remand report and entire investigation/proceedings of Assessing Officer revolved around stating assessee-company as shell company on dictate of third party, Commissioner (Appeals) was justified in deleting impugned addition holding that identity and creditworthiness of persons from whom such credits were received were proved -**JR Properties (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 94 (Chandigarh - Trib.)**
- 4.102 Share premium** : Where Assessing Officer made addition to income of assessee under section 68 on account of unexplained share premium and share capital, since assessee had furnished copy of certificate of incorporation along with MOA and AOA, auditor's report, balance sheet, trading and profit and loss account as on 31-3-2016 along with notes of financial statement, copy of ITR, share application form, confirmation of account, bank account statement and valuation report as per Rule 11UA(2), addition made under section 68 was to be deleted - **Shanta Blankets (P.) Ltd. v. Income Tax Officer - [2024] 162 taxmann.com 97 (Delhi - Trib.)**
- 4.103 TDS** : Where assessee had filed additional evidence under rule 29 of ITAT Rules, 1963, with regard to mismatch in receipts between profit and loss account and Form 26AS, which was not filed before Assessing Officer, matter was to be remanded back to Assessing Officer for de novo adjudication -**GIIR Communications India (P.) Ltd. v. DCIT- [2024] 162 taxmann.com 598 (Delhi - Trib.)**
- 4.104 Demonetization period** :Where assessee, a NBFC, received cash in old currency during demonetization period between 8-11-2016 to 13-12-2016 towards loan instalments, since assessee submitted names of persons from whom cash was received and maintained KYC documents of all these persons and Assessing Officer had not challenged identity of depositors, genuineness of transactions and creditworthiness of depositors, no addition could be made under section 68 - **Shrijeet Finance (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 243 (Pune - Trib.)**

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

- 4.105 Interest** : Where assessee claimed deduction on account of interest paid on unsecured loans taken by it against interest income received on delayed payment of sale consideration of its proprietary concern, since said interest expenditure was connected with proprietary concern which had been sold and

was not connected in any manner with interest which had been earned on late payment of sale consideration by purchaser company, claim of deduction was not allowable - **Vinod D. Chheda v. Income-tax Officer - [2024] 162 taxmann.com 844 (Mumbai - Trib.)**

**4.106 Interest** : Where assessee, a co-operative society, earned interest on its investments made in co-operative banks, assessee was eligible for claim of its cost of funds on entire interest income - **Saptagiri Pattina Souharda Sahakari Sangha Niyamitha v. Income-tax Officer - [2024] 162 taxmann.com 855 (Bangalore - Trib.)**

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

**4.107 Voluntary surrender** : Where Assessing Officer had made an addition on account of unexplained excess stock under section 69, since there was no excess stock found during course of survey and surrender was taken under coercion and threat by survey team, impugned addition was rightly deleted by Commissioner (Appeals) - **Lachhman Dass Bansal v. DCIT - [2024] 162 taxmann.com 599 (Chandigarh - Trib.)**

**4.108 Seized documents** : Where Assessing Officer on basis of diary seized during course of survey wherein certain names and amounts were written against names, made an addition on account of said unexplained advances under section 69, since there was no tangible material in possession of survey team which demonstrated that assessee had undertaken any such transaction with so called persons so mentioned in diary, impugned addition was to be deleted - **Lachhman Dass Bansal v. DCIT - [2024] 162 taxmann.com 599 (Chandigarh - Trib.)**

**4.109 Gold future contracts** :Where assessee made transactions in Gold Futures Contracts in MCX exchange and trading made by assessee resulted in loss and copy of ledger account provided by MCX was never given to assessee for his rebuttal , AO was not justified in making addition as undisclosed investment in hands of assessee - **Assistant Commissioner of Income-tax v. Yogeshkumar Vinaychandra Parekh - [2024] 162 taxmann.com 121 (Rajkot - Trib.)**

**4.110 Property** : Where AO made addition u/s 69 on account of unexplained investment made by assessee in purchase of a farm house ignoring documentary evidence in form of registered sale deed which is a best evidence for finding actual sale value and in absence of any other material to show that transactions involved in cash outside sale consideration mentioned in sale deed and relying on statements of witnesses which had been retracted thereafter and without granting opportunity to assessee to cross-examine witnesses, addition was liable to be deleted - **Maple Destinations and Dreambuild (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 157 (Delhi - Trib.)**

**4.111 Bogus purchases** :Where Assessing Officer alleging that assessee had made bogus purchases made addition under section 69, in absence of cogent details pertaining to sale transaction and consideration amount by assessee on sale of disputed purchase, Commissioner (Appeals) was justified in restricting addition to 5 per cent of disputed purchase - **Assistant Commissioner of Income-tax v. Jagan Nath Hem Chand Jain - [2024] 162 taxmann.com 195 (Delhi - Trib.)**

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

**4.112 Surrender during survey** :Where cash amounting to Rs. 9.82 lakhs was found during course of survey conducted at assessee's business premises and cash as per books of accounts as on date of survey was Rs. 5.75 lakhs, Assessing Officer was justified in making an addition of Rs. 9.25 lakhs on account of excess cash as unexplained money under section 69A - **Lachhman Dass Bansal v. DCIT - [2024] 162 taxmann.com 599 (Chandigarh - Trib.)**

**4.113 Demonetization period** : Where Assessing Officer made addition on account of cash deposits treating same as unexplained money under section 69A, since such cash deposits were primarily used for making payment to a State Government organization which was dealing in agricultural produce and, thus, prima facie it appeared that cash deposits during demonetization period was representing business transactions, cash deposits made by assessee represented business transactions which could not be made subject to tax under section 69A -- **Bhailalbai Mafatlal Pujara v. Income-tax Officer - [2024] 162 taxmann.com 95 (Ahmedabad - Trib.)**

**4.114 Cash deposits** : Where assessee-firm could not establish source for cash deposits in old currency notes, same was to be brought to tax under section 69A read with section 115BBE - **Joint Commissioner of Income-tax (OSD) v. G.K. Dairy - [2024] 162 taxmann.com 100 (Chennai - Trib.)**

**4.115 Cash deposits** : Unless Assessing Officer points out any defects in books of account maintained by assessee or abnormal deviation in total sales, cash sales and cash deposits , no additions can be made towards cash deposits u/s. 69A - **Joint Commissioner of Income-tax (OSD) v. G.K. Dairy - [2024] 162 taxmann.com 100 (Chennai - Trib.)**

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

**4.116 Investment in flat** : Where assessee purchased a flat along with an unrelated party and respective sale consideration was transferred from bank account of unrelated party without any cash deposits by assessee and unrelated party was able to prove source of investment in purchase of flat, Assessing Officer was not justified in making addition under section 69C in hands of assessee - **Assistant Commissioner of Income-tax v. Yogeshkumar Vinaychandra Parekh - [2024] 162 taxmann.com 121 (Rajkot - Trib.)**



**SECTION 80G OF THE INCOME-TAX ACT, 1961 -  
 DONATIONS - DEDUCTION IN RESPECT OF**

**4.117 Approval under sub-section (5) :** Where assessee-trust was granted provisional approval u.s. 80G(5) and, thereafter, assessee filed application in Form 10AB after delay of more than six months, Commissioner (Exemption) denied said claim before issue of CBDT Circular No.07/2024, dated 25-4-2024, since Tribunal was not vested with power to condone delay in filing application u.s. 80G(5), denial of grant of approval u.s. 80G(5) was justified - **Smt. Mangla RamniwasMandhani ABMM Awas Yojana Foundation v. CIT (Exemption) - [2024] 162 taxmann.com 842 (Pune - Trib.)**

**4.118 Approval of institutions - Date of application :** After grant of provisional approval, application for final registration could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration and under such circumstances, date of commencement of activity would be counted when an activity was undertaken after grant of provisional registration either under clause (i) or clause (iv) to first proviso to section 80G(5) - **Rajbalhat Cultural Circle v. Comm. of Income-tax(Exemptions) - [2024] 162 taxmann.com 769 (Kolkata - Trib.)**

**4.119** Where assessee-trust incorporated in 1974 filed application in Form No. 10AB u.s. 80G(5)(iii) and CIT(E) rejected application on ground that application was not filed within time-limit stated in section 80G(5)(iii), since assessee having been incorporated in 1974, it was not possible to file application within six months of commencement of its activities, as per provisions of section 80G(5)(iii) delay in filing Form 10AB, u.s. 80G(5)(iii) was to be condoned - **Shri Kabir Kirti Mandir Kashi v. Commissioner of Income-tax (Exemption) - [2024] 162 taxmann.com 735 (Rajkot - Trib.)**

**4.120** Word 'or within six months of commencement of its activities, whichever is earlier' applies for those trusts/institutions which have not started charitable activities at time of obtaining provisional registration; for existing trust/institution, time limit for applying for regular registration is within six months of expiry of provisional registration if they are applying under sub-clause (iii) of proviso to section 80G(5) - **VallabhdasValjiJilhaVachanalaya v. Commissioner of Income-tax (Exemption) - [2024] 162 taxmann.com 678 (Pune - Trib.)**

**4.121** Where CIT(E) rejected assessee-trust's final registration u.s. 80G(5) due to late submission of Form No. 10AB on 23.11.2022, overlooking Circular No. 6 of 2023 dated 24-05-2023, matter would be remanded to CIT(E) for reconsidering Form No.10AB for final registration u.s. 80G by providing opportunity of proper hearing to assessee-trust - **Avani Thakkar Charitable Trust v. Commissioner of Income-tax (Exemption) - [2024] 161 taxmann.com 812 (Ahmedabad - Trib.)**

**4.122 Approval under sub-section (5) :** Where assessee-trust had filed Form 10AB for grant of final registration u.s. 80G on 4-2-2023 i.e. within extended timeline provided by CBDT Circular No. 6/2023 dated 24-5-2023 with respect to final registration of Trust u.s. 12A in Form 10AB i.e. 30-9-2023, matter was to be remanded to file of Commissioner (Exemption) for re-deciding issue of grant of final registration under section 80G(5), on merits, as per law - **Adani Education Foundation v. Commissioner of Income Tax, (Exemption) - [2024] 162 taxmann.com 40 (Ahmedabad - Trib.)**

**4.123** Where assessee-trust, previously approved under section 80G(5) since 2021, had to reapply approval due to a 2020 amendment and despite applying for provisional approval under Clause (iv), they later sought final approval under Clause (iii) which was rejected by CIT (E), since technical errors caused confusion, leading to misinterpretation by both parties, consequently CIT (E) was instructed to grant provisional approval to assessee under Clause (iii) if eligible and decide on final approval within two months - **MallarpurNaisuva v. Commissioner of Income-tax (Exemptions) - [2024] 162 taxmann.com 120 (Kolkata - Trib.)**

**4.124 Registration :** words, 'within six months of commencement of its activities' in sub clause (iii) of proviso to section 80G(5) apply in context of newly formed trust/institution; for existing Trust/Institution, time limit for applying for regular registration is within six months of expiry of provisional registration if they are applying under sub-clause (iii) of proviso to section 80G(5) - **Birmani Charitable Foundation v. The Commissioner of Income-tax (Exemption) - [2024] 162 taxmann.com 154 (Pune - Trib.)**

**4.125 Approval under sub-section (5) :** Where application for final registration of assessee trust had been filed within six months from date of approval of provisional registration it was to be construed as being within time limit stipulated under clause (iii) of first proviso to section 80G(5) considering extensions provided under CBDT circular Nos. 6/2023 dated 24-5-2023 and 7/2024 dated 25-4-2024 - **Indian Red Cross Society v. Commissioner of Income-tax - [2024] 162 taxmann.com 194 (Chandigarh - Trib.)**

**4.126** Where CIT(E) rejected assessee-trust's application for approval under section 80G due to lack of valid registration under section 12A, since matter in relation to grant of registration under section 12A was restored to file of CIT(E), for de-novo consideration, accordingly, this matter would also be restored to file of CIT(E) for de-novo consideration - **Bhojalram Leuva Patel Seva Samaj Trust v. Commissioner of Income-tax (Exemptions) - [2024] 162 taxmann.com 270 (Ahmedabad - Trib.)**

**4.127 Approval under sub-section (5) :** For existing trusts/institutions, time-limit for applying for regular registration is within six months of expiry of provisional registration if they are applying under clause (iii) of first proviso to section 80G(5) - **T. B. Lulla Charitable Foundation v. Commissioner of Income-tax (Exemption) - [2024] 162 taxmann.com 75 (Pune - Trib.)**

**SECTION 80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS**

- 4.128** Where Commissioner (Appeals) had made general and balled observations while granting deduction claimed by assessee under section 80IA without analysing details of all specific work executed by assessee in which assessee had claimed that it acted as developer and claimed to be eligible for deduction under section 80IA, matter was to be restored back to Commissioner (Appeals) for fresh adjudication - *ACIT v. M.S.Khurana Engineering Ltd.* - [2024] 162 taxmann.com 7 (Ahmedabad - Trib.)

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

- 4.129 Audit report** :Where claim of deduction under section 80JJAA had been rejected by CPC for reason that assessee failed to file Form 10DDA within prescribed time under Statute, however, requisite audit report was available with Assessing Officer before assessment order was framed, claim of deduction could not have been denied - *Akuntha Projects (P.) Ltd. v. Deputy Director-CPC* - [2024] 162 taxmann.com 861 (Ahmedabad - Trib.)

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

- 4.130 Interest** :Where assessee, a co-operative society, earned interest on its investments made in co-operative banks, since interest income received by assessee was not attributable to main business of assessee, same could not be allowed as deduction under section 80P(2)(a)(i) - *Saptagiri Pattina SouhardaSahakari Sangha Niyamitha v. Income-tax Officer* - [2024] 162 taxmann.com 855 (Bangalore - Trib.)
- 4.131 Rectification of mistake** : Where AO in view of decision of Supreme Court in two cases where benefit of deduction under section 80P was denied as in facts of that case assessee was dealing with non-members and had violated principles of mutuality, rectified its order under section 154 holding that deduction under section 80P was wrongly granted to assessee in instant case, since AO had not mentioned that assessee had violated principles of mutuality by dealing with non-members, issue was not a mistake apparent on record which was amenable to rectification under section 154 - *Town VividodeshaSahakariBhandaraNiyamitha v. Income-tax Officer* - [2024] 159 taxmann.com 1601 (Bangalore - Trib.)

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

- 4.132 Elimination of double taxation - Foreign tax credit** : Where assessee claimed relief with respect to tax paid in Kenya as per section 90/91 for assessment years

2015-16 and 2016-17 and AO denied said claim by invoking rule 128 on ground that Form no. 67 was required for availing tax credit, since rule 128 has been inserted by Income Tax (18th Amendment) Rules, 2016 and has made applicable with effect from 1-4-2017, same couldnot be made applicable for relevant assessment years and assessee's claim was to be allowed - *KEC International Ltd. v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 234 (Mumbai - Trib.)

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

- 4.133 Corporate guarantee** : Provision of guarantees is in nature of international transactions and, therefore, Commissioner (Appeals) was justified in confirming made to ALP of corporate guarantee - *Sun Pharmaceutical Industries Ltd. v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 50 (Ahmedabad - Trib.)

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

- 4.134 Adjustments - Volume and geographical adjustments** : Where TPO had rejected assessee's claim to grant business volume discount adjustment and geographical difference adjustment while determining Arms Length Price (ALP) of its international transaction with its associate enterprise, in view of fact that in earlier years assessee had been allowed such adjustments, issue was to be restored to TPO to readjudicate - *Atul Ltd. V. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 862 (Ahmedabad - Trib.)

- 4.135 Methods for determination of - TNMM** :Where assessee was engaged in manufacturing and trading activities - and TPO aggregated said activities and benchmarked said transactions by adopting TNMM at entity level analysis , since assessee submitted that all relevant details of segmental analysis of AE transactions as well as non AE transactions , TPO should consider only segmental results of AE transactions and apply internal TNMM - *Imerys Ceramics India (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 864 (Hyderabad - Trib.)

- 4.136 Adjustments** : When details as to international transactions with AEs and non-AEs are available, margins relating to AE segment alone should be considered - *Imerys Ceramics India (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 864 (Hyderabad - Trib.)

- 4.137 Methods of application** : In case of distributors, RPM is most appropriate method - *Imerys Ceramics India (P.) Ltd. v. Deputy Commissioner of Income-tax* - [2024] 162 taxmann.com 864 (Hyderabad - Trib.)

- 4.138 Methods for determination of- TNM method** : Where assessee, a stock broker, charged higher brokerage from its non-AEs as compared to AEs, and TPO adopted CUP method as MAM to benchmark said transaction, since assessee was required to provide broader range of services



vis-a-viz services to AE FII clients and TPO had not given a specific finding as to what was similarity in services rendered to AEs and non AEs provided by assessee pertaining to brokerage commission received by assessee, TNMM was MAM for benchmarking said transaction - **CLSA India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 863 (Mumbai - Trib.)**

**4.139 Methods for determination of- TNM method** :Where assessee paid brand fee to its AE for use of its brand name and TPO applied CUP on ground that no other group entities of CLSA had paid any royalty for use of its brand, since different group entities had different arrangements with CLSA and were engaged in market contributions with CLSA, there was no necessity of payment of royalty in those cases and thus, TNMM was MAM for benchmarking said transaction - **CLSA India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 863 (Mumbai - Trib.)**

**4.140 Methods for determination of- TNM method** : Where assessee had entered into an agreement with its AE for reimbursement of indirect expenses and used TNMM to benchmark said transaction, however TPO rejected same merely on ground that assessee had failed to substantiate its claim by any documentary evidences, since TPO had not applied any of prescribed methods mentioned in provisions to determine ALP of said transactions, as one of prescribed method for benchmarking said transaction, ad hoc addition made were to be deleted - **CLSA India (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 863 (Mumbai - Trib.)**

**4.141 Method** : Where Assessing Officer made transfer pricing adjustment in respect of international transactions of assessee and TPO rejected CPM method adopted by assessee, since TPO had not looked into appropriate method taking into consideration assessee's manufacturing activities and its sale transactions, matter was to be remanded back - **Skaps Industries India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 675 (Ahmedabad - Trib.)**

**4.142 Adjustments - International transactions with AEs** :While benchmarking import transaction under Transactional Net Margin Method (TNMM), adjustment, if any, was to be restricted only to extent of international transactions carried out by assessee and not to entire segment of manufacturing activity - **Deputy Commissioner of Income-tax v. Bunge India (P.) Ltd. - [2024] 162 taxmann.com 632 (Mumbai - Trib.)**

**4.143 Methods for determination of - Rule 10B** :Where assessee provided management consultancy services to its AEs and to unrelated parties and applied CUP method comparing hourly rate charged to AEs and Non-AE, to justify Internal CUP, since assessee had earned significantly higher profit margins in AE segment vis-à-

vis non-AE segment, internal TNMM was to be given preference over external TNMM analysis, however since CUP applied by assessee did not have any flaw or error, same was to be accepted - **The Boston Consulting Group (India) (P.) Ltd. v. DCIT - [2024] 162 taxmann.com 271 (Mumbai - Trib.)**

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

**4.144 Scope of provisions** :Existence of an 'arrangement' is a condition precedent to trigger provisions of section 80IA(10) and in its absence, business transacted between eligible units and its AE do not get covered within ambit of Specified Domestic Transactions (SDTs) defined u.s. 92BA and eventual TP analysis - **Mankind Pharma Ltd. v. DCIT - [2024] 162 taxmann.com 235 (Delhi - Trib.)**

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

**4.145 Comparability factors - Abnormal events** :Where selected company had undergone an extraordinary event of amalgamation and there was financial impact on funds of company, said company could not be selected as comparable to assessee - **Tech Mahindra Business Services Ltd. v. A. Commissioner of Income-tax - [2024] 162 taxmann.com 643 (Mumbai - Trib.)**

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

**4.146 Book profits** :Reopening of an assessment is unwarranted when tax liability under MAT provisions remains higher and unchanged despite adjustments made under normal tax provisions - **Genus Power Infrastructure Ltd. v. Assistant Commissioner of Income-tax - [2024] 162 taxmann.com 730 (Delhi - Trib.)**

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

**4.147** Where assessee-company filed its income tax return for assessment year 2021-22 on 30.12.2021, opting for reduced taxation u.s. 115BAA, but Commissioner (Appeals) dismissed it due to late filing of Form 10-IC, since Circular No. 19/2023 issued by CBDT allowed for condonation of delay in filing Form No. 10-IC for AY 2021-22, and assessee fulfilled all conditions laid in said circular including timely return filing and electronic submission of Form 10-IC, it would be eligible for concessional tax rate u.s. 115BAA - **Sunpack Barrier Films (P.) Ltd. v. A. Director of Income-tax - [2024] 162 taxmann.com 200 (Ahmedabad - Trib.)**

**4.148 Filing of Form 10-IC** :Where assessee, a domestic company, had uploaded Form 10-IC electronically on 2-5-2021 i.e. before cut-off date mentioned in CBDT circular No. 6/2022, dated 17-3-2022, i.e. 30-6-2022, assessee was entitled to benefit of section 115BAA(1) for purpose of computation of income at rate mentioned thereunder - **Madison Communications (P.) Ltd. v. A. Commissioner of Income-tax - [2024] 162 taxmann.com 280 (Mumbai - Trib.)**

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

**4.149 Adjustment for disallowance under section 14A** :No adjustment to book profits is permissible on account of disallowance of expenses made under section 14A in terms of provisions of section 115JB -**Atul Ltd. V. Deputy Commissioner of Income-tax - [2024] 162 taxmann.com 862 (Ahmedabad - Trib.)**

**4.150 Provision for diminution in value of assets/Provision for bad debts** :Where provision on account of bad and doubtful debts and on account of diminution in value of assets, had been created by correspondingly reducing value of respective assets, no adjustment in terms of explanation 1(1) to section 115JB was warranted on account of these provisions -**Cadila Pharmaceuticals Ltd. v. ACIT - [2024] 162 taxmann.com 229 (Ahmedabad - Trib.)**

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

**4.151 Principles of natural justice** : Where AO made adjustment by making disallowance for certain amount under section 143(1) on basis of entry made by tax auditor in Form 3CD and omission of same in returned income, since under intimation authority of AO was limited to carry out adjustment based on return of income and document provided and in view of fact that tax auditor had categorized said amount as penalty, amount was prima facie disallowable under section 143(1)(a)(iv) and AO was not required to pass a speaking order for said adjustment made in strict terms -**Joyo Plastics v. A. Commissioner of Income-tax. - [2024] 162 taxmann.com 836 (Mumbai - Trib.)**

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

**4.152** Where onerous proceedings under section 153C has not been invoked and could not possibly be invoked, there was no impediment for initiating proceedings under section 147; where Assessing Officer had received information from Investigation that assessee had made purchase transaction with supplier belonging to Group which during search was found to be engaged in providing accommodation entries in grabe of sales, reopening of assessment was justified - **Assistant Commissioner of Income-tax v. Jagan Nath Hem Chand Jain - [2024] 162 taxmann.com 195 (Delhi - Trib.)**

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

**4.153 Jurisdiction** : Where reassessment proceedings were initiated by non-jurisdictional Assessing Officer, and later on, case was transferred to jurisdictional Assessing Officer for completion of reassessment, since non-jurisdictional Assessing Officer had no jurisdiction over assessee, reassessment made by jurisdictional

AO on basis of notice issued u.s. 148 by non-jurisdictional AO was to be quashed -**Saroj Sangwan v. ITO - [2024] 162 taxmann.com 704 (Delhi - Trib.)**

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

**4.154 Condition precedent** :Where search was conducted on 16-2-2018 and as per section 153A assessment for assessment years 2017-18 and 2018-19 were abated, AO was competent to pass asst. order u.s. 153A r.w.s 143(3) for these years - **JR Properties (P.) Ltd. v. DCIT - [2024] 162 taxmann.com 94 (Chandigarh - Trib.)**

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

**4.155 Limitation** : Where there was no specific date of handing over of material in satisfaction note, date of satisfaction note was to be reckoned as date of handing over material and time limit of calculating six years was to be calculated from this date for purpose of section 153C -**ACIT v. Enpro Telecom (P.) Ltd. - [2024] 162 taxmann.com 620 (Delhi - Trib.)**

**4.156 Limitation period** :Where in case of assessee, asst order was passed on 30-12-2011 but it was issued and dispatched on 02-01-2012 as per report of post office after limitation period expired on 31-12-2011, since asst order had already gone out of control of AO on 30-12-2011, it was within period of limitation as per section 153B -**S.P. Kohli v. ACIT - [2024] 162 taxmann.com 282 (Indore - Trib.)**

**SECTION 153D OF THE INCOME-TAX ACT, 1961 -  
SEARCH AND SEIZURE**

**4.157** When there is an approval u.s. 153D, revisionary powers u.s. 263 cannot be exercised - **Gyan Infrabuild (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 162 taxmann.com 664 (Patna - Trib.)**

**SECTION 167B OF THE INCOME-TAX ACT, 1961 -  
ASSOCIATION OF PERSONS - CHARGE OF TAX**

**4.158 Applicability of** : Where assessee, a charitable trust, was a public body, there was no question of its beneficiaries being individual members, whose shares had to be defined and, thus, section 167B prescribing maximum marginal rate would not apply -**MahakaviEdasseriSmaraka Trust v. Income-tax Officer (Exemptions) - [2024] 162 taxmann.com 44 (Cochin - Trib.)**

**SECTION 194LBC OF THE INCOME-TAX ACT, 1961 -  
DEDUCTION OF TAX AT SOURCE - INCOME BY WAY OF  
INTEREST ON SECURITIES, ETC.**

**4.159 Excess Interest Spread** :Where assessee, a securitization trust, made payment to originator, as per RBI guidelines, since originator was neither a holder of any securitized debt instrument, securities or security receipts, it could not be regarded as an investor and, thus, payment made to originator was not covered within purview of section 194LBC - **Income-tax Officer v. Syamantaka IFMR Capital 2017 - [2024] 162 taxmann.com 705 (Mumbai - Trib.)**



**SECTION 234E OF THE INCOME-TAX ACT, 1961 -  
FEE - FOR DEFAULT IN FURNISHING STATEMENTS**

- 4.160 Scope of provision :** Where assessee, a recognized fund, paid interest to provident fund account holder after deduction of tax at source and deposited TDS timely and filed TDS return in Form No. 26Q and later on when it came to know that data of same deduction was to be filled in Form No. 26Q it made efforts to file correction statement but Traces had not allowed to do so and, therefore, assessee filed TDS return in another Form No. 26Q, levy of late fee was not justified - **Birla Cement Works STFF Provident fund v. Income-tax Officer (Exemption)** - [2024] 161 taxmann.com 574 (Jodhpur - Trib.)

