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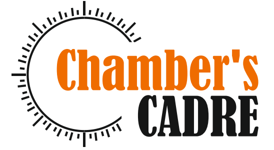
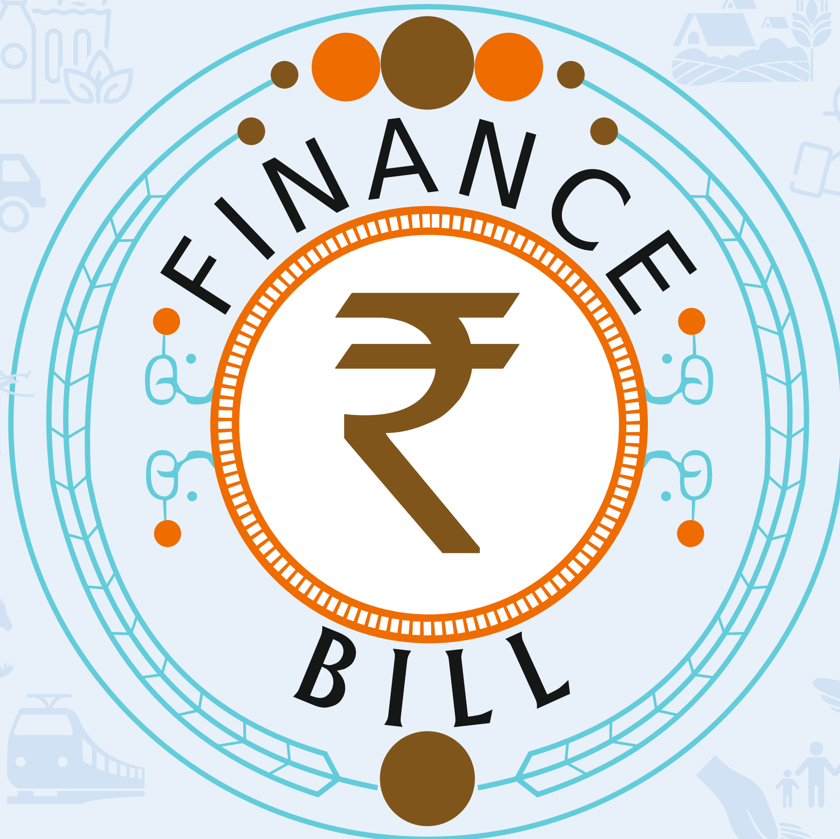


THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XI | No. 5 | February 2023



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Interactive meeting with Hon'ble Union Law Minister Shri Kiren Rijiju at ITAT, Mumbai on 15th January, 2023

CA Parag Ved (President) offering momento to Hon'ble Union Law Minister Shri Kiren Rijiju

Seen from L to R: CA Hitesh R. Shah (Past President), CA Mahendra Sanghvi (Past President), Hon'ble Union Law Minister Shri Kiren Rijiju, CA Parag Ved (President) and CA Anish Thacker (Past President)

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THE CHAMBER OF TAX CONSULTANTS
3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020
Phone : 2200 1787/2209 0423/2200 2455
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Editorial

Dear Readers,

On 1st February 2023, the Hon. Finance Minister, Smt. Nirmala Sitharaman (the hon. FM) presented the first budget in '*Amritkaal*' (the period between the 75th and 100th year of independent India) and the last full budget of the Modi Government's second term to the Parliament. The challenges before the Hon. FM this time around were different from the usual. As compared to the rest of the world, the Indian economy has shown far better performance post the pandemic. The tax collections were buoyant, and the economic survey showed a cautiously optimistic picture of the growth of the economy. At the same time, uncertain global headwinds and the challenging political scenario globally resulted in lesser room for bold experimentation. The middle class, the backbone of the economy also had to be taken care of particularly after the resilience and the full cooperation in vaccination and other projects of the Government in the pandemic years.

Viewed in this context, the budget appears to indeed be a balanced one with all the macro boxes ticked to the extent possible. Coming to the proposals related to Direct Taxes, the number of amendments proposed, have again crossed the century mark (122 to be precise). Some of the amendments proposed are stated to be for rationalisation, like the encouragement to taxpayers to adopt the newer 'incentive light' regime, some rationalisation measures which plugged some tax arbitrage enjoyed by the High Net Worth Individuals etc. Incentives for start ups are extended and the middle class is stated to be given considerable relief by rationalising the income-tax slabs and cutting down the surcharge at the highest level for taxpayers who file their tax returns in the incentive light regime. There was also a mention of raising the exemption threshold for leave encashment from Rs. 3 lakh to Rs. 25 lakh in the speech, at the end, which one presumes, will find its way into the statute, soon. The attention to the middle class mentioning them prominently, in the budget speech, a year prior to the elections is a loud and clear call to action to them.

Maybe one becomes a bit sceptical after one advances in years but listening to one more budget speech, one wonders what will it take to be that tipping point that turns India around to a

nation of compliant and happy taxpayers which are not a low percentage of the population? What will it take to widen the tax base and see that every possible citizen has the income which can be brought to tax, and which then is taxed in a manner that the proverbial bee picks out the flower's sweet nectar? When will we see the disparity between the 'super haves' and the 'have nots' reducing? For any Government, these are fundamental and ever cropping up questions. One really wonders, do 100 plus amendments, yearly, to an Act which has already been amended at least more than 5,000 times post its coming into force, achieve the stated objective of making the tax regime simple and less onerous in terms of the compliance?

Leaving this as food for thought, let me present to you, the February 2023 issue of the journal where a dissection of the proposals of the Finance Bill, 2023 has been aptly done. As usual, the proactive act of the Journal Committee to identify and contact authors, follow up rigorously and collect articles in a short span of time, has made it possible to place this issue before you within a few days of the presentation of the Finance Bill. I hereby express my sincere gratitude to each of the persons contributing to this initiative and in particular, the authors, who, as usual, have contributed erudite articles. This has made the February issue one of the annual highlights of the Chamber's Journal.

All of us carry lots of pride and love for our motherland in our hearts. To end this communication, let me quote something powerful from the celebrated author, Shri Devdutt Patnaik:

"What we possess is temporary but what we become is permanent"

Mother India possesses so much but it is up to us to see that she becomes the world's finest nation.

Jai Hind !

VIPUL K. CHOKSI
Editor

From the President

Dear Members,

Union Finance Minister Ms. Nirmala Sitharaman presented her consecutive fifth budget. The budget 2023-24 has provided much needed oxygen to MSME sector which suffered major setback in 2020. The budget achieves hat-trick of greatly boosting capital spending, slashing taxes and reducing the fiscal deficit. After pandemic, every country's goal was to spend-spend-spend without bothering what impact it will have on its fiscal health or inflation. India took little different approach where it did not put money directly in every citizen's pocket but gave targeted benefit to the people who were actually in the need of urgent assistance.

With 6-7% real GDP growth, India had just peeked into the list of top 10 economies in 2014. In eight years, it has galloped to outshine its former ruler, the United Kingdom, to become the fifth-largest economy in the world. But India's growth story is perhaps just starting. India is likely to surpass Germany in 2027 and most likely Japan by 2029 at the current rate of growth, according to a SBI research note. If true, the country will become the third-largest economy in the world in the next seven years—by 2029, next only to the US and larger rival China.

There are slew of tax measures in the budget and practically all of them are targeted at making the new tax regime more attractive compared to the old one. What the old ' Direct tax code' attempted failed, the new tax regime has given operational shape. In Principle, its always good to have the option of paying less tax without using exemptions, but the taxpayers who do so will have less incentive to save. Ideally exemptions that creates the habit of saving are unequivocally good. The reduced incentive to save in new regime will ultimately result in fewer savings and, later in life, more financial problems especially those who are younger and have lower incomes. If one observes, our present whole consumerist society is designed to encourage people to spend and not save.

India holds the Presidency of the G20 from December 1, 2022 to November 30, 2023. It's really a proud occasion for every Indian. India's Presidency is all about human-centric globalisation and is expected to have large-scale impact on the intergovernmental policy formulations and discussions that will influence the New World order and set the global post-pandemic economic agenda. A nation deeply committed to democracy and multilateralism, India's G20 Presidency would be a watershed moment in her history as it seeks to play an

important role by finding pragmatic global solutions for the wellbeing of all, and in doing so, manifest the true spirit of 'Vasudhaiva Kutumbakam' or the 'World is One Family'.

For India, the G20 Presidency also marks the beginning of “Amritkaal”, the 25-year period beginning from the 75th anniversary of its independence on 15 August 2022, leading up to the centenary of its independence, towards a futuristic, prosperous, inclusive and developed society, distinguished by a human-centric approach at its core

I congratulate Direct tax committee team for organizing Excellent virtual programs on Nauances of new age Shares and securities. The subject theme of the program was completely innovative. Every cession was superbly curated and was inadeptly covered. One more uniqueness of the program was such that more than 70% participant were outside Mumbai.

A Public Webinar was arranged on January 23, 2023 by CPC Bangaluru Income Tax on the initiation of the Principal Commissioner of Income Tax, Mumbai on the Demand Facilitation Centre (DFC) setup by IT Department was a great initiative by the department. A Demand Facilitation Centre (DFC) has been set up by the Department at Mysuru, Karnataka to facilitate taxpayers in resolving or rectifying outstanding tax demands. The DFC will provide a comprehensive solution to all kinds of outstanding tax demands with the Department. Based on a successful pilot in the Karnataka and Goa region, the DFC is being rolled out in PR CCIT (Mumbai) region.

A joint workshop of five organisations with GSTPM – on the subject of GST started from January 17,2023 is great initiative by all the five organisations. I congratulate Student committee chairman and his team for successfully conducting our flagship event for the year The 6th Dastur Debate Competition 2023. I thank respected Shri Anirban Das and Adv Vipin Kumar Jain for Judging the Final and concluding Round of the Competition.

This month issue as per our regular practices is on “Finance Bill “, which will cover the detailed analysis on all important Topic wise / clause wise proposal of the bill. I thank all the contributors for their timely article in very short time.

Friends, the RRC Committee has announced the 46th Residential Refresher Conference on Direct Tax at Indore in first week of March 2023. We are fully booked on residential basis and few slots are available on NRRC basis. All our RRCs have received such a wonderful support from the members that enrolment of all three RRC was Houseful within its initial announcements. The credit for this is due to auality of the education with analytical studies, selection of the contemporary topics and the way chamber provides to the participants, irrespective of their age, a unique platform, for sharing of knowledge among them, friendship and brotherhood among the participants during these three- or four-days program.

I conclude with best wishes to all the readers.

Parag S Ved
President

CA Anil Sathe

Overview

Finance Bill 2023- Hon'ble Finance minister , a little more charity please !

When the Finance Minister (FM) rose to present the budget, the burden of expectations would have certainly weighed on her mind. The economy was getting back on its feet after two and a half years of the pandemic, but global recession was on the horizon. While India was certainly expected to buck the trend of a lower growth which was prevalent in all developed countries, this was a pre-election budget and her audience expected number of reliefs and doles.

In that backdrop it must be appreciated that the FM has refrained from introducing any populist measures. She has continued the emphasis on capital expenditure which is estimated to be 10 lakh crores. To what extent this capital outlay will translate into creation of employment and place money in the hands of the youth, to generate demand remains to be seen. Growth is estimated to be 7%, the fiscal deficit has been limited to 6.4% and is expected to be brought down to 5.9% in the ensuing year.

There are a number of rationalisation measures and some reliefs on the direct tax front but as in earlier years the mistrust that the bureaucracy probably has about the taxpayer has reflected in some amendments. One significant characteristic of this finance bill is that it has very few amendments which can be termed as retrospective or retroactive. In a sense in this context "no change" is to be welcomed. Though there are certain amendments which would increase the tax base, the expectation that a simplification exercise would be undertaken so as to reduce uncertainties and consequent litigation, has been belied. To those in the profession this is heartening but not so for the taxpayer.

Lastly but not the least the harsh treatment seems to have been reserved for charitable entities and non-profit making organisations. The view taken by the highest court of the land in two recent judgements is already creating immense problems for such entities. Instead of mitigating those problems, the amendments will enhance them.

In this article I have drawn attention to significant proposals relating to direct taxes. A more detailed analysis is contained in other articles of this issue.

1) **Tax rates and the new default regime**

   Tax rates have remained more or less constant. The emphasis of the government to shift to a regime, where exemptions/deductions are limited has been continued. Section 115BAC, which was introduced from 1st April 2021, which gave an option to taxpayer to shift to a lower rate of tax subject to his foregoing certain exemptions/deductions,

has now been converted into a default regime. From assessment year 2024-25, the assessee will be assessed to tax on the basis of the new regime and if he desires to avail of the deductions and exemptions he is entitled to, he will have to exercise the option while filing the return of income.

Another change is that the benefit of the section was hitherto available only to individuals and Hindu undivided families. This has now been extended to association of persons (AOP), and unincorporated bodies. The default regime provides for the surcharge to be capped at 25%. Consequently the highest tax rate (other than those who opt for old regime) will be 39% which is effectively a 3.7% saving.

The shift from an optional regime to a default regime operates from assessment year 2024-25. Consequently return filers for assessment year 2023-24, will have to be careful that they remember to opt for the concessional regime if they choose to do so, for the default regime comes into force only for the next year. This needs to be remembered especially by persons who handle the filing of returns in the office of tax professionals.

2) Relief to start-ups

Section 80-IAC, the provision which grants relief to start-ups was available to those which were incorporated on before 1st April 2023. A deduction of hundred percent of the income was available for a period of three continuous years, out of a total period of ten years. The incorporation date, for eligibility has been extended to 1st April 2024.

Section 79, provides that if there is a change in shareholding beyond 51%, the losses incurred for years prior to the year in which a change occurs are not allowed to be carried forward and set off. A proviso provides for a relief in regard to start-ups, which is that as long as the members of the company who were shareholders at the time that the loss was incurred continue to remain as members and shareholders in the year of set off, the prohibition contained in section 79, would not apply. This relaxation was in regard to losses incurred during a period of seven years beginning with the year in which the company is incorporated. Since the deduction of 100%, is available for a period of three continuous years in a period of ten years, the relaxation in section 79 has been made available for a period of ten years.

3) Amendment to section 28(iv), consequential TDS under section 194R, and prosecution in case of failure to comply section 276B

In the Finance Act 2022, perquisites and benefits received by an assessee in exercise of his business or profession, whether convertible into cash or not were bought within the ambit of a TDS provision in terms of section 194R. The said provision has created tremendous difficulties, and government has had to issue clarifications and relaxations but the controversies have not abated.

This finance bill increases the ambit of 28(iv) even further. It is now clearly provided that even if such perquisite is received entirely in cash it will be chargeable to tax under section 28(iv), this proposed amendment virtually overrides and negates the effect of the decision of the Supreme Court in CIT Vs Mahindra and Mahindra 404 ITR 1. Apart from the effect it will have on business assessees one impact will be

on waiver of loans. On account of the Insolvency and Bankruptcy Code (IBC), the number of lenders willing to take a haircut, in order to settle the claim with a defaulting borrower is on the increase. On these resolutions and waivers this provision will have a significant impact. The benefit would probably be liable to tax. One however hopes that the exclusion of the operation of section 194R which was granted by the earlier clarification to certain categories of lenders would continue.

Finally, section 194 R in terms of the proviso provides that if a benefit or perquisites is provided in-kind, the grantor of the benefit, is required to ensure that the grantee, pays tax thereon. Section 194 R, is a fairly complex provision amenable to a number of interpretations. The bill proposes to amend section 276B, making a failure to comply with the proviso to section 194R an offence. One feels that this amendment is really uncalled for. When a burden of withholding tax or ensuring that taxes paid by the receiver of income is cast on a person, one must be liberal with enforcing prosecution provisions. One hopes that this provision in regard to prosecution in the circumstances narrated will be withdrawn when the bill becomes Act

4) **Treating cost of acquisition and cost of improvement of intangible assets as nil-amendment to section 55**

There are already provisions on the statue which treat cost of acquisition and cost of improvement of self-generated assets, like goodwill, trademarks, tenancy rights as nil. This finance bill increases the ambit to include intangible assets ,as well as any other right. From assessment year 2024-25, the cost of acquisition and the cost of improvement of such self-generated assets will be treated as nil. This will have a severe impact on businesses.

