

Editorial Board



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Total no. of page: 75

....From the Desk of Editors



Respected Seniors and my Dear Friends,

With great excitement and pleasure, we present before you DTPA e-Journal which contains diversified area of updates on various statutes which we are hopeful that the readers will find useful.

The festive season which includes Ganesh Puja, Viswakarma Puja, Durga Puja, Deepawali, Kali Puja, Bhaiya Dooj and Chhat followed by Jagatdhatri Puja is almost over and now, we are ready to update and upgrade ourselves by attending time to time seminars, group discussions to be organized by our Association.

During her speech while presenting Finance Bill No. 2 of 2024, our Hon'ble Finance Minister of India, Mrs Nirmala Sitharaman announced a comprehensive review of Income Tax Act 1961 and stated that the purpose is to make the Act concise, lucid, easy to read and understand which will reduce disputes and litigation, thereby providing tax certainty to the tax payers and the same would also bring down the demand embroiled in litigation. It was announced to be completed in six months. Honoring the announcement, the Income Tax Portal has brought in a new window, namely **Suggestions for revamp of I T Act**, which when pressed upon, displays 5(five) boxes, which requires the following to be filled-in and submit:

- 1) Section number against which one want to submit response
- 2) Simplification of language
- 3) Litigation Reduction
- 4) Redundant/Obsolete Provision
- 5) Compliance Reduction

The clause no.1 is mandatorily required to be filled-in followed by filling-in of all or any of the clauses from 2 to 5 followed by its submission.

Recently, CBDT has issued a Circular no. 15/2024 dated 04/11/2024 as per the powers envisaged upon the Board to issue orders from time to time. Order passed by means of the aforesaid circular contains provisions about fixing monetary limits of the income tax authorities in respect of reduction or waiver of interest paid or payable under section Section 220(2) of Income Tax Act, 1961.

GST Council in its 53rd meeting held on 22nd June, 2024 had recommended for waiver of interest and penalties in the demand notices or orders issued under Section 73 of the CGST Act, 2017 (i.e. the cases not involving fraud, suppression or wilful misstatement, etc.) for the Financial years 2017-18, 2018-19 and 2019-20. In view of the above, Rule 164 of CGST rules, 2017 was notified through Notification No. 20/2024 dated. 8th October 2024, effective from 1st November 2024. In this regard, an advisory for Waiver Scheme under Section 128A has been issued on 08.11.2024.

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

To quote "Albert Einstein - "The hardest thing in the world to understand is the Income tax."

We are very much eager to enhance the experience of our readers and therefore, request your feedback to help us achieve greater heights in terms of knowledge sharing and to ensure that the **FLAG OF DTPA** continues to soar high.

Lots of good wishes for the festive season ahead.

Jai Hind!! Jai DTPA!!

With Best Regards

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

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

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....From the desk of President

Dear Members,

As we approach the close of another eventful year, I am delighted to share my thoughts with you in this November issue of our association's journal. This publication is more than just a newsletter; it's a testament to the expertise, commitment, and ethical standards that define our community of tax professionals. It is a space for knowledge sharing, professional growth, and a reaffirmation of the values we stand by as direct tax practitioners.

Our profession is built upon a foundation of trust and integrity, with the ethical standards we uphold defining the quality of service we offer. In an environment where tax laws are complex and continuously evolving, maintaining professionalism and ethical integrity is of paramount importance. Every action we take, every piece of advice we provide, reflects not only on us as individuals but on the association and the larger profession we represent. This journal serves as a reminder of that responsibility and a resource to support you in navigating it with wisdom and principle.

One of our core missions as an association is to foster continuous professional growth. In this era of rapid technological advancements, remaining up-to-date is not just an advantage but a necessity. The modern tax professional must be skilled in both traditional tax knowledge and in understanding and implementing new technologies that drive our field forward. This issue includes insights into emerging digital tools, tax policy updates, and expert analyses, providing you with a comprehensive view of the current and upcoming trends in direct taxation.

This month's journal also emphasizes the ethical implications of utilizing technology in our profession. As we adopt these new tools, it's crucial that we balance innovation with accountability, always keeping our clients' best interests and confidentiality at the forefront. As custodians of sensitive information, we have a responsibility to use technology in a manner that upholds the privacy and integrity of the data we manage.

I am particularly pleased to share thought-provoking articles on recent regulatory changes, case studies, and expert interviews. Each piece is curated to add value to your work and deepen your understanding of the principles that underpin our profession. Whether you are a seasoned expert or new to the field, I encourage you to explore the content thoughtfully, reflecting on how each insight can contribute to your practice and further our collective knowledge.

As we near the year's end, I urge all members to renew their commitment to the high ethical standards that have long been the hallmark of our association. Let us continue to strengthen our professional knowledge, embrace technology responsibly, and foster a community where excellence is the standard.

Thank you for being part of this journey, and I wish you all a productive and insightful read. May the knowledge shared within these pages inspire you to new heights of achievement, integrity, and professional fulfillment

Warm regards

CA Barkha Agrawal

President

11st November, 2024

Glimpses of Bijoya Diwali Get Together on 08.11.2024 at ISKCON House Lawn, Kolkata





Compliance Calendar for November, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th November 2024	Oct-24	Due date for deposit of Tax deducted/collected for the month of October, 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	14th November 2024	Oct-24	Issuance of TDS certificate for Tax deducted under Section 194-IA, 194-IB, 194M	
	15th November 2024	AY 2024-25	Due Date for furnishing of Return of Income under sub-section (1) of Section 139 of the Act in case of assessee referred to in clause (a) of Explanation 2 to sub-section (1) of Section 139 of the Act	
	15 th November 2024	Q3-FY 24-25	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2024	
	30th November 2024	Oct-24	Furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC) and 194M	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th November 2024	Oct-24	GSTR-7	Monthly Return by Tax Deductors For October
	10th November 2024	Oct-24	GSTR-8	Monthly Return by E-Commerce Operators For October
	11th November 2024	Oct-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 November 2024	Oct-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th November 2024	Oct-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th November 2024	Oct-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th November 2024	Oct-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of October, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year
Statute	Due dates	Compliance Period	Details	
Prof. Tax on Salaries	10th November 2024	Oct-24	Professional Tax (PT) on Salaries for October 2024	
ESI & PF	15th November 2024	Oct-24	Provident Fund (PF) & ESI Returns and Payment for October 2024	

Compliance Calendar for December, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th December 2024	Nov-24	Due date for deposit of Tax deducted/collected for the month of November, 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	
	14th December 2024	Nov-24	Issuance of TDS certificate for Tax deducted under Section 194-IA, 194-IB, 194M	
	15th December 2024	AY 2025-26	Advance Tax Payment for Q3- FY 24-25	
	30th December 2024	Nov-24	Furnishing of Challan - Cum - Statement under Section 194IA (Form 26QB), 194IB (Form 26QC) and 194M	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST	10th December 2024	Nov-24	GSTR-7	Monthly Return by Tax Deductors For November
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	13th December 2024	Nov-24	GSTR-5 (MONTHLY)	Summary of Outward taxable supplies and tax payable by a non-resident taxable person
	13th December 2024	Nov-24	GSTR-6 (MONTHLY)	Details of ITC received and distributed by an ISD
	20th December 2024	Nov-24	GSTR-5A (MONTHLY)	Summary of outward taxable Supplies and tax payable by a Person supplying OIDAR services
	20th December 2024	Nov-24	GSTR-3B	Due Date for filling GSTR – 3B return for the month of October, 2024 for the taxpayer with Aggregate turnover exceeding INR 5 crores during previous year
Statute	Due dates	Compliance Period	Details	
Prof. Tax on Salaries	10th December 2024	Nov-24	Professional Tax (PT) on Salaries for November 2024	
ESI & PF	15th December 2024	Nov-24	Provident Fund (PF) & ESI Returns and Payment for November 2024	

Feedback and suggestions are Invited:

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

Speaking Opportunity at DTPA Platform

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

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

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

Regards,

CA Barkha Agrawal
President-DTPA

Request for Article in DTPA Journal

Dear Sir/Madam,

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

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

Topics:

- Direct Taxes
- 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 e-mail at dtpejournal@gmail.com**
- Please note that Journal Committee has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal.

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

Thanks and Regards,

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ज्ञानं एक्यं च न्यायार्थम्
Estd. 1982

Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com



Om Shanti

TOPIC:

**BALANCE
SHEET OF
LIFE**

SPEAKER:

BK SISTER PRERNA (CS,CMA)

Date : 17th Dec, 2024,

Tuesday

Time : 04:00 pm -

07:00 pm

Venue - DTPA

Conference Hall

**CA Barkha Agarwal
President**





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Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

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BREAKFAST | LUNCH | TEA | SNACKS

All members with their families, friends and relatives
are welcome.

VENUE:

BARANAGAR JUTE MILL

284, MAHARAJA NANDA KR ROAD,
ALAMBAZAR-700035

**29TH DEC, 2024, SUNDAY
09:00 AM ONWARDS**



President

CA Barkha Agarwal

Chairman

CA Rajesh Kr Agrawal

Advisor

CA Aghor Dudhwewala

Co-Chairman

CA Mahendra Kr Agarwal

Co-Chairman

CA Sujit Sultania



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Direct Taxes Professionals' Association

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

Email :- dtpakolkata@gmail.com

Save the Date



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



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WOFA PROGRAM HIGHLIGHTS

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

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

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

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

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

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

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DIRECT TAXES

1. STATUTORY UPDATES

- 1.1 No TCS under Sec. 206C(1F) on any payment received from Reserve Bank of India: CBDT - **Notification No. S.O. 4545I, Dated 16-10-2024**

Editorial Note : The Central Government has specified that no collection of tax shall be made under section 206C(1F) of the Income Tax Act, 1961 on any payment received from the Reserve Bank of India. This notification shall come into force from 16.10.2024.

- 1.2 CBDT releases time-series data of direct tax statistics updated up to FY 2023-24 - **Press Release, Dated 16-10-2024**

Editorial Note : The CBDT has released the key statistics relating to Direct Tax collections and administration. Some of the key highlights include (a) an increase in net direct tax collections by 206.95% from Rs 6,38,596 crores in F.Y. 2013-14 to Rs 19,60,166 crores in F.Y. 2023-24; (b) an increase in gross direct tax collections by over 224.06% in F.Y. 2023-24, reaching a figure of Rs 23,38,421 crores from Gross Direct Tax Collections of Rs 7,21,604 crores in F.Y. 2013-14.

- 1.3 CBDT amends Rules 31AA & 37-I; specifies conditions for allowing TCS credit to a person other than the collectee - **Notification G.S.R. 645(E) [NO. 114/2024/F. NO. 370142/21/2024-TPL], Dated 16-10-2024**

Editorial Note : The CBDT has amended Rule 31AA to include a new clause (viii). The new clause requires the collector to furnish particulars of amount received or debited on which tax was not collected or tax was collected at a lower rate in view of any notification issued under section 206C(12). In addition, Rule 37-I has been amended which specifies conditions to allow the credit for the tax collected at source to other person and not to the collectee.

- 1.4 CBDT notifies new Form 12BAA incorporating details of tax deducted or collected by others - **Notification No. G.S.R. 639(E), Dated 15-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified new Form 12BAA, which is to be submitted to the employer deducting tax on salary income. This new form incorporates the amendments brought by the Finance (No. 2) Act, 2024, permitting the credit of all taxes deducted or collected in the employee's name.

- 1.5 PIL filed in HC challenging denial of Sec. 87A rebate under new tax regime if income taxed at special tax rates

Editorial Note : A Public Interest Litigation (PIL) has been filed before the Gujarat High Court challenging the denial of the rebate under section 87A of the Income Tax Act, 1961, on the income attracting special rates of tax. The petitioner contended that the rebate under section 87A was denied to the eligible assessee on any income chargeable to tax at special rates under the new regime. This action of the respondents was in clear

violation of the law.

- 1.6 CBDT releases FAQs on Direct Tax Vivad Se Vishwas Scheme 2024 - **Circular No. 12 of 2024, Dated 15-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has issued a Guidance Note in the form of Frequently Asked Questions (FAQs) to facilitate the various queries raised by the stakeholders following the enactment of the Direct Tax Vivad Se Vishwas (DTVSV) Scheme, 2024.

- 1.7 CBDT issued revised guidelines for compounding of offences under Income-tax Act - **Notification F.No.285/0812014-IT(Inv.V)163, Dated 17-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has issued Revised Guidelines for Compounding of offences under the Income-tax Act, 1961. The revised guidelines supersede all existing guidelines and would apply to pending as well as new applications from the date of its issue. The guidelines facilitate the stakeholders by reducing complexities arising out of existing multiple guidelines, simplifying the compounding procedure and lowering the compounding charges.

- 1.8 CBDT notifies 'West Bengal Pollution Control Board' for the purpose Sec. 10(46) exemption - **Notification No. S.O. 4570(E), Dated 18-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'West Bengal Pollution Control Board' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961. The notification shall be effective for the AY 2015-16 subject to the certain conditions.

- 1.9 CBDT notifies tolerance range under transfer pricing for AY 2024-25 - **Notification No. S.O. 4571(E), Dated 18-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified that the tolerance range of 1 per cent for wholesale trading and 3 per cent in all other cases for assessment year 2024-25. "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils certain conditions.

- 1.10 CBDT notified Seventh Amendment Rules, 2024 to amend Form 10A and Form 10AB - **Notification No. GSR 638, Dated 15-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified the seventh amendment to Form 10A and Form 10AB. The amendment is effective from 01-10-2024 and applies retrospectively. The amendment is made to provide clarity on the information to be furnished in the application for registration under section 12A, 10(23C), and 80G.

- 1.11 CBDT notifies certain entities for the purpose Sec. 10(46) exemption - **Notification Nos. SO 4399, 4400, 4401, Dated 11-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has notified 'District Legal Service Authority', Real Estate Regulatory Authority', 'Gujarat Water Supply and Sewerage Board', 'State Load Despatch Centre Unscheduled Interchange Fund- West Bengal State Electricity Transmission Company Limited' for the purposes of clause (46) of section 10 of the Income-tax Act, 1961

- 1.12 CBDT extends ITR due date from 31st October to 15th November 2024 - **Circular No. 13/2024, Dated 26-10-2024**

Editorial Note : The Central Board of Direct Taxes (CBDT) has extended the due date for furnishing the Income Tax Return (ITR) for Assessment Year 2024-25 under section 139(1) of the Income Tax Act from 31-10-2024 to 15-11-2024.

- 1.13 CBDT invites public input for comprehensive review of Income Tax Act - **Press Release, Dated 07-10-2024**

Editorial Note : In order to make the Income Tax Act concise, clear, and easy to understand, the Finance Minister, in her Budget 2024-25 Speech, announced a comprehensive review of the IT Act. The CBDT has launched a web page inviting public suggestions on simplifying the language, reducing litigation and compliance burden, and removing redundant and obsolete provisions. The web page is live and accessible to the public on the e-filing portal.

- 1.14 CBDT extends due date for filing tax audit reports for AY 2024-25 to October 7, 2024 - **Circular No. 10/2024, Dated 29-09-2024**

Editorial Note : Considering the difficulties faced by taxpayers and other stakeholders in electronically filing various audit reports for Assessment Year 2024-25 under the Income Tax Act, the CBDT has extended the due date from 30-09-2024 to 07-10-2024.

- 1.15 Govt. maintains small savings scheme interest rates unchanged for 3rd quarter of FY 2024-25 - **Notification F.NO.1/4/2019-NS, Dated 30-09-2024**

Editorial Note : The Ministry of Finance has announced the small savings scheme rates for the third quarter of FY 2024-25. The interest rates for different small savings schemes during the third quarter of the Financial Year 2024-25, effective from October 1, 2024, to December 31, 2024, will remain unchanged from those set in the second quarter of FY 2024-25.

- 1.16 CBDT specifies 'Principal Secretary to Government & Chairman, OCAC' as specified authority u/s 138 - **Notification No. S.O. 4276(E), dated 01-10-2024**

Editorial Note : The Central Government has specified 'Principal Secretary to Government & Chairman, Odisha Computer Application Centre (OCAC), Department of Electronics & Information Technology (E&IT), Government of Odisha' for the purposes of identifying genuine beneficiaries for social welfare schemes of the Government of Odisha.

- 1.17 CBDT specifies procedures for making declarations and furnishing undertakings in Form-1 under Vivad se Vishwas - **Notification No. 4 of 2024, Dated 30-09-2024**

Editorial Note : In the exercise of the powers conferred under Rule 8 of The Direct Tax Vivad Se Vishwas Rules, 2024, the Director General of Income Tax (Systems), Bengaluru, hereby lays down the procedures or making declaration and furnishing undertaking in Form-1

- 1.18 CBDT issues new guidelines to handle applications for condonation of delay in filing ITR with refund/losses - **Circular No. 11 /2024, Dated 01-10-2024**

Editorial Note : The CBDT, in supersession of previous instructions, has issued a new circular under Section 119(2)(b) of the Income-tax Act, 1961. This circular provides comprehensive guidelines for handling applications for condonation of delay in filing returns claiming refunds and carry forward of losses, detailing conditions and procedures for such cases.

- 1.19 CBDT further extends due date for filing audit report in Form 10B/10BB for AY 2023-24 to Nov 10, 2024 - **Notification F. NO.173/ II S/2024-ITA-1, Dated 07-10-2024**

Editorial Note : The CBDT vide Circular No. 02/2024, Dated 05.03.2024 extended the due date of filing of audit report in Form 10B/10BB for the assessment year 2023-24 to 31st March, 2024 for those trusts, institutions and funds which have furnished audit report on or before 31st October, 2023 in Form No. 10B instead of Form No. 10BB and vice-versa. Considering the genuine hardship faced by various taxpayers, the CBDT has further extended the due date to 10th November, 2024.

- 1.20 CBDT notifies 'Designated Authority' under the Direct Tax Vivad Se Vishwas Scheme, 2024 - **Notification F.NO.PR.CCIT/LKO/JUDL./VSVS-2024/2024-25/2685, Dated 27-09-2024**

Editorial Note : The CBDT has notified Principal Commissioners of Income-tax/ Commissioners of Income-tax having their headquarters at the Lucknow, Allahabad, Gorakhpur & Bareilly as 'Designated Authority' under the Direct Tax Vivad se Vishwas Scheme 2024.

- 1.21 34 lakh+ tax audit reports filed till due date; Filing grew at 4.8% over the previous year - **Press Release, Dated 09-10-2024**

Editorial Note : The CBDT, in a press release, stated that more than 34.84 lakh audit reports, including 34.09 lakh Tax Audit Reports (TARs), were filed on the e-filing portal for AY 2024-25 by the end of the due date. There is an increase of around 4.8% in TAR filing for AY 2024-25 compared to AY 2023-24.

2. SUPREME COURT

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

- 2.1 **General:** SLP disposed as infructuous against order of High Court that where assessee's claim under section 35D for amortization of preliminary expenses was granted by Assessing Officer for earlier assessment year 2007-08, such claim could not be disallowed in subsequent assessment year 2008-09 by Commissioner through his revisionary powers without disturbing decision in initial year - **Commissioner of Income-tax III v. Subex Ltd. - [2024] 167 taxmann.com 94 (SC)**

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

2.2 Provision for future expenses : SLP dismissed against order of High Court that where provision for future expenses was an allowable expense even if such provision was not on basis of past event and quantification of same was not substantiated before Assessing Officer - **Pr. Commissioner of Income-tax v. Century Real Estate Holdings (P.) Ltd.** - [2024] 167 taxmann.com 221 (SC)

2.3 Broken period interest : Where assessee-bank purchased government securities and paid broken period interest, since said securities were treated as stock-in-trade, broken period interest could not be considered as capital expenditure and would have to be treated as revenue expenditure, which was to be allowed as deduction - **Bank of Rajasthan Ltd.v. Commissioner of Income-tax** - [2024] 167 taxmann.com 430 (SC)

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

2.4 Reassessment : SLP to be dismissed against order of High Court that where Assessing Officer reopened assessment on ground that assessee was beneficiary of accommodation entries in respect of sum received for sale of shared to SCL, since Assessing Officer had all material with respect to said transaction at time of original assessment and if Assessing Officer was not satisfied with explanation furnished by assessee, at that stage, he could have exercised powers to make addition but did not choose to do anything on such count, thus, action of reopening was merely change of opinion and was to be set aside - **Assistant Commissioner of Income-tax v. AIM Fincon (P.) Ltd.** - [2024] 166 taxmann.com 681 (SC)

SECTION 132B OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - RETAINED ASSETS, APPLICATION OF

2.5 Interest on cash seized : SLP dismissed against HC ruling that where officer concerned despite order of Tribunal date 24-9-2014 had not returned cash seized to assessee, assessee would be entitled to interest on cash seized at rate of 12 per cent on account of inordinate delay in releasing same from order of Tribunal until payment - **JCIT v. Vinoda B. Jain** - [2024] 167 taxmann.com 62 (SC)

SECTION 139(5) OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - REVISED RETURN

2.6 Time limit for filing : Where revised return was filed by assessee after time prescribed by section 139(5) for filing a revised return had already expired, Assessing Officer had no jurisdiction to consider claim made by assessee in said revised return - **Shriram Investments v. Commissioner of Income-tax - III** - [2024] 167 taxmann.com 139 (SC)

SECTION 148 OF THE INCOME TAX ACT, 2017 - INCOME ESCAPING ASSESSMENT - ISSUE OF NOTICE FOR

2.7 Supreme Court has ruled that reassessment notices under the Income Tax Act can be issued after 1 April 2021 under the provisions of the old regime - **Union of India v. Rajeev Bansal** - [2024] 167 taxmann.com 70 (SC)

SECTION 154 OF THE INCOME-TAX ACT, 1961 - RECTIFICATION OF MISTAKE - APPARENT FROM RECORDS

2.8 Technological impediment cannot be a reason for harassing an assessee year after year and therefore, Income Tax Department should take steps to upgrade software instead of blaming technology for erroneous tax assessments - **Sunil Bakht v. Asst. Director of Income-tax** - [2024] 167 taxmann.com 267 (SC)

SECTION 158BF OF THE INCOME-TAX ACT, 1961 - BLOCK ASSESSMENT IN SEARCH CASES - CERTAIN INTERESTS AND PENALTIES NOT TO BE LEVIED OR IMPOSED

2.9 Illustrations : SLP dismissed against order of High Court that where provisions of section 158BF was holding field and there was no provision existing at relevant point of time, whereby department could launch a prosecution as regards income disclosed in block assessment for period between 1-7-1995 to 1-1-1997, impugned penalties imposed and criminal proceedings initiated against assessee under section 276C(1), section 277 read with section 278B during block assessment period of 1-4-1985 to 5-1-1996 were liable to be quashed and set aside - **Joint Commissioner of Income-tax v. Suman Paper and Boards Ltd.** - [2024] 167 taxmann.com 24 (SC)

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

2.10 Full and true disclosure : SLP was to be dismissed against impugned order of High Court that where assessee failed to make full and true disclosure of additional income before ITSC, ITSC had no jurisdiction to entertain settlement application of assessee therefore, impugned order passed by ITSC granting immunity from penalty and prosecution to assessee was to be set aside - **Pankaj Buildwell Ltd. and Group v. Pr. Commissioner of Income-tax (Central)-2** - [2024] 167 taxmann.com 234 (SC)

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

2.11 Scope of provisions : SLP dismissed against ruling that High Court exercising jurisdiction under Section 260A is required to consider as to whether any substantial question of law has arisen for consideration; High Court cannot be converted into an appellate Tribunal to examine factual issue which was never placed by assessee before Assessing Officer or before Commissioner (Appeals) or before Tribunal - **Manoj Jain (Hindu Undivided Family) v. Income-tax Officer** - [2024] 167 taxmann.com 191 (SC)

SECTION 275A OF THE INCOME-TAX ACT, 1961 - OFFENCES AND PROSECUTION - CONTRAVENTION OF ORDER UNDER SECTION 132(3)

- 2.12 Where revenue filed FIR against appellant-bank alleging that concerned officials of bank had breached restraining order issued under section 132(3), since FIR/complaint did not show that appellant-bank and its officers acted with any common intention or intentionally cooperated in commission of any alleged offences, provisions of sections 34, 37 and 120B of IPC would not be applicable; ingredients of sections 420 and 462 were also not attracted - *HDFC Bank Ltd. v. State of Bihar* - [2024] 167 taxmann.com 600 (SC)

3. HIGH COURT

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

- 3.1 **Objects of general public utility** : Whether amount made over to assessee Cricket Association by Board for Control of Cricket in India (BCCI) were in nature of infrastructure subsidy or business income, to be decided in light of observations of SC made in case of ACIT (Exemptions) v. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278/[2023] 291 Taxman 11/[2022] 449 ITR 1 - *CIT v. Kerala Cricket Association* - [2024] 167 taxmann.com 69 (Kerala)

CLAUSE 8 OF THE INCOME TAX INFORMANTS SCHEME, 2018 - CIRCUMSTANCES UNDER WHICH AN INFORMANT WILL NOT BE ELIGIBLE TO GET ANY REWARD

- 3.2 Where information offered by petitioner was already in knowledge of respondents and material provided by petitioner did not pertain to undisclosed income of a co-operative society, same could be said to be an information falling within meaning of "undisclosed income and wealth" which forms basis for reward under Guidelines for Grant of Rewards to Informants, 2007 - *Mohinder Pal Singh Bhasin v. Union of India* - [2024] 167 taxmann.com 261 (Delhi)

SECTION 9 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 - ACT NOT TO APPLY IN CERTAIN CASES

- 3.3 **Scope of provision** : Where Competent Authority rejected declarations filed by assessee under DTVSV Act, 2020 on plea that assessee was an accused in FIR by Enforcement Department and he was acquitted by Special Judge and appeal against impugned order was pending before High Court and hence assessee's case came within purview of section 9(c) of aforesaid Act, since there was no embargo in section 9(c) for settling dispute in respect of a person who had been acquitted before filing of declaration, Competent Authority was to be directed to accept assessee's declarations - *Sharad Kumar v. Principal Commissioner of Income-tax* - [2024] 167 taxmann.com 264 (Madras)

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

- 3.4 **Royalties/fees for technical services - Broadcasting Services** : Where assessee, a non-resident company, entered into an agreement with an Indian company for grant of exclusive rights for telecast of matches and received certain revenue from Indian company, since a live telecast would not fall within ambit of expression work, income derived by assessee in respect of live feed would not fall within clause (v) of Explanation 2 to section 9(1)(vi) - *Trans World International LLC TWI v. Deputy Commissioner of Income-tax* - [2024] 167 taxmann.com 517 (Delhi)

- 3.5 **Credit card transaction fees** : Where credit cards had been issued by foreign branch of assessee-bank and credit was given to customer outside India and debt had also arisen outside India, fees charged by foreign branch for providing and extending a credit line to account holder outside India in respect of credit cards issued by foreign branch and used in India would not be taxable in India - *Director of Income-Tax v. ANZ Grindlays Bank* - [2024] 167 taxmann.com 597 (Delhi)

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

- 3.6 **Scope of provision** : Where Commissioner (Exemptions) rejected assessee's application filed under section 10(23C)(vi) for registration/approval and Tribunal dismissed appeal of assessee, since no express finding had been recorded by both authorities that assessee did not satisfy objects and genuineness of its activities as required under second proviso to section 10(23C)(vi), matter was to be remitted to Commissioner (Exemptions) to decide application afresh - *Shaheed Nand Kumar Patel Vishwavidyalaya v. CIT(E)* - [2024] 167 taxmann.com 138 (Chhattisgarh)

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

- 3.7 **Condonation of delay in filing Form 10B** : Where audit report in Form 10B was issued by Chartered Accountant even prior to due date of filing of return which could not be uploaded due to inadvertent delay on part of clerical staff of Chartered Accountant who was suffering from brain tumor, Commissioner (Exemption) was to be directed to condone delay - *Visha Oswal Tap. Shantibhuvan Upashray and Derasar v. CIT (Exemptions)* - [2024] 167 taxmann.com 170 (Gujarat)

- 3.8 **Furnishing of audit report in Form No. 10B** : Where assessee, a public charitable trust, did not upload audit report in Form 10B along with its return of income and CPC processed return u.s. 143(1) denying benefit of section 11, since assessee had already filed audit report in Form 10B electronically during pendency of appellate proceedings along with copy of audited financial statements, delay in filing said form was to be condoned - *CIT (Exemptions) v. Laxmanarayan Dev Shrishan Seva Khendra* - [2024] 167 taxmann.com 548 (Gujarat)

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

3.9 Condonation of delay in filing Form 10B : Where petitioner-trust for past many years had substantially satisfied conditions for claiming exemption and had also explained reason for delay in filing Form No. 10B due to illness of Accountant who was on leave for long time, matter was to be remanded to respondent to condone delay in filing Form 10B - **Shri 108 Parshwanath Bhakti Vihar Jain Trust v. Commissioner of Income-tax (Exemption)** - [2024] 166 taxmann.com 732 (Gujarat)

3.10 Form No. 10AB : Where due to technical glitches assessee could not succeed in submitting Form No. 10AB for registration of society as charitable trust, Commissioner was to be directed to accept Form No. 10AB in physical mode treating same as filed prior to last date of submission and to decide it on its own merits, considering period of delay and reasons for delay - **Vaishya Welfare Gaushala and Naturopathy Shiksha Society v. Union of India** - [2024] 167 taxmann.com 582 (Chhattisgarh)

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

3.11 Sub-section (1)(c) : Where assessee-trust was established in year 1961, that is, before commencement of Income-tax Act, 1961 and assessee had made certain payments towards honorarium to trust members or their family members as per its Memorandum of Association, such payments could not be construed as a violation of section 13(1)(c) and assessee was entitled to claim exemption under section 11 - **Commissioner of Income-tax v. Indian Institute of Engineering Technology** - [2024] 167 taxmann.com 257 (Madras)

3.12 Scope of provision : Where PCIT invoked revisional power under section 263 on ground that capital expenditure was wrongly allowed by Assessing Officer when exemption claimed by assessee under section 11 was disallowed by him in view of section 13(8), since High Court had already held that assessee was a society providing public utility services within meaning of section 2(15) and said order was even upheld by Supreme Court, order passed by Assessing Officer could not be held as erroneous and prejudicial to interest of revenue and accordingly, impugned order passed under section 263 was to be set aside - **Commissioner of Income-tax Exemptions Ahmedabad v. Ahmedabad Urban Development Authority** - [2024] 167 taxmann.com 563 (Gujarat)