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

- 4.161** Interest received on income tax refund and the interest paid on delayed payment of income tax both have same character and as such if interest received from tax department exceeds interest paid, then only net amount could be taxed - **ITC Ltd. v. ACIT** - [2024] 162 taxmann.com 734 (Kolkata - Trib.)

**SECTION 249 OF THE INCOME-TAX ACT, 1961 -  
COMMISSIONER**

- 4.162 Appeals :** Where assessee had no taxable income, there is no obligation cast upon assessee to compute/pay 'advance tax' under sections 208 and 209, and in such circumstances Commissioner (Appeals) could not have held that assessee had failed to comply with statutory conditions contemplated in section 249(4)(b) - **Vishnusharan Chandravanshi v. Income-tax Officer** - [2024] 161 taxmann.com 803 (Raipur - Trib.)

**SECTION 250 OF THE INCOME-TAX ACT, 1961 -  
INCOME-TAX AUTHORITIES - POWERS OF**

- 4.163 Additional evidence :** Commissioner (Appeals) is to exercise his power within provision of law for admission of additional documents instead of getting guided by comment of Assessing Officer in remand report - **Bhailalbhai Mafatlal Pujara v. Income-tax Officer** - [2024] 162 taxmann.com 95 (Ahmedabad - Trib.)

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

- 4.164** Where assessee's declared agricultural income was found to be a long-term capital gain and AO classified land as a capital asset based on its proximity to municipality, and CIT(A) accepted additional evidence from assessee showing a greater distance and allowed appeal, since assessment was based on materials not given to assessee for examination and rebuttal, order of CIT(A) even though in violation of Rule 46A(1) would be upheld due to denial of natural justice during assessment - **Income-tax Officer v. Babu Chandrathil George** - [2024] 162 taxmann.com 596 (Cochin - Trib.)

**SECTION 254 OF THE INCOME-TAX ACT, 1961, READ  
WITH ORDER XLVII, RULE 1 OF THE CODE OF CIVIL  
PROCEDURE, 1908 - APPELLATE TRIBUNAL - POWERS  
OF**

- 4.165 Power to review :** Where already existing judgment of Jurisdictional High Court is not brought to notice or attention of Tribunal, then Tribunal can recall order while exercising powers under section 254(2); Order of Tribunal cannot be recalled based on subsequent judgment of Supreme Court when order of Tribunal had attained finality between parties - **Deputy Commissioner of Income Tax v. ANI Integrated Services Ltd.** - [2024] 162 taxmann.com 889 (Mumbai - Trib.)

- 4.166 Condonation of delay :** Where assessee filed an appeal before Tribunal against order of Principal Commissioner passed under section 263 after a delay of 1740 days contending that there was a delay in filing appeal as income tax practitioner of assessee did not advise assessee to file appeal against order passed by Principal Commissioner under bona fide belief that order passed by Principal Commissioner was not appealable, mistake of lawyer or accountant was a good reason for condonation of delay, therefore, said delay of 1740 days was to be condoned - **Chirag P. Thummar v. Principal Commissioner of Income-tax** - [2024] 159 taxmann.com 1628 (Surat-Trib.)

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

- 4.167 Opportunity of hearing :** Where order passed by Principal Commissioner under section 263 was an ex parte order and non-speaking order and that assessee was not given sufficient opportunity of being heard and he could not plead his case successfully before Principal Commissioner, impugned order passed by Principal Commissioner under section 263 was to be set aside and matter was to be remanded back for fresh adjudication on merits - **Chirag P. Thummar v. Principal Commissioner of Income-tax** - [2024] 159 taxmann.com 1628 (Surat-Trib.)

- 4.168 Proposal of AO :** Where Principal Commissioner issued notice under section 263 and on basis of audit objections and proposal of AO only, jurisdiction under section 263 was invoked and exercised by Principal Commissioner to hold assessment order to be erroneous, it established non-application of independent mind and, thus, impugned order was to be set aside - **AhlconParenterals (India) Ltd. v. Principal Commissioner of Income-tax** - [2024] 162 taxmann.com 759 (Delhi - Trib.)

- 4.169 Scope of provision :** Where Assessing Officer had conducted detailed enquiry, examined seized records, made necessary observations in assessment order, referred to various statements filed by assessee and having taken one of legally permissible view, revisionary powers could not be exercised just on ground that adequate enquiry had not been done - **Gyan Infrabuild (P.) Ltd. v. Principal Commissioner of Income-tax** - [2024] 162 taxmann.com 664 (Patna - Trib.)

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

**4.170 Scope of :** Where assessee sold land but did not file her return of income under section 139(1) but had filed it only in response to notice under section 148 that too by computing capital gains based on value in registered sale deed and not by adopting provisions of section 50C, such act of assessee amounted to concealment of income, therefore, penalty levied upon assessee under section 271(1)(c) was justified -**Meka Ranganayakamma v. Income-tax Officer - [2024] 159 taxmann.com 1621 (Visakhapatnam - Trib.)**

**4.171 Computation of penalty :** Where assessee paid self-assessment tax prior to issue of reopening notice and AO levied penalty equivalent to 100 per cent of tax sought to be evaded on ground that assessee did not file a valid return under section 139, as per Explanation 4 to section 271(1)(c) amount of tax to be evaded was to be determined by taking into consideration amount of tax on total income assessed as reduced by amount of advance tax, TDS, TCS and self-assessment tax paid before issue of reopening notice, since in instant case amount of tax sought to be evaded was nil, impugned penalty was to be deleted -**Smt. Kavita Sachdev v. Income-tax Officer - [2024] 162 taxmann.com 642 (Indore - Trib.)**

**SECTION 282 OF THE INCOME-TAX ACT, 1961 - SERVICE  
OF NOTICE - GENERAL**

**4.172 Illustration :** Where notice under section 148 dated 27-3-2017 was claimed to be served upon assessee on 20-3-2017, that was beyond human probabilities and, thus, such factual mistakes and errors in dates mentioned on notice, and that of date of issue and date of service rendered basic foundation of assessment erroneous and void ab-initio -**Mandeep Malli v. ACIT - [2024] 162 taxmann.com 637 (Amritsar - Trib.)**

**4.173 Affixture :** Where Assessing Officer issued reopening notice to assessee by way of affixture through inspector without presence of two independent witnesses of neighbourhood as per procedure laid down in section 282 read with Rule 12, 17 and Rule 19 of Order V of Civil Procedure Code, 1908, such service of notice was invalid -**Mandeep Malli v. ACIT - [2024] 162 taxmann.com 637 (Amritsar - Trib.)**



## Status of Private Trust- A conundrum



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1. The present article deals with the status in which a private trust is to be assessed under the Income-tax Act, 1961 (hereinafter referred to as the Act) and the issues revolving around the same.
2. In so far as implementation of the Act is concerned, the tax liability depends upon a person by whom any sum of money is payable under the Act and such person is popularly known as “assessee” under section 2(7) of the Act.
3. The word person is defined in Section 2(31) of the Act as follows: -

"person" <sup>14</sup> includes -	
(i)	an individual <sup>14</sup> ,
(ii)	a Hindu undivided family <sup>14</sup> ,
(iii)	a company,
(iv)	a firm <sup>15</sup> ,
(v)	an association of persons <sup>15</sup> or a body of individuals <sup>15</sup> , whether incorporated or not,
(vi)	a local authority, and
(vii)	every artificial juridical person, not falling within any of the preceding sub-clauses.
	<sup>16</sup> [Explanation.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains

4. Now a question arises as to how a private trust is to be assessed under the Income-tax Act for which purpose it has to be seen as to under which of the above categories in Section 2(31), the private trust has to fall so that the tax liability of such trust can be determined.
5. This also becomes relevant for the purpose of getting Permanent Account Number (PAN) in the name of such private trust since before making such an application, it must be decided as to under which category as above the private trust falls. This is in view of the provisions of Section 139A of the Act which deals with PAN and every person if he fulfills certain categories as laid down in the said section has to make an application for PAN and the relevant Rule in this regard is contained in Rule 114 of the Income-tax Rules, 1962[hereinafter referred to as the Rules]. In so far as the said rule is concerned, the said rule refers to the various categories of persons as above, though in relation to Association of Persons (AOP) it further divides such AOPs into two categories as i) AOP[Trust] and ii) AOP (other than trusts).
6. The above bifurcation of AOP into two categories thus gives an impression that a private trust is to be treated as AOP and that too for the purpose of making application for PAN, it has to make an application in the category of AOP (trust). The said interpretation is however based on the plain and simple analysis and is not borne out of any authoritative source.
7. In order to go deeper into this aspect, it will be appropriate to refer to the meaning of the term "Association of Persons". The said term is nowhere defined in the Act and Rules and therefore the interpretation of this has to be borrowed from the judicial decisions in this regard.
8. In the case of CIT, Bombay Vs Indira Balkrishna (1960) 39 ITR 546(SC), the apex court was considering the meaning of the term AOP under the Income-tax Act, 1961. The apex court noted that the Act does not define AOP which is an unit of assessment u/s 3 of the Act. Prior to the year 1924, the said Section 3 did not contain AOP as an unit of assessment and by the Income-tax Amendment Act of 1924(Act XI of 1924), the word AOP was added. In the absence of any definition as to what constitutes an association of persons, the court noted that we must construe the words in their plain ordinary meaning



and we must also bear in mind that the words occur in a section which imposes a tax on the total income of each one of the units of assessment mentioned therein including an association of persons. The meaning to be assigned to the words must take colour from the context in which they occur. The court noted three decisions as follows: -

A). In re: B. N. Elias and Others (1935)3ITR 408.

B) Commissioner of Income-tax, Bombay v. Laxmidas Devidas and Another (1937)5 ITR 584 and

C) In re: Dwarakanath Harishchandra Pitale and Another (1937)5 ITR 716.

In re: B. N. Elias and Others, Derbyshire, C. J., rightly pointed out that the word "associate" means, according to the Oxford dictionary, "to join in common purpose, or to join in an action." Therefore, an association of persons must be one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains. This was the view expressed by Beaumont, C. J., in Commissioner of Income-tax, Bombay v. Laxmidas Devidas and Another at page 589 and also in Re: Dwarakanath Harishchandra Pitale and Another. In re: B. N. Elias (3) Costello, J., put the test in more force full language. He said "It may well be that the intention of the legislature was to hit combinations of individuals who were engaged together in some joint enterprise but did not in law constitute partnership. When we find that there is a combination of persons formed for the promotion of a joint enterprise then I think no difficulty arises in the way of saying that these persons did constitute an association. We think that the aforesaid decisions correctly lay down the crucial test for determining what is an association of persons within the meaning of s. 3 of the Income-tax Act, and they have been accepted and followed in a number of later decisions of different High Courts to all of which it is unnecessary to call attention. It is, however, necessary to add some words of caution here. There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the meaning of s. 3; it must

depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not.

9. Thus, ordinarily by AOP it is meant combination of persons formed for the promotion of a joint enterprise for the purpose of producing profits and gains.
10. The aforesaid decision of Supreme Court in the case of Indira Balkrishna(supra) was followed by the Calcutta high court in the case of CIT Vs Shri Krishna Bhandar Trust(1993) 201 ITR 989(Cal) when the respondent trust in this case was allowed deduction u/s 80L of the Income-tax Act,1961 which otherwise was available only to individuals and the department argued that the said respondent assessee was AOP which was not entitled to claim deduction u/s 80L. On these facts the Hon'ble Judges referring to the law on the subject referred to the decision in the case of Suhashini Karuri v. WTO [1962] 46 ITR 953(cal), where it was held that joint trustees must be taken to be a single unit in law and not as an " association of persons " and there is nothing wrong in treating such a unit as " an individual ". Again, in CIT v. Sodra Devi [1957] 32 ITR 615, the Supreme Court held that the word " individual " does not mean only a human being, but is wide enough to include a group of persons forming a unit. Moreover, In Mammad Keyi v. WTO [1966] 60 ITR 737, the Full Bench of the Kerala High Court held (Velu Pillai J. dissenting) that the term "individual" in Section 3 of the Wealth-tax Act, includes a Moplah Muslim family which is governed by the usages similar to those that governed a Hindu undivided family. Thereafter the Ld judges went on to observe that it is now well-settled that the word "individual" does not necessarily and invariably always refer to a single natural person. A group of individuals may as well come in for treatment as an individual under the tax laws if the context so requires. We may also refer to the decision in CIT [1969] 74 ITR 33, wherein the Supreme Court has observed that there could be no reason why the word "individual" in 3 of the Indian Income-tax Act, 1922, should be restricted to human being alone and not to juristic entities. Thus, finally the Court held that the trust was to be treated as an individual and the deduction u/s 80L was correctly allowed.
11. Thus, the law is fairly settled that the status of a private discretionary trust is to be treated as Individual, with a caveat that the beneficiary of such trust are all individuals, and it



doesn't matter whether the beneficiaries are one or one thousand. The said decision was followed by Delhi High court in the case of CIT Vs Food Corporation of India Contributory Provident Fund Trust(2009) 318 ITR 318(Delhi) where the said assessee with employees of food corporation of India being the beneficiaries claimed the status of individual and the HighCourt relying on catena of judicial decisions also noted that underSection 160 and 161 of the act,the trustees are the representative assesseein respect of the income accruing to the trust. The trustees thus in accordance with the provisions of section 161 of the act are amenable to tax as well as eligible to all exemptions, deductions and benefits which would be available to the beneficiaries that is members who are individuals as per their entitlements, if there were to be individually hold said assets. It is thus clear that the trustees bear the same status under the act as that of the beneficiaries whom they represent.

12. Thus, the law can be said to be fairly settled that the status of the trust is to be determined by the status of the beneficiaries and thus if the beneficiary of a trust is individual, the status of such trust will be individual. On the other hand, if the beneficiaries are non individual, like companies, firm, HUFs etc, then the status of such would accordingly be Company, Firm or HUF as the case may be. There is no decision however, which deals with a situation where the beneficiaries are mixed i.e., individual as well as non-individual which case will have to be settled in future as and when it arises.
13. Thus care must be taken while making application for PAN as well as while filing the return of income of a private trust. In this regard, the CBDT also acknowledged the said difficulty in the software and issued a circular No 6/2012[F.N. 133/44/2012-SO(TPL)] and allowed manual filing of the return.
14. Until the Income-tax Act and the software incorporates the above conundrum, the difficulties continue.

# GST & INDIRECT TAXES

## 1. STATUTORY UPDATES

### 1.1 NIC to launch E-Way Bill 2 Portal on 1st June 2024

**Editorial Note :** NIC is releasing the E-Way Bill 2 Portal i.e. <https://ewaybill2.gst.gov.in> on 1st June 2024. This portal will ensure high availability and will run in parallel to the e-way Bill main portal i.e. <https://ewaybillgst.gov.in>. The e-way bill 2 portal will synchronize the e-way bill details with main portal.

### 1.2 Government has notified jurisdictional changes of GST Authorities in the State of Rajasthan - **Notification No. 10/2024-CENTRAL TAX, Dated 29-05-2024**

**Editorial Note :** The GST law provides that the Government can appoint officers under GST by issuance of notification. In exercise of said power, the Government has made changes in the jurisdiction of Principal Commissioners of Central Tax or the Commissioners of Central Tax in the regions of Alwar, Jaipur, Jodhpur, and Udaipur in Rajasthan.

## 2. SUPREME COURT

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

2.1 Supreme Court had issued notice against order of high court in which it was held that no right, title and ownership was created in favour of petitioner-assessee, therefore, transfer of development rights to petitioner-assessee was amenable to GST; Supreme Court had not stayed operation of impugned judgment/order, therefore, taxes would have to be paid - **Prahitha Constructions (P.) Ltd. v. Union of India - [2024] 162 taxmann.com 640 (SC)**

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

2.2 Transitional Credit whether deniable on ground of procedural issue i.e. filing of Form Tran-1/Tran-2 offline instead of online on account of technical glitches in system. Apex Court dismisses Revenue's appeal on ground of delay - **Deputy Commissioner, State Tax v. Tata Steel Centre - [2024] 162 taxmann.com 26 (SC)**

## 3. HIGH COURT

### SECTION 2(118) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - VOUCHER

3.1 Where assessee was engaged in business of managing and implementing various reward programmes for its corporate clients and it included buying and selling gift vouchers on behalf of clients, since impugned order was unreasoned in respect of imposition of GST on vouchers, same was to be set aside and matter was to be remanded back to Adjudicating Authority for fresh consideration - **Nexus Innovative Solutions (P.) Ltd. v. Additional Commissioner of Central Taxes - [2024] 161 taxmann.com 374 (Madras)**

### SECTION 6 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - GST AUTHORITIES AND ADMINISTRATION - STATE/UNION TERRITORY TAX OFFICERS, AUTHORIZATION OF

3.2 Where for same cause of action, Central Authority had already initiated action and had passed an Order-in-Original, State Authorities could not initiate fresh proceedings - **Dott Services Ltd. v. State of Telangana - [2024] 161 taxmann.com 654 (TELANGANA)**

3.3 Assesseees who are assigned to either Central Tax authorities or State Tax authorities under respective Central Goods and Services Tax Act, 2017 and/or State Goods and Services Tax Act, 2017 cannot be subjected to further proceeding by counterparts under respective GST enactments - **Ram Agencies v. Assistant Commissioner of Central Tax - [2024] 162 taxmann.com 240 (Madras)**

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

3.4 Where provisions of section 108 of Finance Act, 2021 introducing section 7(1)(aa) under CGST Act, w.e.f. 1-7-2017, challenged, by introducing section 7(1)(aa), for purposes of section 2(84) of CGST Act, person and its members or constituents shall be deemed to be two separate persons, impugned demand notice for past 4 assessment years issued based on above amendment was to remain stayed till next date of hearing - **Huda Urban Estate and Town and Country Planning Employees Welfare Organization v. Union of India - [2024] 162 taxmann.com 847 (Punjab & Haryana)**

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

3.5 Where work of supplying manpower had already been commenced by respondent no.2-successful bidder and principles of judicial review in tender matters were very narrow in such matters, therefore, writ petition was dismissed - **Itcon e-solutions (P.) Ltd. v. Amravati Municipal Corporation - [2024] 162 taxmann.com 795 (Bombay)**

**3.6** Budgetary support under Budgetary Support Scheme is in nature of grant and not refund of duty under taxation law and when a procedure is prescribed, assessee while seeking grant of budgetary support, is required to follow that procedure and not work out a different procedure for authorities to follow; Since scheme required assessee to file claim on quarterly basis, however same was filed on monthly basis, assessee was not entitled to any relief against order rejecting claim of assessee - **Glenmark Pharmaceuticals Ltd. v. Union of India** - [2024] 162 taxmann.com 295 (SIKKIM)

**3.7** Effect and operation of Circular No. 204/16/2023-GST, dated 27-10-2023 regarding taxability of corporate guarantee by a person on behalf of another related person, or by holding company for sanction of credit facilities to its subsidiary company, to bank/ financial institutions shall remain stayed - **Acme Cleantech Solutions (P.) Ltd. v. Union of India** - [2024] 162 taxmann.com 151 (Punjab & Haryana)

**3.8** Mango pulp supplied by assessee to 100% Export Oriented Unit would fall under third category of mangos (other than sliced, dried) and would be liable to levy at 12 percent as per SI No 16 of Schedule II of Notification 1/2017-Central Tax (Rate) with effect from 1-07-2017 - **Vimal Agro Products (P.) Ltd. v. Union of India** - [2024] 162 taxmann.com 54 (Gujarat)

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

**3.9** Notified Area Authority, Vapi is neither a "local authority" nor a "Governmental Authority" carrying out any activity in relation to any function entrusted to Panchayat under Article 243G of Constitution or in relation to any function entrusted to Municipality under Article 243W of Constitution - **Nepra Resources Management (P.) Ltd. v. State Of Gujarat** - [2024] 162 taxmann.com 63 (Gujarat)

**SECTION 13 OF THE INTEGRATED GOODS AND SERVICES ACT, 2017 - SUPPLY - PLACE OF SUPPLY - SERVICES WHERE LOCATION OF SUPPLIER/RECIPIENT IS OUTSIDE INDIA**

**3.10** Where assessee participated in jewellery exhibition outside India, supply of services had taken place outside India, as per Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 issued in exercise of powers conferred under sub-section(3) of section 5 of IGST Act, receiver of service i.e., assessee was person registered in taxable territory, services received outside India, taxable at hand of assessee - **Savio Jewellery v. Commissioner, Central Goods and Service Tax** - [2024] 162 taxmann.com 607 (Rajasthan)

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

**3.11** Where impugned order challenged with respect to discrepancies between GSTR 3B return and GSTR 2A return, in show cause notice Input Tax Credit (ITC) reflected in GSTR 2A was higher than that availed by assessee and reflected in GSTR 3B return, imposition of GST on excess amount reflected in GSTR 2A return untenable, impugned order was to be set aside - **Larsen & Toubro Ltd. v. Assistant Commissioner (ST)(FAC)** - [2024] 162 taxmann.com 797 (Madras)

**3.12** Where cess was paid by enclosing relevant GSTR 3B return, still imposed liability with regard to cess, show cause notice called upon assessee as to why ITC should not be reversed in relation to duty credit scrips, in impugned order, said amount treated as turnover from scrips, assessee not provided opportunity to show cause with regard to treating value of scrips as turnover, findings in relation thereto not sustainable - **Larsen & Toubro Ltd. v. Assistant Commissioner (ST)(FAC)** - [2024] 162 taxmann.com 797 (Madras)

**3.13** Where petition challenged orders denying input tax credit due to bogus inward supplies from non-existent firms not receiving actual goods despite initial registration, High Court upheld revenue's action, ruling that mere registration is insufficient when supplier is non-existent, deciding against assessee/petitioner - **Rajshi Processors v. State of U.P.** - [2024] 162 taxmann.com 770 (Allahabad)

**3.14** Where a writ petition was filed seeking declarations regarding denial of Input Tax Credit due to invoice filing discrepancies under CGST Act, but the court denied relief due to limitation issues and non-compliance with statutory requirements, despite the petitioner's arguments and respondents' counterpoints - **Tycoons Industries (P.) Ltd. v. Eastern Coalfields Ltd.** - [2024] 162 taxmann.com 707 (Jharkhand)

