

## Editorial Board



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## ....From the Desk of Editors



Respected Seniors and my Dear Friends,

At the onset, I along with my new co-chairman extend sincere and deep gratitude to the new President, DTPA and the new Executive Committee for the year 2024-25 for reposing faith and entrusted once again this year to serve for the DTPA e-Journal. I take this opportunity to express deep and sincere gratitude to our Past Presidents at DTPA from whom we have always been receiving their unstinted support and motivation to present before you the DTPA e-Journal.

With great excitement, we present before you the first issue of DTPA e-Journal for this term 2024-25 which encompasses wide area of updates on various statutes which we are hopeful that the readers will find useful.

The past few months were very demanding for **WE PROFESSIONALS** in terms of deadlines for Statutory Audit, Tax Audit, GST Compliances and connected assignments. It would not be of place to mention that **WE PROFESSIONALS** are tied up heavily with professional assignments particularly during festive months (September, October and November) as always which if can be shifted to a time when the festive seasons like Durga Puja and Deepawali are not on, will give us a sigh of relief to enjoy the aforesaid festivals with our near and dear ones. However, to honour the law of land, we must plan accordingly and maintain a balance of work and life.

The direct tax as also indirect tax collections are on ever increase if the same are compared with the previous years. MSMED Act 2006, is going to be a good area of practice for **WE PROFESSIONALS**, as we all are aware that MSMEs are the back-bone of our Indian economy and the growth our country is to a large extent dependent on the same.

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.

To quote "**Sam Walton (Founder, Walmart)** - "Don't watch the clock; do what it does. Keep Going".

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

DISCLAIMER

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

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*....From the desk of President*

**Dear Members,**

Festive Greetings!

I am honoured to serve as President of our esteemed association. As we move forward through this term, I am filled with gratitude for the unwavering support and commitment each of you has shown. Together, we have achieved much already, and I am excited about what lies ahead.

I want to extend my heartfelt thanks to all of you for placing your trust in me and granting me this incredible honour. Leading such a distinguished organization is a privilege, made even more special by the remarkable individuals I am fortunate to represent. I owe my deepest thanks to my predecessors, as well as my family and friends, whose unwavering support has been instrumental in my journey within DTPA, bringing me to this esteemed position. Over the past year, we've not only faced challenges, but we've also embraced new opportunities, grown stronger, and discovered new paths to success—together. Together, we have achieved much already, and I am excited about what lies ahead.

Our focus remains on advancing the mission of our association that is disseminating knowledge in the interest of professional and also to help in ease of doing profession by carrying out different workshops, seminars, webinars, RRCs, fellowship activities like Diwali and Bijoya get together, Holi get together etc.

On 5<sup>TH</sup> October 2024, we had a virtual lecture meeting on Recent Changes in GST – IMS And RCM Statement by Speakers CA. Anuj Lohia & Adv. Shreya Mundra. Their insights provided us valuable clarity on the recent developments in GST and helped us stay updated with the latest changes in IMS and RCM.

On 5<sup>TH</sup> October 2024, we also had a virtual lecture meeting on Case analysis of Safari Retreats Judgement by Hon'ble Supreme Court. The same was analysed by Senior Adv. Vikram Nankani, Supreme Court. His expertise was invaluable and helped us navigate the complexities of this judgment and understand its practical implications for businesses and professionals alike.

The same was attended by more than 100 participants from across India which showed the kind of interest that DTPA has evoked in the minds of professionals from across India.

On 8<sup>TH</sup> October 2024, we also had virtual lecture meeting on analysis of Hon'ble Supreme Court Judgement in the case of Rajeev Bansal. We had the privilege of having an expert speaker Adv. S M Surana, who dissected this Judgment and provided insights on how it impacts taxpayers and professionals under both the pre- and post-amendment regimes. The evolution of reassessment provisions has created numerous questions, and this session helped us gain clarity on these critical issues.

On 18<sup>TH</sup> October 2024, we had study circle meeting on Annual Filings - Pre-Check on Compliance Requirements at DTPA Conference Hall. The same was delivered by our respected member CS Ravi Verma, who dissected this topic very insightfully and each participants who were present had gained a lot about pre check on compliances.

We had also sent 4 representations to ministry since last AGM held on 13.09.2024. We are also having Diwali and Bijoya get together on 8<sup>TH</sup> November, 2024 at Iskcon Lawn.

As we navigate the challenges and opportunities that await us, I encourage each of you to stay involved. Your insights, feedback, and participation are essential in shaping the future of our association. We are committed to fostering an environment of inclusivity, innovation, and shared success.

Thank you for your trust, your support, and above all, for your passion. Here's to the remarkable journey we've shared—and to all the exciting milestones still to come.

Warm regards

**CA Barkha Agrawal**

President

21<sup>st</sup> October, 2024



## Direct Taxes Professionals Association held its 41st Annual General Meeting on 13th September, 2024 at the Silver Spring Club, Kolkata









## Direct Taxes Professionals Association held its 1st Executive Committee Meeting on 3rd October, 2024 at the ITC Royal Bengal, Kolkata





## Glimpses of Study Circle meeting on Annual Filings – Pre-Check on Compliance Requirements on 18.10.2024 at DTPA Conference Hall by CS Ravi Varma





LIMITED  
CARDS

## Forthcoming Programs of Direct Taxes Professionals' Association



**BIJOYADIWALI**  
**GET TOGETHER**

All members of the Association  
with Friends & Family are cordially invited  
on  
**Friday, 08th November, 2024**  
**6:30 p.m. onwards**  
At  
**ISKCON House Lawn,**  
**22, Gurusaday Dutta Rd, Rowland Row, Ballygunge, Kolkata,**  
**West Bengal 700019**

**GAMES & GIFTS** **SUMPTUOUS FOOD** **LUCKY DRAW** **ENTERTAINMENT PROGRAMME**

**President**  
CA Barkha Agarwal  
9831184871

**Chairman**  
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CA Mahendra Kr Agarwal  
9830096405

**Co-Chairman**  
CA Sujit Sultania  
9831016678

**DIRECT TAXES PROFESSIONALS' ASSOCIATION**  
Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89  
Income Tax Building, 3, Govt. Place (West)  
Ground Floor, Kolkata - 700 001  
Ph No :- 033 2242-0638 Email :- dtpakolkata@gmail.com

HURRY  
UP!!

Get your Entry  
Card soon

JOIN US TO  
CELEBRATE

Please co-ordinate with the DTPA Team and  
collect your entry passes at the earliest



## Compliance Calendar for October, 2024

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	07th October 2024	Sept-24	<p>1.Due date for deposit of Tax deducted/collected for the month of Sept, 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.</p> <p>2.Due date of furnishing Tax Audit Report for the Asst. Year 2024-2025 by the extended date, who were required to file the said reports by 30.09.2024.</p> <p>3.Submit declaration in Form 27C for no TCS obtained from manufacturer.</p>	
	15 <sup>th</sup> October 2024	July-24 to Sept-24	<p>1.Furnish Quarterly TCS Return in Form 27EQ.</p> <p>2.Issue TDS Certificates for Tax Deducted at Source u/s 194IA, 194IB, 194M and 194S in the month of September 2024.</p> <p>3.Furnish Form 24G by an office of the Government where TDS/TCS for the month of September 2024 has been paid without production of a challan.</p> <p>4.Upload declaration received in Form 15G/15H during the quarter ending September 2024.</p>	
	30th October 2024	July-24 to Sept-24	<p>1.Furnish Challan cum statement for TDS u/s 194-IA (Form 26QB), 194-IB (Form 26QC) and 194-M, 194-S deducted in September 2024.</p> <p>2.Issue Quarterly TCS Certificate in Form 27D for the quarter ending September 2024.</p> <p>3.File form 10DA where deduction u/s 80JJA is claimed in respect of employment of new companies (If ITR due date is 30.11.2024)</p>	
	31st October 2024	1.Asst Year 2024-25 2.July-24-Sept-24	<p>1.The statutory due date for filing of Income Tax Return if the assessee (not having any international or specified domestic transaction) is</p> <p>(a) Corporate Assessee or</p> <p>(b) Non Corporate Assessee (whose books of accounts are required to be audited) or</p> <p>(c) Partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of Section 5A apply.</p> <p>2.Furnish quarterly statement of TDS deposited for the quarter ending September 2024.</p> <p>3.Intimation by a designated constituent entity, resident in India, of an Internal Group in Form 3CEAB for the financial year 2023-2024.</p> <p>4. Furnish Annual Audited Accounts for each approved programs u/s 35(2AA).</p> <p>5. Furnish copies of declaration received in Form 60 during 01.04.2024 to 30.09.2024 to the concerned Director/Joint Director.</p> <p>6. Furnish Audit Report u/s 44AB for the assessment year 2024-2025 in the case of an assessee who is required to submit a report for International/Specified Domestic Transactions in Form 3CEB.</p> <p>7.Furnish Form 10-IC (Section 115BAA) and 10-ID (Section 115BAB, manufacturing Companies), if due date of furnishing Income Tax Return is 31.10.2024.</p>	
Statute	Due dates	Compliance Period	Return	Turnover/Complying Taxpayer
GST Act	10th October 2024	Sept-24	GSTR-7	Filing of Monthly Return by TDS Deductors
	10th October 2024	Sept-24	GSTR-8	File of Monthly Return by TCS Collector (E-Commerce Operators)
	11th October 2024	Sept-24	GSTR-1 (Monthly)	File summary of Outward Supplies where turnover exceeds Rs. 5 Crores during preceding year or have not chosen QRMP scheme.
	13th October 2024	July-24 to Sept-24	GSTR-1 (Quarterly)	Filing by taxpayers opted for the QRMP Scheme.
	13th October 2024	Sept-24	GSTR-5 (Monthly)	File summary of Outward taxable supplies and tax payable by a non-resident taxable person



	13th October 2024	Sept-24	GSTR-6 (Monthly)	File details of ITC received and distributed by an ISD
	18th October 2024	July-24 to Sept-24	CMP-08	Filing by Composite Tax-Payers
	20th October 2024	Sept-24	GSTR-5A (Monthly)	File summary of outward taxable supplies and tax payable by a Person supplying OIDAR services
	20th October 2024	Sept-24	GSTR-3B	File GSTR – 3B return for the month of Sept, 2024 for the taxpayer with aggregate turnover exceeding Rs. 5 Crores during previous year
	22 <sup>nd</sup> October 2024	July-24 - Sept-24	GSTR-3B	File GSTR – 3B return for the quarter ended September 2024 who have opted for quarterly filing as per QRMP Scheme for specified states.
	24 <sup>th</sup> October 2024	July-24 - Sept-24	GSTR-3B	File GSTR – 3B return for the quarter ended September 2024 who have opted for quarterly filing as per QRMP Scheme for specified states.
	25th October 2024	April-24 – Sept-24	ITC-04	File details of goods/capital goods sent to job-worker and receipt thereof) for tax-payers having turnover exceeding Rs.5.00 Crores.
	31 <sup>st</sup> October 2024	Oct-24-Dec-24	-	Opt-in/Opt-out of QRMP Scheme.
<b>Statute</b>	<b>Due dates</b>	<b>Compliance Period</b>	<b>Details</b>	
<b>Companies Act 2013</b>	14 <sup>th</sup> October 2024	30 <sup>th</sup> September 2024	File Form ADT-1 where auditor has been appointed in AGM on 30.09.2024	
	29 <sup>th</sup> October 2024	30 <sup>th</sup> September 2024	File Form AOC-4 (within 30 days from the date of AGM) in respect of Annual Accounts of Companies, where AGM has been held on 30.09.2024	
	30 <sup>th</sup> October 2024	F Y 2023-2024 Apr-24 – Sept-24	1.Furnish Form LLP-Form 8-Statement of Account & Solvency 2.Furnish Form NDH-3 (half-yearly)-applicable to Nidhi or Mutual Benefit Society.	
<b>Statute</b>	<b>Due dates</b>	<b>Compliance Period</b>	<b>Details</b>	
<b>MSMED Act 2006</b>	31 <sup>st</sup> October 2024	Apr-24-Sept-24	File MSME-1.	
<b>Statute</b>	<b>Due dates</b>	<b>Compliance Period</b>	<b>Details</b>	
<b>West Bengal Professional Tax on Salaries</b>	21 <sup>st</sup> October 2024	Sept-24	Professional Tax (PT) on Salaries for September 2024	
<b>ESI &amp; PF</b>	15th October 2024	Sept-24	Provident Fund (PF) & Employees State Insurance (ESI) Returns and Payment for September 2024	

**Feedback and suggestions are Invited:**

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



## Compliance Calendar for 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 <sup>th</sup> 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	



## 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](mailto: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: [dtpaejournal@gmail.com](mailto:dtpaejournal@gmail.com) and at Mob: 9830255500 / 9831016678

Thanks and Regards,

**CA. Barkha Agrawal**

President-DTPA

Ph.9831184871

Email: barkhaagarwal@hotmail.com

**Adv. (CA) Giridhar Dhelia**

Chairman, DTPA-Journal Sub-Committee

Ph.9830255500

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

**CA. Mohan Lal Gupta**

Co- Chairman, DTPA-Journal Sub-Committee

Ph.9836189880

Email: mohangupta.814@gmail.com

# DIRECT TAXES

## 1. STATUTORY UPDATES

- 1.1 CBDT notifies Direct Tax Vivad se Vishwas Rules, 2024 - **Notification No. G.S.R. 584(E), Dated 20-09-2024**

**Editorial Note :** The Central Board of Direct Taxes (CBDT) has notified the Direct Tax Vivad se Vishwas Rules, 2024. The Rules contain provisions related to the calculation of disputed tax in various scenarios. The board has also notified Form-1 & Form-2.

- 1.2 Direct Tax Vivad Se Vishwas Scheme, 2024, will be effective from October 1, 2024: CBDT - **Notification No. S.O. 4016(E), Dated 19-09-2024**

**Editorial Note :** The Finance (NO. 2) Act 2024 introduced the Direct Tax Vivad Se Vishwas Scheme, 2024, to offer a settlement mechanism for disputed issues, aiming to reduce litigation at a minimal cost. The CBDT has appointed October 01, 2024, as the date on which the Direct Tax Vivad Se Vishwas Scheme, 2024 shall come into force.

- 1.3 CBDT issues revised SOP for handling internal audit objections; discontinues raising audit observations - **Instruction No. 2/2023, Dated 09-09-2024**

**Editorial Note :** The CBDT has issued revised instructions regarding the Standard Operating Procedure for handling Internal Audit Objections. The audit scope extends to all matters that should have been correctly carried out in accordance with applicable legal provisions, instructions, circulars, prescribed procedures and guidelines. The aim is to identify errors or omissions and raise an 'objection' through Audit Memo. The practice of raising an 'Audit Observation' has been discontinued.

- 1.4 No Interest on credit balances outstanding under National Saving Scheme from 01-10-2024 - **Notification Nos. G.S.R. 537(E), G.S.R. 538(E), Dated 29-08-2024**

**Editorial Note :** The National Saving Scheme was introduced w.e.f 01-10-1992 and discontinued from 01.11.2002. It has been notified that the interest on credit balances of the subscribers under this scheme will be computed till 30-09-2024 and no interest shall be computed on or after 01-10-2024.

- 1.5 CBDT notifies 'Auroville Foundation' for the purpose of section 35 relief - **Notification No S.O. 3961(E), Dated 18-09-2024**

**Editorial Note :** The Central Board of Direct Taxes (CBDT) has notified 'Auroville Foundation' as 'Other Institution' for the purpose section 35(1)(iii) of the Income-tax Act, 1961.

- 1.6 CBDT notifies 'Designated Authority' under the Direct Tax Vivad Se Vishwas Scheme, 2024 - **Notification No. 1, Dated 27-09-2024**

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

- 1.7 CBDT issues corrigendum to Vivad se Vishwas Rules, amending various schedules of Form 1 - **Notification No. G.S.R. 601(E), Dated 27-09-2024**

**Editorial Note :** The CBDT has released a corrigendum to notification G.S.R. 584(E), dated 20-09-2024, which pertains to the Direct Tax Vivad se Vishwas Rules, 2024. According to the corrigendum, the phrase "or appeal to be filed" has been removed from Schedule XXIII of Form 1. Additionally, a few other omissions have been made across various schedules.

- 1.8 CBDT notifies 'AMTDC, Chennai' for the purpose of section 35 relief - **Notification No. S.O. 3710(E), Dated 30-08-2024**

**Editorial Note :** The Central Board of Direct Taxes (CBDT) has notified 'Advanced Manufacturing Technology Development Centre, Chennai' as 'Other Institution' for the purpose section 35(1)(ii) of the Income-tax Act, 1961.

- 1.9 CBDT launches e-DRS 2022 to minimize litigation and offer relief to eligible taxpayers - **Press Release, Dated 30-08-2024**

**Editorial Note :** In pursuance of section 245MA, the CBDT had notified the e-Dispute Resolution Scheme, 2022 (e-DRS), to reduce litigation and provide relief to eligible taxpayers. An e-DRS application must be filed within one month of receipt of the specified order. If an appeal is pending, the e-DRS application is to be filed on or before 30.09.2024

## 2. SUPREME COURT

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

- 2.1 **Interest on borrowed capital :** SLP dismissed against High Court ruling that where assessee borrowed capitals for investing in shares of his two companies, since purpose of investment was to earn income in form of dividend from two companies and same being not taxable, expenditure incurred on interest paid on such borrowed funds was hit by section 14A - **Mahesh K. Mehta v. Deputy Commissioner Of Income Tax - [2024] 166 taxmann.com 176 (SC)**

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

- 2.2 **Corporate social responsibility expenditure :** SLP dismissed against impugned order of High Court wherein it was held that Explanation 2 appended to section 37(1) by Finance Act, 2014 with effect from 1-4-2015 is applicable prospectively from assessment year 2015-16; therefore, corporate social responsibility expenditure incurred by assessee-company on or before 31-3-2014 was to be allowed as deduction under section 37(1) - **Principal Commissioner of Income-tax v. Steel Authority of India Ltd. - [2024] 166 taxmann.com 264 (SC)**

- 2.3 **Compensation :** SLP dismissed against order of High Court that where mines owned by assessee were used by its subsidiaries for captive use, however said mines had lower



grade of iron ores and subsidiaries purchased same from third parties, since compensation paid by assessee to its subsidiaries with respect to difference in price of ores purchased from assessee and third parties was to recoup business losses of subsidiaries and was irrecoverable as far as assessee was concerned, expenditure claimed by assessee with respect to such compensation was to be allowed - **Principal Commissioner of Income-tax v. Industrial Development Corporation of Orissa Ltd.** - [2024] 166 taxmann.com 319 (SC)

#### SECTION 50 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 - PUNISHMENT FOR FAILURE TO FURNISH IN RETURN OF INCOME, ANY INFORMATION ABOUT AN ASSET (INCLUDING FINANCIAL INTEREST IN ANY ENTITY) LOCATED OUTSIDE INDIA

**2.4 Others :** SLP granted against order of High Court that where revenue took recourse to section 72 of BMI and initiated criminal prosecution against assessee for non-disclosure of alleged beneficial ownership of assets abroad in tax return for year 2007-08 or 2009-10, since facts that became offences were alleged to have happened five years prior to BMI Act coming into force, prosecution initiated could not pass muster under article 20 of Constitution of India and non-disclosure could not be used to criminally prosecute assessee - **Income-tax Department v. Dhanashree Ravindra Pandit** - [2024] 166 taxmann.com 279 (SC)

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

**2.5 Section 132(3) :** SLP was to be dismissed against order of High Court that where revenue invoked section 132(3) prohibiting assessee from removing liquor bottles without prior permission of revenue, since liquor was valuable article and had value in market and furthermore it was not impossible/impracticable for revenue to seize liquor found at premises of assessee, impugned order passed by invoking section 132(3) was to be set aside - **Income-tax Department v. Dilip Mehta** - [2024] 166 taxmann.com 281 (SC)

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

**2.6** SLP dismissed against order of High Court that action under Section 153C cannot encompass multiple assessment years without direct bearing and incriminating material must pertain to a particular Assessment Year for valid action - **Dev Technofab Ltd. v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 515 (SC)

#### SECTION 206AA OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - REQUIREMENT TO FURNISH PAN

**2.7** SLP dismissed against order of High Court that provisions of DTAA overrides provisions of section 206AA and rate of tax to be applied for grossing up should be as per DTAA - **Commissioner of Income-tax v. Edgeverse Systems Ltd.** - [2024] 166 taxmann.com 317 (SC)

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

**2.8 Scope of :** SLP dismissed against order of High Court that where assessee filed an application under section 254(2) for rectification of Tribunal's order, since application under section 254(2) was in effect seeking a review of Tribunal's earlier order, same was to be rejected - **Vijay Channabasav Suttatti v. Assistant Commissioner of Income-tax** - [2024] 166 taxmann.com 385 (SC)

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

**2.9 Scope of provision :** SLP dismissed against High Court ruling that where Assessing Officer had triggered penalty proceedings under section 271(1) against assessee, it was necessary for him to indicate broadly as to limb under which penalty proceedings were triggered - **Principal Commissioner of Income-tax v. Unitech Reliable Projects (P.) Ltd.** - [2024] 166 taxmann.com 135 (SC)

## 3. HIGH COURT

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

**3.1 Rectification order :** Where petitioner received Form No. 5 pursuant to declaration made under DTVSV Act for settlement of disputes, liability determined under provisions of DTVSV Act could not be reopened or revised by any Income Tax authority - **Satish Kumar Dhingra v. Assistant/Deputy Commissioner of Income-tax Circle 61(1)** - [2024] 166 taxmann.com 290 (Delhi)

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

**3.2 Business profit - profit attributable to pe, apportionment of income :** Where assessee had a PE in India, it would be liable to pay tax on income attributable to that PE notwithstanding that assessee at an entity level had suffered a loss - **Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax** - [2024] 166 taxmann.com 466 (Delhi)

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

**3.3 Accumulation of income :** Where Assessing Officer issued reopening notice against assessee charitable trust on ground that it accumulated certain amount for purpose of for construction of buildings etc., however, assessee utilized said accumulated income for purchase of land which was other than specific purpose, since same issue regarding change in

purpose of utilisation of accumulated amount was raised in scrutiny assessment and clarified by assessee, impugned reopening notice was to be set aside being a case of mere change of opinion - **St. Mary's Charity Fund v. Union of India** - [2024] 166 taxmann.com 263 (Kerala)

- 3.4 Where assessee, charitable trust charged capitation fee from student for admission in its educational courses, it would not be entitled to exemption under section 11 - **Principal Commissioner of Income-tax v. Maharaji Education Trust** - [2024] 166 taxmann.com 197 (Delhi)

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

- 3.5 Where assessee had valid registration under section 12AB which continued to operate but assessee mistakenly filed fresh application for registration under section 12A which was rejected by competent authority on some ground, since there was no need for assessee to file fresh application, it was permitted to withdraw said application and consequently order on said application would be inconsequential - **Purandhar Technical Education Society v. Commissioner of Income-tax (Exemption)** - [2024] 166 taxmann.com 129 (Bombay)

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

- 3.6 **Expenses for holding company** : For allowing loss, expenditure must be connected with or related to business carried on by assessee and profits and gains therein; expenditure incurred for giving support services to assessee could not be allowed as revenue expenditure in assessee's hands - **Pipelic Energy Software India Pvt.Ltd. v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 179 (Telangana)

- 3.7 **Reassessment** : Where Tribunal had given a finding that reopening notice issued on ground that assessee had created a total provision of certain amount towards restatement of liability in foreign currency, however, assessee had failed to establish how provision was calculated on a scientific basis in accordance with method of accounting disclosed by assessee was justified as assessee had not furnished information required for completing assessment under section 143(3), since Tribunal was ultimate fact finding authority, its finding could not be disturbed in an appeal under section 260A as scope of said section was confined only to substantial questions of law - **Coastal Energy (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 315 (Madras)

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

- 3.8 **LIC Mutual Fund** : Where LIC Mutual Fund was not public financial institution under section 43B, interest on unsecured debentures payable by assessee to LIC Mutual Fund was not covered by section 43B - **V2 Retail Ltd. v. Deputy Commissioner of Income-tax** - [2024] 165 taxmann.com 676 (Calcutta)

#### SECTION 45 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - YEAR IN WHICH ASSESSABLE

- 3.9 Where sale deed of assessee's land contained certain obligations on part of assessee and co-owners to be fulfilled for receiving balance amount and moreover assessee has received only 50 per cent of compensation during impugned assessment year which was offered to tax in present assessment year as business income then assessee was liable to capital gain tax only on 50 per cent of consideration that has been received during year - **Principal Commissioner of Income-tax v. Rajendra Sitaram Goel** - [2024] 166 taxmann.com 221 (Bombay)

#### SECTION 50 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) - WILFUL FAILURE TO FURNISH IN RETURN ANY INFORMATION RELATING TO ALL ASSETS LOCATED OUTSIDE INDIA

- 3.10 **Grant of anticipatory bail** : Where assessee was director of a company and Assessing Officer having found that company had not disclosed foreign bank account in income tax returns pertaining to assessment years 2009-10 to 2014-15 filed a complaint against assessee before Chief Judicial Magistrate under sections 50 and 51 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, in view of submission of assessee that Black Money Act was not applicable in assessment years 2009-10 to 2014-15 because said Act came into force and was applicable after 1-4-2016, it was to be directed that in event of arrest, assessee was to be released on bail on furnishing personal bond - **Sanjay Vijay Shinde v. Directorate General of Income Tax** - [2024] 165 taxmann.com 677 (Madhya Pradesh)

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

- 3.11 **Reassessment** : Where Assessing Officer on basis of an information received from ITO that there was a difference between sale consideration and fair market value and, accordingly, provisions of 50C were applicable, issued a notice under section 148; in view of fact that issue with regard to valuation of land in question was scrutinised during course of assessment proceedings and petitioner had disclosed fully and truly all materials necessary for assessment, reopening of assessment was to be quashed and set-aside - **Nikita Jenishkumar Patel v. Income-tax Officer** - [2024] 166 taxmann.com 287 (Gujarat)

#### SECTION 53 OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTION ACT, 1988 - OFFENCE AND PROSECUTION

- 3.12 **Summoning of accused** : Where cash found in possession of applicant's wife was treated as benami property of applicant, thereafter complaint was filed against applicant and



impugned summoning order was passed by lower court, since impugned summoning order was passed by simply summarizing contents of complaint, without recording any reason or examining nature of allegation made in complaint, impugned summoning order was contrary to law and, thus, matter was to be remanded back to pass a fresh speaking order - **Keshav Lal v. Union of India** - [2024] 166 taxmann.com 218 (Allahabad)

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

- 3.13 Share premium** : Object of deeming an unjustified premium charged on issue of share as taxable income under section 56(2)(viib) was wholly inapplicable for transactions between holding and its subsidiary company where no income could be said to accrue to ultimate beneficiary, i.e., holding company - **FIS Payment Solutions and Services India (P.) Ltd. v. Union of India** - [2024] 166 taxmann.com 354 (Delhi)

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

- 3.14 Validity of assessment** : Where Assessing Officer issued on assessee a show cause notice under section 144B comprising draft assessment order and thereafter passed assessment order, since there was a clear variance between show cause notice and assessment order passed by Assessing Officer, entire assessment order was contrary to scheme of faceless assessment - **A K Metals Products v. Assessment Unit of Income Tax Department** - [2024] 166 taxmann.com 159 (Gujarat)
- 3.15** Once a company had paid tax on its unaccounted income, same money could not be subjected to tax again in form of share capital. - **Principal Commissioner of Income-tax (Central) v. Heritage Beverages (P.) Ltd.** - [2024] 166 taxmann.com 217 (Delhi)
- 3.16 Reassessment** : Where Assessing Officer issued reopening notice solely on basis of information received from Investigation Wing that substantial amount of cash deposited by assessee had escaped assessment, since there was no close nexus between tangible material and reason to believe that income had escaped assessment neither Assessing Officer made further enquiries to form said belief, reopening notice was to be set aside - **Well Trans Logistics India (P.) Ltd. v. Addl. Commissioner of Income-tax** - [2024] 166 taxmann.com 72 (Delhi)

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

- 3.17 Reassessment** : Where there was no allegation that assessee suppressed income or did not disclose income from unrecorded sales, there was no failure on part of assessee which could give reasons to believe to

AO to reopen assessment after period of four years - **Susheel Kumar Shankarlal v. ITO** - [2024] 166 taxmann.com 382 (Madhya Pradesh)

- 3.18 Opportunity of hearing** : Where AO had not taken into consideration documentary evidence submitted by assessee in reply to notice issued u.s. 148A(b), AO was to be directed to provide opportunity of hearing to assessee and pass fresh asst. order- **Pandian Narayanan v. Assessment Unit, Income Tax Department, NFAC, New Delhi** - [2024] 165 taxmann.com 670 (Madras)

- 3.19 Opportunity of hearing** : Where AO made addition on account of purchases made by assessee for want of supporting documents, since invoices in relation to purchases made by assessee from 30 vendors were not accessed by AO, matter required reconsideration and thus matter was remanded back to AO to decide issue afresh - **Susheel Jewellery Mart (P.) Ltd. v. DCIT** - [2024] 165 taxmann.com 671 (Madras)

- 3.20 Cash gifts** : Where assessee had filed an affidavit explaining receipt of gifts from friends and relatives and such declaration has not been rebutted by revenue by placing any additional facts to contrary, conclusion of Settlement Commission by accepting explanation 'in spirit of settlement' could not be faulted calling for interference in exercise of limited jurisdiction - **PCIT v. Smt. Umah Agarwal** - [2024] 166 taxmann.com 17 (Karnataka)

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

- 3.21 Reassessment** : A detailed adjudication on merits of information available with AO and defence set up by assessee is not contemplated at stage of passing an order u.s. 148A(d) - **Agarwal Polysacks Ltd. v. PCIT-I** - [2024] 166 taxmann.com 248 (Rajasthan)
- 3.22** Where assessee-firm's objections to certain foreign receipts were not considered by revenue in response to notice u.s. 148, and also requested details for reconciling payments were not provided, matter would be remanded to Assessing Officer with a direction to consider objections raised by assessee - **Deloitte Haskins and Sells v. Assistant Commissioner of Income-tax** - [2024] 166 taxmann.com 253 (Gujarat)

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

- 3.23 Reassessment** : Where Assessing Officer issued reopening notice by referring to valuation report wherein it was estimated that assessee had made substantial amount of investment in renovation/ reconstruction of property, however, had declared total investment as nil, since there was no discussion by Assessing Officer as to what was basis for relying on valuation report, nor Assessing Officer applied his mind to ascertain as to whether assessee had already declared value of aforesaid property under 'Fixed Assets and Capital WIP', impugned reopening notice was to be quashed - **Divine Infracon (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 254 (Delhi)

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

**3.24 Reassessment-bogus bills :** Where Assessing Officer issued reopening notice on ground that on account of search conducted in case of a person it was found that he was providing accommodation entries to various beneficiaries and assessee was one of beneficiaries, since assessee had paid tax on book profit under section 115JB and aggregate amount adding amount calculated by Assessing Officer towards escaped income to amount computed under ordinary provisions of Act would be less than said amount of tax paid by assessee, question of any income having escaped would not arise and, therefore, impugned reassessment notice was unjustified - **Adani Wilmar Ltd. v. Assistant Commissioner of Income-tax - [2024] 166 taxmann.com 506 (Gujarat)**

**3.25 Purchases, Bogus :** Where assessee had made purchases from six parties who were declared by Sales Tax Department as ingenuine dealers, in absence of a cohesive and coordinated approach of Assessing Officer with Sales Tax Authorities, it would be difficult to come to a concrete conclusion in regard to such purchases being bogus and, thus, Tribunal rightly restricted addition to 12.5 per cent of gross profit - **Principal Commissioner of Income-tax-1 v. SVD Resins & Plastics (P.) Ltd. - [2024] 166 taxmann.com 242 (Bombay)**

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

**3.26 Lending or borrowing/capital financing :** Where TPO made adjustment on account of notional interest on outstanding receivables of assessee from its associated enterprises, since TPO failed to examine or answer issue of international transactions bearing in mind Explanation (i)(c) to section 92B in light of those deferred payments having an impact on working capital of assessee, impugned adjustment was to be deleted - **Principal Commissioner of Income-tax v. Global Logic India Ltd. - [2024] 166 taxmann.com 171 (Delhi)**

**3.27 Advertisement, marketing and promotion expenses :** Advertisement, marketing and promotion expenditure does not constitute an international transaction - **Principal Commissioner of Income-tax v. Samsung India Electronics (P.) Ltd. - [2024] 166 taxmann.com 130 (Delhi)**

**3.28 Interest on receivables :** Where working capital adjustment was granted to assessee, there was no need for further imputation of interest on outstanding receivables at end of year as same got subsumed in working capital adjustment - **Phoenix Lamps Ltd. v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 376 (Allahabad)**

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

**3.29 Most appropriate method :** Where assessee adopted CUP method as most appropriate method for determining ALP of its international transactions and TPO rejected CUP method and adopted TNMM as most appropriate method, since Tribunal in case of assessee for asst years 2011-12, 2013-14 and 2014-15 held CUP method to be most appropriate method, there was no occasion for TPO to adopt TNMM - **PCIT v. Willis Towers Watson India (P.) Ltd. - [2024] 166 taxmann.com 455 (Punjab & Haryana)**

**3.30 Comparability factors - Exclusion/inclusion of comparable selected by assessee/revenue :** Once TPO himself had not accepted certain comparables while examining subsequent assessment proceedings, same could not be included for first time in impugned assessment year - **PCIT v. Osram India (P.) Ltd. - [2024] 166 taxmann.com 200 (Punjab & Haryana)**

**3.31 Adjustments - Foreign exchange gain/loss :** Foreign exchange gain/loss arising from international transactions is to be considered as an item of operating revenue/cost and not as a non-operating revenue/cost - **PCIT v. Samsung India Electronics (P.) Ltd. - [2024] 166 taxmann.com 130 (Delhi)**

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

**3.32 Reassessment :** Where AO based on audit objections raised by internal audit party of department issued a notice u.s. 148 on ground that TPO had failed to consider foreign exchange risk of 1 per cent which was considered by audit objection party which had resulted in short upward adjustment of Rs. 1.60 crores, since there was no failure on part of assessee to make full and true disclosure of all material facts at time of original assessment, reopening amounted to mere change of opinion and therefore notice was to be quashed - **Mastek Ltd. v. DCIT - [2024] 166 taxmann.com 219 (Gujarat)**

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

**3.33 Condonation of delay :** Where assessees failed to file returns within stipulated time as their CA who handled all their accounts and issues in relation to their income-tax returns, was facing personal issues, since there was a genuine dependence on CA's services whose personal difficulties had caused a delay in filing returns, same would be a cause beyond control of assessees and delay being sufficiently explained would be required to be condoned - **Jyotsna M. Mehta v. Principal Commissioner of Income-tax - [2024] 166 taxmann.com 442 (Bombay)**

**3.34 Condonation of delay :** Where delay of 18 days in filing return of income by assessee was for reasons beyond assessee's control, impugned delay in filing return of income was to be condoned - **Kanyakaparameshwari Co-operative Society Ltd. v. Chief Commissioner of Income-tax - [2024] 166 taxmann.com 195 (Karnataka)**



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

**3.35 Opportunity of hearing :** Where assessee challenged exparte assessment orders on ground that business premises was shifted to some other place and notices that were attempted to be served at old address remained unserved and, therefore, no reply was given before assessment orders came to be passed, assessee was to given an opportunity to file reply to notices and thereafter Assessing Officer shall pass assessment orders - **Senthil Trading and Co. v. Assessing Officer** - [2024] 166 taxmann.com 243 (Madras)

**3.36 Reassessment :** Where at time of framing assessment under section 143(3) Assessing Officer had all relevant details of assessee relating to export sale as well as benefit in form of duty drawback, duty of customs or central excise repaid and repayable, cash assistance in absence of any new material, reopening of assessment on ground that export incentives, interest and claims were not routed through profit and loss account, was nothing but mere change of opinion which is not permissible in eye of law - **Parixit Irrigation Ltd. v. Assistant Commissioner of Income-tax** - [2024] 166 taxmann.com 177 (Gujarat)

**3.37 In case of amalgamation :** Where assessee-company (transferor company) stood merged with another company (transferee company) with effect from 1-4-2012, it was incumbent on part of transferee company to have included tax liability of assessee-company and if this was not done, it was for Assessing Officer to proceed against transferee company and not against assessee-company - **SPB Papers Ltd. v. Income Tax Officer, National Faceless Assessment Centre** - [2024] 166 taxmann.com 157 (Madras)

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

**3.38 Compliance of SOP:** Where show-cause notice issued by Faceless Assessment Unit did not provide minimum of seven days time to respond and time provided to respond was less than three days, same was not only contrary to SOP but was also violative of principles of natural justice - **Lake Gardens Saha Education Society v. Assessment Unit, Income-tax Department** - [2024] 166 taxmann.com 443 (Calcutta)