SECTION 22 OF THE INCOME-TAX ACT, 1961 - INCOME FROM HOUSE PROPERTY - CHARGEABLE AS

3.13 Factory building : Where assessee earned rental income from letting out of factory building, same was to be taxed under head income from house property and was eligible for deduction as per provisions of section 24 - **Principal Commissioner of Income-tax -6 v. Mahle Filters Systems (India) Ltd.** - [2024] 167 taxmann.com 576 (Delhi)

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

3.14 Rental income : Where assessee was engaged in only leasing of buildings, rental income earned from these buildings was business income and not income from house property - **H. R. Properties (P.) Ltd. v. Assistant Commissioner of Income tax** - [2024] 167 taxmann.com 256 (Patna)

3.15 Illustrations : Where shares were acquired by assessee-company as per Board resolution and were to be taken as stock-in-trade and shares were sold by assessee at lower price resulting in loss, said loss was a business loss and not a capital loss - **Pr. Commissioner of Income-tax v. Jupiter Entertainment Ventures (P) Ltd.** - [2024] 167 taxmann.com 83 (Karnataka)

SECTION 32 OF THE INCOME-TAX ACT, 1961 - DEPRECIATION - UNABSORBED DEPRECIATION

3.16 General : Depreciation allowance carried forward under section 32(2), which is deemed to be a business loss for purposes of sections 71 and 72, can be set off only against profits or gains of any business or profession and it cannot be set off against income from any other source - **Alapatt Jewellers v. Deputy Commissioner of Income-tax** - [2024] 167 taxmann.com 427 (Kerala)

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

3.17 Initial public offer of shares expenses : Where assessee-company incurred certain expenditure in relation to initial public offer of shares such as advertising, travelling, postage, market research, etc. and claimed deduction of same as revenue expenditure, since section 35D permitted only certain capital expenses as deductible and not others and assessee had already been granted benefit of deduction of direct expenses incurred in connection with initial public offer of shares, it could not claim deduction of indirect expenses incurred in connection with same object as revenue expenses - **Inditrade Capital Ltd. v. Commissioner of Income-tax** - [2022] 167 taxmann.com 82 (Kerala)

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

3.18 Due date : Payments made by assessee-company towards employees' contribution to PF and ESI after due date prescribed under relevant Act was not allowable as deduction under section 36(1)(va) - **Inditrade Capital Ltd. v. Commissioner of Income-tax** - [2024] 167 taxmann.com 82 (Kerala)

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

3.19 Reassessment : Where Assessing Officer issued reopening notice on ground that assessee had claimed certain sum towards advance written off as expenditure claimed which was not an allowable expenditure, since in original assessment all materials for completing assessment under section 143(3) were furnished and further, claim of assessee in respect of bad debts and advance written off were not disturbed, reopening notice issued on account of change of opinion was to be set aside - **Changepond Technologies (P.) Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer - [2024] 167 taxmann.com 534 (Madras)**

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

3.20 Compensation : Where assessee-firm, engaged in business of real estate and land development, claimed deduction for compensation paid on account of breach of contract wherein it was agreed to transfer part of interest in built-up area of properties, since agreement was entered into by managing partner of assessee in his individual capacity and assessee was not a signatory to agreement nor had any manner of right, title or interest in said properties, question of permitting assessee to claim deduction under section 37(1) would not arise - **Pr. Commissioner of Income-tax Central v. Canara Housing Development Company - [2024] 167 taxmann.com 77 (Karnataka)**

3.21 Professional and consultancy charges : Where assessee-company incurred certain expenditure in relation to professional and consultancy charges, since nature of services that were provided by consultant showed that expenses were incurred in connection with obtaining benefits that **were** of an enduring nature, expenditure was capital in nature and, thus, not eligible for deduction under section 37(1) - **Inditrade Capital Ltd. v. Commissioner of Income-tax - [2024] 167 taxmann.com 82 (Kerala)**

3.22 Royalty : Where assessee-company made royalty payments to its parent company for use of its brand name, since brand name was essential for assessee's business, Tribunal was justified in allowing deduction of royalty payments under section 37(1) - **Principal Commissioner of Income-tax -6 v. Mahle Filters Systems (India) Ltd. - [2024] 167 taxmann.com 576 (Delhi)**

3.23 NRI expenses : Where assessee bank incurred expenses for inviting NRIs to open deposits in its Indian branches in accordance with a Reserve Bank of India circular, such **expenditure** being incurred solely for purpose of business of assessee in India was to be allowed - **Director of Income-Tax v. ANZ Grindlays Bank - [2024] 167 taxmann.com 597 (Delhi)**

3.24 Where no satisfaction was reached by revisional authority that there was an error in assessment order passed earlier by Assessing Officer and that erroneous order was also prejudicial to interests of revenue, revision order was to be quashed - **CMJ Breweries (P.) Ltd. v. Union of India - [2024] 167 taxmann.com 598 (Gauhati)**

3.25 Reassessment : Where assessee debited financial costs in P&L account and declared business loss in its return, thereafter Assessing Officer issued reopening notice on ground that there was no business activity during relevant year and project was yet to be commenced, financial cost along with other expenses should be capitalized as preliminary expenses under head work in progress, since in assessment order there had been disallowance on interest on TDS amount debited to P&L account and subject matter of financial cost had been discussed, reopening was merely based on change of opinion and was to be set aside - **Geopreneur Realty (P.) Ltd. v. Union of India - [2024] 167 taxmann.com 464 (Bombay)**

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

3.26 Amendment in section 40(a)(ia) by Finance Act, 2014 was prospective in nature and, thus, where TDS on various heads of expenses of assessee for assessment year 2006-07 was deposited in Governments' account after due date, in such case benefit of amendment as inserted by Finance Act, 2014 would not be available to assessee - **Pr. Commissioner of Income-tax-24 v. Asphalt India Corporation - [2024] 167 taxmann.com 460 (Bombay)**

SECTION 43A OF THE INCOME-TAX ACT, 1961 - FOREIGN CURRENCY, RATE OF EXCHANGE, CHANGE IN

3.27 Reassessment : Where during regular assessment Assessing Officer had called for details for deduction of foreign exchange loss and same was allowed, in absence of new tangible material available with Assessing Officer with regard to said deduction Assessing Officer could not have assumed jurisdiction to reopen assessment - **Heubach Colour (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 126 (Gujarat)**

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

3.28 Reassessment : Where Assessing Officer issued on assessee a notice under section 148 seeking to reopen assessment framed under section 143(3) on ground that assessee had availed accommodation entries from 'K' in form of LTCG, since Assessing Officer during course of regular assessment proceedings had considered long-term capital gain as well as short-term capital gain claimed by assessee from script of 'K', impugned notice could not be sustained - **Mohit Somchand Shah HUF v. Deputy Commissioner of Income-tax - [2024] 167 taxmann.com 386 (Gujarat)**

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

3.29 Fair market value as on 1-4-1981 : Where assessee sold leasehold land and claimed cost of acquisition after indexation on basis of valuation report of Government Registered Valuer determining value of property at Rs. 57.75 lakhs as on 1-4-1981, Tribunal was not justified in determining FMV of land at Rs. 800 per square yard as on 1-4-1981 by ignoring valuation report of registered approved valuer - **Natraj v. CIT - [2024] 167 taxmann.com 193 (Gujarat)**

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

3.30 Revision : Where AO issued reopening notice on ground that assessee had sold non-agricultural land at value lower than Jantri value, since assessee had shown said property as stock-in-trade and not capital asset, impugned reopening notice issued beyond period of four years from relevant assessment year was to be quashed - **Kalp Developers v. ITO - [2024] 167 taxmann.com 190 (Gujarat)**

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

3.31 Reassessment : Mere non-deposit of sale consideration or portion thereof in designated capital gains account would not deprive petitioner from claiming exemption from payment of capital gains tax u.s. 54F - **Narayan Ravi Prakash v. ITO NFAC - [2024] 167 taxmann.com 192 (Karnataka)**

3.32 Reassessment : Where assessee sold an immovable property and made specific investment and claimed deduction u.s. 54F, since assessee had already furnished requisite details about transaction of sale and purchase of immovable property and working of capital gain along with all necessary evidence at time of filing original return and thereafter in scrutiny, reopening of assessment on ground that assessee was not entitled to claim deduction under section 54F, was not justified - **Hareshkumar Bhupatbhai Panchani v. Income-tax Officer - [2024] 167 taxmann.com 187 (Gujarat)**

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

3.33 Interest : Where assessee-company received funds from Government towards setting up of complex and part of said funds which were not immediately required for construction were parked in banks, since deposits and income were inextricably linked with setting up of project, interest income on short-term deposits of funds infused by Government was in nature of capital receipt and not revenue receipt - **HLL BIOTECH Ltd. v. Commissioner of Income-tax - [2024] 167 taxmann.com 537 (Kerala)**

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

3.34 Reassessment : Unauthorized transactions made without requisite KYC of purchasing party could not be said to be a fresh fact which had come to light which was not previously disclosed which tends to expose untruthfulness of fact - **Sete Mares Global Forex (P.) Ltd. v. Union of India - [2024] 167 taxmann.com 89 (Bombay)**

3.35 Unsecured loans : Where Assessing Officer issued a reopening notice on ground that assessee had failed to explain source of unsecured loans received during year and same was required to be disallowed by invoking provision of section 68, since issue of unsecured loans was considered by Assessing Officer during course of regular assessment proceedings, impugned reopening notice was merely a change of opinion and same was to be set aside - **Merrygold Gems (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 84 (Gujarat)**

3.36 Reassessment - Opportunity of hearing : Whether where Assessing Officer had passed an order under section 148A(d) on ground that there were unexplained credit to account of assessee, without providing an opportunity to assessee to submit his objection in person, impugned order and notices issued under sections 148A(b) and 148 were to be set aside directing Assessing Officer to pass orders in accordance with law, after affording reasonable opportunity of personal hearing to assessee - **Rajam Selvi v. Income-tax Officer [2024] 167 taxmann.com 86 (Madras)**

3.37 Bogus purchases : Where assessee's reply to reopening notice was not considered at all and order under section 148A(d) was issued with approval of Principal Commissioner, since there was non-application of mind while giving approval under section 151, impugned order under section 148A(d) and notice issued under section 148 were to be quashed - **Yogendra Singh v. Union of India - [2024] 167 taxmann.com 64 (Allahabad)**

3.38 Reassessment : Where assessee received certain amount from one person and paid it to another on same day and said amount was received back from second person and returned to first person, since assessee did not retain amount in question, ingredients of section 68 were not attracted and it could not be said that there was any escapement of income so as to invoke reopening of assessment of assessee - **Ameem Mahasukhlal Parekh as LR of Late Mahasukhlal Navnidhlal Parekh v. Income-tax Officer - [2024] 167 taxmann.com 496 (Gujarat)**

3.39 Share transactions : Where original assessment was an outcome of a robust examination of returns, which included a detailed scrutiny of trades in securities during relevant financial year, reassessment on said issue was not valid - **Aashish Niranjan Shah v. Union of India - [2024] 167 taxmann.com 561 (Bombay)**

3.40 Sundry creditor : Where Assessing Officer made addition on account of sundry creditor without considering explanation of assessee, matter should be remitted back to Assessing Officer to pass orders on merits - *SKM Animal Feeds and Foods (India) (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 654 (Madras)*

3.41 Share application money : Where assessee received share application money and had furnished each and every document required for proving identity, creditworthiness of share applicants and genuineness of transactions, impugned addition made under section 68 on ground that it was accommodation entry was to be deleted - *Pr. Commissioner Of Income Tax v. Esspal International (P.) Ltd. - [2024] 166 taxmann.com 722 (Rajasthan)*

3.42 Reassessment : Where Assessing Officer initiated reassessment proceedings on ground that amount shown outstanding as unsecured loan in balance sheet was unexplained and, thus, chargeable to tax under section 68, since there was neither any allegation nor any material to even remotely suggest that assessee had earned income chargeable to tax, which was camouflaged as an unsecured loan and reflected in its books of account, impugned reassessment proceedings initiated beyond period of four years was to be set aside - *Alankar Promoters LLP v. Income-tax Officer - [2024] 167 taxmann.com 594 (Delhi)*

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

3.43 Agricultural income : Where Tribunal had confirmed addition made by Assessing Officer on account of unexplained income under section 69A as regards income earned by assessee from sale of trees, since Assessing Officer had disbelieved statement given in favour of assessee by agent who had purchased wood from assessee without subjecting said person to any cross examination, impugned addition was to be set-aside - *M. Kumarasamy v. Income-tax Officer - [2024] 167 taxmann.com 232 (Madras)*

3.44 Reassessment : Where Assessing Officer on basis of audit objection that assessee had cash balance of certain amount as on 8-11-2016; whereas he had deposited much more cash in specified bank notes during demonetization period issued on assessee a notice under section 148A(b) stating that income chargeable to tax for assessment year 2017-18 had escaped assessment, since in scrutiny assessment issue of deposit of specified bank notes by assessee had been examined by Assessing Officer, audit objection would come within fold of change of opinion and, thus, reassessment notice was not valid - *Shri Dilip Laximan Powar v. Income-tax Officer - [2024] 167 taxmann.com 109 (Bombay)*

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

3.45 Bogus purchases : Where Assessing Officer disallowed 100 per cent of purchases from certain entities which were held to be bogus and Tribunal upheld disallowance of 10 per cent of total purchases alleged to be bogus, since Tribunal simply adopted a 10 per cent margin for disallowance, despite returning a firm finding that Assessing Officer's order was untenable not being backed by cogent and convincing evidence, impugned order of Tribunal deserved to be set aside - *Ashok Kumar Rungta v. Income-tax Officer - [2024] 167 taxmann.com 429 (Bombay)*

3.46 Bogus purchases : Where Assessing Officer made addition on account of accommodation entries received by assessee in form of bogus purchases, addition was to be restricted to 6 per cent of total bogus purchases - *Principal Commissioner of Income-tax 1 v. Mohit Pukhraj Kawdiya - [2024] 167 taxmann.com 473 (Gujarat)*

3.47 Purchases, Bogus : Where there was difference in stock-in-trade but assessee had filed a reconciliation explaining total purchases including capital goods and purchase return and tallied with purchases recorded in account books, Assessing Officer had completely erred in making addition under section 69C on account of difference in purchase - *Principal Commissioner of Income-tax v. Madras Pharmaceuticals - [2024] 167 taxmann.com 108 (Madras)*

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

3.48 Illustrations : Where assessee had entered into an agreement with KSPL for development of Mechanised Port Handling System for unloading and rail dispatch in Kakinada Deep Water Port, since KSPL was a nodal agency formed for purpose of carrying out rights, duties and obligations under concession agreements between Government of Andhra Pradesh and ISPL to develop, operate and maintain further infrastructural facilities including new berth at Kakinada Deep Water Port, assessee would be eligible for deduction under section 80-IA - *Principal Commissioner of Income-tax v. Bothra Shipping Services (P.) Ltd. - [2024] 166 taxmann.com 608 (Calcutta)*

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

3.49 Amalgamation, in case of : Where scheme of amalgamation of assessee with another company was duly approved by High Court, Assessing Officer was not justified in treating said amalgamation as sham transaction to disallow deduction claimed by assessee under section 80-IC - *Principal Commissioner of Income-tax -6 v. Mahle Filters Systems (India) Ltd. - [2024] 167 taxmann.com 576 (Delhi)*

3.50 Rental income, interest income, scrap sale, etc. : Where assessee-company claimed deduction under section 80-IC, rental income and income on fixed deposits being offered to tax under head Income from other sources was not eligible for deduction under section 80-IC, however, other items of income were inevitably linked and had direct nexus to industrial undertaking, thus, same were eligible for deduction under section 80-IC - - **Principal Commissioner of Income-tax -6 v. Mahle Filters Systems (India) Ltd. - [2024] 167 taxmann.com 576 (Delhi)**

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

3.51 Condonation of delay : Where assessee-co-operative society delayed in filing its return, since Chief Commissioner had condoned delay in filing return on grounds that assessee could not furnish return due to delay in completion of audit under State Law, which was beyond control of assessee, matter was to be remanded back to Assessing Officer to re-examine issue as to whether assessee would be entitled to benefit of section 80P - **Pudupet Co-operative Society Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 475 (Madras)**

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

3.52 Adjustments - Royalty : Where assessee, engaged in import and distribution of various products, outsourced manufacturing activities to OEMs and paid royalty to its AEs for use of licensed patents, know-how and trademarks, since assessee was also entitled to get products manufactured through sub-contractors, impugned disallowance of royalty by TPO on ground that goods were manufactured by OEMs and same did not justify any payment of royalty by assessee to its AE, was to be deleted - **Principal Commissioner of Income-tax v. Sony India (P.) Ltd. - [2024] 167 taxmann.com 549 (Delhi)**

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

3.53 Carry forward of credit : Where assessee opted for Direct Tax Vivad Se Vishwas (DTSV) Scheme and in Form 1 opted not to pay tax and filled necessary details about reduction in MAT Credit and claimed refund on account of pre-payment of taxes, assessee was entitled to carry forward reduced MAT Credit for payment of taxes under DTSV Scheme - **Vapi Care Pharma (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 167 taxmann.com 518 (Gujarat)**

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

3.54 General : Where assessee-company had its registered office at Coimbatore and a search was conducted at assessee's premises in Kolkata during which several incriminating documents were seized which were directly linked to assessee's involvement in lottery business, since said incriminating materials were found by Kolkata Office against assessee and were closely linked with assessment of assessee, transfer of case from Coimbatore to Kolkata was justified - **Arise Industries and Agency (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 167 taxmann.com 152 (Madras)**

3.55 Condition precedent : Where search and seizure was conducted under section 132 in case of assessee, resident of Coimbatore, and in course of search many incriminating documents were found which were directly linking involvement of assessee in business of lotteries which was carried out within jurisdiction of Kolkata Office Circle, transfer of case from Coimbatore to Kolkata was justified - **Suvali Real Properties LLP v. Principal Commissioner of Income-tax - [2024] 167 taxmann.com 25 (Madras)**

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

3.56 Scope of : Authorities under Act are entitled to seek interim custody of seized currency notes until culmination of enquiry or trial - **Assainar v. State of Kerala - [2024] 167 taxmann.com 251 (Kerala)**

3.57 Return of seized documents : Where original documents were seized during search conducted at premises of petitioner, petitioner was entitled to seek return of those documents seized from his premises only upon completion of assessment proceedings and not before that and until completion of assessment proceedings, he was entitled to get only a copy of those documents - **A. Selvaraj v. Principal Commissioner of Income-tax - [2024] 167 taxmann.com 248 (Madras)**

3.58 General : Where satisfaction note did not reflect basis to derive a satisfaction that assessee who was in possession of money would not disclose same in due course and was based on suspicion and was not pregnant with any cogent incriminating material which could form basis for an action under section 132, impugned search and seizure was to be set aside - **R.S. Agro Tech v. Union of India - [2024] 167 taxmann.com 508 (Telangana)**

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

3.59 Reassessment : Issuance of notice under section 143(2) is mandatory in reassessment proceedings under section 147 and failure to issue notice under section 143(2) would render reassessment order invalid - **Shaily Juneja v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 90 (Delhi)**

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

3.72 Maintainability of writ petition : Where initiation of proceeding under section 147/148 was sought to be challenged in writ petition and meanwhile a final assessment order was passed, Single Judge was absolutely justified in holding that assessee should avail an alternative remedy to file an appeal under section 246A against said assessment order - **Subhash Agrawal v. Union of India - [2024] 167 taxmann.com 53 (Chhattisgarh)**

3.73 General : Where reopening notice was issued after a period of six years against assessee on ground that assessee had not paid service tax during year and same was shown in balance sheet as taxes and duties payable, since each and every query including issue of service tax raised in original assessment proceedings were satisfied and all relevant materials and information were disclosed truly and fully , reopening notice being based on re-verification of material already on record, was to be quashed - **Kuldipsinh Hamirsinh Rahevar v. Income Tax Officer - [2024] 166 taxmann.com 694 (Gujarat)**

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

3.74 Faceless assessment : Where reopening notice was issued by Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as was required by section 151A, impugned reopening notice was to be quashed - **Great Eastern Shipping Co. Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 186 (Bombay)**

3.75 Jurisdiction to issue reopening notice : Section 144B cannot be viewed as the exclusive basis for all assessment and reassessment procedures and Jurisdictional Assessing Officer (JAO) cannot be completely deprived of power to assess or reassess merely because Section 144B and Faceless Reassessment Scheme 2022 have been introduced - **T.K.S. Builders (P.) Ltd. v. Income-tax Officer - [2024] 167 taxmann.com 759 (Delhi)**

3.76 Where assessee pursuant to notice issued under section 133(6) disclosed that sales commission was received from a company , since same was offered for tax as part of business turnover disclosed in ITR and processed by Assessing Officer issuance of reopening notice 148 on that no reply was filed during proceedings under section 133(6) and assuming that commission received by assessee was not included in taxable business turnover was not justified - **Vishal Garg v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 483 (Punjab & Haryana)**

3.77 Explanation 1 and 2 : Where reopening notice was issued by JAO based on information received by him in

matter of search and seizure under section 132, or requisitioned under section 132A, method of automated allocation, for issuance of notice under section 148 in a faceless manner, as per scheme framed vide notification dated 29-3-2022, could not be applied - **Talati and Talati Llp v. Office of Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 371 (Gujarat)**

3.78 Where Assessing Officer based on information received from search conducted on another person issued reopening notice against assessee on ground that assessee received certain amount from person providing bogus billing, since Assessing Officer had not assessed assessee's income for relevant assessment year under section 143(3), reopening notice could not be said to be merely a result of change of opinion - **R. P. Foam Home (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 603 (Delhi)**

3.79 Validity of notice : Where order passed under section 148A(d) and consequent notice issued under section 148 were issued upon assessee by Jurisdictional Assessing Officer and not by a Faceless Assessing Officer, as was required by provisions of section 151A, impugned order under section 148A(d) and further notice issued under section 148 were to be vitiated - **Seth Iron & Steel (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 23 (Bombay)**

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

3.80 Condition precedent : Where Assessing Officer recorded reasons believing that income had escaped assessment after expiry of four years and Commissioner recorded his satisfaction regarding reasons recorded by Assessing Officer since 151 requires Principal Commissioner to be satisfied of reasons recorded where notice was issued beyond expiry of 4 years, there was no requirement for Commissioner to record his own reasons and reopening notice was valid - **Venky Steels (P.) Ltd. v. Commissioner of Income-tax-II - [2024] 167 taxmann.com 60 (Patna)**

3.81 Scope of provision : Where Assessing Officer issued on assessee a notice under section 148A(b) and passed order under section 148A(d) and consequently issued notice under section 148, since approval order under section 151 was bereft of any reasons, approval granted by prescribed authority for issuance of order under section 148A(d) was not valid and thus, notice under section 148 issued pursuant to order u.s. 148A(d) were to be set aside and quashed - **SBC Minerals (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 113 (Delhi)**

3.82 Validity of : Where Principal Commissioner granted approval for reopening of assessment of assessee under section 148 by merely endorsing his signatures on file in routine and mechanical manner by simply writing 'Yes, I am satisfied', such approval was not valid - **Capital Broadways (P.) Ltd. v. Income Tax Officer Ward 5(3) Delhi - [2024] 167 taxmann.com 533 (Delhi)**

AO rejected request for refund on ground that assessee could raise request for refund, only if assessee filed its application on TRACES Portal in prescribed form i.e. Form 26B, after order passed by Tribunal, revenue was bound to refund amount to assessee with interest without there being any formalities to be completed by assessee and that non-functionality of TRACES Portal would not be ground for denying benefit arising out of statutory provision under Act - ***Birla Corporation Ltd. v. PCIT - [2024] 167 taxmann.com 180 (Madhya Pradesh)***

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

3.95 Illustrations : Where assessee filed settlement application on 15-3-2021 in respect of pending Asst proceedings for AY 2020-21 and Interim Board for Settlement rejected application holding application to be ineligible with reference to CBDT Order F. No. 299/22/2021, dated 28-9-2021 considering that no proceedings were pending as on 31-1-2021, since additional conditions in Para 4 that assessee should be eligible to file an application for settlement on 21-1-2021 was held to be beyond scope of powers of CBDT u.s. 119, application as filed by assessee was liable to be considered by Interim Board for Settlement - ***Atharva Builders and Developers v. CBDT - [2024] 167 taxmann.com 252 (Bombay)***

3.96 General : Where search u.s. 132 in respect of petitioners was prior to 31-3-2021, petitioners were entitled to maintain applications for settlement before Interim Board for Settlement, provided such applications were filed on or before 30-9-2021 - ***New Hope Foundation v. Union of India - [2024] 167 taxmann.com 474 (Kerala)***

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

3.97 Appeals : Where assessee filed writ petition to challenge imposition of excess surcharge which resulted in a demand, since statutory alternative remedy was available to assessee writ petition would be dismissed, with liberty to assessee to raise contentions before Appellate Authority - ***Sunil Bakht v. ADIT - [2024] 167 taxmann.com 266 (Delhi)***

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

3.98 General : Where Tribunal by impugned order allowed appeal filed by assessee quashing and setting aside order passed by Principal Commissioner u.s. 263 and assessee filed a rectification application on same grounds which were already considered by Tribunal, there was no mistake apparent on record from order passed by Tribunal in appeal and assessee could not have on same ground filed rectification application - ***PCIT, Valsad v. Green Park - [2024] 167 taxmann.com 536 (Gujarat)***

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

3.99 Intimation under section 143(1) : Revision under section 264 is maintainable against intimation sent under section 143(1) - ***Adani Gas Ltd. v. PCIT - [2024] 167 taxmann.com 282 (Gujarat)***

3.100 Illustration : After an assessment is completed, if an assessee detects mistakes on account of which he was over-assessed, revisional jurisdiction can be invoked by assessee and such power is not confined merely to erroneous orders passed by lower authorities - ***Bahar Infocons (P.) Ltd. v. PCIT - [2024] 167 taxmann.com 179 (Bombay)***

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

3.101 Monetary limit : Circular No. 9 of 2024 issued u.s. 268A enhancing monetary limits and retaining exceptions of Circular No. 5 of 2024 was to be applied retrospectively to all pending appeals - ***CIT-I v. Satish Kumar Agarwal - [2024] 167 taxmann.com 510 (Rajasthan)***

3.102 Illustrations : Where appeal preferred by revenue against order of Commissioner (Appeals) before Tribunal was not in lieu of audit objection, case would not fall in exception as provided in clause 10(c) of Circular No. 3/2018, dated 11-7-2018 and thus appeal was rightly dismissed on account of low tax effect - ***PCIT v. N K Industries Ltd. - [2024] 167 taxmann.com 110 (Gujarat)***

SECTION 276B OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - FAILURE TO PAY TAX DEDUCTED AT SOURCE

3.103 Ignorance : Where assessee did not deduct tax at source due to ignorance, section 276B was not applicable - ***August Cinema (India) (P.) Ltd. v. ITO (TDS) - [2024] 167 taxmann.com 5 (Kerala)***

SECTION 276C OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - WILLFUL ATTEMPT TO EVADE TAX, ETC.