**3.15** Where ITC available in auto-populated GSTR 2A exceeded ITC availed of in assessee's GSTR 3B returns, prima facie, GST liability would arise only if there was sales suppression; although impugned order was passed imposing tax liability on assessee as assessee failed to reply to SCN, impugned order was to be set aside and matter was to be remanded for re-consideration by putting assessee on terms - **Sri Krishna Fabricators (India) (P.) Ltd. v. Assistant Commissioner (ST)** - [2024] 162 taxmann.com 259 (Madras)

**3.16** Where assessee filed writ petition challenging order passed by Adjudicating Authority on ground that it did not have a reasonable opportunity to contest tax demand on merits, said order was to be set aside and Adjudicating Authority was to be directed to provide a reasonable opportunity to assessee on condition that assessee remitted 10 percent of disputed tax amount - **Gauresh Industries v. Deputy State Tax Officer** - [2024] 162 taxmann.com 184 (Madras)



**3.17** Where show cause notice issued on assessee alleging wrong availment of ITC, tax proposal confirmed largely on ground that there was no proof of actual movement of goods, assessee had submitted original tax invoices, ledger account, bank statement showing payments made to supplier and relevant GSTR 2A returns indicating availability of ITC, assessee was to be provided an opportunity to produce relevant documents to prove actual movement of goods, impugned order was to be set aside - **Ravi Chitra v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 242 (Madras)**

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

**3.18** Where respondent authority while passing impugned order in original had failed to examine as to whether tax liability may be imposed on assessee when relevant goods or services do not fall within reverse charge mechanism, impugned order was to be set aside and matter was to be remanded for re-consideration - **JSR Infra Developers (P.) Ltd. v. State Tax Officer - [2024] 162 taxmann.com 223 (Madras)**

**3.19** Where assessee was denied ITC on purchase of tipper lorry on ground that same was covered under restriction imposed under section 17(5)(a), an opportunity was to be granted to assessee to substantiate its claim that said vehicle was purchased in furtherance of business, thus, impugned order was to be set aside and matter was to be remanded on condition that assessee remitted 10 per cent of disputed tax amount - **Tvl. Devi v. Deputy State Tax Officer-1 - [2024] 162 taxmann.com 212 (Madras)**

**3.20** Where no input tax credit was available in credit ledger, Rule 86A does not provide for insertion of negative balance in ledger; what is permissible is only to block electronic credit ledger and under no circumstances there could be an order for insertion of negative balance in ledger - **Laxmi Fine Chem v. Assistant Commissioner - [2024] 161 taxmann.com 270 (Telangana)**

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

**3.21** Where registration of assessee was cancelled with retrospective effect vide impugned order, since show cause notice and impugned order did not contain any cogent reason for retrospective cancellation, also assessee was not put to notice for retrospective cancellation, impugned order was to be set aside and registration of assessee was to be restored - **Sunrise India v. Commissioner, Delhi Goods and Service Tax - [2024] 162 taxmann.com 378 (Delhi)**

**3.22** Where assessee application of assessee seeking cancellation of registration was rejected and subsequently registration was cancelled retrospectively vide impugned order, since show cause notice and impugned orders did not spell out reason for retrospective cancellation, impugned order was to be modified to extent that registration was to be treated as cancelled from date when assessee filed application seeking cancellation of GST registration - **Swati Gupta v. Commissioner of Delhi GST - [2024] 162 taxmann.com 379 (Delhi)**

**3.23** Where notice issued to assessee requiring it to furnish additional information/clarification did not mention that assessee had to appear for personal hearing and also did not indicate name or designation of officer where assessee had to appear, order rejecting application of assessee seeking cancellation of registration was to be set aside and matter was to be remanded - **Shoppers Home v. Pr. Comm. of GST - [2024] 162 taxmann.com 373 (Delhi)**

**3.24** Where Assessee/Petitioner's GST registration cancelled retrospectively from 01.07.2017; High Court modified order treating registration cancelled from 25.04.2022, date petitioner applied for cancellation, as retrospective cancellation under Section 29(2) requires reason and cannot be done mechanically - **Ravi Parkash Goel v. Sales Tax Officer - [2024] 162 taxmann.com 840 (Delhi)**

**3.25** Where High Court directed GSTN authority to file affidavit explaining functioning of GST portal regarding show cause notice for cancellation of registration, particularly on aspects like reasons reflected, incorporation of additional grounds, signature of proper officer, information to assessee, and manner of suspension of registration - **R.A. International v. Commissioner of CGST - [2024] 162 taxmann.com 812 (Delhi)**

**3.26** Where response filed by petitioner-assessee to show cause notice issued by respondent-department was not considered by respondent-department, further, appeal against cancellation order was rejected on ground of limitation where appellate authority was competent to condone delay of one month beyond prescribed period under Section 107, therefore, cancellation order, order dismissing application for rejection of cancellation and appellate order were set aside - **Ashoke Mukherjee v. Commissioner, WBGST - [2024] 162 taxmann.com 807 (Calcutta)**

**3.27** Where assessee filed application for cancellation of registration on 21-5-2019 on ground of closure of business, impugned order cancelling registration with retrospective effect was to be modified to extent that registration shall be treated as cancelled with effect from 30-4-2019 i. e., date from which assessee sought cancellation of GST registration; Merely, because a taxpayer had not filed returns for some period did not mean that taxpayer's registration was required to be cancelled with retrospective date also covering period when returns were filed and taxpayer was compliant - **Kalpna Cables Products (P.) Ltd. v. Commissioner, Department of Trade and Taxes - [2024] 161 taxmann.com 830 (Delhi)**

- 3.28** Where assessee had closed its business and applied for cancellation of its GST registration but said application had not been disposed of, Competent Authority was directed to decide application of assessee for cancellation of registration - **JVN Traders (P.) Ltd. v. Principal Commissioner of Department of Trade and Taxes - [2024] 161 taxmann.com 829 (Delhi)**
- 3.29** Where registration of assessee was cancelled retrospectively vide impugned order, which did not spell out reason for retrospective cancellation, since assessee did not wasn't to continue with business, impugned order was to be modified to extend that registration was to be treated as cancelled from date of show cause notice - **Mukesh Kumar Singh v. Commissioner of Delhi GST - [2024] 162 taxmann.com 298 (Delhi)**
- 3.30** Where Show Cause Notice was itself defective and cancellation order was cryptic without any reason, therefore, cancellation order could not be sustained; however, since, petitioner-assessee did not seek to carry on business or continue with registration, impugned cancellation order was to be modified to limited extent that registration should be treated as cancelled with effect from date of order i.e. 02.08.2023 and not retrospectively - **Arvind Sharma v. Superintendent - [2024] 162 taxmann.com 696 (Delhi)**
- 3.31** Where assessee sought cancellation of registration on ground of closure of business however same was rejected and registration of assessee was cancelled retrospectively vide impugned order, since assessee was not put to notice about retrospective cancellation, impugned order was to be modified to extent that registration was to be treated as cancelled from date when assessee made application for cancellation - **Chima Ram Harnand Rai v. Principal Commissioner, Department of Trade and Taxes - [2024] 162 taxmann.com 211 (Delhi)**
- 3.32** Since no physical/offline notice was issued to or served on assessee before cancelling its registration and essential requirement of rules of natural justice had remained to be fulfilled, impugned order was to be set aside - **Chemsilk Commerce (P.) Ltd. V. State of U.P. - [2024] 162 taxmann.com 14 (Allahabad)**
- 3.33** Merely because a taxpayer had not filed returns for some period did not mean that taxpayer's registration was required to be cancelled with retrospective date also covering period when returns were filed and taxpayer was compliant - **Bakshi Aerosole v. Commissioner of DGST, Delhi - [2024] 161 taxmann.com 726 (Delhi)**
- 3.34** Where assessment order was passed against assessee for non-filing of GSTR-3B return for month of August, 2022 and liability was imposed entirely on

basis of assessee's turnover of March 2022 and assessee asserted that no business was carried on in August 2022, Therefore, impugned order was to be set aside and matter was to be remanded for reconsideration after providing a reasonable opportunity of hearing - **Sarvagya Infrastructure (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 161 taxmann.com 380 (Madras)**

- 3.35** Where registration of assessee was cancelled on ground that it had not filed returns for a continuous period of six months, since assessee had not filed appeal within prescribed period and also did not avail Amnesty Scheme by which it could restore its registration on payment of all dues, writ petition was to be dismissed - **Pachtaki Infotech (P.) Ltd. v. Union of India - [2024] 161 taxmann.com 835 (Patna)**
- 3.36** Where assessee impugned show cause notice proposing cancellation of GST registration of assessee for issuing invoices or bills without supply of goods or services, notice and did not give any details or particulars and in reasons column had merely extracted provisions of law, notice was defective and bereft of any details, impugned notice was to be set aside - **Rajesh Kumar Singhal v. Goods and Services Tax Network - [2024] 162 taxmann.com 239 (Delhi)**
- 3.37** Where GST registration of assessee cancelled retrospectively w.e.f. 1-7-2017, assessee closed it's business in March, 2021, impugned show cause notice issued on ground that assessee had not filed returns, impugned notice did not put assessee to notice that registration liable to be cancelled retrospectively, order of cancellation was to be modified to operate w.e.f. 2-9-2021, i.e., date of issue of notice - **Ansh Telecom v. Commissioner of DGST - [2024] 162 taxmann.com 269 (Delhi)**

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

- 3.38** Where assessee has delayed in filing application for revocation of GST registration cancellation, Court can condone delay and direct authorities to consider revocation application upon assessee complying with required conditions like payment of taxes, interest, late fees, and penalties - **Mohapatra Engineering, v. Joint Commissioner of State Tax (Appeal) - [2024] 162 taxmann.com 777 (Orissa)**
- 3.39** Where assessee's application for revocation of cancellation of registration rejected on ground of limitation, subject to assessee depositing all taxes, interest, late fee, penalty, etc., due and complying with other formalities, delay in invoking proviso to Rule 23 of OGST Rules to be condoned and assessee's application for revocation was to be considered in accordance with law - **Achyuta Nanda Sethi v. Deputy Commissioner of State Tax, CT & GST - [2024] 162 taxmann.com 743 (Orissa)**
- 3.40** Delay in invoking proviso to Rule 23 by petitioner-assessee was to be condoned and application for revocation of cancellation of registration was to be considered in

accordance with law by respondent-department as long as petitioner-assessee deposited all taxes, interest, late fee, penalty etc. due and comply with other formalities - **BB Medicare (P.) Ltd. v. CT & GST Officer, Bhubaneswar-II - [2024] 162 taxmann.com 668 (Orissa)**

**3.41** Where assessee filed writ petition stating that it could not file Form GSTR-3B due to suspension of GSTIN and sought direction to GST Authorities to open portal so as to enable it to file return, delay in filing revocation application was to be condoned and GST Authorities were to be directed to open portal subject to assessee depositing all taxes, interest, late fee, penalty etc. - **Kintali Sunil Kumar Patro v. State Tax Officer, CT and GST - [2024] 162 taxmann.com 258 (Orissa)**

**3.42** Where assessee filed writ petition stating that it could not file Form GSTR-3B due to suspension of GSTIN and sought direction to GST Authorities to open portal so as to enable it to file return, delay in filing revocation application was to be condoned and GST Authorities were to be directed to open portal subject to assessee depositing all taxes, interest, late fee, penalty etc. - **Bisan Singh v. Commissioner of CT and GST - [2024] 162 taxmann.com 179 (Orissa)**

**3.43** Where registration of assessee was cancelled for failure to respond to show cause notice and assessee undertook to deposit taxes, penalty along with interest, Competent Authority was to be directed to restore GST number of assessee and thereafter assessee was to deposit taxes, penalty along with interest - **Bashir Ahmad Dar v. Union Territory of Jammu & Kashmir - [2024] 162 taxmann.com 176 (Jammu & Kashmir and Ladakh)**

#### SECTION 38 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RETURNS - INWARD SUPPLIES, FURNISHING DETAILS OF

**3.44** Without initiating any adjudication proceedings under sections 73 or 74 of the CGST Act 2017, where liability had been disputed, department could not raise a demand for payment of interest on delayed furnishing of Return under section 39 of the CGST - **East India Udyog Ltd. v. State of Jharkhand - [2024] 162 taxmann.com 106 (Jharkhand)**

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

**3.45** Where impugned order was passed imposing penalty on assessee for non-filing of annual return, whereas assessee submitted that turnover of assessee did not cross threshold limit of 2 crores, thus he was not required to file return, impugned order was to be set aside and matter was to be remanded for re-consideration - **Tvl. Jones Enterprises v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 222 (Madras)**

#### SECTION 47 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RETURNS -LATE FEE

**3.46** When Government itself had waived late fees with under notifications No.7/2023-Central Tax and Notification No 25/2023-Central Tax in excess of Rs.10,000, in case of non-filers of annual return GSTR 9C, there appears to be no justification in continuing with notices for non payment of late fee for belated GSTR 9C, therefore notice issued to assessee demanding late fees was unjust and unsustainable to extent it sought to collect late fee for delay in filing GSTR 9C - **Anishia Chandrakanth v. Superintendent, Central Tax and Central Excise - [2024] 162 taxmann.com 115 (Kerala)**

#### SECTION 49 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - PAYMENT OF TAX - INTEREST, PENALTY AND OTHER AMOUNTS

**3.47** Where claim of assessee for GST amount (differential tax liability) for works executed under agreement was rejected by Executive Engineer of respondent-organization who did not have jurisdiction to pass said order, same was to be set aside and matter was to be remanded for fresh consideration - **Mother India Construction (P.) Ltd. v. Bihar Urban Infrastructure Development Corporation Ltd. - [2024] 162 taxmann.com 296 (Patna)**

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

**3.48** Where writ petition challenged an order imposing interest and penalty despite assessee having discharged GST liability prior to show cause notice, court disposed of petition by permitting assessee to file statutory appeal before appellate authority on remitting sum towards interest liability, subject to appeal being decided on merits without considering question of limitation - **Alamelu Construction v. Assistant Commissioner of GST & Central Excise - [2024] 162 taxmann.com 728 (Madras)**

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

**3.49** Where procedural barriers prevented the petitioner from rectifying deficiencies on the GST portal for an ITC refund claim, interest of justice warranted allowing the petitioner to submit the required documents manually, thus the competent authority was directed to consider the refund claim accordingly - **Little Brain Works (P.) Ltd. v. Union of India - [2024] 162 taxmann.com 876 (Andhra Pradesh)**

**3.50** Supply of services by a subsidiary of a foreign company to its holding company situated outside India is export of service and condition in section 2(6)(v) is not attracted - **Vuram Technology Solutions (P.) Ltd. v. Additional Commissioner of GST (Appeals) - [2024] 162 taxmann.com 380 (Madras)**

**3.51** Where assessee filed a refund application claiming refund of GST on account of tax paid for services provided by it by way of conducting examinations and said application was



rejected on ground that assessee had claimed refund referring to a circular and not produced any asst/provisional asst/appeal/any other order in support of claimed refund, impugned order was to be set aside and matter was to be remanded for consideration afresh - **National Board of Examination in Medical Sciences v. Union of India** - [2024] 162 *taxmann.com* 305 (Delhi)

**3.52** Where assessee had paid advance to its vendor for purchase of goods and also paid GST thereon and subsequently vendor did not supply goods however vendor had paid GST amount of assessee to respondent authority, there being no liability of GST upon assessee or his vendor, said GST amount was to be refunded to assessee - **Nam Estates (P.) Ltd. v. Joint Commissioner of Commercial Taxes (Appeals-I)** - [2024] 162 *taxmann.com* 302 (Karnataka)

**3.53** Where assessee filed refund claim and no deficiency memo issued despite statutory period of 60 days lapsing, proper officer directed to expedite processing refund application, dispose within two weeks as per law, petitioner permitted to avail further remedies against order on refund and interest claim - **Aj Flight Reservations (P.) Ltd. v. Commissioner of CGST** - [2024] 162 *taxmann.com* 709 (Delhi)

**3.54** Where assessee could not filed refund application online due to glitch on portal, however filed manual application, respondent authority was to be directed to consider date of filing of refund application to be preferred by assessee as date of filing manual refund application as relevant date for purpose of limitation - **ADM Agro Industries India (P.) Ltd. v. Union of India** - [2024] 161 *taxmann.com* 230 (Gujarat)

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

**3.55** Where claim for interest on delay in refund of unutilized ITC by department rejected, specific provision u.s. 56 for grant of interest only in event of delay in making of refund by department, no reason or material available with department for not releasing refund amount promptly respondents-authorities were to be directed to make payment of interest on delayed refund - **Qualcom India (P.) Ltd. V. Deputy Commissioner (ST)(FAC)** - [2024] 161 *taxmann.com* 819 (Telangana)

**3.56** For calculation of interest on delayed refund of unutilised ITC, order by Appellate Authority, Tribunal or Court of law, as case may be, has to be treated as order passed under sub-section (5) of section 54, interest to be calculated immediately after sixty days within which payment of refund was to be made starts as per section 56 - **Qualcom India (P.) Ltd. V. Deputy Commissioner (ST)(FAC)** - [2024] 161 *taxmann.com* 819 (Telangana)

#### SECTION 60 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - PROVISIONAL ASSESSMENT

**3.57** Where assessee filed writ petition challenging order of Adjudicating Authority and stated that it was unable to reply to show cause notice or participate in proceedings because such notice and order were only uploaded on 'view additional notices and order' tab of GST Portal and not communicated to assessee through any other mode, impugned order was to be set aside and Adjudicating Authority was to be directed to issue a fresh order after providing an opportunity to assessee - **Tvl. Aditya Automobiles v. Assistant Commissioner (State Tax)** - [2024] 161 *taxmann.com* 690 (Madras)

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

**3.58** Where assessee failed to file GSTR-3B return by due date but filed it after 30 days along with interest and late fee upon receiving best judgment assessment order, High Court allowed writ petition by relying on its earlier judgment and permitted assessee to file application for condonation of delay - **R. Ponnarasu v. Commissioner of Commercial Taxes** - [2024] 162 *taxmann.com* 870 (Madras)

**3.59** Where an audit was conducted and an audit report was issued and thereafter impugned assessment order was passed, petitioner was to be provided an opportunity to submit relevant documents - **Bajrang Clothing v. State Tax Officer (FAC)** - [2024] 161 *taxmann.com* 725 (Madras)

**3.60** Where registration of petitioner was cancelled and subsequently impugned assessment order was issued after issuing show cause notice to assessee on portal, assessee could not be expected to monitor GST portal in same manner as a registered person for receiving notices, thus impugned order was to be quashed and subject to assessee remitting 10 percent of disputed tax demand, fresh order was to be passed - **ShowkathussainMohamedismaile v. Deputy State Tax Officer** - [2024] 161 *taxmann.com* 229 (Madras)

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

**3.61** Where pursuant to an audit under section 65 of CGST Act, 2017, a show cause notice was issued to petitioner and respondent No. 2 passed an assessment order on 29-12-2023, since impugned order was vitiated by non-consideration of petitioner's reply and respondent was directed to provide a reasonable opportunity to petitioner, including a personal hearing, and thereafter issue a fresh order - **Tokyo Zairyo (India) (P.) Ltd. V. Assistant Commissioner** - [2024] 161 *taxmann.com* 695 (Madras)

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

**3.62** Where assessee/petitioner challenged show cause notices for GST and cess on alleged clandestine cigarette supply,

High Court directed revenue to release non-relied documents, grant 30 days for reply, provide personal hearing, and permit cross-examination of witnesses at an appropriate stage - **Elora Tobacco Co. Ltd. v. Union of India** - [2024] 162 taxmann.com 835 (Madhya Pradesh)

- 3.63** Where assessee challenged an interim order and contended that as per Section 67(7), seized goods must be returned if no notice is given within six months of seizure, and time cannot be extended without sufficient cause, since assessee even failed to differentiate stock belonging to them and also failed to produce valid documents in earlier of order of writ petition, assessee was not entitled for any relief and instant writ appeal was to be dismissed - **Kanak Timber House v. Assistant Commissioner of State Tax Bureau of Investigation (S.B.)** - [2024] 162 taxmann.com 107 (Calcutta)

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

- 3.64** Where assessee transported goods in vehicle without valid e-way bill due to break down of original vehicle, there being no intention to evade tax, tax and penalty could not be imposed on it - **Nikita Singhania v. Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal** - [2024] 161 taxmann.com 691 (Calcutta)

#### SECTION 69 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

- 3.65** Where petitioner, accused in a bribery case was granted interim bail, investigation going on till date of hearing, after obtaining FSL reports and after concluding investigation, final challan report under section 173(8) Cr.P.C to be submitted in Special Court, considering period of pre-trial incarceration of more than two months, there was no justification for further pre-trial incarceration, interim order was to be made absolute - **Prem Raj Meena v. State of Haryana** - [2024] 162 taxmann.com 603 (Punjab & Haryana)

#### SECTION 73 OF THE FINANCE ACT, 1994 - RECOVERY OF SERVICE TAX NOT LEVIED OR PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED

- 3.66** Where Competent Authority had confirmed demand of service tax against assessee and also imposed penalty, since assessee contended that impugned order was passed without service of any notice on it and it was willing to cooperate in proceedings, impugned order was to be set aside and matter was to be remanded back to Competent Authority for fresh decision - **Shiva Veener (India) (P.) Ltd. v. Union of India** - [2024] 162 taxmann.com 372 (Allahabad)

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

- 3.67** Where respondent-department passed assessment order against petitioner-assessee without providing opportunity of personal hearing to petitioner-assessee, therefore, impugned asst order was set aside and matter was remanded for reconsideration - **L & T Finance Ltd. v. Assistant Commissioner** - [2024] 162 taxmann.com 868 (Madras)
- 3.68** Where impugned order was passed imposing penalty at 100 percent on assessee, in view fact that show case notice was issued to assessee u.s. 73, however in impugned order reference was also made to section 74, impugned order was to be set aside and matter was to be remanded on condition that assessee remitted 10 percent of disputed tax amount - **Silambuchelvi v. Commercial Tax Officer (ST) (FAC)** - [2024] 162 taxmann.com 374 (Madras)
- 3.69** Where tax proposal was confirmed vide impugned order in view of assessee's failure to reply to SCN, same was to be set aside subject to condition that assessee remitted 10 percent of disputed tax demand, and after affording opportunity of hearing to assessee, fresh asst order was to be issued - **Sre Panneerselvam Tex v. Commissioner of Commercial Taxes** - [2024] 162 taxmann.com 375 (Madras)
- 3.70** Where assessee/petitioner contended that turnover reported in GSTR-1 was erroneously stated as higher amount due to error, HC quashed impugned asst order and order rejecting rectification petition, remanding matter back to revenue authorities to allow assessee/petitioner to establish correct turnover - **Parthasarathy Narasimhan v. Deputy Commercial/State Tax Officer** - [2024] 162 taxmann.com 811 (Madras)
- 3.71** Where impugned order in original was passed confirming tax demand as assessee failed to reply to SCN or attend personal hearing, in interest of justice, impugned order was to be set aside and matter was to be remanded for reconsideration on condition that assessee remitted 10 percent of disputed tax demand - **Sebon Creations v. Asst Commissioner (ST)** - [2024] 162 taxmann.com 371 (Madras)
- 3.72** Where assessee did not participate in asst proceedings due to lack of communication, HC quashed impugned asst order subject to condition of remitting 10% of disputed tax demand and permitted assessee to file reply and avail personal hearing - **Tvl. MSS Projects v. Assistant Commissioner (ST)** - [2024] 162 taxmann.com 809 (Madras)
- 3.73** Where revenue authorities confused assessee's reply on GSTR-1 and GSTR-3B mismatch with issue of reverse charge liability, High Court quashed impugned order and remanded matter to provide opportunity to assessee to file reply on reverse charge issue - **MSR Engineering Company v. The Assistant Commissioner (ST) FAC** - [2024] 162 taxmann.com 800 (Madras)