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

**3.39 Draft assessment order :** A final assessment order passed without passing a draft assessment order as mandated under section 144C is not tenable - **Principal Commissioner of Income tax v. Sumitomo Corporation India (P.) Ltd.** - [2024] 166 taxmann.com 55 (Delhi)

**3.40 Jurisdiction and powers of DRP :** Where DRP on consideration of material which were not considered earlier had come to conclusion that it was a case to exclude trade discounts as well as discount warranty expenses and packing expenses from ambit of advertisement and marketing and promotion expenses for purpose of transfer pricing comparison, DRP was justified in assuming jurisdiction under section 154 to rectify its earlier direction - **PCIT v. Stanley Black and Decker India Ltd.** - [2024] 166 taxmann.com 381 (Karnataka)

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

**3.41 Valuation :** Where assessee adopted concept of average price for valuation of closing stock, since valuation of stock had changed on account of change in market price as well as change in sale price, average market could not be taken up and AO was justified in enhancing value of closing stock by adopting market rate of goods - **Bal Mukand Aggarwal v. CIT** - [2024] 166 taxmann.com 350 (Punjab & Haryana)

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

**3.42 Illustrations :** Where impugned notice u.s. 148 was issued by JAO and same was outside faceless mechanism as provided u.s. 144B r.w.s. 151A and 'scheme' notified by Central Government u.s. 151A, reopening notice and any other proceedings arising out of said proceedings were to be stayed till final decision of SC in proceedings initiated by revenue against Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430 (Bombay) - **JD Printers (P.) Ltd. v. ITO** - [2024] 166 taxmann.com 321 (Bombay)

**3.43 Validity of notice :** Where impugned notice u.s. 148A(b), order passed thereon u.s. 148A(d) and consequent notice issued u.s. 148 were issued by JAO and not by a Faceless Assessing Officer, since revenue had not complied with provisions of scheme notified by Central Government under section 151A(2), impugned reassessment notice was invalid - **Air India Ltd. v. Assistant Commissioner of Income-tax** - [2024] 166 taxmann.com 345 (Bombay)

**3.44 Faceless assessment :** Where notice under section 148 for reopening assessment was issued by Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as is required by provisions of section 151A, it being a prima facie case, said notice was required to be stayed till disposal of writ petition - **Nava Diganta Builders v. Union of India** - [2024] 166 taxmann.com 414 (Calcutta)

**3.45 Recording of reasons :** Once assessment itself is reopened, it would not be confined to those subjects only; this would, however, be subject only to one additional rider and that if, in course of reassessment, Assessing Officer ultimately comes to conclude that no additions or modifications are warranted under those heads, it would not be entitled to make any additions in respect of other items forming part of original return - **ATS Infrastructure Ltd. v. Assistant Commissioner of Income-tax** - [2024] 166 taxmann.com 61 (Delhi)

**3.46 Validity of :** Where impugned notice issued under section 148A(b), order passed thereon under section 148A(d) and consequent notice issued under section 148 were all issued by Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as was required by provisions of section 151A, impugned notices were to be quashed - ***Macleods Pharmaceuticals Ltd. v. Assistant Commissioner of Income-tax*** - [2024] 166 taxmann.com 284 (Bombay)

**3.47 Validity of :** Where notice issued under section 148A(b) and section 148 in respect of returns filed by assessee was not issued by a Faceless Assessing Officer (FAO), as was required by provisions of section 151A, proceedings initiated under section 148 would not be sustainable - ***Ganesh Nivrutti Jagtap v. Assistant Commissioner of Income-tax*** - [2024] 166 taxmann.com 168 (Bombay)

**3.48** Where Assessing Officer issued on 30-6-2021 a notice under section 148 in case of assessee-company for relevant assessment year 2015-16, since said notice was issued after expiry of six years from end of relevant assessment year, same was barred by limitation and, thus, it was to be quashed and set aside - ***Dosch Pharmaceutical (P.) Ltd. v. Income-tax Officer*** - [2024] 166 taxmann.com 216 (Bombay)

**3.49** Where Assessing Officer initiated reassessment proceedings on basis of material found during search in case of assessee-trust that it was charging capitation fee for admission in educational courses which was not shown in ITR, difference in quantum of capitation fee could not be a valid reason for setting aside reassessment proceedings at juncture of issuance of notice under section 148 - ***Principal Commissioner of Income-tax v. Maharaji Education Trust*** - [2024] 166 taxmann.com 197 (Delhi)

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

**3.50 Scope of provision :** Where Assessing Officer issued on assessee a notice under section 148 dated 29-4-2024 in respect of assessment year 2016-17, since section 149(1)(b) as it stood prior to amendment by Finance Act, 2021 prescribed that no notice under section 148 shall be issued if four years but not more than six years have elapsed from end of relevant assessment year, impugned notice deserved to be quashed - ***Manju Somani v. Income-tax Officer*** - [2024] 165 taxmann.com 675 (Delhi)

**3.51 General :** Notice issued on 27-5-2022 under section 148A(b), not being in continuation of reopening notice under section 148 dated 30-6-2021, for reopening assessment for assessment year 2015-16 was in contravention of first proviso to section 149(1) and was barred by prescription of limitation - ***Genpact India (P.) Ltd. v. Assistant Commissioner of Income-tax*** - [2024] 166 taxmann.com 256 (Delhi)

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

**3.52 Specified authority :** TOLA would not alter or amend structure for approval and sanction which stands erected by virtue of section 151; where notice for reopening of assessment was issued four years after end of relevant assessment year, approval granted by JCIT for reopening of assessment would not be compliant with scheme of section 151 and was liable to be quashed - ***Abhinav Jindal Huf v. Income Tax Officer*** - [2024] 166 taxmann.com 536 (Delhi)

#### SECTION 151A OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - FACELESS ASSESSMENT

**3.53** Where reassessment notices under sections 148 and 148A were issued by Jurisdictional Assessing Officer (JAO) instead of a Faceless Assessing Officer (FAO), in contravention of section 151A and faceless mechanism introduced by Central Government vide Notification dated 29 March 2022, such notices were held invalid - ***Sahib Singh Agencies (Bombay) (P.) Ltd. v. Deputy Commissioner of Income-tax*** - [2024] 166 taxmann.com 359 (Bombay)

**3.54 Illustrations :** Where reasons furnished by Assessing Officer to assessee for reopening of assessment were different from reasons placed for consideration before Joint Commissioner to seek approval under section 151, acceptance of reasons submitted for approval as appropriate reasons would be contrary to sanctity of procedure under section 148 and reassessment order was to be set aside - ***Floyd Filandro Linhares v. Income-tax Officer*** - [2024] 166 taxmann.com 125 (Bombay)

**3.55 General :** Only Faceless Assessing Officer can issue notice under section 148 and not Jurisdictional Assessing Officer - ***Dosch Pharmaceutical (P.) Ltd. v. Income-tax Officer*** - [2024] 166 taxmann.com 216 (Bombay)

**3.56** In faceless proceedings revenue has to comply with provisions of section 151A while issuing notice under section 148 - ***Shreenath Finstock (P.) Ltd. v. Union of India*** - [2024] 166 taxmann.com 133 (Bombay)

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

**3.57** Where Tribunal restored issue of addition made on account of gift to Assessing Officer vide order dated 11-10-2019 and Assessing Officer passed assessment order on 11-8-2023, beyond statutory period of limitation, same could not be sustained and needed to be set aside - ***Kanika Chawla v. Income-tax Officer*** - [2024] 166 taxmann.com 257 (Delhi)

**3.58** Where revenue failed to comply with order of Tribunal in passing a fresh assessment order within stipulated time, income as returned by assessee, would stand accepted - ***Ramesh Chawla (HUF) v. Income-tax Officer*** - [2024] 166 taxmann.com 180 (Delhi)



**3.59 General :** Once it is conceded that period for completion of assessment exercise in terms of sub-sections (3) and (4) of section 153 has expired, it would be wholly impermissible for court to expand or enlarge period prescribed for completion of assessment - **Principal Commissioner of Income tax v. Sumitomo Corporation India (P.) Ltd. - [2024] 166 taxmann.com 55 (Delhi)**

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

**3.60** Action under Section 153C cannot encompass multiple assessment years without direct bearing and incriminating material must pertain to a particular assessment year for valid action - **Dev Technofab Ltd. v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 514 (Delhi)**

#### SECTION 154 OF THE INCOME-TAX ACT, 1916 - RECTIFICATION OF MISTAKE - APPARENT FROM RECORDS

**3.61** Where assessee challenged a penalty notice under section 221(1) for filing a wrong return (ITR Form 7) for assessment year 2013-14, since it was noted that assessee had corrected same mistake for Assessment Year 2014-15 there was no occasion for not correcting his ITR for Assessment Year 2013-14, however, assessee had a remedy under section 154 for rectification, and if applied, revenue would decide accordingly - **Cutler Hammer Provident Fund Trust v. Income-tax Officer - [2024] 166 taxmann.com 402 (Punjab & Haryana)**

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

**3.62** Where in case of assessee-trust there was no seized material found during search relating to collection of additional fees (capitation fees) for assessment year 2011-12, there could not be any addition towards additional fees for that assessment year, taking cognizance of seized material available for assessment year 2012-13 which revealed collection of additional fees for assessment year 2012-13 - **Principal Commissioner of Income-tax (Central) v. Kunhitharuvai Memorial Charitable Trust - [2024] 166 taxmann.com 196 (Kerala)**

#### SECTION 194-I OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - RENT

**3.63 Transit rent :** Amount payable to tenant as transit rent by developer/builder could not be considered as revenue receipt in hands of tenant and as a result there will be no question of deduction of tax at source from amount payable by developer to tenant - **Sarfraz S. Furniturewalla v. Afshan Sharfali Ashok Kumar - [2024] 166 taxmann.com 425 (Bombay)**

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

**3.64** Interest on compensation/enhanced compensation : Where assessee [Land Acquisition Officer] did not deduct tax at source on payment of interest on compensation/enhanced compensation in view of an order of Punjab and Haryana HC that tax at source was not required to be deducted on interest paid, action of assessee could not be said to be wrongful or illegal and, thus, liability imposed upon him u.s. 201(1) deserved to be set aside - **Land Acquisition Officer, Urban Estate v. ACIT - [2024] 166 taxmann.com 325 (Punjab & Haryana)**

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

**3.65 Stay of demand :** Where Commissioner (Appeals) passed ex parte order and Tribunal allowed appeal filed by assessee and remanded matter back to file of Commissioner (Appeals) till disposal of appeal by Commissioner (Appeals), assessee shall not be put to any harassment by AO - **Hussain Maideen Ebrahim Sha v. ACIT - [2024] 166 taxmann.com 408 (Madras)**

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

**3.66** Seized cash can only be adjusted against tax liability of person from whom cash was seized - **Kamla Mehta v. CIT, Central Circle, Ludhiana - [2024] 166 taxmann.com 356 (Punjab & Haryana)**

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

**3.67** Order of ITSC is final and conclusive for a particular asst year for which application has been filed; decision of ITSC for other year cannot be relied upon for computing income of current year - **Principal Commissioner of Income-tax v. Maharaji Education Trust - [2024] 166 taxmann.com 197 (Delhi)**

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

**3.68 Condition precedent :** An appeal to High Court from a decision of Tribunal lies only when a substantial question of law is involved, and where High Court comes to conclusion that a substantial question of law arises from said order, it is mandatory that such question(s) must be formulated - **Principal Commissioner of Income-tax Central v. Mukul Kakar - [2024] 166 taxmann.com 199 (Madhya Pradesh)**

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

**3.69 Monetary limit :** Where tax effect in appeals filed by revenue was below Rs. 1 crore, appeals were not maintainable - **Principal Commissioner of Income-tax (Central) v. Kunhitharuvai Memorial Charitable Trust - [2024] 166 taxmann.com 196 (Kerala)**

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

- 3.70 Deliberate or wilful omission :** Where assessee before issuance of notice under section 148 had filed revised returns of income voluntarily and material collected during search conducted under section 132 was never put to assessee prior to his filing of voluntary revised returns, there was no deliberate or wilful omission on part of assessee and thus order of levy of penalty under section 271(1)(c) deserved to be set aside - **S. Duraisamy v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 244 (Madras)

**SECTION 276B OF THE INCOME-TAX ACT, 1961 - OFFENCES AND PROSECUTION**

- 3.71** An appeal filed under section 377 Cr.P.C. against conviction order passed under section 276B read with section 278B on ground of its adequacy lies in Court of Sessions - **Income-tax Department v. Jenious Clothing (P.) Ltd.** - [2024] 166 taxmann.com 372 (Karnataka)

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

- 4.1 Agricultural land :** Where assessee sold a land in a village, since village was not forming part of municipal limits at time of sale of land and it also remained unchallenged that land was situated more than four kilometers away from municipal limits, as applicable at that time, land in question did not fall within definition of capital asset, as per definition contained in section 2(14) and same was agricultural land - **Avtar Singh v. Income-tax Officer** - [2024] 166 taxmann.com 278 (Chandigarh - Trib.)

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

- 4.2 Promoting business of gems and jewellery :** Assessee, a charitable organization registered under section 12A organizing exhibitions all over world for promoting business of gems and jewellery in accordance with its object, was entitled to exemption under section 11 - **Deputy Commissioner of Income-tax(E)-2(1) v. Gem And Jewellery Export Promotion Council** - [2024] 166 taxmann.com 169 (Mumbai - Trib.)

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

- 4.3 Date of transfer :** Where assessee along with co-owners had purchased land in 2010 and assessee released its 25 per cent right in said land in favour of remaining co-owners and received consideration in full and handed over possession of property, transfer of property took place on date on which assessee had released his right in property by way of Release Deed in

2013 and not on date of deed of declaration made by seller in 2014 in respect of title of property and consideration paid to assessee, thus, gain derived from transfer of property was to be assessed under head short-term capital gain - **Narendra Mahendra Kothari v. ITO** - [2024] 166 taxmann.com 485 (Chennai - Trib.)

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

- 4.4 Net profit rate :** Where AO made addition to assessee's income by applying net profit rate of earlier years, however, assessee contended that assessee in relevant year was engaged in business of wholesale food items and therefore profit margin based on turnover/volume would be lower and AO compared same with net profit rate of earlier years, where assessee was engaged in retail trade and profit margin differed, impugned order was to be set aside and matter was to be remitted back to AO to adjudicate afresh - **Ashok Anand Shetty v. ITO** - [2024] 166 taxmann.com 121 (Mumbai - Trib.)

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

- 4.5 Time of accrual - Late payment surcharge :** Where assessee was engaged in distribution of electricity and AO had made addition of late payment surcharge (LPSC) on overdues as income of assessee, since assessee had not recovered any LPSC in past, impugned addition was to be deleted - **Pragati Power Corporation Ltd. v. ACIT** - [2024] 166 taxmann.com 201 (Delhi - Trib.)

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

- 4.6 Salary :** Where assessee, a non-resident individual, was sent on an international assignment to UK and though tax may have been paid/reimbursed by employer, assessee had offered income on gross basis and income was subjected to tax in UK, salary income as accrued to assessee for work performed in UK would not be taxable in India - **Sanjay Ajit v. ITO (International Taxation)** - [2024] 166 taxmann.com 629 (Chennai - Trib.)
- 4.7 Business profits - Offshore supplies :** Where assessee, a foreign company, received income from offshore supply contracts, since said contracts were carried out and concluded outside India, income received by assessee from offshore supply contracts would not be taxable in India - **Atomstroyexport v. DCIT (International Taxation)** - [2024] 166 taxmann.com 540 (Mumbai - Trib.)
- 4.8 Capital gains - Shares/units, transfer of :** Where assessee, a Singapore based company, claimed exemption on capital gains arising from sale of shares of an Indian company under India-Singapore DTAA, since assessee had discharged initial burden by filing statutory evidence of tax residency in form of TRC and same was not rebutted by any inquiry or evidence by AO, assessee was to be allowed exemption - **Tyco Electronics Singapore Pte Ltd. v. DCIT (International Taxation)** - [2024] 166 taxmann.com 491 (Delhi - Trib.)



**4.9 Royalties/Fees for technical services - Secondment of employers :** Where assessee itself have voluntarily offered secondment receipts for taxation either at stage of original asst or at stage of reassessment or in return filed in response to notice issued u.s. 148, no penalty could not be levied under section 271(1)(c) or 270A - **IBM Canada Ltd. v. DCIT (International Taxation) - [2024] 165 taxmann.com 292 (Bangalore - Trib.)**

**4.10 Capital gains - Shares :** Where assessee was holding tax residency certificate of Mauritius and made investment in Indian company in asst year 2011-12 and 2012-13 and sold shares in asst year 2020-21, Said LTCG on sale of shares will not be taxable in India - **Superb Mind Holdings Ltd. v. ACIT - [2024] 166 taxmann.com 224 (Delhi - Trib.)**

**4.11 Capital gains - Shares/units, transfer of :** Where assessee, a Mauritius based investment fund, earned revenue from sale of shares of Indian companies and claimed exemption on capital gains derived from sale of shares under article 13 of India-Mauritius DTAA, in view of TRC certificate, Category 1 Global Business License and SEBI registration, which clearly demonstrated that assessee was a genuine tax resident of Mauritius, assessee was to be treated as a tax resident of Mauritius, thereby eligible to avail treaty benefits - **ACIT v. Maven India Fund - [2024] 166 taxmann.com 198 (Delhi - Trib.)**

**4.12 Resident - Limited Liability Company :** Where assessee, a Limited Liability Company (LLC) incorporated in USA, claimed to be a resident of USA and offered to tax income by way of receipts on account of fees at rate of 15 per cent, applying rate given in India-USA DTAA, since assessee was liable to tax in resident State by virtue of US Income-tax Law, it qualified as a 'person' under Article 4 of Indo-US Tax Treaty and, thus, it was eligible for treaty benefit - **General Motors Company USA v. ACIT, Circle International Taxation 1(3)(1) - [2024] 166 taxmann.com 170 (Delhi - Trib.)**

**4.13 Royalties/Fees for technical services - Make available :** Pre-clinical laboratory services provided by assessee, a Canadian company, to its Indian clients could not be considered as FTS u.s. 9(1)(vii) and article 12 of India-Canada DTAA as no technology/know-how/knowledge was transferred to customers nor any right to access/use of such property was granted - **Charles River Laboratories Montreal ULC v. ACIT - [2024] 166 taxmann.com 122 (Delhi - Trib.)**

**4.14 Royalties/Fees for technical services - Software :** Receipts from Indian customers for offshore sales of books/journals or providing access to online journals/online library do not qualify as Royalties under section 9(1)(vi) as well as under Article 12 of India-USA DTAA - **John Wiley and Sons Inc. v. DCIT, International Taxation - [2024] 166 taxmann.com 30 (Delhi - Trib.)**

**4.15 Royalties/Fees for technical services - Software :** Services of providing access to online database/journals did not fall under FIS as services did not satisfy clause 'make available' as required for provisions of article 12 of DTAA - **John Wiley and Sons Inc. v. DCIT, International Taxation - [2024] 166 taxmann.com 30 (Delhi - Trib.)**

#### SECTION 10(10A) OF THE INCOME-TAX ACT, 1961 - PENSION

**4.16 Others :** Where assessee had joined erstwhile Maharashtra State Electricity Board in year 1980 and they had superannuated in relevant asst years and they claimed exemption u.s. 10(10A) and section 10(10AA) regarding their retiral benefits, since in terms of newly introduced Electricity Act, 2003 services of all employees of Board first stood vested in SG of Maharashtra on reorganization of Board, followed by transfer to various transferee power distribution companies, assessee had to be treated as employees of a State Government duly eligible for benefits of section 10(10A) and section 10(10AA) - **Mohan Baliramji Thakre v. ITO - [2024] 166 taxmann.com 158 (Nagpur - Trib.)**

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

**4.17** Where assessee-society was running two separate educational institutions, gross receipts of each of educational institutions had to be separately considered for purpose of allowing claim of exemption u.s. 10(23C)(iiad) - **Aarti Mahila Kalyan Samiti v. ADIT - [2024] 166 taxmann.com 438 (Indore - Trib.)**

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

**4.18** 'Off market' sale of scrips does not fall under ambit of legitimate tax planning and it is a colourable device used to evade tax - **ACIT v. Vallabh Roopchand Bhansali - [2024] 166 taxmann.com 488 (Mumbai - Trib.)**

#### SECTION 10B OF THE INCOME-TAX ACT, 1961 - EXPORT ORIENTED UNDERTAKING

**4.19 Manufacture or produce :** Where assessee was engaged in business of manufacturing pickles, spices, paste and chutney, since process of manufacturing pickles from raw vegetables and fruits, masala and other ingredients had different marketable commodities than raw materials which were a different value addition, and a new product emerged therefrom, assessee was eligible for deduction u.s. 10B - **ITO v. M.M. Poonjiaji Spices (P.) Ltd. - [2024] 166 taxmann.com 412 (Mumbai - Trib.)**

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

**4.20 Form 10B :** Where while filing return, assessee failed to file Form 10B due to delay of auditors in filing audit report and same was filed belatedly before assessment was finalised, since Form 10B was available when AO passed intimation u.s. 143(1), exemption u.s. 11 was to be allowed - **Touchalife Foundation India v. ITO, Exemptions - [2024] 166 taxmann.com 634 (Hyderabad - Trib.)**

**4.21 Accumulation of income :** Where assessee-trust filed Form 10 explaining purpose of accumulation of income under section 11(2) along with resolution of executive committee not before Assessing Officer and petition for condonation of delay for late filing of Form 10 which was pending consideration, matter was to be remanded back to Assessing Officer to reconsider issue in light of Form 10 filed by assessee - **Sri Laxmi Narsimha Temple v. Income-tax Officer (Exemption) - [2024] 166 taxmann.com 559 (Hyderabad - Trib.)**

**4.22 Corpus donation :** Assessee-trust was not entitled to exemption under section 11(1)(a) of corpus donation utilized for capital purposes - **Dawoodi Bohra Musafirkhana Trust v. Income-tax Officer - [2024] 166 taxmann.com 431 (Ahmedabad - Trib.)**

**4.23 Scope of provision :** Where Assessing Officer by an intimation order under section 143(1)(a) disallowed assessee's claim for exemption under section 11 on grounds that section 12A registration number was not mentioned and Form No. 10B was not furnished one month prior to due date of filing of return, since assessee was granted registration under section 12A during pendency of assessment proceedings and Form No. 10B was also available with CPC while processing return, assessee was entitled to exemption under section 11 - **Sirur Shikshan Prasarak Mandal v. ACIT, Exemption - [2024] 166 taxmann.com 525 (Pune - Trib.)**

**4.24 Delay in filling form 10b :** Where assessee-trust filed Form 10B i.e. audit report, before filing return of income but with a delay of 29 days and, thus, assessee was denied exemption under section 11, filing of Form 10B was not mandatory but directory, when audit report was available while passing intimation under section 143(1)(a) and, when requirement of law were complied with, thus, exemption under section 11 could not be denied - **Sarvadeivatha Education Trust v. Income-tax Officer, Exemptions Ward - [2024] 166 taxmann.com 524 (Bangalore - Trib.)**

**4.25 Condonation of delay in filing audit report :** Requirement of filing audit report in Form No. 10B is procedural in nature and, therefore, not filing audit report along with return could not be impediment in law in claiming exemption under section 11 - **Bhagwant Kishore Memorial Educational Society v. ITO - [2024] 166 taxmann.com 511 (Delhi - Trib.)**

**4.26 Revision :** Where assessee conducted 'Goa Fest' in Goa annually however expenses incurred on 'Goa Fest' was not adjudicated by Assessing Officer in impugned assessment order, assessment order was erroneous and prejudicial to interest of revenue - **Advertising Agencies Association of India v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 247 (Mumbai - Trib.)**

**4.27 Application of income :** Where assessee-trust sold a property and made investment of sale consideration in a bank in FDs which were later on converted into capital gain account scheme and assessee utilised entire amount of CG for purchasing other property in FYs 2022-23 and 2023-24, in view of Instruction No. 883, dated 24-9-1975, assessee qualified for exemption u.s. 11(1A) in relevant asst. year 2016-17 - **Vaishnav Samaj Trust v. ITO - [2024] 166 taxmann.com 155 (Surat-Trib.)**

**4.28 Application of income:** Where assessee-trust earned interest on savings bank account and FDRs and applied certain amount for charitable purposes and remaining accumulated amount was invested in specified securities, since investment in bank was one of modes specified u.s. 11(5), assessee was eligible for exemption u.s. 11(1) - **Vaishnav Samaj Trust v. ITO - [2024] 166 taxmann.com 155 (Surat-Trib.)**

**4.29 Form no. 10B :** Where in audit report (Form No. 10B) so filed, auditors of assessee inadvertently mentioned "No" in Column 3 instead of "Rs. 43.98 lakh" being amount of exemption available to assessee by way of accumulation or set apart for charitable use under second part of section 11(1)(a) and this led AO to compute assessee's total income at Rs. 43.98 lakh and create demand of tax plus interest in intimation u.s. 143(1), assessee's claim of exemption under second part of section 11(1)(a) had to be considered by AO - **Maharana Pratap Social Research and Education Society v. C.P.C. - [2024] 166 taxmann.com 413 (Indore - Trib.)**

**4.30 Form no. 10 :** Where AO made addition to assessee trust's income on ground that assessee had spent less than mandatory 85 per cent of total receipts without considering Form No. 10 filed before him by assessee explaining amount of money which was yet to be spent and how it planned to spend remaining amount in course of next five years, NFAC was unjustified in upholding AO's order and dismissing assessee's appeal without considering it on merit, thus, matter was to be remanded back to file of NFAC for de novo adjudication - **Giridih Carmel Convent School v. DCIT (Exemption Circle) - [2024] 166 taxmann.com 282 (Ranchi-Trib.)**

**4.31 Application of income :** Disbursal of loan scholarships to students in India for study overseas was application of income for charitable purposes in India, and, thus, would qualify for exemption u.s. 11 - **ITO v. J N Tata Endowment for Higher Education of Indians - [2024] 166 taxmann.com 126 (Mumbai - Trib.)**

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

**4.32** Where there was delay in filing appeal before CIT (Appeals) against order of denial of exemption u.s. 11 to assessee trust on ground of delay in filling Form 10B i.e. audit report by assessee, since delay in filing appeal before CIT (Appeals) was due to bona fide reasons as assessee was pursuing alternative remedy available under Act, said delay caused in filing appeal before CIT (Appeals) was to be condoned - **Sarvadeivatha Education Trust v. ITO, Exemptions Ward - [2024] 166 taxmann.com 524 (Bangalore - Trib.)**



**4.33 Form 10AB :** Where Commissioner (Exemption) rejected application of assessee-trust for grant of registration under section 12A(1)(ac) on ground that assessee-trust failed to furnish explanation/documents in response to discrepancies pointed out by him, since Commissioner (Exemption) had not given sufficient time to assessee-trust for compliance, matter was to be remanded back to Commissioner (Exemption) for de novo consideration - **Sai Disha Samjik Vikas Sanstha v. CIT (Exemption) - [2024] 166 taxmann.com 446 (Pune - Trib.)**

**4.34 Withdrawal of registration :** As second proviso to section 143(3) has been inserted with effect from 1-4-2022 in statute to make reference to Pr. Commissioner by Assessing Officer under sections 12AA and 12AB, cancellation of registration of assessee-society for alleged specified violations occurred prior to 1-4-2022 by wrongly invoking provisions of section 12A read with sections 12AA and 12AB(4) was bad in law and thus unsustainable - **Lakshmi Chand Charitable Society v. Principal Commissioner of Income-tax - [2024] 166 taxmann.com 324 (Delhi - Trib.)**

**4.35** Where assessee had committed a technical mistake in preparing application under section 12A(1)(ac)(ii) instead of section 12A(1)(ac)(iii), such typographical error deserved to be corrected - **Vir Sewa Mandir v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 226 (Delhi - Trib.)**

**4.36 Filing of audit report in Form 10B :** Where Assessing Officer disallowed exemption under section 11 claimed by assessee-trust on ground that Form 10B was not submitted within due date i.e. under section 139(1), since audit was completed well before due date fixed for filing Form 10B and assessee had provided a reasonable cause of lapse on part of auditors, Commissioner (Appeals) was supposed to take into consideration that non-filing of audit report along with return of income was a procedural omission, and accordingly, he should consider Form 10B and pass an order afresh on merits as per law - **Shakuntalam Bal Vikas Society v. Income-tax Officer - [2024] 166 taxmann.com 132 (Delhi - Trib.)**

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

**4.37 Cancellation of registration :** Where Commissioner cancelled registration of assessee-trust as granted under section 12A(a) on grounds that activities of trust were not genuine and property and income of trust had been used for personal benefits of trustees, since activities of trust were charitable in nature and benefit that trustees were getting could not be a sole reason to cancel registration of trust, cancellation of registration of assessee to be quashed - **Jodhpur Medical Research Centre v. Commissioner of Income Tax (Exemptions) - [2024] 166 taxmann.com 165 (Jodhpur - Trib.)**

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

**4.38 Illustrations :** Where Commissioner rejected assessee-trust's application for registration under section 12AB on ground that assessee had not furnished documentary evidence on genuineness of its activities, since Commissioner had not considered assessee's rebuttal to queries raised by him in show cause notice, matter required to be remitted back for decision afresh - **Sansthanam Abhay Daanam v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 426 (Pune - Trib.)**

**4.39 Rejection of application :** Where Commissioner (Exemptions) rejected assessee's application for registration under section 12AB on ground that assessee was not registered under Rajasthan Public Trust Act, 1959 and genuineness of activities were not verifiable, since assessee had filed application for registration under Rajasthan Public Trust Act and observation made by Commissioner (Exemptions) was curable in nature, order rejecting registration was to be set aside and matter was to be remanded back to Commissioner (Exemptions) for making a fresh decision with a direction to assessee to produce all related documents - **Aacharya Shri Hira laxmi Guru Jain Gaushala Sansthan v. Commissioner of Income-tax (Exemptions) - [2024] 166 taxmann.com 476 (Jaipur - Trib.)**

**4.40 Opportunity of hearing :** Where Commissioner rejected assessee-trust's application seeking registration under section 12AB on ground that assessee was not registered under Rajasthan Public Trust Act, 1959, since assessee had already applied for registration as per Rajasthan Public Trust Act and defect was curable in nature, matter required to be restored before Commissioner for afresh consideration - **Pacific Medicare Academy v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 245 (Jodhpur - Trib.)**

**4.41 Scope of provision :** Non communication of amendment in trust deed would not be a ground for cancellation of registration already granted to assessee - Trust - **Saranaalayam Trust v. Commissioner of Income-tax (Exemptions) - [2024] 165 taxmann.com 669 (Chennai - Trib.)**

**4.42 Scope of section 13 :** Where assessee-trust was in existence since 1946 i.e., prior to Income-tax Act came into force, provisions of section 13(1)(b) would not be applicable to it - **Levva Patel Gnati v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 163 (Rajkot - Trib.)**

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

**4.43 Payments to members :** Where Assessing Officer disallowed salary paid to specified persons by invoking provision of section 13(1)(c) read with section 13(2)(c) and section 13(3), since assessee was availing services of

members of society and Assessing Officer himself admitted that specified persons were having higher qualification and no comparable case was brought on record to substantiate that salary/ remuneration paid to them was excessive, disallowance made by Assessing Officer was not justified - **ACIT v. Heritage Education Society - [2024] 166 taxmann.com 62 (Chandigarh - Trib.)**

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

**4.44 Conditions precedent :** Disallowance under section 14A read with rule 8D is inapplicable in absence of exempt income - **Oriental Enterprise (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 65 (Ahmedabad - Trib.)**

**4.45 Interest expenditure :** Where assessee had itself admitted that interest bearing funds had been used for investment in shares and also for non-business purpose, Commissioner (Appeals) had rightly sustained disallowance of interest to extent of Rs. 25.79 lakhs - **Shri Rampriya Developers (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 628 (Hyderabad - Trib.)**

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

**4.46 Embezzlement of stock :** Where assessee claimed loss in respect of embezzlement of stock by an employee and others, since FIR had been filed by assessee quantifying details of embezzlement of theft and police had confirmed FIR, loss claimed by assessee deserved to be allowed - **Heena Gems v. ACIT - [2024] 166 taxmann.com 160 (Mumbai - Trib.)**

**4.47 Interest income :** Where assessee-company, Non-Banking Finance Company (NBFC), was engaged in business of granting loan, debenture and bond, interest income earned from investment in securities was to be treated as business income - **ACIT v. Vireet Investments (P.) Ltd. - [2024] 166 taxmann.com 386 (Delhi - Trib.)**

**4.48 Sale on investment :** Where assessee had wrongly credited to profit and loss account Rs. 5.11 crores on account of profit on sale of investment and Assessing Officer made an addition of same under business income without giving effect to revised computation on ground that assessee could not produce any evidence as to how amount of Rs. 5.11 crores was arrived at, since assessee was ready to produce all such documentary evidence consisting of copy of computation, acknowledgement, revised computation, submissions etc. in support of his contentions, matter was to be Assessing Officer for deciding issue afresh on merits - **Andhra Pradesh State Co-operative Bank Ltd. v. Asst. Commissioner of Income-tax - [2024] 166 taxmann.com 293 (Hyderabad - Trib.)**

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

**4.49 Block of assets :** Where due to change in accounting policy certain assets earlier classified as Plant and Machinery were now classified as intangible, consequently assessee applied higher rate of depreciation and claimed depreciation short claimed in preceding years as prior period depreciation, since entire exercise of allowability of claim of depreciation of earlier years in impugned year or year to which it pertained was a tax neutral exercise and as per Explanation 5 to section 32 depreciation was allowable whether or not claimed by assessee, claim of prior period depreciation was to be allowed and revisionary proceedings initiated on ground that claim of assessee was not tenable in terms of section 37(1) read with section 32 was to be set aside - **Sabarmati Gas Ltd. v. Principal Commissioner of Income-tax - [2024] 166 taxmann.com 669 (Ahmedabad - Trib.)**

**4.50 Ownership :** Where Assessing Officer disallowed depreciation relating to assets held in names of directors of assessee-company, since assessee was using these assets for purposes of business of assessee, claim of depreciation of assessee deserved to be allowed - **Shree Veer Buildbest (P.) Ltd. v. Income-tax Officer - [2024] 166 taxmann.com 557 (Ahmedabad - Trib.)**

**4.51 Investment :** No depreciation would be allowable to assessee on investment treated as current assets - **Andhra Pradesh State Co-operative Bank Ltd. v. Asst. Commissioner of Income-tax - [2024] 166 taxmann.com 293 (Hyderabad - Trib.)**

**4.52 Power companies :** Where Assessing Officer disallowed depreciation claimed by assessee on fixed assets by observing that assessee had not submitted working of depreciation, since assessee had submitted relevant depreciation schedule before Assessing Officer which was part of audit report submitted as per Form 3CD, issue was to be remitted back to Assessing Officer to verify same - **Pragati Power Corporation Ltd. v. ACIT - [2024] 166 taxmann.com 201 (Delhi - Trib.)**

**4.53 Written down value :** Assessee was to be allowed depreciation on written down value (WDV) of plant and machinery utilized by assessee for its business - **Deputy Commissioner of Income-tax v. Afcons Infrastructure Ltd. - [2024] 166 taxmann.com 214 (Mumbai - Trib.)**

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

**4.54** Prior to 1-4-2016, there was no requirement for quantification of eligible expenditure by DSIR for claiming deduction and, therefore, revenue was not correct in restricting deduction under section 35(2AB) on basis of amount quantified by DSIR in their approval - **Intas Biopharmaceuticals Ltd. v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 173 (Ahmedabad - Trib.)**



**SECTION 35AD OF THE INCOME-TAX ACT, 1961 - SPECIFIED BUSINESS, DEDUCTION IN RESPECT OF EXPENDITURE ON**

**4.55 Hotels :** Where hotel being run by assessee had been duly granted a four star rating certificate by Ministry of Tourism, Government of India, in subsequent Assessment year, it would be eligible of claim of deduction u.s. 35AD since provisions of section 35AD does not mandates that date of certificate should be with effect from a particular date - **Khanna Infrabuild (P.) Ltd. v. DCIT - [2024] 166 taxmann.com 518 (Chandigarh - Trib.)**

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

**4.56 Interest free advances :** Where assessee-company had sufficient own capital and free reserves which far exceeded amount of interest free advance given to sister concern, impugned disallowance of interest paid on loan borrowed from bank u.s. 36(1)(iii) was not justified - **Capricorn Lifestyle (P.) Ltd. v. DCIT - [2024] 166 taxmann.com 618 (Pune - Trib.)**