3.104 Applicability of : Where assessee filed income-tax return pointing out tax liability for relevant AY, however, tax liability was not deposited, since tax amount was deposited with interest in light of section 240(A) and there was no penalty provision against assessee, entire criminal proceeding including cognizance order, by which, cognizance had been taken for offence u.s. 276(C)(2) and section 277 against assessee, was to be quashed - ***Narendar Singh v. Union of India - [2024] 167 taxmann.com 355 (Jharkhand)***

3.105 Where assessee filed return declaring certain income and tax liability but failed to pay tax, since assessee was under impression that its auditor had paid tax and later assessee itself cleared dues along with interest, there was no intention to evade tax and thus, criminal proceedings initiated against assessee u.s. 276C were to be quashed - ***S.R.S. Projects v. DCIT - [2024] 167 taxmann.com 680 (Hyderabad)***

SECTION 276CC OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - FAILURE TO FURNISH RETURN OF INCOME

3.106 Compounding charges : Where assessee submitted application for compounding on 15-2-2018, Guidelines for Compounding of Offences under Direct Tax Laws, 2014 would apply and compounding charges would be computed in accordance with said Guidelines treating application to have been first made on 15-2-2018 - **Global Visa Services (P.) Ltd. v. Principal Commissioner of Income-tax - [2024] 167 taxmann.com 11 (Delhi)**

3.107 Scope of provision : Where no regular assessment had been framed, assessee did not fall within meaning and scope of a regular assessment to get protection to proviso (b) to section 276CC - **Ramakrishnan Ramasubramani v. Income-tax Officer - [2024] 167 taxmann.com 358 (Madras)**

SECTION 279 OF THE INCOME-TAX ACT, 1961 - OFFENCE AND PROSECUTION - PROSECUTION TO BE AT INSTANCE OF CHIEF COMMISSIONER/COMMISSIONER

3.108 Time-limit for filing application : Where Competent Authority rejected compounding application filed by assessee on ground that it was filed beyond period of limitation of 36 months as stated in Circular dated 16-9-2022, since section 279(2) did not prescribe any time-limit for filing of compounding application, impugned order deserved to be set aside - **Eyeball Media Pvt Ltd. v. Chief Commissioner of Income Tax (TDS) - [2024] 167 taxmann.com 255 (Madras)**

4. TRIBUNAL

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

4.1 Advancement of general public utility : Where assessee, an apex sports body in India representing country, entered into sponsorship agreements with few Indian business groups and received certain amount as sponsorships, since assessee was representing country under aegis of Government in amateur international sports events and arranging these sponsorship contracts was in itself a great task for assessee, income received by assessee from sponsorship agreements was to be considered as 'advancement of general public utility' and, thus, assessee was eligible for exemption under section 11 and 12 - **DCIT (E) v. Indian Olympic Association - [2024] 167 taxmann.com 226 (Delhi - Trib.)**

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

4.2 Relinquishment of trusteeship : SLP to be dismissed against order of High Court that 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 - **Jose Thomas v. Principal Commissioner of Income-tax - [2024] 166 taxmann.com 693 (Chennai - Trib.)**

SECTION 6 OF THE INCOME-TAX ACT, 1961 - RESIDENTIAL STATUS

4.3 Centre of vital interest : Where assessee, an Indian citizen, claimed himself to be a resident of USA as his family was US national holding US passport and he was overseas citizen of India, since he had an active involvement in a running of business of a private limited company in India in which he had set up along with his wife and he had a passive investment in mutual funds, based on rate of return, thus, he did not have any active involvement in USA for earning wages, remuneration, profit, assessee was to be held as a resident of India in terms of article 4(2)(a) of Indo- US - DTAA and all his income derived in USA, was chargeable to tax in India by virtue of provisions of section 5 - **Ashok Kumar Pandey v. ACIT - [2024] 167 taxmann.com 286 (Mumbai - Trib.)**

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED ACCRUAL OF

4.4 Royalties/fees for technical services - Management services : Management services rendered by assessee to its subsidiaries would not fall under nature of 'technical services', thus, management charges received for same was not taxable as fees for technical services - **Dy. CIT (IT) v. Lloyds Register of Shipping - [2024] 167 taxmann.com 231 (Mumbai - Trib.)**

4.5 Permanent Establishment - Agency PE : Where Indian subsidiary of assessee-US company neither concluded any contracts on behalf of assessee since it had no such authority nor secured any orders for it in India, it could not be regarded as agency PE of assessee in India - **Gemological Institute of America v. ACIT (International Taxation) - [2024] 167 taxmann.com 224 (Mumbai - Trib.)**

4.6 Business profits - Commission : Export commission paid by assessee to non-residents agents for services rendered outside India was not liable for withholding tax and, therefore, no disallowance could be made under section 40(a)(i) - **Deputy Commissioner of Income-tax v. Stylam Industries Ltd. - [2024] 166 taxmann.com 733 (Chandigarh - Trib.)**

4.7 Royalties/Fees for technical services - General : Where assessee, non-resident company, did not offer to tax royalty from non-resident Original Equipment Manufacturers (OEMs) located outside India having no PE in India, since said royalty was not taxable in India as per article 12 of Indo-US DTAA, additions made by Assessing Officer under section 9(1)(vi)(c) treating royalty income received from non-resident OEMs as taxable in India were to be deleted - **Qualcom Incorporated San Diego v. Dy. C.I.T - [2024] 167 taxmann.com 405 (Delhi - Trib.)**

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

4.20 Denial of : Where assessee-trust had failed to establish carrying out of any of activities in consonance to stated charitable purposes of trust, in view of natural justice, it was deemed fit that assessee may be allowed one more opportunity to prove its claim before Commissioner (Exemptions) and Commissioner (Exemptions) is directed to pass a de novo order in accordance with law after providing reasonable opportunity to assessee - **Chardikala Foundation v. Commissioner of Income-tax (Exemptions) - [2024] 167 taxmann.com 181 (Amritsar - Trib.)**

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

4.21 Cancellation of provisional registration : Where assessee-trust submitted details of details of various expenditure of various charitable activities, however, Commissioner (Exemption) rejected assessee's application for regularization of registration under section 12A and cancelled provisional registration granted under section 12AB without commenting on activities of assessee stated in these documents, matter was to be remanded back to Commissioner (Exemption) to decide issue afresh - **Shree Bhayander Vardhman Sthankwashi Jain Shrivak Sangh v. CIT(Exemption) - [2024] 167 taxmann.com 167 (Mumbai - Trib.)**

4.22 Cancellation of : Where Commissioner (Exemption) rejected application of assessee for grant of regular registration under section 12AB on ground that assessee had failed to cure defects and remove discrepancies notified by way of filling required documents, since assessee was accorded only ten days to cure defects and explain discrepancies, it suggested denial of real opportunity, hence, impugned rejection of application was to be set aside and matter was to be remanded back for de-novo consideration - **Parner Vipassana Samiti v. Commissioner of Income-tax (Exemption), Pune - [2024] 167 taxmann.com 507 (Pune - Trib.)**

4.23 Objects of trust : Where Commissioner (Exemption) rejected assessee-trusts application for registration under section 12AB on ground that its objects were confined to a particular community, thus attracting provisions of section 13(1)(b), since section 13(1)(b) was not relevant at stage of registration under section 12AB but rather comes into play at time of assessment when determining exemption under section 11, impugned rejection of registration application was unjustified - **Dandhavya chhasath Prajapati Samaj v. Commissioner of Income-tax (Exemption) - [2024] 167 taxmann.com 610 (Ahmedabad - Trib.)**

4.24 Cancellation of registration : Where assessee-trust decided to change its objects and filed an application

seeking permission for change in object clause in Form No. 10AB under section 12A(1)(ac)(v) and Commissioner (Exemptions) rejected application and also cancelled registration, since there was no whisper in order of Commissioner (Exemptions) that there was a violation of conditions on basis of which registration to assessee was granted, cancellation of registration was not justified - **Gayatri Sanshodhan Seva Mandal v. CIT, Exemptions - [2024] 167 taxmann.com 653 (Pune - Trib.)**

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

4.25 Denial of registration : Where assessee-trust was established much prior to commencement of Income-tax Act, 1961, embargo of section 13(1)(b) would not apply - **Bai Navazbai Faramroze D Mehta Charity Blocks v. Commissioner of Income-tax (Exemption) - [2024] 167 taxmann.com 218 (Surat-Trib.)**

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

4.26 Interest : Where assessee made investment in shares of company out of interest free surplus funds available with assessee but no exempt income was earned, disallowance made by Assessing Officer under section 14A read with rule 8D was rightly deleted by Commissioner (Appeals) - **Deputy Commissioner of Income-tax v. Stylam Industries Ltd. - [2024] 166 taxmann.com 733 (Chandigarh - Trib.)**

SECTION 22 OF THE INCOME-TAX ACT, 1961 - INCOME FROM HOUSE PROPERTY - CHARGEABLE AS

4.27 Where main objective of assessee-company was to carry on business of all kinds of engineering products including financing, manufacturing, selling or in any other form, rental income declared by assessee deserved to be assessed as a house property income and not as a business income - **EMC Projects (P.) LTD. v. Deputy Commissioner of Income-tax - [2024] 167 taxmann.com 463 (Kolkata - Trib.)**

4.28 When operation of sub-section (5) of section 23 was not made retrospective, annual value/deemed rental income of property held as stock-in-trade can be calculated and shall be chargeable to income tax only with effect from assessment year 2018-19 and not prior to that - **Varun Developers v. ACIT - [2024] 167 taxmann.com 413 (Pune - Trib.)**

SECTION 31 OF THE INCOME-TAX ACT, 1961 - REPAIRS AND INSURANCE OF MACHINERY, PLANT AND FURNITURE

4.29 Small repairs and replacement of part of plant and machinery is allowable under section 31 irrespective whether it is a capital or revenue in nature - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

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

4.30 Revision : Where Principal Commissioner invoked revisionary jurisdiction on ground that Assessing Officer failed to verify claim of depreciation and additional depreciation on fixed assets, since Assessing Officer had reviewed audited financial statements and tax audit report, particularly Form 3CD, which detailed all additions to fixed assets and corresponding depreciation claimed and auditor had certified these claims, impugned revision order was unjustified - **Aarvee Denims and Exports Ltd. v. Pr. CIT - [2024] 167 taxmann.com 249 (Ahmedabad - Trib.)**

4.31 Aircrafts : Depreciation on aircraft and expenditure incurred on maintenance of aircraft for trial runs and for training of flights was an allowable expenditure - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

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

4.32 Sub-section (1)(ii) : Where assessee-company earned LTCG on sale of factory land and thereafter, made donation to a trust and claimed deduction under section 35(1)(ii), since assessee had incurred business loss and had discontinued its business after selling factory land, there was immediate and proximate nexus between impugned donation and capital gain, thus, assessee would not be entitled to claim deduction under section 35(1)(ii) - **Sarvoday Ply Industries v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 731 (Surat-Trib.)**

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

4.33 Interest free loan : Where assessee was having share capital and reserves and surplus far exceeding advances given by it and had sufficient own funds, no disallowance was called for under section 36(1)(iii) - **Deputy Commissioner of Income-tax v. Stylam Industries Ltd. - [2024] 166 taxmann.com 733 (Chandigarh - Trib.)**

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

4.34 Scope of provision : Where assessee, a non-banking financial company, had made provision for bad and doubtful debts in books of account to extent of Rs. 49.45 crores, however, but had claimed deduction at Rs.63.33 crores which was equal to five percent of total taxable, it was entitled to deduction of Rs. 49.45 crores only under section 36(1)(vii)(a) - **Cholamandalam Investment & Finance Co. Ltd. v. Deputy Commissioner of Income-tax - [2024] 167 taxmann.com 6 (Chennai - Trib.)**

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

4.35 Where assessee was engaged in business of generating, transmitting, distributing and supplying electricity and temporarily suspension of business of assessee was with a proper reason declared on record, therefore, assessee was eligible to claim revenue expenditure as well as relevant depreciation of fixed assets during current year - **Dy.CIT Circle-16(1) New Delhi v. Magnum Power Generation Ltd. - [2024] 167 taxmann.com 439 (Delhi - Trib.)**

4.36 Membership fee : Where assessee, paid membership and subscription fee to a club, since assessee took said membership for business promotion and out of business hour connection with customer and meeting with parties were conducted in club premises, membership was connected with furtherance of business and thus, expenditure was allowable under section 37(1) - **Avirat Rajendra Sonpal v. Dy. Commissioner of Income-tax - [2024] 167 taxmann.com 217 (Mumbai - Trib.)**

4.37 Commission : Amount paid as commission could not be disallowed simply for non-service of notice under section 133(6) to parties - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

4.38 Community development expenses : Community development expenses incurred by assessee-company were allowable business expenditure - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

4.39 Club membership fees : Subscription fees paid by assessee-company for membership of club for its employees was revenue expenditure - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

4.40 Finance charges : Prepaid finance charges incurred by assessee in respect of payments made for availing loan were allowable under section 37(1) - **Cholamandalam Investment & Finance Co. Ltd. v. Deputy Commissioner of Income-tax - [2024] 167 taxmann.com 6 (Chennai - Trib.)**

4.41 VAT penalty : VAT penalty is compensatory in nature and would be allowable as deduction - **Deputy Commissioner of Income-tax v. Stylam Industries Ltd. - [2024] 166 taxmann.com 733 (Chandigarh - Trib.)**

4.42 Provision for expected contract losses, computed using percentage of completion method (POCM), is allowable deduction under Section 37(1) if supported by scientific basis and AS-7 - International **Seaport Dredging (P.) Ltd. v. DCIT - [2024] 166 taxmann.com 691 (Chennai - Trib.)**

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

4.53 General : Mischief of section 56(2)(viib) is not attracted to a company in which public are substantially interested - **ACIT v. Aadhaar Wholesale Trading and Distribution Ltd.** - [2024] 167 taxmann.com 526 (Mumbai - Trib.)

4.54 Valuation of shares : Where assessee had produced valuation report as well as market valuation of subsidiary company in foreign currency, valuation of shares of subsidiary company to determine FMV of holding company, i.e., assessee-company for purposes of issuance of shares at premium thus was in accord with deeming provision and, therefore, addition made by Assessing Officer under section 56(2)(viib) was to be deleted - **Leela Tourism and Heritage (P.) Ltd. v. ACIT** - [2024] 166 taxmann.com 695 (Delhi - Trib.)

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

4.55 Where deduction claimed by assessee under section 57(iii) was about 2.68 times of interest income and, thus, there was a wide gap, it was assessee's burden to provide sufficient details to show that expenses were incurred wholly and exclusively for purpose of making or earning interest income - **Vinayak Kalani v. Deputy Commissioner of Income-tax** - [2024] 167 taxmann.com 519 (Indore - Trib.)

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

4.56 Where assessee originally received loan from certain lender in an earlier financial year which was later transferred to another entity due to a name change and it provided documents like name change certificate, ledger accounts, and bank statements, showing no fresh loans were taken, Assessing Officer was not justified in treating loan as unexplained cash credits under section 68 - **Assistant Commissioner of Income-tax, Circle-1 (1) v. Jaibaba Castings Pvt Ltd** - [2024] 167 taxmann.com 447 (Raipur - Trib.)

4.57 Shares dealing : Where assessee claimed exemption of long-term capital gain (LTCG) on sale of shares under section 10(38) and Assessing Officer by merely relying on Investigation wing's report with respect to an accommodation entry provider, treated said transaction as penny stock transaction and made addition under section 68, since assessee had submitted all documents pertaining to purchase and sale of shares and had sufficiently discharged its onus of proving genuineness of transaction, impugned addition was to be deleted - **Hemantkumar Mansukhlal Soni v. ITO** - [2024] 167 taxmann.com 157 (Ahmedabad - Trib.)

4.58 Burden of proof : Where Assessing Officer did not accept assessee's explanation that he received Rs. 59.90 lakhs from his father for construction of house property during assessment year 2012-13 and made addition of said amount to assessee's income under section 68, since assessee had discharged burden to

prove that an amount of Rs. 57 lakhs was received by him from his father between May, 2011 to February, 2012 and he had withdrawn an amount of Rs. 13.90 lakhs from his bank account between 1-8-2009 to 16-7-2010, assessee succeeded in proving nature and source of Rs. 59.90 lakhs and, thus, impugned addition was not warranted - **Chandra Bhavani Sankar v. Income-tax Officer** - [2024] 167 taxmann.com 384 (Chennai - Trib.)

4.59 Share transactions : Where assessee made purchases and sales of shares through SEBI registered share broker being member of recognized stock exchange and shares were duly reflected in transaction of share statement of assessee and payment and receipt of consideration of share value were reflected in bank account of assessee, transactions of purchase and sale of shares were genuine and impugned addition under section 68 made by Assessing Officer treating said transactions as bogus was to be deleted - **Braten Mandal v. Income-tax Officer** - [2024] 167 taxmann.com 637 (Kolkata - Trib.)

4.60 Unsecured loan : Where assessee had taken unsecured loans from three companies and it was established that said companies were providing accommodation entries through unsecured loans claimed to have been borrowed from them by assessee, addition made under section 68 was to be confirmed - **J. K. Global v. Income-tax Officer** - [2024] 167 taxmann.com 15 (Mumbai - Trib.)

4.61 Share premium : Where nature and source of share premium has been proved which is not doubted by Assessing Officer, then addition can not be made under section 68 for treating premium amount as unexplained on reason that premium amount was not justified being on higher side - **ACIT v. Aadhaar Wholesale Trading and Distribution Ltd.** - [2024] 167 taxmann.com 526 (Mumbai - Trib.)

4.62 Reassessment : Where case of assessee was reopened, to tax excess premium in hands of assessee, since Assessing Officer had asked for all details regarding receipt of share process during year in original assessment proceedings and same were supplied by assessee and no addition has been made by Assessing Officer, reopening on same set of facts being based on mere change of opinion was not permissible - **ACIT v. Aadhaar Wholesale Trading and Distribution Ltd.** - [2024] 167 taxmann.com 526 (Mumbai - Trib.)

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

4.63 Where Assessing Officer disallowed excess interest paid by assessee to creditors, claiming rates of 15% and 18% exceeded reasonable bank interest rate of 12%, since revenue had allowed assessee to claim interest expenditure on similar rates in prior year's then there was no reason for Assessing Officer to make such additions with deviation from his own stand taken in earlier years without any plausible reason brought on record - **Assistant Commissioner of Income-tax, Circle-1 (1) v. Jaibaba Castings Pvt Ltd** - [2024] 167 taxmann.com 447 (Raipur - Trib.)

4.64 Bank deposits : Where Assessing Officer treated cash deposits made by assessee during demonetization aggregating to Rs. 17.86 lakhs as unexplained money under section 69A, since assessee had properly explained sources of cash with respect to withdrawals aggregating to Rs. 15 lakhs after redeeming mutual fund investments, Assessing Officer was to be directed to allow same - **Indira Voona v. Income-tax Officer - Ward 3(1) - [2024] 167 taxmann.com 258 (Visakhapatnam - Trib.)**

4.65 Educational institutions : Where there were cash deposits in assessee-trust's bank accounts and assessee claimed that said sum represented hostel fees received from students residing at one of its two hostels but could not substantiate same through documentary evidence or a formal agreement establishing relationship between trust and hostel owners, matter was to be remanded back for fresh adjudication - **Ideal Education Trust v. Income-tax Officer, Ward Exemption - [2024] 166 taxmann.com 690 (Ahmedabad - Trib.)**

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

4.66 Statements furnished before bank for availing higher credit limits could not be basis for addition on account of undisclosed investment under section 69B - **Assistant Commissioner of Income-tax, Circle-1 (1) v. Jaibaba Castings Pvt Ltd - [2024] 167 taxmann.com 447 (Raipur - Trib.)**

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

4.67 Approval under sub-section (5) : Where assessee filed application under clause (iii) of first proviso to section 80G(5) on 30-9-2023 for final approval and Commissioner rejected application stating that it had not been filed within time-limit, since provisional approval was to expire only on 31-3-2025 and second limb of clause (iii) of first proviso to section 80G(5) was not applicable to instant case, Commissioner was to be directed to decide issue afresh - **Pracheen Shri Aggarwal Digamber Jain Panchayat Delhi v. Commissioner of Income-tax (Exemption) - [2024] 167 taxmann.com 387 (Delhi - Trib.)**

4.68 Approval under sub-section (5) : Where assessee-trust filed application under clause (iii) of first proviso to section 80G(5) on 28-3-2023 for final approval, since assessee could have filed application on or before 30-9-2023 which further stood extended to 30-6-2024 vide Circular No. 7 of 2024, dated 25-4-2024 Commissioner (Exemptions) could not have rejected application on plea that assessee was required to file application on or before 30-9-2022 - **Grow Foundation v. Commissioner of Income-tax (Exemption) - [2024] 167 taxmann.com 12 (Ahmedabad - Trib.)**

4.69 Time limit for filing application for regular/final registration : Where assessee, who was granted provisional registration under section 80G(5)(iv), applied for regular/final 80G approval/registration vide its application Form No. 10AB dated 22-08-2023, since CBDT vide Circular No. 06/2023 had extended time limit upto 30/09/2023 in all cases where due date for making application had expired prior to such date, assessee's application dated 22-08-2023 was well within time - **Parner Vipassana Samiti v. Commissioner of Income-tax (Exemption), Pune - [2024] 167 taxmann.com 507 (Pune - Trib.)**

4.70 Approval under sub-section (5) : Where assessee was an existing trust but it filed an application under clause (iii) of first proviso to section 80G(5) in Form No. 10AB on 24-5-2023 for approval and Commissioner held that application was not maintainable as it was not filed within stipulated period, since whole controversy arose due to incorrect mention of clause in Form No. 10AB, which was mentioned as clause (iii); whereas same should have been mentioned as clause (i), Commissioner was to be directed to consider application as filed under clause (i) for grant of approval - **Nitdaa Foundation v. Commissioner of Income tax (Exemption) - [2024] 167 taxmann.com 111 (Kolkata - Trib.)**

SECTION 80HHC OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - EXPORTERS

4.71 Amendment : Retrospective amendment under section 80HHC is ultra vires and invalid - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

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

4.72 Revision : Where Principal Commissioner invoked revisionary jurisdiction on ground that Assessing Officer failed to disallow unpaid leave salary under section 43B and did not verify claim of depreciation and additional depreciation on fixed assets, since even if unpaid leave salary and additional depreciation were disallowed, resulting tax effect would be NIL due to large available deduction under section 80IA, thus, taxable income would still remain NIL, demonstrating that there was no prejudice to revenue, impugned revisionary order was to be quashed - **Aarvee Denims and Exports Ltd. v. Pr. CIT - [2024] 167 taxmann.com 249 (Ahmedabad - Trib.)**

4.73 Computation of deduction : Where assessee, engaged in manufacturing/production of aluminium and related products had claimed deduction under section 80-IA in respect of its power plant, market value of power supplied by assessee to its industrial units should be computed by considering rate at which State Electricity Board supplied power to consumers in open market and not comparing it with rate of power when sold by assessee to State Electricity Board - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

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

- 4.74 Computation of deduction** : Where Auditor had duly verified deduction under section 80-IB and profitability statement of eligible unit was also filed before Assessing Officer, net profit of turnover of eligible unit was to be accepted and not global profit for computing deduction under section 80-IB - **Hindalco Industries Ltd. v. Deputy Commissioner of Income-tax - [2024] 165 taxmann.com 606 (Mumbai - Trib.)**

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

- 4.75 Interest on receivables** : Where assessee's margin was much higher than comparables margin, no TP adjustment could be made on account of interest on outstanding receivables - **GKN Drive Line (India) Ltd. v. Acit (Osd) - [2024] 167 taxmann.com 124 (Delhi - Trib.)**

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

- 4.76 Passing assessment order** : Final assessment order passed by Assessing Officer without following directions issued by DRP under section 144C being in violation of law was to be quashed **Comporex India (P.) Ltd. v. ITO - [2024] 166 taxmann.com 720 (Delhi - Trib.)**

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - ADDITIONS TO INCOME

- 4.77** Where there was a clerical mistake in reporting raw material consumption, as duly explained and supported by assessee with Form 3CD documents, addition made by Assessing Officer for undervaluation of finished goods could not be sustained - **Assistant Commissioner of Income-tax, Circle-1 (1) v. Jaibaba Castings Pvt Ltd - [2024] 167 taxmann.com 447 (Raipur - Trib.)**
- 4.78 Notice under section 143(2)** : Where assessee filed its return of income with ITO-1(4) but notice under section 143(2) was issued by ITO-1(1) who was not having authority of law to issue such notice and thereafter, case was transferred to ITO-1(4) who passed order under section 143(3), since assessment order passed by ITO-1(4) without issuing any valid notice under section 143(2) was without valid assumption of jurisdiction, same was liable to be quashed - **Income-tax Officer v. G.P. Infraventures - [2024] 166 taxmann.com 723 (Raipur - Trib.)**

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

- 4.79** Where assessee consistently valued finished goods based on cost using adjusted selling price method, and Assessing Officer instead adopted a higher selling price for stock valuation, Commissioner (Appeals) rightly deleted addition as Assessing Officer failed to show any deviation from established method - **Assistant Commissioner of Income-tax, Circle-1 (1) v. Jaibaba Castings Pvt Ltd - [2024] 167 taxmann.com 447 (Raipur - Trib.)**

- 4.80 Excess interest spread** : Where assessee-company, following consistent method of accounting, had offered partial amount of estimated present value of Excess Interest Spread (EIS) in assessment year 2016-17 on proportionate basis as and when they accrued over tenure of loan, leaving balance to be offered to tax in subsequent years, since said methodology was in accordance with RBI norms as well as AS-9 and no fault was found in assessee recognizing revenue under securitization transactions, Assessing Officer was directed to accept same - **Cholamandalam Investment & Finance Co. Ltd. v. Deputy Commissioner of Income-tax - [2024] 167 taxmann.com 6 (Chennai - Trib.)**

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

- 4.81 Sanctioning authority** : Where reopening of assessment was done after obtaining approval of Principal Commissioner, in view of section 151, notice issued under section 148 was void ab initio and bad in law - **Arihant Engineers v. Income-tax Officer - [2024] 167 taxmann.com 120 (Mumbai - Trib.)**

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

- 4.82 General** : Where reassessment proceedings were initiated after promulgation of Finance Act, 2021, such proceedings would be barred by limitation if they did not qualify pre-conditions introduced by first proviso to section 149(1) - **ARN Infrastructures India Ltd. v. Assistant Commissioner of Income-tax - [2024] 167 taxmann.com 38 (Delhi)**

SECTION 153A OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS

- 4.83 Fresh claim for deduction** : An assessee cannot make a fresh claim for deduction u.s. 80-IA(4) for first time in return of income filed in response to notice issued u.s. 153A, pursuant to search conducted u.s. 132, in unabated/completed assessment as on date of search - **DCIT, Central Circle - 2(2), Hyderabad v. SEW Infrastructure Ltd. - [2024] 167 taxmann.com 446 (Hyderabad - Trib.)**

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

- 4.84** Act of non-informing department about discontinuance of business or dissolution of firm, as case may be, was not an omission or oversight by assessee, rather it was a deliberate malicious act of concealment of relevant and vital fact - **Real Cargo Mumbai v. Income-tax Officer - [2024] 166 taxmann.com 728 (Ahmedabad - Trib.)**

GST & INDIRECT TAXES

1. STATUTORY UPDATES

1.1 GSTN Update on GSTR-9/9C: Auto population of eligible ITC from GSTR-2B

Editorial Note : The GSTN has issued an update to inform that GST system will auto-populate eligible ITC for domestic supplies (excluding reverse charge and imports ITC) from table 3(I) of GSTR-2B to table 8A of GSTR-9. These changes in GSTR-9 and 9C for the FY 2023-24 will be available on the GST portal from 15th October 2024 onwards.

1.2 GSTN issued FAQs on IMS to get a better understanding of the new functionality

Editorial Note : The GSTN has issued an update to inform that Invoice Management System (IMS) is now made available to taxpayers and now GSTN has provided frequently asked questions (FAQs) on IMS to get a better understanding of the new functionality.

1.3 Locking of auto-populated liability in GSTR-3B from January 2025: GSTN Update

Editorial Note : The GSTN has issued an update to inform that the GST Portal is going to restrict making changes in auto-populated liability in pre-filled GSTR-3B from GSTR-1/1A/IFF tentatively from January 2025 tax period to further enhance accuracy in return filing. It is once again suggested hereby that in case any change is required in auto-populated liability, the same may please be handled through GSTR-1A.

1.4 Government notified CGST (Second Amendment) Rules, 2024, based on 54th GST Council Meeting recommendations - **Notification 20/2024-Central Tax, Dated 8-10-2024**

Editorial Note : Based on the recommendation of the 54th GST Council Meeting, the Government has notified the CGST (Second Amendment) Rules, 2024, which introduce changes related to Sections 74A and 128A, along with other key amendments.

1.5 Government notified Union Territory Goods and Services Tax (Ladakh) Rules, 2024 - **Notification 02/2024-Union territory Tax, Dated 7-10-2024**

Editorial Note : The Government has notified the UTGST (Ladakh) Rules, 2024. This notification provides that the Central Goods and Services Tax Rules, 2017 ('CGST Rules') shall, mutatis mutandis, apply, with a few modifications.

1.6 Restoration of GST Returns data on Portal: GSTN Update

Editorial Note : The GSTN has issued an update to

inform that the return data for July, 2017 and August, 2017 was archived on 01st August and on 01st September respectively. However, in view of the requests received from the trade due to the difficulties faced, data has been restored back on the portal. The GSTN also recommends to download and save the data if needed, as the archival policy shall be implemented again after giving advance information.

1.7 GSTN implemented IMS on GST portal from 14th October

Editorial Note : The GSTN has issued an update to inform that Invoice Management System (IMS) is made available to taxpayers from 14th Oct, 2024, which will facilitate taxpayers to match their records/invoices vis a vis issued by their suppliers for availing correct ITC. It is also highlighted that it is not mandatory to take action on invoices in IMS dashboard for GSTR-2B generation.

1.8 CBIC issued clarification of various doubts related to Section 128A of the CGST Act, 2017 - **Circular No. 238/32/2024-GST, Dated 15-10-2024**

Editorial Note : The CBIC has issued circular to clarify doubts and ensure uniformity in the implementation of Section 128A of the CGST Act, 2017. The circular also provides guidelines relating to filing of application, payment of tax etc. for waiver of interest or penalty or both under Section 128A.

1.9 CBIC clarifies issues regarding implementation of provisions of section 16(5) & 16(6) of CGST Act, 2017 - **Circular No. 237/31/2024-GST, Dated 15-10-2024**

Editorial Note : The CBIC has issued circular to clarify the issues regarding implementation of provisions of sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017. It also explains the procedure of filing an application for rectification of an order issued under section 73 or section 74 of the CGST Act.

1.10 CBIC issued corrigendum to provide RCM is applicable only on renting of commercial "immovable" property - **Notification No. G.S.R. 652(E), Dated 22-10-2024**

Editorial Note : The CBIC has issued corrigendum to provide RCM is applicable only on renting of commercial "immovable" property. Earlier, the entry was "Service by way of renting of any property other than residential dwelling" and now immovable word is inserted.

1.11 GSTN issued advisory on validation of bank account details while adding bank account

Editorial Note : The GSTN has implemented a validation process and procedure for cases where a taxpayer attempts a non-core amendment to update bank account details. Therefore, the taxpayers are requested to follow the prescribed procedure while adding bank account details on the portal.

- 1.12** GSTN introduces an update to facilitate the registration compliance for buyers of metal scrap through form GST REG-07

Editorial Note : The GSTN has introduced an update to facilitate the registration compliance for buyers of metal scrap through form GST REG-07 and taxpayers in this category are required to select "Others" in Part B of Table 2 under the "Constitution of Business" section. A text box will appear where the taxpayer must enter "Metal Scrap Dealers." This entry is mandatory for those selecting the "Others" option.

- 1.13** Parcel Management System (PMS) of Indian Railways is integrated with the E-Way Bill (EWB) system: GSTN Update

Editorial Note : The GSTN has issued an update to inform that Parcel Management System (PMS) of Indian Railways has now been integrated with the E-Way Bill (EWB) system via Application Programming Interfaces (APIs). This integration facilitates the seamless transfer of RR No./Parcel Way Bill (PWB) data from Railways to e-way bill portal, ensuring better traceability and compliance.

- 1.14** Systemic improvement with respect to mapping / de-mapping of the officers on the GSTN portal: Instruction

Editorial Note : The CBIC has observed that a GST officer, mapped in the GSTN portal, was not de-mapped with immediate effect after his relieving from the charge, which resulted into fraudulent sanction of refund by the officer. Therefore, it is decided that officers should be immediately de-mapped from the concerned field formation, on the GSTN portal, upon execution of the GFR-33.

- 1.15** No case for anti-profiteering to be admitted after 31st March, 2025 - **Notification No. 19/2024, Dated 30-09-2024**

Editorial Note : The CBIC has issued notification to appoint 1st April, 2025 as the date from which the Authority referred to in Section 171 shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by that registered person.