- 3.74** Where revenue authorities confused assessee's reply on GSTR-1 and GSTR-3B mismatch with issue of reverse charge liability, High Court quashed impugned order and remanded matter to provide opportunity to assessee to file reply on reverse charge issue - **MSR Engineering Company v. The Assistant Commissioner (ST) FAC - [2024] 162 taxmann.com 800 (Madras)**
- 3.75** Where assessee filed detailed replies to show cause notice, proposing demand of certain amount on ground that assessee has availed more ITC in GSTR-3B as compared to ITC available in GSTR-2A, short payment of tax as compared to GSTR-1 and that input tax credit has been wrongly availed and utilized by assessee, Adjudicating Authority had to at least consider replies on merit and then form an opinion and if it was of view that any further details were required, same could have been specifically sought from assessee - **Dish TV India Ltd. v. GST Officer - [2024] 161 taxmann.com 827 (Delhi)**
- 3.76** Where two different officers of same jurisdictional office had passed two separate orders creating demand of identical amount against assessee for tax period July, 2017 to March, 2018, said orders were to be set aside and proceedings on show cause notices were to be re-adjudicated by one proper officer - **Dinesh Kumar Varma v. Sales Tax Officer, Avato, Delhi - [2024] 161 taxmann.com 826 (Delhi)**
- 3.77** Where impugned order against assessee was passed without providing reasonable opportunity of being heard, matter was to be remanded back to authority for fresh consideration after providing such opportunity - **Navbharat Boilers v. Assistant Commissioner - [2024] 162 taxmann.com 306 (Madras)**
- 3.78** Where assessee filed writ petition challenging order passed under section 73(9) and contended that he was unaware of proceedings culminating in impugned order, since DRC 7 was uploaded on porta, impugned order was to be set aside and GST Officer was to be directed to issue a fresh order on condition that assessee remitted Rs. 15 lakhs towards tax demand - **Nagaraj Sangiah v. Superintendent of GST & Central Excise (Grp-IV) - [2024] 162 taxmann.com 301 (Madras)**
- 3.79** Where assessee's tax liability was confirmed by impugned order as he failed to reply or appear for personal hearing, impugned order was to be set aside and matter was to be remanded for reconsideration on condition that assessee remitted 10 percent of disputed tax demand - **Muthu Traders v. Deputy Commercial Tax Officer - [2024] 162 taxmann.com 300 (Madras)**
- 3.80** Where impugned order was passed confirming tax liability of assessee as assessee had failed to reply to show cause notice, same was to be set aside subject to condition that assessee remitted 10 percent of disputed tax amount and a fresh order was to be issued after providing reasonable opportunity including a personal hearing to assessee - **Sree Manoj International v. Deputy State Tax Officer - [2024] 162 taxmann.com 264 (Madras)**
- 3.81** Where pursuant to impugned assessment orders, bank account of assessee was attached and a sum was appropriated therefrom, however, assessee was unaware of proceedings culminating in impugned orders as he was under complete bed rest on doctor's advice, impugned order was to be set aside subject to condition that assessee remitted 10 per cent of disputed tax demand in respect of each assessment period - **Lakshmi and Co. v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 260 (Madras)**
- 3.82** Where assessee filed a detailed reply to show cause notice but Adjudicating Authority in impugned order merely held that reply was not found to be satisfactory and since no further opportunity was given to assessee to submit further details or documents, impugned order was to be set aside and matter was to be remanded for re-adjudication - **Kalpatru Projects International Ltd. v. Goods and Service Tax Officer - [2024] 162 taxmann.com 224 (Delhi)**
- 3.83** Where impugned show cause notice proposing a demand against assessee had been disposed of by impugned order and demand including penalty had been raised against assessee, since proper officer had not given any opportunity to assessee to submit clarification/documents, impugned order was to be set aside and matter was to be remanded to proper officer for re-adjudication - **Central Govt. Employees Consumer Coop. Society Ltd. v. Commissioner, State Goods and Service Tax Delhi &Anr. - [2024] 162 taxmann.com 210 (Delhi)**
- 3.84** Where impugned order was passed confirming tax proposal on ground that assessee did not respond to show cause notice, since assessee's reply to notice in Form GST ASMT-10 was not taken into consideration in impugned order, impugned order was to be set aside and matter was to be remanded for re-consideration - **Imperial Shipping Service v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 218 (Madras)**
- 3.85** Where tax proposal under section 73 of CGST Act was confirmed only because assessee failed to reply to show cause notice by enclosing relevant documents, intimation and show cause notice were uploaded on "View Additional Notices and Orders" tab on GST portal, impugned order was to be set aside and assessee permitted to contest tax demand on merits - **Silver & C.Z. International v. Assistant Commissioner (ST) (FAC) - [2024] 162 taxmann.com 641 (Madras)**
- 3.86** Where impugned order passed against assessee creating demand without issuing show cause notice, impugned passed against mandate of section 73 of CGST Act, was to be set aside - **Laxmi Traders v. Principal Commissioner of GST Department of Trade & Taxes - [2024] 162 taxmann.com 651 (Delhi)**



- 3.87** Where despite ample opportunities, assessee failed to reply or prove his claim for ITC, writ petition of assessee challenging asst order disallowing claim of assessee and raising demand was to be dismissed - **M.J. Gold v. State Tax Officer - [2024] 161 taxmann.com 662 (Kerala)**
- 3.88** Since assessee was not heard before asst order was issued, principles of natural justice warrant interference so as to provide an opportunity to assessee to contest tax demand, thus, order demanding tax was to be set aside and the matter is remanded for reconsideration - **New Dolphin Machining Solutions v. Asst Comm. (ST)(FAC) - [2024] 161 taxmann.com 816 (Madras)**
- 3.89** Where assessee filed a detailed reply to show cause notice, Adjudicating Authority was required to consider same on merits and then form an opinion and if it was of view that any further details were required, same could have been specifically sought from assessee - **Biba Fashion Ltd. v. Government of NCT of Delhi - [2024] 161 taxmann.com 399 (Delhi)**
- 3.90** Where assessee appealed against a Single Judge's order, which non-suited them on grounds of alternate remedy, assessee was denied an opportunity of hearing as mandated by section 75(4) before passing an adverse order u.s. 73, since principles of natural justice was warranted, assessee has right to invoke Article 226 of Constitution of India, consequently order passed by Single Judge was to be set aside - **Mahindra & Mahindra Ltd. v. Union of India - [2024] 162taxmann.com53 (Chhattisgarh)**
- 3.91** Where petitioner filed a detailed reply to SCN proposing demand, if AO was not satisfied with reply of assessee, further detailed should have been sought before forming an opinion, thus ex-parte impugned order passed by AO confirming demand was to be set aside and matter was to be remitted for fresh adjudication - **Larsen and Toubro Ltd. v. Commissioner of Delhi Goods and Service Tax - [2024] 161 taxmann.com 227 (Delhi)**
- 3.92** Where petitioner was prevented from filing a response to SCN on account of serious illness of her husband, order passed disposing of SCN proposing a demand including penalty solely on ground that no reply/explanation had been received from taxpayer was to be set aside - **Anita Bansal v. Union of India - [2024] 161 taxmann.com 396 (Delhi)**
- 3.93** Where assessee did not participate in proceedings culminating in impugned asst order, since assessee did not contest tax demand on merits, it was just and appropriate to provide assessee an opportunity of personal hearing and permit to submit a reply to SCN, to do so by putting assessee on terms to remit 10 per cent of disputed tax demand - **S M J Marble & Granite v. Assistant Commissioner (ST) - [2024] 161 taxmann.com 379 (Madras)**
- 3.94** Where assessee did not participate in proceedings and tax demand was confirmed with penalty at 100 percent of tax amount, it is just and appropriate that assessee be provided an opportunity to contest said demand and therefore order confirming tax demand was to be set aside subject to condition that assessee remits 10 percent of disputed tax - **Tvl. Ravisandran v. Asst. Comm. (ST) -0 [2024] 162 taxmann.com 162 (Madras)**
- 3.95** Where revenue issued a notice u.s. 73 (1) stating assessee failed to had failed to produce any evidence from which it could be ascertained that suppliers had paid tax to Government on those supplies (which are disclosed/ admitted by suppliers in their statement in GSTR-I) and that assessee had availed and utilized Input Tax Credit (ITC) in contravention of Section 16(2)(c), however assessee provided certificates from CAs confirming suppliers' tax discharge, but revenue rejected them without inquiry, leading to an erroneous demand confirmation, therefore order confirming demand against assessee was to be set aside - **Lokenath Construction (P.) Ltd. v. Tax/Revenue, GoWB - [2024] 162 taxmann.com 156 (Calcutta)**
- 3.96** Where confirmed tax demand related to discrepancies between input tax credit claimed by assessee in Form GSTR 3B on comparison with GSTR 2B, such tax demand could not have been confirmed without assessee being heard, impugned order was to be set aside on condition that assessee remits 10 per cent of disputed tax demand and thereafter fresh order was to be issued - **Sanjai Gandhi v. Dy Commercial Tax Officer (ST) - [2024] 161 taxmann.com 266 (Madras)**
- 3.97** Where assessee filed reply to SCN of demand giving disclosures under each of heads mentioned in SCN, since proper officer had not considered same while passing impugned order and merely stated that reply of assessee was unsatisfactory, impugned order was to be set aside and matter was to be remanded to proper officer for re-adjudication - **A. B. Traders v. Commissioner of Delhi GST - [2024] 161 taxmann.com 260 (Delhi)**
- 3.98** Since assessee was a semi literate person and might have not been fully aware of implications of notices issued by tax department , impugned order passed demanding tax was to be set aside - **Tvl. Rajaiah v. Deputy State Tax Officer-II - [2024] 162 taxmann.com 206 (Madras)**
- 3.99** Since proper officer did not summon witnesses on account of paucity of time, impugned order to limited extent of denial of input credit tax in respect of cancelled dealers, could not be sustained - **Akshit Petrochem (P.) Ltd. v. Government of NCT of Delhi - [2024] 162 taxmann.com 189 (Delhi)**
- 3.100** Where demand was raised against assessee u.s. 73 of CGST Act, proper officer did not consider detailed reply submitted by assessee before passing impugned order, merely held reply was unsatisfactory, had not applied his mind to reply, impugned order was to be set aside - **Decolene Fibers (P.) Ltd. v. Commissioner, Directorate General of GST - [2024] 162 taxmann.com 230 (Delhi)**

- 3.101** Where demand was raised against assessee under section 73 of CGST Act, proper officer had not considered detailed reply submitted by assessee before passing impugned order, merely held reply was devoid of merits and without any justification, had not applied his mind to reply, impugned order was to be set aside - **Mohd. Zahid v. Sales Tax Officer - [2024] 162 taxmann.com 614 (Delhi)**
- 3.102** Where assessee was unaware of proceedings in view of cancellation of its GST registration, assessee was to be provided with an opportunity to contest tax demand on merits by putting assessee on terms to remit 10 per cent of disputed tax demand - **Tvl. E.Clouds v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 182 (Madras)**
- 3.103** Where assessee, a goods transport agency failed to reply to show cause notice and subsequently impugned order was passed confirming tax demand, same was to be set aside and matter was to be remanded for fresh consideration on condition that assessee remitted 10 percent of disputed tax amount - **C. Ramamoorthy Contract & Lorry Service v. State Tax Officer - [2024] 162 taxmann.com 181 (Madras)**
- 3.104** Where proceedings were initiated against assessee for certain discrepancies and impugned order was passed, since assessee had filed an application for rectification of impugned order along with relevant documents to endeavour to reconcile differences, GST Authorities were to be directed to consider and dispose of rectification application within two weeks - **Bhandari Steels Ltd. v. Assistant Commissioner (ST) - [2024] 162 taxmann.com 177 (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**

- 3.105** Where reply filed by assessee to show cause notice was not taken into account by Adjudicating Authority while passing impugned order, impugned order was to be set aside and show cause notice was to be restored on record of Adjudicating Authority - **Ajayraj Construction (P.) Ltd. v. Commissioner Of Central Tax, GST, Delhi - [2024] 162 taxmann.com 873 (Delhi)**
- 3.106** Where a notice was issued to assessee under section 74(5) and thereafter impugned order was passed, since proper notice was required to be issued to assessee under section 74(1) before passing of impugned order, which was not followed in instant case, impugned order was to be quashed - **Yash Building Material v. State of U.P. - [2024] 162 taxmann.com 381 (Allahabad)**
- 3.107** Where show cause notices are issued proposing different classification of goods from one adopted by assessee over long period, assessing officer must

objectively consider assessee's reply and contentions without any pre-determination based solely on particular judgment - **BASF Catalysts India (P.) Ltd. v. Deputy Commissioner (ST)-I - [2024] 162 taxmann.com 833 (Madras)**

- 3.108** Where assessee filed writ petition challenging order passed u.s. 74, since impugned order was issued without assessee being heard, same was to be set aside and matter was to be remanded back to authority for reconsideration on condition that assessee remitted 10 per cent of disputed tax demand - **Tvl. Sri Bhavani Automobiles v. State Tax Officer (ST) - [2024] 162 taxmann.com 178 (Madras)**
- 3.109** Where issue of difference in output tax liability as between petitioner-assessee's GSTR-1 and GSTR-3B returns in impugned SCN was same issue determined under order dated 23.12.2023, therefore, petitioner-assessee was directed to respond to SCN only insofar as it pertains to issues other than issue already decided in adjudication order - **Jayanthi Plastics (Defunct) v. The Deputy State Tax Officer-2 - [2024] 161 taxmann.com 778 (Madras)**

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

- 3.110** Where assessee filed reply to show-cause notice seeking additional time for furnishing a detailed reply and an opportunity of personal hearing, but Adjudicating Authority without considering request submitted by assessee passed a cryptic order, impugned order was to be set aside and show-cause notice was to be remitted to Adjudicating Authority for re-adjudication - **Sun & Sand Industries Africa (P.) Ltd. v. Sales Tax Officer - [2024] 162 taxmann.com 377 (Delhi)**
- 3.111** Where assessing officer fails to provide reasons for rejecting assessee's reply to show cause notice, and does not grant personal hearing despite being required under law, assessment order is liable to be set aside and matter remanded for reconsideration after providing reasonable opportunity to assessee - **Ford India (P.) Ltd. v. Deputy Commissioner (ST-III) - [2024] 162 taxmann.com 846 (Madras)**
- 3.112** Where notice issued before assessment order passed against assessee raising demand in excess of Rs. 2,44,21,574 sought reply within 30 days, assessing officer mentioned "NA" against column description "Date of personal hearing" and against columns for "Time of personal hearing" and "Venue where personal hearing will be held", assessee was denied opportunity of oral hearing, impugned order was to be set aside - **Ashok Kumar v. State of U.P. - [2024] 162 taxmann.com 710 (Allahabad)**
- 3.113** Failure of respondent to provide a personal hearing to assessee in spite of an express request for a personal hearing vitiated impugned assessment order, thus, matter was to be remanded for reconsideration after affording a personal hearing opportunity to assessee - **Tvl. M.S. Enterprises v. State Tax Officer - [2024] 162 taxmann.com 263 (Madras)**

- 3.114** Where assessee's GST registration was cancelled on 31-5-2021 and impugned order was passed on 31-10-2023 against assessee, contention of assessee that he was not monitoring GST portal could not be disregarded, thus impugned order was to be set aside and matter was to be remanded for reconsideration - **Indian Rocks v. State Tax Officer - [2024] 162 taxmann.com 219 (Madras)**
- 3.115** Where amount of tax and penalty demanded in impugned order was much more than amount specified in show cause notice, impugned order was to be quashed - **Horizon Packs (P.) Ltd. v. Union of India - [2024] 161 taxmann.com 659 (Uttarakhand)**
- 3.116** Where notices preceding impugned order under section 74(9) of UPGST Act did not disclose date, time or venue of personal hearing, in view of decision in Mohini Traders v. State of U.P. & Anr. (Writ Tax No. 551 of 2023) as also in Mahaveer Trading Co. v. Deputy Commissioner State Tax & Anr. (Writ Tax No. 303 of 2024), impugned order was to be set aside and matter was to be remanded - **S.S. Suppliers v. State of U.P. - [2024] 162 taxmann.com 108 (Allahabad)**
- 3.117** Where assessee was not able to attend personal hearing to submit all relevant documents to establish that ITC was availed of in respect of genuine purchases because of cyclone Michaung, since assessee was ready to produce all relevant documents and proper bill, it was just and appropriate that an opportunity be provided by assessee to contest the tax demand on merits, thus assessment order was to be set aside - **Sri Rajaa Store v. The State Tax Officer, Choolai Assessment Circle - [2024] 161 taxmann.com 817 (Madras)**
- 3.118** Where assessee was not provided with a mandatory opportunity of 'personal hearing' as required under Section 75(4) before passing an order, since personal hearing was deemed a fundamental aspect of procedural fairness and natural justice, ensuring individuals have opportunity to present their case and respond to allegations directly to decision-maker, impugned order was to be quashed and set aside and revenue was directed to afford assessee an opportunity of personal hearing and pass a reasoned order - **Meera Glass Industries v. State of U.P. - [2024] 161 taxmann.com 779 (Allahabad)**
- 3.119** Where assessee received a show cause notice which was replied, assessee requested for personal hearing, it was not provided before impugned order was issued, though assessee was unable to check box pertaining to personal hearing while uploading such reply on GST portal, statutory obligation would not stand waived on that account, impugned order was to be set aside - **Sathya Furniture v. Deputy State Tax Officer - [2024] 162 taxmann.com 283 (Madras)**

**SECTION 77 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - TAX WRONGFULLY COLLECTED AND PAID TO THE CENTRAL OR A STATE GOVERNMENT**

- 3.120** Where petitioner had paid tax under wrong head on 20-12-2017 and paid tax under correct head on 19-8-2019 thereby leading to a double deposit of tax, refund application filed on 11-5-2020 was within limitation as per Circular No. 162/18/2021-GST dated 25-09-2021 and, thus, order of Appellate Authority dismissing appeal of petitioner on ground of delay was to be set aside - **DMI Alternatives (P.) Ltd. v. Additional Commissioner, CGST, Appeals 1, Delhi - [2024] 161 taxmann.com 828 (Delhi)**

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

- 3.121** Where assessee filed writ petition seeking setting aside of bank attachment order issued by respondent and direction to respondent to issue fresh order by affording effective opportunity of hearing to assessee, and assessee had already made representation before respondent authority, respondent authority was to be directed to consider and dispose of representation filed by assessee within a period of three months - **Samarjeet Pattnaik v. Commissioner, Central Goods and Service Tax - [2024] 162 taxmann.com 367 (Orissa)**
- 3.122** Where Competent Authority had issued a communication dated 14-8-2019 under section 83 to Bank to seize outward movement of funds from bank account of assessee, since a period of one year had elapsed from issuance of said communication, said order had ceased to be effective and Bank could not restrain operation of bank account of assessee based solely on basis of said order - **Krish Overseas v. Commissioner, Central Tax, Delhi West - [2024] 161 taxmann.com 831 (Delhi)**

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

- 3.123** Biomass / agro boilers as well as agro waste fluid thermic heaters did not fall under any category from (a) to (h) of description of goods and assessee was manufacturing boilers / thermal heaters by using non-conventional fuel which would not be qualified for waste to energy plants and devices - **Isotex Corporation (P.) Ltd. v. Union of India - [2024] 162 taxmann.com 276 (Gujarat)**

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

- 3.124** Where writ petition was filed much after expiry of statutory period of limitation for filing appeal to appellate authority, writ petition was not maintainable - **Laxmi Construction v. State Tax Officer, CT & GST Circle - [2024] 162 taxmann.com 798 (Orissa)**



**3.125** Where assessee had not been communicated with order passed under section 74 of OGST Act physically but made available on common portal, in view of provision of section 169(1)(d) of CGST Act, it was deemed to have been served on him - **Laxmi Construction v. State Tax Officer, CT & GST Circle - [2024] 162 taxmann.com 798 (Orissa)**

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

**3.126** Appellate Authority is not denude of its power to condone delay beyond one month from prescribed period of limitation; Where Appellate Authority had failed to exercise jurisdiction in refusing to entertain application under section 5 of Limitation Act, 1963, order passed by Appellate Authority refusing to condone delay was to be set aside, delay in preferring appeal was to be condoned and appeal was to be restored to its original file and number - **Sujit Das v. Senior Joint Commissioner of Revenue, State Tax - [2024] 162 taxmann.com 376 (Calcutta)**

**3.127** Where an order was issued against assessee by confirming tax proposal and assessee made requisite pre-deposit as per section 107 while filing appeal, and respondent attached immovable property of assessee even before expiry of statutory period of three months, respondent was to be directed to release said attachment within one week - **Tvl. Maxtile AAC Block v. State Tax Officer - [2024] 162 taxmann.com 266 (Madras)**

**3.128** Where assessee's appeal was dismissed by appellate authority, barred by limitation, not accompanied by application under section 5 of Limitation Act, appellate authority was not denude of its power to condone delay beyond prescribed period provided in section 107(4) of CGST Act, however, since assessee not filed application for condonation of delay, no relief was to be granted in favour of assessee - **Raj Kumar Chhalani v. Joint Commissioner of State Tax - [2024] 162 taxmann.com 674 (Calcutta)**

**3.129** Where appeal presented by assessee was rejected on ground of limitation, since delay was only of 12 days on account that concerned staff had left services of assessee causing delay in presentation of appeal, it was just and necessary that assessee be permitted to prosecute appeal, thus assessee was to be permitted to file same within 15 days - **Geotech Offshore Structures (P.) Ltd. v. Deputy Commissioner (ST) - [2024] 162 taxmann.com 213 (Madras)**

**3.130** Where appellate authority rejected an application for condonation of delay beyond prescribed period, it erred, as absence of an express or implied exclusion of Limitation Act allows for such condonation, thereby constituting a failure to exercise jurisdiction - **Jalajoga v. State of West Bengal - [2024] 162 taxmann.com 635 (Calcutta)**

**3.131** Where appeal of assessee challenging order rejecting partial refund was rejected on ground of delay in view of notification no. 53/2023 Central tax dated 2-11-2023, which provided that no appeal shall be admissible in respect of a demand not involving tax, writ petition filed by assessee against order in appeal was to be rejected as no cogent reason had been assigned to declare said notification ultra vires to Constitution of India - **Bharat Aluminium Co. Ltd. v. Union of India - [2024] 161 taxmann.com 653 (Chhattisgarh)**

**3.132** Section 14 of Limitation Act, 1963 providing for 'exclusion of time spent in pursuing wrong remedy bona fide' would apply in relation to appeal filed under section 107 - **Anil Agency v. Assistant Commissioner Commercial Tax - [2024] 161 taxmann.com 397 (Allahabad)**

**3.133** Where assessee was not aware about order passed by adjudicating authority and DRC-07 notice under bona fide belief that respondent was satisfied with reply of assessee, and assessee could not file appeal in time, delay in filing appeal was to be condoned on condition that assessee paid 15 per cent of disputed tax amount - **TVI Swastik Enterprise v. Deputy Commissioner (ST), GST - Appeal - [2024] 161 taxmann.com 182 (Madras)**

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

**3.134** Where assessee filed writ petition challenging an adjudication order demanding interest on ground that assessee had belatedly filed returns and High Court by impugned order directed assessee to deposit 20 per cent of disputed remaining unpaid interest, impugned order was to be set aside to extent of deposit of interest amount - **Evergreen Construction v. Commissioner of Commercial Taxes, Government of West Bengal - [2024] 161 taxmann.com 655 (Calcutta)**

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

**3.135** Where High Court quashed penalty imposed on petitioner for exceeding speed limit with Over Dimensional Cargo (ODC), ruling that speed alone cannot determine ODC classification and penalties require proof of mens rea or wilful intent to evade tax - **Ace Manufacturing Systems Ltd. v. State of U.P. - [2024] 162 taxmann.com 831 (Allahabad)**

**3.136** Where assessee was imposed penalty under section 129(3) for only ground that dispatch address mentioned in e-way bill did not match with that of invoice, however, goods in truck matched with invoice and e-way bill and there was no other discrepancy, thus order imposing penalty stating that mens rea was not essential for imposition of penalty was illegal and was to be set aside - **Ms. Sangeeta Jain v. Union of India - [2024] 162 taxmann.com 368 (Allahabad)**

**3.137** Where a writ petition seeking to quash a penalty for allegedly transporting goods without an E-Way bill was filed, the court granted relief, finding the petitioner complied with statutory

requirements before interception and that the penalty violates natural justice principles due to lack of a hearing - *Mid Town Associates v. Addl. Comm.* - [2024] 162 taxmann.com 736 (Allahabad)