**4.57 Capital work-in-progress :** Where AO had made an addition on account of interest expenditure relatable to amount invested by assessee in in-house development of project, since project was commissioned in FY 2013-14 and interest was already determined and capitalized at time of commissioning of project itself, impugned addition was unsustainable - **Pragati Power Corporation Ltd. v. ACIT - [2024] 166 taxmann.com 201 (Delhi - Trib.)**

**4.58** Where huge interest free funds were available with assessee, presumption of AO that only interest bearing funds were utilized towards CWIP was not correct - **Intas Biopharmaceuticals Ltd. v. DCIT - [2024] 166 taxmann.com 173 (Ahmedabad - Trib.)**

**4.59 Interest free loan :** Where assessee had successfully demonstrated that it had sufficient interest-free funds to cover loan to subsidiary and loan was advanced for commercial expediency, no disallowance of interest was warranted, therefore, disallowance made under section 36(1)(iii) was to be deleted - **Oriental Enterprise (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 65 (Ahmedabad - Trib.)**

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

**4.60 General :** Where assessee had raised an additional ground for first time before Tribunal relating to entitlement of assessee under section 36(1)(vii) to claim deduction on account of bad debts actually written off in their books of account, since this issue had not been considered by lower authorities, matter was to be remanded to Assessing Officer with direction to examine - **Andhra Pradesh State Co-operative Bank Ltd. v. Asst. Commissioner of Income-tax - [2024] 166 taxmann.com 293 (Hyderabad - Trib.)**

**4.61** Where provision for bad debt as debited to accounts of current year was not actually written off in current year by assessee, same could not be allowed - **Intas Biopharmaceuticals Ltd. v. DCIT - [2024] 166 taxmann.com 173 (Ahmedabad - Trib.)**

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

**4.62 Scope of provision :** Where assessee, a co-operative bank, had made provision for bad and doubtful debts in books of account, it was entitled to deduction of bad debts provided u.s. 36(1)(viiia)(a) - **Jivan Commercial Co-operative Bank Ltd. v. ACIT - [2024] 166 taxmann.com 411 (Rajkot - Trib.)**

**4.63 Scope of provision :** For purpose of invoking provisions of section 36(1)(viiia), it is essential for assessee bank to make a provision in books of account for bad and doubtful debts - **Andhra Pradesh State Co-operative Bank Ltd. v. ACIT - [2024] 166 taxmann.com 293 (Hyderabad - Trib.)**

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

**4.64 Office expenses :** Where Assessing Officer disallowed 20 per cent of office expenses on ground that during year there was a significant increase in expenses compared to previous year, since assessee's increased expenses were justified by corresponding increase in turnover, impugned disallowance deserved to be deleted - **Shree Veer Buildbest (P.) Ltd. v. Income-tax Officer - [2024] 166 taxmann.com 557 (Ahmedabad - Trib.)**

**4.65 Commission :** Where assessee paid commission to three parties and also deducted necessary TDS as per applicable provisions of Act and had also explained reasons for difference between closing balance as per books of accounts of assessee and balance confirmed by parties being due to accounting system, no additions towards said differential amount could be made - **Narendra Mahendra Kothari v. Income-tax Officer - [2024] 166 taxmann.com 485 (Chennai - Trib.)**

**4.66 Sales tax :** Where assessee could not adduce any evidences as to how penalty paid under Sales Tax Act and sales tax paid on behalf of third party could be allowed as deduction, addition made by Assessing Officer towards penalty paid under sales tax Act was to be upheld - **Narendra Mahendra Kothari v. Income-tax Officer - [2024] 166 taxmann.com 485 (Chennai - Trib.)**

**4.67 Warranty provision :** Where assessee-company made provision for warranty expenses in respect of contract to supply, installation and commissioning of solar photovoltaic (SPV) irrigation pumps, since provision calculation was based on DCF method and was grounded in a scientifically sound and consistent method which complied with Accounting Standard 29 (AS-29), same was to be allowed as deduction under section 37(1) - **Rotomag Motors And Controls (P.) Ltd. v. Assistant Commissioner of Income-tax - [2024] 166 taxmann.com 486 (Ahmedabad - Trib.)**

**4.68 Forex loss :** Foreign exchange loss incurred by assessee on payment of foreign exchange to BHEL as per contract for acquisition of capital asset from abroad was allowable under section 37(1) - **Pragati Power Corporation Ltd. v. ACIT - [2024] 166 taxmann.com 201 (Delhi - Trib.)**

**4.69** Professional fee paid by assessee for arbitration being incurred for purposes of business was to be allowed as deduction - **Deputy Commissioner of Income-tax v. Afcons Infrastructure Ltd. - [2024] 166 taxmann.com 214 (Mumbai - Trib.)**

**4.70** Where assessee was unable to establish or reconcile difference of an amount on account of addition to CWIP and amount remained unreconciled, same could not be considered as actual capital loss - **Intas Biopharmaceuticals Ltd. v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 173 (Ahmedabad - Trib.)**

**4.71 Trade payables :** Where Assessing Officer had failed to provide substantial evidence to support disallowance made under section 37(1) on account of trade payables and assessee's documentation including audited financial statements and ledger accounts sufficiently demonstrated genuineness of expenses, Commissioner (Appeals) was justified in deleting impugned addition - **Oriental Enterprise (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 65 (Ahmedabad - Trib.)**

**4.72 Gifts :** Where assessee had demonstrated that expenses claimed under 'Gift Articles' and 'Entertainment Expenses' were incurred for business purposes and tax auditor's acceptance further supported this claim, Commissioner (Appeals) was justified in deleting disallowance made by Assessing Officer under section 37(1) - **Oriental Enterprise (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 65 (Ahmedabad - Trib.)**

**4.73 Software license expenditure :** Where assessee incurred software license expenditure towards purchase of Microsoft licenses, expenditure incurred by assessee was revenue in nature - **ACIT v. First Advantage (P.) Ltd. - [2024] 166 taxmann.com 622 (Mumbai - Trib.)**

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

**4.74 scope of provision :** Where assessee made payments of certain amount to contractors and fee for professional service, however, tax at source was deducted at lesser rate by an amount of Rs. 629 and Rs. 6,591 under sections 194C and 194J, respectively disallowance of 30 per cent of total payment by Assessing Officer under section 40(a)(ia) of total payments was unjustified - **ACIT v. First Advantage (P.) Ltd. - [2024] 166 taxmann.com 622 (Mumbai - Trib.)**

**4.75 Rent :** Where Assessing Officer did not examine issue of deduction of tax at source on rent expenses during assessment proceedings and assessee himself admitted that said issue was not considered during assessment proceedings, Principal Commissioner rightly invoked revisionary proceedings - **Sabarmati Gas Ltd. v. Principal Commissioner of Income-tax - [2024] 166 taxmann.com 669 (Ahmedabad - Trib.)**

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

**4.76 Freight :** Where assessee paid freight expenses of Rs. 22,337 in cash in violation of section 40A(3), disallowance made on account of same was to be upheld - **Narendra Mahendra Kothari v. Income-tax Officer - [2024] 166 taxmann.com 485 (Chennai - Trib.)**

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

**4.77 General :** Where Assessing Officer had made addition made under section 41(1) on account of cessation of liability, since Assessing Officer did not provide sufficient evidence to establish that liabilities had ceased during year under consideration, moreover, liabilities were duly reflected in assessee's audited balance-sheet, Commissioner (Appeals) was justified in deleting impugned addition - **Oriental Enterprise (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 65 (Ahmedabad - Trib.)**

**SECTION 43 OF THE INCOME-TAX ACT, 1961 - ACTUAL COST**

**4.78** Grant in aid received by assessee towards plant and machinery and technical civil work is required to be deducted/reduced from value/cost of assets eligible for depreciation - **Pagero Frozen Foods (P.) Ltd. v. ITO - [2024] 166 taxmann.com 357 (Chandigarh - Trib.)**

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

**4.79** Any tax, duty, cess or fee paid or incurred has to be taken into account for valuation of goods and therefore, disallowance of VAT payment which was not paid before prescribed date of filing of return under section 139(1) could not be challenged on ground that assessee was following exclusive method of accounting and amount of VAT was not debited to profit and loss account, stands dismissed - **Grand Motors v. Income-tax Officer - [2024] 166 taxmann.com 192 (Raipur - Trib.)**

**4.80** Opening balance of VAT liability which pertains to earlier year cannot be disallowed under section 43B - **Grand Motors v. Income-tax Officer - [2024] 166 taxmann.com 192 (Raipur - Trib.)**

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

**4.81 Shares :** Where transaction of assessee for purchase and sale of shares was not genuine transaction but a transaction



designed to avoid payment of taxes arising on capital gain due to transfer of shares of another company, AO was justified in disallowing short-term capital loss claimed by assessee on sale of shares - **Shri Rampriya Developers (P.) Ltd. v. DCIT** - [2024] 166 taxmann.com 628 (Hyderabad - Trib.)

- 4.82 General:** Where assessee sold shares of a company and received certain amount as consideration on closing date and remaining amount was to be received as deferred consideration, since assessee had no legally enforceable right to receive deferred consideration during relevant asst year, same could not be brought to tax in that year - **Huntsman Investments (Netherlands) BV v. DCIT, International Tax** - [2024] 166 taxmann.com 63 (Mumbai - Trib.)

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

- 4.83** Once assessee objects to value of property proposed to be adopted by AO, then assessing officer is duly bound to refer matter to DVO in terms of Section 50C(2) - **Income Tax Officer v. Ketaben Janakbhai Patel** - [2024] 165 taxmann.com 835 (Ahmedabad - Trib.)

- 4.84 Valuation by stamp valuation authority :** First proviso to section 50C as inserted by Finance Act, 2016 with effect from 1-4-2017 would apply to a case where there was mention in sale deed of a sum being paid by cheque prior to date of agreement and it was agreed that balance of sale consideration shall be paid at time execution of sale deed on or before a particular date - **Nandlal Pritamdas Kishnani v. ITO** - [2024] 166 taxmann.com 220 (Delhi - Trib.)

#### SECTION 54 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - EXEMPTION OF, IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE OTHER THAN NEW ASSET

- 4.85 Condition precedent :** Where assessee raised additional ground after filing return and claimed deduction under section 54F on ground that his authorised representative committed a mistake, since assessee himself declared income under head 'business or profession' in return and did not declare any capital gain, direction to Assessing Officer to consider claim of assessee under section 54/54F would not arise - **Rajan Arputharaj Vincent Naveen v. ACIT/DCIT** - [2024] 166 taxmann.com 378 (Chennai - Trib.)
- 4.86** Where recital of sale deed clearly pointed out possession of property was taken on 31-3-2015 which was within period of one year before date of sale of original asset and covenants in sale deed executed and registered were conclusive in absence of any evidence to contrary, assessee was entitled for deduction under section 54/54F - **Ramdas Sitaram Patil v. ACIT** - [2024] 166 taxmann.com 222 (Pune - Trib.)

- 4.87 Purchase :** Where assessee had utilized other funds (apart from sale consideration) for constructing new residential house, deduction under section 54 could not be denied to him - **Jignesh Jaysukhlal Ghiya v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 40 (Ahmedabad - Trib.)

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

- 4.88 Conditions precedent :** Capital gains utilized towards purchase of new agricultural land before furnishing of return of income under section 139(4) would be deemed to be sufficient compliance of section 54B(2) - **Rameshbhai Ganeshbhai Sanghani v. Assistant Commissioner of Income-tax** - [2024] 166 taxmann.com 34 (Surat-Trib.)

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

- 4.89 Farm property :** Where assessee owned two properties, namely, a house property and a farm property and lower authorities had clearly established that farm property was capable of being used and was also used by assessee for his residential purposes, assessee was not eligible for deduction under section 54F in respect of investment in a new residential house - **Atul Govindji Shroff v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 246 (Ahmedabad - Trib.)
- 4.90 Physical verification :** Where assessee earned long-term capital gain on sale of equity shares and invested sale proceeds in two adjoining residential flats and claimed exemption under section 54F but said claim was allowed in respect of one flat only, since no physical verification was conducted to verify claim of assessee that two flats were combined into one flat, matter was to be remanded back to Assessing Officer - **DCIT v. Priyanka Bhaskar Shah** - [2024] 166 taxmann.com 415 (Mumbai - Trib.)
- 4.91 Ownership of property :** Where assessee earned capital gain on sale of ancestral property and invested same for construction of a residential house on a plot of land which was in name of her husband, there was no impediment in claiming deduction under section 54F on investment of capital gain in residential house - **Rekha Rajendra Shah v. Officer In Charge, NFAC, DCIT** - [2024] 166 taxmann.com 416 (Surat-Trib.)
- 4.92 Agreement to sell :** Where assessee sold a residential plot and claimed deduction under section 54F towards purchase of new residential house, since assessee had placed on record a copy of passbook of bank showing encashment of cheque of entire sale consideration in account of seller and possession was also delivered, assessee's claim for deduction under section 54F was to be allowed - **Nandlal Pritamdas Kishnani v. ITO** - [2024] 166 taxmann.com 220 (Delhi - Trib.)

**4.93 Scope of provision :** Where assessee sold a land and purchased four flats which were situated at one floor of building, since all four flats constituted as single residential unit and allotted by builder as one single residential unit though having four identification numbers they could be termed as one residential unit for purpose of claiming deduction under section 54F - **Suruchi Jena v. ACIT - [2024] 166 taxmann.com 632 (Cuttack - Trib.)**

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

**4.94 Reassessment :** Where notice under section 148 was issued not only in contravention of provisions of section 151 as sanction of concerned Specified Authority was not obtained, but same was also time-barred as per provisions of section 149 as same was issued after three years and furthermore amount alleged to have escaped assessment was less than Rs.50 lakh, therefore, impugned notice issued under section 148 being void ab initio was liable to be quashed - **Manish Jagdish Joshi v. CIT - [2024] 165 taxmann.com 836 (Mumbai - Trib.)**

**4.95** Where assessee received certain amount as consenting party in sale transaction of property which he declared as income from other sources but claimed deduction as full amount in name of expenses, in absence of any evidence for expenses, Assessing Officer was justified in disallowing same - **Uday Jawahar Kotnis v. Income-tax Officer - [2024] 166 taxmann.com 104 (Pune - Trib.)**

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

**4.96 Brokerage :** Where assessee paid brokerage to broker for obtaining refund of investment (principal amount and interest) made by him in a project of builder which was cancelled, since payment of brokerage was a lump sum payment made by assessee and there was no bifurcation or split of this expenditure relating to recovery of principal and recovery of interest, impugned proportionate disallowance under section 57(iii) of brokerage expenses related to principal amount was not justified - **Deepak N. Sippy v. Assistant Commissioner of Income-tax - [2024] 166 taxmann.com 590 (Mumbai - Trib.)**

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

**4.97 Invalid appeal :** Where appeal filed before Tribunal in Form No. 36 was verified by Chartered Accountant of assessee and not by person (Managing director) who was prescribed as per section 140 read with rules 47(1) and 45(3), appeal of assessee was not a valid appeal - **Grand Consulting Services (P.) Ltd. v. Income-tax Officer - [2024] 166 taxmann.com 428 (Indore - Trib.)**

**4.98 Bank deposits :** Where assessee made cash deposits in two banks and explained that source for cash deposits was out of advance received from a party against sales, since assessee himself claimed that he had refunded advance received from said party because transaction did not materialize, thus, assessee had made a vague claim of cash advance received from a party without there being any evidences, impugned addition made under section 68 on account of said bank deposits received was justified - **Narendra Mahendra Kothari v. Income-tax Officer - [2024] 166 taxmann.com 485 (Chennai - Trib.)**

**4.99 Bank deposits :** Where assessee had made cash deposits in two banks and explained that source for cash deposits was out of loan received from a party, since assessee failed to file necessary evidences to prove creditworthiness of creditor, there was no error in reasons given by Assessing Officer to reject source for cash deposits claimed to have been received, therefore, Assessing Officer was justified in making additions towards cash deposits under section 68 - **Narendra Mahendra Kothari v. Income-tax Officer - [2024] 166 taxmann.com 485 (Chennai - Trib.)**

**4.100 Share dealings :** Where assessee had submitted share application form, share certificate, bank statement highlighting payment made for purchase of shares, demat statement, broker's ledger, contract notes issued by broker, bank statement highlighting sales consideration and STT remitted on such sales to prove purchase/sale of shares, addition made by Assessing Officer under section 68 treating LTCG claimed by assessee on sale of shares as unexplained cash credit was rightly deleted by Commissioner (Appeals) - **Deputy Commissioner of Income-tax v. Nisha Shantaram Pokle - [2024] 166 taxmann.com 552 (Mumbai - Trib.)**

**4.101 Share application money :** Where assessee received certain amount as share application money from a party and documents furnished by assessee established identity, creditworthiness and genuineness of share application money received, addition under section 68 was not justified - **Shree Veer Buildbest (P.) Ltd. v. Income-tax Officer - [2024] 166 taxmann.com 557 (Ahmedabad - Trib.)**

**4.102 Illustrations :** Where Assessing Officer disallowed interest paid by assessee to various loan creditors and treated amount of new loan taken by assessee during year as unexplained cash credit under section 68, assessee was granted permission to file additional evidence in support of its claim of identity of creditors and their creditworthiness as well as genuineness of transaction and case was restored to file of Assessing Officer for consideration of additional evidence to be filed by assessee - **Om Shanti Realtors v. Income-tax Officer - [2024] 165 taxmann.com 679 (Mumbai - Trib.)**

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

**4.103 Agricultural income :** Where assessee submitted that source of investment in liquor business was agricultural income earned by his family members and loan provided by his brother, since assessee produced confirmation letters



from family members along with their pattadar passbooks, copies of return of income of his family members and certificates issued by Village Revenue Officer evidencing their agricultural land holdings, assessee had furnished sufficient evidence to prove that source of investment was agricultural income earned by his family members, addition made under section 69 was to be deleted - **Chandrasekhar Yernena v. Income-tax Officer - [2024] 166 taxmann.com 619 (Visakhapatnam - Trib.)**

**4.104 Bogus purchases** : Where Assessing Officer made additions to income of assessee on account of bogus purchases, since entire sales had been accepted and only one purchase was doubted, addition was to be restricted to gross profit rate on said purchase - **Mahir Diamonds v. Income-tax Officer - [2024] 166 taxmann.com 97 (Mumbai - Trib.)**

**4.105 Agricultural income** : Where assessee declared substantial agricultural income in return and Assessing Officer made addition under section 69 with respect to said income, since affidavit filed by assessee stating that he had no other source of income except agricultural activity and he had not invested or expended alleged amount, was not disputed by revenue and assessee was never cross examined on same, impugned addition made under section 69 was to be deleted - **Madan Lal v. Income-tax Officer - [2024] 166 taxmann.com 519 (Jodhpur - Trib.)**

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

**4.106 On-money** : Where pursuant to search cash of certain amount seized from director of assessee company while he was travelling a survey was also conducted upon assessee and addition was made on account of 'on-money' computed on basis of diaries seized during survey and money seized from his director, cash found during search could not be automatically considered as undisclosed income of assessee, and further, addition on account of 'on-money' was made without any incriminating material found in search, thus, impugned addition was to be deleted - **D G Land Developers (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 620 (Mumbai - Trib.)**

**4.107 Reassessment** : Where Assessing Officer issued a reassessment notice on ground that assessee-NRI had entered into certain transactions for which assessee had not filed his return of income, however, assessee denied alleged transactions, since Assessing Officer had reopened assessee's case based on erroneous facts and premise which did not relate to assessee, impugned draft assessment order and consequential final assessment order were to be held invalid and were to be quashed - **Jagadeesan Mani v. ITO - [2024] 166 taxmann.com 320 (Mumbai - Trib.)**

**4.108 Remittance from abroad** : Where assessee, a non-resident of Israel, had remitted funds from his bank account with overseas bank to his NRE bank account in India and had furnished Foreign Inward Remittance Certificate to establish that money had been remitted by assessee from his bank account held with overseas bank to his NRE bank account in India, since assessee had discharged primary onus regarding source of funds being outside of India, addition made by Assessing Officer under section 69A treating same as unexplained credit was to be deleted - **Alan Moses Mozes v. Income-tax Officer - [2024] 166 taxmann.com 346 (Ahmedabad - Trib.)**

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

**4.109 Investment in immovable property** : Where during course of search, no incriminating material was found exhibiting unexplained investment by an assessee, addition made by Assessing Officer purely on basis of DVO's report which was a work of pure estimation of cost based on government rates was to be deleted - **Khanna Infrabuild (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 518 (Chandigarh - Trib.)**

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

**4.110 Bogus purchases** : Where Assessing Officer treated entire purchases made by assessee from two parties as bogus purchases and made addition to assessee's income invoking section 69C, since assessee had filed details of purchases made and corresponding quantity of sales made, entire purchases could not have been added to income of assessee; only profit element in alleged purchase to be added to assessee's income - **Heena Gems v. ACIT - [2024] 166 taxmann.com 160 (Mumbai - Trib.)**

**4.111 Land** : Where there was no documentary evidence unearthed by Assessing Officer which could show that assessee had paid huge amount over and above sale consideration mentioned in sale deeds of agriculture land, addition made by Assessing Officer should be deleted - **Shanmugasundaram v. Income-tax Officer - [2024] 166 taxmann.com 487 (Chennai - Trib.)**

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

**4.112 Approval under sub-section (5)** : Where Commissioner rejected assessee-trust's application for registration under section 80G(5) on plea that assessee did not furnish copy of regular registration under section 12AB, since Commissioner had not considered assessee's reply to show cause notice, matter deserved to be restored back to Commissioner for decision afresh - **Sansthanam Abhay Daanam v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 426 (Pune - Trib.)**

**4.113 General** : Where application of assessee-religious trust for approval under section 80G was rejected, since reasonable opportunity of being heard was not granted to assessee-trust

to respond to show cause notice to explain objects of trust, matter was to be remanded to Commissioner (Exemptions) for decision afresh - **Parasmal Jain Bilaspuriya (Barjatya) Parmarthik Charitable Trust (Nyas) v. CIT (Exemption) - [2024] 166 taxmann.com 375 (Jaipur - Trib.)**

**4.114 Sub-section 5 :** Where assessee's application for approval under section 80G(5) was rejected on ground that same was filed beyond due date, since CBDT had extended due date for filing Form 10A/10AB upto 30.06.2024, assessee's application dated 01.11.2022 was before extended due date issued by CBDT, and thus assessee's application for approval under section 80G(5)(iii) should be accepted - **Seva Bharati v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 39 (Kolkata - Trib.)**

**4.115 Approval under sub-section (5) :** Where Commissioner rejected assessee-trust's application for approval under section 80G(5) on ground that assessee's application seeking registration under section 12AB was rejected on ground that it was not registered under Rajasthan Public Trust Act, 1959 and without registration under section 12AB approval under section 80G(5) could not be granted, since assessee had already applied for registration as per Rajasthan Public Trust Act, matter required to be restored before Commissioner for afresh consideration - **Pacific Medicare Academy v. Commissioner of Income-tax (Exemption) - [2024] 166 taxmann.com 245 (Jodhpur - Trib.)**

**4.116 Time limit for filing application for final registration :** Where application seeking final registration under section 80G(5)(iii) had been moved well within prescribed time period i.e., before expiry of six months of provisional registration, same was not barred by limitation - **FI Foundation v. Commissioner of Income-tax (Exemptions) - [2024] 166 taxmann.com 124 (Chandigarh - Trib.)**

#### SECTION 80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS, ETC., AFTER CERTAIN DATES

**4.117 Computation of deduction :** Where unwinding of interest on vendor liabilities being a notional loss charged as finance cost in books of accounts was added back for purpose of deduction under section 80IA(4)(iv) as same was not allowable as revenue expenditure, disallowance of same made by Assessing Officer under section 80IA(4) was to be deleted - **Pragati Power Corporation Ltd. v. ACIT - [2024] 166 taxmann.com 201 (Delhi - Trib.)**

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

**4.118 Elimination of double taxation - Scope of provision :** Where assessee was on deputation to Netherlands by his employer and salary earned in Netherlands and tax thereof was paid in said foreign country as per provisions of article 23 of DTAA between India and Netherlands, late filing of Form No. 67 could not be reason for denying assessee's entitlement in respect of benefit of treaty and, thus, assessee was to be allowed foreign tax credit - **Chiragkumar Nandalal Makadia v. ITO - [2024] 166 taxmann.com 26 (Ahmedabad - Trib.)**

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

**4.119 Bank guarantee fee :** Where assessee along with two other companies formed a joint venture for securing contract for some projects in UAE and assessee provided bank guarantee along with its partner, even if impugned transactions were considered as international transactions, no TP adjustment could be made on bank guarantee fee paid by assessee - **DCIT v. Afcons Infrastructure Ltd. - [2024] 166 taxmann.com 214 (Mumbai - Trib.)**

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

**4.120 Adjustment - Aggregation of transactions :** Where assessee-company claimed to have availed Technical Support Services (TSS) and Business Support Services (BSS) from its AEs and established actual rendering of services as per agreements arrived and further, services availed of by assessee were necessary for proper functioning of day to day business operations beneficial to assessee, TPO was not justified in adopting segregative approach for benchmarking international transactions of assessee and matter was to be remanded back to file of TPO for determination of ALP of international transaction of BSS and TSS - **Borgwarner Emissions Systems India (P.) Ltd. v. DCIT - [2024] 166 taxmann.com 439 (Delhi - Trib.)**

**4.121 Methods for determination of - Most appropriate method, determination of :** Where assessee, JV, was awarded contract of transportation from MCL and CIT (Appeals) held that CUP method was most suitable method for determining ALP, in view of fact that assessee was not providing services to any party other than MCL nor any work was executed except from its AEs and there was no internal comparable available with assessee, matter was to be remanded to Assessing Officer for re-examination for determination of ALP based on best suitable method - **ITO v. NCC-SMASL-JRT (JV) - [2024] 165 taxmann.com 798 (Cuttack - Trib.)**

**4.122 Permanent establishment - Agency PE :** Where there was no related party transaction between assessee and SanDisk India during relevant year, SanDisk India could not be held to be a dependent agency PE of assessee in India for relevant year and no addition could be made in hands of assessee as FTS - **Western Digital Technologies Inc. v. Deputy Commissioner of Income Tax (International Taxation) - [2024] 165 taxmann.com 805 (Bangalore - Trib.)**



**4.123 Adjustment - Royalty** : Where assessee paid royalty in terms of agreement where royalty was payable at rate of 5 per cent of net sales of licensed products in India, and at rate of 8 per cent of net sales of licensed products outside India, TPO was not justified in determining ALP of royalty without taking into consideration landed cost of imported components in case of comparables - **Borgwarner Emissions Systems India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2024] 166 taxmann.com 439 (Delhi - Trib.)**

**4.124 Adjustments - Royalty** : In view of Tribunal's decision in assessee's own case in previous assessment years CUP method adopted by assessee in respect of international transaction relating to payment of royalty for use of trademark and know-how was justified - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.125 Adjustment - Benefit from transaction** : TPO had no locus-standi to opine on necessity or otherwise for incurrance of expenditure and his jurisdiction extended only to benchmark transaction in terms of mandate of section 92(1) - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.126 Adjustment - Benefit from transaction** : Certain transactions entered into by assessee for business expediency need not necessarily attract financial benefits and in such cases, revenue cannot dictate its term that certain transactions should not be entered into - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.127 Comparables, functional similarity - Marketing support services** : Where assessee provided marketing support services to its AE, a government company set up for specific government purposes providing diversified high end technical services that were different in nature than support services, was to be excluded from list of comparables - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.128 Comparability factors - Assets/stock value differentiation** : Where there was difference in asset holding of assessee-company vis-a-vis comparable company selected by TPO, same could not be selected as comparable to assessee - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.129 Comparables, functional similarity - Marketing support services** : Where assessee provided marketing support services to its AE, a company providing services in nature of valuation and auctioning, being different from assessee, was to be excluded from list of comparables - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.130 Comparables, functional similarity - Marketing support services** : Where assessee provided

marketing support services to its AE, a company providing registrar and transfer agent services, records management services and payroll and trust fund services was to be excluded from list of comparables - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.131 Comparables, functional similarity - Marketing support services** : Where assessee provided marketing support services to its AE and TPO excluded a company on ground of functional dissimilarity, in view of fact that Ashok Reservation and Management System (ARMS) segment of this comparable was a good comparable if assessee provided segmental financial results for benchmarking analysis, CIT (Appeals) had rightly included this company as comparable - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.132 Comparability factors - Profit margin/Profit level indicator** : A company cannot be rejected merely on account of wide fluctuation in margin (profit/loss) if it is otherwise comparable - **Benetton India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 252 (Delhi - Trib.)**

**4.133 Comparables and adjustments/Methods for determination - General** : Where TPO had accepted TNM method applied by assessee as most appropriate method, then it would not open to TPO to work out ALP in respect of one element, i.e. payment of management charges on entirely different method, i.e. CUP method - **Gates India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 29 (Delhi - Trib.)**

**4.134 Adjustments - Interest** : Where assessee had worked PLI after working capital adjustment and even after working capital adjustment as directed by DRP, PLI was still better vis-a-vis comparables, impact of imputed interest costs on account of high credit period would thus get offset by higher profits earned and, therefore, no rationale exists for separate benchmarking of interest on outstanding receivable - **Gates India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 29 (Delhi - Trib.)**

**4.135 Adjustments - TP adjustment** : TPO should consider transactions between assessee and its AEs only and should not consider non-AE revenue and non-AE cost for purpose of computing TP adjustment - **FIS Global Business Solutions India (P.) Ltd. v. ACIT - [2024] 166 taxmann.com 28 (Delhi - Trib.)**

#### SECTION 115BAA OF THE INCOME-TAX ACT, 1961 - TAX ON NON-RESIDENT SPORTSMAN OR SPORTS ASSOCIATION

**4.136 Sub-section (5)** : Where assessee-company had validly opted for provisions of section 115BAA for AY 2020-21 and revenue authorities having not found any error in such valid claim had allowed option exercised for lower tax rate for AY 2020-21, assessee was not required to exercise option for subsequent assessment year under provision of section 115BAA(5) unless first option was rendered invalid due to violation of any condition contained in sub-clause (ii) or sub-clause (iii) of clause (a) or clause (b) of section 115BAB(2) - **Narayani Laxmi Viniyog (P.) Ltd. v. ITO - [2024] 166 taxmann.com 373 (Kolkata - Trib.)**

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

**4.137 Voluntary liquidation :** Where assessee-company was undergoing voluntary liquidation, since there was no indication whatsoever in section 115JB that a company under voluntary liquidation would be exempt from any of provisions of Income Tax Act, including section 115JB, section 115JB was clearly applicable in its case - **Industrial Investment Bank of India Ltd. v. Principal Commissioner of Income-tax** - [2024] 166 taxmann.com 409 (Kolkata - Trib.)

**4.138 Computation of book profits :** Any tax payment made by employer on behalf of employee is not covered under definition of income tax for purpose of clause (a) to Explanation 1 to section 115JB - **Deputy Commissioner of Income-tax v. Afcons Infrastructure Ltd.** - [2024] 166 taxmann.com 214 (Mumbai - Trib.)

**4.139 Banks :** Banks constituted as 'corresponding new banks' in terms of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and not registered under Companies Act, 2013 or any other previous company law, would not fall under provisions of section 115JB and, therefore, tax on book profits (MAT) would not be applicable to such banks - **Union Bank of India v. DCIT** - [2024] 166 taxmann.com 207 (Mumbai - Trib.)

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

**4.140 Reassessment :** Notice of reopening assessment can validly be issued only by Assessing Officer, who is vested with relevant jurisdiction over case of assessee, while exercising provisions of section 147 read with section 148 for reopening assessment - **Income-tax Officer v. Pankojani Walter** - [2024] 166 taxmann.com 374 (Raipur - Trib.)

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

**4.141 Scope of provision :** Issue whether to include excise duty or exclude excise duty from amount of turnover for determining rate of tax was a debatable issue and same could not be resolved while processing return under section 143(1) and, thus, adjustment made by Assessing Officer under section 143(1) by including excise duty in turnover was not sustainable - **Klubor Lubrication India (P.) Ltd. v. Deputy Commissioner of Income-tax** - [2024] 166 taxmann.com 161 (Bangalore - Trib.)

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

**4.142 Liquor business :** Where assessee was engaged in liquor business and failed to produce sales bills to support sales admitted during year and neither

produced books of account for verification, Assessing Officer was justified in rejecting book results of assessee and estimating net profit at 5 per cent of purchase price of stock that was put to sale - **Chandrasekhar Yernena v. Income-tax Officer** - [2024] 166 taxmann.com 619 (Visakhapatnam - Trib.)

**4.143 Stock :** Addition could not be made to income of assessee on basis of difference between closing stock declared in stock statement submitted to banker being less than book stock - **Income-tax Officer v. M.M. Poonjaji Spices (P.) Ltd.** - [2024] 166 taxmann.com 412 (Mumbai - Trib.)

**SECTION 164 OF THE INCOME-TAX ACT, 1961 -  
TRUST/TRUSTEES - CHARGE OF INCOME WHERE  
SHARE OF BENEFICIARIES UNKNOWN**

**4.144** Where assessee-trust was declared by one 'P' through her will for benefit of her two sons and their families, and shares of beneficiaries under trust were indetermined, in view of fact that it was only trust declared by 'P', income of assessee would be chargeable to be taxed under provisions of section 164(1) read with clause (ii) of first proviso to section 164(1), as it were total income of an association of person (AOP) and deeming fiction under section 164(1) read with clause (ii) of first proviso would not extend to an extent of denial of deduction under sections 80C and 80TTA which is otherwise available to individuals, as all beneficiaries under instant trust were individuals - **Smt. Pashiben Prajapati Family Trust (DISC) v. Income-tax Officer** - [2024] 166 taxmann.com 380 (Ahmedabad - Trib.)

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

**4.145 Maximum marginal rate :** Where assessee, a joint venture between TPL and Chint, had clearly mentioned in its ITR that members' share in AOP's profit was determinate i.e., TPL 99.99 per cent and Chint 0.01 per cent, since TPL was domestic company and Chint was a Chinese company, 99.99 per cent of income of TPL was to be taxed at maximum marginal rate (MMR) of 30 per cent plus surcharge plus cess and 0.01 per cent of income of Chint at MMR of 40 per cent plus surcharge and cess - **JV of TATA Projects Ltd. and Chint Electric Company Ltd. v. ITO** - [2024] 166 taxmann.com 322 (Delhi - Trib.)

**SECTION 178 OF THE INCOME-TAX ACT, 1961 -  
COMPANY-IN-LIQUIDATION**

**4.146 Scope of provision :** Though provisions of IBC would prevail over Income-tax Act, but AO is not barred from determining tax dues against assessee - **ACIT v. Varun Resources Ltd.** - [2024] 166 taxmann.com 166 (Mumbai - Trib.)

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

**4.147 Commission, payment to directors :** Where payment of commission to director was shown as part of his salary in Form 16, tax at source was to be deducted under section 192 - **DCIT v. Indofil Industrial Ltd.** - [2024] 166 taxmann.com 546 (Delhi - Trib.)



**SECTION 194Q OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PURCHASE OF GOODS**

**4.148 Commission agent** : Where assessee, a licensed chillies commission agent, claimed TDS credit of certain amount under section 194Q, since assessee acted only as an agent and not as a principal, thus, its turnover would include only gross commission and not sales effected on behalf of their principals, he was eligible to get credit of entire amount deducted as tax at source under section 194Q - **Kanaka Mahalakshmi Chillies Traders v. Income-tax Officer** - [2024] 166 taxmann.com 323 (Visakhapatnam - Trib.)

**4.149 Commission agent** : Where assessee, a licensed chillies commission agent, claimed TDS credit of certain amount under section 194Q, since assessee acted only as an agent and not as a principal, thus, its turnover would include only gross commission and not sales effected on behalf of their principals, he was eligible to get credit of entire amount deducted as tax at source under section 194Q - **Chilakala Srinivasa Reddy v. Income-tax Officer** - [2024] 166 taxmann.com 352 (Visakhapatnam - Trib.)

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

**4.150** Where remittance made by assessee to foreign subsidiary companies was not chargeable in India, assessee was not liable to deduct tax at source from such payments - **Income-tax Officer (International Taxation) v. HCL Technologies Ltd.** - [2024] 166 taxmann.com 193 (Delhi - Trib.)

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

**4.151 Condonation of delay** : Where Commissioner (Appeals) dismissed appeals filed by assessee as non-maintainable on account of substantial delay in filing of appeals, since Commissioner (Appeals)'s order contained no reason for rejecting explanation of delay given by it, appeals required to be restored back to Commissioner (Appeals) to deal with assessee's application seeking condition of delay - **Chamanlal Shantaben Parekh & Rohini Suketu Parekh Public Charitable Trust v. ITO** - [2024] 166 taxmann.com 513 (Ahmedabad - Trib.)