It is interesting to note that while there is an amendment to section 55, there does not seem to be any amendment to section 32, as well as section 43, defining actual cost . As a consequence, depreciation may continue to be available, for internally constructed or developed intangible assets , other than goodwill. As a corollary in case of disposal of such assets section 50 will come into play. The interplay of section 32, 43, 50 and 55 is likely to create significant complications and litigation is likely to increase.

5) **Increase in rate of tax collection and source on certain remittances section 206C**

The rate for tax collection on remittances, either under the liberalised remittance scheme (LERMS), or payment for overseas travel packages have undergone an increase from 5% to 20%. This is likely to impact the tourism industry, as well as investment by residents overseas. While one cannot dispute the right of the government to increase such a rate, one wonders whether this is a shift in policy.

Earlier, these provisions were brought more as a tracking mechanism. Now with the increase in rate they will operate as a revenue generation measure.

6) **Increasing limit under section 269SS/T and 194N**

Primary agricultural credit societies and Primary cooperative agricultural and rural development banks, serve the

rural sector where banking facilities are limited. The limit of accepting deposits and repayment of loans which under section 269SS/T is ₹ 20,000 hampers their business and leads to lack of access of credit to agriculturists as they require the loans in cash. In order to mitigate the specific hardships of this sector, the limit of Rs.20,000 has been raised to Rs.2,00,000.

Further section 194N, provides for a withholding tax if the cash withdrawal during a year is in excess of rupees one crore. Where the recipient is a cooperative society this has been increased to ₹ 3 Crores.

7) **Provision for refund of TDS , when tax has already been paid in an earlier year section 155(20)**

Mismatch of years in which income is submitted to tax and the year in which tax is deducted at source and withheld, has been a problem faced by assesses for a number of years. For example a person submits to tax income in an year, in which service has been rendered , as income has accrued. The payer however deducts and pays tax in the subsequent year. In such a situation since no tax has been deducted in the year in which the income is submitted to tax, the taxpayer does not get credit. The return forms while providing for a carry forward of TDS credit do not provide for a carry backward.

In the year in which the tax, is deducted and paid to the credit of the treasury, no credit can be enjoyed as in that year no income is submitted to tax. Thus, the credit is lost forever. The amendment now provides for an application to be made within a period of two years from the end of the financial year in which the tax was deducted and paid, and empowers the assessing officer to rectify the intimation or an order of assessment granting the credit in the relevant year.

8) **Limiting the exemption under section 54 and section 54F**

The exemption from capital gains under section 54, for acquisition/purchase of a residential house on sale of another, or under 54 F for acquisition/purchase of residential house, on sale of any other asset is now restricted to the cost of ₹ 10 crores. In computing 54F, the net consideration above 10 crores is to be ignored. This amendment is with a view to taxing those who acquire luxury residential premises. While the social objective of such an amendment has to be accepted, it may have some impact on an already beleaguered real estate industry.

9} **restriction on exemption under section 10(10D) in regard to maturity proceeds of life insurance policies and taxing provision under section 56**

The exemption in regard to proceeds of life insurance policy have been calibrated over the last few years. The exemption should correctly go only to policies which are primarily insurance policies and not investment policies. Consequently the restriction on the quantum of premium qua the sum assured was justified. In an earlier year, the exemption was restricted in respect of those unit linked schemes (ULIP), where the annual premium exceeded Rs.2,50,000.

This finance bill proposes to deny the benefit of exemption to proceeds of policy/policies where the annual premium is in excess of Rs.5 lakhs. The restriction/amendment will apply

only to those policies issued after 1st April 2023. In a corresponding amendment to section 56, it is provided that the proceeds to the extent that they exceed the aggregate premium paid by the policyholder during the tenure of the policy will be subjected to tax under the head income from other sources.

10) Amendments, in regard to charitable trusts

These amendments are uncalled for, and it needs to be brought to the notice of the legislators that, if enacted these will increase manifold the hardships to charitable trusts. There are a number of amendments but only three of them are discussed below for I am certain that the balance will be analysed in depth elsewhere in this issue

The law as it stands today does not permit one charitable entity to donate/ contribute to another in the form of a donation which is made with a specific direction that it will form part of the corpus. One can understand the intent as the exemption is granted on the basis of an application of income and since corpus does not form part of income there is no specific requirement of a timeframe within which it is to be utilised.

It is now provided that when one charitable trust contributes or donates to another only 85% will be treated as application. This is grossly unjust as the balance 15% will be the subject matter of tax in the hands of the donor trust. The memorandum explains that this amendment is to cover and plug the loophole, misused by certain charitable trust of creating multiple trusts with a donation chain wherein a 15% accumulation without fetter is misused to enjoy exemption for the entire hundred percent without any utilisation whatsoever. Firstly this appears to be a misunderstanding and a mathematical improbability. Even otherwise assuming that some stray trusts are planning their affairs to enjoy such an unwarranted exemption the law has got enough teeth to prevent such a situation. The amendment which will apply without any exception would result in a tax obligation on deserving trusts.

The second part of amendments is even more regressive. The accredited tax under section 115TD, was brought on the statute to prevent conversion of a charitable trust to a commercial entity. These provisions over a period have been amended in a manner that a small venial infraction totally unintended by a trust, would result in such accredited tax becoming payable. For example if a trust which is already registered requires to renew its registration by a particular date, a failure to do so would trigger the provisions of hundred and 115TD, resulting in the charitable entity having to pay huge tax. Similarly if during a subsequent examination the Commissioner finds that the earlier application on the basis of which are provisional registration was granted contain some incorrect information once again the accredited tax provisions would stand attracted. The filing of applications for registration is online, and many charitable entities do not have the wherewithal or are not techno savvy. A small innocent error may result in a draconian provision getting attracted.

Thirdly the second third and fourth provisos of section 12A are sought to be deleted as being redundant. In my view the said deletion is on account

of a misunderstanding of the law. This amendment was brought in for the purpose of protecting genuine trusts which had remained to be registered but were of charitable nature. The cumulative effect of these provisions was that if, a trust was registered in a particular year, and the assessments of preceding years were pending, if the objects and activities of the trust were identical in the preceding years the exemption, was available earlier years as well. Further it was provided that, no reassessment proceedings could be commenced only on the basis of non-registration in preceding years.

In my view while after the amendments proposed, registration of a trust is possible also in the year of commencement of activity, the provisos which are sought to be deleted are not redundant and would remain relevant in the future as well. The deletion therefore is clearly rising on account of a misunderstanding.

Conclusion

While the Finance Bill undoubtedly contains many provisions which calibrate and rationalise the law, there is much more which could possibly be done. To illustrate one of the areas of litigation arising on account of procedural lacuna and anomalies is the area of tax deduction at source. The mismatch between years, the denial of credit, and many such situations result in avoidable appeals. If the government wants to significantly reduce this litigation, a passbook scheme where an assessee gets an account to which tax withheld from any payment made to him, is credited should be introduced. The assessee should be free to utilise the same for payment of any tax for which he is liable for any year. With the advance in technology, this should be easily possible. In any event the tax has already reached the government treasury and the credit granted can in no case exceed the receipt. This and many other similar provisions can be made to make compliance with tax laws a little easier.

The greatness of a nation can be judged by the way its animals are treated.

— Mahatma Gandhi

“You have to grow from the inside out. None can teach you, none can make you spiritual. There is no other teacher but your own soul.”

— Swami Vivekananda

CA Vanshika Dharod

Rates of Tax

In the Union Budget 2023 announced on 01st February 2023, the following are major proposals in relation to tax rates:

1. New tax regime (Section 115BAC) shall be the default tax regime. This regime has now also been extended to Association of Persons (AOP) (other than co-operative society), Body of Individuals (BOI)and Artificial Juridical Person (AJP).

2. Increase in basic tax exemption limit under new tax regime to INR 3 lakhs with changes in income slabs.

3. Maximum rebate u/s 87A to Resident Individuals increased to INR 25,000 for total taxable income not exceeding INR 7 lakhs under new tax regime.

4. Highest surcharge on total income above INR 5 crores is proposed to be reduced from 37% to 25% under new tax regime.

5. Concessional Tax Regime of 15% shall be available to new resident manufacturing co-operative societies which are setup and registered on or after 01st April, 2023 and commence production on or before 31st March, 2024 subject to other conditions.

The applicable Tax Rates for the Financial Year 2023-24 (A.Y. 2024-25) are as follows;

(A) Tax Rates for Individuals, HUF, AOP (other than co-operative society), BOI and AJP

I. Old Tax Regime (Paragraph A of Part –III of First Schedule to Finance Bill 2023)

Status →	**Individual, HUF, AOP, BOI & AJP**	**Resident Senior Citizen (60 years & Above)**	**Resident Very Senior Citizen (80 years & above)**	**Notes**
Taxable Income (INR)	Tax Rate	Tax Rate	Tax Rate	• Health and Education Cess @ 4% of Tax + Surcharge. • Maximum rebate of INR 12,500 available to resident individuals with net taxable income up to INR 5,00,000.
Upto – 2,50,000	NIL	NIL	NIL	
2,50,001– 3,00,000	5%	NIL	NIL	
3,00,001 – 5,00,000	5%	5%	NIL	
5,00,001 –10,00,000	20%	20%	20%	

Status →	Individual, HUF, AOP, BOI & AJP	Resident Senior Citizen (60 years & Above)	Resident Very Senior Citizen (80 years & above)	Notes
Above 10,00,000	30%	30%	30%	• AMT @ 18.5% plus applicable surcharge and cess in case of taxpayer claiming specified deduction.

Surcharge Rates

Total Income	Rate of Surcharge*
Less than INR 50 Lakhs	Nil
Exceeding INR 50 Lakhs but not exceeding INR 1 Crore	10%
Exceeding INR 1 Crore but not exceeding INR 2 Crores	15%
Exceeding INR 2 Crores but not exceeding INR 5 Crores #	25%
Exceeding INR 5 Crores #	37%

In case of STCG u/s 111A, LTCG u/s 112 & 112A and dividend, the rate of surcharge shall be restricted to 15%, even if total income exceeds INR 2 Crores.

In case of AOP consisting of only companies as its members, the rate of surcharge shall be restricted to 15%, even if total income exceeds INR 2 Crores.

* Marginal relief is available in case of surcharge

II. New Tax regime u/s 115BAC

Existing Slabs (INR)	Existing Tax Rates	Proposed Slabs (INR)	Proposed Tax Rates	Notes
				• Health and Education Cess @ 4% of Tax + Surcharge. • Maximum rebate of INR 25,000 available to resident individuals with net taxable income up to INR 7,00,000. • AMT will not be applicable if one opts for Section 115BAC.
Up to 2,50,000	NIL	Up to 3,00,000	NIL	
2,50,001 to 5,00,000	5%	3,00,001 to 6,00,000	5%	
5,00,001 to 7,50,000	10%	6,00,001 to 9,00,000	10%	
7,50,001 to 10,00,000	15%	9,00,001 to 12,00,000	15%	
10,00,001 to 12,50,000	20%	12,00,001 to 15,00,000	20%	
12,50,001 to 15,00,000	25%	Above 15,00,000	30%	
Above 15,00,000	30%			

Surcharge Rates

Total Income	Rate of Surcharge*
Less than INR 50 Lakhs	Nil
Exceeding INR 50 Lakhs but not exceeding INR 1 Crore	10%
Exceeding INR 1 Crore but not exceeding INR 2 Crores	15%
Exceeding INR 2 Crores #	25%

In case of STCG u/s 111A, LTCG u/s 112 & 112A and dividend, the rate of surcharge shall be restricted to 15%, even if total income exceeds INR 2 Crores.

In case of AOP consisting of only companies as its members, the rate of surcharge shall be restricted to 15%, even if total income exceeds INR 2 Crores.

In new tax regime u/s 115BAC(1A), the highest surcharge of 37% has been capped to 25%.

* Marginal relief is available in case of surcharge

Note 1

- The new tax regime u/s 115BAC(1A) shall be the default tax regime.
- In order to opt for old tax regime, person shall have to exercise the option and file the return of income within the due date prescribed u/s 139(1).
- The option under old tax regime can be opted every year in case of person not having income from business and profession. In other cases, once such option is exercised it can be withdrawn only once in subsequent years unless such person ceases to have income from business and profession.
- In case of new tax regime, person will not be able to set-off any loss carried forward or depreciation attributable to exemptions/deductions mentioned in Note 2 below. [Though set-off of loss of earlier years on account of unabsorbed depreciation is not allowed, corresponding adjustment in WDV of such block of assets is allowed].

Note 2

Following exemptions/deductions have to be forgone u/s 115BAC(1A);

Section	Provision
10(5)	Leave Travel Concession
10(13A)	House Rent Allowance
10(14)	Allowances applicable for persons in employment (Refer Note 3 below)
10(17)	Allowances to MPs and MLAs
10(32)	Allowance for income of minor of INR 1,500 on clubbing of income
10AA	Units in Special Economic Zone

Section	Provision
16(ii) &(iii)	Deduction for entertainment allowance and profession tax
24(b)	Interest on loan in respect of self-occupied property/vacant property
32(1)(iia)	Additional Depreciation
32AD	Additional Depreciation on new plant and machinery
32AB	Allowance of Investment deposit Account
33AB	Expenditure on Tea, Coffee, Rubber Development Account
33ABA	Expenditure on Telecommunication business
Section 35(1)(ii), (iia), (iii) and 35(2AA)	Certain scientific research expenditure
35AD	Deduction under specified business
35CCC	Deduction for agriculture extension project
Chapter VIA	All deductions under Chapter VI-A are denied. However, following deduction shall be allowed - i. Section 80CCD(2) (Employer contribution on account of employee in notified pension scheme) ii. Section 80CCH(2) (Central Government contribution to Agniveer Corpus Fund) iii. Section 80JJAA (for new employment)
Set off of any losses	i. Carried forward loss or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to above; or ii. Under the head of House Property with any other head of Income; iii. The loss and depreciation referred to in above i and ii shall be deemed to be given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent assessment year iv. Where there is depreciation allowance in respect of block of asset which has not been given full effect to prior to the assessment year beginning on 01st April, 2024 corresponding adjustment shall be made to written down value of such block of assets as on 1st April, 2023.

Note 3

Following deductions are allowed u/s 115BAC(1A) -

1. Government shall prescribe the allowance permitted to be claimed u/s 10(14) u/s 115BAC(1A). Presently, following allowances u/s 10(14) are allowed to person u/s 115BAC(1) as per the Rule 2BB and Notification no. 38/2020-Income Tax dt. 26/06/2020
    - Transport allowance to Divyang Employees for commuting between place of residence and place of duty.
    - Conveyance Allowance in performance of duties
    - Conveyance to meet the cost of travel on tour or on transfer
    - Allowance for ordinary daily charges on account of absence from normal place of duty
2. Deduction u/s 80LA shall be available to person having units in International Financial Services Centre (Section 2(zc) of Special Economic Zones Act, 2005)
3. Standard Deduction upto INR 50,000 from salary u/s 16(ia) – **This is not available presently for new tax regime u/s 115BAC(1).**
4. Deduction for family pension u/s 57(iia) of INR 15,000 or 1/3rd of such pension whichever is lower - **This is not available presently for new tax regime u/s 115BAC(1).**

(B) Tax Rates for Firms (Including LLPs)

Income	Basic Tax	Surcharge	Cess	Total	Notes
Upto INR 1 Crore	30%	-	4%	31.20%	Health and Education Cess @ 4% of Tax + Surcharge
Exceeding INR 1 Crore	30%	12%	4%	34.94%	

(C) Tax Rates for Domestic Companies

Particulars	**Company opting for Sec 115BAA**	**Company opting for Sec 115BAB**	**Other Company**
Business of the Company	Any Business	Manufacturing/Production including generation of electricity	Any Business
Eligibility Criteria	No specific requirement	Set up and registered on or after 1st October, 2019 (manufacturing / production to commence by 31st March, 2024) (Refer Note 6)	No specific requirement
Basic Tax Rate	22%	15% (Refer note 1)	25%/30% (Refer note 2)

Particulars	Company opting for Sec 115BAA	Company opting for Sec 115BAB	Other Company
Surcharge	10%	10%	0%/7%/12% (Refer note 3)
Cess	4%	4%	4%
Effective Tax Rate	25.17%	17.16%	26% to 34.94%
Minimum Alternate Tax	Not applicable	Not applicable	Basic Rate = 15% of Book profits plus applicable surcharge and cess
Other Conditions	Prescribed exemptions /deductions are not allowed (Refer Note 7)		N.A.