- 3.138** Where impugned order passed u.s. 129(3) levying penalty on assessee for non filling up of Part 'B' of e-Way Bill, appeal against said order rejected, respondent-authorities not been able to indicate any mens rea on part of assessee for evasion of tax, impugned orders were to be set aside - *Axrecycle (P.) Ltd. v. Asst Commissioner Mobile Aquad* - [2024] 162 taxmann.com 711 (Allahabad)
- 3.139** Where e-way bill had expired one hour fifteen minutes prior to interception and finding of authorities with regard to intention to evade tax was not supported by factual matrix of instant case, impugned order imposing penalty on assessee was to be set aside and amount of tax and penalty deposited by assessee was to be refunded - *Ld Goyal Steels (P.) Ltd. v. State of U.P.* - [2024] 162 taxmann.com 261 (Allahabad)
- 3.140** Where goods of assessee were detained in transit and penalty was imposed u.s. 129 vide impugned order, since it was not a case that E-way bill was not available, instead same had expired, penalty should not have been imposed u.s. 129, thus impugned order was to be set aside and a penalty of Rs. 10 thousand was to be imposed u.s. 122 - *Faruk Rathore v. Dy. Commissioner, CGST* - [2024] 162 taxmann.com 215 (Rajasthan)
- 3.141** Since issuance of tax invoice and its presence at time of detention of goods was not doubted and inasmuch as on date of transaction being performed, assessee was a registered dealer, penalty was to be reduced - *Krishna Traders v. Asst. Commissioner* - [2024] 162 taxmann.com 16 (Allahabad)
- 3.142** Where penalty could not have been imposed during particular period with regard to technical defects as indicated in detention order, therefore, due to technical defects, detention order, penalty order and appellate order were required to be quashed and set-aside. - *Modern Steel v. Addl. Commissioner Grade 2, State Tax and Another* - [2024] 162 taxmann.com 52 (Allahabad)
- 3.143** Where assessee was required to avail opportunity for release of confiscated goods by depositing amount of tax, penalty, fine etc. within a reasonable time but even on expiry of about one and a half month it did not avail of said opportunity and moreover assessee made oral request for modifying condition of furnishing bank guarantee by permitting assessee to submit bond for total value of confiscated goods, due to disputed facts regarding transaction and recipient firm's existence, instant writ petition was to be dismissed - *Veer Enterprises v. Union of India* - [2024] 161 taxmann.com 818 (Jharkhand)

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

- 3.144** Where quantification of tax liability in impugned order had been done under section 130, authorities should have taken recourse of section 74, thus, impugned order was to be set aside and fresh order was to be passed after granting opportunity of hearing to assessee - *Sapphire International v. Additional Commissioner Grade 2, State Tax, and Another* - [2024] 162 taxmann.com 370 (Allahabad)
- 3.145** Where respondent authorities, reiterated same reasons for passing order for confiscation of goods under section 130 which were recorded in passing order for detention of goods under section 129, another case on similar issue pending with court, instant case to be heard with it, good and conveyance were to be released by way of ad-interim relief - *A.S. Enterprise v. State of Gujarat* - [2024] 162 taxmann.com 742 (Gujarat)

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

- 3.146** Where petitioner arrested in connection with investigation related to an old case, summons issued to company and petitioner appeared on behalf of company, department well aware of GST liability of company, justification given by respondent explaining detention of petitioner for more than 24 hours did not appear to reason, interim bail was to be granted to petitioner - *Mahesh Devchand Gala v. Union of India* - [2024] 162 taxmann.com 869 (Bombay)
- 3.147** Where assessee was arrested for offence punishable under section 132(1)(c) of GGST Act, role attributed to assessee was that she had availed ineligible input tax credit of Rs.7.45 Crores on basis of purchases made from six registered entities, which according to revenue were non-existing, she was in custody since 2-2-2024, arrest memo was totally silent in so far as details of offences committed by assessee and no subjective satisfaction was recorded assessee was to be released on regular bail - *Smit Dipen Shah v. State of Gujarat* - [2024] 162 taxmann.com 109 (Gujarat)
- 3.148** Assessee received money through legitimate business transactions and GST payments were made to GST department and transactions were conducted exclusively through bank hence, assessee should be released on bail - *Ajitkumar Soni v. State of Maharashtra* - [2024] 162 taxmann.com 188 (Bombay)

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

- 3.149** Where assessee/petitioner challenged adjudication order imposing tax and penalties on ground that opportunity of personal hearing was denied, High Court set aside order subject to depositing partial amount and directed revenue to grant fresh personal hearing by following principles of natural justice - *Avshesh Kumar v. Union of India* - [2024] 162 taxmann.com 858 (Allahabad)

#### 4. AAAR

##### 104 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ADVANCE RULING - APPELLATE AUTHORITY - VOID RULING IN CERTAIN CIRCUMSTANCES

- 4.1 Where appellant-assessee had not declared/mis-declared fact of initiation of proceedings against appellant-assessee by department which was clearly evidenced by issuance of GST DRC-01A against appellant-assessee, therefore, invocation of Section 104 by Authority for Advance Ruling and declaring advance ruling dated 20-1-2021 void ab initio is legal - ***Shalby Ltd., In re - [2024] 162 taxmann.com 851 (AAAR-GUJARAT)***

#### 5. AAR

##### SECTION 2(6) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - EXPORT OF SERVICES

- 5.1 Where applicant and foreign colleges are nowhere related to each other, thus, applicant cannot be treated as establishment of a distinct person in accordance with Explanation 1 to Section 8 of IGST Act; activity of applicant for foreign college and university should qualify as 'export of service' in terms of Section 2(6) of IGST Act provided payments are received in convertible foreign exchange - ***Center for International Admission and Visas (CIAV), In re - [2024] 162 taxmann.com 681 (AAR- TELANGANA)***

##### SECTION 2(13) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 - INTERMEDIARY

- 5.2 Where applicant cannot be construed to have been facilitating services of foreign colleges and university to prospective students, as students cannot be construed as service recipients particularly in absence of consideration flowing from students to applicant, therefore, applicant cannot be considered as 'intermediary' for purpose of Section 2(13) of IGST Act - ***Center for International Admission and Visas (CIAV), In re - [2024] 162 taxmann.com 681 (AAR-TELANGANA)***

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

- 5.3 Where, as per Notification No. 37/2017-CT, dated 13-10-2017, a unit in Domestic Tariff Area (DTA) can supply services to a unit in SEZ without payment of IGST, subject to furnishing of Letter of Undertaking(LUT) to jurisdictional Commissioner, therefore, following aforesaid notification, applicant is not required to pay GST under RCM on specified services - ***Waaree Energies Ltd., In re - [2024] 162 taxmann.com 21 (AAR - GUJARAT)***

- 5.4 Where assessee is engaged in activity of adding insulation to bare M.S. pipes to convert them into pre-insulated M.S pipes and is adding PU Foam and PI film/FIDPE jacket on bare M.S. pipes provided by their customers (other registered owners) on job work basis, as per Circular No. 126/45/2019-GST, dated 22-11-2019 services by way of treatment or processing undertaken by assessee on goods belonging to another registered person would be classifiable under 26(id) of notification no. 11/2017-Central Tax (Rate) under Heading No. 9988 - ***Perma Pipe India (P.) Ltd., In re - [2024] 162 taxmann.com 60 (AAR - GUJARAT)***

- 5.5 Where CBIC Circular no. 172/04/2022-GST dated 06.07.2022 states that tax is not applicable on perquisite which is part of employee agreement and which may be free of cost for employees, further, applicant-assessee recover charges from employees on a subsidized basis for availing canteen facilities, therefore, GST is to be levied on amount recovered by applicant-assessee from employees towards canteen provision - ***Sundaram Clayton Ltd., In re - [2024] 162 taxmann.com 168 (AAR - TAMILNADU)***

- 5.6 Where entry fee being collected by applicant from visitors/devotees/pilgrims, is covered under charitable activities relating to advancement, therefore, benefit of this Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 in terms of Serial No. 1 is available to them; applicant is not required to pay any tax under GST Act - ***Shri Digamber Jain SidhkutChaityalaya Temple Trust, In re - [2024] 162 taxmann.com 291 (AAR- RAJASTHAN)***

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

- 5.7 Where applicant-assessee had established canteen in their premises and has been bearing a part of cost for providing food/beverages to their employee and it is certainly an activity amounting to supply of service, therefore, supply of food by employer, i.e., applicant to their employees is composite supply of food held as 'Supply of service' as per Schedule-II of GST Act --***Sundaram Clayton Ltd., In re - [2024] 162 taxmann.com 168 (AAR - TAMILNADU)***

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

- 5.8 Where Section 17 denies Input Tax Credit in respect of inward supplies received to construct immovable property and applicant-assessee has taken up various construction activities and development activities like electricity, drainage, water facilities, parks, club house for completing his project which amounts to inward supply, therefore, applicant-assessee is not eligible for Input Tax Credit on any inward supply of goods and services - ***NBER Developers LLP, In re - [2024] 162 taxmann.com 130 (AAR-ODISHA)***



## **FAQs ON INPUT SERVICE DISTRIBUTOR**



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### **What is ISD?**

ISD or an Input Service Distributor is a type of taxpayer under GST who needs to distribute the GST Input Tax Credits that pertain to its GSTIN to its units or branches having different GSTIN but registered under the same PAN.

The concept of ISD under GST is a legacy carried over from the Service Tax Regime. An ISD will have to compulsorily take a separate registration as such ISD and apply for the same in form GST REG-1. There is no threshold limit for registration for an ISD. The other locations may be registered separately. Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as the output services are being provided there.

### **What is the role of ISD?**

In the context of the Goods and Services Tax (GST) in India, an Input Service Distributor (ISD) plays a crucial role in ensuring the fair distribution of Input Tax Credit (ITC) across different branches or distinct persons registered under the same PAN. Hence an ISD is essentially an office of a supplier that receives tax invoices for input services and distributes the corresponding ITC among various recipients. These recipients can be branches of the same company with different GST numbers under the same PAN (distinct persons) or independent entities altogether.

## **When should ITC be distributed by an ISD?**

As per rule 39 the procedure for distribution of input tax credit by Input Service Distributor is as follows:-

- 1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely,
  - a. the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR- 6 in accordance with the provisions of Chapter VIII of these rules;

## **Can ineligible ITC be distributed by an ISD?**

As per rule 39 the procedure for distribution of input tax credit by Input Service Distributor is as follows:-

- b. the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

## **How will we distribute central tax, state tax, union territory tax and integrated tax by an ISD?**

- c. the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);
- d. the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula –

$$C1 = (t1 \div T) \times C$$

where,

“C” is the amount of credit to be distributed,

“t1” is the turnover, as referred to in section 20, of person R1 during the relevant period, and “T” is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

- e. the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

**What will be the procedure for distribution of input tax credit on account of central tax and state tax?**

As per rule 39 the procedure for distribution of input tax credit by Input Service Distributor is as follows:-

- f. the input tax credit on account of central tax and State tax or Union territory tax shall-
- (i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;
  - (ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

**When credit note/Debit note should be issue by an ISD?**

As per rule 39 the procedure for distribution of input tax credit by Input Service Distributor is as follows:-



- g. the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;
- h. any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;
- i. any input tax credit required to be reduced on account of issuance of a credit note to the ISD by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (d), and the amount so apportioned shall be-
  - (i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or
  - (ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

### **How to submit return by an Input Service Distributor?**

Every Input Service Distributor shall, on the basis of details contained in FORM GSTR-6A, and where required, after adding, correcting or deleting the details, furnish electronically the return in FORM GSTR-6, containing the details of tax invoices on which credit has been received and those issued under section 20, through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

## **Does an ISD require registration under GST?**

- An ISD is required to obtain a separate registration. The registration is mandatory and there is no threshold limit for registration for an ISD.
- Businesses who are already registered as an ISD under the existing regime (i.e. under Service Tax), will be required obtain a new ISD registration under GST.
- The existing ISD registration will not be migrated to the GST regime.

## **What is the relevance of ISD?**

- ISD, under GST is relevant for businesses having multiple branches operating within India. These businesses are required to obtain GSTIN for each branch from where taxable supply is made.
- Based on the purchases of the head office or branch, ITC (Input Tax Credit) in the form of SGST, CGST or IGST would accrue to the business.
- To ensure that the ITC is properly distributed amongst the various branches of the business, ISD concept has been introduced by the Government as defined below.

## **Why is GSTR 6 important?**

- GSTR 6 is a monthly return that has to be filed by an Input Service Distributor. It contains details of ITC received by an Input Service Distributor and distribution of ITC. There are a total of 11 sections in this return.
- GSTR 6 contains details of all the documents issued for distribution of Input Tax Credit and the manner of distribution of credit and tax invoice on which credit is received. GSTR 6 has to be filed by every ISD even if it is a nil return.
- The due date for filing of GSTR 6 as per GST Act is 13th of next month. Late fees have been reduced to Rs. 50 per day. However, no provision for reduction is made where NIL return is filed.
- Table 6A of GSTR-1 needs export details to be reported. Under GST, exports are

considered to be zero-rated supplies. The suppliers of zero-rated supplies enjoy certain benefits under the GST law very similar to customs law.

## **What is GSTR 6A?**

- GSTR 6A is an automatically generated form based on the details provided by the suppliers of an Input Service Distributor in their GSTR 1. GSTR-6A is a read-only form. Any changes to be made in GSTR-6A have to be done while filing GSTR-6.

## **Amendment in the Manner of distribution of ITC by the ISD:**

It was proposed to make registration as an Input Service Distributor (ISD) mandatory in case of procurement of common input services and distribution of ITC thereof to distinct persons, Clause (61) of section 2 relating to the definition of ISD is proposed to be substituted for this purpose. Earlier through the 50th Council Meet held on 11.07.2023, followed by a CBIC Circular No. 199/11/2023-GST dated 17-07-2023, it was clarified that the Head Office (HO) had an option to distribute ITC in respect of such common input services either by following ISD mechanism or cross charge and that the ISD route was not mandatory as per the current provisions of the CGST Act and Rules. A new manner of distribution along with the restrictions and conditions would be prescribed, to distribute the credit of central tax or integrated tax charged on invoices received by ISD.



## GST on Vouchers, Gift Cards & Loyalty Programs



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### Vouchers, Gift Cards & GST

Gift cards and vouchers have become a popular medium to gift close and distant people. These vouchers and gift cards also benefit the companies by guaranteeing purchases by their customers as against redemption of these vouchers. It has turned out to be a lucrative way of marketing for companies. It is plausible that it will be aggressively used by more companies in the near future. It is, therefore, essential to analyse the GST implications in case of issuance and redemption of these vouchers.

Prior to that, it is important to understand the different kinds of vouchers since the implications under the GST law differ with each kind. To begin with, European Union (EU) VAT Directives recognise two types of vouchers namely single-purpose vouchers and multi-purpose vouchers. Single-purpose vouchers are the ones where the vouchers can be used only for a specific supply which is identifiable at the time of issuance of the voucher itself. On the contrary, multi-purpose vouchers can be used for supply of more than one good or service and hence, the supply is identifiable only when the voucher is actually redeemed. Whether single-purpose or multi-purpose vouchers, they can be further bifurcated into vouchers sold for a consideration (including gift cards) and vouchers given free of cost.

A precise example of a single-purpose voucher would be: suppose the voucher issued by an airline company can only be used for purchase of domestic flight tickets. In this case, the supply is already identifiable at the time of issuance of voucher. However, in a case where a travel agency platform providing a wide range of services, sells its voucher to Mr. X to purchase any of its products from its website, it shall be a multi-purpose voucher

as it can be redeemed for a wide range of goods and/ or services like purchasing flight tickets or booking hotel rooms or availing any other transport/accommodation facility, not identifiable at the time of issue of the voucher.

Coming to the legal perspective, on a bare reading of Section 2(118) of CGST Act, 2017, one can observe that:

*"voucher means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument".*

[Emphasis added]

On perusal of the above definition, it is safe to infer that all the coupons, gift cards and vouchers fall under the definition of voucher where such voucher acts as an instrument of money and can be accepted as a valid form of consideration.

### **Classification and Supply of Vouchers and Gift Cards**

The GST Law nowhere stipulates if the supply of a voucher shall be one of goods or services and how it shall be classified. Yet, the same is important to identify the tax incident and whether it forms a valid supply. Though the above discussion leads us to believe that a voucher is merely an instrument of consideration, however, one may also argue that it is an actionable claim since it enables the holder of a voucher a right to claim certain goods or services against the voucher. Both these views have been discussed hereafter.

#### **Supply of Vouchers as Actionable Claims**

As regards the contention of vouchers to be considered as actionable claim, one needs to refer to the definition of actionable claim in Section 2(1) of the CGST Act, 2017. The definition makes a reference to Section 3 of the Transfer of Property Act, 1882 which states as follows:

*"actionable claim means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable*

*property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;"*.

Hence, any debt or interest in movable property, whether existent, accruing, conditional or contingent which creates a right in favour of claimant, is an actionable claim. The contention, however, does not seem to be acceptable for the reason that the rule cannot be made generally applicable for all cases as there may not necessarily be any interest in movable property or hypothecation in immovable property (cases involving supply of services).

#### Supply of Vouchers as Instruments of Money

Another contention relates to treating the supply of vouchers and gift cards as a mere instrument of money, thereby not being liable to GST. In ***Sodexo SVC India (P.) Ltd. v. State of Maharashtra*** [2015] 64 taxmann.com 396/[2016] 53 GST 293/2016 (331) E.L.T. 23 (SC), the Hon'ble Supreme Court held that vouchers are nothing more than pre-paid instruments which cannot be considered as goods. A similar view was also taken by the Tamil Nadu Appellate Authority for Advance Ruling in ***Kalyan Jewellers India Ltd., In re*** [2021] 127 taxmann.com 37/ 86 GST 472/2021 (50) G.S.T.L. 96 (AAAR - Tamilnadu), wherein it was opined that vouchers could not be classified into goods or services as they are only instruments of consideration and it is only the underlying goods or services which will be leviable to GST. Lastly, in ***Premier Sales Promotion Pvt. Ltd. v. Union of India*** [2023] 147 taxmann.com 85/2023 (70) GSTL 345/[2023] 96 GST 363 (Kar.), the Hon'ble Karnataka High Court once again affirmed that vouchers do not constitute a supply of goods or services and they are merely pre-deposit for the purchase of goods or services.

Further, RBI's Master Directions on Prepaid Payment Instruments (PPIs) dated August 27, 2021 mentions about certain pre-paid instruments (PPI). These instruments of money facilitate purchase of goods and services and have been trifurcated as follows:



1. **Closed System PPI** - Instruments issued by a non-banking entity for purchase of goods or services from that entity itself – Example: Metro rail card
2. **Semi-closed System PPI** - Issued by a banking or non-banking entity for purchase of any goods or services, with prior approval from RBI – Example: Paytm wallet
3. **Open System PPI** - Issued by a banking entity for purchase of any goods or services and cash withdrawal – Example: Debit cards issued by banks

Our scope is only limited to closed system PPIs and semi-closed system PPIs as it is apparent that the players in the travel and tourism industry will not be permitted to issue open system PPIs.

A combined reading of the RBI Master Directions with the above-mentioned cases reveals that vouchers and gift cards will also fall under the category of PPIs as they are in the nature of consideration used for facilitation of purchase of goods or services.

### **Time of Supply in case of Sale of Vouchers**

Time of supply governs the provisions related to the time when liability to pay GST arises. It is akin to the point of taxation provisions of the service tax regime. As per Section 13(4) of the CGST Act (4), in case of supply of vouchers by a supplier, the time of supply shall be—

- (a) *the date of issue of voucher, if the supply is identifiable at that point; or*
- (b) *the date of redemption of voucher, in all other cases.*

It is relevant to note that, as discussed above, vouchers per se are neither 'goods' nor 'services'. GST is leviable only on the ultimate supply of the underlying goods and/ or services. Since vouchers are capable of being bought and sold in the market for a consideration, the time of supply of the underlying goods and/ or services is to be derived from the above provision. Accordingly, in case vouchers are being sold by the issuer to an intermediary company or future customer, the time of supply shall be the date of issue of vouchers if supply is identifiable at that point of time, else in case the supply is not identifiable, the time of supply will be the date of redemption of voucher. An identical provision is also contained in Section 12(4) in the case of supply of underlying goods.

There is another issue with regard to the time of supply of underlying services solely in case of supply of multi-purpose vouchers. It is well known that GST is leviable at the time of receipt of advance in case of services. If vouchers for an underlying 'service' are sold for a consideration, such receipt of consideration is as good as an advance received for services. Hence, by virtue of Section 13(2)(b) of the CGST Act, GST shall be liable to be paid at the time of receipt of advance. However, it is a settled principle of law that a specific entry of law must always prevail over a general entry of law (Generalis Specialibus non Derogant). Hence, Section 13(4) supra would be applicable and the time of supply would be construed accordingly. On the other hand, this issue does not arise in case of a specific voucher inasmuch as the time of supply in case of a specific voucher is the date of issuance of voucher, i.e., the time when payment is received for such voucher. Hence, the impact of Section 13(2)(a) and 13(4) coincide.

### **Value of Supply of Vouchers and Underlying Goods or Services**

Based on the above discussion, it makes it clear that sale of vouchers for consideration or issuance of voucher free of charges, is not a supply within the purview of GST. As such any transaction which involves transfer of vouchers does not attract GST. However, it is critical to understand that supply of underlying goods and/ or services would be leviable to GST. The levy of GST on such supply of goods and/ or services must not be confused to be 'supply' of vouchers. Accordingly, the value of vouchers irrespective of its transaction value would not be relevant for the purpose of levy of GST.

It is also relevant to note that the valuation rules covered under rule 32(6) of the CGST Rules prescribes as under:

*The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.*

This appears to be an anomaly in the law as value of supply of vouchers is not relevant at all inasmuch as vouchers are not liable to GST.

However, the above provision shall be relevant in determining the value of supply of the underlying goods and/ or services. The value of supply of the underlying goods and/ or services would be the money value of goods and/ or services which can be bought using the voucher irrespective of the value at which the voucher is sold. Accordingly, the rate of GST would also depend on the HSN code or SAC of the underlying supply.

Example: Suppose the voucher is sold for Rs 800 which entitles the holder to redeem it for purchase of airline tickets up to Rs 1000. The value of supply of the airline services would be Rs 1000 in such case.

### **GST Implications on Vouchers in Different Instances**

The takeaways from the entire discussion could be briefly summarised through the tabular presentation of GST implications in case of specific and multi-purpose vouchers:

Sl. No.	Type of Voucher	On issuance of voucher	On redemption of voucher	On expiry/lapse of voucher
<b>A. Vouchers/ Gift cards sold for a consideration (sale value of voucher = Rs 800/-and redemption value = Rs 1,000/-)</b>				
1.	Single-Purpose Voucher	Receipt voucher to be issued for Rs 1,000/- and GST to be paid thereon	Tax invoice to be raised for the sale of underlying goods and/ or services	Tax invoice to be raised for forfeiture of advance received
2.	Multi-Purpose Voucher	Receipt voucher to be issued for Rs 1,000/- and GST is not required to be paid	Tax invoice to be raised for the sale of underlying goods and/ or services and GST to be paid	Tax invoice to be raised for forfeiture of advance received and GST to be paid on Rs 800/-



**B. Vouchers issued by the company for free (suppose redemption value is Rs 1,000/-)**

3.	Single-Purpose/ Multi-Purpose Voucher (Free)	No supply as there is no consideration	Tax invoice be issued for underlying supply of goods and/ or services	No effect
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**Availability of ITC in cases where GST has been levied**

The next issue to be looked at is availability of ITC in cases where GST has been levied. It is amply clear after the judgment of the Karnataka High Court that sale of vouchers does not amount to supply. Until the ruling is overruled by the Apex Court, the interpretation to be adopted as of now is in line with the Karnataka High Court's decision. However, since the decision came in the year 2023, it might have happened that suppliers of vouchers may have paid GST in the period prior to this decision. The moot question which arises now is about the eligibility of ITC on the purchase of vouchers where the supplier has charged GST.

In this regard, it is relevant to note that in the case of *Myntra Designs (P.) Ltd., In re* [2023] 148 taxmann.com 186/97 GST 387/2023 (73) G.S.T.L. 106 (AAAR – Kar.) the Appellate Authority for Advance Ruling, Karnataka held that no ITC shall be available on purchase of vouchers as it is neither a supply of goods nor services. After the Advance Ruling, it will not be incorrect to say that the Department may take the view of disallowing ITC for all those persons who have purchased vouchers and the suppliers have charged GST thereon, during the past tax period. Resultantly, now the recipients are in a perplexed state where they have already borne the tax liability but may not get ITC.