**4.152 Condonation of delay** : Where Commissioner (Appeals) declined to condone delay of 669 days in filing appeal by assessee, since submission made by assessee regarding non-receipt of assessment order was not at all before first appellate authority who was concerned with condonation of delay in filing first appeal, matter was to be remanded back to Commissioner (Appeals) for consideration afresh - **Amit Vyas v. Income-tax Officer** - [2024] 166 taxmann.com 330 (Indore - Trib.)

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

**4.153 Principles of natural justice** : Where CIT (Appeals) passed ex parte order in violation of principles of natural justice, since he had not passed order as per mandate of provisions of section 250(6) i.e., he did not pass order on merit based on entire material available on record, one more opportunity should be granted to assessee to plead its case before Cit (Appeals) - **Amitkumar Dhirajlal Joshi v. ITO** - [2024] 166 taxmann.com 310 (Rajkot - Trib.)

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

**4.154** Where PCIT initiated revisional proceedings u.s. 263 based on AO's proposal rather than conducting an independent examination, it would amount to a jurisdictional defect and vitiate revisional proceedings - **Smt. Anamika Garg v. PCIT** - [2024] 166 taxmann.com 42 (Indore - Trib.)

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

**4.155** Where assessee delayed physical filing of an appeal by 218 days due to unawareness of procedure, delay would be condoned as appeal was initially filed online - **Punam Kanwar Bhati v. ITO** - [2024] 165 taxmann.com 286 (Jodhpur - Trib.)

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

**4.156 Search and seizure** : An order of assessment passed u.s. 153A r.w.s. 143(3) after getting an approval of Jt. Commissioner u.s. 153D could not be revised u.s. 263 without giving a finding that prior approval u.s. 153D was vitiated and was also erroneous so far as prejudicial to interest of revenue - **Devender Kumar Gupta v. PCIT** - [2024] 166 taxmann.com 95 (Delhi - Trib.)

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

**4.157 Misreporting of income** : Where assessee had produced books of accounts, vouchers and payment had been made through banking channels, payments which were required to be subject to deduction of TDS, same had been deducted, AO was not justified in imposing penalty u.s. 270A(9)(a) for misreporting of income - **VDB Infra and Realty (P.) Ltd. v. ITO** - [2024] 165 taxmann.com 293 (Bangalore - Trib.)

**4.158 Scope of provisions** : Where AO initiated penalty proceedings u.s. 270A for misreporting and under reporting of income on account of excess depreciation debited in P&L account and on account of disallowance of claim of interest on TDS and passed an order levying penalty at rate of 200 per cent, however, neither in show cause notice nor in final penalty order, it was specified as to which part of sub-section (9) of section 270A was attracted, penalty order was to be quashed - **Jaipur Telecom (P.) Ltd. v. DCIT** - [2024] 165 taxmann.com 289 (Jaipur - Trib.)

**4.159 Sub-section (9)(e) :** Where Assessing Officer levied penalty under section 270A(9)(e) for failure to record any receipt in books of account, but there was no such failure to record any receipt in books of account by assessee and addition was on account of disallowance of certain deductions claimed under Chapter VI-A and section 24, penalty was not maintainable as it was levied under incorrect section - **Popat Karbhari Bhalerao v. Income-tax Officer - [2024] 165 taxmann.com 291 (Pune - Trib.)**

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

**4.160** Immunity from penalty under section 270AA is available if demand is deposited within 30 days, and delay in filing Form No. 68 is only a procedural lapse - **Punam Kanwar Bhati v. ITO - [2024] 165 taxmann.com 286 (Jodhpur - Trib.)**

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

**4.161 Disallowance of claim, effect of :** Where Assessing Officer disallowed deduction claimed by assessee under section 54F and section 54EC and he also imposed penalty for furnishing inaccurate particulars, since co-ordinate Bench of Tribunal in quantum appeal partially allowed deduction under section 54F, Assessing Officer was to be directed to recompute quantum of penalty - **Smt. Maya K. Dharwani v. Income-tax Officer - [2024] 166 taxmann.com 558 (Ahmedabad - Trib.)**

**4.162 General :** Where claim of assessee for deduction under section 80 -IB (10) was based on incorrect facts of claiming himself as a developer and secondly built up area of most of residential houses was exceeding stipulated limit of 1500 square feet, there was no error or irregularity in confirming levy of penalty under section 271(1)(c) - **Ram Babu Singh v. DCIT - [2024] 166 taxmann.com 444 (Indore - Trib.)**

**4.163 Bogus transactions :** Where loss claimed by assessee in return of income as business loss was a speculative loss and impermissible to set off against business income, said claim was impermissible resulting in furnishing of incorrect particulars of income by assessee in return of income, levy of penalty under section 271(1)(c) was proper and justified - **Swan Petrochemicals (P.) Ltd. v. DCIT (Central) - [2024] 166 taxmann.com 292 (Indore - Trib.)**

**4.164 Higher depreciation :** Where assessee had disclosed and explained all relevant facts and details pertaining to claim of higher depreciation on biometric devices, merely claiming higher depreciation, which was otherwise supported by various judicial precedents would not lead to conclusion that assessee had furnished inaccurate particulars of income and, thus, no penalty under section 271(1)(c) was imposable on disallowance made by Assessing Officer towards claim of depreciation made by assessee - **Mahaonline Ltd. v. Commissioner of Income-tax (Appeals) - [2024] 166 taxmann.com 175 (Mumbai - Trib.)**





## The Role of Technology in the future of Taxation in India



**Anupam Agrawal**

**E-mail - [anupamagrawal.in@gmail.com](mailto:anupamagrawal.in@gmail.com)**

The role of Income Tax in the growth of the country has been a norm from the ages and Kautilya's 'Arthashastra' deals with taxation in an elaborate and planned manner suggesting ways to guide a king in running the state in an efficient and fruitful manner. According to him, treasury is the root of administration ('kosh moolo dandah'). This is the tag line of the Income Tax Department.

Technology has become a critical catalyst transforming the old tax systems by streamlining processes, enhancing transparency, and improving compliance. As tax systems evolve, the integration of technology continues to play a crucial role in addressing challenges related to tax administration and revenue collection to the point that both have already been entangled and the future will be more intertwined.

As we try to see the future of taxation through the prism of technology, let's see how the technological developments of the past has shaped today's taxation.

- i. In the early 90s when Personal computers were gaining traction, early web browsers were beginning to evolve and centralized databases became common, we saw the launch of new PAN (Permanent Account Number). This solved the issues of regional based PAN and very little data associated with the PAN itself.
- ii. As the Government opened up Internet and internet Service Providers started proliferating in the country, we saw the introduction of Tax Information Network in 2005. The release stated that NSDL has established a nationwide Tax Information Network (TIN) on behalf of the Income Tax Department (ITD) and the press release stated that this starts Elimination of manual preparation, signing and issue of TDS certificates, No need to file and store multiple copies of TDS Certificates; Instead of filing large number of physical papers (truckloads for large companies) the e-TDS return is now one floppy/CD.



- iii. The implementation of Goods and Services Tax (GST) in 2017 was one of India's largest tax reforms, heavily reliant on IT infrastructure which is using the latest in data center technology and deployed in anycast model. The GST Network (GSTN), integrates multiple stakeholders such as the Central Board of Indirect Taxes and Customs (CBIC) and state tax authorities, creating a unified system. This digitization has streamlined the compliance process, reducing manual intervention and errors.
- iv. Now Artificial intelligence and data analytics are transforming tax administration by automating processes and improving the accuracy of tax assessments. The introduction of Faceless Assessment Scheme in 2020, which eliminates the need for physical interaction between tax officials and taxpayer is an AI-driven system that minimizes bias, reduces corruption, and streamlines assessments.

These innovations have led to a much more prominent role of the state. Direct Tax to GDP ratio has increased from 5.62% in F.Y. 2013-14 to 6.11% in F.Y. 2022-23. The increase in direct tax revenue has been due to high growth of GDP and overall improvement in tax administration.

The future of taxation in India will depend on some key themes of general change which in turn is going to be significantly impacted by the shape of technological change itself.

- a) Population - As the current medical systems advance by increased use of technology, the average age for Indians will increase and the current system of taxation may not be sufficient for supporting the aging population. Efforts for improving the base of taxation will have to be widened along with possibly changing the model of taxation from income to including consumption as well.
- b) Climate change - There is a sharp change in the climatic patterns and this pace of climatic change is going to be sharper in the coming years and decades. Increased use of data centers will further lead to erosion of fossil fuels and this will lead to introduction of carbon tax sometime in the future to handle the externalities of emissions.
- c) Smart Manufacturing - The improvement in technologies will allow the production system to be widespread and it will be difficult to tax based on production points. The nature of globalization will influence the migration patterns for people and as such destination-based taxation might be more relevant.
- d) Digital Public Infrastructure - There is a strong focus on DPI in the country. It is a critical enabler of digital transformation and is helping to improve public service delivery at scale. Examples are Aadhar, UPI, Digi locker, Ayushman Bharat Digital Mission. It has demonstrated how 1.4 billion individuals can access socio-economically important

services in the field of finance, health, education, e-Governance, taxation, skills etc. Increased use of DPI will mean easier identification of gaps in tax collection and administration.

On the other hand, Artificial Intelligence or more commonly known as AI will be much smarter and there will be AI agents which will change the way we interact with technology. Possibly, AI will move from just being an AI to AGI which is Artificial General Intelligence, and it will look like the same computer which we use today can do much more work than it did earlier.

All this will lead to a final scenario wherein the tax response will still be dependent on the trust in the government. The digitalization will require the government to be more transparent and stand the scrutiny of accountability by the citizens. This uncertainty if managed effectively along with stable rule based systems will allow for reaping the benefits of technological advancements in taxation.

<sup>1</sup> <https://nsdl.co.in/pressrelease/050722.php#:~:text=NSDL%20has%20established%20a%20nation,Smt.>

<sup>1</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1998906>

# GST & INDIRECT TAXES

## 1. STATUTORY UPDATES

- 1.1** The Ministry of Finance issues Handbook of GST law and Procedures for departmental officers

**Editorial Note :** On completion of 7 years of GST, the Government has issued Handbook of GST law and Procedures for departmental officers.

- 1.2** GSTN Update: Launching of New Invoice Management System

**Editorial Note :** GSTN has issued an update to inform that a new communication process called the Invoice Management System (IMS) is being brought up at portal to enable taxpayers to efficiently address invoice corrections/amendments with their suppliers through the portal. This facility shall be available to the taxpayer from 1st October onwards on the GST portal.

- 1.3** New advisory on reporting of supplies to un-registered dealers in GSTR-1/GSTR-5: GSTN Update

**Editorial Note :** The GSTN has issued an advisory to inform that till the time new functionality is made available on portal for reporting of invoice wise details of inter-state supplies made to unregistered dealers above 1 Lakh; the taxpayers may continue reporting the invoice wise details which are more than 2.5 Lakhs in the Table 5 of Form GSTR-1 and Table 6 of GSTR-5.

- 1.4** New GSTN Advisory for Biometric-Based Aadhaar Authentication for applicants of Bihar, Delhi, Karnataka and Punjab

**Editorial Note :** The GSTN has issued an update to inform that new functionality is developed for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Bihar, Delhi, Karnataka and Punjab. It also provides the document verification and appointment booking process. It has been rolled out in Bihar, Delhi, Karnataka, and Punjab on 6th September 2024.

- 1.5** Recommendations of 54th GST Council Meeting: Press Release

**Editorial Note :** The 54th GST Council meeting has been held under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman in New Delhi today. In this press release, all recommendations relating to changes in GST tax rates, relief to individuals, measures for facilitation of trade and measures for streamlining compliances in GST are compiled.

- 1.6** Clarification regarding regularization of refund of IGST availed in **contravention** of rule 96(10) of CGST Rules, 2017 - **Circular No. 233/27/2024-GST, Dated 10-9-2024**

**Editorial Note :** The CBIC has issued circular to clarify that where the inputs were initially imported without payment of integrated tax and compensation cess by availing exemption but subsequently, GST on such imported inputs are paid at a later date, then the IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

- 1.7** Clarification in respect of advertising services provided to foreign clients - **Circular No. 230/24/2024-GST, Dated 10-9-2024**

**Editorial Note :** The CBIC has issued circular to clarify that the advertising company which is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis does not fulfil the criteria of "intermediary" under section 2(13) of the IGST Act. Also, the recipient of the advertising services provided by the advertising company in such cases is the foreign client.

- 1.8** CBIC issued clarification on availability of input tax credit in respect of demo vehicles - **Circular No. 231/25/2024-GST, Dated 10-9-2024**

**Editorial Note :** The CBIC has issued circular to provide clarification that input tax credit in respect of demo vehicles is not blocked under clause (a) of section 17(5) of CGST Act. Also, the availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.

- 1.9** Data hosting services provided to overseas cloud computing service providers are not intermediary services - **Circular No. 232/26/2024-GST, Dated 10-9-2024**

**Editorial Note :** The CBIC has issued circular to clarify that data hosting services provided by service providers located in India to cloud computing service providers located outside India shall not be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.

- 1.10** Re-opening of Reporting ITC Reversal Opening Balance: GSTN Update

**Editorial Note :** The GSTN has issued an update to inform that the Taxpayers are being provided with one final opportunity to report their cumulative ITC reversal (ITC that has been reversed earlier and has not yet been reclaimed) as opening balance for "Electronic Credit Reversal and Reclaimed Statement", if any, before hard locking the reversal and reclaim ledger. The functionality to reporting the opening balance will be available from 15th September 2024 to 31st October 2024.



**1.11 Draft Manual on Invoice Management System**

**Editorial Note :** The GSTN has unveiled a ground breaking new facility, the Invoice Management System (IMS), revolutionizing the way recipient taxpayers interact with invoices. The new system shall facilitate taxpayers in matching their records/invoices vis a vis issued by their suppliers for availing the correct Input Tax Credit (ITC). Now, a draft manual has been issued and the final version shall be published later.

**1.12 Frequently Asked Questions on IMS**

**Editorial Note :** With the Introduction of Invoice Management System (IMS), the taxpayers interaction with invoices and business processes will change. Now, the GSTN has issued an update on frequently asked questions (FAQs) on IMS to get a better understanding of the new functionality.

**1.13 Archival of GST Returns data on GST portal: GSTN Update**

**Editorial Note :** The GSTN has issued an update to inform that as per GST portal data policy, data for view of taxpayer to be retained for seven years only. Therefore, the same data policy is being implemented on the GST portal. Thus, the return data will not be available to view beyond 7 years for taxpayers. Accordingly, on 1st August 2024, return filed for July 2017 has been archived and on 1st September 2024, data for August 2017 has been archived.

**1.14 GSTN issued advisory on issuance of Notices/Orders without digital signatures of the issuing authorities**

**Editorial Note :** The GSTN has issued an advisory regarding the validity of documents issued by the tax officers on the common portal viz. SCN/Orders without the Digital signatures on the pdf document downloaded from the common portal. In this context, it is to be mentioned that such documents are generated on the common portal from the login of the officer, who logs in through Digital Signatures which can be verified through <https://www.gst.gov.in-->Dashboard-->Services-->User Services-->Verify RFN>.

**1.15 CBIC notified effective date of applicability of GST provisions of Finance (No. 2) Act, 2024 - Notification No. 17/2024-Central Tax, Dated 27-9-2024**

**Editorial Note :** The CBIC has issued notification to provide that the provisions of sections 118, 142, 148 and 150 of the Finance (No. 2) Act, 2024 shall come into force from 27th September, 2024. However, the provisions of sections 114 to 117, 119 to 141, 143 to 147, 149 and 151 to 157 of the said Act shall come into force from 1st November, 2024.

**2. SUPREME COURT****SECTION 25 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - PROCEDURE FOR**

- 2.1** Supreme court dismissed instant special leave petition as it was inclined to entertain instant special leave petition under Article 136 of Constitution, and judgement of high court was upheld in which high court dismissed writ petition filed by petitioner holding that petitioner had not suffered any legal injury by 101st Amendment, especially since he was not person involved in commercial activities and he did not claim any prejudice having been caused to him - **Amit Pandey v. Union of India - [2024] 166 taxmann.com 313 (SC)**

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

- 2.2** Where counsel for appellant was not heard by High Court before passing order of cancellation of bail granted to appellant by trial Court, thus, there had been a breach of principles of natural justice and therefore, impugned order was to be set aside and matter was remanded back - **Gautam Garg v. Union of India - [2024] 166 taxmann.com 404 (SC)**
- 2.3** Where Petitioner was in custody since 18-10-2023 under sections 132(1)(b), 132(1)(f), in view of period of incarceration, nature of allegations which relate to documentary evidence, completion of investigation, filing of challan and trial may take some time, bail was to be granted to petitioner - **Saurabh Kumar v. State of Madhya Pradesh - [2024] 166 taxmann.com 670 (SC)**

**3. HIGH COURT****CLASSIFICATION OF GOODS**

- 3.1 Bio-fertilizers :** Where Appellate Authority in case of assessee held that bio-fertilizers were classifiable under Heading No. 3002 attracting 12 percent GST, however in another case had classified same under Heading No. 3105 attracting 5 percent GST, there was anomaly in order of Appellate Authority thus same was to be set aside and matter was to be remanded - **Novozymes South Asia (P.) Ltd. v. Joint Commissioner of State Goods and Services Tax - [2024] 165 taxmann.com 523 (Gujarat)**

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

- 3.2** Where demand against assessee was raised in respect of nonpayment of IGST under RCM on the Ocean freight charges and other discrepancies, in view of judgement in Union of India v. Mohit Minerals (P.) Ltd. [2022] 138 taxmann.com 331 (SC), demand in respect of nonpayment of IGST under RCM on the Ocean freight charges, demand was to be dropped, however demand arising out of other allegations was to be adjudicated before Appellate Authority - **L.S. Mills v. Assistant Commissioner of CGST & Central Excise - [2024] 165 taxmann.com 488 (Madras)**

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

- 3.3 Where circular authorizing Intelligence Wing officers to conduct assessments was challenged, court upheld its validity but declined to interfere with Asst orders involving disputed questions of fact - **A.J. Steels v. State Tax Officer** - [2024] 164 taxmann.com 720 (Madras)

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

- 3.4 Where documents including original purchase invoices submitted by assessee in response to SCN was lost by department and contrary letter was issued to assessee stating that department had not received any documents, directions were to be issued to department to show cause as to why disciplinary action should not be taken against concerned officers as assessee required those documents to substantiate its claim which had been prejudiced - **Sheshnath Adyaprasad Singh v. Uol** - [2024] 166 taxmann.com 209 (Bombay)

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

- 3.5 CGST authorities cannot initiate proceedings when same subject matter is already under investigation by SGST authorities; Blocked credit ledger and summons issued by CGST authorities were to be set aside as proceedings had already been initiated by SGST authorities on same subject matter - **Kundlas Loh Udyog v. State of Himachal Pradesh** - [2024] 166 taxmann.com 550 (Himachal Pradesh)
- 3.6 Where SCN issued and adjudication order passed u.s. 73(9) of WBGST Act for a tax period, Central authorities, in respect of same tax period and subject matter, initiated proceeding, assessee duly participated in proceeding, impugned SCN and order were to be set aside - **Bazaar Style Retail Ltd. v. Dy Comm. of State Tax** - [2024] 166 taxmann.com 93 (Calcutta)

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

- 3.7 No tax is payable on supply of service by director of company by way of providing guarantee on loans taken by company; No GST is payable on supply of services by way of extending loans by company to its subsidiary company - **Manappuram Finance Ltd. v. Uol** - [2024] 165 taxmann.com 401 (Kerala)
- 3.8 Where Competent Authority had confirmed demand of GST against assessee engaged in supply of 'Fish Meal', assessee was to be directed to file statutory appeal before Appellate Authority and same was to be decided subject to decision of SC on classification of 'Fish Meal' - **Pearl City Marine Products (P.) Ltd. v. Addl Comm.** - [2024] 165 taxmann.com 524 (Madras)

- 3.9 Shareholding by parent company not taxable as supply of service under GST; taxability of external commercial borrowings to be reconsidered after giving opportunity to assessee - **A.O. Smith India Water Products (P.) Ltd. v. State of Karnataka** - [2024] 166 taxmann.com 613 (Karnataka)

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

- 3.10 Where SCN was issued to petitioner demanding tax on royalty and same was challenged on grounds that royalty itself was tax, therefore there was no tax payable on same, since it was settled in Mineral Area Development Authority v. Steel Authority of India [2024] 164 taxmann.com 806 (SC) by Apex court holding that royalty is not a tax and its merely a contractual consideration paid by mining lessee to lessor, contention of petitioner could not be appreciated and petitioner was to be disposed of - **Mahesh Sharma v. Uol** - [2024] 166 taxmann.com 110 (Chhattisgarh)
- 3.11 Where when assessee had executed construction work, GST was charged @ 12% on total value of Work Order, however, GST authority fixed GST to be payable @ 18% of total value of Work Order, since said issue of additional 6% was still pending before National Rural Infrastructure Development Agency (NRIDA), instant W.P. was to be disposed of without going into merits - **Shibesh Kumar Das v. Jt Commr., Commercial Taxes & State GST** - [2024] 166 taxmann.com 362 (Calcutta)
- 3.12 Where assessee's contentions on classification of goods and ITC mismatch were not properly addressed, order set aside and matter remanded for fresh consideration after providing reasonable opportunity to assessee - **Tvl. Boomi Agro Needs v. Jt Commr. of Commercial Taxes** - [2024] 164 taxmann.com 791 (Madras)

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

- 3.13 Where assessee claimed tax exemption but failed to submit supporting documents, matter remanded to allow opportunity to establish eligibility for exemption - **B.T. Ghuge Civil Engineer and Contractor v. Uol** - [2024] 164 taxmann.com 725 (Bombay)

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

- 3.14 Where ITC was denied for belated claim, it was directed reconsideration based on CBIC circular clarifying time limit for ITC availment in reverse charge cases - **Bosch Ltd. v. State of Karnataka** - [2024] 165 taxmann.com 445 (Karnataka)
- 3.15 Where assessee had wrongly claimed ITC and thereafter reversed said ITC in its entirety by filing Form GSTR-3B before any notice was issued to assessee, it could be concluded that assessee was an honest tax payer, therefore, impugned order passed against assessee raising demand for excess claim of ITC was to be set aside and matter was to be remanded for fresh consideration - **Kurian Tharayil Sabu v. State Tax Officer, Tax Payer Circle, Vyttila** - [2024] 166 taxmann.com 51 (Kerala)

- 3.16** Where impugned order was passed confirming demand on account of discrepancy in GSTR 2A and GSTR 3B, since assessee had not submitted proper documents to distant itself from proposals made in DRC 01, an opportunity was to be granted to assessee to explain same and impugned order was to be set aside - **Tvl. Global Energies v. Asst Commr (ST) (IU) - [2024] 166 taxmann.com 83 (Madras)**
- 3.17** ITC cannot be denied solely because GST payments made against provisional GSTIN do not reflect against permanent GSTIN without examining if payments were actually made against provisional GSTIN - **Key Systems v. State Tax Officer - [2024] 165 taxmann.com 741 (Kerala)**
- 3.18** Where ITC claim was rejected due to late filing of GSTR-3B, High Court granted interim relief based on proposed legislative amendment, subject to partial deposit - **Adhiraj Distributors Ltd. v. Addl Commr of Revenue - [2024] 165 taxmann.com 439 (Calcutta)**
- 3.19** Where assessee claimed ITC on purchases of peanuts, paddy and galla, however, it had only brought on record tax invoices, e-way bills and payment through banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof had been provided, actual physical movement of goods and genuineness of transportation as well as transaction could not be established and, thus, impugned orders denying ITC were to be upheld - **Anil Rice Mill v. State Of U.P. - [2024] 166 taxmann.com 314 (Allahabad)**
- 3.20** Where entire communication including show cause notice alleging mismatch in GSTR 2A and GSTR 3B and consequential orders were uploaded on common portal under 'view additional notices' tab and assessee was not aware of same, since assessee had no occasion to view said column and impugned order was passed without affording an opportunity of hearing to assessee, same was to be set aside and matter was to be remanded - **Tvl. Bright Power Projects India (P.) Ltd. v. Asst Commr (State Tax) - [2024] 166 taxmann.com 145 (Madras)**
- 3.21** Where registration of assessee was cancelled and proceedings were initiated thereafter, whereas, all notices and orders were uploaded on portal and not physically handed over to assessee, since assessee could not access portal post cancellation, impugned order was in violation of principles of natural justice, thus same was to be set aside - **SLA Enterprises v. Dy State Tax Officer-II - [2024] 166 taxmann.com 210 (Madras)**
- 3.22** Where SCN was issued alleging that supplier from whom petitioner had claimed input tax credit was non-existent and engaged in bill trading activities, petitioner should respond to said notice and if still aggrieved, seek judicial review; W.P. filed without responding to show cause notice was not maintainable - **Sumathi Enterprises v. Assistant Commissioner (ST) - [2024] 166 taxmann.com 602 (Madras)**
- 3.23** Where tax was confirmed against assessee for mismatch between GSTR 3B and GSTR 2A, since assessee was not aware of proceedings as notices and orders were uploaded in 'view additional notices and orders' tab on portal, interest of justice warranted that an opportunity be provided to assessee to contest tax demand - **Tvl. Rana Granites v. Assistant Commissioner (ST), Krishnagiri - [2024] 166 taxmann.com 300 (Madras)**
- 3.24** Registered person was entitled to take input tax credit in any return under section 39 filed up to 30-11-2021 - **Sushee Infra and Mining Ltd. v. Union of India - [2024] 166 taxmann.com 633 (Gauhati)**
- 3.25** Where assessee had challenged order, issued in Form GST DRC-07 by revenue whereby, assessee was directed to pay Rs. 42,58,557 under Section 73, along with interest and penalty on alleged ground that Input Tax Credit had been availed in contravention of Section 16(2)(c), instant writ petition was to be disposed of directing assessee to avail statutory remedy of appeal under Section 107 - **Sursarita Vanija (P.) Ltd. v. Principal Commissioner of Central Goods and Services Tax - [2024] 166 taxmann.com 631 (Jharkhand)**
- 3.26** Where assessee's registration was cancelled and thereafter restored, due to which, assessee filed belated returns and impugned order was passed confirming demand, same was to be set aside in view of finance bill 2024, which proposed to regularize delay in filing ITC - **Tvl. Muthu Rathina Indane Gas Agencies v. Joint Commissioner (ST) (Intelligence) - [2024] 166 taxmann.com 231 (Madras)**
- 3.27** Where a notice was issued to assessee alleging certain discrepancies in respect of claim of ITC in GSTR-3B and GSTR-2A returns and assessee had filed response to same along with certain documents, however impugned order was passed without giving any further opportunity to assessee to substantiate its claim, impugned order was to be set aside and matter was to be remanded - **Noor Jewel Impex v. Assistant Commissioner (ST), Vepery Assessment Circle - [2024] 166 taxmann.com 233 (Madras)**
- 3.28** Where assessee did not file reply to notice issued by Authority for alleged discrepancies and excess availment of ITC, as assessee was under impression that its consultant must have filed suitable reply, since impugned order confirming demand was passed without hearing assessee, same was to be set aside for being in violation of natural justice - **Tvl. Balaji Trading Company v. Assistant Commissioner (ST), Kothawalchavadi Assessment Circle - [2024] 166 taxmann.com 271 (Madras)**
- 3.29** Where assessee had already submitted reply to show-cause notice issued alleging excess claim of ITC, however same was rejected by simply stating 'not satisfied' and without assigning adequate reason, order passed thereafter confirming tax liability was in violation of principles of natural justice, thus, same could not be sustained - **Ella Tea Industry v. Deputy State Tax Officer - [2024] 165 taxmann.com 820 (Madras)**



- 3.30** Input tax credit disallowance based on supplier's retrospective GST registration cancellation requires reasoned order after giving purchaser opportunity to prove receipt of goods and tax payment - **APN Sales and Marketing v. Union of India** - [2024] 164 *taxmann.com* 789 (Delhi)
- 3.31** Where pursuant to show cause notice issued to assessee alleging excess claim of ITC etc., impugned order was passed confirming demand without considering contentions advances by assessee in its reply, impugned order being unreasoned was to be set aside and matter was to be remanded - **Sree Ananta Exim v. Union of India** - [2024] 165 *taxmann.com* 592 (Delhi)
- 3.32** Where assessee claimed that due to mismatch between GSTR-1 filed by supplier and GSTR-3B filed by assessee certain ITC, to which assessee was entitled, had not been granted and he had already filed application for rectification of assessment order, Competent Authority was to be directed to consider and pass orders on said application after affording an opportunity of hearing to assessee - **Rinshad Maliyam Karim v. State Tax Officer, State Goods and Services Tax Department** - [2024] 165 *taxmann.com* 556 (Kerala)
- 3.33** Assessee filed return for tax period February, 2018 to March, 2018 on 31-7-2019, determination under section 73 of GST Act made, assessee's bank account attached, major part of tax liability already recovered from electronic credit ledger, in view of amendment of section 16 of CGST Act, notice attaching assessee's bank account was to be set aside and matter remanded - **North Land Construction v. State of West Bengal** - [2024] 166 *taxmann.com* 127 (Calcutta)
- 3.34** Where issue of delay in availing input tax credit was addressed by GST Council in its 53rd Meeting held on 22-6-2024 and was being remedied under Finance (No. 2) Bill, 2024 whereby delay in availing ITC was being condoned, impugned demand on account of alleged delay in availing ITC was to be set aside and case was to be remitted back for fresh consideration - **Tvl. Vectra Computer Solutions v. Commissioner of Commercial Taxes, Chennai** - [2024] 165 *taxmann.com* 665 (Madras)
- 3.35** Where assessee's claim of Input Tax Credit was wrongly rejected under section 73 as no reasons were provided for said rejection and since neither date for personal hearing was fixed nor any reason had been assigned for initiating proceedings under Section 73, impugned order rejecting ITC claim could not be sustained in eyes of law and same was to be quashed and matter was to be remanded back to revenue - **Arihant Steel v. State of U.P.** - [2024] 166 *taxmann.com* 92 (Allahabad)

- 3.36** Where ITC reflected in GSTR 2A was not properly considered in assessment, matter remanded for fresh consideration after providing reasonable opportunity to assessee - **Oasys Cybernetics (P.) Ltd. v. State Tax Officer** - [2024] 164 *taxmann.com* 581 (Madras)
- 3.37** Where assessee was denied benefit of Input Tax Credit on ground of delayed availing of same, in view of Finance (No.2) Bill, 2024, said order was to be set aside and matter was to be remitted back to Adjudicating Authority to pass fresh order - **Kannan Mahalingam v. Commissioner of GST & Central Excise** - [2024] 165 *taxmann.com* 487 (Madras)
- 3.38** Where assessee could not reply to show-cause notice issued for mismatch between GSTR 2A, GSTR 07 and GSTR 3B due to ailing kidney problem and impugned order was passed, same was to be set aside and matter was to be remanded for fresh consideration - **Tvl. M. Muthupandi v. Deputy State Tax Officer-1** - [2024] 165 *taxmann.com* 489 (Madras)

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

- 3.39** Where assessment orders were passed after issuance of show cause notices in Form DRC-01A, since assessee did not file reply to said notices, it was fault of assessee, however assessee was to be permitted to file appeal within 30 days - **Gog Steel Alloys (P.) Ltd. v. State Tax Officer (FAC)** - [2024] 166 *taxmann.com* 823 (Madras)

#### RULE 23 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 - REVOCATION OF CANCELLATION OF REGISTRATION

- 3.40** Where assessee's registration cancelled for not depositing returns, assessee willing to pay tax and other dues for return to be accepted by department, following directions in assessee's own case in *Mohanty Enterprises v. Commissioner CT & GST & Ors.*, W.P.(C) No.30374 of 2022, decided on 16-11-2022, assessee was to be given relief by condoning delay - **Mononit Das v. State Tax Officer, Cuttack** - [2024] 166 *taxmann.com* 259 (Orissa)

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

- 3.41** Where impugned order cancelling registration of assessee was passed without assigning any reason, reasons are heart and soul of any judicial and administrative order and in absence of same order cannot be justified in eye of law, impugned order was to be set aside - **Archana v. State of U.P.** - [2024] 166 *taxmann.com* 401 (Allahabad)
- 3.42** Where registration of assessee was cancelled without assigning any reason in order terminating cancellation or in show cause notice, same was a clear violation of natural justice, therefore order cancelling registration was to be set aside and registration was to be restored - **D K Enterprises v. Superintendent** - [2024] 166 *taxmann.com* 80 (Andhra Pradesh)

- 3.43** Where date of show cause notice issued to assessee proposing to cancel registration and order cancelling registration was same, such order was to be set aside for being cryptic in view of judgement passed in Aggarwal Dyeing and Printing Works v. State of Gujarat [2022] 137 taxmann.com 332 (Gujarat) - **Himat Trading Co. v. Union of India** - [2024] 166 taxmann.com 84 (Gujarat)
- 3.44** Assessee's registration cancelled and application for revocation of cancellation also rejected, no particulars of fraud and misstatement or suppression disclosed in show cause notice, no reasons disclosed for cancellation, impugned order vague and non-speaking was to be set aside - **Indrajit Roy v. Superintendent, Barasat Range IV** - [2024] 166 taxmann.com 371 (Calcutta)
- 3.45** Where assessee's registration cancelled for failure to file returns for continuous period of six months, respondents case was not that assessee had been adopting dubious process to evade tax, suspension/cancellation of registration works against interest of revenue, impugned order was to be set aside subject to conditions - **Pranabesh Sarkar v. Superintendent, CGST & CX** - [2024] 166 taxmann.com 377 (Calcutta)
- 3.46** Tax authorities must process GST registration cancellation expeditiously upon business cessation, without delay for pending tax assessments, while ensuring proper communication channels - **B.R. Enterprises v. Principal Commissioner of Goods and Service Tax** - [2024] 165 taxmann.com 443 (Delhi)
- 3.47** GST registration cancellation order passed without proper consideration of assessee's reply to show cause notice is liable to be set aside for fresh consideration - **Arya Cine Entertainment v. State of U.P.** - [2024] 165 taxmann.com 442 (Allahabad)
- 3.48** Cancellation of GST registration without proper show cause notice cannot be retrospective; effective from date of show cause notice only - **Anwar Ali v. Additional Commissioner of CGST Delhi** - [2024] 165 taxmann.com 440 (Delhi)
- 3.49** Where assessee had challenged show cause notice issued for cancellation of GST registration, along with a suspension order and had asked for documents from revenue which had been referred to containing specific details as mentioned in show cause notice but such documents had not been supplied till date, Instant writ petition was to be disposed of directing revenue to provide all documents referred to in show cause notice - **Baba Industries v. Union of India** - [2024] 166 taxmann.com 349 (Allahabad)

- 3.50** GST registration cancellation without proper hearing opportunity and time-barred appeal restored, granting assessee another chance to prove existence - **Alufab Ores (P.) Ltd. v. Department of Trade and Taxes** - [2024] 165 taxmann.com 771 (Delhi)
- 3.51** Cancellation of assessee's GST registration with retrospective effect was in violation of principles of natural justice as SCN issued by revenue did not propose cancellation of assessee's GST registration with retrospective effect, therefore, instant writ petition was to be disposed of directing revenue to restore assessee's GST registration for a period of thirty days to enable assessee to file its returns - **Bansal Exim v. Commissioner of DGST, Delhi** - [2024] 166 taxmann.com 481 (Delhi)
- 3.52** Where assessee's GST registration was cancelled due to default in payment of tax, cancellation order was set aside and restoration of registration directed, allowing assessee to file returns and remit outstanding dues within specified timeframe - **Chendur Film International v. Superintendent of GST & Central Excise** - [2024] 165 taxmann.com 775 (Madras)
- 3.53** Where assessee challenged order of cancellation of registration on ground of not providing opportunity of hearing and order was passed without assigning any reason for cancellation, appeal against cancellation was dismissed on ground of limitation, impugned orders were to be set aside and matter was to be remanded with directions - **Ashish Ghanshyambhai Surani v. Joint Commissioner (Appeals)** - [2024] 166 taxmann.com 538 (Gujarat)
- 3.54** Denial of opportunity of hearing vitiates proceedings as well as orders cancelling registration - **Jai Nath Rai Construction v. State of U.P.** - [2024] 166 taxmann.com 593 (Allahabad)
- 3.55** Where High Court had directed GST authorities to consider application for cancellation of GST registration in expeditious manner and GST authorities had taken decision on said application, contempt petition filed for alleged wilful disobedience of said direction was not maintainable - **Shri Vaishnavi International v. Ms. Chanchal Yadav** - [2024] 166 taxmann.com 604 (Delhi)
- 3.56** Where GST registration was cancelled on ground of non-existence at registered address, petitioner was at liberty to file appeal before appellate authority along with relevant documents in support of its contention that it was existing at its principal place of business - **AK Enterprises v. Sales Tax Officer Class II/AVATO** - [2024] 166 taxmann.com 584 (Delhi)
- 3.57** Order of cancellation of registration passed without providing opportunity of hearing and without assigning any reason was not sustainable; matter was to be remanded to Assessing Officer at show-cause notice stage - **Jay Ambe Enterprise v. Deputy State Tax Commissioner** - [2024] 166 taxmann.com 548 (Gujarat)