Notes:

1. If total income of company u/s 115BAB includes any income not derived or incidental to manufacturing/production, such income shall be taxable at 22% without any allowance or expenditure. Short term capital gain from capital asset on which depreciation is not allowable shall be taxable at 22%.

2. Basic rate of Tax is 25% if turnover in FY 2021-22 is not more than INR 400 Crores and for domestic manufacturing companies u/s 115BA.

3. Surcharge Rates for Other Company

Total Income	***Applicable Surcharge***
Upto INR 1 Crore	0%
Exceeding INR 1 Crore but not exceeding INR 10 Crores	7%
Exceeding INR 10 Crores	12%

4. The option of Section 115BAA can be exercised in any year but before the due date specified u/s 139(1) for filing return of income for that year. This option once exercised cannot be withdrawn subsequently.

5. The option of Section 115BAB needs to be exercised before the due date specified u/s 139(1) for filing 1st Return of Income of the Company. The option once exercised, cannot be withdrawn subsequently. However, if the company fails to satisfy the conditions of Section 115BAB it can opt for Section 115BAA. However, if the violation is discovered subsequently after the due date u/s 139(1), it may be doubtful to opt for such an option.

6. Following companies not eligible for Section 115BAB –

   o Formed by restructuring or splitting up of existing business

   o Using old plant & machinery more than 20% of total plant and machinery (except imported subject to certain conditions)

   o Using building used previously as hotel or convention centre in

respect of which deduction u/s 80-ID has been allowed

- o Engaged in software development, mining, conversion of marble blocks into slabs, bottling of gas into cylinder, printing of books, production of cinematographic film or any other notified business

7. Prescribed exemptions/deductions includes:

Section	Provision
10AA	Units in Special Economic Zone
32(1)(iia)	Additional depreciation allowance
32AD	Deduction for investment in new plant and machinery in notified backward States.
33AB	Tea/ coffee/ rubber development allowance
33ABA	Site restoration fund
35(1)(ii), (iia), (iii) and 35(2AA), (2AB)	Certain scientific research expenditure
35AD	Deduction in respect of expenditure on specified business (e.g. Cold Storage, cross country gas line, etc.)
35CCC	Expenditure on agricultural extension project
35CCD	Expenditure on skill development project
Chapter VI-A	All deductions under Chapter VI-A are denied. However, following deduction shall be allowed — i. Section 80JJAA (deduction in respect of new employees) ii. Section 80M (receipt of dividend)
Set off of any losses	i. Carried forward loss or depreciation from any earlier assessment year (including deemed u/s 72A), if such loss or depreciation is attributable to any of the deductions referred to above; or ii. The loss and depreciation referred to above shall be deemed to be given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent assessment year iii. Though set off of loss on account of unabsorbed depreciation is not allowed, corresponding adjustment in WDV of such block of assets shall be allowed.

8. Deduction u/s 80LA shall be available to person having units in International Financial Services Centre (Section 2(zc) of Special Economic Zones Act, 2005) under section 115BAA.

(D) Tax Rate for Foreign Companies

Income	Tax	Surcharge	Cess	Total	Notes:
Upto INR 1 Crore	40%	-	4%	41.60%	Health and Education Cess @ 4% of Tax + Surcharge
Exceeding INR 1 Crore but not exceeding INR 10 Crores	40%	2%	4%	42.43%	
Exceeding INR 10 Crores	40%	5%	4%	43.68%	

(E) Tax Rate for Co-operative Societies

Particulars	Resident Co-operatives opting for Sec 115BAD	Resident Co-operatives opting for Sec 115BAE	Other Co-operatives
Business of Co-operative Society	Any Business	Manufacturing / Production including generation of electricity	Any Business
Eligibility Criteria	No specific requirement	Set up and registered on or after 1st April, 2023 (manufacturing / production to commence by 31st March, 2024)	No specific requirement
Basic Tax Rate	22%	15% (Note – 1)	10%/ 20%/ 30% (Note – 2)
Surcharge	10%	10%	0%/ 7%/ 12% (Note - 3)
Cess	4%	4%	4%
Effective Tax Rate	25.17%	17.16%	10.4% to 34.94%
Alternate Minimum Tax	Not applicable	Not applicable	Basic Rate =15% of Book profits plus applicable surcharge and cess
Other Conditions	Note – 4	Note – 5	N.A.

Note 1

If total income of co-operative society u/s 115BAE includes any income not derived or incidental to manufacturing/production, such income shall be taxable at 22% without any allowance or expenditure. Short term capital gain from capital asset on which depreciation is not allowable shall be taxable at 22%.

Note 2– Basic Tax Rate

Total Income	Applicable Tax Rates
Upto INR 10,000	10%
Exceeding INR 10,000 but not exceeding INR 20,000	20%
Exceeding INR 20,000	30%

Note 3 – Surcharge Rates

Total Income	Applicable Surcharge
Upto INR 1 Crore	0%
Exceeding INR 1 Crore but not exceeding INR 10 Crores	7%
Exceeding INR 10 Crores	12%

Note 4 - Concessional Rate of Tax for Co-operative Society under Section 115BAD

In line with provisions related to domestic companies, co-operative society having any business, resident in India, shall have the option to pay tax at effective rate of @ 25.17% (inclusive of surcharge and cess), subject to fulfilment of specified conditions. All other aspects such as exercise of option, prescribed deductions/exemptions not allowed, adjustment of WDV of block of assets, etc. are in line with those applicable to companies as per Section 115BAA.

Note 5 - Concessional Tax Rate for new Resident Manufacturing Co-operative Society under Section 115BAE

In line with provisions related to new domestic manufacturing companies, co-operative society engaged in manufacturing, resident in India, shall have the option to pay tax at effective rate of @ 17.16% (inclusive of surcharge and cess), subject to fulfilment of specified conditions. All other aspects such as exercise of option, prescribed deductions/exemptions not allowed, eligibility to claim concessional tax rate, adjustment of WDV of block of assets, etc. are in line with those applicable to companies as per Section 115BAB.

"Do one thing at a time, and while doing it put your whole soul into it to the exclusion of all else."

— Swami Vivekananda

Strength does not come from physical capacity. It comes from an indomitable will.

— Mahatma Gandhi

CA Preeti Sharma

New Scheme of Taxation for Individuals

A. Introduction

Optional New Tax Regime was introduced in Union Budget 2020 vide section 115BAC of Income-Tax Act, 1961 (IT Act) with the objective to simplify tax structure for Individual and HUF taxpayers, bring ease of compliance, administrative convenience and reduce litigations. The New Tax Regime was introduced to promote a flat tax base structure with lower tax rates for the individual taxpayers who opt to forgo certain deductions and exemptions.

The tax rates applicable for individuals as per the new tax regime for the financial year 2022-23 are as follows:

Income slabs	Tax rates*
Taxable income up to INR 250,000	NIL
Taxable income between INR 250,001 & 500,000	5%
Taxable income between INR 500,001 & 750,000	10% plus INR 12,500
Taxable income between INR 750,001 & 10,00,000	15% plus INR 37,500
Taxable income between INR 10,00,001 & 12,50,000	20% plus INR 75,000
Taxable income between INR 12,50,001 & 15,00,000	25% plus INR 1,25,000
Taxable income above INR 15,00,000	30% plus INR 1,87,500
*Surcharge and education cess are applicable in addition to above rate	

Some common deductions/exemptions not available under the new tax regime are listed here:

a) Leave Travel Allowance

b) House Rent Allowance

c) Exemption under section 10(14) read with Rule 2BB:

- Helper/Uniform/Academic allowance
- Children education – ₹ 100/month/child
- Hostel expenditure– ₹ 300/month/child

d) Standard Deduction/Professional tax deduction

e) Free food (₹ 50/meal)

f) Interest and principal repayment in respect of self-occupied property

g) Set off of loss under the head 'House Property' for Self-Occupied Property (which is allowable up to ` 2 lakh under the old tax regime)

h) Chapter VIA deductions e.g. deduction under section

i) 80C - PPF, life insurance, employee's contribution to PF, tuition fees etc.

j) 80CCD(1)/80CCD(1B) – Employee's contribution to NPS

k) 80D - Medical insurance

l) 80E – Loan taken for higher education

m) 80G – Donations

n) 80TTA – Interest on saving deposit

Major takers of the New Tax Regime are the individuals who are not keen towards investment in tax efficient schemes or maintaining record of various expenses that allows them to receive tax breaks.

As this is an optional scheme, tax payers based on their investment preferences are allowed to opt for the existing system of taxation (Old Tax regime) or New Tax Regime whichever is more beneficial to them. Given there are two regimes of taxation available to individuals, it has added more complexity to an already complex process of taxation.

Although the New Tax Regime was introduced two years back, there are not many takers given the tax payers have already planned their investments/expenditures keeping in mind all deductions/exemptions available in the old regime. In facts, the compensation structure of all the employees are well created by the employers to pass on all eligible exemptions/deductions available to the employees.

B. Why not preferred: Advantage of opting Old Tax Regime

The tax rates applicable for individuals as per the old tax regime for the financial years 2021-22 and 2022-23 are as follows:

Income slabs	Tax rates
Taxable income up to INR 250,000	Nil
Taxable income between INR 250,001 & 500,000	5%
Taxable income between INR 500,001 & 1,000,000	20% plus INR 12,500
Taxable income above INR 1,000,000	30% plus INR 112,500

The basic exemption limit of INR 250,000 is increased to INR 300,000 in case of resident taxpayers who are 60 years of age or more but less than 80 years of age (at any time during the FY) and INR 500,000 in case of resident taxpayers who are of the age of 80 years or more (at any time during the FY).

Despite the high tax rates, there are several ways to reduce the tax liability in Old Tax Regime. IN last many years, the Government has added provisions to the IT Act, giving Indian taxpayers access to various exclusions and deduction options that enable them to lower their taxable income and so pay less tax in Old Tax Regime.

Some exemptions are included in the individual's income, such as the House Rent Allowance (HRA) and Leave Travel Allowance (LTA). The deductions allow taxpayer to lower their tax obligation by investing, saving, or spending on specific items. Section 80C is the most popular and generous deduction, allowing you to reduce your taxable income by up to ₹ 1.5 lakh. Besides that, there are several more exemptions and deductions most widely available for the taxpayers.

- Taxpayers can reduce tax obligations by lakhs due to a combination of exemptions and deductions. Hence, tax planning is imperative to maximize your income, savings, and investments each year to limit your taxable income to a minimum.
- The old tax regime promotes a saving culture in individuals over time by requiring investments in specific tax-saving instruments. Most of tax payers plan their saving keeping in mind the tax breaks available to them.
- The compensation structure of employees in India are well created keeping in mind the tax breaks available under old tax regime
- People have planned their housing requirements/borrowings considering the deduction available on account of interest on housing loan under old tax regime

Let's understand the above with the help of some illustrations:

Illustration 1

a. An individual is earning salary income of INR 900,000 per annum.

b. He is contributing the following amounts per annum:
   - INR 50,000 towards Employee PF as a deduction from his payroll
   - INR 100,000 towards Public Provident Fund

c. The Individual is claiming deduction towards house rent paid by him to the tune of INR 60,000 per annum under Section 10(13A) of the IT Act.

Let's take a look at the amount of tax due from him under Old Tax Regime and New Tax Regime FY 22-23.

Particulars	**Old Tax Regime FY22**	**New Tax Regime FY 22**
Total income	9,00,000	9,00,000
Standard Deduction	50,000	-
Other Deductions	2,10,000	-
Taxable income	6,40,000	9,00,000
Tax	40,500	60,000
Rebate	-	-
Tax payable after Rebate	40,500	60,000
Surcharge	-	-
Education cess	1,620	2,400
Total tax including Surcharge & Cess	42,120	62,400

As can be seen, the Individual is paying more tax under the new tax regime as compared to the old tax regime, even with the minimal deductions as claimed above.

Illustration 2

a. An individual is earning salary income of INR 2,000,000 per annum.

b. He is contributing the following amounts per annum:
   - INR 50,000 towards Employee PF as a deduction from his payroll
   - INR 100,000 towards Public Provident Fund
   - INR 50,000 towards National Pension Scheme
   - INR 25,000 towards medical insurance premium

c. The Individual is claiming deduction towards house rent paid by him to the tune of INR 150,000 per annum under Section 10(13A) of the IT Act.

Let's take a look at the amount of tax due from him under Old Tax Regime and New Tax Regime FY22.

Particulars	Old Tax Regime FY22	New Tax Regime FY 22
Total income	20,00,000	20,00,000
Standard Deduction	50,000	-
Other Deductions	3,75,000	-
Taxable income	15,75,000	20,00,000
Tax	2,85,000	3,37,500
Rebate	-	-
Tax payable after Rebate	2,85,000	3,37,500
Surcharge	-	-
Education cess	11,400	13,500
Total tax including Surcharge & Cess	2,96,400	3,51,000

As can be seen with both the illustrations above, the Individual is paying more tax under the new tax regime as compared to the old tax regime, even with the minimal deductions as per their salary bands. Most individuals being risk averse do opt for some or the other retirement savings scheme to secure their future. Thus, most individuals carried on with the old tax regime, as post the investment and expense deductions, old regime made more sense.

C. Changes introduced in Union Budget 2023

In order to give a boost to the number of individuals opting for new income tax regime and to make it more attractive, Finance Minister has announced significant changes to the new income tax regime under the Budget 2023-24. The proposed changes include reduced tax rates, enhanced rebate, standard deduction, reduced & lower surcharge for super rich individual tax payers high net-worth individuals. Details as follows:

a) The basic income exemption threshold has been increased from INR 2.5 lakhs to INR 3 lakhs. The following reduced tax slab rates are proposed under New Tax Regime:

New Tax Regime introduced in Finance Bill 2020	
Income	**Tax Rate***
Upto INR 250,000	Nil
INR 250,001 – 500,000	5%
INR 500,001 – 750,000	10%
INR 750,001 – 1,000,000	15%
INR 1,000,001 – INR 1,250,000	20%
INR 1,250,001 – INR 1,500,000	25%
Above INR 1,500,000	30%

New Tax Regime introduced in Finance Bill 2023	
Income	**Tax Rate***
Upto INR 300,000	Nil
INR 300,000 – 600,000	5%
INR 600,000 – 900,000	10%
INR 900,000 – 1,200,000	15%
INR 1,200,000 – INR 1,500,000	20%
Above INR 1,500,000	30%

*Excluding surcharge and Health and Education Cess @4% on tax and surcharge

b) Currently a rebate under Section 87A of IT Act upto INR 12,500 is available to any resident individual with taxable income upto INR 500,000. it means that anyone with taxable income upto INR 5,00,000 is not required to pay taxes. The Finance Bill 2023 proposes to increase the amount of rebate to INR 25,000. Hence, a resident individual with taxable income upto INR 700,000 is not required to pay any taxes under the New Tax Regime. This benefit is not available under Old Tax Regime.

c) The salaried class is now eligible to claim standard deduction of INR 50,000 under the New Tax Regime as well. This was not available earlier to those who opt for New Tax Regime till FY 2022-23.

d) New Tax Regime shall be considered as default regime for all tax payers but an individual tax-payers still have an option to opt for old regime if the same is more beneficial in terms of tax outflow. In case anyone wants to assess his/her income under Old Tax Regime, such person has to specifically opt for the same while filing his/her tax return.

e) The maximum rate of surcharge on income above INR 5 Crore is proposed to be restricted to 25% under New Tax Regime as compared to 37% in Old Tax Regime. The surcharge under New Tax Regime shall be as follows:

Income Bands	Surcharge rates on Income other than dividend and capital gains covered under Section 111A and 112A	Surcharge rates on dividend Income and capital gains covered under Section 111A and 112A
Upto INR 5,000,000	Nil	Nil
INR 5,000,0001- 10,000,000	10%	10%
INR 10,000,0001- 20,000,000	15%	15%
Above INR 20,000,000	25%	15%

The above changes in the New Tax Regime shall be effective for Financial Year 2023-24 onwards. There is no change in the tax rates, surcharges and slabs under the Old Tax Regime.