What is the remedy? In such a case, suppliers should have a right to claim refund of the said amount of payment made on sale of vouchers.

### **Time limit for claiming such refund:**

The time limit prescribed under Section 54 of the CGST Act, 2017 is 2 years from the 'relevant date', which in this case would be 2 years from the date of payment of tax. Therefore, all those cases wherein the refund application is being filed within the prescribed period of 2 years, there would not be any issue with respect to the period of limitation. However, in cases wherein the period of 2 years has already elapsed, the GST refund sanctioning Department may deny refund on the grounds of period of limitation.

However, it is pertinent to note that it is a well-settled principle of jurisprudence that refund is not hit by bar of limitation if tax is paid on services by mistake. In the case of ***Commissioner v. KVR Construction – 2018 (14)G.S.T.L. J70 (S.C.)*** the Apex Court dismissed the appeal by the Commissioner and upheld the decision of the Karnataka High Court which held that provisions of limitation under Section 11B of Central Excise Act, 1944, would not apply for refund of Service Tax paid by mistake on exempted services even though the assessee had filed claim under Form-R which shows that they had treated such payment as duty but later on claimed it as not a duty. Mere payment of an amount by the assessee and acceptance by Department would not regularize such amount as duty if it was not actually payable and paid by mistake.

Applying the above ratio in the given case, it is clear that sale of vouchers is not a 'supply' of goods and/ or services. As such, GST is not chargeable on such sale of vouchers. The suppliers who have charged GST erroneously under mistake of law shall be granted the benefit of refund claim without the application of the limitation period prescribed in the GST Law inasmuch as the payment made was not in the nature of GST, hence, the period of limitation of claim of refund of GST shall not apply on such refund applications. Though such cases are unambiguous, it is highly probable that the refund will not be granted by the lower authorities. Hence, this is another area which may lead to litigation, giving rise to similar jurisprudence in the GST Law as well.

# COMPANY AND SEBI LAWS UPDATES

## 1. STATUTORY UPDATES

- 1.1** SEBI issues updated Master Circular for FPIs, DDPs and Eligible Foreign Investors - **Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/70, Dated 30-05-2024**

**Editorial Note** : Earlier, on 19 Dec, 2022 the SEBI had issued a Master Circular for FPIs, DDPs, and Eligible Foreign Investors under the SEBI (Foreign Portfolio Investors) Regulations 2019. Subsequently, various circulars pertaining to FPIs and DDPs have been issued. Now, the updated master circular has been issued to enable users to access the provisions of applicable circulars at one place. This master circular supersedes the seven circulars issued earlier.

- 1.2** SEBI launches 'Settlement Calculator (BETA Version)' to provide transparency in calculating settlement amounts - **Press Release No. 09/2024, Dated 30-05-2024**

**Editorial Note** : SEBI has launched the 'Settlement Calculator (BETA Version)' in order to provide more transparency in the process of arriving at the indicative settlement amount, as per the parameters laid down in SEBI (Settlement Proceedings) Regulations, 2018. This Settlement Calculator contains fields for the applicant to identify the violations and select the appropriate options with respect to their past regulatory track record based on SEBI's actions on the date of filing the settlement application.

- 1.3** SEBI reduces time for granting approval to stock brokers for Internet-Based Trading (IBT) to 7 days - **Circular No. SEBI/HO/MRD/TPD-1/P/CIR/2024/68, Dated 30-05-2024**

**Editorial Note** : Under the extant norms, the stockbroker must apply to the respective stock exchange for formal permission to provide IBT Services. Stock exchange must communicate its decision to the member within 30 calendar days of the application being submitted. Now, it has been reduced to 7 days. Further, the requirement of periodic confirmation of IBT statistics by the stock brokers has done away with. Exchanges would publish the same on the basis of details of IBT terminals provided by the stock brokers.

- 1.4** SEBI eases inspection requirements of Accredited Storage Facilities with Nil Stock - **Circular No. SEBI/HO/MRD/MRD-POD-1/P/CIR/2024/64 DATED 29/05/2024, Dated 29-05-2024**

**Editorial Note** : Under extant norms, clearing corporations shall engage expert agencies to conduct 2 independent audits of goods & other facilities in the storage facilities. Now SEBI has decided that facilities with 'Nil' stock for the past 6 months need only 1 inspection per year. Further, if a storage facility has 'Nil'

stock for the entire year, there will be no requirement of inspection. However, periodic in-house inspections would still be required. The circular shall be effective from calendar year 2024.

- 1.5** SEBI strengthens risk management framework for Clearing Corporations (CCs) - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/65, Dated 29-05-2024**

**Editorial Note** : SEBI has reviewed the existing collaterals accepted by CCs and specified the prudential norms for exposure of CCs. As per the amended norms units of growth plan of overnight mutual fund schemes shall be accepted as Cash Equivalent by CCs with a haircut of 5%. Earlier, a limit of 10% was specified. The 10% haircut remains unchanged for other overnight mutual fund plans. Further, the Prudential Norms for Exposure of CCs has also been specified. The circular shall be effective from 01st Aug, 2024.

- 1.6** SEBI updates Investor Charter for stock exchanges and depositories to include new services and guidelines - **Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/63, Dated 29-05-2024**

**Editorial Note** : In November 2021, SEBI formulated the Investor Charter for Depositories/ Depository Participants (DPs) and Stock exchanges. It contains information on services provided to investors, such as grievance redressal mechanisms, rights and obligations of investors, etc. With the recent introduction of the Online Dispute Resolution (ODR) platform and SCORES 2.0 by SEBI, the Investor Charter has been updated to incorporate these new services.

- 1.7** SEBI issues SOP for handling Stock Exchange outage and extension of trading hours in 'Commodities Derivatives Segment' - **Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2024/62, Dated 27-05-2024**

**Editorial Note** : SEBI has put in place a standard operating procedure (SOP) for handling stock exchange outages and extending trading hours in the commodities derivatives segment. A 'Stock Exchange Outage' means stoppage of continuous trading, either suo moto by the exchange or due to reasons beyond the exchange's control. Under the SOP, a stock exchange that suffered an outage must inform SEBI immediately after the occurrence of an outage and notify trading members within 15 minutes of the occurrence.

- 1.8** SEBI reduces turnover requirement for launching options on 'agricultural and agri-processed commodities' to Rs 100 cr - **Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2024/61, Dated 27-05-2024**



**Editorial Note** : Earlier, SEBI vide master circular dated August 4, 2023, for the 'Commodity Derivatives Segment' prescribed Product Design and Risk Management Framework for options on commodity futures. Based on representations received from market participants and deliberations by the Commodity Derivatives Advisory Committee (CDAC) of SEBI, the average daily turnover requirement for launching options on agricultural and agri-processed commodities has been reduced from Rs 200 crore to Rs 100 crore.

- 1.9 Social Enterprises shall make annual disclosures as per the framework on SSE, for FY 23-24 by 31.10.2024: SEBI - **Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/0059, Dated 27-05-2024**

**Editorial Note** : As per the Regulation 91C (1) of the SEBI (LODR) Regulations, 2015, Not for Profit Organizations (NPOs) registered on Social Stock Exchange including NPOs whose designated securities are listed on SSE, shall be required to make annual disclosures to the SSE on matters specified under the framework on Social Stock Exchange. Now, SEBI has prescribed the timelines for the FY 2023-24. The disclosure shall be made by 31.10.2024. Also, Annual Impact Report to SSE shall be submitted by 31.10.2024.

- 1.10 SEBI designates ICAI and ICSI as 'Self-Regulatory Organizations' for Social Impact Assessors - **Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/0060, Dated 27-05-2024**

**Editorial Note** : SEBI has added two more agencies as 'Self-Regulatory Organizations' for Social Impact Assessors in the Social Stock Exchange (SSE) context. The agencies are the ICAI Social Auditors Organization (ICAI SAO) under the Institute of Cost Accountants of India and the ICSI Institute of Social Auditors (ICSI ISA) under the Institute of Company Secretaries of India. These agencies are in addition to the Self-Regulatory Organization under the Institute of Chartered Accountants of India.

- 1.11 SEBI amends InvITs Regulations, 2014; introduces a new chapter on 'Framework for issuance of Subordinate Units' - **Notification No. SEBI/LAD-NRO/GN/2024/182, Dated 27-05-2024**

**Editorial Note** : SEBI has notified SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2024. A new chapter IVA w.r.t 'Framework for issuance of Subordinate Units' has been inserted. As per new chapter, subordinate units must be issued by a privately placed InvIT upon acquisition of an infrastructure project. Also, SEBI has inserted definition of 'subordinate unit', which refers to an instrument issued by InvIT that can be reclassified as an ordinary unit. The norms are effective from 27.05.2024.

- 1.12 The requirement of nomination for Mutual Funds shall be optional for jointly held Mutual Fund folios; SEBI

clarifies - **Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/29; Dated 30-04-2024**

**Editorial Note** : Earlier, SEBI vide Master Circular for Mutual Funds dated May 19, 2023 prescribed the requirement for nomination/opting out of nomination for all existing individual unit holders holding Mutual Fund units either solely or jointly by June 30, 2024. SEBI has now modified Clause 17.16 of the Master Circular regarding nomination for Mutual Fund unit holders. SEBI has clarified that the requirement of nomination for Mutual Funds shall be optional for jointly held Mutual Fund folios.

- 1.13 Appointment of a dedicated fund manager for commodity-based funds shall be optional; SEBI clarifies - **Circular No. SEBI/HO/IMD/IMD-PoD-2/P/CIR/2024/30; Dated 30-04-2024**

**Editorial Note** : SEBI has modified Clause 3.3.11 of the Master Circular for Mutual Funds dated May 19, 2023 regarding the appointment of a dedicated fund manager. SEBI has clarified that appointment of a dedicated fund manager shall be optional for commodity-based funds such as Gold ETFs, Silver ETFs and other funds participating in the commodities market. However, the person appointed as a fund manager for such funds must have adequate experience in managing investments in the commodities market.

- 1.14 SEBI provides a framework for Unit Based Employee Benefit schemes for employees of investment manager - **PR No. 8/2024, Dated 30-04-2024**

**Editorial Note** : SEBI in its 205th board meeting has approved a proposal to provide a framework for Unit Based Employee Benefit schemes (UBEB) for employees of investment manager/manager of InvIT/REIT. The investment manager/manager may receive the units of InvIT/REIT in lieu of management fees to provide unit-based employee benefits. Further, SEBI has approved the proposal to provide an option for Venture Capital Funds (VCFs) registered under VCF regulations to merge into AIF regulations.

- 1.15 Former High Court Judge Suresh Kumar Gupta appointed to Chair the Appellate body for CAs, CSs, and CMAs - **Notification No. G.S.R. 255(E), Dated 26-04-2024**

**Editorial Note** : Govt. has appointed Justice Suresh Kumar Gupta, as Chairperson of the Appellate body for Chartered Accountants (CAs), Company Secretaries (CSs) and Cost Accountants (CMAs). The MCA had appointed three members, Rakesh Mohan, Sandip Garg and Amit Anand Apte to the Appellate Authority. Shri Garg is also a whole-time member of the IBBI. Members of CA, CS, and CMA Institutes who are found guilty of misconduct by disciplinary panels can appeal such orders to the Appellate Authority.

- 1.16** SEBI releases framework for administration and supervision of Research Analysts and Investment Advisers - **Circular No. SEBI/HO/MIRSD/MIRSD-SEC-3/P/CIR/2024/34, Dated 02-05-2024**

**Editorial Note** : Earlier, SEBI notified that a recognised stock exchange may undertake activities of administration and supervision over specified intermediaries. Accordingly, stock exchanges can be recognised as Research Analyst Administration & Supervisory Body (RAASB) and Investment Adviser Administration & Supervisory Body (IAASB) for administration & supervision of RAs and IAs. SEBI has now released a framework for the administration & supervision of Research Analysts and Investment Advisers.

- 1.17** SEBI mandates person or entity involved in distribution of portfolio management services to get registered with APMI - **Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/32; Dated 02-05-2024**

**Editorial Note** : SEBI, in order to facilitate collective oversight of PMS distributors at the industry level, has decided that any person or entity involved in the distribution of portfolio management services must obtain registration with APMI. This move is aimed at promoting ease of doing business initiatives for portfolio managers. Further, portfolio managers must ensure that registration is obtained in accordance with the criteria laid down by APMI. The circular shall be effective from Jan 1, 2025.

- 1.18** Portfolio Manager now requires new client's separate signature on fee annexure with handwritten confirmation: SEBI - **Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/35, Dated 02-05-2024**

**Editorial Note** : SEBI has notified amendments to facilitate ease in the digital onboarding process for clients and enhance transparency for Portfolio Managers. Now, while onboarding a client, Portfolio Managers must ensure that the client has understood the fee and charge structure. Further, for physical & digital onboarding, a new client must provide a separate signature on the fee annexure, with acknowledgement either by handwritten note or by electronically typing or using a finger or stylus pen.

- 1.19** SEBI issues updated Master Circular on 'Alternative Investment Funds' - **Circular No. SEBI/HO/AFD-1/AFD-1-PoD/P/CIR/2024/39, Dated 07-05-2024**

**Editorial Note** :SEBI has issued an updated master circular on 'Alternative Investment Funds' (AIFs). The master circular consolidates all existing circulars issued by SEBI till date. As per the circular, AIFs must independently comply with other requirements specified by SEBI for market intermediaries such as the 'Levy of Goods & Services Tax (GST) on the fees payable to SEBI and the approach to securities market data access. The circular shall be effective from 07.05.2024.

- 1.20** MCA relaxes additional fees on filing of Form LLP BEN-2 and LLP Form No. 4D up to 01.07.2024 - **General Circular No. 03/2024, Dated 07-05-2024**

**Editorial Note** : In view of the transition of MCA-21 from version 2 to version 3 and to promote compliance on the part of reporting LLPs, MCA has granted relaxation in filing LLP forms. Accordingly, LLPs may file Form LLP BEN-2 and LLP Form No. 4D, without payment of any further additional fees up to 01.07.2024. Form LLP BEN-2 is filed with the ROC w.r.t declaration u/s 90 of Companies Act, 2013. LLP Form No. 4D is filed with the ROC w.r.t declaration of beneficial interest in contribution received by LLP.

- 1.21** SEBI permits '360 ONE Distribution Services Limited' to use UIDAI's e-KYC Aadhaar Authentication as sub-KUA in Markets - **Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2024/36, Dated 06-05-2024**

**Editorial Note** :Earlier, Finance Ministry vide notification dated 30.04.2024 has notified '360 ONE Distribution Services Limited' to conduct Aadhaar authentication under section 11A of the Prevention of Money-laundering Act, 2002. Now, SEBI has allowed the entity to use e-KYC Aadhaar Authentication services and on-boarding process of UIDAI in Securities Market as sub-KYC User Agency

- 1.22** Companies can retain DVR shares with differential voting & dividend rights if issued before SEBI's restrictive circular

**Editorial Note** : Jagatjit Industries Limited (JIL), a public ltd. Company, sought informal guidance on whether the existing differential voting rights (DVR) shares, issued in 2004, can retain their distinct characteristics on differential rights to dividends & voting or be treated as ordinary equity shares at par with company's other equity shares. SEBI clarified that JIL can retain its distinct characteristics as listed co(s) were permitted to issue shares with differential rights at time of issuance.

- 1.23** SEBI notifies Industry Standards on verification of market rumours - Circular **No. SEBI/HO/CFD/CFD-POD-2/P/CIR/2024/52, Dated 21-05-2024**

**Editorial Note** : The Industry Standards Forum comprising of representatives from three industry associations, viz. ASSOCHAM, CII and FICCI, has formulated industry standards, in consultation with SEBI. The purpose is to effectively implement the requirement to verify market rumours under Regulation 30(11) of SEBI (LODR) Regulations, 2015. The industry associations which are part of ISF (ASSOCHAM, FICCI, and CII) and the stock exchanges shall publish the industry standards note on their websites.

- 1.24** SEBI issues updated Master Circular for Research Analysts - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/49, Dated 21-05-2024**

**Editorial Note** : SEBI, from time to time, has been issuing various circulars/directions to Research Analysts (RAs). In order to enable users to have access to the applicable circulars at one place, this Master Circular consolidating all the existing circulars on Research Analyst has been issued. Subsequently, various guidelines/directions were issued to the RAs by way of circulars/advisory. The provisions of such circulars issued until 15.05. 2024 have been incorporated in this Master Circular.

- 1.25** SEBI issues the framework for top entities to consider unaffected prices in case of market rumours - **Notification No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/51, Dated 21-05-2024**

**Editorial Note** : As per regulation 30(11) of LODR unaffected price shall be considered for transactions on which pricing norms specified by SEBI or the stock exchanges are applicable. In view of the same SEBI has prescribed the framework for considering unaffected price. This circular shall be applicable to top 100 listed entities with effect from June 01, 2024 and to top 250 listed entities (i.e., next top 150) with effect from December 01, 2024.

- 1.26** SEBI issues updated Master Circular for Investment Advisers - **Circular No. SEBI/HO/MIRSD/MIRSD-POD-1/P/CIR/2024/50, Dated 21-05-2024**

**Editorial Note** : SEBI, from time to time, has been issuing various circulars/directions to Investment Advisers (IAs). In order to enable users to have access to the applicable circulars at one place, this Master Circular consolidating all the existing circulars on Investment Advisers has been issued. Subsequently, various guidelines/directions were issued to the IAs by way of circulars/advisory. The provisions of such circulars issued until 15.05.2024 have been incorporated in this Master Circular.

- 1.27** SEBI issues updated Master Circular on listing obligations & disclosure requirements for NCS, securitized debt, & CPs - **Circular No. SEBI/HO/DDHS/DDHS-POD-1/P/CIR/2024/48, Dated 21-05-2024**

**Editorial Note** : The SEBI (LODR) Regulations, 2015, prescribes the continuous disclosure requirements for issuers of listed Non-convertible Securities, Securitised Debt Instruments and Commercial Paper. In this regard, SEBI has been issuing various circulars from time to time. In order to enable the stakeholders to have an access to all the applicable circulars/directions at one place, the provisions of the circulars issued till May 20, 2024 are consolidated in this Master Circular

- 1.28** SEBI to unlock global opportunities for Indian Mutual Funds with new investment proposal

**Editorial Note** : SEBI has released a consultation paper dated May 17, 2024 on easing investments by

Indian mutual funds in overseas funds. The objective of the consultation paper is to seek public comments on the proposal to ease investments by Indian mutual funds in overseas mutual funds (MFs)/unit trusts (UTs) that invest a certain portion of their assets in Indian securities.

- 1.29** SEBI issues updated Master Circular for Stock Brokers - **Master Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2024/53, Dated 22-05-2024**

**Editorial Note** : SEBI, from time to time, has been issuing various circulars/directions to Stock Brokers (SBs). In order to enable users to have access to the provisions of applicable circulars at one place, SEBI issued master circular dated May 17, 2023 in respect of Stock Brokers. Subsequently, various guidelines/directions were issued to Stock Brokers by way of circulars/advisory. The instant master circular supersedes the master circular for stock brokers dated May 17, 2023.

- 1.30** SEBI issues updated Master Circular on 'Issue & listing of NCS, securitized debt, security receipts, & CPs' - **Master Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/54, Dated 22-05-2024**

**Editorial Note** : SEBI vide notification dated August 9, 2021 notified SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. SEBI issued multiple circulars covering procedural and operational aspects. In order to enable the stakeholders to have an access to all the applicable circulars/ directions at one place, the provisions of the circulars issued till May 21, 2024 are incorporated in this Master Circular. The Master circular shall be effective from May 22, 2024.

- 1.31** SEBI proposes relaxation in valuations of investment portfolios of 'Alternative Investment Funds'

**Editorial Note** : SEBI has issued a Consultation Paper to review certain aspects of the framework for valuing the investment portfolio of Alternative Investment Funds (AIFs). The objective is to seek public comments on proposals to relax certain aspects of the valuation. These include changes in valuation methodology on material change, eligibility criteria of independent valuers to be appointed by AIFs, and computing the valuation of AIFs' investment portfolios.

- 1.32** SEBI seeks public comments on redefining the valuation framework for AIFs' investment portfolios

**Editorial Note** : SEBI has issued a Consultation Paper dated May 23, 2024 to review specific aspects of the framework for the valuation of investment portfolios of Alternative Investment Funds (AIFs). The key proposals include (a) the applicability of valuation norms under SEBI (Mutual Fund) Regulations to compute the valuation of AIFs' investment portfolios, and (b) the eligibility criteria for independent valuers to be appointed by AIFs. Comments on the same may be submitted by June 13, 2024.



- 1.33** SEBI unveils new guidelines mandating Audio-Visual presentations for public issue disclosures - **Circular No. SEBI/HO/CFD/CFD-TPD-1/P/CIR/2024/55, Dated 24-05-2024**

**Editorial Note** : SEBI has announced new guidelines for presenting public issue disclosures for investors through audio-visual (AV) means. These guidelines are voluntary from July 1, 2024, and mandatory from October 1, 2024. The content of the AV shall be factual, non-repetitive, and non-promotional. These presentations must be made available in both English and Hindi, and the AV's web link shall be made available on the websites of the Stock Exchanges and the Lead Managers to the issue.

- 1.34** SEBI modifies the framework for price band formulation for scrips in the derivatives segment to manage volatility - **Circular No. SEBI/HO/MRD/TPD-1/P/CIR/2024/58, Dated 24-05-2024**

**Editorial Note** : SEBI has modified the framework for price band formulation for scrips in the derivatives segment, enhancing dynamic price bands. Key updates include increasing the conditions for flexing price bands to 50 trades & 10 unique UCCs, aligning price bands for cash market & futures contracts, extending cooling-off periods, & implementing Sliding price band on account of flexing. These changes aim to strengthen volatility management & reduce information asymmetry, effective from 03.06.2024, in phases.

- 1.35** SEBI reduces minimum staggered delivery period for commodity derivatives to three days - **Circular No. SEBI/HO/MRD/MRD-PoD-1/P/CIR/2024/57, Dated 24-05-2024**

**Editorial Note** : Earlier, SEBI vide 'Master Circular for Commodity Derivatives Segment' dated 04.08.2023 had issued various requirements for stock exchanges and clearing corporations for compliance in commodity derivatives segment. Now, SEBI has reduced the minimum duration of staggered delivery period to at least three working days, from five working days. This circular shall be effective from 01.07.2024 i.e., for contracts where staggered delivery is scheduled after this date.

- 1.36** Market Intermediaries must not share real-time price data with third parties, except for regulatory purposes: SEBI - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/56, Dated 24-05-2024**

**Editorial Note** : The issue of sharing of real time price data with third parties including various platforms was deliberated in Secondary Market Advisory Committee of SEBI. Now, SEBI has directed that stock exchanges, clearing corporations and depositories & registered market intermediaries shall ensure that no real time price data is shared, except where sharing of such information is required for orderly functioning of the securities market or for fulfilling regulatory requirements.

## 2. SUPREME COURT

### SECTION 22 OF THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 - SUSPENSION OF LEGAL PROCEEDINGS, CONTRACTS, ETC.