- 3.58** Cancellation of registration could not be made effective retrospectively when reasons for such cancellation were not provided in Show Cause Notice but were provided in order of cancellation; cancellation of registration would be effective from date of issuance of SCN - **Balaji Industries (Vipin Kumar) v. Principal Commissioner CGST Delhi North Commissionerate** - [2024] 166 taxmann.com 653 (Delhi)
- 3.59** Where petitioner was seeking initiation of contempt proceedings against respondent authority for wilful disobedience of directions of court in W.P.(C) No. 10636/2024, dated 2-8-2024, however, submitted that direction of court had since been complied and GST registration had been cancelled, instant contempt petition was to be dismissed as withdrawn - **AG Traders v. Ms. Chanchal Yadav, Principal Commissioner of Department of Trade and Taxes** - [2024] 166 taxmann.com 615 (Delhi)
- 3.60** Where order of cancellation of registration was passed without giving any reason and without giving assessee an opportunity of hearing, order cancelling registration was to be set aside and matter was to be remanded to Assessing officer at show cause notice stage - **R C Construction v. State of Gujarat** - [2024] 166 taxmann.com 213 (Gujarat)
- 3.61** Order cancelling registration was not sustainable when details, particulars, etc., as regards alleged violation of rule 86B were not mentioned either in show cause notice or in order; registration was to be restored - **Mohammed Sadiq v. Superintendent** - [2024] 166 taxmann.com 664 (Karnataka)
- 3.62** Where impugned order cancelling registration of assessee retrospectively was passed without giving any cogent reason and without providing any hearing opportunity to assessee, same was to be set aside for being in violation of principles of natural justice - **Chauhan Construction Co. v. Commissioner of DGST** - [2024] 166 taxmann.com 273 (Delhi)
- 3.63** Where show cause notice issued to assessee for cancellation of its registration, registration also suspended, impugned notice did not provide specific reason for proposing to cancel registration and merely reproduced Rule 21(b) of CGST Rules, also did not indicate which bill or transaction was alleged to be in non-compliance of statutory provisions, respondent authorities were to be directed to restore assessee's registration forthwith. - **PRINCE GARG v. AVATO WARD 63 STATE GOODS** - [2024] 165 taxmann.com 841 (Delhi)
- 3.64** Where GST registration of petitioner's father was cancelled retrospectively by impugned order on ground that it had not filed returns for a continuous period of six months and in fact assessee's father had expired and since then none of its legal heirs had carried on business, impugned order was to be modified to extent

that it would be operative from date on which assessee's father expired - **Varun Kumar Arya v. Commissioner of Delhi Goods and Service Tax** - [2024] 165 taxmann.com 630 (Delhi)

- 3.65** Where vide orders dated 21-9-2019 and 19-3-2020, provisional registration of petitioner was cancelled, another order passed on 19-3-2020 cancelling registration w.e.f. 1-7-2017, without specifying any reason, based on show cause notice stating returns had not been filed for a continuous period of six months, there was no cause for petitioner to file returns after cancellation of registration, cancellation was not to be sustained - **Rajni Gupta v. Principal Commissioner, State GST** - [2024] 166 taxmann.com 288 (Delhi)
- 3.66** Where impugned order did not state any reasons for cancellation of registration retrospectively, registration could not be cancelled mechanically, merely because a taxpayer had not filed returns for some period did not mean taxpayer's registration was required to be cancelled with retrospective date - **Rajni Gupta v. Principal Commissioner, State GST** - [2024] 166 taxmann.com 288 (Delhi)
- 3.67** Where GST registration was cancelled due to non-existence at registered address, but assessee claimed operation from additional registered place of business, verification and potential restoration of registration was directed, subject to rectification of principal place of business details - **Shivoy Enterprises v. Commissioner of CGST** - [2024] 164 taxmann.com 726 (Delhi)
- 3.68** Where petitioner-assessee did not reply to show cause notices issued by respondent no.3-department as show cause notices did not reach petitioner-assessee physically and cancellation of registration could have resulted in petitioner-assessee not looking into mails sent to E-Mail ID which was registered with respondent no 3-department, therefore, writ petition was allowed and order of cancellation was set aside - **Somaprasanth Karampudi v. Union of India** - [2024] 166 taxmann.com 237 (Andhra Pradesh)
- 3.69** Cryptic show cause notice for GST registration cancellation lacking necessary details set aside - **Rayees Metals v. Deputy State Tax Officer** - [2024] 164 taxmann.com 646 (Telangana)
- 3.70** Where registration of assessee was cancelled pursuant to a letter issued by GST officer, which was not furnished along with SCN issued to assessee so as to eliciting proper response from assessee, cancellation of registration was in violation of natural justice and thus same was to be set aside - **Shakti Metals v. Commissioner, Central Goods and Services Tax** - [2024] 165 taxmann.com 519 (Delhi)
- 3.71** Where assessee's registration cancelled, show cause notice did not specify any intelligible reason for proposing to cancel registration, did not set out any particulars regarding fraud or indicate any statement which alleged to be a misstatement or provide any details of facts which were allegedly suppressed, show cause notice cryptic and failed to meet standards of notice, show cause notice and impugned order were liable to be set aside - **Nutech Appliances v. Superintendent, Range-35, Central Goods and Services Tax** - [2024] 166 taxmann.com 99 (Delhi)



**3.72** Firm in which petitioner partner dissolved on 1-7-2021, partners sought cancellation of firm's registration, SCN dated 14-6-2021 issued and registration cancelled retrospectively as no reply furnished to SCN, petitioner stated that subsequently he become aware that order passed under section 73 of CGST Act raising a demand, petitioner submitted instant petition confined to seeking copies of returns and documents to enable petitioner to pursue its appellate remedy, alternate relief claimed by petitioner was to be allowed - **Nishant Tandon v. Commissioner, CGST** - [2024] 166 taxmann.com 64 (Delhi)

**3.73** Where registration of assessee was cancelled retrospectively on ground of non-filing of returns, due to which, assessee could not access portal and view notices including notice for personal hearing, impugned order was to set aside and same was to be treated as addendum to show cause notice - **Magic Pearls Fine Arts v. Deputy State Tax Officer-2** - [2024] 165 taxmann.com 520 (Madras)

**3.74** Where assessee's office was located in a hotel owned by assessee, management of which was changed, assessee's registration cancelled retrospectively as hotel's reception could not provide details about assessee to respondent authorities, show cause notice and impugned order recorded no reason for proposing to cancel/ cancellation of registration, show cause notice as well as impugned order were liable to be set aside - **Scope Promoters (P.) Ltd. v. Commissioner Of Central Goods And Services Tax** - [2024] 166 taxmann.com 13 (Delhi)

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

**3.75** Delay in filing application for revocation of cancelled registration could be condoned subject to payment of tax, interest, penalty and late fee - **Bimal Kishore Sahu v. Additional Commissioner, GST (Appeals)** - [2024] 166 taxmann.com 512 (Orissa)

**3.76** Where application of assessee seeking revocation of application was rejected as assessee failed to reply to notice issued pursuant to filing of such application and also failed to appear on appointed date, since assessee sought opportunity to respond to allegations, order rejecting revocation application was to be set aside to enable assessee to respond to allegations on basis of which cancellation order was sustained - **SS Enterprises v. Principal Commissioner, CGST** - [2024] 166 taxmann.com 303 (Delhi)

**3.77** Where GST Competent Authority had issued a show cause notice on assessee demanding certain amount on account of discrepancies in returns filed by assessee for financial years 2017-18 to 2022-23 and thereafter passed an order confirming demand raised in show cause notice, since impugned assessment order was passed even before period of 30 days

mentioned in show cause notice had elapsed, there was violation of principles of natural justice and impugned order was to be set aside - **Avexa Corporation (P.) Ltd. v. State Of Andhra Pradesh** - [2024] 166 taxmann.com 190 (Andhra Pradesh)

**3.78** Delay in filing GST registration revocation application condoned, directing consideration of revocation subject to payment of dues and compliance with formalities - **Raghunath Mohapatra Art & Craft Foundation v. Commissioner of CT & GST** - [2024] 164 taxmann.com 597 (Orissa)

#### SECTION 35G OF THE CENTRAL EXCISE ACT, 1944 - HIGH COURT - APPEAL TO

**3.79** Appeal lies to Supreme Court when case falls within the phrase "determination of any question relating to rate of Service tax"; appeal to High Court is not maintainable - **Principal Commissioner CGST, Gurugram v. Hitachi Metal India (P.) Ltd.** - [2024] 163 taxmann.com 707 (Punjab & Haryana)

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

**3.80** Where assessee after availing ITC, filed GSTR-3B for September, 2020 with a delay of one day and due to COVID-19 situation, however GST officer refused to condone delay and also proposed to reverse ITC vide impugned notice issued in GSTR 01A, same was to be set aside in view of recommendations issued by 53rd GST council to extend deadlines in filing GSTR 3B for relevant time - **Ohm Sakthi Blue Metals v. Superintendent of GST & Central Excise** - [2024] 166 taxmann.com 114 (Madras)

**3.81** Where an adjudication order was passed under section 73(9) for reason that assessee had availed ITC by filing GSTR-3B after last date, since in Finance Bill No. 2 of 2024, a provision has been made by proposing an amendment to section 16(4) so as to entitle registered persons to benefit of ITC in any return filed under section 39 up to 30-11-2021, assessee was to be allowed interim protection against any coercive action - **Cart Infralog Ltd. v. Assistant Commissioner of CGST & CX** - [2024] 165 taxmann.com 399 (Calcutta)

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

**3.82** Where assessee challenged assessment order for Assessment Year 2018-19 on grounds of limitation, interim stay was granted, holding prima facie that three-year limitation period under Section 73(10) of CGST Act begins from original due date of filing annual return, not from extended date - **S.S. Enterprises v. Union of India** - [2024] 165 taxmann.com 322 (Patna)

#### SECTION 50 OF THE CUSTOM ACT, 1962 - ENTRY OF GOODS FOR EXPORTATION

**3.83** If party is able to show proof of supply to SEZ Unit, then non-submission of "Bill of Export" cannot be treated as non-discharge of proof of Export Obligations - **Phoenix Industries Ltd. v. Union of India** - [2024] 166 taxmann.com 101 (Bombay)

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

- 3.84** Levy of GST on concession fees paid by duty-free shop operator to airport authority held revenue neutral, as operator entitled to input tax credit on zero-rated supplies - **Flemingo Dutyfree Shop (P.) Ltd. v. Union of India** - [2024] 165 taxmann.com 706 (Gujarat)
- 3.85** Errors in GSTR-1 filing leading to non-processing of refunds require consideration of representation and opportunity of hearing before passing orders - **A. Abdul Latheef v. State Tax Officer** - [2024] 165 taxmann.com 738 (Kerala)
- 3.86** Where appeal was filed by petitioner against order-in-original and petitioner succeeded in appeal, refund application filed by petitioner which was consequential to order-in-appeal was to be directed to be processed - **Adept Artvertising Solutions (P.) Ltd. v. Commissioner of State GST, Department of Trade and Taxes** - [2024] 166 taxmann.com 537 (Delhi)
- 3.87** Where refund application had been rejected by respondent no.4-department without giving personal hearing to petitioner-assessee and respondent no.4-department had rejected refund application on basis of it being not within time prescribed under Sub Section (2) of Section 34, although, it had been recorded that petitioner-assessee's application had been filed under Section 54; therefore, order rejecting refund application passed by respondent no.4-department and appellate order passed by respondent no.1-appellate authority were quashed - **Siemens Ltd. v. Joint Commissioner of State Tax** - [2024] 166 taxmann.com 630 (Bombay)
- 3.88** Department could not withhold refund which had been directed to be issued by Appellate Authority unless same was otherwise stayed by a superior forum - **Mandy Enterprises v. Deputy Commissioner, CGST Division** - [2024] 166 taxmann.com 663 (Delhi)
- 3.89** Where revenue passed order rejecting assessee's claim for a refund, on grounds that assessee did not respond to show cause notice, remarks in said order, which claims that assessee did not respond to show cause notice or provide FIRC details, reflects a total non-application of mind on part of revenue as assessee had replied to notice and have also submitted required details, thus, matter was to be remanded back to revenue - **Claritrics India (P.) Ltd. v. Asst Commr (ST)** - [2024] 166 taxmann.com 655 (Madras)
- 3.90** High Court refused to entertain writ petition challenging rejection of refund claim as assessee had an alternative efficacious remedy of filing appeal - **GEA Westfalia Separator India (P.) Ltd. v. State of Haryana** - [2024] 165 taxmann.com 822 (Punjab & Haryana)

- 3.91** Where limitation would start from date of Original Authority's order and from that date, if sixty days period was over, then, after expiry of sixty days, dealer was entitled to get interest at maximum rate of 6%, therefore, order passed by writ court did not call for any interference, except with rate of interest of 9% allowed by writ court was modified into 6% - **Commercial Tax Officer-GD-III v. Suzlon Energy Ltd.** - [2024] 166 taxmann.com 291 (Madras)
- 3.92** Where refund claim under inverted duty structure was rejected based on circular struck down as ultra vires, rejection order set aside and matter remanded for fresh consideration - **Eveready Spinning Mills (P.) Ltd. v. Assistant Commissioner** - [2024] 164 taxmann.com 794 (Madras)
- 3.93** Instant writ petition challenging rejection of assessee's refund claim under Section 54(3)(i), passed ex parte after failure to respond to show cause notice (SCN) within the prescribed time and denial of an extension request by revenue, was to be dismissed as there was no procedural infirmity, contravention of law, or merit in assessee's case warranting interference with impugned order - **Suraj Mangar v. Assistant Commissioner of West Bengal State Tax** - [2024] 166 taxmann.com 236 (Calcutta)
- 3.94** Furnishing of Regional Energy Account (REA) for preceding month, while making an application for refund of tax in succeeding month, would be in accord with provisions of Act and Rules - **SEIL Energy India Ltd. v. Union of India** - [2024] 165 taxmann.com 558 (Andhra Pradesh)
- 3.95** Where levy of GST on Ocean Freight Services vide notification 8/2017-IT(Rate), and Notification No.10 of 2017-IT(Rate) was struck down as ultra vires in case Union of India v. Mohit Minerals (P.) Ltd [2022] 138 taxmann.com 331 (SC), thus following said judgement, instant writ petition was to be disposed of directing revenue to grant refund of Rs 13,147/- to assessee - **Viterra India (P.) Ltd. v. Union of India** - [2024] 166 taxmann.com 137 (Madras)

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

- 3.96** Failure to consider assessee's clarifications on GST return discrepancies warrants setting aside order for reconsideration with personal hearing and reasoned decision - **G. Anand v. Assistant Commissioner (ST)** - [2024] 166 taxmann.com 403 (Madras)
- 3.97** Notice was issued to assessee under section 61 of CGST Act on ground of mismatch in GSTR, in space meant for date and time of personal hearing, words 'NA' written, assessee did not submit reply, impugned notice under section 73(1) issued, assessee did not submit reply and moved adjournment application and for granting opportunity of personal hearing, impugned order passed, law settled in Mohan Agencies v. State of U.P. & Anr., Writ Tax No. 58 of 2023, dated 13-2-2023, inapplicable in facts of case, writ petition was to be dismissed, leaving it open for assessee to file appeal - **Savitri Tech and Infra Works (P.) Ltd. v. State of U.P.** - [2024] 165 taxmann.com 800 (Allahabad)

**3.98** Where there was a discrepancy in GSTR 1 and GSTR 3B filed by assessee, and impugned order was passed without considering reply of assessee explaining such discrepancy, impugned order was to be set aside for being in violation of principles of natural justice and matter was to be remitted - **Tvl. Elango Auto Electricals v. Deputy State Tax Officer - [2024] 165 taxmann.com 819 (Madras)**

**3.99** Where assessee filed writ petition challenging order passed by respondent authority confirming demand for difference of turn over reported in GSTR-7 and GSTR-3B, and contended that no prior notices were issued to assessee, in view of fact that assessee might have a case on merit, impugned order was to be set aside and matter was to be remanded - **Sundarapandian v. State Tax Officer - [2024] 165 taxmann.com 594 (Madras)**

**3.100** Where notices under CGST Act were issued without granting adequate response time as per Section 61, demand orders set aside and matter remanded for proper opportunity to respond - **Sri Saidurga Automobiles v. Assistant Commissioner, State Tax - [2024] 164 taxmann.com 584 (Andhra Pradesh)**

**3.101** Show-cause notice under Section 74(1) of GST Act upheld when proper scrutiny procedure under Section 61 was followed, including issuance of discrepancy notice and seeking explanation - **PepsiCo India Holdings (P.) Ltd. v. Union of India - [2024] 166 taxmann.com 10 (Patna)**

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

**3.102** Where registration of assessee had been cancelled retrospectively and thereafter impugned orders of assessment were passed with regard to output tax liability, which were not noticed by assessee due to cancellation of registration, impugned orders were to be set aside and matter was to be remanded on condition that assessee admitted its tax liability - **Global Distributors v. Assistant Commissioner - [2024] 166 taxmann.com 82 (Kerala)**

**3.103** Where impugned assessment order was passed ex parte as notices were uploaded on common portal which assessee failed to notice and could not file reply thereto, impugned assessment order was to be set aside with direction to assessee to deposit additional 15 per cent of disputed tax amount; matter was to be remanded for fresh consideration - **Tvl. Priyam Agencies v. Commissioner of Commercial Taxes, Chennai - [2024] 165 taxmann.com 405 (Madras)**

#### SECTION 63 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - ASSESSMENT - UNREGISTERED PERSONS

**3.104** Prior authorization is not required for conducting assessment based on inspection or audit as per section 63 of APGST/CGST Act, 2017 - **Sri Srinivasa Lorry Transport v. Assistant Commissioner ST - [2024] 166 taxmann.com 671 (Andhra Pradesh)**

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

**3.105** Show cause notice under GST Act overlapping with period of concluded audit raises jurisdictional issue, requiring adjudication order to be withheld pending resolution - **J K Chemicals v. Assistant Commissioner - [2024] 165 taxmann.com 707 (Calcutta)**

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

**3.106** Where on account of said search and seizure operations conducted by Superintendent, Central Tax (HPU), assessee was not in a position to submit a detailed reply to SCN issued under section 73 as all documents, books of accounts, registers, computer data, hard disk were seized, thus, order issued under section 73 was to be set aside and matter remitted back to revenue for reconsideration to stage of submitting reply to SCN - **Vijaya Trading Company v. State of Karnataka - [2024] 166 taxmann.com 454 (Karnataka)**

**3.107** Where petitioners prayed for refund of amount which they were compelled to deposit during course of raid, Challan indicated that deposit was voluntary against entry cause of payments, issues contentious, directions for refund of deposit not to be considered, petitioners however, entitled to apply for refund without waiting for adjudication of show cause notice - **Aimlay (P.) Ltd. v. Commissioner of Central Tax, Delhi West - [2024] 166 taxmann.com 249 (Delhi)**

**3.108** Where assessee challenged provisional attachment of bank accounts and sought return of seized assets, Commissioner was directed to provide copies of seized documents/data to assessee and return seized items within statutory time limit, while allowing Commissioner to retain items temporarily if required - **Aimlay (P.) Ltd. v. Commissioner of Central Tax, Delhi West - [2024] 165 taxmann.com 662 (Delhi)**

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

**3.109** Where GST Act lacks specific route declaration requirement, mere interception of goods on different route does not imply tax evasion intent, precluding penalty without cogent evidence - **Exide Industries Ltd. v. Additional Commissioner Grade-II (Appeal)-1 - [2024] 164 taxmann.com 579 (Allahabad)**

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

**3.110** When assessee, summoned by Revenue Authority, expressed willingness to cooperate and provide information, High Court quashed summons and instructed assessee to appear before designated officer for further proceedings - **Ganpathi Alloys v. Union of India - [2024] 166 taxmann.com 355 (Bombay)**



# 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

- 3.111** Where Asst order was challenged for non-consideration of material and jurisdictional issues, order partly set aside and remanded for reconsideration with reasonable opportunity to assessee, directing partial payment of disputed tax - **JSR Infra Developers (P.) Ltd. v. State Tax Officer - [2024] 165 taxmann.com 708 (Madras)**
- 3.112** Where impugned GST Asst order was passed without proper notice or opportunity to rectify returns mismatch, order set aside and fresh hearing directed after partial deposit, upholding principles of natural justice - **Tvl. Cuuro Motors v. Appellate Dy Commissioner (ST), Chennai - [2024] 165 taxmann.com 705 (Madras)**
- 3.113** Where assessee had filed reply to SCN within stipulated time, however assessee was not notified with regard to date of personal hearing before passing impugned order, in view of order passed in Alfa City infra (P.) Ltd. v. Chief Commissioner of Central Tax, Goods and Services Tax [2024] 165 taxmann.com 208 (Orissa), all orders pursuant to SCN were to be set aside - **Shree Mahabir Corporation v. Chief Commissioner of Central Tax and GST - [2024] 166 taxmann.com 52 (Orissa)**
- 3.114** Where impugned order of Adjudicating Authority proceeded on basis that assessee had not responded to notice, whereas assessee had filed response along with relevant comparative statements, impugned order suffered from violation of principles of natural justice, therefore, warranted interference - **Tvl. N.A.R. Stores v. State Tax Officer, Office of the Commercial Tax Officer - [2024] 166 taxmann.com 53 (Madras)**
- 3.115** Notification extending time limit u.s. 73(9) of CGST Act challenged as ultra vires Section 168A for lack of GST Council recommendation; interim stay granted on coercive action pending final decision - **Arunakhel Sports and Events (P.) Ltd. v. Union of India - [2024] 165 taxmann.com 663 (Gauhati)**
- 3.116** Order passed u.s. 73 and demand made in Form GSTDRC-07, with regard to certain discrepancies in its returns, inter alia, alleging short payment of tax/excess availment of ITC against assessee was to be set aside as proper officer without giving any opportunity of hearing had concluded proceeding, from documents on record, which was in violation of natural justice - **Vijay Krishna Gupta v. State of WB - [2024] 166 taxmann.com 453 (Calcutta)**
- 3.117** Where notices were only uploaded on GST portal without proper intimation, Asst order set aside for violation of natural justice principles, directing fresh hearing subject to partial deposit - **Tvl. Zulaikha Motors (P.) Ltd. v. Assistant Commissioner (ST) - [2024] 166 taxmann.com 383 (Madras)**

- 3.118** Where SCN and order under GST Act were only uploaded on portal without physical service, order set aside and matter remanded, directing deposit of 10% tax demand, reply filing, and personal hearing before fresh order - **Candour Auto Components v. Dy Commercial Tax Officer - [2024] 165 taxmann.com 774 (Madras)**
- 3.119** GST proceedings against closed business with different PAN remanded for de novo hearing with reasoned order - **Anand Swaroop Rastogi v. State Of U.P. - [2024] 165 taxmann.com 772 (Allahabad)**
- 3.120** Writ petition challenging GST adjudication order after appeal period expiry may be disposed with leave to file belated statutory appeal, subject to conditions - **Bhakat Battery House v. State of WB - [2024] 165 taxmann.com 773 (Calcutta)**
- 3.121** Where assessee had changed its place of business and had also intimated department about same, however SCN and order in original were communicated on old address, it was fault on part of respondent authority that assessee became unaware of entire proceedings, accordingly, impugned order in original was to be set aside and matter was to be remanded for fresh consideration - **Nocsmart Software Solutions (P.) Ltd. v. Dy Commr of CGST and Central Excise - [2024] 166 taxmann.com 113 (Madras)**
- 3.122** Where several contentions had been urged by assessee for purpose of contending that order passed by was illegal, arbitrary and without jurisdiction or authority of law, thus, without expressing any opinion of merits/demerits of rival contentions and in light of undisputed fact that impugned order was an ex-parte order which was passed without assessee contesting SCN, same was to be set aside and matter was to be remitted back - **IL and FS Solar Power Ltd. v. State of Karnataka - [2024] 166 taxmann.com 484 (Karnataka)**
- 3.123** Writ jurisdiction could not be invoked to challenge recovery of tax from electronic cash ledger and attachment of bank account when alternate remedy by way of appeal was available; however, if 10 per cent of tax in dispute was recovered, stay could be granted - **Basanti Medical Stores v. State of WB - [2024] 166 taxmann.com 510 (Calcutta)**
- 3.124** Where assessee filed reply to show cause notice in respect of each of issues mentioned in SCN, however proper officer passed impugned order recording identical observation on each issue by stating that assessee had not filed proper documents, impugned order was vitiated by complete non-application of mind and non-consideration of assessee's reply, thus, same was to be set aside and matter was to be remanded - **Paramount Shipping Services (P.) Ltd. v. Asst Commr (ST), Broadway Assessment Circle - [2024] 166 taxmann.com 147 (Madras)**
- 3.125** Where SCN was issued u.s. 73, which did not mention details of personal hearing and impugned order was passed thereafter, since SCN denying personal hearing opportunity was bad in law, consequential impugned order also became bad in law, thus impugned order and SCN were to be set aside - **Phuljhora Agro Plantation (P.) Ltd. v. Union of India - [2024] 166 taxmann.com 148 (Calcutta)**

- 3.126** Where multiple overlapping SCNs were issued, raising concerns regarding non-application of mind by department and subsequent ex parte proceedings deprived petitioner of a fair opportunity to present their case, impugned order was to be set aside - **Aadhi Cars (P.) Ltd. v. Asst Commr (ST) (FAC) - [2024] 166 taxmann.com 535 (Madras)**
- 3.127** SCN projected on portal under tab 'Additional Notices and Orders' would not be valid compliance of SCN requirement - **Binsar Automobiles v. Sales Tax Officer Class II/Avato - [2024] 166 taxmann.com 589 (Delhi)**
- 3.128** Impugned order u.s. 73 of CGST Act set aside due to lack of personal hearing opportunity; matter remanded for fresh consideration after allowing assessee to file reply and be heard, subject to payment of 10% of disputed amount - **Seshammal Jain Sanjay Kumar v. Asst Commr (ST) - [2024] 166 taxmann.com 626 (Madras)**
- 3.129** Where assessee filed reply to SCN, however impugned order was passed confirming demand stating that assessee had not filed reply, same was in violation of principles of natural justice, therefore, impugned order was to be set aside - **Sri Murugan Traders v. Commercial Tax Officer - [2024] 166 taxmann.com 230 (Madras)**
- 3.130** Ex parte order under GST Act quashed; authority directed to grant hearing and pass reasoned order within timeframe - **Aadi Shakti Ent Udyog v. GST Council - [2024] 166 taxmann.com 614 (Allahabad)**
- 3.131** Where assessee paid tax liability as per impugned orders, matter remanded for reconsideration in light of new Section 128A of CGST Act providing for deemed conclusion of proceedings - **Saptarshi v. Deputy Commissioner of State Tax, Bureau of Investigation, South Bengal HQ - [2024] 166 taxmann.com 625 (Calcutta)**
- 3.132** Where assessee was not aware of notices/communications as same were uploaded on common portal by authorities under 'view additional notices and orders' tab and impugned order was passed without granting any opportunity of hearing to assessee, same was to be set aside for violation of principles of natural justice - **V Four E Systems India (P.) Ltd. v. Deputy State Tax Officer I - [2024] 166 taxmann.com 304 (Madras)**
- 3.133** Where impugned order was passed without granting assessee an opportunity of hearing, said order was to be set aside and matter was to be remanded back to authority concerned in view of order passed in Mahaveer Trading Company v. Deputy Commissioner, State Tax [2024] 163 taxmann.com 515 (Allahabad) - **Bankey Bihari Plywood Industries (P.) Ltd. v. State of U.P. - [2024] 166 taxmann.com 272 (Allahabad)**
- 3.134** Where all notices and communications were uploaded on portal, which assessee was not aware of, and impugned order was passed without granting any opportunity of hearing to assessee, same was to be set aside for being violation of natural justice - **S. Subramaniam v. Deputy Commercial Tax Officer - [2024] 166 taxmann.com 302 (Madras)**
- 3.135** Where Verification Report was relied upon in adjudication order, but same was not referred to in show cause notice and not provided to petitioner, impugned order was to be quashed and set aside - **FIS Payment Solutions and Services India (P.) Ltd. v. Union of India - [2024] 166 taxmann.com 656 (Bombay)**
- 3.136** Where SCN was issued to assessee alleging excess claim of ITC etc. and assessee had replied to same explaining that assessee had paid taxes, interest etc. and had not availed ITC, since response of assessee was not considered while passing impugned order under section 73, same was to be set aside and matter was to be remanded - **Child Education Society v. Union of India - [2024] 165 taxmann.com 400 (Delhi)**
- 3.137** Where assessee challenged GST demand order without exhausting available statutory appeal, writ petition declined, directing assessee to pursue alternative remedy - **Gee Pee Steel v. State of Jharkhand - [2024] 164 taxmann.com 795 (Jharkhand)**
- 3.138** Impugned GST demand order set aside for failing to address assessee's contention about separate state registrations using common bank account; matter remanded for fresh consideration with opportunity of hearing - **Malaysia Airlines Berhad v. Commissioner of Delhi GST, Department of Trade and Taxes - [2024] 164 taxmann.com 796 (Delhi)**
- 3.139** Non-receipt of SCN due to valid reasons may warrant setting aside demand order and remanding for fresh consideration after allowing response - **Retrovis Fashion (P.) Ltd. v. Sales Tax Officer Class II/AVATO - [2024] 165 taxmann.com 320 (Delhi)**
- 3.140** Asst orders challenged due to GSTR-1 and GSTR-3B discrepancies quashed; matter remanded for fresh consideration with opportunity to file reply, subject to 30% tax deposit - **Tvl. A. Saravanam v. Dy State Tax Officer - [2024] 164 taxmann.com 788 (Madras)**
- 3.141** Where substantial demand pursuant to order u.s. 73 was on account of cess, assessee claimed it was dealing in dry-fruits and no cess was leviable on dry fruits, impugned order was to be set aside and matter was to be remanded to adjudicating authority for consideration afresh - **Bhagirath Mutha and Co. v. Commissioner, Delhi GST - [2024] 166 taxmann.com 235 (Delhi)**
- 3.142** Uploading SCN under 'Additional Notices' on GST portal does not constitute proper service. Impugned order set aside and matter remanded for fresh consideration with opportunity for assessee to respond - **Bablu Rana v. Proper Officer, SGST - [2024] 164 taxmann.com 721 (Delhi)**

- 3.143** Where assessee claimed non-receipt of SCN despite multiple requests, order confirming tax demand set aside and matter remanded for fresh adjudication after providing notice copy, upholding principles of natural justice - **Essence Communication (P.) Ltd. v. Commissioner of CGST, Audit-II** - [2024] 164 taxmann.com 681 (Delhi)
- 3.144** Where financial statements appeared to be prima facie prepared on basis of All India data contained in petitioner-assessee's financial statements and respondent-department did not verify financial statements, further, petitioner-assessee failed to participate in proceedings in spite of being provided several opportunities, therefore, impugned order dated 16.04.2024 was set aside on condition that petitioner-assessee would remit 10% of disputed tax - **Tvl. International Construction Co. v. Asst Commr (ST)** - [2024] 166 taxmann.com 206 (Madras)
- 3.145** Where a SCN was issued to assessee in DRC-01 and reply filed by assessee was accepted by department, however certain demands were confirmed vide impugned order in respects of defect, which was not part of notice issued in DRC 01, such order suffered from violation of principles of natural justice and same was to be quashed - **Tvl. Senthil Hardwares v. State Tax Officer** - [2024] 165 taxmann.com 559 (Madras)
- 3.146** Where non participation of petitioner-assessee was on account of not being aware of proceedings, therefore, on account of interest of justice, impugned order dated 20.12.2023 was set aside and respondent-department was directed to provide a reasonable opportunity to petitioner-assessee - **Tvl. Abraham Stores v. Asst Commissioner (ST), Chengalpattu Assessment Circle** - [2024] 166 taxmann.com 182 (Madras)
- 3.147** Where show cause notice was uploaded on portal under 'view additional notices and orders' tab and impugned order was passed thereafter under section 73, same was to be set aside with liberty to assessee to file response to SCN - **Himanshu Aggarwal Proprietor - HMV Mobile Phone Accessories Company v. Sales Tax Officer Class II** - [2024] 165 taxmann.com 555 (Delhi)
- 3.148** Where assessee was unaware of proceedings due to notices being uploaded only on GST portal, matter remitted for fresh consideration, providing opportunity to assessee to respond, subject to payment of 10% of disputed tax - **Tvl. Rasandik Auto Components (P.) Ltd. v. Assistant Commissioner (ST)(FAC)** - [2024] 164 taxmann.com 598 (Madras)
- 3.149** Where assessee ignores show cause notice and fails to appear for personal hearing despite opportunity, plea of violation of natural justice in ex-parte GST demand order is not sustainable - **Lucknow City Transport Services Ltd. v. State of U.P.** - [2024] 164 taxmann.com 596 (Allahabad)

- 3.150** Unsigned SCN and Asst order under GST Act, lacking digital or physical signature as required by Rule 26 of CGST Rules, are legally invalid and liable to be quashed - **High Noon Consulting (P.) Ltd. v. Dy Commr of State Tax** - [2024] 164 taxmann.com 593 (Telangana)
- 3.151** Where assessee failed to respond to GST notices uploaded on common portal due to unawareness, impugned order quashed and directed fresh adjudication after assessee deposits 25% of disputed tax and files consolidated reply within 30 days - **RSM Luxmi Silks v. Dy State Tax Officer** - [2024] 166 taxmann.com 36 (Madras)
- 3.152** Order u.s. 73 of CGST/OGST Act passed without opportunity of personal hearing quashed and remanded for fresh hearing after providing opportunity to assessee - **Rabindra Surgicals (P.) Ltd. v. Chief Commissioner, CT & GST** - [2024] 164 taxmann.com 562 (Orissa)
- 3.153** Where assessee was not provided sufficient opportunity for personal hearing before adjudication under GST Act, appellate authority directed to provide reasonable opportunity of hearing - **K.S. Enterprises v. Addl Chief Secretary, Ministry of Finance** - [2024] 164 taxmann.com 558 (Karnataka)

**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**

- 3.154** Where assessee claimed lack of reasonable opportunity to contest tax demand, order set aside and matter remanded for fresh consideration with directions to allow submission of additional documents and provide personal hearing, subject to assessee depositing 20% of disputed amount - **Ravi Chitra v. Asst Commr (ST)** - [2024] 166 taxmann.com 35 (Madras)
- 3.155** Where revenue passed an order u.s. 74 beyond period of limitation and also evenue had issued SCN u.s. 73 and they had passed impugned order u.s. 74, which was contrary to provisions of Section 74; order of interim stay was to be granted until next date of hearing - **Prabha Cars (P.) Ltd. v. Dy State Tax Officer-1 (ST)** - [2024] 166 taxmann.com 358 (Madras)
- 3.156** Where assessee was subjected to assessment u.s. 74 and it contended that while impugned order stated that notices in DRC-01A and DRC-01 had been uploaded, however, same had not been uploaded resulting in denying assessee an opportunity to put-forth its explanation, impugned order was to be set aside and assessee was to be granted one final opportunity - **Tvl. C.M. Promoters v. Deputy State Tax Officer** - [2024] 166 taxmann.com 78 (Madras)
- 3.157** Where AAR held unfried fryums to be taxable at rate of 18 per cent while AAAR held it exempted and ultimately GST Council held it taxable at rate of 5 per cent and CBIC circular stated that issue of past period GST upto 27-7-2023 would be regularized on 'as is' basis, since upto 27-7-2023 petitioner had not paid any GST, they could not be subjected to any levy as it was status of payment of GST by petitioner that would continue to prevail upto 27-7-2023 - **J. K. Papad Industries v. Union of India** - [2024] 166 taxmann.com 410 (Gujarat)



**3.158** Where assessment orders were challenged for lack of consideration of assessee's responses and computational errors, orders were set aside, partial payment of disputed tax directed, and fresh adjudication ordered with due opportunity of being heard - **Krishna Iron & Steen Company v. Assistant Commissioner (ST)** - [2024] 165 taxmann.com 742 (Madras)

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

**3.159** Where on very date of show cause notice, assessee was invited for personal hearing and thereafter, impugned order was passed, it was clear that statutory obligation under section 75(4) was not fulfilled by authorities, thus in light of judgement passed in Shree Sai Palace v. State of U.P. [2024] 161 taxmann.com 240 (Allahabad), impugned order was to be set aside - **Kamakshi Marketing v. State of U.P.** - [2024] 166 taxmann.com 49 (Allahabad)

**3.160** Where assessee claimed lack of reasonable opportunity to contest tax demand, matter remanded for fresh consideration with directions to allow reply submission and personal hearing - **Tvl. Shiva Shakthi Engineering Works v. Deputy State Tax Officer-I** - [2024] 166 taxmann.com 452 (Madras)