Let's understand the above changes with the help illustrations.

Illustration 3

a. An individual is earning salary income of INR 750,000 per annum.

b. He is contributing the following amounts per annum:

- INR 50,000 towards Employee PF as a deduction from his payroll
- INR 100,000 towards Public Provident Fund

c. The Individual is claiming deduction towards house rent paid by him to the tune of INR 50,000 per annum under Section 10(13A) of the IT Act.

Let's take a look at the amount of tax due from him under Old Regime and New Regime FY23.

Particulars	Old Tax Regime	New Tax Regime
Total income	7,50,000	7,50,000
Standard Deduction	50,000	50,000
Other Deductions	2,00,000	-
Taxable income	5,00,000	7,00,000
Tax	12,500	25,000
Rebate	12,500	25,000
Tax payable after Rebate	-	-
Surcharge	-	-
Education cess	-	-
Total tax including Surcharge & Cess	-	-

Now, as can be observed from the above illustration, with the certain level of investments, under the old regime as well, the individual ended up paying no tax.

However, anyone working at this income level is no more required to make mandatory tax investments/claim various exemptions under Old Tax Regime to be in no tax liability situation.

Illustration 4

a. An individual is earning salary income of INR 2,000,000 per annum.

b. He is contributing the following amounts per annum:
   - INR 50,000 towards Employee PF as a deduction from his payroll
   - INR 100,000 towards Public Provident Fund
   - INR 50,000 towards National Pension Scheme
   - INR 25,000 towards medical insurance premium

c. The Individual is claiming deduction towards house rent paid by him to the tune of INR 150,000 per annum under Section 10(13A) of the IT Act.

Let's take a look at the amount of tax due from him under Old Regime and New Regime FY23.

Particulars	Old Tax Regime	New Tax Regime
Total income	20,00,000	20,00,000
Standard Deduction	50,000	50,000
Other Deductions	3,75,000	-
Taxable income	15,75,000	19,50,000
Tax	2,85,000	2,85,000
Rebate	-	-
Tax payable after Rebate	2,85,000	2,85,000
Surcharge	-	-
Education cess	11,400	11,400
Total tax including Surcharge & Cess	2,96,400	2,96,400

In the above illustration, we can see that the amount of tax due under both the old and new regime FY23 is same, with the amount of deductions/exemption of INR 3,75,000 claimed by the individual.

Hence any one at this level is better of opting for New Tax Regime if the exemptions/deductions are upto INR 3,75,000. However, if such amount is more than INR 3,75,000, then the tax payer is better of in Old Tax Regime.

Such level of exemption/deduction can be achieved as follows:

Section	Amount
Section 80C (EPF, PPF, Life Insurance) etc	1,50,000
Section 24 (interest on housing loan)	2,00,000
Section 80D (Medical insurance)	25,000

In addition to this, many salaried taxpayers claim deduction for HRA/LTA/Meal coupons etc.

Illustration 5

a. An individual is earning salary income of INR 2,000,000 per annum.

b. He is contributing the following amounts per annum:

- INR 50,000 towards Employee PF as a deduction from his payroll
- INR 100,000 towards Public Provident Fund
- INR 50,000 towards National Pension Scheme

c. The Individual is claiming deduction towards house rent paid by him to the tune of INR 50,000 per annum under Section 10(13A) of the IT Act.

Let's take a look at the amount of tax due from him under Old Regime and New Regime FY23.

Particulars	Old Tax Regime	New Tax Regime
Total income	20,00,000	20,00,000
Standard Deduction	50,000	50,000
Other Deductions	2,50,000	-
Taxable income	17,00,000	19,50,000
Tax	3,22,500	2,85,000
Rebate	-	-
Tax payable after Rebate	3,22,500	2,85,000
Surcharge	-	-
Education cess	12,900	11,400
Total tax including Surcharge & Cess	3,35,400	2,96,400

In a combined understanding of the Illustration 2 and 3, we can observe that as an individuals investment or eligible expenditure exemption fall, the amount of tax due under the old regime increases. In the present case, the new tax regime is more beneficial to a particular employee.

Although the tax rates introduced under Finance Bill 2023 seem lucrative, it is recommended that the taxpayers look at their personal situation, the various investments and expenditure that are eligible for tax exemption under old regime and then decide which regime is better for them, as we have already seen with our illustrations above.

SS-V-23

Illustration 6

a. An individual is earning salary income of INR 5,50,00,000 per annum.

b. He is contributing the following amounts per annum:

- INR 150,000 towards Employee PF as a deduction from his payroll
- INR 100,000 towards Public Provident Fund
- INR 50,000 towards National Pension Scheme

Let's take a look at the amount of tax due from him under Old Regime and New Regime FY23.

Particulars	Old Tax Regime	New Tax Regime
Total income	5,50,00,000	5,50,00,000
Standard Deduction	50,000	50,000
Other Deductions	2,00,000	-
Taxable income	5,47,50,000	5,49,50,000
Tax	1,62,37,500	1,61,85,000
Rebate	-	-
Tax payable after Rebate	1,62,37,500	1,61,85,000
Surcharge	60,07,875	40,46,250
Education cess	8,89,815	8,09,250
Total tax including Surcharge & Cess	2,31,35,190	2,10,40,500

As can be seen from the above illustration, we can observe that with the reduced surcharge for income above INR 5 Crore, new tax regime is more beneficial.

The below table outlaying when it makes sense for an individual to go for old tax regime:

	(all amounts in INR)
Income level	***Minimum amount of deduction/exemptions for opting Old Regime**
7,50,000	2,00,001
10,00,000	2,50,001
15,00,000	3,58,331
20,00,000	3,75,001
Above 5 Cr	New Regime is more beneficial
*does not include the amount of standard deduction as it is now available in both the regimes.	

D. Global Scenario

Each country provides different levels of benefits to its citizens, and individuals get different returns on the sums they pay into social insurance programs based on personal factors like income, age, and health status. Different countries put taxpayers into different brackets based on their income level, marital status, and the number of dependents.

Some countries have a flat tax rate, where everyone pays the same amount of taxes regardless of their income Greenland, for example, has a flat tax, and at 45%, it is one of the world's highest taxes. Similarly, Mongolia and Kazakhstan have flat taxes of 10%, and Bolivia and Russia have flat taxes of 13%,

Most countries have progressive tax slab rates, meaning that people with higher incomes pay more in taxes than people with lower incomes, like the USA, Canada, Japan, Germany, etc. The progressive tax is assessed as a more efficient means to ensure the redistribution of income in the economy. Being taxed according to the income level, then almost everyone will be offered to pay according to income level.

The tax rates and the method of arriving the taxable income varies from country to country. However, lower tax jurisdictions follow flat basis of computation of income rather than allowing various deductions based on tax-payers personal situation. However, most of the countries follow a single tax regime.

E. Conclusion

India also desires to reach a simple and flat tax structure, however, the current journey to reach to such stage has created complexity for the tax-payers with two ongoing regimes of taxation. Hopefully, the Government will soon come up with the transition plan to devise a single basis of taxation for Individuals – An updated New Tax Regime which will be preferred by most of the tax payers. The changes proposed in this Budget is a step towards that direction. However, many more such changes are required to be introduced in New Tax Regime to make it as the preferred regime for all tax payers.

Prayer is the key of the morning and the bolt of the evening.

— Mahatma Gandhi

CA Pratik Soni

CA Riddhi Soni

Budget 2023 proposals in relation to income chargeable under the head "Profits and Gains from Business of Profession"

Background

The Economic Survey mentions that the fundamentals of the Indian economy in the 75th year of India's Independence are sound as it enters its Amrit Kaal, the 25-year journey towards its centenary as a modern, independent nation. In contrast, the global landscape in terms of geopolitical tensions, high inflation, rising interest rates and possible resurgence of the pandemic can post roadblocks during the Amrit Kaal. Thus, the need to insulate the Indian economy from the possible negative effects of global turmoil is higher than ever before. It is in such precarious backdrop, that the Finance Minister rose on the floor of the Parliament on 1 February 2023 to present what she dubbed as the first Budget of the Amrit Kaal of India.

The Budget, through the provisions of Finance Bill, 2023 ('the Finance Bill, 2023') relating to direct taxes seek to amend the Income-tax Act, 1961 ('the Act') and continue reforms in direct tax system through tax reliefs, removing difficulties faced by taxpayers and rationalization of various provisions. For the said purpose, the Finance Bill, 2023 proposes following amendments to the existing provisions of 'Income from Profits and Gains from Business and Profession'.

All amendments discussed hereinafter shall be applicable from 1 April 2024 and will accordingly apply to the Assessment Year 2024-25 and onwards unless otherwise specified.

Section 10AA: Time limit specified for bringing export proceeds into India

Section 10AA of the Act provides for a 15-year tax benefit to units located in SEZ subject to fulfillment of certain conditions. However, in order to claim such deduction the said Section does not mandate the Company to file tax return before due date provided under Section 139(1) of the Act. Section 143(1) of the Act however, provides that such deduction shall be allowed only if tax return is filed within the due date specified under Section 139(1) of the Act. In order to align both the provisions, the Finance Bill 2023 proposes that no deduction under the Section 10AA of the Act shall be allowed to an Assessee who does not furnish a tax return on or before the due date specified under Section 139(1).

Further unlike Section 10A/10B of the Act, there is no time limit prescribed under Section 10AA of the Act, for timely remittance of export proceeds to India for claiming deduction therein. Accordingly, in order to

deal with the issue of delayed receipts of convertible foreign exchange, the Finance Bill 2023 proposes that deduction under said Section shall be available to a unit, only if the proceeds from sale of goods or provision of services is received in, or brought into, India in convertible foreign exchange within 6 months from the end of the previous year or, within such further period as the competent authority, being RBI, may allow. It is however clarified that export proceeds kept in a separate bank outside India with the approval of RBI shall be deemed as received in India. Consequential amendment is also proposed in Section 155 of the Act, to allow the Assessing Officer to amend the assessment order to allow deduction under Section 10AA of the Act, where the export proceeds are realized in India beyond the stipulated period, subject to RBI approval.

At this juncture, a question that arise for consideration is whether deduction under Section 10AA of the Act shall be available on additional income arising to an Assessee pursuant to such Assessee entering into an Advance Pricing Agreement ('APA') with the transfer pricing authorities in light of the proposed amendment. The issue can be better explained with the help of an example. Assume that Assessee has entered into an APA with the tax authorities on 1 April 2022 resulting in additional income arising to it in relation to say AY 2019-20. As a result, the Assessee issues invoice on say 30 April 2022 and receives remittance by 31 August 2022. Thus, while the Assessee has received remittance in respect of export proceeds within 6 months from the date of invoice, however, the same is received beyond 6 months from the end of FY 2018-19 to which the claim pertains. Thus, will the Assessee be able claim the said income as deduction under Section 10AA and if so how, needs to be seen.

The proposed amendment will put additional pressure on companies claiming deduction under Section 10AA of the Act with respect to realization of export proceeds. Otherwise, such companies will have to forego the deduction. Having said which, such denial of deduction under Section 10AA of the Act will not be permanent as such companies will be able to claim the deduction as and when they are able to realize the outstanding export receivables subject to RBI approval. This will however lead to increase in compliance burden of such companies.

Section 28: Cash benefit and perquisites

Section 28 of the Act provides for income that shall be chargeable to income tax under the head 'Profits and gains of business or profession'. Clause (iv) of the said Section brings to chargeability the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. In this regard, the Hon'ble Supreme Court in the case of ***CIT vs. Mahindra and Mahindra Limited (2018) 93 Taxmann.com 32 (SC)*** held that for the purpose of Section 28(iv), benefit has to be in some form other than money. A similar position has been taken by several other courts. The said conclusion flows from the expression 'whether convertible into money or not' which implies that the benefit or perquisite in the Section is something apart from money such as something in kind, which may or may not be convertible into money.

Accordingly, the Finance Bill 2023 proposes that the provisions of the aforesaid clause applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind. Consequently, the

aforesaid decision of Supreme Court as well as those of the other courts are overturned.

This amendment will thus impact intra-group as well as other transactions such as waiver of loan, interest free loan, etc., where benefit will accrue in cash to the Companies.

Consequent amendment has been proposed in Section 194R, which provides for deduction of tax at source on benefit or perquisite provided to a resident arising from business or exercise of a profession.

Section 35D: Ease in claiming deduction on amortization of preliminary expenditure

Currently, Section 35D of the Act provides for amortization of certain preliminary expenses which are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit. This includes expenditure in connection with preparation of feasibility report, project report, etc. The Section inter-alia provides that the work in connection with such reports or conducting of surveys, etc. would need to be carried out either by the Assessee himself or by a concern which is approved by the Central Board of Direct Taxes ('Board').

In order to ease the process of claiming amortization of these preliminary expenses, the Finance Bill, 2023 proposes to remove the condition that activity in connection with these expenses needs to be carried out by a concern approved by the Board. Instead, Assessees shall be required to furnish a statement containing the particulars of the preliminary expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner, as may be provided by rules.

The aforesaid amendment would thus ease the process of claiming the said preliminary expenditure as a deduction for any Assessee wanting to do so.

Section 43B and 43D: Reclassification of NBFCs

Section 43B of the Act, *inter-alia,* provides that any sum payable by the Assessee as interest on any loan or borrowing from deposit taking NBFCs and systematically important non-deposit taking NBFCs' shall be allowed as deduction only on payment basis. It can be allowed on accrual basis if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

Further, Section 43D of the Act, inter-alia, provides that interest income in relation to certain categories of bad or doubtful debts received by deposit taking NBFCs and systematically important non-deposit taking NBFCs' shall be chargeable to tax in the previous year in which it is credited to its profit and loss account or actually received, whichever is earlier.

Such classification for NBFCs is no longer followed by the Reserve Bank of India for the purposes of asset classification. Accordingly, the Finance Bill 2023 proposes to include only such class of NBFCs as may be notified by the Central Government for the purpose of Section 43B and 43D of the Act.

Section 43B: Promoting timely payments to Micro and Small Enterprises

Section 43B of the Act provides for certain deductions to be allowed only on payment basis. Further, the proviso of the said Section allows deduction on accrual basis if the amount is paid within the due date of furnishing of the tax return.

The Finance Bill 2023 proposes to bring within the purview of Section 43B of the Act any sum payable to micro and small enterprises. Accordingly, Finance Bill 2023 proposes that any sum payable by the Assessee to a micro or small enterprise beyond the time limit specified in Section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment. Section 15 of MSME Act provides for following timelines to make payment to MSME:

- In case of the written agreement - date agreed as per the agreement or 45 days from day of acceptance/deemed acceptance
- In case of no written agreement - 15 days from the day of acceptance / deemed acceptance of goods or services

Finance Bill, 2023, further provides that the benefit of proviso to Section 43B of the Act is not available on such payments implying that such payments will be allowed as deduction to an Assessee on accrual basis only if payment is made within the time stipulated under MSMED Act outlined above. This amendment being a socio-economic welfare measure is brought in to promote timely payments to micro and small enterprises.

Section 44AD and Section 44ADA: Increased threshold limits for presumptive taxation schemes

The existing provisions of Section 44AD of the Act, inter-alia, provide for a presumptive income scheme for small businesses. This scheme applies to certain resident Assessees[1] carrying on any business except the business of plying, hiring or leasing goods carriages referred to in Section 44AE and having a turnover or gross receipt of ₹ 2 Crore or less. Under this scheme, a sum equal to 8% or 6% (for turnover or gross receipts that are received in prescribed electronic modes) of the turnover or gross receipts is deemed to be the profits and gains from business subject to certain conditions. If Assessee has claimed to have earned higher sum than 8% or 6%, then that higher sum is taxable as business income.