- 1.16** CBIC empowers Principal Bench of the Appellate Tribunal to examine anti-profiteering matters - **Notification No. 18/2024 – Central Tax, Dated 30-09-2024**

Editorial Note : The CBIC has issued notification to provide that the Principal Bench of the Appellate Tribunal shall examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by

that registered person.

- 1.17** GSTN Advisory: GSTN e-Services App to replace e-Invoice QR Code Verifier App shortly

Editorial Note : The GSTN has issued an update to inform the launch of the new GSTN e-Services app, which replaces the old e-Invoice QR Code Verifier App. The app would soon be available on the Google Play Store and App Store and no login is required to use the app.

- 1.18** GSTN to bar filing of GST returns after the expiration of three years from the due date

Editorial Note : The GSTN has issued an advisory to inform that the taxpayers shall not be allowed file their GST returns after the expiry of a period of three years from the due date. The said changes are going to be implemented in the GST portal from early next year (2025). Hence, the taxpayers are advised to reconcile their records and file their GST Returns as soon as possible if not filed till now.

- 1.19** TDS of 2% to be applicable on supply of metal scrap by registered person in case of B2B supplies - **Notification No. 25/2024-Central Tax, Dated 9-10-2024**

Editorial Note : The CBIC has issued notification to provide that any registered person receiving supplies of metal scrap shall deduct TDS of 2% on B2B transaction. This notification shall be applicable from 10th October, 2024.

- 1.20** Metal scrap dealers liable to obtain registration on crossing threshold limit despite supply notified under RCM - **Notification No. 24/2024-Central Tax, Dated 9-10-2024**

Editorial Note : The CBIC has issued notification to provide that exemption granted to persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis, shall not be available to metal scrap dealers and they have to obtain GST registration on crossing threshold limit.

- 1.21** Govt. notified due date for tax payment under Section 128A for interest and penalty waiver upto 31-03-2025 - **Notification No. 21/2024–Central Tax, Dated 08-11-2024**

Editorial Note : The CBIC has notified March 31, 2025, as last date to pay taxes under Section 128A for waiver of interest and penalties, due under a notice, statement, or order mentioned in clauses (a), (b), or (c) of Section 128A. If a notice was initially issued under Section 74 but later found unsustainable under that section, benefit under Section 128A is available if payment is made within 6 months of order date for redetermining tax under Section 73.

- 1.22** CBIC notifies special procedure for rectification of order by registered persons - **Notification No. 22/2024– Central Tax, Dated 08-10-2024**

Editorial Note : The CBIC has notified the special procedure for rectification of order by the class of registered persons against whom any order under section 73 or section 74 or section 107 or section 108 has been issued. The such persons shall file an application for rectification of an order electronically on the common portal within a period of six

months from the date of issuance of this notification.

- 1.23** Govt. waives 100% of late fees applicable on delayed filing of Nil GSTR-7 returns - **Notification No. 23/2024-Central Tax, Dated 08-10-2024**

Editorial Note : The Government has issued a new notification waiving late fees for delayed filing of Form GSTR-7, with full waiver for Nil GSTR-7 returns. The new notification also supersedes the previous notification, which had earlier reduced late fees to Rs. 50 per day (Rs. 25 each under CGST and SGST) and capped them at Rs. 2,000 from June 2021 onwards. In the new notification, these previous late fee waiver are re-notified.

- 1.24** RCM shall be applicable on supply of Metal Scrap from unregistered person to registered person - **Notification No. 06/2024, Dated 06-10-2024**

Editorial Note : The CBIC has issued notification to levy GST on supply of metal scrap by unregistered person to a registered person under RCM. It would help to resolve the issue of fraudulent input tax credit claims by scrap dealers. This notification shall be effective from 10th October, 2024.

- 1.25** Govt. reduced GST rate on major cancer drugs from 12% to 5% - **Notification No. 05/2024-Central Tax (Rate), Dated 08-10-2024**

Editorial Note : The CBIC has issued notification to reduce the GST rate on major cancer drugs from 12% to 5% to lower the cost of cancer treatment. Also, the GST rate on seats used for motor vehicles which are classifiable under 9401 20 00 is increased from 18% to 28%.

- 1.26** 5% GST shall be levied on transportation of passengers by helicopter on seat-share basis - **Notification No. 07/2024-Central Tax (Rate), Dated 08-10-2024**

Editorial Note : The CBIC has issued notification to notify 5% GST rate for helicopter services on a seat-share basis. Notably, the GST council has earlier recommended to notify 5% GST rate for helicopter services on a seat-share basis by inserting a separate entry for the same. It is also provided that the credit of input tax charged on goods used in supplying this service shall not be taken.

- 1.27** Govt. introduces RCM on renting of commercial property by unregistered to registered person - **Notification No. 09/2024- Central Tax (Rate), Dated 08-10-2024**

Editorial Note : The CBIC has issued notification to provide levy of GST under Reverse Charge Mechanism ('RCM') on renting of commercial property by an unregistered person to a registered person. This notification shall be effective from 10th October, 2024.

- 1.28** No GST on supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc.- **Notification No. 8/2024- Central Tax (Rate), Dated 08-10-2024**

Editorial Note : The CBIC has issued notification to exempt supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc. from levy of GST which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers.

- 1.29** GSTN Advisory for Taxpayers: New GST Provision for Metal Scrap Transactions

Editorial Note : The GSTN has issued an advisory to inform that the GST portal will soon be updated to enable compliance of registration through FORM GST REG-07 by the businesses dealing with Metal Scrap.

- 1.30** Clarification regarding GST rates & classification of goods based on recommendations of the GST Council: Circular - **Circular No. 235/29/2024-GST, Dated 11-10-2024**

Editorial Note : The CBIC has issued circular to provide clarification regarding GST rate on Extruded/Expanded Savoury food products; GST rate on Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways and GST rate on Car and Motor cycle seats.

- 1.31** Clarifications regarding applicability of GST on certain services: Circular - **Circular No. 234/28/2024-GST, Dated 11-10-2024**

Editorial Note : The CBIC has issued circular to clarify that applicability of GST on the service of affiliation provided by universities to colleges; GST on the service of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to schools; GST on DGCA approved flying training courses conducted by Flying Training Organizations etc.

- 1.32** Refund of pre-deposit to be allowed if assessee filed appeal and decided in its favor due to Section 16(5) & 16(6) - **Corrigendum to Circular No. 237/31/2024-GST, 25-10-2024**

Editorial Note : The CBIC has issued Corrigendum to Circular No. 237/31/2024-GST to clarify that restriction on refund under section 150 of the Finance (No. 2) Act, 2024 will not apply to the refund of an amount paid as pre-deposit by the taxpayer as per sub-section (6) of section 107 or sub-section (8) of section 112 of the CGST Act, at the time of filing of an appeal, where such appeals are decided in favor of the said taxpayer.

2. SUPREME COURT

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

- 2.1 Registered dealer purchasing raw cotton falling in Heading No. 5201 from an agriculturist, was liable to pay GST under reverse charge with effect from 15-11-2017 - **Anjani Cotton Industries v. Principal Commissioner of Central Goods and Services Tax - [2024] 167 taxmann.com 285 (SC)**

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

- 2.2 Orders of High Court remanding matter for re-adjudication on issue of inclusion of ESI and EPF in assessable value on supply of manpower services on making pre-deposit. Apex Court refuses to interfere against High Court order - **Reddy Enterprises v. State of Andhra Pradesh - [2024] 167 taxmann.com 194 (SC)**

SECTION 18G OF THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951 - POWER OF PERSON OR BODY OF PERSONS APPOINTED UNDER SECTION 15 TO CALL FOR ASSISTANCE IN ANY INVESTIGATION

- 2.3 Parliament does not have legislative competence to enact a law taking control of industry of intoxicating liquor covered by Entry 8 of List II in exercise of power under Article 246 read with Entry 52 of List I; Legislature of State will have competence to regulate denatured alcohol - **State of U.P. v. Lalta Prasad Vaish and Sons - [2024] 167 taxmann.com 673 (SC)**

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

- 2.4 Notice issued in SLP filed against impugned order of High court that proceedings on basis of search and seizure by State authorities, being prior in point of time and all proceedings being inter-related, State authorities should continue with proceedings; therefore, Preventive Wing of CGST and DGGI Wing of CGST should forward all their investigation carried out as against petitioner and inter-related transaction to State authorities, who should continue with proceedings from same stage - **Senior Intelligence Officer Directorate General of Gst Intelligence v. Vivek Narsaria - [2024] 167 taxmann.com 171 (SC)**

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

- 2.5 In view of Circular NO. GST/INV/PROVISIONAL ATTACHMENT/ADVISORY/2023-24, DATED 2-9-2023 prescribing time-frame for initiation and conclusion of

proceedings, attachment of bank account was to be lifted - **RHC Global Exports (P.) Ltd. v. Union of India - [2024] 166 taxmann.com 730 (SC)**

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

- 2.6 Penalty was imposable on assessee for deliberately not paying GST under reverse charge on purchase of raw cotton from an agriculturist - **Anjani Cotton Industries v. Principal Commissioner of Central Goods and Services Tax - [2024] 167 taxmann.com 285 (SC)**

3. HIGH COURT

CLASSIFICATION OF SERVICES

- 3.1 **Reinsurance Services** : Reinsurance services offered in relation to government insurance schemes are exempt under Notification No. 12/2017-Central Tax(Rate) - **AXA France Vie-India v. Union of India - [2024] 167 taxmann.com 567 (Delhi)**

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

- 3.2 Where assessee was suspended from service for issuing GST registration to fake dealer without verifying report submitted by State Tax Officer who conducted field survey, Competent Authority was directed to complete disciplinary proceedings against assessee within a period of six months - **S. Srinivasan v. State of Tamil Nadu - [2024] 166 taxmann.com 343 (Madras)**

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

- 3.3 Where assessee assailed show cause notice issued under section 74 by State officer as supply had taken place not only in Chandigarh but also in other States, Powers of officers appointed under sections 4, 5 of CGST Act and appointed under section 6 of CGST Act are same, once notice been issued by State GST Officer of Punjab, no other officer from any other State would be authorized to initiate proceedings, thus, there was no jurisdictional error in issuing show cause notice - **Ethos Limited v. Additional Commissioner, CGST Audit - [2024] 167 taxmann.com 122 (Punjab & Haryana)**
- 3.4 Where summons were issued by State GST authority for utilization of inadmissible ITC pertaining to two firms had been already investigated by State authorities, Central Authorities had no jurisdiction to investigate, however, investigation relating to ITC from third firm, no other authority except State authority had initiated investigation, State GST should not carry out further investigation in respect of first two firms but investigation pertaining to third firm could be continued - **Kanco Tea and Industries Limited v. Union of India - [2024] 167 taxmann.com 43 (Gauhati)**

3.5 Where respondent no.1-state government had already initiated proceedings by issuing notice under Section 74 for same 'subject matter' and respondent no.2-DGGI could not be allowed to initiate proceedings for availment of Input Tax Credit by fraudulent means from 28.07.2019 to 20.01.2022, therefore, action of respondents in transferring proceedings to respondent no.2-DGGI, vide their orders, was not sustainable in law and impugned orders transferring proceedings to DGGI were quashed and set aside - **Stalwart Alloys India Private Limited v. Union of India - [2024] 167 taxmann.com 93 (Punjab & Haryana)**

3.6 Parallel penalty proceedings by CGST authorities under Section 122 barred under Section 6(2)(b) of CGST Act when same subject matter already adjudicated by State GST authorities - **Huida Sanitaryware India (P) Ltd. v. Deputy Commissioner of Central Tax (AE) GST West Commissionerate - [2024] 167 taxmann.com 466 (Karnataka)**

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

3.7 Where petitioner supplied laboratory items to Eklavya Vidyalaya, Raipur and raised bills with GST for payment of amount but payment was not made, amount was to be disbursed within 20 days from date of receipt of articles under supply order, writ petition was to be disposed of permitting petitioner to submit fresh representation before respondent to be considered and decided by concerned authority in accordance with law - **Laxmi Stores v. State Of Chhattisgarh - [2024] 167 taxmann.com 131 (Chhattisgarh)**

3.8 Where assessee challenged demand of GST by Greater Noida Industrial Development Authority on allotment of plot for long term lease, court directed Authority to grant personal hearing to assessee, consider objections raised, and pass reasoned order within eight weeks - **Vikas And Associates v. State Of U.P. - [2024] 167 taxmann.com 61 (Allahabad)**

SECTION 8 OF THE UTTAR PRADESH VALUE ADDED TAX ACT, 2008 - LIABILITY ON FRAUDULENT ISSUANCE AND PROCUREMENT OF TAX INVOICE AND SALE INVOICE

3.9 Sugar manufacturing unit is entitled to benefit for purchase of diesel used for transportation from cane purchase center factory premises at concessional rate of tax as prescribed in Notification dated 10.08.2017 even if said unit has received benefit under Notification dated 07.12.2019 - **Balampur Chini Mills Ltd. v. Commissioner Of Commercial Taxes U.P. Lko - [2024] 167 taxmann.com 253 (Allahabad)**

SECTION 8 OF CENTRAL SALES TAX ACT, 1956 - RATES OF TAX ON SALES IN THE COURSE OF INTER-STATE TRADE OR COMMERCE

3.10 Where assessee, having set up industrial units in Jammu and Kashmir based on government's Industrial Policy-2004, which provided exemption from Central Sales Tax (CST) on sale of finished goods outside state, challenged withdrawal of Budgetary Support Scheme under SRO 431—replaced by Turnover Incentive Scheme—on grounds of breach of promissory estoppel promissory estoppel; However, instant writ petition was to be dismissed as SRO 431 explicitly allowed for scheme's review at end of each financial year, meaning that government had made no unconditional promise to assessee, and therefore, assessee could not claim a breach of promissory estoppel - **Sudhir Power Ltd. v. Union Territory of jammu and Kashmir - [2024] 167 taxmann.com 412 (Jammu & Kashmir and Ladakh)**

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

3.11 Where assessee was engaged in construction work and was paying GST at rate of 18 per cent as per Notification No. 15/2021-Central Tax (Rate), dated 18-11-2021, but respondent-Government Entity was paying running bills with only 12 per cent GST, respondent was to be directed to pay difference of GST amount to assessee at 6 per cent - **Jee Constructions v. State of Madhya Pradesh - [2024] 167 taxmann.com 196 (Madhya Pradesh)**

3.12 Where assessee challenged demand of GST on royalty payable for mining, demand was stayed and case was listed along with similar pending case, considering that issue was under consideration by Supreme Court - **Falgungiri Mines v. Union Of India - [2024] 167 taxmann.com 79 (Allahabad)**

3.13 Where assessee was engaged in construction work and was paying GST at rate of 18 per cent as per Notification No. 15/2021-Central Tax (Rate), dated 18-11-2021, but respondent-Government Entity was paying running bills with only 12 per cent GST, respondent was to be directed to pay difference of GST amount to assessee at 6 per cent - **S And L Infrastructure v. State of Madhya Pradesh - [2024] 167 taxmann.com 165 (Madhya Pradesh)**

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

3.14 Where assessee claimed exemption from GST under Entry No.102 of Notification No.2/2017-Central Tax (Rate) dated 28-6-2017 on cotton seed oil cake produced in extracting cotton seed oil cake from cotton seeds as cattle feed, merely supply of cotton seed oil cake to traders would not determine levy of GST as end use of cattle feed was not in dispute, assessee was entitled to exemption and impugned orders were to be set aside - **Dharti Industries v. Office of Commissioner - [2024] 167 taxmann.com 183 (Gujarat)**

3.15 Fish meal in powder form, unfit for human consumption, manufactured and supplied to aquatic/poultry/prawn feed manufactures for use as inputs would not be eligible to benefit of exemption under Sl. No. 102 of Notification No. 2/2017-C.T. (Rate), dated 28-6-2017 read with corrigendum,

dated 27-7-2017 thereto and same would be taxable @ 5% GST [2.5% CGST + 2.5% SGST] in terms of Sl. No. 103 of Schedule I to Notification No. 1/2017-C.T. (Rate), dated 28-6-2017 read with C.B.I. & C. Circular., dated 31-12-2018 - **Union of India v. Jenefa India - [2024] 167 taxmann.com 161 (Madras)**

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

- 3.16** Where supply of service and location of recipient as also location of supplier was outside India due to their fixed establishments in Maldives, question of levy and collection of tax in teeth of Section 9 of CGST Act or Section 5 of IGST Act did not arise; location of immovable property, which was outside India, governs place of supply under Section 13(4) of IGST Act and, thus, Indian GST laws were not applicable; as services fall outside scope of Indian tax regime, department should reimburse GST paid by petitioner to department - **Avantika Contractors (I) Ltd. v. Appellate Authority for advance ruling (GST) - [2024] 167 taxmann.com 410 (Telangana)**

SECTION 13 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - TIME OF SUPPLY OF SERVICES

- 3.17** Annuity received for construction and maintenance of national highway is taxable at time of issuance of invoice or receipt of payments of annuity, whichever is earlier - **Apco Arasavalli Expressway (P.) Ltd. v. Assistant Commissioner, State Tax - [2024] 166 taxmann.com 717 (Andhra Pradesh)**

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

- 3.18** Where as per agreement between Petitioner, a Goods Transport Agency (GTA), and service recipient, cost of fuel has to be procured and supplied by service recipient, value of fuel cannot be added to value of freight charges charged by service provider - **New Jai Hind Transport Service v. Union of India - [2024] 167 taxmann.com 133 (Uttarakhand)**

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

- 3.19** Where assessee, while filing GSTR-3B returns, inadvertently omitted to include IGST details and impugned order was passed after issuing a show cause notice, same was to be set aside and authority was to be directed to afford an opportunity of personal hearing to assessee and pass order on merits - **Natural Products Export Corporation Ltd. v. Government of Tamil Nadu - [2024] 166 taxmann.com 392 (Madras)**

- 3.20** Input Tax Credit denied for delayed availing remanded for reconsideration under proposed GST amendments - **Umashankar Alloys Private Limited v. Assistant Commissioner of Central Tax - [2024] 167 taxmann.com 271 (Madras)**

- 3.21** Rule 96(10) of Central Goods and Services Tax Rules, 2017 is ultra vires section 16 of IGST Act and unenforceable as it imposes restriction on right of exporter to claim refund of IGST paid on export of goods or tax paid on input services or input goods used in export - **Vinayaka Cashew Company v. Union of India - [2024] 167 taxmann.com 760 (Kerala)**

- 3.22** GST registration cancellation order set aside for violation of natural justice principles; appeals against consequential assessment orders allowed within two weeks, to be considered uninfluenced by delay - **Saluja Overseas (P.) Ltd. v. Commissioner of CGST and Central Excise Delhi East Commissionerate - [2024] 167 taxmann.com 608 (Delhi)**

- 3.23** Where assessee failed to produce vehicle movement details required under Section 16(2)(b) of CGST Act for availing Input Tax Credit, writ petition challenging assessment order dismissed, granting liberty to file appeal before Appellate Authority within 4 weeks - **Tvl.Sri Shanmuga Traders v. State Tax Officer (ST)(FAC) - [2024] 167 taxmann.com 27 (Madras)**

- 3.24** Where purchaser claims Input Tax Credit (ITC) on supplies from non-compliant vendors, burden of proving genuineness of transactions lies on purchaser claiming ITC, beyond mere invoices or payments - **Metgud Tiles v. State of Karnataka - [2024] 166 taxmann.com 696 (Karnataka)**

SECTION 22 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1985 - PROCEDURE AND POWERS OF TRIBUNALS

- 3.25** Central Administrative Tribunal (CAT) while dismissing petition seeking extension of Non-Functional Financial Upgradation (NFU) Scheme to Group-B Officers, had not properly appreciated contentions advanced; matter was to be readjudicated - **All India Association of Central Excise Gazetted Executive Officers v. Union of India - [2024] 167 taxmann.com 2 (Delhi)**

RULE 27 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - VALUE OF SUPPLY OF GOODS OR SERVICES WHERE THE CONSIDERATION IS NOT WHOLLY IN MONEY

- 3.26** Where Petitioner entered into contract with SG for conversion of wheat provided by SG into atta, by-products generated, sold after further processing by petitioner in open market at rates notified by SG, AAR held composite supply of services by way of milling of food grains into flour was eligible for exemption, impugned show cause notice under section 74 of CGST Act issued to petitioner, petitioner was to be granted liberty to respond to show cause notice - **Baba Lokenath Flour Mills (P.) Ltd. v. Director General of Goods and Services Tax Intelligence (DGGI) - [2024] 167 taxmann.com 530 (Calcutta)**

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

3.27 Where assessee's registration was cancelled on ground that assessee was not carrying on business at declared place of business and had not followed provisions of section 28 for change or addition of place of business, since registration of assessee was granted several years back, one more opportunity was to be provided to assessee to approach original authority along with appropriate application - **Shantanu Dey v. Assistant Commissioner of State Tax - [2024] 166 taxmann.com 471 (Calcutta)**

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

3.28 GST registration cancellation order set aside where show cause notice lacked proper reasons due to technical glitch and assessee had no opportunity to respond to allegations; registration directed to be restored with 30 days allowed for filing pending returns - **Prakash Singh Bisht v. Commissioner of Delhi Goods and Services Tax - [2024] 167 taxmann.com 356 (Delhi)**

3.29 Where assessee's registration was cancelled by impugned order which preceded show cause notice, assessee could not reply to SCN within stipulated time, ends of justice warranted that assessee was to be accorded an opportunity to furnish response to SCN, instant writ petition was to be disposed off with directions - **Lokesh Sanitary Store v. Principal Commissioner of department of trade and taxes, Government of NCT of Delhi - [2024] 167 taxmann.com 438 (Delhi)**

3.30 Where registration of assessee was cancelled without assigning proper reasons and without substantiating with supporting documentary evidence, also assessee was not granted any opportunity of hearing at any point of time prior to passing of such order, same was to be set aside and matter was to be remanded for fresh consideration - **Nikunj Mayankbhai Mankad v. State of Gujarat - [2024] 166 taxmann.com 393 (Gujarat)**

3.31 Where impugned show cause for cancellation of registration of assessee only reproduced statutory language of section 29(2)(e) of CGST Act without disclosing factual details on strength of which alleged breach was committed by assessee, impugned notice deprived assessee to file effective reply and was to be set aside - **9 Star Traders v. Deputy Commissioner ST - [2024] 167 taxmann.com 347 (Telangana)**

3.32 Where assessee's appeal against order of cancellation of registration was rejected on ground of exceeding statutory limitation period, since assessee had failed to give any good ground for Condonation of delay, instant Court, under extra ordinary jurisdiction under section

35 of limitation Act, 1960, could not interfere with impugned orders, thus, instant writ petition was to be dismissed - **Genius Security Service v. State of Uttar Pradesh - [2024] 167 taxmann.com 394 (Allahabad)**

3.33 Power to cancel registration with retrospective effect can neither be robotic nor routinely applied; order must reflect reasons which may have weighed upon authority to cancel registration with retrospective effect - **Riddhi Siddhi Enterprises v. Commissioner of Goods and Services Tax - [2024] 167 taxmann.com 302 (Delhi)**

3.34 Cancellation of GST registration with retrospective effect requires specific reasons; arbitrary retrospective cancellation without grounds is not sustainable - **Ultra Industries v. Commissioner of Central Tax Appeal First Delhi - [2024] 167 taxmann.com 270 (Delhi)**

3.35 Where order cancelling GST registration issued without opportunity of hearing or reasons, impugned orders quashed and matter remanded for fresh show cause notice with detailed reasons and decision after hearing assessee - **Siddhi Vinayak Alloys v. Superintendent Ghatak 31 Visnagar - [2024] 167 taxmann.com 239 (Gujarat)**

3.36 GST registration cancellation order set aside when show cause notice lacked specific reasons and proper opportunity to respond was not given; registration to be restored while authorities retain right to initiate lawful proceedings - **S.M. Trading Co. v. Assistant Commissioner of Central Goods and Service Tax - [2024] 167 taxmann.com 235 (Delhi)**

3.37 Where order of cancellation of registration was passed without giving any reason and appeals filed by assessee under section 107 were also dismissed, impugned order passed by Appellate Authority as well as order of cancellation of registration were to be quashed and set aside - **Gayatri Steel Company v. Union of India - [2024] 167 taxmann.com 185 (Gujarat)**

3.38 Where petitioners-assessee did not raise any valid ground against delay in filing appeal, further, extension of limitation as granted by Hon'ble Supreme Court did not have any application in both cases, furthermore, there was no reason to entertain writ petition on ground of testing constitutional validity of Section 29(2), which was found to be a last-ditch effort on part of petitioners-assessee, therefore, writ petitions were to be disposed of and impugned orders were to be upheld - **Vaibhav Gopal Construction Private Limited v. Union of India - [2024] 167 taxmann.com 200 (Patna)**

3.39 Where assessee's GST registration was cancelled with retrospective effect on ground that assessee's address was not traceable, in view of fact that assessee had provided a copy of electricity bill reflecting same address and no date of personal hearing was communicated to assessee, cancellation order was to be modified to make it operative from date of show cause notice - **HRC International v. Union Of India - [2024] 167 taxmann.com 188 (Delhi)**

- 3.40** Where assessee's GST registration was cancelled without assigning any reason, cancellation order was set aside and directed restoration of registration status, allowing assessee to file reply to show cause notice and file returns - **Jasveen Kaur v. Union of India** - [2024] 167 taxmann.com 160 (Gauhati)
- 3.41** Cancellation of GST registration should not be withheld due to pending Asst proceedings or recovery of statutory dues, as cancellation does not absolve liability for past acts - **Kundan Trading Company v. Pr. Commissioner Of Department Of Trade & Taxes** - [2024] 167 taxmann.com 130 (Delhi)
- 3.42** Retrospective cancellation of GST registration without reasons or opportunity to be heard is invalid; cancellation to be effective from date of application for cancellation - **Guruji Enterprises v. Pr. Commissioner Delhi GST** - [2024] 167 taxmann.com 80 (Delhi)
- 3.43** Show cause notice for cancellation of GST registration must contain sufficient details of alleged violations, not merely reproduce statutory language, to enable effective reply by assessee - **Max Enterprises v. Dy State Tax Officer** - [2024] 167 taxmann.com 20 (Telangana)
- 3.44** Where assessee's registration was cancelled, assessee not in position to submit reply to SCN as was arrested, only one day was given to submit reply and appear for personal hearing, necessary particulars, details, etc. were not forthcoming in impugned notice, impugned order was to be set aside - **Imthiaz v. Superintendent LgstO-260 Mangaluru** - [2024] 167 taxmann.com 14 (Karnataka)
- 3.45** Where assessee's GST registration was cancelled, there was dispute as to date on which assessee had filed application for amendment of GST registration on change in address of principle place of business, controversy as to whether assessee was in existence at its principal place of business prior to shifting to new address was required to be addressed by considering assessee's document of being in existence, matter was to be remanded - **D K Frieght Carrier v. Union of India** - [2024] 166 taxmann.com 721 (Delhi)
- 3.46** Cancellation of GST registration on pretext of violation of rule 86B was a disproportionate punishment imposed on petitioner and was liable to be interfered in exercise of power conferred on this Court under article 226 of Constitution of India - **A.M. Enterprises v. State of Himachal Pradesh** - [2024] 166 taxmann.com 715 (Himachal Pradesh)
- 3.47** Order of cancellation of registration passed on basis of "prima facie" investigation without completion of investigation was arbitrary, unreasonable and in violation of article 14 of Constitution of India - **A.M. Enterprises v. State of Himachal Pradesh** - [2024] 166 taxmann.com 715 (Himachal Pradesh)
- 3.48** Where no reason had been assigned for cancellation of registration of petitioner-assessee by respondent-department and by various judgments, it was held that reasons are heart and soul of any judicial and administrative order, therefore, cancellation order passed against petitioner-assessee by respondent-department was quashed and matter was remanded - **Sumiran Construction v. State of U.P.** - [2024] 167 taxmann.com 95 (Allahabad)
- 3.49** Where assessee's GST registration was cancelled retrospectively for assessee found "Non-Functioning/Not Existing at Principal Place of Business" neither SCN nor impugned order spelt out reasons for retrospective cancellation, impugned order was to be quashed to extent that it purported to take effect retrospectively; cancellation was to come into effect prospectively from date of show cause notice - **Oscar Enterprises through Its Proprietor Sh. Vikas v. Commissioner of Delhi GST and Anr.** - [2024] 167 taxmann.com 441 (Delhi)
- 3.50** GST registration suspended due to erroneous conclusion of non-existent business premises must be restored if field verification indicates premises exist, with matter remanded for reconsideration after allowing reply to SCN- **Umesh v. Union of India** - [2024] 167 taxmann.com 482 (Delhi)
- 3.51** GST registration cancellation for non-filing of returns set aside, allowing assessee to file pending returns and pay dues within four weeks, recognizing compliance willingness and counterproductive effect of cancellation on revenue collection - **Tamas Dutta v. State of west Bengal** - [2024] 167 taxmann.com 480 (Calcutta)
- 3.52** Where GST registration was cancelled without specific details of alleged fraud in show cause notice, cancellation order set aside for violating principles of natural justice - **Suresh Chand Gupta Proprietor of Gupta and Associates v. Union of India** - [2024] 167 taxmann.com 478 (Delhi)
- 3.53** Where order of cancellation of registration was passed without giving any reason and competent authority had not followed guidelines issued in Aggarwal Dyeing and Printing Works v. State of Gujarat [2022] 137 taxmann.com 332 (Gujarat), order of cancellation was to be set aside and matter was to be remanded to show cause notice stage - **Classic Sound and Light v. Union of India** - [2024] 166 taxmann.com 435 (Gujarat)
- 3.54** Cancellation of GST registration due to address discrepancy should not be mechanical; revenue authorities must consider bona fide explanations and seek affidavits before cancelling registration - **Professional Car Decors v. Superintendent of CGST & C.Ex** - [2024] 167 taxmann.com 544 (Madras)
- 3.55** Where registration of assessee was suspended and consequently ITC available to assessee was blocked, since registration had been restored, assessee was to be granted to liberty to approach appropriate authority with representation and concerned authority was to be directed to take appropriate decision - **Swal Ltd. v. State of Jharkhand** - [2024] 166 taxmann.com 497 (Jharkhand)