**3.161** Where assessee-proprietor could not appear for personal hearing on date fixed and when she appeared for subsequent date fixed for hearing, concerned officer was on leave, however impugned order was passed thereafter without providing any opportunity of hearing despite assessee having made a representation requesting same, impugned order was to be set aside and matter was to be remanded - **P.R. Papers v. Deputy State Tax Officer** - [2024] 166 taxmann.com 115 (Madras)

**3.162** Where date, time and venue of personal hearing were not provided in show cause notice, assessment order was to be redone after affording reasonable opportunity of hearing - **Shasthiri Senthamarai Kannan v. Deputy Commercial Tax Officer (ST)** - [2024] 166 taxmann.com 600 (Madras)

**3.163** Section 75(5) of CGST Act does not require minimum of three adjournments to be granted before passing of any order - **Sri Srinivasa Lorry Transport v. Assistant Commissioner ST** - [2024] 166 taxmann.com 671 (Andhra Pradesh)

**3.164** Opportunity of hearing is required to be given even if person does not make any request for such hearing; assessment order passed without granting personal hearing was to be set aside - **Sri Srinivasa Lorry Transport v. Assistant Commissioner ST** - [2024] 166 taxmann.com 671 (Andhra Pradesh)

**3.165** Where assessee was issued show cause notice fixing date for personal hearing, but assessee neither availed said opportunity nor filed any application for giving a further date for hearing and filed a writ petition against order confirming demand passed thereafter, same was to be dismissed as misconceived - **N A Enterprises v. State of U.P.** - [2024] 166 taxmann.com 275 (Allahabad)

**3.166** Impugned order passed without granting opportunity of personal hearing as mandated under Section 75(4) of GST Act quashed and remanded for fresh consideration after providing hearing opportunity - **Bhavesh Gordhanbhai Sagpariya v. State of Gujarat** - [2024] 164 taxmann.com 722 (Gujarat)

**3.167** Where assessee lacked reasonable opportunity to contest tax demand due to unawareness of show cause notice, impugned order set aside and matter remanded for reconsideration with directions to allow assessee's reply and provide personal hearing - **Seoyon E-Hwa Summit Automotive India (P.) Ltd. v. Deputy Commissioner (ST)** - [2024] 164 taxmann.com 648 (Madras)

**3.168** Even in a case where a person is chargeable with tax or penalty and has not requested a personal hearing, department is bound to give a personal hearing when an adverse decision is contemplated against such a person - **Vulcan Metallurgical Works v. Joint Commissioner of Commercial Taxes (Appeals), Belagavi** - [2024] 165 taxmann.com 667 (Karnataka)

#### SECTION 76 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - TAX COLLECTED BUT NOT PAID TO GOVERNMENT

**3.169** Failure to adequately consider evidence on tax collection and remittance warrants remand for reconsideration with opportunity for assessee to present case - **Erode Medical Centre v. State Tax Officer-2** - [2024] 164 taxmann.com 680 (Madras)

#### SECTION 78 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - DEMANDS AND RECOVERY - INITIATION OF RECOVERY PROCEEDINGS

**3.170** Where assessee filed appeal against assessment order, recovery proceedings initiated by department was to be deferred till disposal of appeal - **Tvl. R. Selvarathinam v. Deputy State Tax Officer-II** - [2024] 166 taxmann.com 554 (Madras)

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

**3.171** Where property purchased from GST defaulters is attached, purchaser must file suit to prove bona fide purchase; attachment upheld but coercive action stayed pending timely suit filing - **S. Geetha v. State Tax Officer, Madurai Rural (West)** - [2024] 165 taxmann.com 321 (Madras)

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

- 3.172** Where Competent Authority had attached demat accounts of petitioner in a proceeding against one 'W' company, wherein petitioner was a director, without issuing a notice or granting opportunity of hearing, such attachment orders were to be set aside - **Gaurav Modwel v. Deputy Commissioner of State Tax - [2024] 166 taxmann.com 109 (Bombay)**
- 3.173** Order of provisional attachment of assessee's properties under section 83 was to be set aside as it failed to provide reasons which weighed with Commissioner to form an opinion, that for purpose of protecting interest of Government of revenue and order of provisional attachment was necessary, which is mandate under section 83(1) - **Global Tabacc Legacy v. Union of India - [2024] 166 taxmann.com 370 (Bombay)**
- 3.174** Rule 86A(1) of CGST Rules does not contemplate an order, effect of which is to require a taxpayer to replenish his ECL with valid availment of ITC, to extent of ITC used in past, which Commissioner or an officer authorized by him has reasons to believe, was fraudulently availed or was ineligible; hence, order disallowing debit from ECL of petitioners, in excess of ITC available in ECL at time of passing order, was to be set aside - **Best Crop Science (P.) Ltd. v. Principal Commissioner, CGST Commissionerate - [2024] 166 taxmann.com 654 (Delhi)**
- 3.175** Where Commissioner had passed impugned order of provisional attachment under section 83(1) without recording any reason for forming such an opinion, impugned order could not be sustained and matter was to be remanded for recording of reasons - **Elitecon International Ltd. v. Union of India - [2024] 166 taxmann.com 274 (Bombay)**
- 3.176** Summary of order in Form GST DRC-07 issued to assessee related to discrepancies between GSTR-3B and GSTR-2A on 13.08.2019, could not be sustained as no order dated 14.06.2019 existed, which formed basis for summary of order issued in Form GST DRC-07, thus same was to be quashed and consequent action for recovery on basis of said summary of order was to be quashed and set aside including attachment of bank accounts of assessee - **Ketan Stores v. State of Gujarat - [2024] 166 taxmann.com 258 (Gujarat)**
- 3.177** Where provisional attachment orders under Section 83 of CGST Act continued beyond one year, fresh attachment orders were justified if assessee avoided service of show cause notices, and writ petition was not maintainable without exhausting alternative remedy under Rule 159(5) of CGST Rules - **Lakshman Saraf v. Senior Intelligence Officer, Director General of GST Intelligence - [2024] 164 taxmann.com 559 (Calcutta)**

**SECTION 93 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - TAX, INTEREST OR PENALTY IN, LIABILITY TO PAY IN CERTAIN CASES**

- 3.178** Asst orders challenged post-assessee's death remanded for reconsideration, allowing legal heir to address applicability of GST Act Section 93 - **S. Selvi v. Asst Commr (ST) - [2024] 166 taxmann.com 37 (Madras)**

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

- 3.179** Where assessee's appeal against cancellation of registration was dismissed vide impugned order on ground of delay, doctrine of merger will have no application, impugned order was to be set aside - **Archana v. State of U.P. - [2024] 166 taxmann.com 401 (Allahabad)**
- 3.180** Review petition dismissed; liberty granted to approach appellate forum, with directions to consider appeal uninfluenced by prior observations and account for previous litigation period in relaxing limitation - **Ayamat Khan & Rahamat Khan v. Commissioner of CT & GST, Odisha - [2024] 165 taxmann.com 664 (Orissa)**
- 3.181** Where assessee filed appeal with a delay of 285 days and same was rejected vide impugned order, since assessee had shown reasonable cause of delay, delay in filing appeal was to be condoned and Appellate Authority was to be directed to dispose of appeal of assessee on merits - **Tvl. Deepa Traders v. Dy Commr (ST) - [2024] 166 taxmann.com 81 (Madras)**
- 3.182** Where assessee was unable to file appeal against order of Adjudicating Authority u.s. 107 as order had not been uploaded on portal, Adjudicating Authority was to be directed to permit assessee to file appeal manually - **Muthalapuram Service Co-operative Bank Ltd. v. Intelligence Officer, State GST Department - [2024] 166 taxmann.com 112 (Kerala)**
- 3.183** Where assessee's appeal against order passed by revenue was rejected due to delay of 12 days in filing appeal, since assessee was unaware about order passed by revenue as all notices/communications were uploaded under column, viz., "View Additional Notices and Orders", in GST portal which assessee was not aware about, said rejection order was to be set aside and delay of 12 days in filing appeal before Appellate Authority was to be condoned - **Tvl. Jayalakshmi Steel Corporation v. Dy Commr (ST)(FAC) - [2024] 166 taxmann.com 451 (Madras)**
- 3.184** Where appeal against penalty was dismissed on technical grounds, HC set aside dismissal and restored appeal for consideration on merits, emphasizing substance over form in tax proceedings - **Varun Bevarages Ltd. v. State of Bihar - [2024] 165 taxmann.com 744 (Patna)**
- 3.185** Where English language should continue to be used in addition to Hindi and respondent no.3-commissioner (appeals) had passed appellate order only in Hindi, therefore, writ petitions were disposed of with a direction to respondent no. 3-commissioner (appeals), to furnish copies of orders passed by him in these three writ petitions, in English, to petitioners-assesseees - **Subodh Enterprises v. Union of India - [2024] 166 taxmann.com 363 (Andhra Pradesh)**

- 3.186** When order was not uploaded in portal and petitioner was prevented from preferring appeal, time spent in writ petition was to be excluded while computing period of limitation for appeal - **Amarnath Enterprises v. Asst Commr of GST and Central Excise** - [2024] 166 taxmann.com 508 (Orissa)
- 3.187** Where assessee paid tax imposed in Asst order and challenged penalty component in appeal, however same was rejected vide impugned order holding that penalty alone could not be challenged, same was not proper, thus, impugned order was to be set aside and appeal was to be restored - **Aatral Associates v. State Tax Officer** - [2024] 166 taxmann.com 141 (Madras)
- 3.188** Where an order was passed against assessee for wrongly availing ITC and appeal against same was filed with delay of over 2 months, since assessee was not aware of proceeding as notices and orders were uploaded on GST common portal, in interest of justice, delay in filing appeal was to be condoned and Appeal was to be restored - **Mahesh Arts v. Dy Commr (ST) GST-Appeal, Chennai-I** - [2024] 166 taxmann.com 229 (Madras)
- 3.189** Delay in filing appeal against order of cancellation of GST registration was to be condoned when illness of grandfather of proprietor of petitioner-firm was shown as reason and opportunity should be given to petitioner-firm to contest matter on merits - **Man Singh Tanwar v. Commissioner, CGST Department** - [2024] 166 taxmann.com 596 (Rajasthan)
- 3.190** Non-filing of certified copy within time in electronically filed GST appeal is technical error; appeal should not be dismissed solely on this ground - **Ap Machine Tools v. Addl Commr Grade-2** - [2024] 166 taxmann.com 652 (Allahabad)
- 3.191** Section 107 of CGST Act operates as a complete code in itself, explicitly delineating limitation periods for filing appeals and implicitly excluding application of general limitation provisions such as section 5 of Limitation Act; Delay in filing appeal cannot be condoned beyond prescribed period of limitation in Act - **Umair Traders v. State of U.P.** - [2024] 166 taxmann.com 672 (Allahabad)
- 3.192** Appeal order in unfamiliar language, provision of certified translation directed, order's operation suspended, limitation period for further action extended - **K V R Estates v. Commr of Central Tax and Customs (Appeals)** - [2024] 164 taxmann.com 453 (Andhra Pradesh)
- 3.193** Where impugned order was discovered by assessee after expiry of limitation period for filing appeal against same, in view of fact that assessee was prevented from filing appeal in time, Appellate Authority was to be directed to decide appeal of assessee on merits sans limitation - **Elanco India (P.) Ltd. v. Excise and Taxation Officer** - [2024] 166 taxmann.com 818 (Punjab & Haryana)
- 3.194** Where assessee filed appeal before GST Appellate Authority with a delay of 5 days beyond condonable period, since there was only a marginal delay and assessee might have a case on merits, respondent authority was to be directed to dispose of appeal of assessee on merits without reference to limitation - **V.K.K. Super Digital Cables v. Appellate Deputy Commissioner, GST Appeals** - [2024] 165 taxmann.com 629 (Madras)
- 3.195** Appeal dismissed as time-barred without opportunity for condonation remanded for fresh consideration, including determination of filing date and provision of opportunity to seek condonation if delay is within condonable limit - **Balaji Shipping v. Union of India** - [2024] 164 taxmann.com 790 (Rajasthan)
- 3.196** Where assessee did not participate in proceedings before respondent GST Authority and contended to be unaware of impugned proceedings, impugned order confirming demand against assessee was to be set aside subject to assessee depositing 25 percent of disputed tax amount - **Tvl. Thanya Cashew Nut Factory v. State Tax Officer** - [2024] 165 taxmann.com 537 (Madras)
- 3.197** Appellate authority being appropriate authority to examine whether there was a valid service of notice or order, writ petition filed by assessee was to be disposed of with liberty given to it to avail alternate remedy of filing an appeal - **V.N.V. Builders (P.) Ltd. v. State Tax Officer, Gobichettipalayam** - [2024] 166 taxmann.com 294 (Madras)
- 3.198** Appeal against GST registration cancellation rejected for delay; impugned order set aside and matter remanded to Appellate Authority for consideration on merits, as assessee provided sufficient reasons for delay warranting condonation - **Chandra Gupta and Associates v. Commissioner of Central Tax (Appeals-II)** - [2024] 164 taxmann.com 723 (Delhi)
- 3.199** Where impugned order was passed by High Court in presence of parties and order in question was passed on consent of parties, there was no error apparent on face of record and, thus, review petition against said order passed in writ was to be dismissed - **Steer Overseas (P.) Ltd. v. Additional Commissioner of State Tax (Appeal)** - [2024] 165 taxmann.com 593 (Orissa)
- 3.200** Where petitioner-assessee was not well at time of filing of appeal and immediately upon recovery, appeal had been filed, therefore, writ petition was disposed of by directing, appellate authority to receive and dispose of petitioner-assessee's appeal on merits, without going into question of limitation - **G.R. Megaa Engineering v. Deputy Commissioner (ST) (GST)** - [2024] 166 taxmann.com 167 (Madras)
- 3.201** Date of online filing considered as date of filing GST appeal when order appealed against is uploaded on common portal, even if hard copy submitted later - **Kasturi & Sons (P.) Ltd. v. Additional Commissioner of GST & Central Excise (Appeals-1)** - [2024] 164 taxmann.com 594 (Madras)



**3.202** Delay in filing GST appeal beyond condonable period, appellate authority directed to consider appeal on merits, disregarding limitation issue - **KM Wedding Events Management (P.) Ltd. v. Dy Commr (ST), GST Appeal - [2024] 164 taxmann.com 595 (Madras)**

**3.203** Where assessee challenged order passed under section 129(3), court granted liberty to challenge said order before appellate authority, make payment of Rs.10 lakhs and bank guarantee for balance amount, assessee complied and goods released, prayed court to modify above order as authorities not accepting appeal without pre-deposit, right to prefer appeal crystallized into full-fledged right after court's order, authorities were not to insist on payment of additional amount in terms of section 107(6) of CGST Act - **Parmar Sandip Chamanbhai v. State of West Bengal - [2024] 166 taxmann.com 32 (Calcutta)**

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

**3.204** Where assessee had challenged order passed by revenue under section 74 read with 122 of UPGST Act on ground that assessee was not granted opportunity of personal hearing before passing said order, following judicial precedents, impugned order was to be set aside and matter was to be remitted back - **Jn Sons v. State of UP - [2024] 166 taxmann.com 194 (Allahabad)**

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

**3.205** Where respondent-department had not been able to indicate any mens rea of petitioner-assessee for evasion of tax, therefore, process of detention leading to show cause notice and imposition of penalty was without any basis in law; impugned order was liable to be quashed and set aside - **Amplus Kn One Power (P.) Ltd. v. Assistant Commissioner State Tax - [2024] 166 taxmann.com 479 (Allahabad)**

**3.206** Where assessee challenged circular directing creation of liability for tax paid under section 129 of CGST Act, writ petitions were dismissed, holding that tax collected at stage of detention under section 129 can be claimed as refund if excess tax paid in regular returns - **Chetna Steel Tubes (P.) Ltd. v. Goods and Service Tax Network - [2024] 165 taxmann.com 776 (Madras)**

**3.207** Where goods in transit were intercepted and detained on ground that there was no e-way bill produced and there was under valuation of goods in question, assessee was permitted to make payment of tax and penalty under section 129(1)(a) as determined by authorities at twice tax leviable on market value of goods - **GHS Traders v. Assistant Commissioner of Commercial Taxes (ENF) - [2024] 166 taxmann.com 591 (Karnataka)**

**3.208** Where goods were accompanied with documents i.e., tax invoice, GR and E-way bill and state failed to bring on record any material to show that goods were purchased from non-bonafide dealer, proceedings under section 129 could not be initiated - **Samira Enterprises v. State of U.P. - [2024] 166 taxmann.com 599 (Allahabad)**

**3.209** When consignor with tax invoice and e-way bill claim himself to be owner of goods, provisions of Section 129(1)(b) could not be invoked - **Samira Enterprises v. State of U.P. - [2024] 166 taxmann.com 599 (Allahabad)**

**3.210** Penalty under section 129(3) could not be imposed on detention of goods and vehicle when discrepancy in e-way bill was only a typographical error and there was no intention to evade tax - **Rimjhim Ispat Ltd. v. State of U.P. - [2024] 166 taxmann.com 555 (Allahabad)**

**3.211** Where petitioner had purchased certain goods which were intercepted while being transported and in notices issued in MOV-01 and 02, name of petitioner was not mentioned, however impugned order was passed against petitioner without any prior opportunity, same was in violation of natural justice and was to be accordingly set aside - **Tvl. Spark Bio Gas (P.) Ltd. v. State Tax Officer (FAC) - [2024] 165 taxmann.com 591 (Madras)**

**3.212** Incomplete e-way bill due to technical error, without evidence of tax evasion, does not justify penalty or adverse inference of tax evasion - **Ram Krishna Gupta v. State of U.P. - [2024] 164 taxmann.com 645 (Allahabad)**

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

**3.213** Where proceedings under section 130 could not be put to service, if excess stock was found at time of survey and proceedings were initiated against petitioner-assessee under section 130 on ground that excess stock was found during survey, therefore, impugned order dated 16.04.2024 passed by respondent no. 1-first appellate authority, as well as impugned order dated 08.10.2018 passed by respondent no. 2-second appellate authority could not be sustained in eyes of law and same were quashed - **PP Polyplast (P.) Ltd. v. Additional Commissioner Grade 2, State Tax, Uttar Pradesh - [2024] 166 taxmann.com 128 (Allahabad)**

**3.214** Where excess stock found in inspection/search conducted at business premises of assessee, proceedings under section 130 of CGST Act initiated, proceedings under sections 73/74 of CGST Act should be pressed in service and not under section 130 of CGST Act, impugned orders were to be set aside - **Vijay Trading Company v. Additional Commissioner Grade-2, State Tax, Uttar Pradesh - [2024] 166 taxmann.com 69 (Allahabad)**

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

**3.215** Where respondent was arrested for involvement in generation of fake invoices and passing on ITC without actual supply of

goods, was granted bail, but bail order was set aside, subsequently on application under section 167(2) of CrPC, he was allowed on bail, investigation not completed and complaint not filed when application under section 167(2) of CrPC taken up for hearing despite respondent spent sixty days in custody, petition challenging impugned order was to be dismissed - **Commissioner of Central Tax, GST, Delhi (West) v. Adesh Jain** - [2024] 166 taxmann.com 400 (Delhi)

**3.216** Where applicant was accused of managing fake firms, generating fraudulent ITC, and attempting to destroy evidence, High Court denied bail, considering gravity of offense, applicant's key role in operating 12 fake firms, and suspicion of creating more non-existent firms - **Saurabh Kumar v. State of Madhya Pradesh** - [2024] 166 taxmann.com 417 (Madhya Pradesh)

**3.217** Where completion of trial of petitioner-assessee would take a long time and no useful purpose would be served by keeping petitioner-assessee behind bars for a long time, therefore, without commenting upon merits of case, petition was allowed and petitioner-assessee was directed to be released on regular bail - **Deepak Sharma v. State of Punjab** - [2024] 166 taxmann.com 368 (Punjab & Haryana)

**3.218** Where applicant was arrested in a complaint alleging creation of fake firms and issuing and receiving bogus invoices without supply of goods/services, applicant was to be released on bail in view of fact that co-accused having more serious role had already been released on bail - **Gurmeet Singh Batra @ Sahil v. Union of India** - [2024] 166 taxmann.com 47 (Allahabad)

**3.219** Where applicant was in custody for last two months for availment of ITC on basis of fictitious firms, and investigation was still in progress, also firm of applicant was attached, it was a fit case to exercise discretion in favour of applicant, thus, applicant was to be enlarged applicant on bail - **Krupeshbhai Rameshbhai Patel v. State of Gujarat** - [2024] 166 taxmann.com 50 (Gujarat)

**3.220** Where summons were issued under section 70 to applicants, following decision of SC in State of Gujarat v. Choodamani Parmeshwaran Iyer [2023] 152 taxmann.com 522 (SC), application filed by applicants for grant of anticipatory bail was not maintainable - **Anant Bansal v. Union of India** - [2024] 166 taxmann.com 143 (Allahabad)

**3.221** Where complaint was made and FIR was registered against one Shreenath Soya's proprietor in which petitioner had been implicated later on, penal provisions of IPC invoked without invoking penal provisions of section 132 of CGST Act, no sanction before launching prosecution taken from Commissioner as required under section 132(6) of CGST Act, FIR and consequential proceedings emanating therefrom were to be quashed, as against petitioner - **Deepak Singhal v. Union of India** - [2024] 166 taxmann.com 482 (Madhya Pradesh)

**3.222** Where, court in a W.P. had held that office objections were to be removed within a period of three weeks from date of order, failing which matter was to be dismissed for non-prosecution without reference to Court - **Commissioner CGST and Central Excise Commissionerate, Surat v. Arkay Logistics Ltd.** - [2024] 166 taxmann.com 616 (Gujarat)

**3.223** Where accused-director of a company arrested, allegation were said company had filed input tax credit for firms which were non-operational, since transactions of 2017/2018 and department itself sought judicial custody of accused Trial Court granted bail to accused, investigation required for offence of nature mostly documentary in nature which investigating agency would be able to procure, bail was not to be cancelled - **Commissioner of Central Goods and Service Tax, South v. Sanjeev Malhotra** - [2024] 166 taxmann.com 38 (Delhi)

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

**3.224** Where assessee had ample opportunities to submit GST TRAN-1 form, including extended deadline up to 31.03.2019 and special window provided by the Supreme Court in 2022 but said window of relief was also not availed of by assessee, thus, instant writ petition was to be dismissed as there was no question of a credit being permitted - **RSD Natural Resources (P.) Ltd. v. Union of India** - [2024] 166 taxmann.com 523 (Patna)

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

**3.225** Where assessee applications for refund of Cenvat Credit rejected, assessee transitioned CENVAT credit to GST regime through TRANS-1, Circular dated 9-9-2022 allowed second chance to transition to manufacturers/ dealers who could not transition, assessee's application rejected being covered by instruction No. 4.7 of Circular barring transition of disputed tax, rejection order not order of rejection of TRAN-1/TRAN-2, was to be set aside - **Cholayil (P.) Ltd. v. State of Andhra Pradesh** - [2024] 166 taxmann.com 123 (Andhra Pradesh)

**3.226** Where unutilized input tax credit under VAT Act was erroneously carried forward to GST regime and later reversed, refund along with statutory interest is to be granted from date of eligibility till date of payment - **Navneet Cotton Co. v. State of Gujarat** - [2024] 164 taxmann.com 561 (Gujarat)

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

**3.227** Where assessee had filed an application for rectification of an order passed under section 73 and said application was rejected vide impugned order without giving any reason or opportunity of hearing to assessee, same was to be set aside and rectification application was to be restored - **Orissa Stevedores Ltd. v. Deputy Commissioner of CT and GST** - [2024] 165 taxmann.com 825 (Orissa)

**3.228** Failure to consider assessee's objection to SCN violates principles of natural justice; Asst order quashed and matter remanded for fresh consideration with opportunity of hearing - **Tvl. R. Thangaraj v. Deputy Commissioner (ST) - [2024] 164 taxmann.com 644 (Madras)**

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

**3.229** CBIC is not required to issue clarification on queries raised by taxpayers directly; further, Solar Energy Corporation of India Limited (SECI) could not issue any binding clarification as to chargeability of Battery Energy Storage Systems (BESS) to tax - **Association of Power Producers v. Solar Energy Corporation of India Ltd. - [2024] 166 taxmann.com 539 (Delhi)**

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

**3.230** Where impugned Asst order was passed relying on Notification No. 56/2023-CE issued by CBIC, whereby time limit to pass orders u.s. 73 for years 2018-20 had been extended, and assessee challenged said notification on grounds that same was in violation of section 168(A), as there was no recommendation for same from GST council, respondent authorities were to be directed to file affidavits and interim protection from coercive action was to be granted to assessee - **Barkataki Print and Media Services v. Union of India - [2024] 166 taxmann.com 144 (Gauhati)**

**3.231** Where impugned Asst order was passed relying on Notification No. 56/2023-CE issued by CBIC, whereby time limit to pass orders under section 73 for years 2018-20 had been extended, and assessee challenged said notification on grounds that same was in violation of section 168(A), as there was no recommendation for same from GST council, respondent authorities were to be directed to file affidavits and interim protection from coercive action was to be granted to assessee - **Pallab Kumar Pandit v. Union of India - [2024] 166 taxmann.com 146 (Gauhati)**

**3.232** Notification issued by CBIC extending time limit for passing of order under section 73(9) without recommendation of GST Council was not in consonance with provisions of section 168A - **Jawahar Singh v. Union of India - [2024] 166 taxmann.com 547 (Gauhati)**

**3.233** Notification No. 56/2023-CT, dated 28-12-2023 extending period for passing of order under section 73(10) of Central Act issued without any recommendation of GST Council is ultra vires Central Act and same is not legally sustainable in law - **Barkataki Print and Media Services v. Union of India - [2024] 166 taxmann.com 586 (Gauhati)**

**3.234** Where assessee filed writ petition assailing action on part of Central Board of Indirect Taxes and Customs in issuance of Notification No. 56/2023 dated 28-12-2023, till next date no coercive action shall be taken on basis of impugned assessment order - **Merle Construction and Marketing (P.) Ltd. v. Union of India - [2024] 165 taxmann.com 521 (Gauhati)**

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

**3.235** Where assessee's GST registration was cancelled, service of notice through e-mode without physical service violates principles of natural justice, requiring adjudication order to be set aside - **Chandani Tent Traders v. State of U.P. - [2024] 164 taxmann.com 792 (Allahabad)**

## 4. AAAR

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

**4.1** 'Rotary parking system' installed and commissioned at premises of appellant-assessee amounts to construction of an immovable property, whereby, input tax credit on purchase of 'rotary parking system', by appellant-assessee becomes ineligible under Section 17(5)(d), therefore, ruling pronounced by AAR in Advance Ruling is upheld and accordingly, appeal filed by appellant-assessee is dismissed - **Arthanarisamy Senthil Maharaj, In re - [2024] 166 taxmann.com 456 (AAAR - TAMILNADU)**

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

**4.2** Where appellant received performance-based incentive for disbursing loans under public welfare scheme, incentive lacking characteristics of both subsidy and actionable claim, constituted consideration for loan disbursement services and was therefore subject to GST - **Rajkot Nagarik Sahakari Bank Ltd., In re - [2024] 166 taxmann.com 387 (AAAR-GUJARAT)**

## 5. AAR

#### CLASSIFICATION OF GOODS

**5.1 Non-woven coated fabric impregnated with PVC :** Goods of applicant-assessee namely "non-woven coated fabrics-coated, laminated or impregnated with PVC" would fall under chapter 39; Products namely [a] table cover, [b] television cover [c] washing machine cover would fall within ambit of tariff item 392690 and would attract 18% GST, while, bags would be classified under tariff item 3923 and would attract 18% GST - **Om Vinyls (P.) Ltd., In re - [2024] 166 taxmann.com 635 (AAR - GUJARAT)**

**5.2 Parts of Electric Accumulators :** Where parts of electric accumulators manufactured by applicant-assessee happen to be made of plastic, therefore, they are to be classified under



Heading No. "8507" with applicable tax rate at 14% CGST and 14% SGST - *V M Polymers., In re - [2024] 166 taxmann.com 20 (AAR - TAMILNADU)*

**5.3 Retail Dealer of Petroleum Products :** Where amount paid as differential dealer margin is in nature of a consideration received for agreeing to obligation to refrain from an act, therefore, it squarely falls under clause (e) of Sl No. 5 of Schedule II and hence taxable to GST; Differential dealer margin is taxable under Heading No 9997 at 18% - *P Achuthan Nair & Co., In re - [2024] 166 taxmann.com 76 (AAR - KERALA)*

**5.4 Technical Consultancy :** Where services supplied by applicant-assessee are in nature of "Technical Consultancy for Project Development and Management support services" to 'Government Authority' and supply is performed and invoiced after 31.12.2021, therefore, exemption is not applicable and services are classifiable under 'SAC code 998399 - Other professional, technical and business services', covered at Sr No 21 (ii) in Notification No 11/2017- Central Tax (Rate) dated 28.06.2017 and are taxable at rate of 18% - *Geospatial Studio LLP, In re - [2024] 166 taxmann.com 75 (AAR - MAHARASHTRA)*

**5.5 Technical Consultancy :** Where services supplied by applicant-assessee are in nature of "Technical Consultancy for Project Development and Management support services" to 'Government Authority' and supply is allotted, performed and invoiced after 31.12.2021, therefore, exemption is not applicable and services are classifiable under Sr No 21 (ii) in Notification No 11/2017- Central Tax (Rate) dated 28.06.2017 and are taxable at rate of 18% - *Geospatial Studio LLP, In re - [2024] 166 taxmann.com 75 (AAR - MAHARASHTRA)*

**5.6 Natural Fibre Composite Board :** Product 'Natural Fibre Composite Board' manufactured by applicant-assessee is classifiable under CTH 441193 as 'Others' and attracts 6% CGST and 6% SGST - *Tra Plast Industrics (P.) Ltd., In re - [2024] 166 taxmann.com 420 (AAR - ANDHRA PRADESH)*

**5.7 Marine Distress Signals, Emergency Position Indicating Radio Beacon etc :** Where applicant-assessee has agreed with classification done by Customs without any protest and discharged duties, further, there is no change in character of goods supplied by applicant-assessee to one imported, therefore, goods when supplied by applicant-assessee, post importation would be classified under same chapter, heading, sub-heading and tariff item under which it was classified by Customs and on which IGST was discharged during course of import of said goods - *Intiyaz Kaiyum Barvatiya, In re - [2024] 166 taxmann.com 561 (AAR - GUJARAT)*

## CLASSIFICATION OF SERVICES

**5.8 Reselling of bakery products :** Classification for service of serving of cooked items across counter, which is provided by applicant-assessee, is Heading No. 996331 and rate of tax can be 18% or 5% depending on fulfilment of prescribed conditions - *Devalokam Bakery, In re - [2024] 166 taxmann.com 139 (AAR - KERALA)*

**5.9 Handover of Building and Civil Structure :** Contractual agreement of handing over of Building and Civil Structure is classifiable under other miscellaneous service (SAC 999792) and taxable at 18% under Sl. No. 35 of Notification No. 11/2017-CT (Rate), date 28.06.2017 - *Essel Mining Industries Ltd., In re - [2024] 166 taxmann.com 140 (AAR-ODISHA)*

## SECTION 2(69) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - LOCAL AUTHORITY

**5.10** Supplies made to all authorities by applicant-assessee, except, services provided to Madhya Pradesh Jal Nigam Maryadit, can be regarded as services provided either to State Government or local authority - *Shyama Chatterjee, In re - [2024] 166 taxmann.com 108 (AAR-WEST BENGAL)*

## SECTION 2(93) OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 - RECIPIENT OF SUPPLY OF SERVICE OR GOODS OR BOTH

**5.11** Maharashtra Jeevan Authority [erstwhile Maharashtra Jeevan Pradhikaran] is service receiver within meaning of Sec 2(93) in respect of amounts received as grants by MJP which are paid to applicant on services provided before 01.01.2022 - *Geospatial Studio LLP, In re - [2024] 166 taxmann.com 75 (AAR - MAHARASHTRA)*

**5.12** Maharashtra Jeevan Authority [erstwhile Maharashtra Jeevan Pradhikaran] is service receiver within meaning of Sec 2(93) in respect of amounts received as grants by MJP which are paid to applicant on services provided after 01.01.2022 - *Geospatial Studio LLP, In re - [2024] 166 taxmann.com 75 (AAR - MAHARASHTRA)*

## SECTION 2(102A) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SPECIFIED ACTIONABLE CLAIM

**5.13** Where applicant-assessee is organizing tournament of bridge and contribution of money by players, is deposited in a common pool, further, applicant-assessee does not lien over this money or money's worth contributed by players, therefore, applicant-assessee cannot be held to be a supplier of "specified actionable claim"; applicant-assessee shall not be liable to pay tax by way of organizing a tournament of physical /offline games of contract bridge when played for money - *Bridge Federation of India, In re - [2024] 166 taxmann.com 25 (AAR-WEST BENGAL)*

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

**5.14** Where applicant-assessee has no right or ownership in land, therefore, handover of building structure and railway siding by

applicant-assessee to OMCL does not tantamount to sale of building and it is not covered under clause no. 5 of Schedule III - ***Essel Mining Industries Ltd., In re - [2024] 166 taxmann.com 140 (AAR-ODISHA)***

**5.15** Where applicant-assessee effectively agrees to an obligation to refrain from removing constructed/erected structures for benefit of OMCL against receipt of consideration, therefore, it is covered under scope of supply under Section 7(1) and same is treated as 'supply of service' - ***Essel Mining Industries Ltd., In re - [2024] 166 taxmann.com 140 (AAR-ODISHA)***

**5.16** Where assets created by applicant-assessee being an immovable property does not fall under definition of "goods" and element of consideration is not involved in activity of shifting of transmission lines for widening of roads, therefore, shifting of transmission lines for widening of roads by applicant-assessee is not a supply under Section 7 - ***National Highways Authority of India, In re - [2024] 165 taxmann.com 848 (AAR- UTTAR PRADESH)***

#### **SECTION 8 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - COMPOSITE AND MIXED SUPPLIERS, TAX LIABILITY ON**

**5.17** Where Applicant-assessee is running ladies hostel in an immovable property owned by assessee, providing boarding and lodging facilities to students and working women and are also providing certain ancillary services such as housekeeping, security arrangements, televisions, parking facility etc, since assessee provides number of services in a composite manner, hostel accommodation services provided by assessee being principle supply, which is taxable at 18 per cent GST as per Sl. No. 7(vi) of Notification No. 11/2017 - ***Udayam Ladies Hostel, In re - [2024] 166 taxmann.com 365 (AAR - TAMILNADU)***

**5.18** Where services provided by applicant-assessee are composite in nature, therefore, activity of supply of in-house food to inmates of hostel amounts to providing services in a composite manner and hostel accommodation services provided by applicant, being principal supply, which is taxable at 18%, is tax rate for composite supply provided by them - ***Subiksha Hostel., In re - [2024] 166 taxmann.com 296 (AAR - TAMILNADU)***

**5.19** Where Applicant-assessee is running ladies hostel in an immovable property owned by assessee, providing boarding and lodging facilities to students and working women and are also providing certain ancillary services such as housekeeping, security arrangements, televisions, parking facility etc, since assessee provides number of services in a composite manner, hostel accommodation services provided by assessee being principle supply, which is taxable at 18 per cent GST as per Sl no 7(vi) of Notification 11/2017 - ***Tapovan Living Solutions., In re - [2024] 166 taxmann.com 268 (AAR - TAMILNADU)***

**5.20** Where services provided by applicant-assessee are composite in nature, therefore, various activities provided by applicant-assessee are also provided in a composite manner and hostel accommodation services provided by applicant-assessee, being principal supply, which is taxable at 18%, is tax rate for composite supply provided by them - ***Shriram Sai NEST Ladies Hostel., In re - [2024] 166 taxmann.com 228 (AAR - TAMILNADU)***

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

**5.21** Where assets constructed by applicant-assessee do not fall under category of goods, thus, no supply is involved, therefore, applicability of GST does not arise, however, GST is only leviable on supervision charges charged by MVVNL for supervising activity of shifting of transmission lines for widening of roads by applicant-assessee - ***National Highways Authority of India, In re - [2024] 165 taxmann.com 848 (AAR- UTTAR PRADESH)***

**5.22** Where MVVNL is only concerned with supervision charges and GST on estimated project cost and project cost is being borne by applicant-assessee through its contractors, where GST is paid, therefore, it would be case of double taxation, if applicant-assessee pays GST on entire value of work done to its contractors and also pays GST to MVVNL - ***National Highways Authority of India, In re - [2024] 165 taxmann.com 848 (AAR- UTTAR PRADESH)***