- 2.1** Civil suit for recovery of money from sick industrial company could not be said to be a proceeding in nature of execution, distress or like, hence suit was not hit by Section 22(1) of 1985 Act - **Fertilizer Corporation of India Ltd. V. Coromandal Sacks (P.) Ltd. - [2024] 162 taxmann.com 20 (SC)**

## 3. HIGH COURT

### SECTION 5 OF THE EMPLOYEES PROVIDENT FUND SCHEME, 1952 - TERMS OF OFFICE

- 3.1** HC strikes down Para 83 of the EPF Scheme, which requires PF contribution on the entire global pay of foreign employees in India from non-SSA Countries - **Stone Hill Education Foundation v. Union of India - [2024] 162 taxmann.com 292 (Karnataka)**

### SECTION 143 OF THE COMPANIES ACT, 2013 - AUDITOR'S POWERS AND DUTIES AND AUDITING STANDARDS

- 3.2** Where petitioner-auditor ruled out observation of another joint auditor related to issues of unusual mode of transactions in company under audit and petitioner neither performed independent audit procedures on these matters nor reported material misstatements in audited balance sheets, charges on petitioner of non-compliance with standard on auditing were established, order of NFRA debaring petitioner from undertaking any audit in respect of financial statements and imposing penalty on it was to be affirmed - **Vishal Dhiren Shah v. Union of India - [2024] 162 taxmann.com 617 (Delhi)**

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

- 3.3** Where on respondent company's failure to pay outstanding dues, petitioner company filed petition for winding up of respondent and said winding up petition was opposed by respondent on ground that petitioner had been routinely overcharging respondent company and in fact, petitioner was liable to refund 25% of total amount billed to respondent company on account of such overcharging, in view of fact that contentions raised by parties constitute triable issues, insofar that there was a dispute as to existence of a payable debt, instant company petition was to be dismissed as withdrawn and petitioner was granted liberty to institute proceedings before appropriate Commercial Court - **Newage Scaffoldings (P.) Ltd. v. Paramount Infraventure (P.) Ltd. - [2024] 162 taxmann.com 848 (Delhi)**

3.4 Where on respondent company's failure to pay outstanding dues, petitioner company filed petition for winding up of respondent and said winding up petition had been complete non-starter, and as or yet, no substantial orders had been passed and during pendency of proceedings, Companies Act, 2013, had been enacted, in view of fact that section 434 of 2013 Act provides for transfer of proceedings relating to winding up, pending before High Court, to NCLT, thus, instant winding up petition was to be transferred to NCLT - ***Ester Industries Ltd. v. Indus Polyfilms Specialists (P.) Ltd.*** - [2024] 162 taxmann.com 128 (Delhi)

#### SECTION 329 OF THE COMPANIES ACT, 2013 - WINDING UP

3.5 Where shareholdings of petitioner company were to be transferred to respondent company but it failed to pay balance purchase amount for said land and slipped into liquidation, possession of said land was taken by liquidator treating said land as respondent's asset, transfer of shareholding and pattern of payments was a purely commercial decision of petitioner taken in ordinary course of business, since, right to shareholding of petitioner did not fructify in favour of respondent, said land could not be made available to liquidator for purposes of winding up proceedings of respondent - ***Rajni Anand v. Cosmic Structures Ltd.*** - [2024] 162 taxmann.com 252 (Delhi)

## 4. NCLAT

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

4.1 Legal representative of deceased member can become party to proceedings under sections 241 and 242 even if he/she is not member of company - ***Ambadi Investments Ltd. v. Ms. Valli Arunachalam*** - [2024] 162 taxmann.com 77 (NCLAT - Chennai)

# COMPETITION LAW

## 1. HIGH COURT

### SECTION 27 OF THE COMPETITION ACT, 2002 - ORDERS BY COMMISSION AFTER INQUIRY INTO AGREEMENTS OR ABUSE OF DOMINANT POSITION

- 1.1 Interest is not leviable for late payment of penalty imposed, if CCI did not issue demand notice to the enterprise penalized - *Geep Industries (India) (P.) Ltd. v. Competition Commission of India* - [2024] 161 taxmann.com 822 (Delhi)

## 2. CCI

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

- 2.1 Where Informant, a pharmacist and holder of patented dietary supplement sold under brand name 'Protestin' was primarily aggrieved by non-marketing of its product due to non-cooperation of private hospitals, online pharmacies, medicines shops etc (OPs) and thus, filed information under section 3, in view of fact that there did not exist any agreement or arrangement as envisaged under provisions of Section 3(4), and therefore, there was no contravention of provisions of section 3(4), read with section 3(1), and thus, matter was to be closed under section 26 - *Somnath Banerjee v. Apex Lab* - [2024] 162 taxmann.com 132 (CCI)



# FEMA BANKING AND INSURANCE LAWS

## 1. STATUTORY UPDATES

### 1.1 RBI releases finalised framework for recognising Self-Regulatory Organisations in FinTech Sector - **PRESS RELEASE NO. 2024-2025/403, Dated 30-05-2024**

**Editorial Note** : RBI has released a finalised framework for recognising Self-Regulating Organisations (SRO) in the FinTech (FT) Sector. An 'SRO' would be an industry-led entity responsible for establishing and enforcing regulatory standards, promoting ethical conduct, ensuring market integrity, resolving disputes, and fostering transparency and accountability among its members. The SRO-FT must be capable of motivating its members to align with regulatory priorities and facilitating communication with the RBI.

### 1.2 RBI releases draft master directions on 'Electronic Trading Platforms' - **Press Release No. 2024-2025/211, Dated 29-04-2024**

**Editorial Note** : RBI has released draft master directions on 'Electronic Trading Platforms' (ETPs). ETP refers to any electronic system, other than a recognised stock exchange, on which transactions in eligible instruments are contracted. As per master directions, an entity seeking authorisation as an ETP operator must maintain a minimum net worth of Rs.5 crore and must continue to maintain a minimum net worth prescribed at all times. These directions are effective immediately.

### 1.3 RBI directs 'Regulated Entities' to review their practices regarding mode of loan disbursement & application of interest - **Circular No. RBI/2024-25/30 DoS.CO.PPG.SEC.1/11.01.005/2024-25, Dated 29-04-2024**

**Editorial Note** : The RBI has observed certain practices of charging interest which are not in consonance with the spirit of fairness and transparency while dealing with customers. In the interest of fairness and transparency, RBI has directed all Regulated Entities to review their practices regarding mode of disbursement of loans, application of interest and other charges and take corrective action, including system level changes. The circular shall take effect from 29.04.2024.

### 1.4 Govt. permits '360 ONE Distribution Services Limited' to conduct Aadhaar authentication under the PMLA - **Notification No. S.O. 1863(E), Dated 30-04-2024**

**Editorial Note** : The Central Government on being satisfied that the reporting entity, 360 ONE Distribution Services Limited has complied with the standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and after consultation with the Unique Identification Authority of India and the SEBI,

hereby permits the said reporting entity to perform authentication under the Aadhaar Act for the purposes of the Money-laundering Act.

### 1.5 RBI notifies Guidance Note on Operational Risk Management and Operational Resilience - **Press Release No. 2024-2025/220 and Circular No. RBI/2024-25/31 DOR.ORG.REC.21/14.10.001/2024-25, Dated 30-04-2024**

**Editorial Note** : The RBI has placed on its website 'Guidance Note on Operational Risk Management and Operational Resilience'. This Guidance Note aligns the RBI's regulatory guidance with the Basel Committee on Banking Supervision (BCBS) Principles, viz., (a) 'Revisions to the Principles for the Sound Management of Operational Risk' & (b) 'Principles for Operational Resilience', while adopting the global best practices including those on operational resilience. The existing Guidance Note stands repealed.

### 1.6 ADs to forward details of option transactions on a weekly basis by first working day of following week: RBI - **Circular No. RBI/2024-25/32 A. P. (DIR Series) Circular No. 04, Dated 03-05-2024**

**Editorial Note** : The RBI has updated the directions on reporting of OTC foreign exchange derivative contracts and foreign currency interest rate derivative contracts to the Trade Repository of Clearing Corporation of India Ltd. Now, Authorised Dealers should forward details of option transactions (FCY-INR) and total outstanding foreign currency borrowings undertaken on a weekly basis through CIMS / email by the first working day of the following week, instead of 10 th of next month.

### 1.7 IFSCA enables NRIs and OCIs to invest in Indian securities through schemes or funds established in IFSC - **Circular No. F. No. IFSCA-IF-10PR/2/2024-Capital Markets, Dated 02-05-2024**

**Editorial Note** :IFSCA has facilitated investments by NRIs and OCIs into Indian securities via schemes/funds in an IFSC. IFSCA, in discussion with SEBI has approved of two alternative routes for increased participation by NRIs and OCIs in Indian securities via IFSC-based FPIs. Firstly, NRI/OCI/RI investors may contribute up to 100% in corpus of IFSC-based FPIs where FPIs are required to submit copies of PAN with other documents. Secondly, NRI/OCI/RI investors may contribute without submission of documents.

### 1.8 RBI releases draft guidelines on 'Prudential Framework for Income Recognition, Asset Classification and Provisioning'-**Press Release No. 2024-2025/244, Dated 03-05-2024**

**Editorial Note** : RBI has released draft guidelines on 'Prudential Framework for Income Recognition,

Asset Classification and provisioning pertaining to Advances - Projects under Implementation'. These guidelines apply to SCBs, NBFCs, Primary UCBs and All India Financial Institutions (AIFIs). RBI emphasized that for any project, all mandatory prerequisites must be in place before financial closure. The list includes availability of encumbrance-free land and/or right of way, environmental clearance, etc.

- 1.9 RBI revises extant guidelines on issuance of 'Irrevocable Payment Commitments' by banks - **Circular No. RBI/2024-25/33 DOR.CRE.REC.22/21.03.054/2024-25, Dated 03-05-2024**

**Editorial Note** :RBI has revised the extant guidelines on issuance of 'Irrevocable Payment Commitments' by banks in the light of T+1 settlement cycle. Accordingly, only those custodian banks will be permitted to issue IPCs, which have a clause in the agreement with clients giving the banks an inalienable right over the securities for receiving a payout in settlement. Also, the maximum intraday risk to custodian banks issuing IPCs would be reckoned as Capital Market Exposure (CME) at 30% of settlement amount.

- 1.10 IFSCA allows SEBI-registered non-bank entities as FPIs to issue derivative instruments in GIFT-IFSC - **Circular No. IFSCA/CMD-DMIIT/NBE-DI/2024-25/001, Dated 02-05-2024**

**Editorial Note** : IFSCA has allowed IFSCA-registered non-bank entities, registered with SEBI as Foreign Portfolio Investors (FPIs), to issue Derivative Instruments with Indian securities as underlying, in GIFT-IFSC. Presently, the Authority permitted IFSC Banking Units, registered with SEBI as FPIs to issue Derivative Instruments. Further, the entity issuing such Derivative Instruments in GIFT-IFSC must ensure compliance with the requirements on issuance of ODIs, issued by SEBI and IFSCA, from time to time.

- 1.11 AD Banks can allow interest-bearing accounts for non-residents to post/collect margins for derivative contracts - **Notification No. F. No. FEMA 5(R)/(4)/2024-RB, Dated 06-05-2024**

**Editorial Note** : RBI has notified the FEM (Deposit) (Fourth Amendment) Regulations, 2024. An amendment has been made to Regulation 7. As per the amended norms, an authorised dealer in India may allow a person resident outside India to open, hold and maintain an interest-bearing account in Indian Rupees and/or foreign currency for posting and collecting margins in India for permitted derivative contracts entered into by such person as per FEM (Margin for Derivative Contracts) Regulations, 2020.

- 1.12 ADs can post and collect margins in India/outside India for derivative contracts entered with non-residents - **Notification No. FEMA 399(1)/2024-RB, Dated 30-04-2024**

**Editorial Note** : RBI has notified FEM (Margin for Derivatives Contracts) (First Amendment) Regulations, 2024. As per amended norms, authorised dealers (ADs) may post and collect margin in India and outside India for permitted derivative contracts entered into with a person resident outside India (PROI) and receive and pay interest on such margin. Further, ADs may post and collect margins outside India for permitted derivative contracts entered into with other authorised dealers subject to certain conditions.

- 1.13 RBI holds meeting with major stakeholders in UPI ecosystem; aims to scale up UPI infrastructure - **Press Release: 2024-2025/268, Dated 08-05-2024**

**Editorial Note** : The Governor of RBI held a meeting on May 08, 2024, with major stakeholders in UPI ecosystem to discuss potential strategies for further expanding the reach of UPI. The major stakeholders included banks, National Payments Corporation of India (NPCI), third-party application providers, & technology service providers. The stakeholders shared valuable inputs on strategies for scaling UPI infrastructure and expanding products portfolio, challenges encountered by ecosystem and solutions for same.

- 1.14 RBI notifies directions on 'Margin for Derivative Contracts' after review based on market feedbacks - **Circular No. RBI/2024-25/34 A. P. (DIR Series) Circular No.05, Dated 08-05-2024**

**Editorial Note** : Earlier, the RBI vide circular dated 15.02.2021 notified 'Margin for Derivative Contracts'. It was issued to allow posting and collection of margin for permitted derivative contracts between a person resident in India and a person resident outside India. Now, based on the market feedbacks received, the central bank has notified RBI (Margin for Derivative Contracts) Directions, 2024. These directions shall apply to AD Cat-I banks & AD Cat-III Standalone Primary Dealers, from immediate effect.

- 1.15 RBI issues master direction on 'Margining for Non-Centrally Cleared OTC Derivatives' - **Master Direction No. RBI/FMRD/2024-25/117 FMRD.DIRD.01/14.01.023/2024-25, Dated 08-05-2024**

**Editorial Note** : RBI has issued master direction on 'Margining for Non-Centrally Cleared OTC Derivatives'. 'Non-centrally cleared derivatives (NCCDs) mean derivative contracts whose settlement is not guaranteed by a central counterparty. A Central counterparty means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts.

- 1.16 RBI decides to regularise prior issuance of partly paid units by AIFs to non-residents via compounding under FEMA - **Circular No. RBI/2024-25/36 A.P. (DIR Series) Circular No. 7, Dated 21-05-2024**

**Editorial Note :** Earlier, the RBI enabled the issuance of partly paid units to persons resident outside India by investment vehicles. Now, in this regard, the RBI has decided to regularise the issuances of partly paid units by AIFs to persons resident outside India prior to the said amendment via compounding under FEMA, 1999. However, before approaching the RBI for compounding, AD Category-I banks may ensure that the necessary administrative action by AIFs to the RBI is completed.

- 1.17 RBI decides to remove obsolete/ outdated/ superfluous instructions, and to rationalize & simplify existing instructions - **Circular No. RBI/2024-25/37 DoS.CO.PPG.SEC.2/11.01.005/2024-25, Dated 21-05-2024**

**Editorial Note :** After an internal review of regulations, the RBI has decided to remove obsolete/ outdated/ superfluous instructions, and to rationalize and simplify existing instructions. List of circulars withdrawn includes circulars on Meeting of Compliance Officers, Internal Organisation and Control System, Compliance Officers of Banks, Checklist for Evaluation of Internal Inspection/ Audit, Compliance Officers of banks etc.

- 1.18 'Fincare Small Finance Bank Limited' ceases its status as banking company, no longer a scheduled bank: RBI - **Circular No. RBI/2024-25/38DOR.RET.REC.23/12.07.160/2024-25, Dated 24-05-2024**

**Editorial Note :** The RBI has announced that 'Fincare Small Finance Bank Limited' has been removed from the Second Schedule (List of Scheduled Banks) of the RBI Act, 1934, effective April 1, 2024, as the bank ceased banking operations from April 1, 2024.

- 1.19 RBI releases the data relating to financial performance of non-government non-financial FDI companies during FY 2022-23 - **Press Release: 2024-2025/380, Dated 27-05-2024**

**Editorial Note :** The RBI has released the data relating to financial performance of non-government non-financial (NGNF) foreign direct investment (FDI) companies in India during 2022-23 based on audited annual accounts of 2,272 companies, which reported in the Indian Accounting Standards (Ind-AS) format for three accounting years from 2020-21 to 2022-23. Their economic sector classification is based on their principal business activity reported in MGT-7 form of the MCA.

- 1.20 RBI mandates Money Changers to sell atleast 75% of bought foreign currency notes to the public quarterly - **Circular No. RBI/2024-25/39 A.P. (DIR Series) Circular No. 08, Dated 27-05-2024**

**Editorial Note :** The RBI has decided that from 01.07.2024, value of foreign currency notes sold by FFMCS (Full Fledged Money Changers)/ non-bank ADs Cat-II to the public for permitted purposes should not be less than 75% of the value of foreign currency notes purchased from other FFMCS/ ADs, on a quarterly basis. Further, data of such sale & purchase should be maintained and made available for audit / inspection.

## 2. SUPREME COURT

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

- 2.1 Where for offence under PMLA, when Special Court issued summons, applicant did not appear, and thus, warrant was issued and after issuance of warrant, applicant surrendered and thereafter applied for bail, which was rejected by High Court, in view of fact that even without surrendering also, applicant could have applied for cancellation of warrant by giving an undertaking to Special Court to remain present on dates fixed before Special Court and applicant had undergone incarceration for a period of 1 year and 1 month, considering these facts, applicant was entitled to be enlarged on interim bail - **Sandeep Gupta v. Directorate of Enforcement - [2024] 162 taxmann.com 287 (SC)**

## 3. HIGH COURT

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

- 3.1 Scheduled offence and proceeds of crime generated therefrom is very foundation for offence of Money Laundering and once a person is discharged or acquitted from scheduled offence, very foundation gets knocked out and charge of Money Laundering will not survive as there will be no proceeds of crime, and concomitantly, properties attached under PMLA cannot legally be treated as proceeds of crime or be viewed as property derived or obtained from criminal activity - **Directorate of Enforcement v. Akhilesh Singh - [2024] 162 taxmann.com 104 (Delhi)**

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

- 3.2 There is no bar on continuation of recovery proceedings initiated by bank under RDB Act due to invocation of SARFAESI proceedings, which were in nature of enforcement proceedings - **Magnum Steels Ltd. v. Asset Reconstruction Co. (India) Ltd. - [2024] 162 taxmann.com 105 (Delhi)**

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

- 3.3 Where petitioner filed writ petition challenging order passed by adjudicating authority in terms of section 8, said petition was to be as not maintainable in view of alternate and equally efficacious remedy available of an appeal in terms of Section 26 of PMLA - **Joseph Faust D'Sa v. Union of India - [2024] 162 taxmann.com 19 (Bombay)**



**SECTION 31B OF THE RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993 - PRIORITY TO SECURED CREDITORS**

- 3.4 Secured creditors will have priority of claim over unsecured creditors, and so far as inter se priority amongst secured creditors is concerned, by relying upon Section 529A of Act of 1956, first charge holding secured creditors will have priority over second charge holding secured creditors - **Maharashtra Explosives Ltd., In re - [2024] 162 taxmann.com 682 (Bombay)**

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

- 3.5 Where applicant, who was in custody in money laundering case filed a bail application to avail treatment for cancer he was suffering from and attend to his wife, who was also suffering from cancer of an advanced grade, in view of fact that applicant claimed to be 72 years of age and possibility of him fleeing away from justice and tampering with evidence were remote, and thus, applicant was to be released on bail, for a period of two months, on furnishing a P.R. bond in sum of Rs.1 Lakh and one or two sureties in like amount to satisfaction of Special Judge - **Naresh Goyal v. Directorate of Enforcement - [2024] 162 taxmann.com 810 (Bombay)**
- 3.6 Delhi HC takes a tough stand on corruption cases by denying bail to Manish Sisodia in Liquor Policy scam cases - **Manish Sisodia v. Directorate of Enforcement - [2024] 162 taxmann.com 746 (Delhi)**

**SECTION 56 OF THE BANKING REGULATION ACT, 1949 - ACT TO APPLY TO CO-OPERATIVE SOCIETIES SUBJECT TO MODIFICATIONS**

- 3.7 Merely because a co-operative bank to which provisions of BR Act are applicable by virtue of insertion of Section 56(a) with effect from 1-3-1966 or by virtue of amendment coming into effect from 1-4-2021 thereby transforming into a non-obstante clause, cannot be said to have been excluded by implication from ambit of MPID Act, in view of definition of 'Financial Establishment' contained in Section 2(d) of MPID Act - **Rajendrakumar Aatmaram Agarwal v. State of Maharashtra - [2024] 162 taxmann.com 712 (Bombay)**

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

- 3.8 Where accused no. 1 and accused no 6 were separate legal entities; one registered in Dubai and other registered in India, and thus, accused no 6 could not have been proceeded against under section 138 only on allegation that it was a group company of accused no. 1, which was drawer of cheque in question - **Sachin Kumar Parolia v. Rahul Rajan - [2024] 162 taxmann.com 879 (Delhi)**

- 3.9 Where cheques issued by accused borrower - director of a company to lender towards discharge of its liability were dishonoured and lender filed a complaint under section 138 against accused and company, also, lender made vital improvements in complaint which were not informed to accused through notice, accused had issued cheques as a director of a company and on behalf of it, since company and its directors were separate entities and notice was not served upon company, appellant failed to adhere to proviso (b) of section 138 of NI Act and, thus, acquittal of accused by Trial Court was to be affirmed - **S. Selvakumari Perulmal v. Kaushal Realtors (P.) Ltd. - [2024] 162 taxmann.com 18 (Bombay)**

- 3.10 Where cheque issued by firm to discharge its liability had been dishonoured, in view of fact that petitioner-proprietor of firm had not signed said cheque, mere averments in complaint that petitioner was authorized signatory of accused no 1, was not sufficient to make him vicariously liable for dishonour of cheque issued by firm - **Mrs. Mithlesh Gupta v. National Industrial Corporation Ltd. - [2024] 162 taxmann.com 56 (Delhi)**

**SECTION 141 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - OFFENCE BY COMPANIES**

- 3.11 Protection of cessation of liability for prior offence under Section 32-A of IB Code is applicable only to a corporate debtor i.e. a Company and that too only if management of Company is changed in resolution approved by Adjudicating Authority and this protection is not available to a natural person - **K & K Foundry (P.) Ltd. v. Goyal Iron and Steel (Nagpur) (P.) Ltd. - [2024] 162 taxmann.com 808 (Bombay)**

## 4. SAFEMA

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

- 4.1 Where ED imposed penalties on appellant for alleged violations of sections 3 and 4 and ED's findings were not solely based on statements of appellant and a co-accused, but also on documents seized from their business premises, thus, there was no error in findings recorded by ED, however, penalty imposed was deemed excessive compared to contraventions involved and to rectify this, penalty for contravention of Section 4 was to be reduced from Rs. 26 lakhs to Rs. 10 lakhs, and penalty for contravention of Section 3 was to be reduced from Rs. 98 lakhs to Rs. 40 lakhs and as appellant had already deposited Rs. 50 lakhs, adjusted penalties were deemed appropriate, resulting in partial allowance of appeal - **Shri Satpal Singh Vig @Pali v. Joint Director, Directorate of Enforcement - [2024] 162 taxmann.com 713 (SAFEMA - New Delhi)**

**SECTION 7 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - EXPORT OF GOODS AND SERVICES**

4.2 Where RBI issued a circular stating that funds from repayment of state credits scheme were to be utilized by exporter companies for export of goods to Russian Federation only, but appellant company exported goods to Dubai instead of Russia and proceeds of such export were realized in rupees under state credit scheme for export to Russia as well as company generated hard foreign currency from export to Dubai which was later transferred to Russia, without special or general permission of RBI, since key precondition under RBI Circular of export to Russia for drawing funds under state credit scheme was not completed by appellant and, therefore, penalty imposed on appellant by ED was to be confirmed - **Anoop Kumar v. Deputy Director, Directorate of Enforcement - [2024] 162 taxmann.com 680 (SAFEMA - New Delhi)**

#### SECTION 9 OF THE FOREIGN EXCHANGE REGULATION ACT, 1973 - RESTRICTIONS ON PAYMENTS

4.3 Where for rendering of services by company in UK, i.e., ESL to appellant company in procuring export orders of goods to Russia, appellant company chose to make payment to ESL through conversion of resident non-convertible rupee account to non-resident convertible rupee account and same was done without permission of RBI and in contravention of Section 9 (1) (a) of FERA Act, 1973, impugned order by Enforcement Directorate, imposing penalty on appellant for alleged violation was justified - **U.K. Paints (India) Ltd. v. Assistant Director, Directorate of Enforcement - [2024] 162 taxmann.com 779 (SAFEMA - New Delhi)**

4.4 Where during a search at Sudhir Kapadia's residence, authorities seized a document marked "B" and Sudhir Kapadia explained that it contained details of a New York account, which he faxed to one Bhagubhai to arrange \$38,000 for appellant and consequently, a penalty of Rs. 3 lakh was imposed on appellant for violating section 9, however, appellant wasn't given a chance to cross-examine Sudhir Kapadia, whose statement was sole basis of case, furthermore, Sudhir

Kapadia reportedly retracted his statement and thus, there was insufficient evidence to implicate appellant, leading to allowance of appeal against imposed penalty - **Amit Shah v. Special Director Directorate of Enforcement - [2024] 162 taxmann.com 647 (SAFEMA - New Delhi)**

#### SECTION 24 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - BURDEN OF PROOF

4.5 Where an ECIR was registered alleging that one M, in collusion with certain other entities was engaged in illegal foreign remittances to Hong Kong by submitting fake import documents to banks and evidence exists in form of statements of witnesses, including that of main accused and other accused persons apart from other evidence, which incriminate appellants-forex dealers/agents, on other hand, other than bare denials, appellants have not presented any credible evidence to discharge their burden of proof under section 24, impugned order passed by Adjudicating Authority for attaching various movable and immovable properties of appellants was justified and accordingly, appeal against same was to be dismissed - **Rajeev Wadhwa v. Deputy Director Directorate of Enforcement - [2024] 162 taxmann.com 748 (SAFEMA - New Delhi)**