- 3.56** Where GST registration of assessee was cancelled by impugned order with retrospective effect on grounds of failure to furnish return, since assessee had filed its return belatedly and did not wish to continue with business, said order cancelling registration was to become effective from date of show cause notice - **Star Enterprises v. Commissioner of Delhi GST - [2024] 166 taxmann.com 496 (Delhi)**
- 3.57** Cancellation of a tax payer's GST registration does not absolve tax payer from discharging its liability or for any statutory non-compliance and it also does not preclude concerned authority from taking any action for any statutory violation or for recovery of dues, if any - **J.M.D. Traders v. Pr. Commissioner of GST - [2024] 166 taxmann.com 692 (Delhi)**
- 3.58** Where petitioner-assessee did not have a reasonable opportunity to contest tax demand on merits as petitioner-assessee did not appear for personal hearing or responded to SCN, therefore, impugned order dated 20.12.2023 was set aside on condition that petitioner-assessee remit 5% of disputed tax demand as agreed to within a period of fifteen days from date of receipt of a copy of this order - **Health Remedies v. Asst Commissioner of State Tax - [2024] 166 taxmann.com 689 (Madras)**
- 3.59** Where assessee's GST registration was erroneously cancelled due to technical glitch, cancellation order quashed and revenue authorities directed to reactivate assessee's original GST registration number to allow filing of pending returns - **Mansingh Somabhai Chaudhari v. State of Gujarat - [2024] 167 taxmann.com 504 (Gujarat)**

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

- 3.60** GST registration cancellation can be challenged through revocation application, submitted with pending returns and tax dues, to be decided by authority within set timeframe - **Triptveer Singh v. Asst Commissioner State GST - [2024] 167 taxmann.com 57 (Uttarakhand)**
- 3.61** Where assessee's GST registration was cancelled but assessee was willing to pay all dues, directed that subject to assessee depositing all taxes, interest, late fees, penalties etc. due and complying with other formalities, assessee's application for revocation of cancellation will be considered in accordance with law - **Double D Construction Pvt. Ltd. v. Commissioner, The Department of Finance, Govt. of Odisha - [2024] 167 taxmann.com 78 (Orissa)**
- 3.62** Where assessee challenged cancellation of GST registration without availing statutory appeal or amnesty scheme, writ petition dismissed due to delay and non-exhaustion of alternative remedies - **Jawahar Jha Azad v. State of Bihar - [2024] 167 taxmann.com 127 (Patna)**

- 3.63** Where registration of assessee was cancelled and assessee filed instant petition, in view of order passed in **Mohanty Enterprises v. Commissioner CT & GST [W.P.(C) No.30374 of 2022, dated 16-11-2022**, delay in invoking provision to rule 23 was to be condoned and subject to assessee depositing all taxes, interest and penalty, assessee's application was to be considered - **Odisha State Labour Cooperative Society Ltd. v. State Tax Officer (CT and GST) - [2024] 166 taxmann.com 647 (Orissa)**
- 3.64** GST registration cancelled for non-filing of returns for six months; assessee allowed to apply for revocation within two weeks, subject to filing pending returns and paying dues - **Sunil Sah v. Union of India - [2024] 167 taxmann.com 477 (Uttarakhand)**
- 3.65** Where assessee's registration was cancelled and application for revocation of cancellation was rejected, new grounds and reasons assigned for rejection of revocation which were not found in original cancellation order, impugned order was to be set aside - **Imthiaz v. Superintendent LgstO-260 Mangaluru - [2024] 167 taxmann.com 14 (Karnataka)**
- 3.66** Where registration of assessee was cancelled and assessee was ready and willing to pay tax, interest, late fee, penalty, subject to assessee depositing all taxes, interest, late fee, penalty etc., due and complying with other formalities, application for revocation of cancellation of registration was to be considered by competent authority - **Indranil Roy v. CT and GST Officer - [2024] 166 taxmann.com 468 (Orissa)**
- 3.67** GST registration cancellation for non-payment of returns can be revoked upon submission of pending returns and payment of outstanding dues within prescribed timeframe - **Kalyan Singh v. Commissioner State GST Commissionerate - [2024] 167 taxmann.com 501 (Uttarakhand)**

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

- 3.68** Inadvertent error in GSTR-1 marking exports as "without payment of IGST" instead of "with payment of IGST" can be rectified by manual resubmission of corrected GSTR-1, when GSTR-3B shows correct figures, to allow assessee to avail legitimately entitled credit - **Nivriya India (P.) Ltd. v. Asst Commissioner of State Tax - [2024] 167 taxmann.com 541 (Calcutta)**

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

- 3.69** Where assessee's-exporter's IGST refund due u.s. 16 of IGST Act, r.w.s. 54 of CGST Act, was not processed as assessee inadvertently did not include amount of IGST paid by assessee in Form GSTR-1, as error was unrectifiable by automated system, assessee could not be deprived of refund which was otherwise legitimately payable to assessee as per provisions of Section 54 of CGST Act r.w.s. 16 of IGST Act, therefore, revenue was directed to immediately act and manually process refund payable to assessee - **Bajaj Herbals (P.) Ltd. v. Dy Commissioner of customs - [2024] 167 taxmann.com 390 (Gujarat)**

- 3.70** Where assessee provides Business Support Services to Vodafone Group Services Limited (VGSL); denial of assessee's ITC refund due to payment being routed to a different branch's bank account was overly technical and unsustainable, as Section 2(6)(iv) of IGST Act requires payment to be received by supplier, not in a specific bank account, thus order-in-appeal which had upheld order-in-original rejecting assessee's application for refund was to be quashed - **Cable And Wireless Global India Private Limited v. Assistant Commissioner, Cgst - [2024] 167 taxmann.com 288 (Delhi)**
- 3.71** Where assessee claimed input tax credit of Rs. 32,29,195 under section 140 of CGST Act, in meanwhile assessee filed refund application not connected with transitional credit, which was sanctioned for Rs. 5,38,20,214 and Rs. 5,09,13,939 was refunded, later on when assessee's claim for transitional credit was approved, for withheld amount of Rs. 32,29,195, no refund application was to be required - **Ahluwalia Contractors India v. Union of India - [2024] 167 taxmann.com 150 (Patna)**
- 3.72** Where petitioner filed first refund application within limitation period but second application was filed on advice of department after expiry of limitation period, time limit for refund would be determined from date original application was filed, thus, refund claimed could not be said to be barred by limitation - **Hallmark v. Jammu and Kashmir Goods and Services Tax Department - [2024] 167 taxmann.com 13 (Jammu & Kashmir and Ladakh)**
- 3.73** Rejection of refund claim without giving opportunity of hearing is not sustainable - **Hallmark v. Jammu and Kashmir Goods and Services Tax Department - [2024] 167 taxmann.com 13 (Jammu & Kashmir and Ladakh)**
- 3.74** Where description of amount received as advance after supply of goods was shown by mistake and same was rectified by filing amended return, tax officer should have considered amended return before rejecting refund claim - **Jafar Karakkunnel Arshal v. Deputy Commissioner, Central Tax & Central Excise - [2024] 167 taxmann.com 16 (Kerala)**
- 3.75** Directed CGST authorities to issue payment advice, compute applicable interest, and disburse sanctioned GST refund with interest within six weeks of order - **Sunil Pramanik v. Union of India - [2024] 167 taxmann.com 516 (Calcutta)**
- 3.76** Limitation period for GST refund claims extended, excluding March 1, 2020 to February 28, 2022 due to CBIC notification, allowing reconsideration of previously time-barred applications - **Supernova Engineers Ltd. v. Joint Commissioner - [2024] 167 taxmann.com 580 (Gujarat)**
- 3.77** Where assessee sought refund of IGST paid on ocean freight under reverse charge mechanism with interest from date of payment, held not entitled to additional interest as input tax credit had already been availed and utilized - **South India Krishna Oil and Fats (P.) Ltd. v. Asst Commissioner of GST-Central Tax Central Excise - [2024] 167 taxmann.com 513 (Madras)**
- 3.78** Assessee allowed to file fresh refund application for inputs under inverted duty structure, following retrospective amendment to CGST Rules including 'Services' in refund formula, to be decided as per amended law - **Sunil Finishing Works v. Union of India - [2024] 167 taxmann.com 515 (Rajasthan)**
- 3.79** Notification No. 54/2018-Central Tax has come into effect from 9-10-2018 and as such there was a mistake apparent on record in CAV judgement wherein it was incorrectly stated that said notification has come into effect from 23-10-2017; mistakes in judgment was rectified - **Cosmo Films Ltd. v. Union of India - [2024] 166 taxmann.com 683 (Gujarat)**
- 3.80** Where assessee challenged orders blocking their Electronic Credit Ledgers under Rule 86A of CGST Rules, impugned blocking orders were quashed, holding that pre-decisional hearing was required and revenue failed to fulfill mandatory requirements for invoking Rule 86A - **K-9-Enterprises v. State of Karnataka - [2024] 167 taxmann.com 499 (Karnataka)**

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

- 3.81** Assessee directed to respond to second SCN u.s. 61 of JGST Act within two weeks, despite prior response to first notice, for authorities to consider and take follow-up action as per law - **Jindal Stone Works v. State of Jharkhand - [2024] 167 taxmann.com 229 (Jharkhand)**
- 3.82** Where notice issued in alleged exercise of power u.s. 61 of JGST Act read with Rule 99(1) of JGST Rules, as per assessee was wholly without jurisdiction and was in excess of power conferred upon Respondent-authority, first notice had been responded, second notice issued, writ petition was to be disposed of giving liberty to assessee to explain reason sought in second notice - **Shyam Stone Works v. State of Jharkhand - [2024] 167 taxmann.com 51 (Jharkhand)**
- 3.83** Assessee granted liberty to respond to second SCN for scrutiny of returns u.s. 61 of JGST Act within two weeks; authority directed to consider response and take follow-up action as per law - **Maa Tara Stone Works v. State of Jharkhand - [2024] 167 taxmann.com 539 (Jharkhand)**
- 3.84** Where petitioner-assessee had responded to first SCN issued by respondent-department and in pursuance thereof, second show-cause notice had been issued, therefore, writ petition was disposed of by giving liberty to petitioner-assessee to explain reason which had been sought in second show-cause - **Jindal Stone Works v. State of Jharkhand - [2024] 167 taxmann.com 467 (Jharkhand)**

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

- 3.85 Delay in filing GSTR-3B within 60 days of best judgment assessment order under Section 62(1) of TNGST Act condoned; assessment order deemed withdrawn, subject to recovery of due tax, interest, and late fees - *Helmet House v. Deputy State Tax Officer-1* - [2024] 167 taxmann.com 81 (Madras)

SECTION 64 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - SUMMARY ASSESSMENT

- 3.86 Where appeal against order in original was dismissed on grounds of limitation and assessee instead of challenging order in appeal, filed writ petition against order in original, jurisdiction under article 226 could not be exercised unless order in appeal was set aside; writ petition was to be dismissed - *Bhawani Marketing (P.) Ltd. v. Union of India* - [2024] 166 taxmann.com 643 (Gauhati)

SECTION 64A OF THE SALE OF GOODS ACT, 1930 - IN CONTRACTS OF SALE, AMOUNT OF INCREASED OR DECREASED TAXES TO BE ADDED OR DEDUCTED

- 3.87 Rate of tax having increased after implementation of GST, assessee to be reimbursed by PWD Department for services rendered by assessee by applying principle in Section 64A of Sale of Goods Act, 1930 - *V. Kanagaraj v. Government of Tamil Nadu* - [2024] 163 taxmann.com 691 (Madras)

SECTION 66 OF THE FINANCE ACT, 1994 - CHARGE OF SERVICE TAX

- 3.88 Show cause notices demanding service tax on income from affiliation fees received by technological university was quashed, holding that service tax cannot be levied on such income in light of previous division bench ruling on issue - *Visvesvaraya Technological University v. Additional Director General* - [2024] 167 taxmann.com 201 (Karnataka)

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

- 3.89 Where assessee's original documents were seized in search under section 67(2) of CGST Act, pre-show cause notice intimation and show cause notice issued were based upon records, papers, documents etc. seized by respondents, records were thus not required, respondent- authority was to be directed to return back said documents - *SLN Infra v. Principal Commissioner of Central Tax* - [2024] 167 taxmann.com 363 (Karnataka)
- 3.90 Where assessee's bank accounts were provisionally attached after search under section 67(2) of CGST Act

in assessee's office, assessee had deposited Rs. 3,60,00,000 out of total liability of Rs. 5,10,47,405, provisional attachment order was to be set aside - *SLN Infra v. Pr. Commissioner of Central Tax* - [2024] 167 taxmann.com 363 (Karnataka)

- 3.91 GST Act as special law prevails over IPC for covered offences; authorities cannot bypass GST Act procedures by prosecuting solely under IPC without invoking GST provisions or obtaining Section 132(6) sanction - *Deepak Singhal v. Union of India* - [2024] 167 taxmann.com 222 (Madhya Pradesh)

- 3.92 Seizure of cash during GST search operations without explicit legal authority is impermissible and subject to return with interest - *Krishna Chaurasia v. Additional Director General, Directorate General of Gst Intelligence* - [2024] 167 taxmann.com 129 (Delhi)

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

- 3.93 Where ITC fraud case of hundred of crores affected society at large scale and it started from registration of fake firms by using Aadhar and PAN Cards of informant fraudulently, instant case being a case of forgery and not related to GST, proceedings could not be initiated against applicants under special Act i.e. GST Act; further since accused were trying to cause deliberate delay so that charges might not be framed, thus, interfering in judicial process, same constituted ample reason of not enlarging accused persons on bail - *Rajiv Jindal v. State of U.P.* - [2024] 167 taxmann.com 357 (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

- 3.94 Where assessee filed writ petition alleging vagueness in SCN, since said notice was not vague and contained all relevant particulars, allegation of assessee was misconceived, thus petition of assessee was to be dismissed with cost of Rs. 5 lakhs - *Viswaat Chemicals Ltd. v. Union of India* - [2024] 167 taxmann.com 450 (Bombay)
- 3.95 Non-receipt of show cause notice due to inaccessible portal tab warrants setting aside of Asst order and opportunity to file reply - *Sadhna Kohli v. Sales Tax Officer Class II, Avato Ward 80* - [2024] 167 taxmann.com 360 (Delhi)
- 3.96 Erroneous entry of ITC in GSTR-3B return, Assessee allowed to file rectification petition for consideration by tax authorities after giving opportunity of hearing - *Tvl. Thendral Electricals v. Commissioner of Commercial Taxes* - [2024] 167 taxmann.com 269 (Madras)
- 3.97 SCN proposing to levy higher GST rate cannot be challenged through writ jurisdiction when statutory remedies are available under GST law - *Hero Motocorp Limited v. Union Of India* - [2024] 167 taxmann.com 225 (Rajasthan)

- 3.98** Service of GST SCN by email held valid; uploading of order summary and Form GST DRC-07 on portal directed before enforcement - **Jayanta Ghosh v. Union of India** - [2024] 167 taxmann.com 228 (Calcutta)
- 3.99** Where assessee requested adjournments citing medical reasons, impugned Asst order set aside and treated as SCN, allowing submission of objections after depositing 25% of disputed tax - **V. Sanguine Exim v. State Tax Officer** - [2024] 167 taxmann.com 199 (Madras)
- 3.100** Adjudicating authority is bound to consider reply to SCN and record reasons as to why reply is not satisfactory; mere rejection of reply by a single line is not sustainable - **Haripa India v. Asst Commissioner of State Tax** - [2024] 167 taxmann.com 156 (Calcutta)
- 3.101** Where assessee filed writ petition against order imposing service tax liability, petition granting liberty to approach appellate authority within 10 days disposed of, holding that issues raised involve questions of fact and law which should first be agitated before statutory appellate forum - **Tripureshwari Udyog v. Union of India** - [2024] 167 taxmann.com 58 (TRIPURA)
- 3.102** Proceedings u.s. 130 of GST Act cannot be initiated for excess stock found during inspection; proper course is to initiate proceedings u.s 73/74 for determination of tax liability on unaccounted goods - **Vk Electricals v. Addl Commissioner Grade-2 Appeal-Ii** - [2024] 167 taxmann.com 63 (Allahabad)
- 3.103** Where assessee could not file reply to SCN due to covid-19, which resulted in passing of impugned order in original, same was to be set aside and assessee was to be permitted to file reply to SCN and thereafter, fresh order was to be passed - **Ajay Kumar Sharma v. Dy Commissioner, GST and Central Excise** - [2024] 167 taxmann.com 420 (Orissa)
- 3.104** Where revenue had passed order against assessee without considering assessee's objection/reply to SCN and thus said order suffers from violation of principles of natural justice and non application of mind to material on record, writ petition was to be disposed of - **Kajah Trading Private Limited v. State Tax Officer** - [2024] 167 taxmann.com 19 (Madras)
- 3.105** Where respondent-department had failed to give any reasons apart from recording that petitioner-assessee had failed to respond to notice issued in DRC-01A or to notice in DRC-01 and Appellate Authority had also rejected appeal on ground of delay, further, there had been no appropriate consideration of matter on merits at any stage, therefore, instant case was remanded back to appellate authority for adjudicating on merits and order of rejection of appeal in Form GST APL-02 dated 03.04.2024 was set aside - **Resinous Chemicals(India) (P.) Ltd. v. State of WB** - [2024] 166 taxmann.com 729 (Calcutta)
- 3.106** Where ITC was claimed from suppliers registered at time of supply, impugned order demanding reversal was set aside for fresh adjudication after allowing assessee to submit supporting documents and be heard - **R. L. Enterprises v. Commissioner state goods and services tax Delhi** - [2024] 167 taxmann.com 406 (Delhi)
- 3.107** Where impugned orders were passed without considering reply submitted by petitioner, non-reconciliation of ITC information and excess ITC availment allegations were to be considered afresh - **Wellness Marketing Exi (P.) Ltd. v. Union of India** - [2024] 166 taxmann.com 503 (Delhi)
- 3.108** Where in violation of principles of natural justice, orders were passed demanding tax, penalty and interest, and assessee came to know about same only after bank attachment, since disputed tax had already been recovered, bank attachment could not survive - **Tvl. Zen Machine Tools v. State Tax Officer** - [2024] 166 taxmann.com 504 (Madras)
- 3.109** GST assessment order and proceedings for periods prior to NCLT-approved Resolution Plan stand extinguished, as all prior claims are nullified upon approval of Resolution Plan under IBC - **Srei Equipment Finance Ltd. v. Deputy Commissioner of Commercial Taxes** - [2024] 167 taxmann.com 514 (Karnataka)
- 3.110** Where order passed under Section 73(9) of UPGST Act without granting opportunity of personal hearing, impugned order quashed with directions to grant opportunity to file fresh reply, fix hearing date, and pass reasoned order - **Maruti Suppliers and Constructions v. Deputy Commissioner Mirzapur** - [2024] 167 taxmann.com 577 (Allahabad)
- 3.111** Where assessee unable to access GST portal and respond to notices, assessment order set aside on condition of 25% tax deposit, matter remanded for fresh consideration with opportunity of hearing - **Syedsirajudeen v. Deputy commercial tax officer** - [2024] 167 taxmann.com 479 (Madras)
- 3.112** Where although revenue claimed to have issued a notice for a hearing on 16.04.2024 to assessee, there was no evidence that said notice was ever served on assessee, thus assessment order issued, finalizing assessment under section 73 was to be quashed and revenue was directed to issue a fresh notice, intimating assessee as regards opportunity for personal hearing - **Dr. Ashley Thomas Jacob v. State of Kerala** - [2024] 166 taxmann.com 684 (Kerala)
- 3.113** Where summary order under GST Act issued without underlying detailed assessment order, such summary order held void ab initio and quashed, with directions to lift consequent bank account attachments - **Messrs Kisan Mouldings Ltd. v. Union of India** - [2024] 167 taxmann.com 502 (Gujarat)

3.114 Where show-cause notice with demand issued for difference in Input Tax Credit in FORM GSTR-3B and Form GSTR-2A, no reply to show cause notice filed because managing partner of assessee receiving communications had undergone cancer surgery, one more opportunity of hearing was to be granted to assessee, to comply with provisions of section 75(4) of CGST Act, impugned orders were to be set aside - **Aashutosh Realities v. Assistant Commissioner, Rajkot** - [2024] 167 taxmann.com 527 (Gujarat)

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

3.115 No provision for adjudication or hearing at pre-show cause notice stage under GST Rule 142(1A); writ petition against mere communication not maintainable - **Sharma Steeltech India (P.) Ltd. v. State Of Rajasthan** - [2024] 167 taxmann.com 238 (Rajasthan)

3.116 Where Show Cause Notice under Section 74 was issued against petitioner-assessee by respondent—adjudicating authority and multiple audit memos were issued by respondent no.3-tax authority to petitioner-assessee, further, irregularities in issuing audit memos did not impinge validity of impugned Show Cause Notice, therefore, impugned Show Cause Notice was not liable to be set aside - **Magicon Impex Private Limited v. Commissioner of Central Goods and Service Tax** - [2024] 167 taxmann.com 260 (Delhi)

3.117 Where show cause notice issued under section 74 did not contain even a whisper of fact that assessee had wrongly availed or utilized input tax credit due to any fraud, or wilful mis-statement or suppression of facts to evade tax, impugned show cause notice was to be quashed - **Hcl Infotech Ltd v. Commissioner, Commercial Tax** - [2024] 167 taxmann.com 125 (Allahabad)

3.118 Where assessee had declared that rate of tax payable by him is 12% and had paid tax declared by him, however, revenue had taken view that tax payable was 18% and that there was willful suppression by assessee, requiring a notice, under Section 74, stay on all further proceedings was to be granted to assessee related to impugned show-cause notice for a period of six weeks - **Ketan Constructions Limited v. Union Of India** - [2024] 167 taxmann.com 44 (Andhra Pradesh)

3.119 Set aside of appellate order dismissing appeal as time-barred despite filing within condonable period, with direction to reconsider appeal on merits and pre-deposit requirement - **Sri. Om Traders v. State of Karnataka** - [2024] 167 taxmann.com 605 (Karnataka)

3.120 Where assessee's explanation of higher electricity consumption despite lower turnover was due to necessary cold storage operations during COVID-19 period, absence of contrary evidence to prove sales suppression warranted reconsideration of GST demand - **S.P. Mani and Mohan Diary (India) (P.) Ltd. v. Assistant Commissioner (ST) (FAC) (Inspection)** - [2024] 167 taxmann.com 607 (Madras)

3.121 Where supply of free power to states was contended to be compensation for environmental distress caused by hydro projects and not consideration liable to GST, interim stay granted on GST demand, noting prima facie merit in arguments and conflicting departmental views on issue - **NHPC Ltd. v. Principal Commissioner, CGST and Ors.** - [2024] 167 taxmann.com 400 (Punjab & Haryana)

3.122 Where order was passed ex parte and same was not passed on date fixed for hearing, further, no notice was given to petitioner-assessee by respondent-department for subsequent date of hearing, therefore, following relevant precedent, impugned order passed under section 74 was set aside - **Kalpna And Kamla Cargo And Travels v. State of U.p.** - [2024] 167 taxmann.com 42 (Allahabad)

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

3.123 Hearing opportunity is mandatorily to be granted before passing adverse adjudication order against assessee; non-grant of hearing opportunity would lead to violation of principles of natural justice - **Brijesh Kumar Singh Thru v. State of U.P.** - [2024] 167 taxmann.com 287 (Allahabad)

3.124 Non-compliance with mandatory requirement of personal hearing under Section 75(4) of UP GST Act warrants setting aside of assessment order and remand for fresh consideration - **Rk Electronics v. State of U.P.** - [2024] 167 taxmann.com 606 (Allahabad)

3.125 Impugned GST order passed without providing mandatory opportunity of personal hearing under Section 75(4) set aside; matter remanded for fresh consideration after granting hearing - **Tvl.Modular Building Systems v. Deputy State Tax Officer** - [2024] 166 taxmann.com 735 (Madras)

3.126 Where assessee failed to file reply to notice issued by revenue, in absence of opportunity of personal hearing, impugned order was to be set aside - **Tvl. Zen Machine Tools v. State Tax Officer** - [2024] 166 taxmann.com 505 (Madras)

3.127 Where assessee failed to file reply to notice uploaded on GST portal leading to ex-parte orders, matter remanded to provide opportunity for reply and personal hearing before passing fresh orders - **K.N.Raj Construction v. Assistant Commissioner (ST)** - [2024] 167 taxmann.com 468 (Madras)

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

- 3.128** Where demand was proposed under section 79 of CGST Act on basis of mismatch of GSTR-01 with GSTR-09, assessee had contended that mismatch was on account of technical glitch in GST portal functionality, but not accepted by respondent authority, assessee's similar contention for subsequent period was accepted and demand was dropped, impugned order was to be set aside - **Celebi Delhi Cargo Terminal Management India (P.) Ltd. v. Sales Tax Officer** - [2024] 166 taxmann.com 719 (Delhi)
- 3.129** Recovery actions challenged for lack of notice and excess attempts; respondent directed to explain, further actions stayed, assessee allowed to operate accounts pending GST Tribunal constitution - **Solvi Enterprises v. Additional Commissioner Grade 2** - [2024] 167 taxmann.com 512 (Allahabad)

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

- 3.130** Objections against provisional attachment under GST law must be decided within reasonable time, not exceeding three months from submission date - **Adabala Naryana Rao v. Union of India** - [2024] 167 taxmann.com 37 (Rajasthan)
- 3.131** Provisional attachment under Section 83(1) of CGST/DGST Act valid if issued after initiation of proceedings under Chapter XII, XIV or XV to protect government revenue, regardless of specific proceeding mentioned in attachment order - **MJ Bizcrafts LLP v. Central Goods and Services Tax** - [2024] 167 taxmann.com 505 (Delhi)
- 3.132** There cannot be any blocking of credit in Electronic Credit Ledger if there is no sufficient balance available - **PMW Metal and Alloys (P.) Ltd. v. Union of India** - [2024] 167 taxmann.com 543 (Gujarat)

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

- 3.133** Where electronic credit ledger of assessee was blocked by invoking Rule 86A of CGST Rules, impugned order did not contain independent or cogent reasons to believe except that registered person/supplier found to be non-existent or not to be conducting any business from registered place, impugned order was to be set aside - **Lead Factory v. Assistant Commissioner of Commercial Taxes** - [2024] 167 taxmann.com 574 (Karnataka)
- 3.134** Where ITC of certain amount blocked under Rule 86A of CGST Rules, concerned dealer been informed to be a fraudulent dealer engaged in passing of ITC by

issuing fake invoices without actually supplying goods and transactions entered into by said dealer with various entities including assessee mentioned in communication, writ petition was to be disposed of permitting assessee to approach authority who issued notice - **St. Joseph Oil Mills v. Joint Commissioner, State Taxpayer Services** - [2024] 166 taxmann.com 703 (Kerala)

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

- 3.135** As long as order of NCLT holds, it would not be open for any person, who is bound by order, to contend that such an order is not binding; Hence, liability of Corporate debtor (CP), arising out of AP VAT Act or GST Act stands extinguished - **Patanjali Foods Limited v. Assistant Commissioner St Fac** - [2024] 167 taxmann.com 262 (Andhra Pradesh)

SECTION 94 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - FIRM, AOP, HUF, LIABILITY OF PAY TAX

- 3.136** SCN issued to non-existent firm was not valid in law; however, department was at liberty to move against petitioner as well as legal heirs of partner who died, to extent of share of said partner - **Arpit Agarwal v. State of U.P.** - [2024] 166 taxmann.com 718 (Allahabad)

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

- 3.137** Appeal admitted electronically should not be dismissed on technical ground of delayed manual submission of certified order copy, but decided on merits - **Sunder Synthetics Pvt .Ltd. v. Union of India** - [2024] 167 taxmann.com 369 (Telangana)
- 3.138** Where assessee's appeal was dismissed by Appellate Authority on ground that it had not complied with mandatory condition of pre-deposit of 10 per cent of disputed tax amount, since assessee was never put on notice of fact that it had not complied with 10 per cent pre-deposit, matter was to be remitted back to Appellate Authority - **Sree Balaji Traders v. Commissioner of GST & Central Excise (Appeals)** - [2024] 166 taxmann.com 389 (Madras)
- 3.139** Where appeal against Asst order was dismissed on ground that appeal was filed beyond condonable period of limitation and there was no provision in TNGST Act to condone delay, assessee's case was that no opportunity was given before passing Asst order, impugned order was to be set aside and first appellate authority was to be directed to take appeal on file and pass final orders in appeal itself - **Tvl. Canply v. Dy Commissioner (ST) (FAC)** - [2024] 167 taxmann.com 268 (Madras)
- 3.140** Where reasons given by petitioners-assesseees for seeking condonation of delay were only an ipsi dixit of petitioners-assesseees, therefore, it did not bring these petitions within exceptional circumstances; all these writ petitions were found to be without merit - **Jatinder Singh v. Union Territory of J&K** - [2024] 167 taxmann.com 227 (Jammu & Kashmir and Ladakh)