Similarly, Section 44ADA of the Act provides for a presumptive income scheme for small professionals. This scheme applies to certain resident Assessees (i.e., an individual, partnership firm other than LLP) who are engaged in any profession referred to Section 44AA(1)[2] of the Act, and whose total gross receipts do not exceed ₹ 50 Lakhs in a previous year. Under this scheme, a sum equal to 50% of the gross receipts is deemed to be the profits and gains from business. If Assessee has claimed to have earned higher sum than 50%, then that higher sum is taxable.

1. An individual, HUF and a partnership firm other than LLP and other than those persons which claim tax holiday under Sections 10A, 10AA, 10B, 10BA or Chapter VIA-C of the Act.
2. Professions mean Legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the *Official Gazette*.

To ease compliance and to promote non-cash transactions, it is proposed by the Finance Bill, 2023that where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total turnover or gross receipts, a threshold limit of ₹ 3 Crore will apply for the presumptive taxation scheme under Section 44AD and a threshold limit of ₹ 75 Lakhs will apply for the presumptive taxation scheme under Section 44ADA of the Act.

The Finance Bill, 2023 further proposes that the receipt of amount or aggregate of amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be receipt in cash to determine the total turnover or gross receipt received in electronic mode.

Lastly, the Finance Bill, 2023 further proposes that provision of Section 44AB of the Act which provides of Assessees that shall be subject to tax audit shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of Section 44AD or Section 44ADA of the Act.

The aforesaid amendments will help reduce the compliance burden of small businesses engaged in eligible businesses. Not only that it will also encourage further adoption of non-cash modes of transaction settlement and give a boost to digitalization of the Indian economy.

Section 44BB and Section 44BBB: Preventing misuse of the presumptive taxation schemes

At present, Section 44BB of the Act provides for presumptive income scheme in the case of a non-resident Assessee who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils. Under the scheme, a sum equal to 10% of the aggregate of the amounts towards provision of services and facilities in connection with the aforesaid is deemed to be the profits and gains of such business chargeable to tax under the head 'Profits and gains of business or profession'.

Section 44BBB of the Act provides for presumptive income scheme in the case of a non-resident foreign company who is engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government. Under this scheme, a sum equal to 10% of the amount paid or payable (whether in or out of India) to the said Assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning is deemed to be the profits and gains of such business chargeable to tax under the head 'Profits and gains of business or profession'.

It was observed that the Assessees opt-in and opt-out of presumptive scheme in order to avail benefit of both presumptive scheme and non-presumptive income. In a year when they have loss, they claim actual loss as per the books of account and carry it forward. In a year when they have higher profits, they use presumptive scheme to restrict the profit to 10% and set off the brought forward losses from earlier years.

Conceptually, if Assessee is maintaining books of account and claiming losses as per such accounts, he should also disclose profits as per accounts. There is no justification for setting-off of losses computed as per books of account with income computed on presumptive basis.

In order to plug the aforesaid loophole, the Finance Bill, 2023 proposes to provide that notwithstanding anything contained in Section 32(2) and Section 72(1), where an Assessee declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set-off of unabsorbed depreciation and brought forward loss shall be allowed to the Assessee for such previous year.

Section 94B: NBFCs to be excluded from Thin Capitalization

Section 94B of the Act (also known as Thin Capitalization Rule) was inserted vide Finance Act 2017 in order to implement the measures recommended by OECD under Base Erosion and Profit Shifting (BEPS) Action Plan 4.

It provides for restriction on deduction of interest expense in respect of any debt issued by a non-resident, being an associated enterprise of the borrower. It applies to an Indian company, or a permanent establishment of a foreign company in India, who is a borrower. If such person incurs any expenditure by way of interest or of similar nature exceeding ₹ 1 crore which is deductible in computing income chargeable under the head "Profits and gains of business or profession", the interest deductible shall be restricted to the extent of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA). Proviso to this Section brings within its scope certain debt issued by a lender who may not be an associated enterprise of the borrower.

This Section however does not apply to an Indian company, or a permanent establishment of a foreign company which is engaged in the business of banking or insurance. On the contrary, the aforesaid provision currently applies to NBFCs engaged in the business of financing. The Finance Bill 2023 therefore proposes to exclude such NBFCs from the purview of Section 94B, since they function on similar lines and are subject to similar regulations and compliances as are applicable to banking and insurance companies. Thus, henceforth, NBFCs can claim the deduction of interest on their borrowings without any cap, thereby providing significant relief to them.

"We reap what we sow. We are the makers of our own fate. None else has the blame, none has the praise."

— Swami Vivekananda

CA Bhavin JM Dedhia

Amendment to the Chapter of Capital Gain

This Budget was widely anticipated to bring many measures to rationalize the provisions of the Income-tax Act, 1961 ('Act'). One of the many changes expected was rationalization in the period of holding and tax rates for various categories of the capital assets. However, the Finance-Minister has shied away from said change and has rather sought to bridge the gaps in the existing provisions. In this article we will discuss the amendment and their impacts and also the anomalies emanate out of these amendments.

AMENDMENT IN SECTION 54 AND 54F

Background

Existing provisions of section 54 and section 54F of the Act provide for exemption of long-term capital gains arising from transfer of residential house property and other capital assets, respectively, to Individual/HUF, where such taxpayers purchase or constructs residential house property in India within specified time.

The prices of residential properties in the metro cities and more particularly in Mumbai have skyrocketed over the years wherein the cost of the residential house property either exceeds or covers significant amount of capital gain/ net consideration arising from transfer of capital asset. Resultantly various taxpayers have optimized their capital gain taxation by investing in such residential house properties.

Proposed Amendment

The Finance-Ministry claims to have noted instances of huge deductions being claimed by high-net-worth taxpayers under these provisions of section 54 and 54F wherein such taxpayers are resorting to purchase of very expensive residential house properties. The Memorandum explaining the provisions in the Finance Bill 2023 ('Memorandum'), highlights that the provisions of section 54 and 54F were introduced to mitigate the acute shortage of housing and to give boost to house building activities. However, claims of huge deduction by acquiring very expensive house property is termed in the Memorandum as an act that defeats the intent and purpose behind the introduction of these provisions. Accordingly, it is proposed to amend the provisions of section 54 and 54F so as to limit the maximum deduction under these section to 54 and 54F of the Act. To give effect to this, the following amendment is proposed:

1. For the purposes of computation of capital gain under section 54 and 54F, the cost of the new residential house property shall be restricted to ten crore rupees. The amount exceeding ten crore rupees shall not be taken into account.

2. Similarly, with regard to deposit of amount in the specified bank account under the capital gain account scheme (CAGS), it is proposed that capital gain* in excess of ten crores rupees shall not be taken into account. Therefore, any deposit in the bank account under the CAGS in excess of ten crore rupees shall be ignored.

(* 'net consideration' in case of section 54F)

The proposed amendment is stated to become effective from AY 2024-25 and should apply to capital gain arising on or after April 01, 2023

Impact Analysis of the Amendment

Example: Let us evaluate the capital gain computation framework pre and post amendment:

Particulars	Section 54		Section 54F			
	Existing	Proposed	Existing	Proposed	Proposed	Proposed
Net Sale Consideration	500,000,000	500,000,000	500,000,000	500,000,000	100,000,000	160,000,000
Indexed Cost of Acquisition	(250,000,000)	(250,000,000)	(250,000,000)	(250,000,000)	(60,000,000)	(60,000,000)
Long-term Capital Gain	250,000,000	250,000,000	250,000,000	250,000,000	40,000,000	100,000,000
Cost of New Residential House Property	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000
Amendment: above cost restricted to	NA	100,000,000	NA	100,000,000	100,000,000	100,000,000
Exemption under section 54 /54F	150,000,000	100,000,000	75,000,000	50,000,000	40,000,000	62,500,000
Taxable capital gain	100,000,000	150,000,000	175,000,000	200,000,000	-	37,500,000

1. **Section 54:** In case of section 54 by capping the cost of the new residential house property to ten crore rupees, the capital gain exemption shall also get capped to ten crore rupees.

2. **Section 54F:** By capping the cost of new residential house property and where the net consideration is more than such cost of new residential house, the exemption under section 54F shall be worked out to a sum less than ten crore rupees. The exemption in such case will be ten crore rupees only in scenario where the amount of capital gain is equal to the net consideration, however, such instances would be not much illustratively, sale of bonus shares, etc. The Memorandum seeks to bring this amendment to restrict the capital

gain exemption to ten crore rupees, however for section 54F the exemption works out to lower than ten crore rupees in scenario where the cost of the residential house property is capped to ten crore rupees. This doesn't seem to be thought-of and may need a change in the final bill before it receives the assent of the President of India, until than this shall be the framework.

3. Overall, the above amendment though introduced with the objective of rationalizing the capital gain exemption for high net-worth individuals, however it may end up hurting more taxpayers then the one who have benefitted out of it. Take a situation wherein taxpayer based out of South Mumbai having a tenancy-rights in respect of a property with 2000 sq ft of carpet area, gets under a redevelopment scheme an ownership flat of equal or higher value. He will end-up be paying tax or can it be argued that this did not constitute transfer as there was a mere improvement in the right from tenancy to ownership.

Food for thought

1. Presently, the clause (i) to sub-section (1) to section 54 provides that where the amount of capital gain is more than the cost of new asset, then the exemption shall be restricted to the cost of the new asset and that upon transfer of such new asset within a period of three years the cost thereof shall be reckoned as nil.

2. Now, where the capital gain is, say, 15 crores and the cost of new asset is also 15 crores, then consequent to the amendment the cost of new asset will be restricted to 10 crores thereby the exemption under section 54 will work out to 10 crores. Now, upon transfer of such new asset within a period of three years the cost of this new asset shall be taken nil. This is because there is no corresponding amendment made to this effect in section 54. This would thus lead to an agony for the taxpayers as neither do they get higher exemption nor is the amount exceeding 10 crores allowed as cost. This again seems to be a part that has missed the attention of the draftsmen and may need correction before the assent of the President of India is received.

Note on Taxation of Market Linked Debentures (MLDs)

Background

This is a new animal for which a special provision is proposed to be introduced. Before we get into the amendments let us first understand the framework of this new instrument called MLD.

1. MLDs are a form of debentures where the returns are linked to performance of the underlying market index being Sensex, Nifty, etc.The returns on the MLDs are generally payable on their maturity. Say Company issues MLD for a tenure of 2 years. On redemption, the investor will receive the principal amount along with returns thereon which are linked to underlying market index (say Sensex). The table below summarizes the annual return XIRR under different market conditions:

Underlying performance at maturity	***Annual Return XIRR***
>= 75%	9%
>=25% < 75%	8%
< 25%	0%

Accordingly, if the underlying performance is greater than or equal to

75% of the base level, return shall be 9%. But in an adverse scenario where the underlying performance is less than 25% of the base level, return can even be 0%. In such a case the investor on maturity will only receive the principal amount without any additional returns.

2. The above illustration is a case of principal protected MLDs wherein irrespective of the underlying performance, the investor is protected from the downside risk of the market. In case of non-principal protected MLDs the principal amount may also not be paid by the issuer company in case of adverse performance of the underlying market index. The SEBI governs the Listed MLDs and has also issued guidelines for issue and listing of structured products/ MLDs. As per said SEBI guideline, non-principal protected instruments are not regarded as debt securities and are not allowed to be listed under such regulations.

Existing taxation position

1. Further, below is the period of holding for classification as long-term capital asset in case of:

   - Listed MLD - More than 12 months,
   - Unlisted MLD - More than 36 months.

2. Considering the framework of MLDs the gain on their transfer including on maturity, is currently offered as income from capital gain. The below table encapsulates the applicable tax rates to an individual on income from MLDs and on interest received on normal debentures:

Nature of Income	**Applicable Tax Rates**
Interest income on normal debentures	At normal applicable rates (could go as high as 42.74%)
Short term capital gains on MLDs	At normal applicable rates (could go as high as 42.74%)
Long term capital gains on transfer of listedMLDs	11.96% (assuming highest surcharge rate of 15%)
Long term capital gains on transfer of unlistedMLDs	23.92% (assuming highest surcharge rate of 15%)
*No indexation is allowed on debentures as per section 48	

3. The above tax arbitrage on account of timing difference and differential tax rate benefitted the investors significantly.

Proposed Amendment

1. The MLDs are proposed to be defined as a security by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and include any securities classified or regulated as a Market Linked Debenture by Securities and Exchange Board of India (‘SEBI’).

2. Proposed provisions seeks to treat consideration received or accruing on transfer/ redemption/ maturity of the MLDs as reduced by, cost of acquisition and the expenditure incurred in

connection with the transfer, as short-term capital gains arising from the transfer of a short-term capital asset. This amendment is to take effect from 1st April, 2024 and will, accordingly, apply in relation to the AY 2024-2025 and subsequent AYs.

3. As per Memorandum the intention to deem capital gains arising on transfer of MLDs as short term is for aligning the tax treatment of MLDs with other financial instruments (like derivatives) and bring to tax the income therefrom at normal rates (which as discussed above could go as high as 42.74%) as against the concessional rate of 11.96% being applied currently by the taxpayers.

4. Let us understand the impact of the amendment by way of an illustration. Company A Ltd., issues MLDs for a tenure of 2 years. MLDs are listed on a recognized stock exchange in India. A resident individual (taxed at highest slab rate and opted for old regime) invests INR 10,00,000 in such listed MLDs issued by Company A. On redemption, the investor will receive the principal plus annualized coupon on XIRR basis. Coupon will be linked to performance of a G-sec. Coupon (if any) shall be payable only on maturity. Taxability under pre and post amendment scenarios under assumption that listed MLDs are transferred to a third-party buyer at the end of 15 months, is as under:

Pre – Amendment Scenario

Particulars	Amount
Full Value of Consideration	1,100
Cost of Acquisition	1,000
Long Term Capital Gains	100
Tax Rate (%)	11.96
Tax Outflowif no exemption is claimed	11.96

Post – Amendment Scenario

Particulars	Amount
Full Value of Consideration	1,100
Cost of Acquisition	1,000
DeemedShort Term Capital Gains	100
Tax Rate (%)	42.74
Tax Outflow	42.74

Thus, the tax-liability on transfer of MLDs which was earlier worked out at Rs.11.96, now stands enhanced to Rs.42.74.

Food for thought

1. This amendment is effective from AY 2024-25, but it shall end up having retroactive application. Even the instruments acquired before April 01, 2023 (AY 2024-25),and transferred after April 01, 2023, shall be subject to the proposed provisions of section 50AA of the Act. Such kind of amendment can affect investor sentiments as the investment decisions made based on then prevailing law no longer remain sustainable. Will the Ministry of Finance grandfather the investments already made before specific date say February 01, 2023?

2. The Memorandum while explaining the intention for introducing deeming fiction for capital gains taxation of MLDs referred to MLDs as listed securities. While section 50AA nowhere seeks to restrict its applicability to listed MLDs. Can it be contended that provisions of proposed section 50AA should be read harmoniously with the Memorandum and thereby the section 50AA be applicable only in case of listed MLDs? Considering that the language of section 50AA is unambiguous, no recourse to Memorandum is required?

Note on Claim of Double Deduction on Interest Paid for Property

Background

1. The capital gain arising on transfer of a capital asset being building not forming part of block of asset is to be computed in accordance with provisions of section 48 and 49 of the Act. As per section 48 the capital gain shall be computed by deducting from the full value of consideration inter alia the cost of acquisition and cost of improvement. Unlike where the building forms part of block of assets and depreciation is allowed thereon, the computation is to be done as per special provision of section 50 wherein the capital gain is computed by reducing from the full value of consideration inter alia the opening WDV and actual cost of asset to the block of assets during the previous year, as computed in accordance with provision on of section 43(1).