#### SECTION 47 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - POWER TO MAKE REGULATIONS

4.6 Where appellant company failed to report receipt of FDI within stipulated period under section 6(3)(b) and Regulation 5 of FEM (Transfer or Issue of Security By a Person Resident Outside India) Regulations, 2000 for which penalty was imposed on it, provision of section 6(3)(b) was repealed/omitted and section 47(3) was inserted but requirement of reporting FDI was maintained, since pursuant to section 47(3), regulations framed by RBI were in operation when appellant defaulted and, thus, appeal filed by appellant challenging said penalty was to be disposed - **Shell India Markets (P.) Ltd. v. Special Director, ED - [2024] 162 taxmann.com 167 (SAFEMA - New Delhi)**

# INSOLVENCY AND BANKRUPTCY CODE

## 1. SUPREME COURT

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

1.1 Where point regarding limitation in filing application under section 7 was never raised before authorities, same could not be entertained before Supreme Court - **Ashok Kumar Bansal v. Punjab National Bank - [2024] 162 taxmann.com 775 (SC)**

## 2. HIGH COURT

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

2.1 Delhi HC invokes "dura lex sed lex" to quash DGCA's rejection letters to de-register aircraft whose lease to GoAir was terminated by lessors - **Accipiter Investments Aircraft 2 Ltd. v. Union of India - [2024] 162 taxmann.com 165 (Delhi)**

### SECTION 24 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS

2.2 Where during CIRP of corporate debtor, Resolution Professional had convened meeting of CoC in a hasty manner without serving proper notice to petitioner, resolution applicant, in compliance with section 24 read with regulation 19, resolution made in said meeting i.e. approval of resolution plan of successful resolution applicant, was unsustainable and invalid and consequently, resolution plan approved in this CoC meeting was quashed - **Farooq Ali Khan v. Punjab National Bank - [2024] 162 taxmann.com 845 (Karnataka)**

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

2.3 Where tax liability due to Taxes Department by corporate debtor was not included in resolution plan approved by NCLT and said department neither challenged such resolution plan before its approval by way of an appeal or a proceeding before instant Court nor approached RP or NCLT, demands raised of tax due by it stood extinguished after said approval and, thus, taxes department was to be restrained from proceeding for recovery against corporate debtor - **Patna Highway Projects Ltd. v. State of Bihar - [2024] 162 taxmann.com 57 (Patna)**

### SECTION 52 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - SECURED CREDITOR IN

2.4 Where shares of corporate debtor were pledged with secured creditor however said creditor failed to realize its security interest and thus, shares were directed to be handed over to Liquidator by NCLT under regulation 21A presuming said shares to be part of liquidation asset and directed to sale thereof, since said order did not adjudicate rights of petitioner being a secured creditor in respect of security interest to disputed shares, there was no scope of interference by instant Court with NCLT's order - **Culver Max Entertainment (P.) Ltd. v. National Company Law Tribunal - [2024] 162 taxmann.com 55 (Calcutta)**

## 3. NCLAT

### SECTION 3(11) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - DEBT

3.1 Where documents placed on record by appellants-shareholders of corporate debtor was not signed by corporate debtor and balance sheet of corporate debtor also showed that unsecured loan owed to appellants was nil and same was acknowledged by appellants, impugned order passed by NCLT rejecting section 7 application filed by appellant was justified - **Vijay Jain v. Laxmi Foils (P.) Ltd. - [2024] 162 taxmann.com 79 (NCLAT- New Delhi)**

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

3.2 Where corporate guarantor had executed a Deed of Guarantee in favour of financial creditor, unequivocally guaranteeing to discharge and fulfill obligations of guarantee since, corporate guarantor had not repaid obligations of principal borrower, it was deemed to have committed default in law and, therefore, impugned order passed by NCLT admitting section 7 application against corporate guarantor was justified - **Noil Christuraj v. State Bank of India - [2024] 162 taxmann.com 715 (NCLAT - Chennai)**

3.3 Where appellant, ex-director of corporate debtor filed instant appeal on ground that a disbursed amount of Rs.5 crores by financial creditor wasn't a loan but a part payment deposit for a land project money however, due amount was disbursed via RTGS transfer and corporate debtor's balance sheet categorized it as Long Term Borrowings, which clearly showed that disbursal was a loan and, therefore, impugned order passed by NCLT admitting section 7 application was justified - **Arunkumar Jayantilal Muchhala v. Awaita Properties (P.) Ltd. - [2024] 162 taxmann.com 203 (NCLAT- New Delhi)**

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



3.4 Where demand notice issued by appellant was disputed in its reply by respondent and, there were also a police complaints on record, making it a criminal case since, there was no contract entered into between parties but, there was evidence of a pre-existing dispute, conditions laid down under section 9 were not fulfilled and, therefore, NCLT had rightly rejected section 9 application - **Akbar Travels of India (P.) Ltd. v. Ritco Travels & Tours (P.) Ltd.** - [2024] 162 taxmann.com 646 (NCLAT- New Delhi)

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

3.5 In view of Explanation (a) to section 18, if a corporate debtor possesses assets belonging to a third party, those assets are not subject to CIRP or moratorium period, since there was no subsisting contract between appellant and corporate debtor which would entitle RP to claim any right, title or interest in appellant's property thus, subject property could not be included in list of assets of corporate debtor - **Mrs. Durdana Aabid Ali v. Vijay Kumar V Iyer (Resolution Professional of Future Retail Ltd.)** - [2024] 162 taxmann.com 208 (NCLAT- New Delhi)

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

3.6 Vesting of goods under section 126 of Customs Act, 1962 is not dependent on exercise of option to pay redemption fine - **Principal Commissioner of Customs GST v. Pratim Bayal RP For B.K.M. Industries Ltd.** - [2024] 162 taxmann.com 745 (NCLAT- New Delhi)

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

3.7 Where applicant was declared a wilful defaulter much prior to submission of its resolution plan and there was no judicial stay existed in favour of applicant regarding its status as wilful defaulter on date of submission of resolution plan and, thus, impugned order passed by NCLT that applicant was not eligible to submit resolution plan was justified - **Namdev Hindurao Patil v. Virendra Kumar Jain, Liquidator, Warana Dairy and Agro Industries Ltd.** - [2024] 162 taxmann.com 248 (NCLAT- New Delhi)

3.8 Where applicant was declared a wilful defaulter much prior to submission of its resolution plan and there was no judicial stay existed in favour of applicant regarding its status as wilful defaulter on date of submission of resolution plan and, thus, impugned order passed by NCLT that applicant was not eligible to submit resolution plan was justified - **Namdev Hindurao Patil v. Virendra Kumar Jain, Liquidator, Warana Dairy and Agro Industries Ltd.** - [2024] 162 taxmann.com 248 (NCLAT- New Delhi)

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

3.9 Where financial statements of corporate debtor were placed on record by financial creditor to show that debt was not time barred, in view of fact that appellant-suspended director of corporate debtor was not given chance to explain notes of said balance sheets which allegedly expressed caveats regarding debt and, therefore, impugned order passed by NCLT admitting section 7 application was to be set aside - **Subham Bhagat v. Ankit Metal & Power Ltd.** - [2024] 162 taxmann.com 875 (NCLAT- New Delhi)

3.10 Where appellant, personal guarantor alleged that an application under section 95 had already been filed against him by L&T, which initiated moratorium and, during moratorium, respondent-financial creditor had no jurisdiction to file any further proceedings, including another application under section 95, since L&T's application was dismissed as withdrawn due to jurisdictional issues, interim moratorium did not apply and, thus, impugned order passed by NCLT admitting respondent's application filed under section 95 was justified - **Arvind Dham v. State Bank of India** - [2024] 162 taxmann.com 649 (NCLAT- New Delhi)

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

3.11 According to Rule 22(2) of NCLAT Rules, 2016, every appeal shall be accompanied by a certified copy of impugned order, which is a mandatory one since, appellant failed to file appeal, in terms of Rule 22 (2) before lapse of Limitation period, besides these, appellant had not filed an application to exempt it, from fulfilling with any of requirement of NCLAT Rules, 2016, and not obtained any `Exemption Orders from Tribunal and, therefore, instant appeal was to be rejected - **State Bank of India v. India Power Corporation Ltd.** - [2024] 162 taxmann.com 611 (NCLAT - Chennai)

## 4. NCLT

**SECTION 5(6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE**

4.1 Where financial creditor had advanced credit facilities to company Gnex and Loan Agreement specifically indicates name of Corporate Debtor as co-borrower and moreover, corporate debtor had affixed its signatures and stamp on each and every page of Loan Agreement confirming its liabilities as borrower/co-borrower, and financial creditor had annexed loan sanction letter, loan agreement duly executed by Corporate Debtor / co-borrower, statement of account evidencing disbursement of amount, thus, in event of default in repayment, instant application by financial creditor to

initiate CIRP against corporate debtor was to be admitted - *Indiabulls Housing Finance Ltd. v. Essel Homes (P.) Ltd.* - [2024] 161 taxmann.com 823 (NCLT - Mum.)

**SECTION 94 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY DEBTOR**

4.2 Where applicant, a guarantor to a loan agreement between R and Bank, sought insolvency proceedings due to default, since demand notice did not directly address applicant, indicating that guarantee was not invoked against them and report of RP had not been found to be satisfactory in examining eligibility of borrower to file application under section 94, present

application would not be maintainable - *Sanjay D Kanani v. Kotak Mahindra Bank* - [2024] 161 taxmann.com 798 (NCLT - Ahd.)

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

4.3 Where applicant-personal guarantor secured loan obtained by corporate debtor and subsequent to default of repayment by corporate debtor, demand notice demanding repayment of loan was issued to applicant on 19-11-2015, application filed by personal guarantor under section 94 in year 2023, was barred by limitation period for not preferring application within relevant period and, therefore, such application was to be rejected - *Bindu Subhas Tibrewal, In re* - [2024] 161 taxmann.com 797 (NCLT - Ahd.)

**Delisting of Shares from Stock Exchange under the Insolvency  
and Bankruptcy Code (IBC) 2016:  
Process, Considerations, and Regulatory Implications**



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In typical delisting scenarios, companies need to obtain shareholder approval to ensure fairness and transparency, and to protect the interests of minority shareholders. However, the situation is somewhat different for companies undergoing the Insolvency and Bankruptcy Code (IBC) process.

Under the IBC framework, once the resolution plan, which could include the proposal for delisting, is approved by the Committee of Creditors (CoC) and sanctioned by the National Company Law Tribunal (NCLT), the requirement for further approval from the shareholders for the specific actions prescribed in the resolution plan is generally bypassed. This includes the delisting of shares.

This exception exists because:

1. **Primacy of the Resolution Plan:** The resolution plan approved under IBC takes precedence. The rationale is that the CoC, which represents the interests of the creditors (and, indirectly, the larger stakeholder group including shareholders), has already approved the plan. The NCLT's sanction of the plan further validates its legality and feasibility.
2. **Purpose of IBC:** The IBC is designed to resolve insolvency swiftly and efficiently, maximizing value for creditors while ensuring a fair and equitable treatment of all stakeholders. The streamlined process helps in expediting the



resolution and reduces the administrative burden, especially when the survival of the business might be at risk.

3. **Protection of Interests:** It's assumed that the CoC's decisions, as representatives of the largest financial stakeholders in the company, are aligned with the company's best interests, which may sometimes require tough decisions like delisting, restructuring, or even liquidation.

This framework ensures that the process of resolving insolvency issues isn't unduly prolonged by the requirements of multiple layers of approvals, thereby facilitating quicker resolution and restructuring efforts that can be crucial for the revival or liquidation of the distressed company.

**Following important points needs to be kept in mind:**

1. Have the Exchange submitted its claim in the manner as provided under the IBC Rules.
2. Where Tribunal has not admitted any claims of the Exchange, the same shall be processed without placing the matter before the waiver committee. In case if there is no specific order, the Companies shall be required to seek a waiver from the Exchange.
3. Unless otherwise specified by the directions of Hon'ble Tribunal/Courts, the applications/cases for delisting by operation of law shall be disposed off within a period of fifteen days from the date of receipt of an application for delisting complete in all respects and subject to clearance of all applicable dues of SEBI/Stock Exchanges.
4. Details of documents to be submitted along with application - For processing application in case a company is admitted under Corporate Insolvency Resolution Plan and is delisted pursuant to Hon'ble NCLT's order is attached. The same can be accessed at <https://www.bseindia.com/static/about/downloads.aspx>

The fee of INR 12,50,000 that needs to be paid to the Bombay Stock Exchange (BSE) for the delisting process is essentially a regulatory fee imposed by the exchange. Here are some of the reasons and purposes for this fee:

- 1. Administrative Costs:** The fee covers the administrative and processing costs incurred by the BSE in handling the delisting process. This includes the review of the delisting application, the monitoring of the delisting procedures to ensure compliance with regulatory requirements, and other administrative support.
- 2. Regulatory Oversight:** The fee also supports the regulatory oversight functions of the exchange. BSE ensures that the delisting process is carried out in accordance with the rules and regulations set by SEBI and provides a framework to protect the interests of public investors.
- 3. Use of Facilities and Technology:** Part of the fee compensates for the use of the exchange's technology and infrastructure. Delisting involves significant changes in the trading system, including the eventual removal of the stock from trading platforms.
- 4. Ensuring Compliance:** The exchange plays a crucial role in ensuring that the companies follow all procedural requirements for a fair and transparent delisting process. The fee helps to fund these compliance and monitoring efforts.

This fee is fairly standard and is part of the cost structure that companies must consider when planning for delisting, especially in cases involving complex scenarios such as insolvency proceedings under the IBC. The specific amount is determined by the exchange based on various factors, including the nature of the delisting, the size of the company, and the expected complexity of the process.

## BSE LIMITED

**Checklist for delisting of equity shares from Bombay Stock Exchange (BSE) pursuant to resolution plan approved NCLT under section 31 of the Insolvency Code**

Sr. No.	Particulars of documents/details required	Yes/ No/ Not Applicable
1	An application for approval of the proposed delisting on the letterhead of the Company.	
2	Copy of the NCLT order approving the resolution Plan along with a copy of Resolution plan, highlighting the relevant provision relating to delisting	
3	Confirmation as to whether the delisting is sought under Regulation 3(2)(b)(i) or (ii) of the amended SEBI Delisting Regulations along with detailed process that company propose to follow	
4	Certification from statutory auditor, certifying that the exit price mentioned in the resolution plan is not less than the liquidation value as determined under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 after paying off dues in order of priority as defined under Section 35 of the Insolvency and Bankruptcy Code, 2016 [No.31 of 2016]	
5	Undertaking from the Company/Promoter/Acquirer, certifying that if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the exit price determined, the existing shareholders shall also be provided an exit opportunity at a price which shall not be less than the price, by whatever name called, at which such promoters or other shareholders, directly or indirectly, are provided exit.	
6	An undertaking from the company / acquirer(s) / promoter(s) that the proposed delisting is in compliance with the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 and amendment thereof.	



7	Confirmation from Managing Director/Company Secretary that the details of delisting of shares of company along with the justification for exit price in respect of delisting proposed was disclosed to Exchange within one day of resolution plan being approved under section 31 of the Insolvency and Bankruptcy Code, 2016	
8	Record date fixed to determine the list of public shareholders to whom the exit/ delisting offer shall be made	
9	Copy of the letter of offer sent to public shareholders and confirmation regarding the date on which the letters were sent to all the public shareholders	
10	Shareholding pattern pre-delisting offer and post delisting offer.	
11	An Undertaking from the company/Promoter(s)/Acquirer(s) that they will resolve investor grievances post delisting	
12	Confirmation from Peer reviewed Company Secretary confirming the following: (i) The procedure as laid down in the Resolution Plan for the delisting of <name of the company> has been successfully completed as per the NCLT Order dated ____ within the specified timeline, if any & (ii) Company has complied with requirement of NCLT order dated ____ for delisting of its equity shares.	
13	Certificate stating that there is no listing fees / dues, pending with the recognized stock Exchange, where the equity shares of the company are listed.	
14	Certified true copy of public announcements pre and post delisting offer.	
15	Confirmation from the RTA/Company with respect to non-pending payment to the shareholders who have tendered their shares in the delisting offer.	
16	Non-Refundable Processing fee of Rs. 12,50,000/- plus GST	
17	Explanation for procedure undertaken with respect to requests from shareholders for tendering shares post delisting.	

Note:

1. All documents to be dated, duly signed and stamped.
2. Name and Designation to be mentioned of all Signing Authorities.
3. Exchange reserves right to call for original documents at any time in the future.
4. The Exchange may ask additional documents depending on the nature of case.

**Summary of Exit Offer in below format**

Total no of shares held by the public Shareholders as on Record date to whom the letter of offer has been sent	Shares surrendered under the Exit Offer	Shares rejected	Shares accepted under the Exit Offer and payment made	Offer price (Rs.)	Date of payment	Payment made to the shareholders who have surrendered their shares in the offer (Rs.)

## ACCOUNT AND AUDIT UPDATES

- 1.1** ICAI has issued an exposure draft guidance note on audit reports under section 12A/10(23C) of the Income-tax Act, 1961

**Editorial Note** : Charitable, religious trusts, institutions, and educational entities claiming tax exemption need to maintain books of account and other documents and additionally need to get their books of account audited. To assist in this matter, ICAI has issued the exposure draft for public comments, providing guidance to the auditors in conducting the audit. The last date for submitting the comments is 29th May 2024.

- 1.2** The ICAI has issued advisory for the members on unit of measure of compilation of Annexures to the Cost Audit Report

**Editorial Note** : The Institute of Cost Accountants of India (ICMAI) has issued an advisory for its members regarding the unit of measure for compiling Annexures to the Cost Audit **Report** as specified the unit of measure under the customs Tariff Act 1975. In case of any deviation the same needs to be clearly mentioned in the cost audit report by way of appropriate Qualification or matter of Emphasis or Disclosure.

- 1.3** ICAI releases exposure draft on proposed networking model for LLP firms

**Editorial Note** :The Committee for Aggregation of CA Firms (CACAF) of ICAI has proposed an exposure draft on the Merger & Demerger guidelines for public

comment. The CACAF invites comments on the mentioned specific question as well as any aspect of this Exposure Draft. This exposure draft contains the proposed amendments in mergers and demerger guidelines and the concepts related to mergers and demerger.

- 1.4** ICAI releases an Exposure Draft on the proposed Merger & Demerger guidelines for public comment

**Editorial Note** : The Committee for Aggregation of CA Firms (CACAF) of ICAI has proposed an exposure draft on a new model of networking, Approach III named as LLP Firm Network Model. This exposure draft contains the silent feature of the LLP Firm Network Model and proposed insertions in the guidelines for Networking of Indian CA Firm, 2021.

- 1.5** ICMAI issues an updated version of CAS-2 (Revised 2024), replacing CAS-2 (Revised 2015)

**Editorial Note** : The Cost Accounting Standards Board of the Institute of Cost Accountants of India (ICMAI) has issued an updated version of the Cost Accounting Standard (CAS)-2 (Revised 2024) on Capacity Determination, replacing CAS-2 (Revised 2015). The objective of this standard is to bring uniformity and **consistency** in the principles and methods of determination of capacity with reasonable accuracy. This Cost Accounting Standard shall be effective from the period commencing on or after 1st April 2024.



## Direct Taxes Professionals' Association

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

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### APPLICATION FOR MEMBERSHIP

2 Pcs.  
Pass Port  
Colour  
Photographs

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

Dear Sir,

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

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

1. Name in Full ( Mr. / Mrs. / Miss ) : \_\_\_\_\_  
(BLOCK LETTERS)
2. Father's Name : \_\_\_\_\_
3. Date of Birth : \_\_\_\_\_
4. Academic and/or Professional Quali fications : \_\_\_\_\_
5. Professional Status (Pls. specify) :  In Practice  In Service  In Business  Others
6. Organisation : \_\_\_\_\_
8. Mem. No. of CA/CS/ICWAI/Bar Council : \_\_\_\_\_
9. Blood Group : \_\_\_\_\_ (Self) \_\_\_\_\_ (Spouse)
10. Name of Spouse : \_\_\_\_\_
11. Office Address : \_\_\_\_\_  
\_\_\_\_\_
12. Residence Address : \_\_\_\_\_  
\_\_\_\_\_
13. Telephone (Nos.) : (Off.) : \_\_\_\_\_ (Resi.) : \_\_\_\_\_ Fax : \_\_\_\_\_  
Mobile : \_\_\_\_\_ E-mail : \_\_\_\_\_
14. Address where Circular etc. should be sent :  Office  Residence  
Enclosed herewith Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ )  
by Cash/Cheque No. \_\_\_\_\_ Dated \_\_\_\_\_ Drawn on \_\_\_\_\_  
towards  Life Membership  General Membership.

Place : \_\_\_\_\_

Date : \_\_\_\_\_

\_\_\_\_\_  
Signature of the Applicant

**Would you like to contribute to the following activities of DTPA ? (Pls. specify)**

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Signature : \_\_\_\_\_

#### FOR OFFICE USE ONLY

Date of Receipt \_\_\_\_\_ Membership Approved on \_\_\_\_\_ Membership No. Allotted \_\_\_\_\_

**Chairman, Membership Sub-Committee**

**President**

**General Secretary**

**NOTES :** 1. Fee for Life Membership (a) Individual Rs. 7,500/- (G.S.T. Extra @ 18%), (b) If application is made within a period of 5 years of attaining first professional qualification Rs. 5,000/- (G.S.T. Extra @ 18%), (c) Corporate Bodies Rs. 7,500/- (G.S.T. Extra @ 18%).

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

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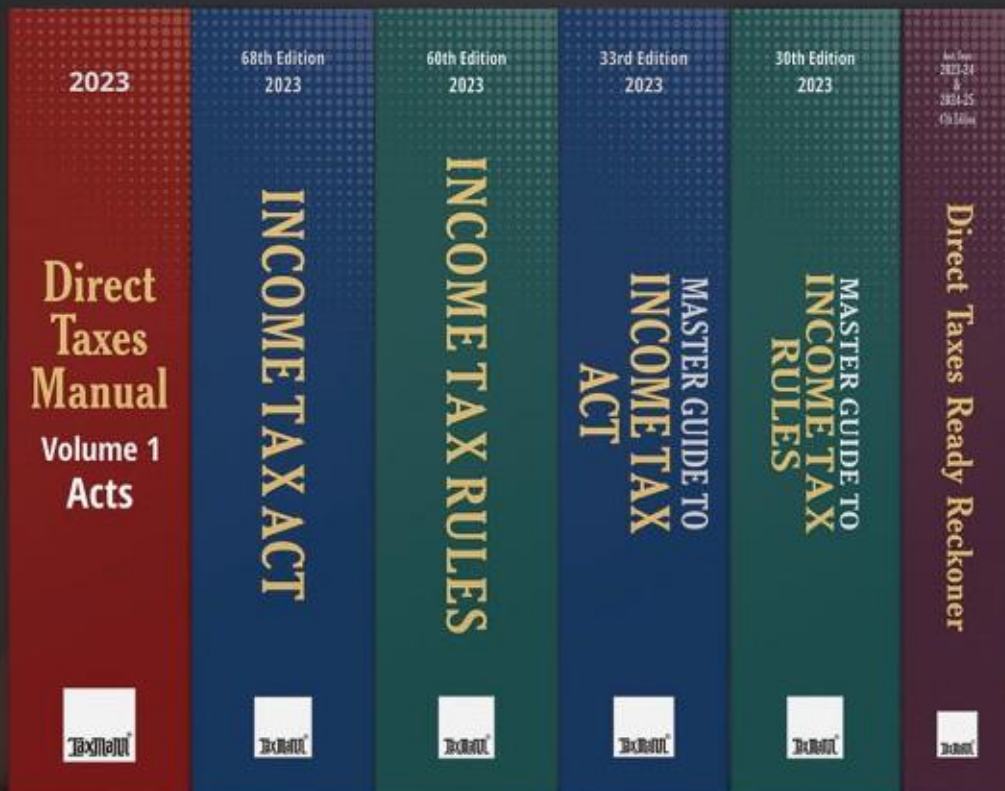
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