- 3.141** Where various factual and legal contentions and submissions made by both sides had not been addressed correctly or properly by respondent No.2-Appellate Authority, therefore, impugned orders were to be set aside and matter was to be remitted back to respondent no.2-appellate authority - **Xiaomi Technology India Private Limited v. State of Karnataka** - [2024] 167 taxmann.com 142 (Karnataka)
- 3.142** Where assessee had deposited entire amount demanded, though in dispute, it could not be asked to deposit amount either in terms of section 107(6)(a) or section 107(6)(b) while hearing its appeal - **Honda Motorcycle And Scooter India Pvt. Ltd. v. Union Of India** - [2024] 167 taxmann.com 158 (Punjab & Haryana)
- 3.143** Interim stay granted on GST demand upon deposit of 10% of disputed tax amount in addition to pre-deposit, where appellate tribunal not yet constituted - **Hriday Kumar Das v. State of West Bengal** - [2024] 167 taxmann.com 159 (Calcutta)
- 3.144** Appeals filed beyond prescribed limitation period under GST Act cannot be condoned beyond additional one month specified in Section 107(4), as Section 5 of Limitation Act is impliedly excluded - **Venkateswara Rao Kesanakurti v. State of Andhra Pradesh** - [2024] 167 taxmann.com 59 (Andhra Pradesh)
- 3.145** Appellate Authority has a duty and an obligation to examine grounds raised by appellant in memorandum of appeal and decide issue on merits even if appeal is filed ex parte - **Silverline v. State of Bihar** - [2024] 167 taxmann.com 611 (Patna)
- 3.146** Dismissal of appeal as time-barred without opportunity to prove date of communication set aside; matter remanded for de novo consideration with directions for proper notice and reasoned order - **Reliance General Insurance Company Ltd. v. Union of India** - [2024] 167 taxmann.com 408 (Bombay)
- 3.147** When assessment order is appealable under section 107 of CGST/SGST Act, 2017, challenge against assessment order passed on ground of violation of principles of natural justice is maintainable before appellate authority - **Vikas A Shah v. State tax officer** - [2024] 167 taxmann.com 449 (Kerala)
- 3.148** Where assessee filed appeal against assessment order manually, which was rejected on ground that appeal had to be filed only through online portal and was further rejected on grounds of limitation when assessee attempted to file same online, interest of justice warranted that assessee be granted another opportunity, therefore appeal was to be taken on record by appellate authority - **GU Ocean (P.) Ltd. v. Deputy Commissioner (ST), GST Appeal** - [2024] 166 taxmann.com 467 (Madras)
- 3.149** Appeal filed within extended deadline per notification cannot be dismissed as time-barred; appellate authority must decide such appeals on merits - **Nrusingha Charan Jena v. Chief Commissioner of CT and GST, Cuttack** - [2024] 167 taxmann.com 542 (Orissa)
- 3.150** Appellate authority's enhancement of tax liability without following procedure under Section 107(11) of GST Act is not tenable; matter remanded for fresh consideration including effect of subsequent closing order for same tax period - **Hriday Kumar Das v. State of West Bengal** - [2024] 167 taxmann.com 465 (Calcutta)
- 3.151** Where appeal filed under section 107 of CGST Act against order passed under section 73 of CGST Act was rejected due to late filing, determination on merits would not only involve detailed scrutiny of records but also determination on factual aspects, matter was to be remanded to appellate authority to hear out appeal under section 107 and dispose of on merits - **Made easy education (P.) Ltd. v. Assistant Commissioner of State Tax** - [2024] 167 taxmann.com 575 (Calcutta)
- 3.152** Where petitioner paid entire amount of demand issued under section 129(3) of GST Act, portal was not accepting appeal against order of which demand paid entirely, right to file appeal cannot be taken away merely because petitioners have paid entire amount, writ petitions were to be disposed of giving liberty to petitioner to file appeal - **TNS Express Pvt Ltd. v. State of Assam** - [2024] 167 taxmann.com 581 (Gauhati)
- 3.153** Where appeal could not be filed within period of three months from date of receipt of order due to financial hardship and illness of MD, delay was to be condoned and matter was to be remanded to appellate authority for deciding appeal on merits - **A.R. Enterprises v. Addl Commissioner, CGST (Appeals)** - [2024] 166 taxmann.com 716 (Allahabad)
- 3.154** Where petitioner in a writ petition submitted that in SCN, tax period was mentioned as July, 2017 to March, 2018, but while adjudicating tax period was mentioned as 2017-18 and 2018-19, writ petition was disposed of with liberty to file appeal - **Prasad Explosive & Chemicals v. Pr. Commissioner, CGST & Central Excise** - [2024] 166 taxmann.com 698 (Jharkhand)
- 3.155** When appeal has been filed within time frame prescribed, that is, three months, authority should not dismiss appeal on ground that certified copy of decision was not filed within time as per proviso to Rule 108, thus order rejecting assessee's appeal could not be sustained in eyes of law and same was to be quashed - **Patel Beej Bhandar v. State of U.P.** - [2024] 166 taxmann.com 697 (Allahabad)
- 3.156** Where appeal was dismissed ex-parte without providing requested email notification of hearing dates, order set aside and matter remanded for fresh consideration with proper hearing opportunity - **Ebony Automobiles (P.) Ltd. v. Jt Commissioner of Commercial Taxes (Appeals)** - [2024] 166 taxmann.com 685 (Karnataka)

SECTION 108 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REVISIONAL AUTHORITY, POWERS OF

3.157 Where appeal filed by petitioner-assessee was rejected by respondent no.3-appellate authority on ground that petitioner-assessee had not submitted certified copy of refund rejection order dated 30.04.2020 and as per Section 108, respondent no.3- appellate authority could not have rejected appeal on such a technical ground more particularly when statute did not provide same, therefore, for aforesaid reasons, impugned order dated 28.02.2023 passed by respondent No.3-appellate authority was hereby quashed and set aside; matter was remanded back to respondents no.3-appellant authority - **Rgs Impex (P.) Ltd. Through Jinil Atulbhai Rachchh v. State of Gujarat - [2024] 167 taxmann.com 21 (Gujarat)**

3.158 Where after appeal filed by assessee was allowed in favour of assessee, respondent invoked revisional jurisdiction u.s. 108 and passed impugned order without notifying or granting any opportunity of hearing to assessee, same could not be sustained - **BVM Trans Solutions (P.) Ltd. v. Commercial Tax Officer - [2024] 166 taxmann.com 644 (Karnataka)**

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

3.159 Where assessee filed writ petition challenging appellate orders passed against rejection of refund applications, since impugned orders were with respect to refund, assessee was to be directed to file an appeal before Tribunal as and when it is constituted - **Ganpati Motors v. Chief Commissioner of CGST and Central Excise - [2024] 166 taxmann.com 437 (Patna)**

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

3.160 Where penalty was imposed at higher rate being 100 per cent of value of goods under section 129(1)(b) from petitioner who describes himself to be owner of goods, same was to be reduced to twice amount of tax in terms of provisions of section 129(1)(a) - **Ram India Company v. State of U.P. - [2024] 167 taxmann.com 164 (Allahabad)**

3.161 Where petitioner was owner of goods in transit that were detained by revenue, those goods were to be released in terms of section 129(1)(a) instead of calculating amount of penalty under section 129(1)(b) - **Fadil Enterprises v. State of U.P. - [2024] 167 taxmann.com 10 (Allahabad)**

3.162 Penalty order passed on detention of goods and vehicle after 7 days from service of notice was not sustainable - **Kedia Enterprises v. State of Bihar - [2024] 166 taxmann.com 724 (Patna)**

3.163 Where assessee contended that goods should be released under Section 129(1)(a) of CGST Act rather than Section 129(1)(b), impugned order was quashed and directed authorities to release goods as per Section 129(1)(a) within three weeks - **S.M. Enterprises v. State of Up - [2024] 167 taxmann.com 445 (Allahabad)**

3.164 Where E-way bills were generated for transporting of iron cast from Ahmedabad to Noida and same were valid upto 31-12-2022, but vehicle was seized at Beawar on 1-1-2023 and E-way bills were not extended prior to seizure or expiry period, there was no force in petition filed by assessee challenging same on ground of breakdown and same was to be dismissed - **Ashwin Auto Cast (P.) Ltd. v. State of Rajasthan - [2024] 166 taxmann.com 433 (Rajasthan)**

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

3.165 Where accused of creating fake firms and fraudulently availing/utilizing input tax credit (ITC) of Rs. 54.33 crore, bail granted considering lack of documentary evidence, prolonged custody, and unlikely early trial conclusion - **Gyaan Chandra Jaiswal @ Gyan Chandra Jaiswal v. Union of India - [2024] 167 taxmann.com 570 (Jharkhand)**

3.166 Bail petition of petitioner-applicant and documents attached to it, point towards petitioner-applicant's involvement in offence, therefore, no case was made out for anticipatory bail, and therefore, instant application under Section 438 was to be dismissed - **Suresh Chand Meena v. Anti Corruption Bureau Faridabad - [2024] 167 taxmann.com 96 (Punjab & Haryana)**

SECTIONS 146 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMMON GST PORTAL

3.167 Where assessee challenged disposal of appeal without opportunity of hearing, writ petition dismissed, holding that service of notice via email was valid under Section 169 of GST Act, and assessee's failure to appear despite notice precluded claim of inadequate notice - **Delta Goods Private Limited v. Union of India - [2024] 167 taxmann.com 7 (Calcutta)**

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

3.168 Where assessee filed writ challenging an order raising tax demands, contending entitlement to benefit of Notification 11/2017-Central Tax, dated 28-6-2017, which had not been considered, and denial of input tax credit, assessee was to be directed to file application for rectification under section 161; period of limitation would stand excluded if rectification petition was filed within 10 days - **Easy Infra Inc. v. Union of India - [2024] 167 taxmann.com 184 (Kerala)**

4. AAR

CLASSIFICATION OF GOODS

4.1 *Baby Carriage with hip seat* : Supply of 'Baby Carrier with hip seat' as manufactured by applicant-assessee shall be covered under HSN 6307 90 and would attract tax @ 5%, when sale value does not exceed Rs. 1,000/- per piece and @12% when sale value exceeds Rs. 1,000/- per piece - ***Butt Baby Enterprise (P.) Ltd., In re - [2024] 167 taxmann.com 241 (AAR-WEST BENGAL)***

SECTION 2(5) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - AGENT

4.2 Where none of condition of 'Pure Agent' enumerated in Rule 33, is fulfilled by applicant-assessee, therefore, applicant-assessee could not act as 'Pure Agent', hence, applicant-assessee is required to pay GST on taxable supply received from Indian Railways and said charges are not covered under scope of 'Pure Agent' - ***Rajasthan Tourism Development Corporation Ltd., In re - [2024] 167 taxmann.com 521 (AAR-RAJASTHAN)***

SECTION 2(30) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - COMPOSITE SUPPLY

4.3 Where assessee, a premier and elite clubs provides service of renting of premise to members for carrying out functions, wedding, social gatherings, parties etc. as well as indoor catering services along with renting of premise, rental and catering services are offered together by assessee, are considered "naturally bundled" services, supplied in conjunction with each other - ***Tollygunge Club Ltd., In re - [2024] 167 taxmann.com 274 (AAR-WEST BENGAL)***

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

4.4 Where assessee is owner of a digital platform namely Yatri Sathi App and provides supply of services to drivers by way of allowing drivers to use digital platform against a consideration, thus, assessee qualifies to be an Electronic Commerce Operator in terms of section 2(45) - ***Kundan Kumar Prasad, In re - [2024] 167 taxmann.com 308 (AAR-WEST BENGAL)***

4.5 As per section 2(45), an Electronic Commerce Operator is an owner or operator of a digital platform used for supplying goods or services, in instant case where applicant owns Yatri Sathi App, providing a platform to connect actual suppliers (cab drivers) and recipients (passengers intending to use the driver's service), therefore, applicant qualifies as an Electronic Commerce Operator - ***Natural Language Technology Research, In re - [2024] 167 taxmann.com 205 (AAR-WEST BENGAL)***

SECTION 2(67) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - INWARD SUPPLY

4.6 Where value of supply shall include within itself 'inward supplies' of exempted goods/services and services by way of extending loans by HDFC Bank to applicant-assessee against consideration payable in form of interest is an 'inward supply' of exempted services of applicant-assessee, therefore, aforesaid services would be a part of total inward supply for purpose of computing threshold limit of 80% - ***Mangalam Developers, In re - [2024] 167 taxmann.com 309 (AAR-WEST BENGAL)***

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

4.7 Where applicant-assessee has sublet task of operating Palace on Wheels to operator for smooth operation and Indian Railways had not entered into any contract with operator, therefore, applicant-assessee is a recipient of service from point of view of Indian Railways and applicant-assessee is required to pay GST on charges paid to Indian Railways - ***Rajasthan Tourism Development Corporation Ltd., In re - [2024] 167 taxmann.com 521 (AAR-RAJASTHAN)***

4.8 Where supervision charges are recovered by applicant-assessee from consumer under first mode, same shall, inter-alia constitute supply under GST Act, further, in second method, where Deposit work is undertaken by DISCOM, all work including cost of material and its supervision is being done by applicant-assessee, therefore, it also qualifies to be supply under Section 7 - ***Pashchimanchal Vidyut Vitran Nigam Ltd., In re - [2024] 167 taxmann.com 659 (AAR-UTTAR PRADESH)***

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

4.9 Where assessee, a premier and elite clubs provides renting of premises along with supply of food at any event, such supply would attract tax @ 5% with restriction of input tax credit and subject to condition that Room Tariff of club does not exceed Rs. 7,500/- per unit per day or equivalent - ***Tollygunge Club Ltd., In re - [2024] 167 taxmann.com 274 (AAR-WEST BENGAL)***

4.10 Where applicant's business model connects drivers and passengers and their role ends on such connection and effectively does not have any control over subsequent business activities and has no control over actual provision of service by service provide, since supply of services is not made through applicant but such supply is independent in nature, applicant is not person liable for discharge of tax liability under section 9(5) - ***Natural Language Technology Research, In re - [2024] 167 taxmann.com 205 (AAR-WEST BENGAL)***

4.11 Where charges are paid to Indian Railways by applicant-assessee and not operator, therefore, applicant-assessee is liable to pay GST as per rate mentioned - ***Rajasthan Tourism Development Corporation Ltd., In re - [2024] 167 taxmann.com 521 (AAR- RAJASTHAN)***

4.12 Product 'Vanilla Mix' which is dried softy ice cream mix (low fat) in vanilla flavour is classifiable under Heading No. 2106 90 99 of First Schedule to Tariff Act attracting tax at rate of 18 per cent of GST - **VRB Consumer Products (P.) Ltd., In re - [2024] 167 taxmann.com 587 (AAR- RAJASTHAN)**

4.13 Where recipient of service is liable to pay GST under RCM and applicant-assessee is a recipient of service, therefore, applicant-assessee is liable to pay GST on Mining Lease Payments including Royalty, to be paid to Govt. of Rajasthan under RCM and applicant-assessee is liable to pay GST at 18% - **Deccan Cements Ltd., In re - [2024] 167 taxmann.com 586 (AAR- RAJASTHAN)**

4.14 Where upfront payment made to SG is no more deposit, but, advance which shall be adjusted towards future payments of revenue share amount, therefore, applicant-assessee is liable to pay GST on upfront payments - **Deccan Cements Ltd., In re - [2024] 167 taxmann.com 586 (AAR- RAJASTHAN)**

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

4.15 Where applicant-assessee provides services to Nagar Nigam, Bikaner, which is a 'local authority' and Entry No. 3B of Notification No. 13/2017-CT (Rate) dated 28.06.2017 exempts services provided to 'Government Authority' by way of water supply, public health, sanitation conservancy, solid waste management, slum improvement and up gradation, therefore, activity of providing, laying, jointing, testing and commissioning of sewer system and all ancillary works by applicant-assessee to Nagar Nigam Bikaner, being a local authority is not exempted under Entry 3B of Notification No. 13/2017-CT (Rate) dated 28.06.2017 - **Technocraft Construction (P.) Ltd., In re - [2024] 167 taxmann.com 620 (AAR- RAJASTHAN)**

4.16 Where equity in applicant-assessee is shared between NTPC Limited and Government of UP in a ratio of 74.496% and 25.504%, which is less than stipulated equity given in requirement of 90%, hence, applicant-assessee cannot be categorized and considered as "Governmental Entity", therefore, provisions of Entry No. 45 of Notification No. 12/2017 - Central Tax (Rate) dated 28-6-2018 shall not be applicable in case of applicant-assessee - **THDC India Ltd., In re - [2024] 166 taxmann.com 741 (AAR- UTTARAKHAND)**

SECTION 13 OF THE CGST ACT, 2017 - SUPPLY - TIME OF SUPPLY OF SERVICES

4.17 Where no consideration has been charged by Associated Enterprises from applicant-assessee and supplier of service is located outside India, therefore, time of supply shall be date of entry in books of account of recipient of supply and GST under RCM is required to be paid at one time, not periodically considering that guarantee has been issued only once - **Green Infra Wind Farm Assets Ltd., In re - [2024] 167 taxmann.com 485 (AAR- RAJASTHAN)**

4.18 Where GST is required to be paid at one time and not periodically, therefore, value of supply shall be, if guarantor executes contract of guarantee without consideration, in GST regime prior to 26-10-2023, for benefit of a related party, GST would be payable on basis of valuation mechanisms as per Rule 28(1) at time of execution of contract; Further, GST under reverse charge mechanism is payable on 1% of deemed total value of loan after guarantees executed after 26-10-2023 as per rule 28(2), on one time basis at time of execution of contract, if guarantor executes contract of guarantee without consideration, for benefit of a related party in GST regime post 26-10-2023 - **Green Infra Wind Farm Assets Ltd., In re - [2024] 167 taxmann.com 485 (AAR- RAJASTHAN)**

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

4.19 In first mode, value of materials and cost of installation shall not be included in value of supply for determination of taxable value under GST, therefore, applicant-assessee shall be liable to pay GST only on supervision charges, further, in second mode, value of supply will include within itself, value of material and cost of execution work reimbursed on cost basis for installation - **Pashchimanchal Vidyut Vitran Nigam Ltd., In re - [2024] 167 taxmann.com 659 (AAR- UTTAR PRADESH)**

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

4.20 Where tax payable under provisions of sub-section (3) and (4) of Section 9 is included in input tax and credit of input tax charged on any supply of goods or services or both to applicant-assessee which are used or intended to be used in course or furtherance of his business, therefore, applicant-assessee is eligible to avail ITC of GST paid by them under Reverse Charge Mechanism subject to fulfilment of conditions laid down under section 16 - **Deccan Cements Ltd., In re - [2024] 167 taxmann.com 586 (AAR- RAJASTHAN)**

4.21 Where construction of lines is being done on behalf of customers of applicant-assessee and applicant-assessee is not doing it on his own account, therefore, ITC on material labour, installation and other overhead does not fall under block credit under section 17(5), Hence, applicant-assessee is eligible for Input Tax Credit as per Section 16 - **Pashchimanchal Vidyut Vitran Nigam Ltd., In re - [2024] 167 taxmann.com 659 (AAR- UTTAR PRADESH)**

SECTION 24 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - COMPULSORY, REGISTRATION IN CERTAIN CASES

4.22 Where person who is required to pay tax under RCM, is liable to be registered in state in which they would be receiving services, therefore, applicant-assessee is required to pay GST in State of Rajasthan as royalty amount shall be paid to Government of Rajasthan - **Deccan Cements Ltd., In re - [2024] 167 taxmann.com 586 (AAR- RAJASTHAN)**

5. CCI

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

5.1 Where GST rate of services by way of admission to exhibition of cinematography films supplied by respondent-assessee was reduced from 28 per cent to 18 per cent and from 18% to 12%, further, respondent-assessee had not passed benefit of reduction in GST rate to recipients by way of commensurate reduction in price in terms of section 171, therefore, commission directed respondent-assessee to deposit profiteered amount - **Principal Commissioner v. Ranga 70 MM - [2024] 167 taxmann.com 339 (CCI)**

5.2 Where respondent-assessee had not retained any ITC related to 'Ireo Waterfront' project and reversed all ineligible ITC pertaining to F.Ys. 2017-18 and 2018-19, therefore, it could be concluded that post-GST, no benefit of additional ITC had been accrued to respondent-assessee in respect of project "Ireo Waterfront", therefore, provisions of Section 171 (1) were not attracted in respondent-assessee's project "Ireo Waterfront" - **Director General of Anti Profiteering v. Ireo Waterfront (P.) Ltd. - [2024] 167 taxmann.com 242 (CCI)**

Section 128A of the CGST Act, 2017: Waiver of Interest and Penalty



CA Swapnil Jain

Background

Section 128A was introduced into the Central Goods and Services Tax Act, 2017 (CGST Act) with effect from November 1, 2024 through Finance Act 2024. This section aims to provide relief to taxpayers by waiving interest and penalties associated with tax demands raised under Section 73 of the CGST Act for specific financial years. This move is intended to reduce the financial burden on taxpayers for past tax liabilities.

Coverage

Section 128A applies to tax demands raised under Section 73 of the CGST Act for the financial years 2017-18, 2018-19, and 2019-20. This encompasses situations where:

- A notice or statement has been issued under Section 73, but no order has been passed.
- An order has been issued under Section 73, but no order has been issued by the Appellate Authority or Revisional Authority.
- An order has been issued by the Appellate Authority or Revisional Authority, but no order has been passed by the Appellate Tribunal.

Furthermore, Section 128A also covers cases where a notice was initially issued under Section 74 for the specified financial years, and an order is passed by the proper officer under Section 73 due to directions from the Appellate Authority, Appellate Tribunal, or a court.

Benefits

The primary benefit of Section 128A is the waiver of interest and penalties on tax demands raised under Section 73 for the specified financial years, provided certain conditions are met. This waiver aims to reduce the financial burden on taxpayers and encourage them to settle past tax liabilities.

Prerequisites

To avail the benefits under Section 128A, taxpayers must fulfill the following prerequisites:

- **Payment of Tax:** Taxpayers must pay the full amount of tax payable as per the notice, statement, or order related to the demand. This includes any additional tax liability determined by the Appellate Authority, Appellate Tribunal, court, or Revisional Authority.
- **Withdrawal of Appeals/Petitions:** If an appeal or writ petition is pending before any Appellate Authority, Appellate Tribunal, or court, it must be withdrawn before applying for the waiver.

- **Filing of Application:** Taxpayers need to file an application electronically on the common portal. **FORM GST SPL-01** is used for notices/statements, while **FORM GST SPL-02** is used for orders.

Restrictions

Section 128A does not apply to the following:

- **Erroneous Refunds:** Waiver is not applicable to any amount payable due to an erroneous refund.
- **Pending Appeals/Petitions:** The waiver cannot be availed if an appeal or writ petition filed by the taxpayer is pending and has not been withdrawn.
- **Partial Payments:** The benefit of waiver is only available when the full amount of tax demanded is paid. Partial waivers based on partial payments are not allowed.
- **Late Fees and Redemption Fines:** The waiver does not cover late fees, redemption fines, or penalties not directly related to the tax demand.

Additional Points

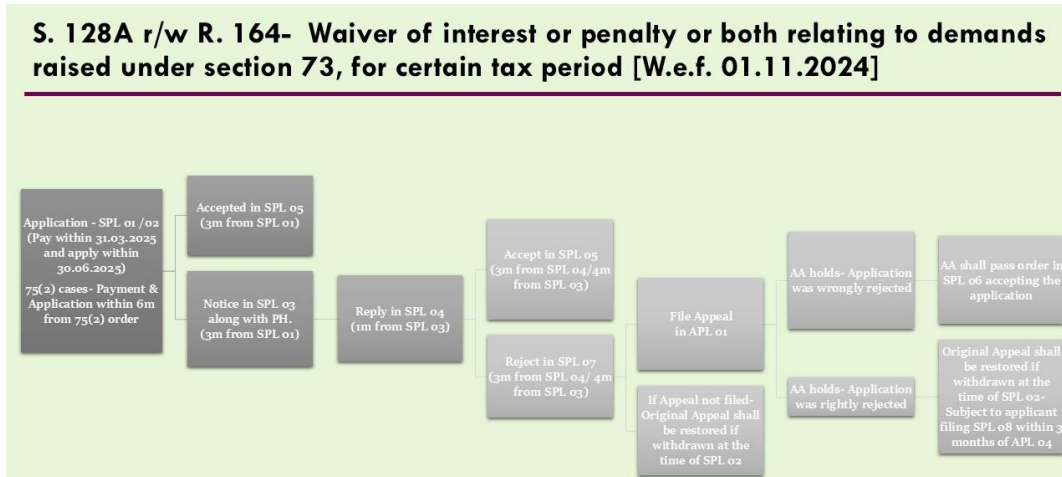
- **Tax Paid Before Section 128A:** Any amount paid towards the demand up to the notified date, even before the section came into effect, is considered valid for availing the waiver.
- **Recovery from Other Persons:** Amounts recovered by tax officers from other persons on behalf of the taxpayer are considered as tax paid towards the demand.
- **Transitional Credit Demands:** Demands related to wrongly availed transitional credit during the covered period are also eligible for the waiver.
- **Payment Methods:** Taxpayers can make payments using their electronic cash ledger, Input Tax Credit (ITC), or a combination of both. However, certain demands, such as those related to reverse charge mechanism or erroneous refunds paid in cash, can only be paid through the electronic cash ledger.

Procedure for Availing Waiver

The process for availing the waiver under Section 128A involves specific steps and forms that taxpayers need to follow:

- **Filing of Application:** Taxpayers must file their application within three months from the notified date, which is March 31, 2025.
- **Payment of Tax:** The tax payment must be made on or before the notified date.
- **Processing of Application:** The proper officer will examine the application and may issue a notice for clarification or rejection. The taxpayer can reply to the notice within one month.
- **Issuance of Order:** The proper officer will issue an order either accepting or rejecting the application within the prescribed time limits.
- **Appeal:** Taxpayers can appeal against a rejection order within the specified time limit.

128A Process flowchart



Conclusion

Section 128A offers a valuable opportunity for taxpayers to settle past tax liabilities by waiving interest and penalties. By understanding the coverage, benefits, prerequisites, and restrictions of this section, taxpayers can effectively utilize its provisions to alleviate their financial burden.

COMPANY AND SEBI LAWS UPDATES

1. STATUTORY UPDATES

1.1 FPIs to receive sale proceeds on T+1 with streamlined tax certificate issuance - **PR No. 26/2024, Dated 16-10-2024**

Editorial Note : SEBI has introduced measures to speed up the availability of sale proceeds for foreign portfolio investors (FPIs), bringing them to par with domestic institutional investors. FPIs previously reported delays in their access to sale proceeds beyond the standard 'T+1' settlement date. Under the new system, effective from September 9, 2024, tax certificates for FPI sale trades executed on 'T' day are issued by tax consultants by 9:00 AM IST on the 'T+1' day.

1.2 SEBI introduces Liquidity Window to boost early redemption of debt securities - **Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/141, Dated 16-10-2024**

Editorial Note : SEBI has introduced a Liquidity Window facility for debt securities, allowing issuers to offer put options for investor redemption prior to the maturity date. This framework, governed by Regulation 15 of the SEBI (NCS) Regulations, 2021, aims to enhance liquidity in the corporate bond market, especially for retail investors. The Liquidity Window facility can be provided only for prospective issuances of debt securities through public issue process or on a private placement basis.

1.3 SEBI increases position limits for trading members in Index Futures and Options contracts - **Circular no. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/140, Dated 15-10-2024**

Editorial Note : SEBI vide Master Circular dated October 16, 2023, had specified the overall position limit at the Trading Member level to be the higher of Rs 500 crores or 15% of the total Open Interest (OI) in the market. This position limit is applied separately for all open positions on futures and options contracts in a particular underlying index. SEBI has now raised the position limits for Trading Members in index futures and options contracts to Rs 7500 crore or 15% of the total OI in the market.

1.4 ICSI caps signing of Annual Returns by practicing Company Secretaries to 75 companies annually w.e.f. F.Y. 2025

Editorial Note : ICSI's Council, in its 312th meeting, introduced a ceiling on the number of Annual Returns (MGT-7) that a Company Secretary (CS) in Practice can sign. A CS can sign for up to 75 companies per financial year, while a Peer Reviewed CS can sign for up to 125 companies, effective from FY 2025. Also, it has been advised that the CS in practice shall observe mandatory compliance with the ICSI Unique Document Identification Number (UDIN) Guidelines, 2019.

- 1.5** SEBI issues FAQs on Collective Investment Schemes (CIS) pursuant to amendments in SEBI (CIS) Regulations, 1999

Editorial Note : Collective Investment Schemes (CIS) involve pooling investor contributions for a scheme managed by a third party, with investors receiving returns without direct control. Now, SEBI has notified CIS FAQs pursuant to amendments in SEBI (CIS) Regulations, 1999. The FAQs clarify exemptions for certain schemes, such as those by NBFCs, insurance companies, and chit funds. Further, Collective Investment Management Companies (CIMCs) can raise public funds by meeting regulatory conditions.

- 1.6** SEBI proposes allowing AOPs to hold units of MFs, corporate bonds and govt. securities in their own demat accounts

Editorial Note : SEBI has proposed allowing associations of persons (AOPs) to hold units of mutual funds (MFs), corporate bonds and government securities in their own demat accounts. This would encourage dematerialisation of securities held in physical form. In the case of AOP, the beneficiary owner (BO) account can be in the name of AOP and securities (other than equity shares) can be held in its own name. Further, the demat account must not be used for subscribing/holding equity shares.

- 1.7** All Market Infrastructure Institutions must disclose their shareholding pattern as per LODR Regulations: SEBI - **Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/139, Dated 14-10-2024**

Editorial Note : In order to ensure ease of compliance and effective monitoring of the provisions related to minimum public shareholding, other shareholding limits and fit & proper criteria, SEBI has decided that all Market Infrastructure Institutions (MIIs) shall disclose their shareholding pattern as per the requirements and formats specified for listed companies under LODR Regulations. Further, every MII shall appoint a 'Designated Depository (DD)' for the purpose of monitoring their shareholding limits.

- 1.8** SEBI issues Corrigendum on SOP for MIIs regarding payment of "Financial Disincentives" due to technical glitches - **Circular No. SEBI/HO/MRD/TPD-1/P/CIR/2024/138, Dated 14-10-2024**

Editorial Note : SEBI has issued a corrigendum to the Circular on Ease of Doing Business regarding the Standard Operating Procedure (SOP) for payment of "Financial Disincentives" by MIIs due to technical glitches. The corrigendum includes references to relevant sections of the Master Circular for Commodity Derivatives Segment dated 04.08.2023. Further, it also mandates MIIs to investigate technical glitches, and take appropriate action, with SEBI retaining the right to initiate enforcement if necessary.

- 1.9** SEBI allows 3-in-1 trading accounts for public issue of debt and other securities in addition to existing modes - **Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/142, Dated 18-10-2024**

Editorial Note : SEBI has clarified that investors can continue using 3-in-1 accounts to apply online for public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments. This is in addition to the existing modes of making an application in the public issue of securities. A 3-in-1 trading account combines a savings account, a Demat account, and a trading account into a single integrated solution.