2. The impact of the current amendment accordingly shall be more applicable to the former case where building being a capital asset does not form part of block of asset and the gain is to be computed in accordance with section 48 of the Act. The term 'cost of acquisition' and 'cost of improvement' are defined under section 55 in wide manner. Further, unlike section 36(1)(iii) and Explanation 8 to section 43(1), there is no specific provision on similar lines under the chapter of capital gain prescribing the treatment of the interest expense on loan taken for acquiring the capital asset being building (now referred in this part as 'said property'). One of the prominent rulings is that of the High Court of Delhi in the case of ***CIT vs. Mithlesh Kumari***[1] where the Court held that all expenses incurred in acquiring the capital asset shall be included in the actual cost of the capital asset. It was held that interest on loan taken for acquiring immovable property constituted the actual cost to the assessee of the land, and that it would not make any difference whether the interest was paid on the date of the purchase or whether it was paid subsequently.

3. However, the challenge arose in a situation where the taxpayer had already claimed deduction of such interest while computing the income under the head of income from house property under section 24(b) of the Act or as Chapter VI-A deduction under section 80EE.

4. As per provisions of section 24(b), interest on loan taken for acquisition, construction, renovation, etc., of the property is allowed as deduction from income from house property. Accordingly, there were instances where the taxpayers claimed the deduction of the interest while computing the income from house property and further capitalized same interest as cost of acquisition of the capital asset thereby claimed it as deduction while computing income under the head of capital gain. This lead to double deduction and was contested by tax department. However, the Tribunal in the case of ACIT v C. Ramabrahmam[2] allowed the claim of the taxpayer on the premise that there is no restriction in either of the sections either limiting deduction or excluding the operation of one section where deduction is already claimed in other section.

1. [1973] 92ITR9 (Delhi)
2. [2012] 27 taxmann.com 104 (Chennai)

Proposed Amendment

1. To prevent claim of double deduction, the Finance-Minister has proposed to insert a proviso to section 48 providing that the cost of acquisition or the cost of improvement shall not include the amount of any interest already claimed under section 24 or under Chapter VI-A of the Act.

2. The above amendment is stated to take effect from April 01, 2024, applicable in relation to the assessment year 2024-25 and subsequent assessment years.

Food for thought

The amendment may throw-up some interesting questions for consideration:

1. Whether the taxpayer will have an option to decide the section under which the interest be claimed deductible i.e., section 24(b) v. section 48 v. section 80EE? Whether taxpayer can claim proportionate deduction say partly under section 24(b) and partly under section 48 of the Act?

2. What if the interest claimed as deductible under section 24(b) has resulted in loss under the head of income from house property?

Note on Amendments related to Electronic Gold Receipts (EGR)

Background

1. The Hon'ble Finance Minister, Ms. Nirmala Sitharaman while announcing the Union Budget for Financial Year ('FY') 2018-19, had unveiled the intent to establish a system of regulated gold exchanges in India to promote the concept of Electronic Gold. Further endorsing the intention, the Hon'ble Finance Minister in her budget speech for FY 2021-22 notified Securities and Exchange Board of India ('SEBI') as the sole regulator for gold exchange including vaulting, assaying, gold quality and delivery standards. Implementing the proposition, SEBI set up a framework to operationalize the regulated gold exchange through an instrument representing 'gold' on the exchange platform. Thus, like shares, even EGRs are held in demat account and can be traded through recognized stock exchanges. At this stage it may be noted that the EGRs are different from the sovereign gold bonds issued by the Government under various schemes launched by it over the years.

2. As per the current framework, the ecosystem of the EGR is divided into following three tranches:

   - First Tranche: Conversion of Physical Gold into EGR
   - Second Tranche: Trading of EGR on stock exchange
   - Third Tranche: Conversion of EGR into Physical Gold

3. Pursuant to the proposition of setting up an entire ecosystem to regulate gold exchanges and the framework drawn up by SEBI for trading in gold on existing stock exchanges through EGRs, the Finance Minister in this Budget has proposed amendments in relation to EGRs.

Proposed Amendment

1. EGR is proposed to be defined as per the meaning assigned to it under the relevant SEBI (Vault Managers) Regulations, 2021, which in turns takes you to SCRA. The Ministry of Finance have vide Notification dated December 24, 2021, notified to include EGR as security within the definition of term 'securities' under section 2(h)(iia) of

SCRA. Thus, EGR shall be a security even for the purposes of the Income-tax Act, 1961.

2. It seems that in order to encourage more people to convert the physical gold into EGR, the government has proposed that the transaction of conversion of gold into an EGR issued by a vault manager and *vice versa*, shall not be regarded as transfer for the purposes of provisions of section 45 of the Act.

3. ***Cost of acquisition***: Considering that the conversion of the physical gold into EGR and vice versa are an exempt transfer, the Finance Bill 2023 also proposes an amendment to deem the cost of these securities in following manner:

    3.1 Cost of acquisition of EGR issued on conversion of physical gold: In a case where the EGR is issued on conversion of the gold, then in the hands of a person in whose name the EGR is issued the cost of such EGR will be deemed to be the cost of the gold so converted into EGR.

    3.2 Cost of acquisition of Gold released on surrender of EGR: Similarly, in a case where the gold is released on account of conversion or surrender of the EGR, then the cost of such gold so released shall be deemed to be the cost of the EGR in the hands of such person holding said EGR.

    3.3 In other cases, where the EGR is normally traded over the exchange, the cost of acquisition shall be amount that is paid as purchase price for acquisition of said EGR through stock exchange platform.

4. ***Period of holding***

4.1 Similarly, with regard to above transactions that are not regarded as transfer, it proposed that the period of holding of the EGR for the purpose of capital gain shall include the period for which gold was held by such person prior to its conversion into EGR. The similar analogy of period of holding shall also apply for conversion of EGR into gold i.e. period of holding for the physical gold shall include the period for which the EGR was held prior to its conversion into gold.

4.2 For these capital assets (EGR and physical gold) to be constituted as long-term capital asset, the period of holding for EGR being a listed security shall be 12 months, whereas with regard to the physical gold the period of holding shall be 36 months.

5. ***Indexation***: The fourth proviso to section 48 debarring indexation on certain securities being bonds and debentures has not been amended to exclude EGRs like the sovereign gold bonds. However, since EGR are not bonds therefore the indexation benefit shall be allowed with regards to these capital assets being EGRs as well as physical gold for that matter.

6. ***Tax***: The ETF being a listed security if held for more than 12 months, the long term capital gain will be chargeable to tax at @ 20% with indexation; and 10% without indexation, as enhanced by applicable surcharge and cess. However, the short-term capital gain shall be chargeable to tax at the normal tax rates as applicable to specific taxpayer.

This is a welcome amendment on direct tax front, now if the government is able to mitigate the GST levy on the issue of EGR

or provide effective credit mechanism process then it can provide an impetus to growth and development of EGR market in the country.

Note on Consideration to include consideration received through cheque, electronic mode, etc. – Section 45(5A)

Background

1. As per the existing provision of section 45(5A) of the Income Tax Act, 1961, the capital gain arising to a taxpayer (individual and HUF), from the transfer of a capital asset, being land or building or both, under a specified agreement, is chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. One of the key prerequisites of section 45(5A) is that the consideration to be discharged for such transfer of land or building or both should be in form of constructed area in such project whether with or without payment of part consideration in cash.

2. As per section 45(5A) the full value of consideration in the hands of taxpayer is computed as stamp duty value of the developed area on the date of issue of completion certificate as increased by the consideration received in 'cash'.

3. There seems to be a school of thought which has interpreted the term 'cash' referred above as actual cash i.e., excluding the consideration paid in cheque, through electronic mode, etc.

Proposed Amendment

1. Accordingly, an amendment is proposed to section 45(5A) to include all form of consideration including the consideration received in form of cheque or draft or by any other mode. This amendment would align the provisions of section 45(5A) with the provisions of section 194-IC wherein there is explicit requirement of deducting tax on consideration paid in cash or cheque or draft or by any other mode.

2. The amendment is proposed to be effective from AY 2024-25 and subsequent years. Does it give any ray of hope for the taxpayer to contest that for preceding assessment years the term 'cash' as referred to in existing section shall only mean actual cash and not the consideration paid by way of cheque or draft or any other mode. Though it may seem to be a proposition, but to plan things on this footing maybe regarded as too optimistic. Thus, maybe a better approach to address this would be to treat it as clarificatory amendment, as same phrase was already part of section 194-IC which was applicable to cases covered by section 45(5A) of the Act.

Food for thought

As we discussed this amendment you may note that even section 64 of the Act uses similar phrase viz., "in cash or in kind", so does the proposed amendment to section 28(iv) and many other sections. Is there anything to infer there?

Note on computation of cost of acquisition and cost of improvement in relation to specified assets

Background

1. Amongst the various amendments made by Finance Act 2023, one of the amendments was overhauling the existing provision for computation of cost of acquisition and cost of improvement in relation to specified intangible assets.

2. The extant provisions of section 55 of the Act inter-alia contain provision for ascertaining cost of acquisition and cost of improvement of specified capital assets.

3. Let's step back and look into the history before we move ahead with the proposed amendment. In the landmark judgement of CIT vs. B.C. Srinivasa Setty[3], the Supreme Court had held that an asset which is capable of acquisition at a cost would be included within the provisions pertaining to the head "Capital gains" as opposed to a capital asset in the acquisition of which no cost at all can be conceived. Thereby the principle of 'the charge failing, consequent to the failure of computation mechanism' was made prominent. The said principle laid down by the Supreme Court has been followed till date in many cases.

4. Against this backdrop, successive amendments were introduced in section 55 to include various categories of intangible assets or rights, in relation to which the cost of acquisition and cost of improvement were required to be taken as nil.

5. Currently, section 55 provides that the cost of improvement in relation to a certain capital asset, being goodwill of a business or a right to manufacture, produce or process any article or thing or right to carry on any business or profession shall be taken to be nil. Further, as regards to the cost of acquisition in relation to a capital asset being goodwill of a business or profession or trademark or brand name associated with a business or a profession or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights or stage carriage permits or loom hours shall be taken to be nil.

6. However, the controversy has continued to exist with respect to capital gain taxation of other rights, intangible assets, etc., which are not specifically mentioned in the afore-said section. Illustratively, the High Court of Bombay in the case of ***CIT vs. Sambhaji Nagar Co-op. Hsg. Society Ltd.***[4] had, with regard to a transferable development right which was generated by the plot itself on account of change in law, held that on transfer thereof the consideration received was not subject to capital gain tax.

Proposed Amendment

1. The Finance Bill 2023 read together with the Memorandum seeks to plug the loophole that is still available for other assets where no cost is incurred for their acquisition. Thus, in case of such assets it is proposed that the cost of acquisition of a capital asset being intangible asset or any other right, shall be taken as nil. Thus, predominantly in case of self-generated intangible assets or other rights the cost shall by default be deemed to be reckoned as nil.

2. Further, it is also proposed that the 'cost of improvement' of a capital asset being any intangible asset or any other right, whether self-generated or acquired, shall be taken nil.

3. With this amendment a greater number of assets would now be subject to section 55 whereby their cost of acquisition and/ or cost of improvement, as the case may be, shall be deemed to be nil. This would also reduce the litigations on this count.

3. [1981] 128 ITR 294 (SC)
4. [2015] 370 ITR 325 (Bombay)

CA Neha Bagri

Income from Other Sources

The Union Budget 2023-24, presented by our Hon'ble Finance Minister, Nirmala Sitharaman builds on the foundation laid in the previous budgets and provides a blueprint for India @100 – envisioning a prosperous and inclusive India.

The budget provides a framework for growth by focusing on seven key budget priorities: (i) Inclusive development (ii) Reaching the last mile (iii) Infrastructure and investment (iv) Unleashing the potential (v) Green growth (vi) Youth power (vii) Financial sector. Additionally, the Hon'ble Finance Minister has announced several tax and regulatory proposals which aim to maintain continuity and stability of taxation, further simplifying and rationalising various provisions to reduce the compliance burden, promote the entrepreneurial spirit and provide tax relief to citizens.

While there are several direct as well as indirect tax proposals announced in the Budget, we wish to highlight some of the key direct tax proposal which proposes to bring some untouched receipts to tax.

Repayment of loan proceed by REIT/ InVIT

Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT) [commonly referred to as business trusts] are type of pooling vehicle that either owns a portfolio of income-generating real estate assets/ infrastructure projects or invests in Special Purpose Vehicles (SPV), which holds the assets through equity or debt instruments. The income generated by such REITs and InVITs generally includes interest income, dividend income, capital gains and rental income (in case of REIT).

A special tax regime has been provided under the Income-tax Act, 1961 (ITA) for business trusts and its unitholders. Pursuant to the same (section 115UA of the ITA), pass-through status has been accorded to business trusts in respect of interest income, dividend income and rental income. Such income is taxable in the hands of the unit holders per the provisions of section 10(23FC) and section 10(23FCA) of the ITA, unless specifically exempted. Further, section 115UA also provides that any income distributed by a business trust to its unitholders is deemed to be of the same nature and in the same proportion as it had been received by the business trust.

Furthermore, section 10(23FD) of the ITA provides that any income distributed by a business trust, other than interest income,

dividend income or rental income, is exempt from tax in the hands of the unitholders.

Certain business trusts distribute the proceeds received as repayment of principal amount of loan given to a SPV as income on units to the unitholder. Due to the way the tax laws are framed, such receipt being capital in nature, is not subject to tax in the hands of business trust. Separately, as these receipts does not get covered under 'interest', dividend' or 'rental' income it is also not subject to tax in the hands of the unitholders. Interestingly, as the amount is being distributed by the business trust to the unitholders as income on units (and not by way of redemption of units), the cost of acquisition of the units also does not get reduced for the unitholders.

With the intent to avoid the income from escaping taxation, it is proposed in the Budget to make such sum received by the unitholder taxable in their hands as 'income from other sources' from April 1, 2023. Further, to the extent such amount is distributed by the business trust to the unitholder by way of redemption of units, the cost of units redeemed shall be reduced from the taxable amount. The amendment is proposed by way of inserting new clause (xii) in sub-section (2) of section 56 of the ITA.

The key impact of the said amendment are listed below:

- There are no clear guidelines under the SEBI Regulations governing redemption of units by business trust. Further, due to minimum lot size issue, there could be situations where the business trust may not be able to redeem units for all unitholders on a pari-passu basis. Due to such operational challenges, the business trust may not be able to upstream proceeds by way of redemption of units. This will lead the entire distributed amount being taxable in hands of the unitholders at full rates, which could be as high as approx. 39% in case of resident investors.
- In case of non-resident investors such income shall be taxable under the ITA at 40% (plus applicable surcharge and cess), subject to characterisation and benefits under tax treaty, if any.
- Where the unitholders of the business trust include Sovereign Wealth Funds (SWF) or Pension Funds, this amendment can be more punitive as exemption provided to them under section 10(23FE) (in case these are notified for the purpose of claiming benefit of said section), does not cover income earned under head 'Income from Other Sources' and covers only income in nature of long term capital gains, dividend and interest. Thus, such income which otherwise could have been exempt from tax may now be taxable.

Winnings from Online Gaming

Section 115BB of the ITA provides for taxation of winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature. Section 194B and 194BB of the Act provides for tax deduction at source on winnings from lotteries, crossword puzzles, card/other games or horse race, respectively.

In the recent times, there has been a significant increase in online gaming platforms and participants in such online games. While sections 115BB and 194B covered games of any sort, the Finance Minister was of the view, that due to different nature of online

games i.e. it being easily accessible vide the Internet and computer resources with a variety of playing options and payment options it required a separate tax regime. Also, the current provisions of section 194B provides a threshold of ₹ 10,000 per transaction for withholding tax. It was seen that the income per transaction was being kept below threshold to avoid applicability of tax deduction.

To address this, the Budget proposes to

a) Amend section 194B and 194BB to provide that deduction of tax under these sections shall be on the amount or aggregate of the amounts exceeding ten thousand rupees during the financial year; and

b) bring in specific provisions for taxability and withholding of winning from online games.

Accordingly, for taxation of online gaming income, following provisions are proposed in the Budget:

- A new section 115BBJ is proposed to be inserted specifically for taxation of winnings from any online game in the hands of the participants at the rate of 30% (plus applicable surcharge and cess) from AY 2024-25 onwards. The income tax would be computed on the net winnings, which is to be computed in a manner to be prescribed.