**5.23** Where supply of pre-packaged and labelled shrimps by applicant-assessee in pouches or boxes fall within definition of 'pre-package and labelled' commodity and Ministry of finance, Government of India clarified that GST is applicable on 'pre-packaged and labelled' goods, therefore, GST would be applicable on supply of "pre-packaged and labelled" shrimps and it will be liable for GST at 5% - ***Asvini Fisheries (P.) Ltd., In re - [2024] 166 taxmann.com 494 (AAR - ANDHRA PRADESH)***

**5.24** Supply of hostel accommodation services is taxable at 18 per cent GST as per Heading No. 9963 under Sl. No. 7(vi) of Notification No. 11/2017-Central Tax (Rate) - ***Udayam Ladies Hostel, In re - [2024] 166 taxmann.com 365 (AAR - TAMILNADU)***

**5.25** Supply of hostel accommodation services is taxable at 18 per cent GST as per Heading No 9963 under Sl No 7(vi) of Notification 11/2017-Central Tax (Rate) - ***Tapovan Living Solutions., In re - [2024] 166 taxmann.com 268 (AAR - TAMILNADU)***

**5.26** Where hostel services provided by applicant-assessee cannot be equated to a hotel accommodation and hotel GST rates cannot be applied to a hostel, therefore, it was observed that supply of hostel accommodation services (Tariff heading 9963) is taxable at 9% CGST and 9% SGST - ***Shriram Sai NEST Ladies Hostel., In re - [2024] 166 taxmann.com 228 (AAR - TAMILNADU)***

**5.27** Where hostel services provided by applicant-assessee cannot be equated to a hotel accommodation and hotel GST rates

cannot be applied to a hostel, therefore, it was observed that supply of hostel accommodation services (Tariff heading 9963) is taxable at 9% CGST and 9% SGST - **Subiksha Hostel., In re - [2024] 166 taxmann.com 296 (AAR - TAMILNADU)**

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

- 5.28** Hostel accommodation is not equivalent to residential accommodation as residence in common usage, refers to specifically to a place where someone resides permanently or for an extended period of time with family/dependents whereas hostels are nothing by accommodations with temporary lodging to inmates, whether students or working people, therefore hostel services supplied by applicant would not be eligible for exemption under Sl. 12 of Notification No. 12/2017-Central Tax (Rate) - **Udayam Ladies Hostel, In re - [2024] 166 taxmann.com 365 (AAR - TAMILNADU)**
- 5.29** Where Jaipur Development Authority is a government authority and Governmental authority or a Government Entity shall not be considered as 'State Government' under Notification No. 12/2017-CT (Rate), dated 28-6-2017, therefore, Jaipur Development Authority is not covered under definition of "State Government" in reference of Entry 3A of Notification No. 12/2017-CT (Rate), dated 28-6-2017; Hence, not liable for exemption - **Ramesh Kumar Jorasia., In re - [2024] 166 taxmann.com 364 (AAR - RAJASTHAN)**
- 5.30** Hostel accommodation is not equivalent to residential accommodation as residence in common usage, refers to specifically to a place where someone resides permanently or for an extended period of time with family/dependents whereas hostels are nothing by accommodations with temporary lodging to inmates, whether students or working people, therefore hostel services supplied by applicant would not be eligible for exemption under Sl 12 of Notification 12/2017-Central Tax(Rate) - **Tapovan Living Solutions., In re - [2024] 166 taxmann.com 268 (AAR - TAMILNADU)**
- 5.31** Where benefit of exemption is available, if, a Residential Welfare Association collects up to an amount of Rs.7500/- per month from a member by way of reimbursement of charges or share of contribution, therefore, applicant-assessee shall not be liable to pay tax on amount which is collected from its members by way of reimbursement of charges or share of contribution, where such amount does not exceed Rs.7500/- per month per member - **Fortune Estates Association of Apartment Owners, In re - [2024] 166 taxmann.com 184 (AAR-WEST BENGAL)**
- 5.32** Where SMPK is controlled by board, which is an autonomous body and there is no intervention from Central Government, therefore, conditions for availing benefit of exemption as per impugned entry, do not get

fulfilled and services by way of grant of long term lease of land by SMPK to applicant-assessee for purpose of "setting up commercial office complex" as involved, is found not to be covered under Entry 41 of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 - **Anmol Industries Ltd., In re - [2024] 166 taxmann.com 183 (AAR-WEST BENGAL)**

- 5.33** Where scope of work involves survey, design, drawing, estimate and preparation of detailed report in respect of water supply schemes, and same doesn't involve any supply of goods, therefore, supply provided by applicant-assessee can be regarded as pure services - **Shyama Chatterjee, In re - [2024] 166 taxmann.com 108 (AAR-WEST BENGAL)**
- 5.34** Services provided by applicant-assessee for survey, design, drawing, estimate and preparation of comprehensive plan related to water supply schemes application is found to be a matter as listed in Eleventh and/or Twelfth Schedule in relation to functions entrusted to a Panchayat under Article 243G and/or to a municipality under Article 243W of Constitution of India - **Shyama Chatterjee, In re - [2024] 166 taxmann.com 108 (AAR-WEST BENGAL)**
- 5.35** Where all conditions given under Serial No. 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 are fulfilled by applicant-assessee, therefore, supplies made by applicant-assessee for survey, design, drawing, estimate and preparation of comprehensive plan related to water supply schemes to state government and local authorities are exempted from payment of tax vide serial number 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 [corresponding State Notification No. 1136 F.T. dated 28.06.2017], as amended, except services provided to Madhya Pradesh Jal Nigam Maryadit which cannot be regarded either as State Government or local authority - **Shyama Chatterjee, In re - [2024] 166 taxmann.com 108 (AAR-WEST BENGAL)**
- 5.36** "Technical Consultancy for Project Development and Management support services", provided by applicant-assessee to MJP for its water supply schemes, where time of supply is on or before 31.12.2021, are covered by exemption entry at Sr No. 3 of exemption notification No 12/2017-Central Tax (Rate), dated 28.06.2017 - **Geospatial Studio LLP, In re - [2024] 166 taxmann.com 75 (AAR - MAHARASHTRA)**
- 5.37** Where applicant-assessee provides hostel accommodation for boarding and lodging facilities to students and requisite conditions of "renting of residential dwelling" for "use as residence" are not met, therefore, exemption sought by applicant-assessee is not available - **Shriram Sai NEST Ladies Hostel., In re - [2024] 166 taxmann.com 228 (AAR - TAMILNADU)**
- 5.38** Where applicant-assessee provides hostel accommodation for boarding and lodging facilities to students and requisite conditions of 'renting of residential dwelling' for 'use as residence,' are not met, therefore, exemption sought by applicant-assessee is not available - **Subiksha Hostel., In re - [2024] 166 taxmann.com 296 (AAR - TAMILNADU)**



**SECTION 12 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - TIME OF SUPPLY OF GOODS**

- 5.39** Where assessee demanded interest on delayed payment for goods sold as per terms of invoice and debited interest in account of purchaser, in view of section 12(6) GST is to be paid on date on which supplier of goods receives such addition in value through interest of delayed payments - ***Pink City Steel Rolling Mills (P.) Ltd., In re - [2024] 166 taxmann.com 295 (AAR- RAJASTHAN)***

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

- 5.40** Where beneficial tax treatment is given only to maintenance, repair and overhaul services provided in respect of ships, vessels, its engine and its other components and parts and services provided by applicant-assessee do not primarily constitute maintenance, repair, or overhaul services as envisaged in notification, therefore, tender work rendered by applicant-assessee does not fall under scope of Entry 25(ib) of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 as amended by Notification No. 02/2021-Central Tax (rate), dated 2-6-2021; Further, question to avail ITC does not arise - ***Visakha Trades, In re - [2024] 166 taxmann.com 581 (AAR - ANDHRA PRADESH)***
- 5.41** Applicant-assessee would be eligible to claim ITC of tax paid on both direct and indirect expenses such as repairs and refurbishment works of used vehicle, spare purchases, office stationary, telephone, rent, advertisement, professional charges utilized in second hand business of luxury cars, subject to fulfilment of conditions prescribed u.s. 16 to 21 and Rule 36 to Rule 45 - ***Royaldrive Pre Owned Cars LLP, In re - [2024] 166 taxmann.com 46 (AAR - KERALA)***
- 5.42** Where demo cars are indispensable for sales promotion, since, prospective customers prefer to test drive cars before they make a decision, therefore, demo cars are put to use for furtherance of business as envisaged under Section 16, hence, applicant-assessee is entitled to avail Input Tax Credit on inward supply of motor vehicles which are used for demonstration purpose - ***Sai Service (P.) Ltd., In re - [2024] 166 taxmann.com 107 (AAR - KERALA)***
- 5.43** Where applicant-assessee is Singapore based company which does not have any place of business in India and applicant-assessee does not have any GST registration in India, therefore, transaction done by applicant-assessee does not fall under definition of 'export of goods', hence, related transactions shall not be considered as 'Zero Rated Supply' - ***MCM Pacific PTE Ltd., In re - [2024] 166 taxmann.com 527 (AAR - ANDHRA PRADESH)***

**SECTION 23 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REGISTRATION - PERSONS NOT LIABLE FOR**

- 5.44** Where applicant-assessee is not liable to get exemption, therefore, applicant is required to get themselves registered in state of Tamil Nadu, if their aggregate turnover in a financial year exceeds twenty lakh rupees - ***Subiksha Hostel., In re - [2024] 166 taxmann.com 296 (AAR - TAMILNADU)***
- 5.45** Where applicant-assessee is not liable to get exemption, therefore, applicant is required to get themselves registered in state of Tamil Nadu, if their aggregate turnover in a financial year exceeds twenty lakh rupees - ***Shriram Sai NEST Ladies Hostel., In re - [2024] 166 taxmann.com 228 (AAR - TAMILNADU)***

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

- 5.46** No ruling is issued, as question put forth by applicant-assessee does not fall under scope of Section 97(2) of GST Act - ***Subiksha Hostel., In re - [2024] 166 taxmann.com 296 (AAR - TAMILNADU)***
- 5.47** No ruling is issued, as question put forth by applicant-assessee does not fall under scope of Section 97(2) of GST Act - ***Shriram Sai NEST Ladies Hostel., In re - [2024] 166 taxmann.com 228 (AAR - TAMILNADU)***
- 5.48** Where there is no information on HSN code and tax rate adopted by applicant-assessee, therefore, no ruling can be given - ***Devalokam Bakery, In re - [2024] 166 taxmann.com 139 (AAR - KERALA)***
- 5.49** No ruling can be given on impugned question, since, question on which advance ruling is sought, do not fall under purview of any of clauses of sub-section (2) of section 97 - ***P Achuthan Nair & Co., In re - [2024] 166 taxmann.com 76 (AAR - KERALA)***
- 5.50** No ruling can be given on impugned question, since, question on which advance ruling is sought, do not fall under purview of any of clauses of sub-section (2) of section 97 - ***Geospatial Studio LLP, In re - [2024] 166 taxmann.com 75 (AAR - MAHARASHTRA)***

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

- 6.1** Where initial investigation had affirmed respondent builder's failure to pass on full GST benefits, Applicant challenges had led to directive from Competition Commission of India, instructing DGAP to further investigate discrepancies in saleable area, NAA directive compliance, manipulated turnover claims, forensic audit, and GST benefit re-verification, and had mandated cooperation from both parties, specifically directing DGAP to confirm ITC benefits with all 303 homebuyers through email communication - ***Rajeev Goyal v. Prateek Infra Projects India (P.) Ltd. - [2024] 166 taxmann.com 676 (CCI)***

# COMPANY AND SEBI LAWS UPDATES

## 1. STATUTORY UPDATES

- 1.1** SEBI updates SOP on 'MII's' penalties; MD and CTO exempted from fines for technical glitches - **Circular No. SEBI/HO/MRD/TPD-1/P/CIR/2024/124, Dated 20-09-2024**

**Editorial Note :** Earlier, the SEBI issued a circular revising the Standard Operating Procedure (SOP) related to financial disincentives imposed on Market Infrastructure Institutions (MIIs) due to technical glitches. Extant norms allowed penalties to be levied on individuals, such as the Managing Director (MD) and Chief Technology Officer (CTO). Now it has been decided to limit penalty to the MIIs themselves. Further, MIIs must submit compliance reports & disclose disincentives on their websites and annual report

- 1.2** MCA amends Prospectus and Allotment Rules; extends dematerialisation compliance period for producer Cos. to 5 years - **Notification No. G.S.R 583(E), Dated 20-09-2024**

**Editorial Note :** MCA has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024. An amendment has been made to Rule 9B(2), which states that a private company, which is not a small company as of the FY ending on or after March 31, 2023, must dematerialise its securities within 18 months of closure of FY. A new proviso has been inserted to Rule 9B(2), stating that a producer company must comply with dematerialisation provisions within a period of 5 years from closure of such FY.

- 1.3** SEBI allows flexibility to mutual funds to buy and sell credit default swaps with adequate risk management - **Circular No. SEBI/HO/IMD/PoD2/P/CIR/2024/125, Dated 20-09-2024**

**Editorial Note :** SEBI has allowed mutual funds (MFs) greater flexibility to buy and sell Credit Default Swaps (CDS) with adequate risk management. This flexibility to participate in CDS would serve as an additional investment product for mutual funds and also aid in increasing liquidity in the corporate bond market. As per the new framework, MF Schemes can buy CDS only to hedge their credit risk on debt securities they hold in various schemes. The circular shall be effective immediately.

- 1.4** SEBI amends NCS norms, reduces draft offer document review period to 5 days - **Notification No. SEBI/LAD-NRO/GN/2024/205, Dated 17-09-2024**

**Editorial Note :** SEBI has notified the SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2024. An amendment has been made to Regulation 27 relating to 'filing of draft

offer document'. As per amended norms, the draft offer document filed with stock exchange must now be made public by posting on website of stock exchanges for seeking public comments for a period of 5 working days from date of filing draft offer document. Earlier, the period was 7 working days.

- 1.5** Companies can hold AGMs through VC/OAVM till September 30, 2025; no extension of Statutory time: MCA - **General Circular No. 09/2024, Dated 19-09-2024**

**Editorial Note :** In continuation to this General Circulars dated 05.05.2020, 05.05.2022, 28.12.2022 and 25.09.2023, after due examination, MCA has now decided to allow companies whose AGMs are due in the Year 2024 or 2025, to conduct their AGMs through VC or OAVM on or before 30th September, 2025. Also, Ministry clarified that General Circular shall not be construed as conferring any extension of statutory time for holding of AGMs by the companies under the Companies Act, 2013.

- 1.6** SEBI modifies framework for valuation of investment portfolio of AIFs - **Circular No. SEBI/HO/AFD/PoD-1/P/CIR/2024/123, Dated 19-09-2024**

**Editorial Note :** SEBI has modified the framework for the valuation of investment portfolios of Alternative Investment Funds (AIFs). Under this framework, securities other than unlisted, non-traded, or thinly traded securities will now be valued in accordance with mutual fund Regulations. This change came after SEBI received feedback from the AIF industry, which highlighted issues with certain aspects of the valuation framework for AIFs. The circular shall be effective immediately.

- 1.7** 93% of 1 crore F&O traders saw Rs. 2L avg loss, while top 3.5% faced Rs. 28L avg loss from FY22-FY24, incl. costs: SEBI - **PR NO.22/2024**

**Editorial Note :** SEBI's updated study reveals that 93% of over 1 crore individual traders in the equity F&O segment incurred losses between FY22 & FY24, with an average loss of Rs. 2 lakh per trader. The top 3.5% of loss-makers faced an average loss of Rs. 28 lakhs. Only 1% of traders earned profits above Rs. 1 lakh. Meanwhile, proprietary traders & FPIs booked profits of Rs. 33,000 crore & Rs. 28,000 crores, in FY24, driven by algorithmic trading. Individual losses exceeded Rs. 1.8 lakh crore over the 3 years.

- 1.8** SEBI issues updated Master Circular on 'Surveillance of Securities Market' - **Circular No. SEBI/HO/ISD/ISD-POD-2/P/CIR/2024/126**

**Editorial Note :** SEBI has issued an updated master circular on 'Surveillance of Securities Market'. This master circular consolidates all the circulars pertaining to the surveillance of the securities market at one place. This Master Circular is categorised subject-wise under various headings, viz., trading rules and shareholding in dematerialized mode, and monitoring of unauthenticated news circulated by SEBI registered market intermediaries through various modes of communication.

- 1.9** SEBI mandates UPI for public issue applications of debt securities for an amount up to Rs 5 lakh - **Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/128, Dated 24-09-2024**

**Editorial Note :** SEBI has mandated the use of UPI by individual investors for making applications in public issue of securities via intermediaries. Accordingly, all investors applying in public issues of securities via intermediaries must use only UPI for the purpose of blocking funds, where application amount is up to Rs 5 lakh. These provisions shall apply to public issues of debt securities, non-convertible redeemable preference shares, and securitized debt instruments opening on or after Nov 1, 2024.

- 1.10** SEBI issues parameters for performance evaluation of Market Infrastructure Institutions - **Circular No. SEBI/HO/MRD/POD-III/CIR/P/2024/127, Dated 24-09-2024**

**Editorial Note:** SEBI has issued parameters for the performance evaluation of Market Infrastructure Institutions (MIIs). These parameters aim to ensure consistency and uniformity in evaluations conducted by independent external agencies. The evaluation shall be based on seven key criteria. Further, MIIs are required to appoint independent external agencies to evaluate their performance every three years. The agencies need to have relevant expertise in the securities market and must receive an NOC from SEBI.

- 1.11** Deadline for filing Form CSR-2 for FY 2023-24 is due by 31.12.2024 post filing of Form AOC-4: MCA - **Notification No. G.S.R. 587(E), Dated 24-09-2024**

**Editorial Note :** The MCA has amended the Companies (Accounts) Rules, 2014. A proviso has been inserted after the third proviso to Rule 12(IB), providing that for the financial year 2023-2024, companies are required to file Form CSR-2 separately by 31-12-2024. This filing must follow the submission of Form AOC-4, Form AOC-4-NBFC (Ind AS), or Form AOC-4 XBRL as applicable, based on the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, as the case may be.

- 1.12** SEBI amends delisting norms; Acquirers can use the 'fixed price process' for frequently traded shares - **Notification No. SEBI/LAD-NRO/GN/2024/206., Dated 25-09-2024**

**Editorial Note :** Following the previously issued consultation paper, SEBI has now notified amendments to the SEBI (Delisting of Equity Shares) Regulations, 2021. Under the amended norms, the acquirer can now delist through 'fixed price process' if the company's shares are frequently traded. Further, the acquirer must offer a delisting price at least 15% above the floor price. SEBI has also prescribed the method for calculating the floor price in both the reverse book building and fixed price process.

- 1.13** SEBI shortens listing timeline for public issue of debt securities & NCRPS to T+3 working days from T+6 - **Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/129, Dated 26-09-2024**

**Editorial Note :** In order to align the listing timeline in case of public issue of debt securities and Non-convertible Redeemable Preference Shares (NCRPS) with that of non-convertible securities issued on private placement basis & specified securities, SEBI has decided to reduce the listing timeline in case of public issue of debt securities and NCRPS to T+3 working days from existing timeline of T+6 working days. For ease of compliance, issuers may opt for T+3 for 1 year, after which it will be mandatory.

- 1.14** SEBI issues Operational Guidelines for smooth transition to the amended SEBI (FVCI) Regulations, 2024 - **Circular No. SEBI/HO/AFD/AFD-PoD-3/P/CIR/2024/130, Dated 26-09-2024**

**Editorial Note :** Earlier, SEBI notified SEBI (Foreign Venture Capital Investors) Regulations, 2024. Now, in order to ensure smooth transition to the amended FVCI regime and operationalise the amended provisions of the FVCI Regulations, SEBI has decided to issue necessary guidance in the form of operational guidelines. The provisions of this circular shall come into force with effect from 01.01.2025. The guidelines provide for processing of applications, transfer of existing FVCI data, KYC requirements, etc.

- 1.15** SEBI updates derivatives entry/exit criteria, increases key financial thresholds - **Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/116, Dated 30-08-2024**

**Editorial Note :** Earlier, SEBI vide Master Circular dated October 16, 2023, laid down the eligibility criteria for entry/exit of stocks in derivatives segment. SEBI has now revised the eligibility criteria. As per the revised norms, SEBI has raised the median quarter sigma order size (MQSOS) over previous 6 months on a rolling basis from Rs 25 lakhs to Rs 75 lakhs. Further, stock's average daily delivery value in cash market over the previous 6 months on a rolling basis must not be less than Rs 35 crores.

- 1.16** SEBI reduces trading lot size for InvITs units on a designated stock exchange from Rs 1 crore to Rs 25 Lakh - **Notification No. SEBI/LAD-NRO/GN/2024/207, Dated 26-09-2024**

**Editorial Note :** SEBI has notified the SEBI (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2024. An amendment has been made to Regulation 16 relating to 'listing and trading of units'. As per the amended norms, SEBI has reduced the trading lot size for trading units on the designated stock exchange to Rs 25 lakhs. Currently, the trading lot size is Rs 1 crore. Further, the investment manager and trustee must maintain adequate backup systems and data storage capacity.



- 1.17** SEBI proposes a standardized format for disclosure of change in risk-o-meters of Mutual Fund schemes and its benchmark

**Editorial Note :** SEBI has released a Consultation Paper on a draft circular regarding disclosing expenses, half-yearly returns, yield, and risk-o-meter of Mutual Fund (MF) schemes. Considering that expense, expense ratio, returns and yields for direct and regular plans differ, SEBI has proposed that disclosures on both direct and regular plans be disclosed in a standard format. Further, SEBI has proposed standardising the format for disclosure of change in risk-o-meters of an MF scheme and its benchmark.

- 1.18** SEBI's 'Unified Distilled File Formats' boosts efficiency, productivity, and interoperability while reducing costs - **PR No. 24/2024, Dated 26-09-2024**

**Editorial Note :** SEBI has implemented the Unified Distilled File Formats (UDiFF), reducing reporting formats for Trading Members, Clearing Members, and Depository Participants from over 200 to 23. This initiative promotes ease of doing business, enhances operational efficiency, and aligns with international standards. The UDiFF implementation has led to cost savings, seamless MII-member interface, and improved regulatory oversight, projecting savings of over INR 200 crore over the next five years.

- 1.19** SEBI sets up FPI Outreach Cell to engage with foreign investors and provide seamless access to Indian securities market - **Press Release No.23/2024, Dated 25-09-2024**

**Editorial Note :** The SEBI has established a dedicated Foreign Portfolio Investor Outreach Cell within the Alternative Investment Fund and Foreign Portfolio Investors Department (AFD). This cell will focus on direct engagement with Foreign Portfolio Investors (FPIs), facilitating their seamless access to the Indian securities market. Foreign investors can reach out to the FPI Outreach Cell for assistance at <mailto:fpioutreach@sebi.gov.in>.

- 1.20** SEBI issues FAQs for 'Mutual Fund Investors'

**Editorial Note:** SEBI has issued Frequently Asked Questions (FAQs) for Mutual Fund Investors. The FAQs cover: (a) What is a Mutual Fund? (b) What is the history of Mutual Funds in India and role of SEBI in mutual funds industry? (c) How is a mutual fund set up? (d) What is the Net Asset Value (NAV) of a scheme? (e) What are the different types of mutual fund schemes? (f) What are Sectoral funds and Thematic Funds? (g) What are exchange-traded funds? and (h) What are entry load and exit load in mutual funds?

- 1.21** SEBI issues FAQs for 'Mutual Fund Intermediaries'

**Editorial Note:** SEBI has issued Frequently Asked Questions (FAQs) for Mutual Fund Intermediaries. The FAQs cover: (a) Who is a sponsor? (b) Who can apply for registration of a Mutual Fund? (c) How to apply for registration of a Mutual Fund? (d) Whether SEBI conducts any onsite due diligence in the process of registration? and (e) What are the steps that must be taken by the applicant after they are found eligible by SEBI to sponsor a Mutual Fund?

- 1.22** SEBI study shows that 54% of IPO shares allotted to Investors are sold within a week of listing - **Press Release No. 19/2024, Dated 02-09-2024**

**Editorial Note :** Recently, SEBI conducted an in-depth study to analyse investor behaviour in 144 Main Board IPOs listed between April 2021 & Dec. 2023. SEBI revealed that around 54% of IPO shares allotted to investors, excluding anchor investors, were sold within a week of listing. Individual investors sold 70% of IPO shares by value within a year. Key findings of study include 'Flipping' behaviour among individual investors, disposition effect evident among investors and surge in demat accounts post-Covid.

- 1.23** Govt. nominates Ms. Deepti Gaur Mukerjee, Secretary, MCA as Member, SEBI - **Notification No. S.O. 3763(E), Dated 03-09-2024**

**Editorial Note :** The Central Government has nominated Ms. Deepti Gaur Mukerjee, Secretary, Ministry of Corporate Affairs as Member, Securities and Exchange Board of India, vice Dr. Manoj Govil, ex-Secretary, Ministry of Corporate Affairs.

- 1.24** SEBI addresses concerns over work culture, denies claims, and reaffirms commitment to transparency & employee growth - **Press Release No.20/2024, Dated 04-09-2024**

**Editorial Note :** On August 06, 2024, SEBI employees sent a letter to HRD highlighting concerns about work culture and unreasonable targets. A second letter followed seven days later with 16 demands for monetary and non-monetary benefits, including higher HRA. SEBI clarified that initiatives were already undertaken to address these issues. Refuting the claims, SEBI reaffirmed its commitment to serving the market with transparency and responsiveness while enhancing employee capacity and potential.

- 1.25** SEBI amends FVCI Regulations; introduces 'Obligations and Responsibilities for FVCIs and Depository Participants' - **Notification No. SEBI/LAD-NRO/GN/2024/203, Dated 04-09-2024**

**Editorial Note :** SEBI has notified the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024. As per the amended norms, new regulations 15A and 15B relating to the 'Obligations and Responsibilities of Foreign Venture Capital Investors and Designated

Depository Participants' have been inserted. Further, it states that no person must buy, sell or otherwise deal in securities as a FVCI unless he has obtained a certificate granted by a designated depository participant on behalf of the Board.

- 1.26** Entities with listed commercial papers must now report payment status within one working day: SEBI - **Circular No. SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/117, Dated 06-09-2024**

**Editorial Note** : SEBI has modified the timeline for entities with listed commercial papers to report the status of their payment obligations to stock exchanges. The timeline has been reduced from 2 working days to 1 working day after payment becomes due. This change aligns the reporting timeline for intimating stock exchanges w.r.t payment status for listed non-convertible securities and listed commercial papers. This move aims to enhance transparency for stakeholders & ensure timely disclosures by entities.

- 1.27** MCA increases consolidated monthly salary of Chairperson and Full-Time members of NFRA - **Notification No. G.S.R 543(E), Dated 06-09-2024**

**Editorial Note** : MCA has notified National Financial Reporting Authority (Manner of appointment and other terms and conditions of service of Chairperson and Members) Amendment Rules, 2024. An amendment has been made to Rule 11 w.r.t 'salary and allowances'. The MCA has increased the consolidated monthly salary of the Chairperson and full-time members of the NFRA. The Chairperson's salary has been raised from Rs 4.5 lakhs to Rs 5.625 lakhs, while full-time members will now receive Rs 5 lakhs from Rs 4 lakhs.

- 1.28** MCA amends CCI pay rules; increases consolidated monthly salary of Chairperson and full-time members of CCI - **Notification No. G.S.R 544(E), Dated 02-09-2024**

**Editorial Note** : The MCA has notified the Competition Commission of India (Salary, Allowances and other terms and conditions of service of Chairperson and other Members) Amendment Rules, 2024. An amendment has been made to Rule 3 relating to 'pay'. The MCA has increased the consolidated monthly salary of the Chairperson from Rs 4.5 lakhs to Rs 5.625 lakhs, while full-time members will now receive Rs 5 lakhs from Rs 4 lakhs. This shall be effective from January 1, 2024.

- 1.29** Govt. amends merger rules; prescribes norms for cross-border deals between foreign holding company and Indian WOS - **Notification No. G.S.R 555(E), Dated 09-09-2024**

**Editorial Note** : Govt. has notified Co(s) (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024. A new sub-rule has been inserted into Rule 25A, w.r.t merger or amalgamation of a foreign company with an Indian company and vice versa. Where transferor foreign company incorporated outside India, is a holding company, and transferee Indian company, is a wholly-owned subsidiary company incorporated in India, enter into a merger or amalgamation, both companies must obtain prior approval of the RBI.

- 1.30** MCA includes legal heir certificate as proof to register transmission of securities up to Rs 5,00,000 - **Notification No. G.S.R 552(E), Dated 09-09-2024**

**Editorial Note** : Govt. has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024. An amendment has been made to Schedule II. As per amended norms, the Govt. now includes a legal heir certificate issued by a revenue authority, not below the rank of Tahsildar, having jurisdiction as an additional document to register transmission of securities valued up to Rs 5,00,000 per issuer company. These rules shall be effective from 09.09.2024.

- 1.31** MCA to launch Form ADJ (Memorandum of Appeal) on V3 Portal for appeals against orders passed by Adjudicating Authority

**Editorial Note** : MCA has announced the launching of Form ADJ or Memorandum of Appeal on V3 portal on 16th September, 2024 at 12:00 A.M. This form is used to file an appeal against an order passed by the Adjudicating Officer. Stakeholders are advised to note the following points, (a) ADJ Form on V2 portal will be disabled from 12th September 2024 to 15th September at 11:59, which is planned for roll-out on 16th September 2024, and (b) ensure that there are no SRNs in pending payment and resubmission status

- 1.32** SEBI allows securities funded by cash collateral to be considered as maintenance margin for Margin Trading Facility - **Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/118, Dated 11-09-2024**

**Editorial Note** : SEBI has allowed securities funded by cash collateral to be considered as maintenance margin for Margin Trading Facility (MTF) to promote ease of doing business. This move helps to ease the burden of providing additional collateral towards the maintenance margin for the margin trading facility. This change came after SEBI received requests from market participants through the Industry Standards Forum to relax margin trading requirements. The circular shall come into effect from October 1, 2024.

- 1.33** SEBI speeds up bonus-issue process; shares would now be available for trading on a T+2 basis - **Circular No. CIR/CFD/PoD/2024/122, Dated 16-09-2024**

**Editorial Note :** As part of its continuing endeavor to streamline the process of issuing bonus equity shares, SEBI has decided to reduce the time taken for the credit of bonus shares and the trading of such shares from the record date of the bonus issue. The issuer, while fixing and intimating the record date (T day) to the stock exchange, shall also take on record the deemed date of allotment on the next working day after the record date. Further, shares will now be available for trading on a T+2 day.

- 1.34** SEBI revises the format of the quarterly report submitted by FVCIs on venture capital activity - **Circular No. SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/121, Dated**

**Editorial Note :** Foreign Venture Capital Investors (FVCIs) are required to submit quarterly reports to SEBI in the format specified. Now, the SEBI has revised the report's format. FVCIs shall submit the quarterly report even if no investment is made during the quarter. Further, report for the quarter ending Sep 30, 2024 and Dec 31, 2024 shall be submitted in excel file by Nov15, 2024 and Jan 15, 2025 via email. From quarter ending Mar onwards, the report shall be submitted on the SEBI intermediary portal.

- 1.35** SEBI introduces 'Centralized Fee Collection Mechanism' for Investment Advisers and Research Analysts - **Circular No. SEBI/HO/MIRSD/MIRSD-POD-1/P/CIR/2024/120, Dated**

**Editorial Note :** With growing interest in the securities market, SEBI recognised the need for a mechanism to help investors verify that the fees are being paid to a registered Investment Adviser (IA) or Research Analyst (RA) . In order to create a closed and transparent payment ecosystem, SEBI has introduced 'Centralized Fee Collection Mechanism for IA and RA' to facilitate collection of fees from their clients. The mechanism has been co-created by BSE Limited with the help of other stakeholders.

- 1.36** SEBI directs Exchanges, Depositories and Clearing Corporations to set up 'Near Sites (NS)' for near-zero data loss - **Circular No. SEBI/HO/MRD/TPD/P/CIR/2024/119, Dated 12-09-2024**

**Editorial Note :** Based on consultations with MIIs and recommendations of the Technical Advisory Committee, SEBI has notified modifications in guidelines for the Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs). In addition to the Disaster Recovery Site (DRS), all Stock Exchanges, Clearing Corporations, and Depositories must also have a Near Site to ensure zero data loss.

- 1.37** SEBI issues FAQs on Registration and Initial offer of units by InvITs and issuance of units by REITs...[read more](#)

**Editorial Note :** SEBI has issued Frequently Asked Questions (FAQs) on Registration and initial offer of units by InvITs and the issuance of units by REITs. The FAQs cover: (a) What is the procedure for obtaining registration as an InvIT or REIT from SEBI? (b) What is the procedure for making an application on the SI Portal? (c) What information/documents are required for registration? (d) What are the requirements for registration as an InvIT or REIT? and (e) Is there a need to appoint a compliance officer?

## 2. SUPREME COURT

### SECTION 41 OF THE LAND ACQUISITION ACT, 1894 - AGREEMENT WITH APPROPRIATE GOVERNMENT

- 2.1** Co. can't avoid liability of compensation to landowners by returning acquired land where it was unutilised due to company's default - **Ultra-Tech Cement Ltd. v. Mast Ram - [2024] 166 taxmann.com 580 (SC)**

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

- 2.2** SC sets aside NCLT/NCLAT orders passed without examining material, facts and evidence on record & restores file NCLT to decide afresh - **Chalasani Udaya Shankar v. Lexus Technologies (P.) Ltd. - [2024] 166 taxmann.com 267 (SC)**

## 3. HIGH COURT

### SECTION 212 OF THE COMPANIES ACT, 2013 - SERIOUS FRAUD INVESTIGATION OFFICE - INVESTIGATION BY

- 3.1** Where petitioner was Director companies having relationship with company which was being investigated by SFIO, and thus, SFIO issued a look out circular (LOC) against petitioner and no cogent reasons have been given by petitioner, for travelling abroad, instant application by petitioner seeking interim stay of LOC and for permission to travel abroad from 16.08.2024 to 05.09.2024 was to be dismissed accordingly - **Vijay Singh Dogra v. Serious Fraud Investigation Office - [2024] 166 taxmann.com 136 (Delhi)**

### SECTION 241 OF THE COMPANIES ACT, 2013 - OPPRESSION AND MISMANAGEMENT

- 3.2** NCLT has authority to examine documents allegedly to be forged and fabricated, which purportedly led to changes in directorship of company and transfer of shares of appellant to respondents - **Smt. Kavita Arora v. Leptons Designtek (P.) Ltd. - [2024] 166 taxmann.com 203 (Delhi)**



# COMPETITION LAW

## 1. STATUTORY UPDATES

- 1.1** CCI may now appoint monitoring agencies to ensure compliance and supervise the implementation of its orders - **Notification No. CCI/ Reg-G.R./08/ 2024-25, Dated 17-09-2024**

**Editorial Note :** The CCI has notified CCI (General) Regulations, 2024. As per notified norms, when the Commission deems it necessary to monitor the implementation of its orders under Sections 31, 48A, 48B, or any related provisions, it may appoint agencies to oversee the implementation. These agencies will operate under terms and conditions set by the Commission. Further, the appointed agencies must be independent of the parties involved in the proceedings and must not have any conflict of interest with them.

- 1.2** Govt. enforces Sec 26(9) of Competition Act w.e.f. 19.09.2024, mandating CCI to notify inquiry outcomes to authorities - **Notification No. S.O. 4031(E), Dated 19-09-2024**

**Editorial Note :** Govt. has notified 19.09.2024 as the effective date for enforcement of section 19(f) of the Competition (Amendment) Act, 2023. Section 19(f) of the Amendment Act inserts a new sub-clause (9) to Section 26 of the Competition Act, 2002, which states that upon completion of the investigation/inquiry, the CCI may pass an order closing the matter or pass an order u/s 27 and send a copy of its order to the Central Government, the State Government, the statutory authority or the parties concerned.

- 1.3** Govt. exempts acquisitions below Rs 450 cr assets or Rs 1250 cr turnover from competition review - **Notification No. G.S.R 547(E), Dated 09-09-2024**

**Editorial Note :** The Govt. has notified the Competition (Minimum Value of Assets or Turnover) Rules, 2024, outlining key thresholds for mergers and acquisitions. As per the rules, the transactions where the value of assets or turnover of the enterprise being acquired, controlled, merged, or amalgamated in India does not exceed Rs 450 crore and Rs 1250 crore, respectively, shall not be considered a combination under Section 5 of the Act. These rules will take effect from September 10, 2024.

- 1.4** MCA announces 10.09.2024 as effective date for amendments relating to investigation procedures on combinations - **Notification No. S.O. 3846(E), Dated 09-09-2024**

**Editorial Note :** The MCA has set 10.09.2024 as the effective date for amendments to various sections of the Competition (Amendment) Act, 2023. This includes Section 21 & 22 (Procedure for Investigation of Combinations), Section 23 (Orders of Commission on Certain Combinations), Section 24 (Acts taking place outside India but having an effect on competition in India), and others.