- 1.10** Unlisted subsidiaries of listed entities must identify 'related party' and 'related party transaction' as per LODR norms: SEBI

Editorial Note : A listed company sought SEBI's informal guidance on whether unlisted subsidiaries must identify related parties as per Reg. 2(1)(zb) or other laws. SEBI clarified that unlisted subsidiaries of listed entities must identify 'related parties' and 'related party transactions' as per LODR Regulations. Further, under Reg. 2(1)(zc), transactions between a subsidiary and its related party, or the holding listed entity's related party, are considered 'related party transactions' under LODR Regulations.

- 1.11** SEBI extends timeline for compliance with provisions relating to direct pay-out of securities to client's demat account - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/136; Dated 10-10-2024**

Editorial Note : Earlier, SEBI, vide circular dated June 5, 2024, mandated the pay-out of securities directly to the client's demat account. The circular was to come into effect from October 14, 2024. In order to ensure the smooth implementation of the pay-out of securities directly to the client's demat account without any disruption to market players and investors, SEBI has now extended the timeline for implementation of the circular. The circular shall come into effect from November 11, 2024.

- 1.12** MCA amends Adjudication of Penalties Rules; Pending Proceedings before AO or RD to continue under existing provisions of these rules - **Notification No. G.S.R 630(E); Dated 09-10-2024**

Editorial Note : The MCA has notified the Companies (Adjudication of Penalties) Rules, 2014. An amendment has been made to Rule 3A relating to the Adjudication Platform. A new proviso has been inserted to Rule 3A(1), which states that the proceedings pending before the Adjudicating Officer or Regional Director on the date of such commencement must continue as per the provisions of these rules existing prior to such commencement. These norms are effective from

Oct 9, 2024.

- 1.13** SEBI extends timeline for Social Enterprises to make annual disclosures on Social Stock Exchange up to 31.01.2025 - **Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/134, Dated 07-10-2024**

Editorial Note : Earlier, SEBI, vide circular dated May 27, 2024, had prescribed the timeline for submission of annual disclosures and annual impact reports by Social Enterprises on the Social Stock Exchange for FY 2023-24. Social Enterprises that have registered or raised funds via SSE were required to submit a report by October 31st, 2024, in accordance with Regulation 91C(1) and 91E(1) of the SEBI (LODR) Regulations, 2015. SEBI has now extended this timeline to January 31, 2025.

- 1.14** SEBI releases a periodic reporting format for Research Analysts and Proxy Advisers - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/148; Dated: 25-10-2024**

Editorial Note : SEBI has released a periodic reporting format for Research Analysts (RAs) and Proxy Advisers (PAs). RAs must submit their periodic reports to the Research Analyst Administration and Supervisory Body (RAASB), and PAs must submit their periodic reports to SEBI. The periodic reports must be submitted within 30 days from the last date of the reporting period. Further, RAs/PAs must submit periodic reports for half-yearly periods ending on September 30 and March 31 of every financial year.

- 1.15** SEBI mandates a non-individual Investment Adviser to obtain annual compliance certificate for client-level segregation - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/147; Dated: 25-10-2024**

Editorial Note : SEBI has decided to allow a non-individual Investment Adviser (IA) to obtain an annual compliance certificate from auditor confirming compliance with client-level segregation. Regulation 22 of SEBI (IA) Regulations, 2013, specifies that a non-individual IA must have client-level segregation at group level for investment advisory & distribution services. This is a step towards ease of doing business and in terms of recommendations of working group for review of compliance requirements for IAs.

- 1.16** Voting threshold under REIT regulations to be based on unit holders present & voting, including e-voting & postal ballot - **Notification No. SEBI/LAD-NRO/GN/2024/208., Dated 26-09-2024**

Editorial Note : SEBI has notified SEBI (Real Estate Investment Trusts) (Third Amendment) Regulations, 2024. As per the amended norms, the voting threshold specified under REIT regulations must be calculated based on unit holders' present and voting. Further, unit holders' voting through the e-voting facility and postal ballot must also be counted for determination of unit holders' present and voting. Also, manager

must provide unit holders with video conferencing and remote e-voting facility for all meetings.

- 1.17** Research reports by Research Analysts (RAs) are not advertisements unless promoting RA services: SEBI - **Circular No. SEBI/HO/MIRSD/MIRSD-POD1/P/CIR/2024/146, Dated 24-10-2024**

Editorial Note : The SEBI, after receiving various queries with respect to applicability of provisions of advertisement code on a Research Report issued by an RA, has clarified that Research Report and research recommendations of an RA will not be considered advertisement unless anything contained in the research report is in the nature of promotion of products or services offered by an RA. Subsequently, this clarification modifies paragraph 8.1 a. ii. of the Master Circular on advertisement code.

- 1.18** Government appoints 'Shri Rayasam Lakshmi Kanth Rao' as executive director of RBI - **Notification No. S.O. 4648(E), Dated 24-10-2024**

Editorial Note : The Central Government has now appointed 'Shri Rayasam Lakshmi Kanth Rao' as the executive director of the Reserve Bank of India (RBI). Earlier, Smt. Indrani Banerjee was appointed as the executive director of the RBI.

- 1.19** Govt. appoints 'Shri Samir Ashwin Vakil' as director in Serious Fraud Investigation Office under MCA w.e.f 22.08.2024 - **Notification No. S.O. 4629(E), Dated**

Editorial Note : The Central Government has appointed 'Shri Samir Ashwin Vakil' as Director in the Serious Fraud Investigation Office under the Ministry of Corporate Affairs w.e.f August 22, 2024 for a period of 5 years up to August 21, 2029 or until further orders, whichever is earlier.

- 1.20** SEBI tightens insider trading norms for mutual funds; requires AMCs to disclose designated persons' holdings quarterly - **Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/144; Dated 22-10-2024**

Editorial Note : SEBI has strengthened the regulatory framework regarding prohibition of insider trading in units of mutual funds (MFs). As per new norms, asset management companies (AMCs) must disclose the details of the holdings of designated persons of AMCs, trustees, and their immediate relatives on an aggregate basis quarterly from Nov 1, 2024. The holdings as on Oct 31, 2024, must be disclosed on platform of stock exchanges by Nov 15, 2024. Further, the holdings must be disclosed in a specified format.

- 1.21** SEBI revises Master Circular for FPIs; restricts NRI/OCI/RI investment to below 25% of FPI corpus-based in IFSCs - **Circular No. SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/145; Dated 22-10-2024**

Editorial Note : SEBI has modified the annexure to the Common Application Form (CAF) attached to the Master Circular dated May 30, 2024. Additional information has been added to the annexure and shall be applicable only in case of applicants based in IFSCs in India. It specifies that NRIs/OCIs/RIs as investors in the FPI and contributions by single NRI/OCI/RI including those of NRI/OCI/RI controlled investment manager must be below 25% of the corpus of the FPI. The circular shall be effective immediately.

- 1.22** SEBI directs regulated persons to terminate contracts with unregistered advisors or claimants within 3 months - **Circular No. SEBI/HO/MIRSD/ MIRSD-PoD-1/P/CIR/2024/143, Dated 22-10-2024**

Editorial Note : Earlier, SEBI amended various regulations to prohibit regulated persons from associating with persons offering unregistered advice or making performance claims related to securities, except through a 'specified digital platform'. Now, SEBI has advised regulated persons and their agents to terminate their existing contracts, if any, with persons engaged in the activities mentioned above, within 3 months from the date of issuance of this circular i.e., 22.10.2024.

- 1.23** SEBI relaxes Listed Entities from dispatching hard copies of Annual Report for AGMs held till 30.09.2025 - **Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/133, Dated 03-10-2024**

Editorial Note : Earlier, MCA vide Circular dated Sep 19, 2024, had extended the relaxation from sending of physical copies of financial statements (including Board's report, Auditor's report etc.) to shareholders for the AGMs conducted till Sep 30, 2025. Therefore, to bring it in line with MCA Circular, SEBI has decided to extend the relaxation to listed entities. Listed entities are relaxed from sending a hard copy of the annual report for the AGMs conducted till Sep 30, 2025.

- 1.24** Govt. appoints Smt. Deepti Gaur Mukerjee as chairperson to the Investor Education and Protection Fund - **MCA Notification S.O. 4333(E), dated 03-10-2024**

Editorial Note : The Central Government has appointed Smt. Deepti Gaur Mukerjee as chairperson to the Investor Education and Protection Fund Authority (IEPF)

- 1.25** Govt. mandates signing of Financials of the IEPF Authority by the Chief Executive Officer - **MCA notification G.S.R. 607(E), Dated 03-10-2024**

Editorial Note : The Govt. has notified Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Amendment Rules, 2024. As per the amended norms, the annual statement of accounts of the Investor Education and Protection (IEPF) Authority shall be signed by the Chairperson and the Chief Executive Officer. Earlier the same was signed by the Chairperson and the one member.

- 1.26** SEBI issues measures to strengthen equity index derivatives framework - **Notification No. SEBI/HO/MRD/TPD-1/P/CIR/2024/132, Dated 1-10-2024**

Editorial Note : SEBI has issued measures to strengthen equity index derivatives framework. Some of key measures include (a) upfront collection of options premium from options buyer, (b) removal of calendar spread treatment on expiry day, (c) intraday monitoring of position limits and (d) rationalisation of weekly index derivatives products

- 1.27** SEBI introduces liberalised Mutual Funds Lite framework for passively managed schemes - **PR No. 25/2024, Dated 30-09-2024**

Editorial Note : SEBI in its 207th board meeting, has approved a proposal for introduction of liberalised Mutual Funds Lite (MF Lite) framework for passively managed schemes of Mutual Funds. This framework introduces relaxed eligibility requirements for sponsors, including modifications to net worth, track record, and profitability criteria. Also, the Board has approved a proposal to review regulatory framework for Investment Advisers (IAs) and Research Analysts (RAs) to facilitate ease of doing business.

- 1.28** SEBI revises 'Stress Testing Framework' for equity derivatives to enhance determination of Core SGF corpus - **Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/131, Dated 01-10-2024**

Editorial Note : SEBI has revised the stress testing framework for equity derivatives segment to determine the Minimum Required Corpus (MRC) of Core Settlement Guarantee Fund (Core SGF). The updated guidelines introduce new stress testing methodologies like Stressed VaR, Filtered Historic Simulation, & Factor Model to capture tail risks more effectively. Further, the Clearing Corporations shall jointly frame a policy on updation and review of stress periods and get it approved by their Risk Committees.

- 1.29** Stock brokers can upload the same mobile no. /email address for more than one client belonging to one family: SEBI - **Circular No. SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/XXX, Dated 28-10-2024**

Editorial Note : Earlier, SEBI issued guidelines regarding SMS and email alerts to investors by stock exchanges. It states that stock brokers must ensure that a separate mobile number/email address is uploaded for each client. SEBI has now clarified that

the stock broker may, at a client's request, upload the same mobile number/email address for more than one client, provided the client belongs to one family or such client is an authorised person of a HUF, partnership, or trust.

- 1.30** SEBI directs AIFs and their managers to exercise specific due diligence w.r.t investors and investments of AIF - **Circular No. SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/135, Dated**

Editorial Note : SEBI has directed Alternative Investment Funds (AIFs) and their managers to exercise specific due diligence with respect to investors and investments to prevent circumvention of various laws and ensure compliance with regulatory frameworks. Under this, AIFs designated as Qualified Institutional Buyers (QIBs) or Qualified Buyers (QBs) must ensure that investors who are not eligible for QIB or QB status on their own do not avail of the respective benefits through the AIF.

2. SUPREME COURT

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

- 2.1** Where parties have not been able to reach at an agreement in matter of appointment of Arbitrator for resolving disputes, former Judge of Gujarat High Court was to be appointed as sole Arbitrator to resolve disputes in accordance with Arbitration Centre (Domestic and International), High Court of Gujarat Rules, 2021 - **SBI General Insurance Co. Ltd. v. Krish Spinning - [2024] 167 taxmann.com 263 (SC)**
- 2.2** Limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of parties to other party and there has been either a failure or refusal on part of other party to make an appointment as per appointment procedure agreed upon between parties - **Arif Azim Co. Ltd. v. Aptech Ltd. - [2024] 167 taxmann.com 250 (SC)**

SECTION 232 OF THE COMPANIES ACT, 2013 - AMALGAMATION

- 2.3** Where scheme for amalgamation of some companies, including both public and private was approved by NCLT, respondent-shareholder in said public company challenged said approval and NCLAT rejected scheme, since respondent had no objection to said private companies, appeal filed by appellant against order passed by NCLAT was to be allowed and amalgamation scheme for four private companies was to be confirmed - **Rama Investment Company (P.) Ltd.v. Ankit Mittal - [2024] 167 taxmann.com 579 (SC)**

2. HIGH COURT

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- 2.2** Where petitioner filed a writ petition in Delhi High Court seeking a writ of mandamus to prevent respondents from granting approval for establishment of a nursing college to Trust, however, all parties involved were located in Tamil Nadu and had already approached Courts situated in State of Tamil Nadu and have contested and obtained orders from said Courts, instant petition was to be dismissed on ground of lack of territorial jurisdiction - **Michael Builders and Developers (P.) Ltd. v. National Medical Commission - [2024] 167 taxmann.com 724 (Delhi)**

3. NCLAT

SECTION 231 OF THE COMPANIES ACT, 2013 - COMPROMISE AND ARRANGEMENT - POWER OF TRIBUNAL TO ENFORCE

- 3.1** Where a scheme of arrangement and amalgamation between some companies with applicant company was rejected by instant Tribunal, applicant vide an application sought modification of said order and to consider if scheme could be partly enforced with regard to private companies, since section 231 applies if order was made sanctioning arrangement, when scheme was rejected, section 231 could not be relied upon to seek a modification and, therefore, said application was to be rejected - **Rama Investment Company (P.) Ltd. v. Ankit Mittal - [2024] 167 taxmann.com 509 (NCLAT- New Delhi)**

4. NCLT

SECTION 130 OF THE COMPANIES ACT, 2013 - ACCOUNTS - RE-OPENING OF, ON COURT'S OR TRIBUNAL'S ORDERS

- 4.1** Where petitioner-director of respondent No.1-company filed a petition for re-opening of accounts of company on basis of audit report, however, auditor was not sure about his findings and had merely observed that there might be manipulations/deliberate omissions in sales and purchases, since there was no sufficient evidence for reopening of accounts, instant petition filed under section 130 seeking for re-opening of accounts of company for certain financial years was to be dismissed - **Muralidhar Rao Maddiboina v. Aayusiddi Life Sciences (P.) Ltd. - [2024] 167 taxmann.com 528 (NCLT - Hyd.)**

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

- 4.2** Where petition had been filed under Section 241-242 and petitioner had sought time for amending petition and leave was granted for **amending** petition, petitioner had again prayed for grant of three weeks' time for filing amendment to petition, time prayed for was granted and matter now stands posted to 05.07.2024 and it was made clear that no further extension of time would be granted if amendment to petition was not filed before 02.07.2024 - **Sunny Kochar v. Kochar Sung up Acrylic Ltd. - [2024] 167 taxmann.com 616 (NCLT-Chd.)**
- 4.3** Where petitioner-director filed instant application seeking waiver of requirements under section 244 for purpose of

filing oppression and mismanagement application, in view of fact that petitioner in order to avenge his removal as CEO/Executive Director by Board of Directors had filed oppression and mismanagement petition and prima facie removal of petitioner was neither prejudicial to interest of public shareholders nor to affairs of respondent company which was otherwise a Public Listed Company, consequently, instant application under section 244 for seeking waiver of conditions was not maintainable and was to be dismissed - **Adesh Kumar Gupta v. Liberty Shoes Ltd. - [2024] 167 taxmann.com 656 (NCLT-Chd.)**

COMPETITION LAW

1. CCI

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

1.1 Where information was filed against OPs - owners of multi system operator and broadcasters alleging contravention of sections 3 and 4 for coercively seizing shares of informant-cable TV operator to

force-fully grab their cable TV networks and monopolize business, since provisions of section 3(3) were not applicable on relationship among OPs as section 3(3) requires enterprises engaged in similar provision of services and participate in furthering of an agreement, no case of contravention under sections 3 and 4 was established and, thus, said information was to be closed - **Vande Mataram Cable TV Network v. Union of India** - [2024] 166 taxmann.com 736 (CCI)

FEMA BANKING AND INSURANCE LAWS

1. STATUTORY UPDATES

- 1.1 RBI directs ARCs to join all Credit Information Companies and regularly submit the borrower credit data - **Circular No. RBI/2024-25/82 DoR.FIN.REC.No.46/26.03.001/2024-25, Dated 10-10-2024**

Editorial Note : The RBI has revised guidelines for Asset Reconstruction Companies (ARCs) to align with those for banks and NBFCs. ARCs are now required to become members of all Credit Information Companies (CICs) and submit borrower data in the Uniform Credit Reporting Format. Also, ARCs shall keep the information collected/maintained by them, updated regularly on a fortnightly basis or at such shorter intervals as mutually agreed upon. ARCs must ensure compliance with these guidelines by January 1, 2025.

- 1.2 RBI issues guidance for Regulated Entities on internal risk assessment for money laundering, and terrorist financing - **Press Release: 2024-2025/1261, Dated 10-10-2024**

Editorial Note : The RBI has released a Guidance Note to assist its regulated entities (REs) in conducting risk assessments for Money Laundering (ML), Terrorist Financing (TF), and Proliferation Financing (PF). The note intends to support AML/CFT/CPF compliance efforts of the REs as well as to enhance the ability of the financial sector to detect and deter ML/TF/PF by providing certain key principles, methodology, etc.

- 1.3 RBI directs CICs and CIs to implement credit reporting mechanism after license/registration cancellation of banks/NBFCs - **Circular No. RBI/2024-25/81 DoR.FIN.REC.47/20.16.042/2024-25, Dated 10-10-2024**

Editorial Note : The RBI has directed Credit Information Companies (CICs) and Credit Institutions (CIs) to implement a credit information reporting mechanism for borrowers even after the cancellation of licences or Certificates of Registration (CoR) of banks and NBFCs. This aims to address hardships faced by borrowers whose repayment history may not be updated after such cancellations. CICs can only accept credit information from entities covered under CICRA, 2005.

- 1.4 RBI directs payment system participants to review & modify payment systems for accessibility to Persons with Disabilities - **Circular No. RBI/2024-25/83 CO.DPSS.POLC.No.S-708/02-12-004/2024-25, Dated 11-10-2024**

Editorial Note : All sections of population, including differently abled persons, are increasingly adopting digital payment systems. To promote effective access, RBI has directed payment system participants to review their payment systems / devices in terms of accessibility to Persons with Disabilities. Based on the review they may carry out the necessary modifications, such that all their payment systems and devices, can be accessed and used by Persons with Disabilities with ease.

- 1.5 Govt. extends Interest Equalization Scheme for Pre and Post-Shipment Rupee Export Credit up to Dec 31, 2024: RBI - **Circular No. RBI/2024-25/80 DOR.STR.REC.45/04.02.001/2024-25, Dated 09-10-2024**

Editorial Note : Earlier, the Govt. extended the Interest Equalization Scheme for MSME exporters till 30.09.2024. Now, the Govt. has allowed for an extension of the scheme up to 31.12.2024 with some modifications to scheme. The fiscal benefits of each MSME on an aggregate will be restricted to Rs 50 lakhs for FY 2024-25 till 31.12.2024. Also, MSME manufacturer exporters who have already availed equalization benefits of Rs 50 lakhs or more in FY 204-25 till 30.09.2024 will not be eligible for further benefit.

- 1.6 FCRA associations permitted to file another application in Form FC-6E even if one is pending on FCRA portal: MHA - **Public Notice No. II/21022/23(03)2024-FCRA-II, Dated 25-10-2024**

Editorial Note : The Government has permitted FCRA associations to file another application in Form FC-6E, even if an application for change in office bearers, key functionaries, or members of the same association is pending. Once the association initiates filing another FC-6E application, the details/requests from the previous FC-6E application must be auto-filled in the new application. Further, upon submission of a new application, the association's previous application will be automatically closed.

- 1.7 RBI flags irregularities in loans against gold; Supervised Entities (SEs) urged to tighten controls and report actions - **Circular No. RBI/2024-25/77 DOS.CO.PPG.SEC.10/11.01.005/2024-25, Dated**

Editorial Note : The Reserve Bank of India conducted a review of loans against gold ornaments and found several irregularities across Supervised Entities (SEs), including improper third-party involvement, lack of transparency in gold auctions, and inadequate monitoring of loan-to-value ratios. SEs must address these deficiencies and enhance controls, especially over outsourced activities, to ensure compliance. Further, RBI advised SEs to report action taken to RBI within three months.

- 1.8** Govt. extends the validity of FCRA Registration Certificates till Dec 31, 2024 - **Public Notice No. II/21022/23(22)2020-FCRA-II, Dated 28-09-2024**

Editorial Note : The Govt., in public interest, has decided to extend the validity of FCRA registration certificates. The validity of registration certificates of entities whose validity was extended till 30.09.2024 and whose renewal is pending, will stand extended till 31.12.2024 or till the date of disposal of renewal application, whichever is earlier. Similarly, the validity of FCRA entities whose 5-year validity period is expiring from 01.10.2024 to 31.12.2024 will stand extended up to 31.12.2024.

- 1.9** IFSCA notifies 'Payment and Settlement Systems Regulations' outlining operations of Payment Systems in IFSCs - **Notification No. IFSCA/GN/2024/009, Dated 14-10-2024**

Editorial Note : The IFSC Authority has notified IFSCA (Payment and Settlement Systems) Regulations, 2024. These regulations lay down the process of authorisation and operations of Payment Systems in International Financial Services Centres. Further, Every System Provider shall comply, on an ongoing basis and to the extent applicable, with the Principles for Financial Market Infrastructure issued by Committee on Payments and Market Infrastructures and International Organization of Securities Commissions.

- 1.10** IFSCA amends IFSC Insurance Office Regulations; insert norms on 'Unit Linked Insurance Products' & 'Investment Patterns' - **Notification No. IFSCA/GN/2024/008, Dated 14-10-2024**

Editorial Note : IFSCA has notified the IFSCA (Investment by International Financial Services Centre Insurance Office) (Amendment) Regulations, 2024. As per amended norms, new regulations 9A and 9B relating to 'Unit Linked Insurance Products' and 'Admissible pattern of investment' have been inserted. It states that every IFSC Insurance Office must invest and at all times keep its unit-linked business funds invested as per the pattern of investment subscribed to by policyholders.

- 1.11** IFSCA amends 'IFSCA (Registration of Insurance Business) Regulations, 2021'; updates reinsurance business norms - **Notification No. IFSCA/GN/2024/010, Dated 14-10-2024**

Editorial Note : The IFSCA has notified amendment in IFSCA (Registration of Insurance Business) Regulations, 2021. The key amendments include the omission of certain forms, such as FORM-A, FORM-B, FORM-C, and FORM-D in the First Schedule, and FORM-A and FORM-B in the Fourth Schedule. Further, the reinsurance business participant must now opt for category as per Regulation 5(2)(A) of the IRDAI (Re-insurance) Regulations, 2018.

- 1.12** RBI releases draft circular on 'Forms of business and Prudential Regulation for Investments' - **Press Release No. 2024-2025/1225, Dated 04-10-2024**

Editorial Note : RBI has released a draft circular on 'Forms of business and Prudential Regulation for Investments'. As per draft circular, only a single entity within a bank group must undertake a particular form of permissible business. Multiple entities within a bank group must not undertake the same business or hold/acquire the same category of license/authorisation or registration from any financial sector regulator. This circular applies to all SCBs (excluding RRBs).

- 1.13** RBI directs AD Category-I banks to ensure FEMA-compliant guarantee contracts for resident constituents - **Circular No. RBI/2024-25/79 A.P. (DIR Series) Circular No. 18; Dated 04-10-2024**

Editorial Note : RBI came across instances of guarantees issued by persons resident outside India, favouring persons resident in India, which are not permitted under the extant FEMA regulations. The RBI has now directed AD Category-I banks to ensure that guarantee contracts advised by them to or on behalf of their resident constituents are in accordance with the FEMA regulations.

- 1.14** RBI's committee proposes extending MIBOR calculation to first 3 hours of transactions for better market representation - **Press Release: 2024-2025/1202, Dated 01-10-2024**

Editorial Note : The RBI has released the Report of the Committee on MIBOR Benchmark, led by Shri R. Subramanian. The Committee was tasked with reviewing Rupee interest rate benchmarks, particularly MIBOR, & assessing the need for transitioning to new benchmarks. The committee recommended extending the calculation of MIBOR to the first three hours of transactions, instead of just the first hour. This change aims to make MIBOR more representative of call money market activities & enhance its reliability.

- 1.15** RBI updates FEMA compounding directions to align with newly notified compounding rules - **Master Directions No. 17/2024-25, Dated 01-10-2024**

Editorial Note : Earlier, the Govt. has issued Foreign Exchange (Compounding Proceedings) Rules, 2024. These rules supersede the erstwhile Compounding rules. Therefore, now RBI has issued updated directions/guidelines to align the same with the newly notified rules. Further, the list of circulars that have been superseded has also been provided.

- 1.16** RBI widens access to NDS-OM, allowing direct transactions via SGL accounts for new financial entities - **Circular No. RBI/FMRD/2024-25/124 FMRD.MIOD.No.04/11.01.041/2024-25, Dated 18-10-2024**

Editorial Note : RBI has widened direct access to its Negotiated Dealing System-Order Matching (NDS-OM) electronic trading platform to a broader set of regulated entities (REs) including RRBs, local area banks, NBFCs (including housing finance companies). Direct access means access to NDS-OM, where an entity that is a party to a transaction directly executes/reports the transaction on/to the platform, and such transactions are settled in its own Subsidiary General Ledger (SGL) account.

- 1.17** Central Govt constitutes RBI Monetary Policy Committee with 6 members, including Governor and other experts - **Notification No. S.O. 4309(E), Dated 01-10-2024**

Editorial Note : The Central Government has constituted Monetary Policy Committee, under section 45ZB of RBI Act. The Monetary Policy Committee includes the Governor of RBI as Chairperson, Deputy Governor, and one officer of RBI as ex officio members, along with external members—Prof. Ram Singh, Shri Saugata Bhattacharya, and Dr. Nagesh Kumar, appointed for a period of 4 years.

- 1.18** RBI updates Directions for Central Counterparties (CCPs), enables CCPs to appoint Independent Directors - **Circular No. RBI/2024-2025/85 DPSS.CO.RLVDP.No.S789/02.07.038/2024-25, Dated 28-10-2024**

Editorial Note : The RBI has issued updated 'Directions for Central Counterparties (CCPs)'. Under these guidelines, an authorized CCP is now permitted to appoint an Independent Director in accordance with Section 150 of the Companies Act, 2013. Additionally, the responsibilities of the Nomination and Remuneration Committee (NRC) have been outlined, requiring the NRC to identify individuals qualified to serve as Directors or be appointed to senior management roles, following the specified criteria.

- 1.19** India-UAE Bilateral Investment Treaty takes effect, ensuring continuity of investment protection for both countries - **Press Release, Dated 07-10-2024**

Editorial Note : The Bilateral Investment Treaty (BIT) signed on Feb 13, 2024 at Abu Dhabi, UAE between the Government of the Republic of India and the Government of United Arab Emirates (UAE), entered into force from Aug 31, 2024. This gives continuity of investment protection to investors of both countries. Some of key features of BIT 2024 include a closed asset-based definition of investment with coverage of portfolio investment, general and security exceptions, and the right to regulate for the State.

- 1.20** RBI to launch beneficiary name look-up feature for RTGS/NEFT transfers - **Press Release: 2024-2025/1254, Dated**

Editorial Note : RBI has released a Statement on Developmental and Regulatory Policies. To enable remitters in RTGS and NEFT to verify the name of the beneficiary account holder before initiating funds transfer, RBI has now proposed to introduce a 'beneficiary account name look-up facility'. Remitters can input the account number and the branch IFSC code of the beneficiary, following which the name of the beneficiary will be displayed. Further, it has been decided to enhance the limits for UPI123Pay & UPI lite.