- Separately, section 194BA is proposed to be inserted with effect from 1st July 2023, to provide for deduction of tax at source at rates in force on net winnings in the user account at the end of the financial year. In case there is withdrawal from user account during the financial year, the income-tax is to be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. It is further proposed that where the net winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings.

The key impact of the said amendment is as listed below:

o There could be a double tax deduction on winnings from online games paid from 1 April 2023 to 30 June 2023. First, tax could be deductible under section 194B at the time of credit of winnings to the user account and secondly, under section 194BA at the end of the financial year 2023-24 or when the winnings are withdrawn after 30 June 2023.

o Section 194BA provides for withholding of tax on the net winnings in the account irrespective of whether it is distributed. Thus, tax may become deductible more than once where the winning lying in the user account at the end of financial year is withdrawn in subsequent year. Appropriate clarification in ITA will need to be provided to avoid the said double tax situation (similar to as provided in section 115UB of the Act).

Exemption of income from Life insurance Policy

Clause (10D) of section 10 of the Act provides for income-tax exemption on the sum received

under a life insurance policy, including bonus on such policy. There is a condition that the premium payable for any of the years during the terms of the policy should not exceed 10% of the actual capital sum assured. This condition is not applicable where the sum received is on account of death of the person.

Vide Finance Act, 2021, clause (10D) of section 10 of the Act is amended to, inter-alia, provide that the sum received under a ULIP (barring the sum received on death of a person), issued on or after the 01.02.2021 shall not be exempt if the amount of premium payable for any of the previous years during the term of such policy exceeds ₹ 2,50,000. It was also provided that if premium is payable for more than one ULIPs, issued on or after the 01.02.2021, the exemption under the said clause shall be available only with respect to such policies where the aggregate premium does not exceed ₹ 2,50,000 for any of the previous years during the term of any of the policy.

It is now proposed to apply similar provisions for income from life insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above ₹ 5,00,000 in a year. The sum received from such life insurance policies where the premium or aggregate of premium exceeds ₹ 5,00,000, other than by way of death of the person, is now proposed to be taxed as 'income from other sources'. Deduction shall be allowed for premium paid if such premium has not been claimed as deduction earlier. The proposed provision shall apply for policies issued on or after 1st April, 2023.

The Central Board of Direct Taxes issued circular no. 02 of 2022 dated 19 January 2022 under existing seventh proviso to section 10(10D) of the ITA to explain how the exemption is to be calculated when there are more than one ULIP policies. The said circular currently only refers to the ULIP policies. A similar circular may be issued by the CBDT to specify the mechanism of computing exemption where there is more than one policy (other than ULIP).

The primary objective behind this move as explained in the Budget memorandum is to restrict HNIs from overusing insurance policies for tax savings.

Section 56(2)(viib) - Bringing the non-resident investors within the ambit of section 56(2)(viib) to eliminate the possibility of tax avoidance

Section 56(2)(viib) of the ITA, commonly known as angel tax, is attracted when a closely held company issues shares to a resident investor at a premium and the consideration exceeds Fair Market Value (FMV). In such a case the difference between the actual consideration and the FMV of the shares shall be deemed to be the income of such a closely held company and be taxable under the head 'Income from other Sources'. Following categories of investors / investee companies are exempt from the provisions of said section:

- Investment by Non-resident investors in Indian companies;
- Indian companies in which public are substantially interest (i.e. substantially listed companies or companies which are subsidiary of listed companies);
- Venture capital undertaking issuing shares to investors registered as Venture Capital Company with Securities Exchange Board of India (SEBI) or registered as Category I or Category II AIFs and regulated by SEBI or by

International Financial Services Centres Authority; and

- Class or classes of persons as may be notified by Central Government in this behalf. CBDT through Notification No. 13/2019 dated 5 March 2019 granted exemption to eligible startup companies fulfilling certain prescribed conditions .

Clause (viib) of sub section (2) of section 56 of the ITA was introduced in 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for shares issued to non-resident investors.

It is now proposed to bring shares issued to non-residents also within the ambit of the provisions of this section with effect from AY 2024-25.

Thus, going forward capital raised by closely held Indian companies (other than eligible start-ups) from non-resident investors, by issue of shares at a premium can be subject to tax under section 56(2)(viib) of the ITA.

The key impact of the said amendment are listed below:

o Investment by non-resident investors is governed by the Exchange Control Regulations, which provides that the investment by non-residents in India cannot be at a price which is lower than the FMV of the security. Whereas section 56(2)(viib) of the ITA provides for taxation in the hands of the Indian company where shares are issued at a price which is above FMV. Thus, to ensure that the non-resident investor meets the regulatory requirement and also the Indian company doesn't suffer any tax implications, the transaction will need to be undertaken 'at' FMV. This may be commercially difficult to achieve.

o Secondly, the method prescribed for determination of FMV for purposes of section 56(2)(viib) is Discounted Cash flow (DCF) method (in case of equity shares, FMV can also be based on price arrived through book value method computed as per formula prescribed, at the option of the issuing Indian company) as determined by a merchant banker. However, under the Exchange Control Regulations, the FMV is the price determined as per internationally accepted accounting method as determined by a chartered accountant or a merchant banker. Thus, while the method to determine the FMV under the Exchange Control Regulations is flexible and thus provides ability to use the commercial method as deemed fit, but for Income-tax purposes the Indian company is bound to follow substantially the DCF method. Accordingly, the parties will need to ensure that the valuation arrived by applying the method deemed fit by valuer for Exchange Control Regulation purposes and pricing arrived through DCF method is the same. Accordingly, it may pose restriction on determining the pricing method.

CA Vipin Batavia

Finance Bill Proposals with Respect to Charitable and Religious Trust

The Hon'ble Finance Minister Madam NirmalaSitharaman has presented the Finance Bill 2023 in Parliament on 1stFebruary. like every year this year also there are many important amendments proposed which will have far reaching impact on the taxation of charitable trusts. There are some welcome proposals and some are unreasonable proposals. I hope such unreasonable proposals are put right while passing the bill.

A) INTER-CHARITY DONATIONS -

Background–

i) Inter-charity donation is permissible but it is to be ensured that inter charity donation is given for the similar objects for which the donor trust is created.

The ITAT Allahabad in the case of Nazareth Hospital Society v. Deputy Commissioner of Income-tax (Exemption) Lucknow Uttar Pradesh 2021 (2) TMI 739 held that inter charity donation to an organization which is engaged in some other type of activities is not permissible. It was necessary that both the trusts should share similar objects.

ii) Inter charity donation (other than towards corpus) is treated at par with direct application for the purpose of sections 11(1) (a) and 10(23C). It is also held that inter charity donation is treated at par with direct utilization of funds.

iii) Corpus donation given by a section 12AA/12AB registered trust/institution to a 12AA/12AB registered NGO as well as to section 10(23C) approved institution is not treated as an application of income.

iv) Funds accumulated under Sec. 11(2) are not allowed to be donated to other trust /institution. It is to be directly applied for the specific purpose for which it is accumulated. However, inter-charity donation out of accumulated funds under Sec. 11(2) may be permissible in case of dissolution of a trust.

v) Inter-charity donation to a non-section 12AA or a non-FCRA organization is generally not permissible but has not been held as illegal activity or a reason for cancellation.

vi) A charitable organization can be considered as charitable in nature even if the entire donation mobilized is given as inter-charity donation.

vii) The funds given as inter-charity donation shall be treated as application of income even if it might not have been applied by the donee trust.

However, the donee trust has to apply them for charitable purposes only.(CBDT instruction No. 1582, dated 19-10-1984)

The Finance Bill, 2023 has proposed an amendment to inter trust donations that only 85% of eligible donations made by a trust or institutions under both the regime to another trust shall be treated as application only to the extent of 85% of such donation. Accordingly there are amendments carried out in first and second regime. **(The effective date is w.e.f. 1.4.2024 i.e. from AY 2024-25 and subsequent years.)**

Comment - The said proposed amendment is carried out to curb the situation of transfer of funds from one trust to another trust and further to multiple trusts by taking benefit of accumulating 15% at each layer.According to memorandum explaining provisions, it says that this type of transfer of funds were defeating the intension of the legislature and getting benefit of accumulation of 15% by multiple trusts. These amendments is unreasonable. The said situation should have been tackled by some other way.

B) APPLICATION OF INCOME –

Depositing back of corpus and repayment of loans & Borrowings (w.e.f. 01.4.2023 and accordingly apply to AY 2023-24 and subsequent years)–

The corpus donations given to other trust were allowed as an application of income to the donor trust and exempt in the hands of donee trust under both the regime u/s. 11(1)(d)and u/s. 10(23C).

The said provision was not correct since such types of inter-trust donations were allowed as a deduction to the donor and was exempted in the hands of donee. To plug this loophole the following amendments was carried out by Finance Act, 2021.

The Finance Act, 2021, inserted after section to Sec. 11 (1) (d)explanation 4 and Sec. 10(23C) (For both the regime) w.e.f. 1.4.2022.

For the purpose of determining amount of application-

i) Corpus donations received during the year shall not be treated as an application of income in the same year however it will be allowed as an application of income in the year in which it is invested and deposited back in modes specified u/s. 11(5).

ii) Similarly any loan and borrowings shall not be treated as an application of income however it will be allowed as an application of income in which the loan and borrowings or part thereof is repaid out of the income of that year and to the extent of such re-payment.

Now the Finance Bill, 2023has proposed following amendments under both the regime –

1) The amount invested or deposited back shall not be treated as application for charitable or religious purposes unless such investment or deposit is **made within a period of five years** from the end of the previous year in which such application was made from corpus.

2) The amount of loan & borrowings repaid shall not be treated as application for charitable or religious purpose unless such repayment is **made within a period of five years** from the end of the previous year during which such application was made out of loan or borrowing;

3) The utilization of corpus, loans or borrowings by a charitable or religious trust **on or before 31.03.2021** will not be considered an application for charitable or religious purposes if the amount is subsequently deposited back into the corpus or the loan is repaid.

4) Further certain conditions are added which are required to be satisfied in case of application for charitable or religious purpose while making the application out of corpus and loans & borrowings.

These conditions are as follows- (Applicable for both the regime)

i) Such application should not be in the form of corpus donation to another trust.

ii) TDS, if applicable, should be deducted on such application.

iii) Application whereby payment or aggregate of payments made to a person in a day exceeds ₹ 10,000 other than specified modes (such as cash) is not allowed.

iv) Carry forward and set off of excess application is not allowed.

v) Application is allowed in the year in which it is actually paid.

vi) Application should not directly or indirectly benefit any person referred to in section 13(3)of the Act and the income of the trust or institution should not ensure any benefit to such person.

vii) Application should be in India except with the approval of the Board in accordance with the provisions of clause (c) of sub-section (1) of section 11 ofthe Act.

Memorandum explaining provisions states that the availability of indefinite period for the investment for depositing back of corpus or repayment of loans & borrowings will make the implementation of the provisions quite difficult since there was no any time limit was earlier prescribed.

Comment – So far as the period of depositing back of the corpus is concerned which is restricted to 5 years the same seems reasonable since it is not very much affecting the assesses moreover the trust has to keep the record and track only for 5 years.

However, the restricting of application for repayment of loans & borrowings up to 5 years is bit unreasonable provision since the loans and borrowings obtained by the trust have to be fully paid back in 5 years if they want to avail full deduction or in such cases, where the tenure of the loans and borrowings are more than 5 years they will get application of income for the payments made only up to 5 years.

C) AMENDMENT IN DUE DATE FOR SUBMISSION OF FORM 9A&10 (ACCUMULATION) (w.e.f. 01-04-2023 and will accordingly apply to AY 2023-24 and subsequent years)

The proposed amendment–

In order to claim the accumulation of income, trusts or institutions under both the regime must file form 9A and Form 10 for accumulation of income **at least two months prior** to the deadline for filing the return of income.

The due date for filing of return is 31st October and the due date for filing of Audit report in both the regime in form 10B / 10BB is 30th September i.e. one month before filing of ITR. Till AY 2022 - 23 the filing of form 9A & form 10 was due date which was before filing of ITR i.e. 31st October. Now it is proposed to file these forms for accumulation at least two months prior to the filing of ITR i.e. by 31st August.

The memorandum is explaining the provisions states that the proposed change is with the intention that the auditors are required

to report the details of form 9A/10 for accumulation of income in the audit report. Since the due date for furnishing 9A /10 is on or before the due date specified under Sec. 139 (1) for furnishing of ITR, auditors find it difficult to report.

In order to rationalized the provisions, it is now proposed to provide for filing of form 9A/10 at least two months prior to due date for filing of ITR in both the regime.

Comment – This proposed amendment appears impractical provision since how an amount of accumulation can be arrived before the completion of audit. The due date for completion of audit under all applicable laws to a charitable trust under Companies Act, under Maharashtra Public Trust Act and even under IT Act as well is 30th September. Therefore it will become more difficult for the auditors to arrive at the amount of accumulation one month before the due date of completion of audit.There is no provision to revise form 9A/10 however it was earlier possible to file it again before the due date of filing of ITR. Therefore now if it is amended there are chances of not deciding the correct amount of accumulation before completing of audit.

There are various circulars issued by CBDT from time to time for Condonation of delay in filing form 9A/10. The present position in this regard is the CIT (Exemp) is authorized to consider applications for the delay up to 365 days (Circular No. 3/2020 dated 03-01-2020) and Principal Chief CIT / Chief CIT are authorized to condone the delay for delay beyond 365 days, up to 3 years for AY 2018-19 and subsequent years (Circular No. 17/2022 dated 19-07-2022).

Insteadof rationalizing the provision it is made more harsh than earlier. The due date for filing of Form 9A/10 should also be in line of filing of audit report i.e. One month beforefiling of ITR.

D) FILING OF ITR WITHIN DUE DATE FOR CLAIMING EXEMPTION (w.e.f. 01-04-2023 and will accordingly apply to AY 2023-24 and subsequent years)

The proposed amendment –
The exemption can be claimed by trust or institution only if return of income is furnished within time limit prescribed under Sec. 139(1) or 139(4).

Sec. 139 (1) - Every person who has a total income that exceeds the exemption limit is liable to furnish Income Tax Return within the due date.

Sec. 139 (4) – Any person has not furnished a return within time allowed u/s. 139 (1) may furnished the return for any previous year at any time before 3 months prior to end of the relevant assessment year or before the completion of assessment year , whichever is earlier.

As per the existing provision inserted by Finance Act, 2022 w.e.f. 1-4-2023 of twentieth proviso to Sec.10(23C) under the first regime entities referred to in sub clause (iv), (v), (vi) or (via) shall furnished the return of income for the previous year in accordance with the provisions of Section 139(4C) within the time allowed under that Section. As per provisions of Sec. 139(4C) all the assesses claiming exemption under any sub-section of Sec. 10(23C)were required to file the ITR, if its income exceeds without giving effect to the provisions of Sec. 10 maximum amount which is not chargeable to tax shall, so far as may be apply as if it were a return required to be furnished u/s. 139(1).

Similarly the provisions of Sec. 11 & 12 shall not apply unless certain conditions are fulfilled. One of the conditions mentioned at Sec. 12A (1) (ba) "the person in receipt of the income has furnished the return of income of previous year in accordance with the provisions of Sec. 139(4A) within the

time allowed under that Section. As per Sec. 139(4A) every person in receipt of income derived from property held under the trust or other legal obligation claiming exemption under Sec. 12A (1) (ba) were required to file the ITR, if its income exceeds without giving effect to the provisions of Sec. 11 & 12 maximum amount which is not chargeable to tax shall, so far as may be apply as if it were a return required to be furnished u/s. 139(1).

Now it is proposed that the exemptions can be claimed by trusts or institutions only if return of income is furnished within time limit prescribed under Sec. 139(1) or 139(4). As per this amendment now a charitable trust / institutions can file ITR u/s. 139(4) up to the time prescribed for the belated returns. This provision is applicable for AY 2023-24.