- 1.5** MCA notifies new 'Competition Rules' exempting certain combinations from disclosure and timeline requirements - **Notification No. G.S.R. 549(E), Dated 09-09-2024**

**Editorial Note :** The MCA has notified the Competition (Criteria for Exemption of Combinations) Rules, 2024, effective from 10.09.2024. Under Rule 3, combinations that meet the criteria outlined in the Schedule are exempt from the requirements to disclose combination details, adhere to the 210-day timeline, and comply with exemptions under Sections 6(2), 6(2A), and 6(4) of the Competition Act. The Schedule specifies 12 different criteria for exemption under Section 6.

- 1.6** Govt. specifies criteria for parties to Combination to give notice to CCI u/s 6(4) of the Act - **Notification No. G.S.R 548(E), Dated 09-09-2024**

**Editorial Note :** The Govt. has notified Competition (Criteria of Combination) Rules, 2024. The Rules define the terms under which parties may notify combinations u/s 6(4) of the Act. Parties, group entities, and their affiliates can notify if they neither produce similar products/services nor engage in complementary or different production stages. Affiliates are defined based on shareholding, voting rights, board representation, or access to sensitive information. The rules come into effect on 10-09-2024.

- 1.7** CCI broadens 'transaction value' under Sec 5(d) to include all forms of consideration, covenants, and future payables - **Notification No. CCI/CD/Comb. Regl./2024, Dated 09-09-2024**

**Editorial Note :** CCI has notified CCI (Combinations) Regulations, 2024, effective from 10.09.2024. Now, any request for confidentiality of information submitted during the inquiry shall be duly considered by the Commission. Further, the transaction value under Section 5(d) includes all forms of valuable consideration, direct or indirect, immediate or deferred, including covenants, obligations, interconnected steps, call options, and payables within two years for IP rights, supply, marketing, or future outcomes.

## 2. CCI

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

- 2.1** Where informant filed information alleging that opposite party was spreading misinformation/mis-statements on its YouTube channel about cost of IVF and fertility treatments, since cost of IVF treatments did not fall within ambit of Competition Act, 2002, there was no prima facie case of contravention of provisions of Act warranting an investigation and hence, matter was to be closed in terms of provisions contained in section 26(2) - **Sabine S. v. Mitera Hospital - [2024] 166 taxmann.com 329 (CCI)**

### 3. HIGH COURT

#### SECTION 26 OF THE COMPETITION ACT, 2002 - DUTIES, POWER AND FUNCTIONS OF COMMISSION - PROCEDURE FOR INQUIRY UNDER SECTION 19

- 3.1** CCI cannot proceed with inquiry after a settlement has been reached between parties to dispute and, thus, impugned order passed by CCI directing issuance of search warrants was to be set aside - **JCB India Ltd. v. Competition Commission Of India - [2024] 166 taxmann.com 283 (Delhi)**

- 3.2** Where CCI, while hearing a case of cartelization by tyre manufacturers, passed an order changing status of petitioner i.e. tyre manufacturer company from a 'participant' in investigation to an 'opposite party' without granting any opportunity and also copy of investigation report was not furnished to petitioner, since section 26(4) makes it statutorily mandatory for CCI to supply a copy of report to parties, non-supply of same compounded an irregularity in procedure and, therefore, writ petition filed by petitioner praying to quash order passed by CCI was to be allowed - **MRF Ltd. v. Competition Commission of India - [2024] 166 taxmann.com 98(Madras)**

# FEMA BANKING AND INSURANCE LAWS

## 1. STATUTORY UPDATES

- 1.1 AD Category-I banks are no longer required to submit LRS monthly returns starting from Sept, 2024: RBI - **Circular No. RBI/2024-25/74 A.P. (DIR Series) Circular No. 16, Dated 06-09-2024**

**Editorial Note :** The Reserve Bank of India (RBI) has introduced changes to the reporting requirements for Authorized Dealer (AD) Category-I banks under the Liberalised Remittance Scheme (LRS). From September 2024, AD Category-I banks will no longer be required to submit monthly LRS returns. AD Cat-I banks would only need to upload transaction-wise details under LRS daily return (CIMS return code: R010) at the close of business of the next working day on the Centralised Information Management System (CIMS).

- 1.2 Govt. permits 'HDB Financial Services Limited' to perform Aadhaar authentication for client verification u/s 11A of PMLA - **Notification No. S.O. 4240(E), Dated 26-09-2024**

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

- 1.3 Govt. designates 1st 'Additional District and Sessions Judge, Dehradun' as Special Court under PMLA, 2002 - **Notification No. S.O. 3872(E), Dated 10-09-2024**

**Editorial Note :** The Central Government has designated the 1st 'Additional District and Sessions Judge, Dehradun' as a Special Court under PMLA, 2002. The area specified for the trial of offences under the Additional District and Sessions Judge, Dehradun, includes the entire state of Uttarakhand.

- 1.4 RBI imposes monetary penalty on 'HDFC Bank Limited' and 'Axis Bank Limited' for non-compliance with RBI Directives - **Press Release No. 2024-2025/1075, Dated 10-09-2024**

**Editorial Note :** RBI has imposed a monetary penalty of Rs 1 crore on 'HDFC Bank Limited' and Rs 1.91 crore on 'Axis Bank Limited' for non-compliance with certain directions issued by RBI on Interest Rate of Deposits. Both banks opened certain savings deposit accounts in the name of

ineligible entities. Besides, a wholly-owned subsidiary of Axis Bank undertook business as a technology service provider, which is not a permissible business u/s 6 of the Banking Regulation Act.

- 1.5 Govt. notifies new rules for Compounding under FEMA; specifies list of non-compoundable offences, expands pecuniary limits - **Notification No. G.S.R. 566 (E), Dated 12-09-2024**

**Editorial Note :** The Ministry of Finance has issued new rules for Compounding Proceedings under FEMA. Rule 9 of the newly notified rules provides a list of contraventions that can't be compounded; earlier, no such list was there. Further, the compounding authority's pecuniary limits have also been enhanced. Payment for Compounding can now be made via NEFT, RTGS, and other permissible electronic modes. These rules shall be effective immediately.

- 1.6 Govt. permits 'INDmoney Private Limited' to perform Aadhaar authentication for client verification u/s 11A of PMLA - **Notification No. S.O. 3885(E), Dated 10-09-2024**

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

- 1.7 Union Finance Minister Smt. Nirmala Sitharaman to launch NPS Vatsalya Scheme for minors w.e.f September 18, 2024 - **Press Release, Dated 16-09-2024**

**Editorial Note :** As announced in the Union Budget 2024-25, Finance Minister Smt. Nirmala Sitharaman will launch the NPS Vatsalya scheme on September 18, 2024, in New Delhi. The Union Finance Minister will also launch an online platform for NPS Vatsalya subscriptions, release the scheme brochure, and distribute Permanent Retirement Account Number (PRAN) cards to new minor subscribers. NPS Vatsalya will allow parents to save for their children's future by investing in a pension account.

- 1.8 Interest Equalization Scheme extended for MSME exporters till 30.09.24; annual subvention capped at Rs. 10 Cr. per IEC: RBI - **Circular No. RBI/2024-25/76 DOR.STR.REC.44/04.02.001/2024-25, Dated 20-09-2024**

**Editorial Note :** Earlier, the Government allowed for an extension of the Interest Equalization Scheme for Pre and Post-Shipment Rupee Export Credit Scheme from September 1, 2024, to September 30, 2024. The Government has now clarified that the extension applies only to MSME manufacturer exporters. Further, the annual net subvention amount is capped at Rs 10 crore per importer-exporter code (IEC) for a given financial year.



## 2. SUPREME COURT

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

- 2.1 High Court was justified in holding that since a Master Directions on Frauds do not expressly provide an opportunity of hearing to borrowers before classifying their account as fraud, principles of natural justice, particularly rule of audi alteram partem has to be read into provisions of master directions on fraud to save them from vice of arbitrariness - **State Bank of India v. Rajesh Agarwal** - [2024] 166 taxmann.com 33 (SC)

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

- 2.2 SC/HC, in exercise of jurisdiction under Art. 32/Art. 226, may grant bail in PMLA cases if trial is not likely to complete in 3 to 4 years - **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement** - [2024] 166 taxmann.com 677 (SC)

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

- 2.3 SC dismisses TMC MP Abhishek Banerjee's plea against ED summons to him in illegal coal mining case - **Abhishek Banerjee v. Directorate of Enforcement** - [2024] 166 taxmann.com 227 (SC)

## 3. HIGH COURT

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

- 3.1 Where petitioner was a well-educated and accomplished woman, who had remained Member of Parliament, Member of Legislative Council, etc., she could not be equated to a 'vulnerable woman', who might have been misused to commit an offence, which was class of women for whom proviso to Section 45 of PMLA had been incorporated, as held by Supreme Court in case of Saumya Chaurasia, thus, petitioner could not avail benefit of section 45(1) of PMLA which entitles a woman for special treatment while her prayer for bail was being considered - **Kalvakuntla Kavitha v. Central Bureau of Investigation** - [2024] 164 taxmann.com 811 (Delhi)
- 3.2 Where petitioner was accused of committing an offence of money laundering and had projected proceeds of crime as untainted money, and had made huge cash deposits in his bank accounts, in

view of serious nature, gravity and severity of accusations levelled against petitioner, he was not entitled to be released on bail at this stage - **Satheesh Kumar P. v. Assistant Director, Directorate of Enforcement** - [2024] 166 taxmann.com 361 (Kerala)

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

- 3.3 Where ED a seized property of appellant company alleging that it made foreign remittances to different foreign companies under guise of payments against bogus import of services and Single Judge dismissed writ petition filed by appellant challenging said seizure on grounds of disputed question of facts could not be considered by writ Court, since issue as to how appellant had transacted its business etc. were highly disputed questions of fact, Court exercising powers of judicial review under article 226 of Constitution did not have necessary wherewithal to render its opinion thereon, therefore, appeal filed by appellant challenging said dismissal was to be dismissed - **PC Financial Services (P.) Ltd. v. Directorate of Enforcement** - [2024] 166 taxmann.com 178 (Delhi)

### SECTION 14 OF THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999 - DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

- 3.4 Where petitioner filed instant writ questioning commercial transactions between Axis entities involving acquisition of shares of a life insurance company i.e. Max Life, in view of fact that insurance and banking sectors were regulated and independent sectoral regulators, namely, SEBI and RBI were seized of controversy, Writ Court should not act as a 'super regulator' and interfere in exercise of Article 226 jurisdiction, and accordingly, instant writ petition was to be disposed of with a direction to SEBI and RBI to complete investigation - **Dr. Subramanian Swamy v. Union Of India** - [2024] 166 taxmann.com 27 (Delhi)

### SECTION 18 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - APPEAL TO APPELLATE TRIBUNAL

- 3.5 In matters of condonation of delay, unless delay is condoned, main proceedings would not be taken up for hearing, and stage of depositing amount as may be prescribed / engrafted in any statute as a pre-condition for entertaining a substantive proceeding, would not be applicable for dealing with applications for condonation of delay - **Gadekar Ginning and Pressing (P.) Ltd. v. Canara Bank** - [2024] 166 taxmann.com 517 (Bombay)

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

- 3.6 Where petitioner-borrower availed credit facilities from respondent bank in terms of sanction letter obliging petitioner to route its sale proceeds through said bank's account only, however, petitioner diverted its sale

proceeds and routed same through another bank, wherein, petitioner had an account and respondent declared account of petitioner as NPA, since petitioner abused process of law as he was in wanton breach of sanction letter, writ petition filed by petitioner challenging declaration of its account as NPA was to be dismissed - **Sharma Enterprises v. Banking Ombudsman** - [2024] 166 taxmann.com 223 (Delhi)

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

- 3.7** Where applicant was arrested by ED for being involved in framing of Delhi Excise Policy 2021-22 in exchange of Rs.100 Crores kickbacks, since applicant was in judicial custody for almost two years and with a little hope of speedy completion of Trial, he would therefore be entitled to grant of bail, applicant, who has no previous involvement, was not at flight risk or was likely to tamper with evidence and, thus, applicant was to be released forthwith on bail - **Sameer Mahandru v. Directorate of Enforcement** - [2024] 166 taxmann.com 379 (Delhi)
- 3.8** Where applicant was arrested by ED for laundering proceeds of crime received by her father as bribes on behalf of main accused, since documents involved in enquiry were voluminous and trial might take a long time to get concluded and father of applicant was also admitted to bail by Supreme Court, applicant was a woman who was entitled to bail under proviso to section 45 and, thus, applicant was to be admitted to regular bail upon her furnishing a personal bond - **Sukanya Mondal v. Directorate of Enforcement** - [2024] 166 taxmann.com 418 (Delhi)
- 3.9** Where ED arrested applicant for being actively involved in conspiracy for cartel formation and playing an active role in Delhi Excise Policy 2021-22 formation and participating in conspiracy of kickbacks, however applicant, an experienced professional and volunteered to work with Organisations such as UNICEF, had deep roots in society and was not a flight risk and had business based in India and, therefore, conditions of triple test being duly satisfied, applicant was to be released on bail - **Arun Ramchandran Pillai v. Directorate of Enforcement** - [2024] 166 taxmann.com 347 (Delhi)

## 4. SAFEMA

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

- 4.1** Where for alleged contravention of section 3 of FEMA, Adjudicating Authority had imposed penalty upon appellant and appellant challenged said order on ground that while passing impugned order, Adjudicating Authority had relied on retracted statements which were made under coercion, however, there was nothing on record to substantiate allegation, moreover, appellant had not furnished any evidence to contrary so as to disprove statements recorded under oath, thus, there was contravention of provisions of Section 3(a) of FEMA, 1999 - **Suresh Himmatlal Parmar v. Special Director, Directorate of Enforcement** - [2024] 166 taxmann.com 526 (SAFEMA - New Delhi)
- 4.2** Where appellant's proprietorship firms facilitated over-invoiced book imports and unauthorized remittances under guise of legitimate business activities, through which appellant gained two percent commission, contravention of Section 8(3) r/w Section 8(4) as well as of said Sections r/w Section 64(2) of FERA were established against appellant, and since, appellant was not main mastermind, total penalty of Rs.5 lakh on appellant was to be reduced to Rs. 2 Lakhs - **Shivshankar Chunnilal Joshi v. Special Director, Directorate of Enforcement, Mumbai** - [2024] 166 taxmann.com 261 (SAFEMA - New Delhi)
- 4.3** Where appellant, a shipping company, diverted consignment of tea from Moscow to Dubai on instruction of exporter, since appellant was well aware of fact that containers were to be shipped for Dubai right from issuing Bills of Lading, appellant facilitated exporter to carry out transactions in violation of FEMA and, therefore, penalty imposed upon appellant was justified - **Green Ways Shipping Agency (P.) Ltd. v. Special Director, Directorate of Enforcement** - [2024] 165 taxmann.com 831 (SAFEMA - New Delhi)
- 4.4** Where for alleged violation of section 8 of 1973 Act respondent imposed penalty upon all accused including appellant and according to appellant, though, respondent had relied on statement of appellant recorded under Section 108 of Customs Act, 1962 for passing order, appellant had retracted statement in a period of 12 days and thus, could not be relied by respondent, in view of fact that no document to prove same had been submitted by appellant, and thus, there was no merit in instant appeal and accordingly, it was to be dismissed - **Bala Shivaprasad v. Deputy Director, Directorate of Enforcement, Bang.** - [2024] 166 taxmann.com 1 (SAFEMA - New Delhi)
- 4.5** Where appellant was imposed with penalty for contravention regulations by permitting transaction of crediting non-convertible rupee funds received from Bank of USSR to make it convertible and transferred it to

London and Hong kong which was not permissible and though, there was no loss of foreign currency as it was brought back to India, contravention of provisions of 1973 Act would not be nullified, thus, while there was contravention of provisions of 1973 Act, penalty imposed was disproportionate to default, and thus, same was to be reduced - **Standard Chartered Bank v. Special Director, Directorate of Enforcement, Delhi - [2024] 166 taxmann.com 205 (SAFEMA - New Delhi)**

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

- 4.6** Where appellant was alleged to have contravened Sections 9(1)(b) and 9(1)(d) of FERA, 1973 and number of opportunities were given by Adjudicating Authority to appellant to present their defence during course of Adjudication proceedings, but appellant chose to seek repeated adjournments on one ground or other, thus, contraventions by appellant was established but since, appellant had pleaded for reduction in penalty imposed due to economic status, ends of justice would be met if penalty was reduced to from Rs.1.35 crore to Rs. 13.50 lakh - **Mustaq Mohd. Patel v. Special Director Directorate of Enforcement - [2024] 166 taxmann.com 286 (SAFEMA - New Delhi)**

#### SECTION 5 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 - ATTACHMENT

- 4.7** Where in a money laundering case subject property o appellant was attached by ED, which order was subsequently confirmed by AA and enough material had been brought on record by respondents to confirm attachment of subject properties, also burden of proving that property possessed by appellant was not proceeds of crime and where untainted properties was squarely upon appellant which had remained undischarged, thus, claim of deriving substantial income from legal sources and having purchased subject property out of legitimate income had remained an empty claim, and accordingly, instant appeal against order of AA was

to be dismissed - **Chanda Singh v. Joint Director, Directorate of Enforcement - [2024] 166 taxmann.com 440 (SAFEMA - New Delhi)**

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

- 4.8** Where appellant company made investment in its wholly owned subsidiaries without permission of RBI, however, it was having letter of clearance from RBI, and certain omissions were found thus, it could not be said that appellants were not vigilant to seek clearance/approval before making investments thus, penalty imposed upon appellant was to be reduced from Rs. 70 lakhs to Rs. 35 lakhs - **Tips Industries Ltd. v. Special Director Directorate of Enforcement, Mumbai - [2024] 166 taxmann.com 225 (SAFEMA - New Delhi)**
- 4.9** Where in a prosecution proceedings, name of appellant was discovered for engaging in capital account transactions but main accused was discharged and adjudicating proceedings were launched against appellant, since outcome of prosecution proceedings i.e. said discharge was independent from adjudication proceedings and would have no binding effect on adjudication proceedings, therefore, appeal filed by appellant against adjudication proceedings was to be dismissed - **Ms. Susila Ramaswamy v. Special Director, Directorate of Enforcement - [2024] 165 taxmann.com 837 (SAFEMA - New Delhi)**

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

- 4.10** Where respondent served a Show Cause Notice upon appellant for contravention of Sections 8 and 9 of 1973 Act and a period of more than 22 years had already passed from date of Show Cause Notice and taking into consideration peculiarity of case and also that total penalty amount was of Rs. 5 lakhs for which prayer was made to reduce it to Rs. 2 lakhs, penalty was to be reduced to Rs. 2 lakhs - **Maulik Dave v. Assistant Director, Directorate of Enforcement, Mumbai - [2024] 166 taxmann.com 326 (SAFEMA - New Delhi)**



# INSOLVENCY AND BANKRUPTCY CODE

## 1. STATUTORY UPDATES

- 1.1** IBBI bars late selection of Insolvency Professional as authorised representative under amended IRP norms - **Notification No. IBBI/2024-25/GN/REG116, Dated 24-09-2024**

**Editorial Note :** IBBI has notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024. As per the amended norms, the choice of an insolvency professional to act as an authorised representative by a financial creditor in Form CA must not be considered, if Form CA is received after the time stipulated in public announcement. Further, IP selected must be entitled to attend meetings of the committee and have rights and duties of an authorised representative.

## 2. SUPREME COURT

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

- 2.1** Where pursuant to closure of regional stock exchanges, appellant-company was moved to Dissemination Board of Bombay Stock Exchange and was debarred by SEBI from accessing securities market, since such debarment was revoked by BSE, appellant was to be permitted to submit a fresh resolution plan and EoI to CoC - **Aggarsain Spinners Ltd. v. Rajiv Khurana - [2024] 166 taxmann.com 59 (SC)**

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

- 2.2** SC upholds the time extension granted by NCLT due to COVID-19 to the auction purchaser in liquidation to deposit the balance consideration - **V. S. Palanivel v. P. Sriram, CS, Liquidator, etc. - [2024] 166 taxmann.com 185 (SC)**

## 3. HIGH COURT

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

- 3.1** Where defendant company created security interest in favour of plaintiff-lender for its financial assistance but on default of defendant, plaintiff filed an insolvency petition and a suit, plaintiff also filed an interim application proposing some amendments to enforce its mortgage and to preserve security created by defendant, also,

assailing execution of subsequent developments by defendant, said application was to be partly allowed as amendment to extent it partook character of enforcement security interest was not to be allowed in view of moratorium and rest amendment was to be permitted - **Edelweiss Asset Reconstruction Co. Ltd. v. Meeti Developers (P.) Ltd. - [2024] 166 taxmann.com 544 (Bombay)**

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

- 3.2** Where petitioner-company was admitted into an insolvency and respondent No. 2-power distribution corporation had sought recovery of electricity dues from petitioner company for periods prior to takeover of petitioner under insolvency and, had further refused to provide new electricity connections to petitioner, since respondent did not submit any claims in respect of their dues, stand of respondent No. 2 was unsustainable, impugned letter issued by respondent No. 2 to extent that it pertained to dues of petitioner prior to takeover was to be quashed - **Reliance Infratel Ltd. v. State of Meghalaya - [2024] 166 taxmann.com 522 (Meghalaya)**
- 3.3** Where petitioner-financial creditor filed a counter claim before Arbitrator against corporate debtor - claimant and, subsequently, a resolution plan of corporate debtor under CIRP was approved by NCLT which stated that any pending counter claims in arbitration would stand extinguished, since claims incorporated in petitioner's counter claims stood extinguished with approval of said plan, Arbitrator vide interim order arrived at legally correct findings in dismissing said counter claims on ground of such approval and, thus, petition filed against said order was to be dismissed - **West Bengal Power Development Corporation Ltd. v. Ujaas Energy Ltd. - [2024] 166 taxmann.com 138 (Calcutta)**
- 3.4** Where acquisition plan of a company in liquidation was approved by NCLT and Department of State Taxes & Excise marked red entries/charge over properties of said company on account of dues recoverable for arrears of taxes, in view of fact that all claims of arrears stood extinguished after sale of assets of said company in liquidation through acquisition plan approved by NCLT, a writ of mandamus was to be issued directing tax authorities to remove its red entries/charge on subject properties - **Su-Kam Power System Ltd. v. State of Himachal Pradesh - [2024] 166 taxmann.com 14 (Himachal Pradesh)**
- 3.5** Where pursuant to search and seizure action under section 132 of income tax, Revenue had initiated proceedings under section 153C of income tax against petitioner, however, section 31 of IBC provides that once a resolution plan is duly approved, no proceedings in

respect of any dues relating to period prior to approval of resolution plan can be continued or initiated and, therefore, notices issued by revenue were to be quashed and set aside - **Uttam Value Steels Ltd. v. Assistant Commissioner of Income-tax** - [2024] 166 taxmann.com 493 (Bombay)

#### SECTION 63 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - CIVIL COURT, NOT TO HAVE JURISDICTION

- 3.6 Where corporate debtor's account was declared as NPA and lender bank invoked guarantee by filing a petition to initiate CIRP against petitioner - corporate guarantor of corporate debtor which was admitted by NCLT, same was upheld by NCLAT and Supreme Court, petitioner filed a writ petition seeking to direct bank to align its claims with terms of guarantee deed, which limits financial liability of guarantor, since NCLT was competent to decide upon quantum of claims that would impact entire CIRP proceedings, said petition was to be disposed of with direction to NCLT to decide said issues - **Seeta Shah v. Reserve Bank of India** - [2024] 166 taxmann.com 260 (Delhi)

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

- 3.7 Members of Disciplinary Committee as per proviso to section 220(1) of Insolvency and Bankruptcy Code, 2016, would include a singular whole-time member as Clause 2(1)(c) of IBBI (inspection and investigation) Regulations, 2017 in clear terms indicates that Disciplinary Committee constituted by IBBI ought to consist of whole-time member(s), which would clearly indicated that Disciplinary Committee could consist of either a single whole-time member or more than one whole-time member - **Rohit J. Vora v. Insolvency & Bankruptcy Board of India** - [2024] 166 taxmann.com 181 (Bombay)

## 4. NCLAT

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

- 4.1 Where corporate debtor was under insolvency and, resolution plan of appellant-SRA was approved by Committee of Creditors (CoC), however, appellant was later found ineligible under section 29A(f) due to SEBI's ban on securities market participation, since appellant was barred from accessing security market, making them ineligible to submit resolution plan, impugned order passed by NCLT upheld its ineligibility was justified - **Aggarsain Spinners Ltd. v. Shreeji Cotfab Ltd.** - [2024] 166 taxmann.com 44 (NCLAT- New Delhi)

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

- 4.2 Where appellant-Income-tax Dept. filed claim in respect of outstanding income tax demands raised on corporate debtor after approval of resolution plan by CoC and NCLT, since such claim was filed after approval of resolution plan, same could not be allowed - **Assistant Commissioner of Income-tax, Central Circle-3 v. RP of Diamond Power Infrastructure Ltd.** - [2024] 166 taxmann.com 74 (NCL-AT)

#### SECTION 54D OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS - TIME-LIMIT FOR COMPLETION OF

- 4.3 Section 54D does not contemplate any automatic termination of Pre-Packaged Insolvency Resolution Process (PPIRP) after 120 days, it requires RP to file an application for termination; even if period of 120 days has been passed and question of termination of proceeding comes for consideration before NCLT it can refuse termination and extend period, which should be within its jurisdiction - **Vikash Gautamchand Jain Resolution Professional of Kethos Tiles (P.) Ltd., In re** - [2024] 166 taxmann.com 106 (NCLAT- New Delhi)

#### SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM BANKRUPT'S ESTATE - APPLICATION BY CREDITOR

- 4.4 Where date of filing of application by financial creditor was prior in time and there was no defect in said application, mere fact that application filed by another financial creditor was registered earlier would be inconsequential and moratorium shall commence on filing of application by first financial creditor - **Sangita Arora v. IFCI Ltd.** - [2024] 166 taxmann.com 202 (NCLAT- New Delhi)

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

- 4.5 Where appellant-personal guarantor filed instant appeal claiming that an application filed by financial creditor under section 95 on 30.09.2021 was time barred, however, a letter dated 12.06.2017 issued by appellant admitting debt, started a fresh period of limitation thus, Limitation of three years would have expired on 11.06.2020 and Supreme Court's order in *Suo Motu Writ Petition No. 03/2020* excluded period from 15.03.2020 to 25.03.2021, thus, application filed on 30.09.2021 was well within time - **Jagdishchandra Mansukhani v. STCI Finance Ltd.** - [2024] 166 taxmann.com 490 (NCLAT- New Delhi)

## 5. NCLT

### SECTION 54D OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS - TIME-LIMIT FOR COMPLETION OF

- 5.1** Where RP filed an application to extend Pre-Packaged Insolvency Resolution Process (PPIRP) period by 60 days after date of completion of PPIRP (120 days), since no resolution plan was approved within specific time period which was 120 days, instant application for an extension was to be rejected - ***Vikash Gautamchand Jain Resolution Professional of Kethos Tiles (P.) Ltd., In re - [2024] 166 taxmann.com 70 (NCLT - Ahd.)***

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

- 5.2** Where applicant-financial creditor filed a petition to initiate an insolvency resolution process against respondent-personal guarantor of a corporate debtor and copies of application were served to both personal guarantor and corporate debtor, in compliance with section 95(5), NCLT vide impugned order appointed RP, directing him to submit his report in terms of section 99 and relevant Regulations within stipulated time period - ***IFCI Bank Ltd. v. Sangita Arora - [2024] 166 taxmann.com 131 (NCLT - New Delhi)***



## ACCOUNT AND AUDIT UPDATES

### 1.1 MCA Issues Companies (Indian Accounting Standards) Second Amendment Rules, 2024, Revising Ind AS 116

**Editorial Note :** The Ministry of Corporate Affairs through its notification dated 9th September, 2024 issued Companies (Indian Accounting Standards) Second Amendment Rules, 2024. The amendment is made with respect to the accounting treatment of sale and leaseback under Ind AS 116. There has been inclusion of some new paragraphs and appendix under the Ind AS 116.

### 1.2 NFRA seeks public comments on proposed SA 600 revisions to enhance audit quality for PIEs

**Editorial Note :** The NFRA has identified significant deficiencies in audit quality for Public Interest Entities (PIEs) under SA 600 and is advocating for a comprehensive revision of the standard. The proposed updates aim to clarify auditor roles, enhance materiality and risk assessment, and improve supervision and documentation, aligning Indian standards with international practices. NFRA is seeking stakeholder feedback on these proposed revisions, with comments due by 30 October 2024.

### 1.3 Exposure draft of annual improvements to Ind AS 2024: Aligning with recent IFRS standards amendments by IASB

**Editorial Note :** The ASB of ICAI is committed to aligning Ind AS with IFRS to enhance financial reporting reliability and transparency. It has released an Exposure Draft of amendments corresponding to the annual improvements to IFRS Standards Volume 11, inviting public feedback by October 23, 2024. Key revisions include updates to hedge accounting for first-time adopters and clarifications on financial instrument disclosures and lease liabilities.

### 1.4 ICAI releases exposure draft on amendments to Ind AS for classification and measurement of financial instruments

**Editorial Note :** The Accounting Standard Board of ICAI has released an Exposure Draft of amendments to IndAS, aligning them with recent revisions to IFRS standards. Stakeholders are invited to provide feedback by October 23, 2024, on significant changes to Ind AS 109 and Ind AS 107 regarding the classification and measurement of financial instruments, effective from April 1, 2026.

## Direct Taxes Professionals' Association

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

Secretariat : 3, GOVT. PLACE (WEST), INCOME TAX BUILDING, KOLKATA - 700 001

Ph. +91 33 2242-0638, 4003-5451 • E-mail : [dtpakolkata@gmail.com](mailto:dtpakolkata@gmail.com) • Website : [www.dtpa.org](http://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

Would you like to contribute to the following activities of DTPA ? (Pls. specify)

- ☐ Contributing articles for Journal ☐ Being part of the Core group which runs the functioning of DTPA  
☐ Being faculty / Speaker at Conferences / Seminars / Workshops ☐ Others

Area of Professional Interest (Pls. specify) : ☐ Indian Income Tax ☐ International Tax

- ☐ FEMA ☐ Company Law ☐ Auditing ☐ Corporate Finance ☐ Indirect Tax ☐ General Management  
☐ Information Technology ☐ Human Resource ☐ Banking & Financial Services ☐ Investment Consultancy ☐ Others

I would like to receive News Letter / Notices / Circulars by ☐ E-mail ☐ Courier ☐ Both

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".

## OFFICE BEARERS 2024-2025

President



**CA. Barkha Agarwal**  
9831184871  
barkhaagarwal@hotmail.com

I.P.P.



**CA. Rajesh Kr. Agrawal**  
9007217679  
thinkvisor18@gmail.com

Sr. Vice-President



**CA. Manju Lata Shukla**  
9831491002  
ml\_shukla@rediffmail.com

Vice-President



**CA. Mahendra Kr. Agarwal**  
9830096405  
mahendrasubhashandco@gmail.com

General Secretary



**CA. Shyam Agarwal**  
9903040775  
Shyam\_ag12@yahoo.co.in

Joint Secretary



**Adv. (CA) Giridhar Dhelia**  
9830255500  
gdhelia@gmail.com

Treasurer



**CA. Sujit Sultania**  
9831016678  
sultaniasujit@gmail.com

## EXECUTIVE COMMITTEE MEMBERS 2024-2025



**CA. Ajit Kr. Tulsian**  
9831131100  
aaakdt@gmail.com



**CA. Akkal Dudhwewala**  
9748090242  
akkal.dudh@gmail.com



**Adv. Ankit Kanodia**  
9831543580  
ankitkanodia@gmail.com



**CA. Arup Dasgupta**  
9831503290  
orup.dasgupta@gmail.com



**CA. Ashish Rustagi**  
9339768131  
rustagico@rediffmail.com



**CA. Bharat D. Sarawgee**  
9830022057  
bharatsarawgee@gmail.com



**CA. Kedar Nath Gupta**  
9830648056  
guptakn123@yahoo.co.in



**CA. Neena Maheshwari**  
9830281121  
neenamaheshwari@gmail.com



**Adv. Rites Goel**  
9831029805  
replyrites@gmail.com



**CA. Ritesh Vimal**  
9830574278  
vimalritesh@gmail.com



**CA. Sahib Singh Choudhary**  
9339328137  
sahibschoudhary@gmail.com



**CA. Sanjay Satnalika**  
9830041626  
satnalika2096@gmail.com



**CA. Sanjay Poddar**  
9830047033  
poddar.sanjay@gmail.com



**CA. Mohan Lal Gupta**  
9836189880  
mohangupta.814@gmail.com



## PAST PRESIDENTS



**CA. K. C. JAIN**  
9830073387  
kcjain34@yahoo.co.in



**Adv. N. P. Jain**  
9830951252  
npjainadv@gmail.com



**Adv. J. R. Bhadani**  
9830135150  
jrvtaxation@yahoo.com



**Adv. V. K. Singhania**  
9831003609  
vitrum@vsnl.net



**CA. Indu Chatrath**  
9831048516  
ichatrath@yahoo.com



**Adv. R. D. Kakra**  
9831052151  
rdkakra@gmail.com



**CA. Pawan Agarwal**  
9830038817/9830262464  
pawan@asac.co.in



**CA. Raja Ram Chowdhary**  
9830088796  
rrchowdhary@hotmail.com



**CA. D. N. Agrawal**  
9830339556  
dn.agrawal@dbcca.co.in



**CA. P. K. Agarwalla**  
9831220797  
pkaco\_ca@yahoo.co.in



**Adv. S. D. Verma**  
9830026177  
kdsanju@hotmail.com



**CA. M. C. Jagwayan**  
9831021650  
nitjags81@rediffmail.com



**Adv. B. L. Kheria**  
9831696921  
bl\_kheria@yahoo.com



**CA. R. N. Rustagi**  
9830030845  
rustagico@rediffmail.com



**CA. A. K. Tibrewal**  
9831070922  
anand@nkpco.in



**CA. Santosh Kulthia**  
9748731590  
kkscaindia@gmail.com



**CA. Nilima Joshi**  
9830039990  
canilimajoshi@gmail.com



**CA. P. R. Kothari**  
9830021198  
pk.ramram@gmail.com



**Adv. Arvind Agrawal**  
9831026660  
gpakol.office@gmail.com



**CA. Sajjan Kr. Sultania**  
9830037498  
sundeepsultania@gmail.com



**CA. Sanjay Bajoria**  
9831845005  
sbacal2019@gmail.com



**Adv. Subash Agarwal**  
9830052141  
subash\_sushma@yahoo.in



**CA. Aghor Kr. Dudhwewala**  
9831039440  
aghorassociates@yahoo.co.in



**CA. Bishnu Kr. Loharuka**  
9830260400  
bkloharuka2003@yahoo.com



**CA. P. K. Himmatsinghka**  
9331024755  
pkhkol@gmail.com



**Adv. Paras Kochar**  
9831024563  
paraskochar@hotmail.com



**CA. K. P. Khandelwal**  
9830030216  
ca.kpkhandelwal@gmail.com



**CA. Sunil Surana**  
9831005533  
thanmalji@hotmail.com



**CA. Kamal Bagrodia**  
9830043311  
kamalbagrodia@gmail.com



**CA. Ramesh Kr. Chokhani**  
9748747044  
rkchokhani@yahoo.com



**CA. Vikash Parakh**  
9830969234  
vikashparakh.ca@gmail.com



**CA. N. K. Goyal**  
9831046053  
ngc.narendra@hotmail.com



**Adv. Kamal Kr. Jain**  
9830708341  
kamalkrjain@yahoo.com



**CA. D.S. Agarwala**  
9433097972  
agards@gmail.com

## SUB COMMITTEES 2024-2025

Sub-committee	Chairman/Chairperson	Co-chairman/Chairperson	Advisor
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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
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Note : President and Secretary are Ex-Officio members of all Sub-Committees.			

## SPECIAL INVITEES 2024-2025



**Mr. Prasanta Dutta**  
9830162034  
p\_dutta\_advocate@yahoo.co.in



**Mr. Rahul Parasrampur**  
9831042317  
parasrampurarahul@gmail.com



**Mr. Harsh Duggar**  
9748787888  
harshdugar@icai.org



**Mr. Vivek Jain**  
9874746182  
vivekjain4u@yahoo.com



**Mr. Vinit Jalan**  
9830516369  
vinitjalan@gmail.com



**Mr. Amit Singhan**  
9836356488  
amitsinghan86@yahoo.co.in



**Mr. Amit Agarwal**  
9804118873  
amit25385@gmail.com



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