- 1.21** RBI keeps Repo Rate unchanged at 6.50% - **Press Release: 2024-2025/1252, Dated 09-10-2024**

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

2. SUPREME COURT

SECTION 45 OF PREVENTION OF MONEY LAUNDERING ACT, 2002 - DIRECTION FOR GRANT OF BAIL TO PERSON APPREHENDING ARREST

- 2.1** Supreme Court upheld order passed by High Court wherein it was held that when applicant was already in custody in one case, he could not be precluded from seeking pre-arrest bail in connection with another case in which he apprehends arrest - **Dhanraj Aswani v. Amar S. Mulchandani - [2024] 167 taxmann.com 564 (SC)**

3. HIGH COURT

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

- 3.1** Where an e auction was conducted by respondent-lender bank of property of borrower, later, due to directions issued by CBI to bank to hold back said properties, respondent cancelled auction sale and sought to return advance amount paid by petitioner-auction purchaser, since except direction of CBI there was no other impediment for channelizing sale proceeds, respondent erred in cancelling auction and, thus, writ petition filed by petitioner challenging said cancellation was to be allowed - **Ram Swaroop v. IDBI Bank Ltd. - [2024] 167 taxmann.com 658 (Telangana)**

SECTION 19 OF THE RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993 - APPLICATION TO TRIBUNAL

- 3.2 Where parties had arrived at a One Time Settlement and proposal had been accepted by lead member of consortium of banks, i.e., SBI, and there was no criminal case pending against petitioner-managing director, Look Out Circular issued against petitioner, which had effect of taking away fundamental right guaranteed under article 21 of Constitution of India, could not be permitted to sustain and same was to be quashed - **Balram Garg v. Union of India - [2024] 167 taxmann.com 635 (Delhi)**

SECTION 35 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - APPEAL TO HIGH COURT

- 3.3 Appeal against order passed by Appellate Authority beyond period of outer limit of 60 days as prescribed under section 35 is not maintainable - **Union of India, Directorate of Enforcement v. Nirayu (P.) Ltd. - [2024] 167 taxmann.com 85 (Gujarat)**
- 3.4 Where petitioner- exporter company's request for an additional license was denied and their claim for a 20% premium under Circular dated 5-5-1993 was rejected by Director General of Foreign Trade, Supreme Court directed Director General to pay premium amount to petitioner in exchange of bank guarantee, but Director General forfeited bank guarantee for failure of petitioner to pay interest on said amount, also, placed Importer-Exporter Code of petitioner on Denied Entities List, since Director General had no jurisdiction to adjudicate upon a claim for payment of interest, Director General was to be directed to remove petitioner from said list - **Chowgule and Company (P.) Ltd. v. Assistant Director General of Foreign Trade - [2024] 167 taxmann.com 173 (Bombay)**

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

- 3.5 Where applicant was arrested in 2022 in connection with illegal coal mining and laundering of tainted money, twin conditions under section 45 of bail do not create an absolute restraint to grant bail on grounds of delay in completion of trial and long incarceration, due to his long incarceration i.e. 2 years and possibility of trial not concluding in near future, applicant was to be released on regular bail, subject to his furnishing a personal bond - **Gurupada Maji v. Enforcement Directorate - [2024] 167 taxmann.com 294 (Delhi)**
- 3.6 Where applicant was already in custody in one case, he could not be precluded from seeking pre-arrest bail in connection with another case in which he apprehends arrest - **Amar S. Mulchandani v. State of Maharashtra - [2024] 167 taxmann.com 495 (Bombay)**

- 3.7 Where petitioner - transport minister was arrested for misusing his position and engaging in job scam in exchange of money, also, genuine aspirants for jobs were deprived of level playing field, since there were no reasonable grounds for believing that he was not guilty and if petitioner was let out on bail in a case of this nature, it would be against larger public interest, twin condition mandatory under section 45(1) was not satisfied by petitioner and, therefore, bail petition filed by petitioner was to be dismissed - **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement - [2024] 165 taxmann.com 856 (Madras)**

- 3.8 Requirement of assistance either in form of physical aids like wheelchair or walker, or human support, cannot be construed to be such an infirmity as to warrant release on bail by invoking proviso to section 45(1) of PMLA - **Amar Sadhuram Mulchandani v. Directorate of Enforcement - [2024] 167 taxmann.com 565 (Bombay)**

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

- 3.9 Where in a cheque bounce case, accused sought to set aside impugned order passed by Metropolitan Magistrate awarded him a sentence of simple imprisonment of six months and also imposed a fine of Rs.30 lakh taking defence that he had already paid loan amount in cash, in view of fact that accused admittedly had no acknowledgement of repayment of loan from complainant and had also not been able to explain why he did not take back said three cheques from complainant at time when he made alleged repayment, thus, accused had not been able to discharge presumption against him under section 139, and therefore, accused had been rightly convicted and sentenced for offence under section 138 - **Devender Aggarwal v. State NCT of Delhi - [2024] 167 taxmann.com 497 (Delhi)**

SECTION 139 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - PRESUMPTION IN FAVOUR OF HOLDER

- 3.10 Where in a proceeding initiated under section 138, accused had already raised a probable defence to dislodge presumption raised against him, and thus, it was on complainant to show existence of debt, however, complainant had failed to prove that there existed any debt/liability on date, or show mode and manner of advancement of loan, or lead any evidence/documentary proof so as to establish how loan was advanced, and for this reason, complainant having failed to lead evidence to show existence of debt / liability, there was no perversity in impugned judgment of Trial Court by which it acquitted accused, and consequently, instant appeal against order of Trial Court was to be dismissed - **Atul Pundhir v. Delhi Group - [2024] 167 taxmann.com 4 (Delhi)**

4. SAFEMA

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

- 4.1 Where date of order of provisional attachment of properties by ED was 23.12.2020, order passed by Adjudicating Authority for retention of seized properties on 09.11.2021 was within a period of 180 days in view of direction made by Supreme Court in Cognizance for Extension of Limitation, In re [2022] 134 taxmann.com 307/441 ITR 722 (SC) to exclude period from 15-3-2020 till 28-2-2022 for purpose of computation of limitation period due to Covid-19 - **Bhuneshwar Prasad Verma v. Deputy Director, Directorate of Enforcement - [2024] 167 taxmann.com 172 (SAFEMA - New Delhi)**

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

- 4.2 Where appellant challenged order of respondent-Directorate imposing penalty upon appellant for alleged contravention of provisions of Section 3(b) on ground that case of respondent rests on statements made by him before DRI and respondent, which were recorded under threat and duress, in view of fact that respondent independently recorded statements of appellant nearly four years after DRI had recorded his statements and yet appellant confirmed facts stated to officers of DRI during investigation under Customs Act, thus, allegation of threat and duress were clearly an afterthought on part of appellant to escape liability under FEMA, and thus, instant appeal stands dismissed - **Sh. Devendra M Jariwala v. Joint Director Directorate of Enforcement, Mumbai - [2024] 167 taxmann.com 535 (SAFEMA - New Delhi)**

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

- 4.3 Where date of provisional attachment of properties by ED was 18-06-2021, order passed by Adjudicating Authority on 29-03-2022 confirming attachment order was within a period of 180 days in view of direction made by Supreme Court in Cognizance for Extension of Limitation, In re [2022] 134 taxmann.com 307/441 ITR 722 (SC) to exclude period from 15-3-2020 till 28-2-2022 for purpose of calculating limitation period due to Covid-19 - **Shailesh Mulchand Savla v. Deputy Director, Directorate of Enforcement, Mumbai - [2024] 167 taxmann.com 50 (SAFEMA - New Delhi)**

SECTION 8 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - REALISATION AND REPATRIATION OF FOREIGN EXCHANGE

- 4.4 Where company Mrugank Investments had failed to realise export proceeds within stipulated time,

Adjudicating Authority vide impugned order imposed penalty of Rs. 40 Lakhs company and Rs.4 Lakh on each of four Directors of Company including appellants, in view of fact that appellants failed to furnish any documentary evidence of having made efforts to realize export proceeds, there were no reason to intervene with Impugned Order insofar as its findings that appellant Directors have contravened Sections 8, however, ends of justice would met on reduction of penalty amount on appellants to Rs.2 lakh - **Rais Ahmed v. Special Director Directorate of enforcement, Mumbai - [2024] 167 taxmann.com 442 (SAFEMA - New Delhi)**

SECTION 12 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - REPORTING ENTITY TO MAINTAIN RECORDS

- 4.5 Where there were series of high value cash transactions in respect of which appellant bank failed to make report, thus, there was continuous contravention of section 12 of 2002 Act and Maintenance of Records Rules, 2005, and accordingly, penalty of Rs.25.70 lakh imposed upon appellant could not be said to be disproportionate - **Noida Commercial Co-Operative Bank Ltd. v. Director, Financial Intelligent Unit - [2024] 167 taxmann.com 174 (SAFEMA - New Delhi)**

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

- 4.6 Maximum amount of penalty which can be imposed under section 13(1) of FEMA is three times amount of contravention involved; where respondent company and its director had failed to report and submit Form FC-GPR within 30 days from date of issue of shares against foreign direct investment of Rs. 67.50 crores and said failure deprived RBI of information about compliances required to be met while issuing shares by Company, penalties on Company and on individual, was to be enhanced from Rs. 10 lakh and Rs. 5 lakh to Rs. 20 lakhs and Rs. 10 lakhs respectively - **Assistant Director, Directorate of Enforcement, Bhubaneshwar v. Orissa Sponge Iron & Steel Ltd. - [2024] 166 taxmann.com 666 (SAFEMA - New Delhi)**

SECTION 17 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - SEARCH AND SEIZURE

- 4.7 Where bank officials of Indian Overseas Bank fraudulently intercepted messages and issued letter of conformity/letter of undertaking to foreign banks for Buyers Credit extended by them and this was done in collusion with accused companies and their directors, including company 'Dream Height' (of which appellant was director), and have caused loss to bank to tune of Rs. 321 crores, impugned order by Adjudicating Authority, whereby it allowed ED to retain/seize/freeze bank accounts etc., of accused including appellant was justified, as same was suspected to be proceeds of crime - **Dinesh Kumar v. Deputy Director, Directorate of Enforcement - [2024] 167 taxmann.com 8 (SAFEMA - New Delhi)**

INSOLVENCY AND BANKRUPTCY CODE

1. STATUTORY UPDATES

- 1.1 IBBI extends deadline for filing forms relating to liquidation process to 30.11.2024, citing technical submission issues - **Circular No. IBBI/LIQ/76/2024 & No. IBBI/LIQ/77/2024, Dated 09-10-2024**

Editorial Note : Earlier, IBBI vide Circular No. IBBI/LIQ/74/2024 & IBBI/LIQ/73/2024, dated 28.06.2024, directed the liquidators to file forms relating to the voluntary liquidation and liquidation process latest by 30.09.2024. In this regard, representations have been received from the liquidators & Insolvency Professional Agencies for extending the date citing the technicalities in the submission of the forms. Now, IBBI has decided to extend the last date of submission of the forms till 30.11.2024.

2. SUPREME COURT

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

- 2.1 Where petitioner-RP challenged High Court's order on ground that CIRP was initiated against corporate debtor and, moratorium was in effect, thus, acquisition proceedings against him by Slum Rehabilitation Schemes (SRA) could not be proceeded since, corporate debtor had applied for an Lol and was obligated to provide rehabilitation units and transit accommodation to eligible slum dwellers, which was a condition precedent for acquiring free sale rights, petition filed by RP was rightly dismissed by High Court and same was to be upheld - **Rajan Garg v. Chief Executive Officer - [2024] 167 taxmann.com 443 (SC)**

SECTION 66 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR WRONGFUL TRADING

- 2.2 Where suspended management of corporate debtor had entered into fraudulent sale of stocks with fictitious debtors and misrepresented stock statement, application filed by RP under section 66 was allowed by NCLAT and suspended management was directed to pay back sums received by them from corporate debtor and also reverse sums siphoned off from corporate debtor through RP was to be upheld - **Vinod Agarwal v. Jagdish Kumar Parulkar Resolution Professional Of Tayal Foods Ltd. - [2024] 167 taxmann.com 30 (SC)**

3. HIGH COURT

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

- 3.1 Where petitioner claimed that it was highest bidder and yet its bid had not been accepted by CoC, and thus, it filed instant writ seeking direction in nature of Mandamus upon CoC to initiate process of fresh voting on its Resolution Plan, in view of fact that resolution plan decided by CoC would be put up for consideration before Adjudicating Authority, which forum alone would finally decide whether CoC had performed its fiduciary duty as per legislative mandate of IBC, instant writ was to be dismissed - **Gateway Investment Management Services Ltd. v. Reserve Bank of India - [2024] 167 taxmann.com 40 (Delhi)**

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

- 3.2 Where RP was found guilty of technical deficiencies which did not cause any prejudice or loss to any stakeholder or corporate debtor, IBBI was justified in taking lenient view and cautioning RP to be more careful in future while handling process under IBC - **Sarish Mittal v. National Company Law Tribunal - [2024] 166 taxmann.com 702 (Punjab & Haryana)**

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

- 3.3 Where petitioner, IP, had failed to protect assets of corporate debtor and there was a substantial delay in submission of forms by petitioner with Board, several instances of failure on part of petitioner had been found in failing to protect assets of corporate debtor and, therefore, order of Disciplinary Committee of IBBI suspending registration of petitioner for a period of two years was justified - **Sandeep Kumar Bhatt v. Insolvency and Bankruptcy Board of India - [2024] 167 taxmann.com 136 (Delhi)**

4. NCLAT

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

- 4.1 Where appellant's claim against guarantor i.e., corporate debtor was deemed inadmissible because appellant had not disbursed any amount to principal borrower thus, admission of claim by RP was unsustainable and NCLAT

had not committed any error in ousting appellant from CoC - **Saratvam Creators v. Sudhir Construction Infrapase (P.) Ltd.** - [2024] 167 taxmann.com 236 (NCLAT- New Delhi)

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

- 4.2 Section 9(5)(ii) mandates NCLT to provide an opportunity to applicant to rectify defect before rejecting an application as defective; Where NCLT had not issued a notice to appellant to rectify defect in application filed under section 9 within seven days before rejecting application as defective, thus, impugned order passed by NCLT was to be set aside and directed to revive section 9 application filed by appellant before NCLT - **Shiv Glitz Hotels and Resorts LLP v. Oravel Stays Ltd.** - [2024] 167 taxmann.com 303 (NCLAT- New Delhi)

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

- 4.3 Where resolution plan submitted by successful resolution applicant was approved by CoC and application for approval by NCLT was pending consideration, NCLT committed error in giving last opportunity to suspended director of corporate debtor so that acceptable settlement could be arrived - **Nehru Place Hotels & Real Estates (P.) Ltd. v. Sanjeev Mahajan** - [2024] 166 taxmann.com 665 (NCLAT- New Delhi)

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

- 4.4 During a moratorium period, supply of essential goods or services to a corporate debtor can be interrupted if payments for those supplies are not made; where corporate debtor did not pay for electricity during moratorium, impugned order passed by NCLT directing appellant not to disconnect electricity connection of corporate debtor was to be set aside - **Noida Power Company Ltd. v. Gaurav Katiyar RP of Earthcon Universal Infractech (P.) Ltd.** - [2024] 167 taxmann.com 145 (NCLAT- New Delhi)

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

- 4.5 Section 53 does not envisage any difference between unsecured debtors and related party unsecured financial creditors, however, in order of priority in distribution of assets in liquidation process, financial debts owed to unsecured creditors rank higher than debt of operational creditor and, therefore, liquidator

was not wrong in placing related party unsecured financial creditor ahead of operational creditors in waterfall mechanism - **Times Innovative Media Ltd. v. Pawan Kumar Aggarwal** - [2024] 167 taxmann.com 240 (NCLAT- New Delhi)

SECTION 94 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

- 4.6 Where application filed by personal guarantor under section 94 was dismissed by NCLT for non-compliance but, allowed appellant to withdraw petition with permission to re-file on request made by appellant himself that he wanted to withdraw petition with liberty to re-file under section 94 however, NCLT had not expressed any opinion as to whether application which was to be re-filed by appellant under section 94(1) would be maintainable or not and, thus, withdrawing restoration application did not equate to permission for a fresh application that would nullify prior dismissal - **Gursev Singh v. IDBI Bank** - [2024] 167 taxmann.com 204 (NCLAT- New Delhi)

5. NCLT

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

- 5.1 Only financial creditors can be part of CoC; where respondents had referred themselves in documents executed with corporate debtor as contractors, they were classified as operational creditors rather than financial creditors, thus RP was directed to reconstitute CoC classifying respondents as operational creditors instead of financial creditors - **Bank of Maharashtra v. Ram Ratan Kanoongo** - [2024] 167 taxmann.com 195 (NCLT - Mum.)
- 5.2 Where corporate debtor had provided cheques to financial creditors for repayment of dues but cheques when presented for collection were returned by bank with endorsement "stopped by drawer", since there was a debt and default on part of corporate debtor, application filed by financial creditor under section 7 was to be admitted - **Apurva Jain v. Adaptio Facility Management (P.) Ltd.** - [2024] 167 taxmann.com 562 (NCLT- Chennai)
- 5.3 Where applicants-homebuyers filed a petition under section 7 against respondent-corporate debtor due to non-refund of amount paid by them for purchase of flats however, applicants were only four in number, whereas total units allotted by corporate debtor were 488, since petitioners were neither 100 in number nor were they 10 per cent of allottees, instant petition was not maintainable - **Rahul Gyanchandani v. Parsvnath Landmark Developers (P.) Ltd.** - [2024] 167 taxmann.com 617 (NCLT - New Delhi)

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

- 5.4 Where there was no proper explanation given on date of invoice, default and limitation period to ascertain due date and invoices were raised on two different entities and not segregated, therefore application filed by applicant under section 9 was to be dismissed as defective - *Shiv Glitz Hotels and Resorts LLP v. Oravel Stays Ltd.* - [2024] 167 taxmann.com 265 (NCLT - Ahd.)

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

- 5.5 Section 53 does not envisage any difference between unsecured debtors and related party unsecured financial creditors, therefore, liquidator was not wrong

in placing related party unsecured financial creditor ahead of operational creditors in waterfall mechanism - *Times Innovative Media Ltd. v. Pawan Kumar Aggarwal (Liquidator)* - [2024] 167 taxmann.com 198 (NCLT - Mum.)

6. IBBI

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

- 6.1 IBBI's section 220 does not specify a quorum or constitution for Disciplinary Committee; it only requires that its members be whole-time members of IBBI, thus, a single Whole Time Member of IBBI can constitute Disciplinary Committee - *Rakesh Kumar Gupta, In re* - [2024] 167 taxmann.com 46 (IBBI)

Role of AI in Taxation



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The term artificial intelligence was coined at the Dartmouth Summer Research Project on Artificial Intelligence in 1955¹. The summer research proposal stated that the study is to proceed on the basis of the conjecture that every aspect of learning or any other feature of intelligence can in principle be so precisely described that a machine can be made to simulate it. Since then the field of artificial intelligence (AI) has gone through periods of hectic research and then long drawn out periods where the research problems could not be solved for limits of the existing technology. The current progress in AI began around 2010 because of the availability of large data sets (Big Data) and improved Machine Learning approaches and most importantly the low cost of computing power.

Currently, Artificial Intelligence (AI) has been defined in ISO/IEC 39794-16:2021 as a “discipline concerned with the building of computer systems that perform tasks requiring intelligence when performed by humans” and AI application has been defined in ISO/IEC 5339:2024 as the “use of AI with functional characteristics that operates in stakeholder contexts to deliver an intended result”. ML is a subset of AI focused on constructing computer systems that can automatically improve through experiencing and determining certain characteristics inherent in all learning systems, which can include computers, humans, and organizations.²

In India, AI has been used by the regulators and increasingly there is an impetus to be use AI by the organizations from the regulator itself. The recent Consultation Paper on recognition as specified digital platform³ by the Securities and Exchange Board of India (SEBI) instructs platforms about how they can prevent fraud, impersonation, claims by unregistered entities, and the presence of unregistered entities by relying on AI/ML-based solutions.

While the AI/ML technology gets adopted, there are positive and negative impacts of the technology for both the government and the citizens in the field of taxation. The positive includes

- a) Use of ML systems for e-Filing which will facilitate tax payment and reporting, improve tax services and detect tax frauds (tax avoidance).

- b) Use of AI Chatbots which can improve tax services because it can reply to incoming messages automatically at any time without having to wait for working hours.
- c) Use of Natural Language Processing (NLP) as it improves tax services because it answers taxpayers messages automatically besides making it easier for taxpayers to make detailed narrative reports about tax refund submissions.

The negative impact includes

- a) Reduction in taxable employees – If for AI there is a transfer of labour functions from human labour to AI resulting in less recruitment or reduction in workforce, there is going to be decrease in the income tax revenues.
- b) Reduction in Accounting services – some of the cloud based applications will require less of accounting professionals resulting in less revenue on the tax from accounting professionals.
- c) Other Professional services – A similar trend may be seen in the requirement of junior level audit professionals, requirement of teachers or even colleges.

Overall, with the development of AI technology, a new forecasting and statistical model for tax auditing has been created providing convenience and improving efficiency for tax practitioners, AI provides simulated tax risks, which can help more complex human judgments to be made for tax payers and . AI aids detection of fraud, contributing to its supervision and monitoring by government. So the development of AI is increasingly going to be more and more in the field of taxation⁴ but it comes with its risks and biases. However, such an approach has been cautioned by the RBI Governor recently when he said “The heavy reliance on AI can lead to concentration risks, especially when a small number of tech players dominate the market. This could amplify systemic risks, as failures or disruptions in these systems may cascade across the entire sector,” He also said that “AI’s opacity makes it difficult to audit or interpret the algorithms that drive decisions, potentially leading to unpredictable market consequences”⁵. This cautionary statement is not in isolation, “In July 2023, the Biden Administration convened representatives from seven AI companies— Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI—and announced voluntary commitments from each of them “to help move toward safe, secure, and transparent development of AI technology”⁶.

All this is leading towards development of Responsible AI. Over the next decade the AI development which has emerged to take care of the biases, can be made accountable should be the focus of the government. The Government of India is taking steps by becoming a member of the Global Partnership on Artificial Intelligence(GPAI)⁷ and taxation professionals need to be on the table providing their inputs and recommendations.

Summarizing, the quest for Digital Transformation in the country which gained momentum from the Digital India Initiative has undoubtedly become extremely pronounced and leveraging Artificial Intelligence (AI) is further pushing the boundaries. The area of taxation has not remained untouched from AI and there will be greater role of AI in the tax administration. The expectation is that AI should lead to more rightful, fair and unbiased tax system.

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1. <https://www-formal.stanford.edu/jmc/history/dartmouth/dartmouth.html>
 2. <https://www.science.org/doi/10.1126/science.aaa8415> .
 3. https://www.sebi.gov.in/reports-and-statistics/reports/oct-2024/consultation-paper-on-recognition-as- specified-digital-platform_87839.html
 4. https://www.scirp.org/html/6-2121281_86895.htm
 5. https://www.business-standard.com/finance/news/over-reliance-on-ai-may-pose-financial-stability- risks-rbi-governor-124101400757_1.html
 6. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris- administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to- manage-the-risks-posed-by-ai/>
 7. <https://gpai.ai/>

ACCOUNT AND AUDIT UPDATES

1.1 Temporary extension for Insurance Companies to apply Ind AS 104 in Consolidated Financial Statements

Editorial Note : The MCA, through its notification dated 28th September 2024, has amended the "Companies (Indian Accounting Standards) Rules, 2015". This amendment permits insurance companies to continue using Ind AS 104, Insurance Contracts for consolidated financial statements until Ind AS 117 is notified by the IRDA. A new proviso in Rule 5 extends this provision temporarily, granting insurers more time to ensure a smoother transition.

1.2 Disclaimer of opinion doesn't exempt auditors from fraud reporting under section 143(12): NFRA

Editorial Note : The NFRA has penalized the EP ₹5,00,000 for professional misconduct during the FY 2017-18 audit, emphasizing that issuing a disclaimer of opinion does not exempt auditors from their obligation to report fraud u/s 143(12) of the Companies Act, 2013. Key lapses included failure to address significant fraud indicators, lack of sufficient audit evidence, non-compliance with auditing standards, and improper documentation of internal controls.

1.3 NFRA issues a circular clarifying the auditor's responsibilities and addressing risks in Group Audits

Editorial Note : The NFRA has issued a new circular clarifying the responsibilities of auditors in group audits and addressing associated risks. The circular emphasizes compliance with auditing standards, highlights significant risks in group structures, and reiterates the necessity for principal auditors to thoroughly evaluate the work of component auditors. Effective immediately, this initiative aims to enhance audit quality and protect public interest by preventing future audit failures.

1.4 ICAI issues new standards on Quality Management: SQM 1 and SQM 2 for audits and assurance engagements

Editorial Note : The ICAI's Auditing and Assurance Standards Board (AASB) has introduced SQM 1 and SQM 2, focusing on quality management for firms conducting audits, reviews, and other assurance engagements. SQM 1 outlines the requirements for establishing a quality management system, while SQM 2 specifies the criteria for engagement quality reviews. These standards become mandatory from April 1, 2026.

Direct Taxes Professionals' Association

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

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 Ph. +91 33 2242-0638, 4003-5451 • E-mail : dtpakolkata@gmail.com • Website : www.dtpa.org

APPLICATION FOR MEMBERSHIP

2 Pcs.
Pass Port
Colour
Photographs

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

Dear Sir,

I hereby apply for **LIFE / GENERAL MEMBER** of the Association.
 I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

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

12. Residence Address : _____

13. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
 Mobile : _____ E-mail : _____
14. Address where Circular etc. should be sent : Office Residence
 Enclosed herewith Rs. _____ (Rupees _____)
 by Cash/Cheque No. _____ Dated _____ Drawn on _____
 towards Life Membership General Membership.

Place : _____

Date : _____

 Signature of the Applicant

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Proposed By : Name : _____

DTPA Membership No. : _____

Signature : _____

Seconded By : Name : _____

DTPA Membership No. : _____

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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SUB COMMITTEES 2024-2025

Sub-committee	Chairman/Chairperson	Co-chairman/Chairperson	Advisor
DIRECT TAXES & DIRECT TAXES CO-ORDINATION	Mr. Paras Kochar	Ms. Manjulata Shukla Mr. Rites Goel	Mr. S.K. Sultania Mr. M.C. Jagwayan
DIRECT TAXES-RESEARCH & PUBLICATION	Mr. P.R. Kothari	Mr. Ajit Tulsyan Mr. Vinit Jalan	Mr. A.K. Tibrewal
ITAT CO-ORDINATION	Mr. Sunil Surana	Mr. Akkal Dudhwewala	Mr. Arvind Agrawal
FELLOWSHIP / EXCURSION	Mr. Rajesh Kumar Agrawal	Mr. Mahendra Kr. Agarwal Mr. Sujit Sultania	Mr. Aghor Dudhwewala
AUDIT & ASSURANCE	Mr. N.K. Goyal	Mrs. Neena Maheshwari	Mrs. Nilima Joshi
COMPANY & ALLIED LAW MATTERS	Mr. Ashish Rustagi	Mr. Rahul Parasrampuria	Mr. K.P. Khandelwal
RESIDENTIAL CONFERENCE	Mr. Vikash Parakh	Mr. Ritesh Vimal	Mr. N.K. Goyal
PUBLIC RELATIONS & MEDIA	Mr. N.P. Jain	Mr. K.N. Gupta	Mr. R.D. Kakra
GST & INDIRECT TAXES	Mr. D.S. Agarwala	Mr. Arup Dasgupta	Mr. Vikash Parakh
GST & INDIRECT TAXES-RESEARCH & PUBLICATION	Mr. Ankit Kanodia	Mr. Sahib Singh Choudhary	Mr. D.S. Agarwala
JOURNAL	Mr. Giridhar Dhelia	Mr. Mohan Lal Gupta	Mr. Subhas Agarwal
INFORMATION TECHNOLOGY & EMERGING OPPORTUNITIES	Mr. Amit Singhanian	Mr Harsh Duggar	Mr. Bharat D. Sarawgee
CAPITAL MARKET COMMITTEE	Mr. Sanjay Satnalika	Mr. Bharat D. Sarawgee Mr. Vivek Jain	Mr. Sanjay Bajoria

Note : President and Secretary are Ex-Officio members of all Sub-Committees.

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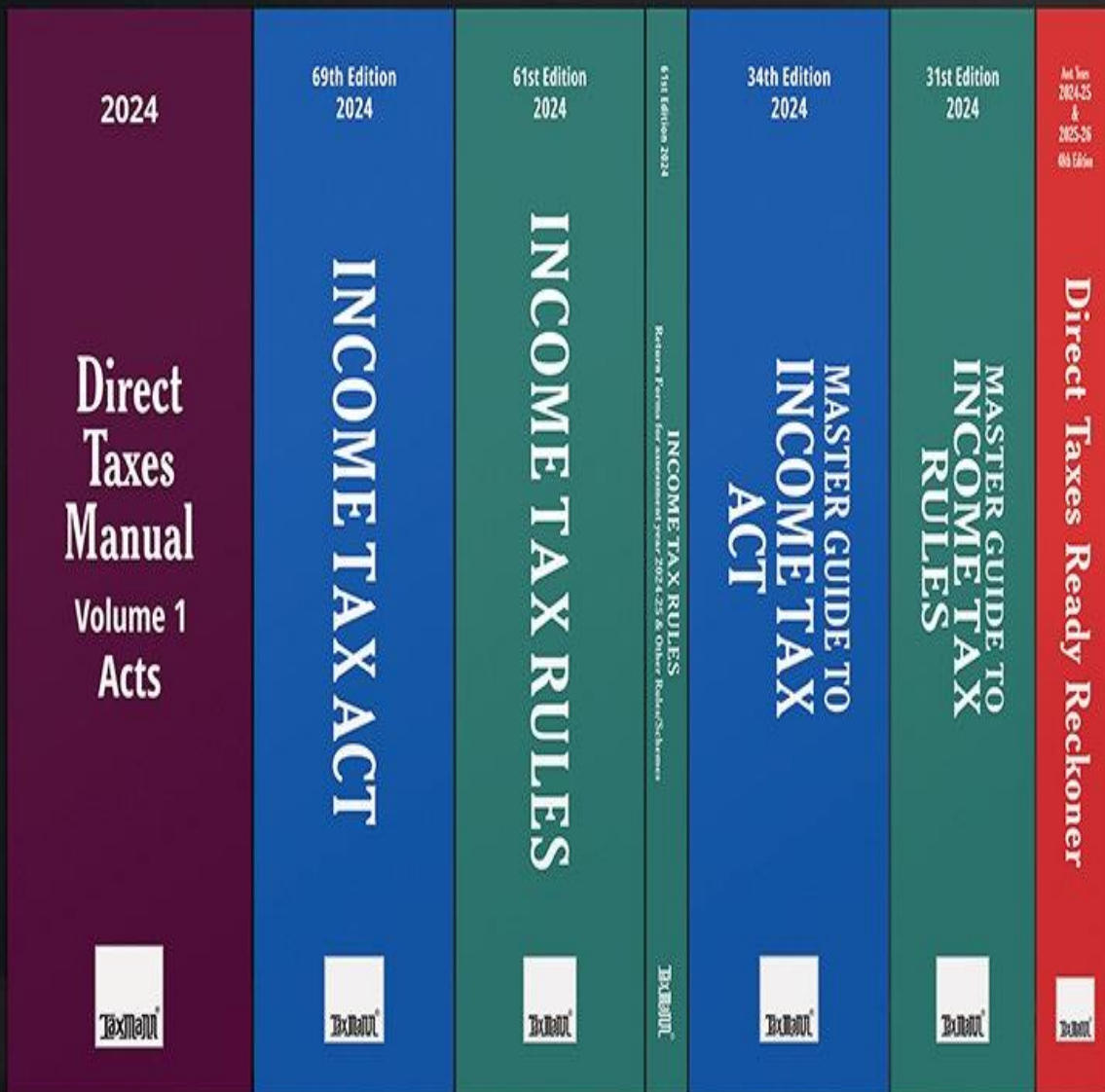


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