Comment – This is a welcome provision. We were demanding for this amendment since long so with this amendment ITR can be filed by charitable trust / institutions up to 31st December to avail exemption.

We would like to inform in this regard that the CBDT issued a circular vide file no. 173/193/2019-ITA-I dated 23-04-2019 clarifying time allowed for filing of ITR subsequent to insertion of 12A(1)(ba). As per this circular CBDT said in order to provide clarity in this regard it is proposed to further amend Sec. 12A as to provide further condition that the person in receipt of income chargeable to income-tax shall furnish ITR within time allowed u/s. 139 of the Act. It further says this amendments are clarificatory in nature. This amendments will take effect from 01-04-2018 and will, accordingly, apply in relation to AY 2018-19 and subsequent years. As per this circular a trust can file ITR within the due date prescribed under Sec. 139 however no such amendment was carried out up till now.

E) UPDATED RETURN (w.e.f. 01-04-2023 and will accordingly apply to AY 2023-24 and subsequent years)

It is proposed to amend that in case of filing updated return the exemption will be available only if ITR has been furnished within time allowed u/s. 139(1) or 139 (4).

Section 139 of the Act was amended by the Finance Act, 2022 providing for an option to the taxpayers to furnish updated return of income at any time within 24 months from the end of relevant assessment year.

As per Memorandum explaining the provision this resulted in unintended consequences of allowing exemption under section 11, 12of the Act and sub-clause (iv)/ (v)/ (vi)/ (via) of clause (23C) of section 10 of the Act will be available to the trusts where they furnish updated return of income. Accordingly, it isproposed to clarify that the exemption under section 11, 12 and sub-clause(iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act will be available only if there turn of income has been furnished within the time allowed under sub-section (1) or subsection(4) of section 139 of the Act.

F) OMISSION OF PROVISOS SECOND, THIRD AND FOURTH TO SECTION 12A (2) (w.e.f. 01 April, 2023)

As per Sec. 12A(2) the exemption u/s. 11&12 were available in relation to income from the Assessment year immediately following the financial year in which such application is made. However there are Four provisos to Sec. 12A (2).

The **first proviso** says that the provisions of Sec. 11&12 shall apply to the trust or institution where application is made for re-registration under section 12(A) 1 (ac) (i) from the assessment year from which such trust or institution was earlier granted registration and for the new trust obtained provisional registration under Sec. 12(A) 1 (ac) (iii) from the first of the assessment year for which it was provisionally registered.

The **Second proviso** says where the registration has been granted u/s. 12AA or

12AB then provisions of Sec. 11&12 shall apply in respect of any income derived from the property held under the trust of any assessment year preceding the aforesaid assessment year for which assessment proceeding is pending before AO as on the date of such registration and objects and the activities remained the same for such preceding assessment year.

The **Third proviso** says the AO shall not take any action u/s. 147 in case of such trust for any assessment year preceding the aforesaid assessment year only for non-registration of such trust / institution. **The Fourth proviso** says that the provisions of First & Second proviso shall not apply in case the trust or institution which was refuse registration or registration granted was cancelled any time u/s. 12AA or 12AB.

It is proposed to omit Second, Third & Fourth proviso to Sec. 12A (2).

Comment–The aforesaid provisions were inserted for the benefit of old trust to provide them exemption for earlier years to come forward and registered their trust under IT Act. Now the old trust or institutions will not get exemption for the earlier years.

G) SPECIFIED VIOLATIONS (w.e.f. 01 April, 2023)

Insertion of one more specified violation added for applications made for 10(23C) (iv)(v)(vi)(via) which is approved or provisionally approved and for all situations mentioned in Sec. 12A(1)(ac) as under –

a) It is proposed to insert clause (e) in explanation 2 to the fifteen proviso of Sec. 10(23C) of the Act to provide that the specified violation shall also include the case where the application referred to in first proviso is not complete or it contains false or incorrect information for the first regime.

b) It is proposed to insert clause (g) in explanation to sub-section (4) of section 12AB of the Act to provide that the specified violation shall also include the case where the application referred to Sec. 12A (1) (ac) of the Act is not complete or it contains false or incorrect information for the second regime.

Comment – This provision has been brought in to cover the situation where the forms furnished by the trust for provisional registration & Approval or re-registration / Approval were found defective and CPC granted registration due to automated system. There is at present approval / registration and provisional approval / registration of the trust can be cancelled by PCIT or CIT for certain violations.

H) TRUST / INSTITUTION CAN APPLY DIRECTLY FOR FINAL REGISTRATION / APPROVAL (w.e.f. 01 October, 2023)

The trust or institution under the first and second regime were allowed to make application for provisional registration& approval u/s. 80G even before the commencement of activities. Now it is proposed that where the trust has already commenced activities they can directly apply for regular registration and approval u/s. 80G under both the regime.

All other procedures prescribed for regular registration will have to be satisfied.

The time limit to pass an order by PCIT and CIT for granting or rejecting application will remain the same i.e. within six months from the end of the month in which application was received.

Comment – This is a welcome provision which will avoid double procedure for provisional registration and then going for regular registration / approval for the old trust as well as new trust who have already commenced their activities. There is one

more situation which is also covered that in case of new trust if they start their activity immediately in its first year and they apply for regular registration / approval they can obtain registration / approval even in the first year of its set up.

I) EXEMPTION TO DEVELOPMENT AUTHORITIES

(w.e.f.01-04-2024 and will accordingly apply to AY 2024-25 and subsequent years)

Amendment in Sec. 10(46) & insertion of new Sec. 10(46A)is an outcome of Hon'ble Supreme Court decision in the case of Ahmedabad Urban Development Authority in civil appeal no. 21762 of 2017 vide order dated 19-10-2022.

Sec. 10(46) of the Act provides exemption to any specified income arising to a Body or Authority or Board or Trust or Commission or a Class thereof which –

a) has been established or constituted by or a under central, state or provincial Act or By Centralora State Govt. with an object of regulating or administrating any activity for the benefit of general public,

b) is not engaged in any commercial activity and,

c) is notified by Central Govt. in official Gazette.

There was restriction on undertaking a commercial activities by a body or authority or board or trust or commission notified u/s. 10(46) has been a litigated issue.

Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority held that in Sec. 10(46)(b) the word "commercial" has the same meaning as trade, commerce or business in proviso to Sec. 2(15). Therefore, sums charged by these entities will require similar consideration i.e. whether it is at cost with a nominal markup or significantly higher, to determine whether it falls within the mischief of commercial activity or not.

However the Apex Court has observed that such entities are established for achieving essential public functions / services. In such cases the Court have held that the amounts or any money whatsoever charged for the public services are prima-facie to be excluded from the mischief of proviso to Sec. 2(15).

In Sec. 10(46) for the words "or a class thereof" at both places shall be substituted with "other than those covered under clause (46A) or a class thereof".

This amendment is with the intention to exclude income of such entities from the scope of Sec. 10(46) the new Sec. 10(46A) isinserted.

Sec. 10(46A) – Any income arising to a Body or Authority or Board or Trust or Commission, not being a company,notified by Central Govt. in official Gazette,has been established for–

i) dealing with and satisfying the need for housing accommodation;

ii) planning, development or improvement of cities, towns and villages;

iii) regulating, or regulating and developing, any activity for the benefit of the general public; or

iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

Consequential amendment is also proposed in explanation to nineteenth proviso of Sec. 10(23C) and similarly also in Sec. 11(7) of the Act.

J) ACCRETED INCOME U/S. 115TD EVEN FOR FAILED TO APPLY FOR RE-REGISTRATION (w.e.f 01-04-2023 accordingly apply to AY 2023-24 onwards)

The provisions of Sec. 115TD will also apply in following 3 more situations –

i) In case where certain trusts or institutions under first and second regime have not applied for regular registration / approval after obtaining provisional registration / approval.

ii) Further some trusts or institutions under both the regime have not applied for re-registration / approval.

iii) The trusts or institutions if not applied for re-registration after the expiry of 5 years / 3 years.

The provision of tax on accreted income under Sec. 115TD where applicable under both the regime may wind-up its activities and dissolved and failed to transfer, upon dissolution to any other trust or institution registered under both the regime, all its assets within a period of 12 months or may merged with non-charitable institutions or it may convert into non-charitable organization or its registration / approval has been cancelled.

The above mentioned 3 more situations are proposed to be added so that in such situations also the provisions of Sec. 115TD will apply.

K) REMOVAL OF CERTAIN FUNDS FROM SECTION 80G (w.e.f. 01-04-2024 and accordingly will be applicable for AY 2024-25 and subsequent years)

Section 80G of the Act provides for the procedure for granting approval tocertain institutions and funds receiving donation and the allowable deductions in respect ofsuch donations. The Sec. 80G (2) (a) provides a list of certain funds where the deduction is available @100% of the sum donated. In case of other trusts or institutions obtaining approval u/s. 80G where the deduction will be available the deduction @50% of the sum donated however restricted to maximum 10% of the total income.

Now it is proposed that following three trust are omitted from the list of 100% deduction i.e.sub-clauses (ii), (iiic) and(iiid) of clause (a) of sub-section (2) of section 80G of the Act namely Jawaharlal Nehru memorial Fund, Indira Gandhi memorial trust and Rajiv Gandhi Foundation.

Comment – The aforesaid three trusts are omitted from the list of allowable 100% deduction to the donor. The memorandum explaining the provisions saysin the heading **"Removal of certain funds from Sec. 80G".** Now the question arises whether deduction u/s. 80G allowable to the donors to these trusts to the extent of 50% deduction. This situation is not clear. According to my personal view it has been just omitted from the list of 100% deduction. However if these trusts comply the requirements of other approved trusts u/s. 80G and satisfy all conditions as mentioned u/s. 80G(5)then 50% deduction should be available.

L) ENTITY DIGILOCKER

During the course of speech Hon'ble FM has announced that an Entity DigiLocker will be set up for use by MSMEs, large businessand charitable trusts. This will be towards storing and sharing documentsonline securely, whenever needed, with various authorities, regulators,banks and other business entities.

CA Rohan Sogani

Amendments related to TDS & TCS

1. Introduction

Provisions related to Tax Deduction at Source ("TDS") and Tax Collection at Source ("TCS") were introduced, under the Income Tax Act, 1961 ("ITA") with an aim to collect tax at the first instance. Over the years, these TDS/TCS provisions have not only become a major source of revenue for the Government, but also an important tool to prevent tax evasion. TDS/TCS provisions have witnessed numerous changes/additions over the past many years and Finance Bill, 2023 is no different. Endeavour of this article is to briefly delve upon amendments proposed in Finance Bill, 2023, related to TDS/TCS provisions.

2. Section 194BA – TDS On Winnings From Online Gaming

With an ever-increasing population using internet, there has been significant growth of online gaming industry in India. Winnings from online gaming, up till now, were included under Section 115BB and tax at the rate of 30% was paid on such winnings on gross basis. Section 194B cast duty on the payer to deduct Tax at Source ("TAS"), at the rate of 30%, on such winnings, being more than ₹ 10,000, at the time of payment. Finance Bill, 2023, proposes to introduce Section 115BBJ and Section 194BA, specifically for taxing winnings from online gaming in the hands of the gamer (assessee) and deduction of TAS by the online platform (payer) respectively. Comparative position of Section 194B and 194BA, on the tax to be deducted on winnings from online gaming, prior and subsequent to the Budget proposal is as under: -

Particulars	Section 194B	Proposed Section 194BA
Income covered	Winnings from lottery, crossword puzzle, card games or other game of any sort	Winnings from any online game
TAS to be deducted on	Gross Amount of Winnings	Net Winnings in user account. [Computational mechanism to be prescribed]
Threshold Limit	Winnings in excess of ₹ 10,000	No Threshold limit

Particulars	Section 194B	Proposed Section 194BA
Point of time for deduction of TAS	At the time of payment	• At the time of Withdrawal of Net Winnings; and • Net Winnings in the user account at the end of Financial Year.
Rate of Tax	30%	30%

Under the extant provisions of Section 194B, winnings from online gaming till now was not specifically provided and was covered under winnings from "other game of any sort". However, Section 194BA is specifically for the purpose of winnings from online gaming, which is proposed to come into force from 1.07.2023. It has been proposed in Section 194BA that TAS would be deducted on "net winnings". It is pertinent to note that in the extant provisions [Section 194B], there was no usage of the words "net winnings".

Online gaming may involve multiple games being played multiple times, on a single gaming platform, by the online gamer, some of which may result into losses and some may result into gains. Although, the computation mechanism shall be prescribed, but the "net winnings" connote that the benefit of setting off the losses incurred on some of the games, would be available against the incomes earned from certain other games. TAS has to be deducted on the net winnings in the recipient's/user's account as at the end of the financial year. However, if the recipient wishes to withdraw the net winnings during the financial year, then TAS will have to be deducted on such withdrawal amount of the net winnings. If after partial withdrawal, during the financial year, there are any net winnings available in the user account even at the end of the financial year then TAS will have to be deducted on such amount.

As stated, online gaming may involve multiple games, with high frequency, with amount being added/reduced multiple times to/from the user account. Also, the online users with seamless money transfer mechanism, may want to withdraw the amount multiple times, it would require online gaming platforms to come up with built in mechanism, on the platform itself, for compliance with Section 194BA.

3. Section 194B, Section 194BB – TDS Based on Aggregate Amount

Section 194B cast responsibility for deduction of TAS, on any person, paying income by the way of winning from lottery or crossword puzzle or card game and any other game of any sort, of amount exceeding ₹ 10,000. Further, Section 194BB, similar to Section 194B, provided for deduction of TAS for horse racing. However, for applying the threshold of ₹ 10,000, it wasn't clear whether the threshold would be applicable for each transaction, or would be applicable on aggregate of amounts of transactions. Without such clarity, TAS was deducted by considering the threshold limit to be applicable qua each transaction, which resulted into multiple transactions, each being less than ₹ 10,000 but aggregating to a substantial amount, being outside the ambit of applicability of Section 194B and Section 194BB. In order to plug this gap, it has now been proposed, by Finance Bill, 2023, to apply Section 194B and Section 194BB, qua the aggregate of amounts of transactions.

4. Section 206C(1G) - Higher TCS On

Remittances under LRS, Overseas Tour Package

Provisions in relation to TCS, under Section 206C(1G), on remittances outside India by individuals, under the Liberalized Remittance Scheme ("LRS") of Reserve Bank of India ("RBI") or on payments made by persons, within India, including individuals/entities, for Overseas Tour Package was introduced, for the first time, vide Finance Act, 2020, w.e.f. 01.10.2020. LRS allows resident individuals to remit, an amount equal to $250,000 per Financial Year, outside India for variety of reasons, which inter alia includes acquisition of immovable property abroad, investing in companies abroad, gift/donation, maintenance of relatives abroad, business trips, medical treatment abroad, studies abroad. TCS provisions were introduced, as a monitoring mechanism, for mapping such LRS remittances/payments for Overseas Tour Packages, with reference to return of income filed by the assesses and verifying such returns qua sources for such remittances. Resultantly, TCS was pegged at 5% of the remittances under LRS above ₹ 7 lacs and for booking of Overseas Tour Package, without any threshold limit.

Finance Bill, 2023 proposes to hike the rate of TCS, under Section 206C(1G), w.e.f. 1.07.2023, on remittances under LRS, other than for foreign education or for medical treatment, from 5% to 20%, including doing away with the threshold limit of ₹ 7 Lacs. Similarly, TCS on booking of Overseas Tour Packages, is continued without any threshold limit, with TCS rate hike from 5% to 20%. Snapshot of the proposed changes vis-à-vis the existing law is as under: -

Type of Remittance	Present Position		Proposed through Finance Bill, 2023	
	Threshold Limit	Rate of TCS	Threshold Limit	Rate of TCS
Overseas Tour Package	No Limit	5%	No Limit	20%
For the purpose of Education, if remittance is out of Education Loan obtained from Financial Institution [Section 80E]	₹ 7 Lacs	0.5%	No change	
Medical Treatment, Education other than specified above	₹ 7 Lacs	5%	No change	
Remittance under LRS (Illustrative List) • Acquisition of immovable property abroad, • Investment in companies abroad; • Private Visit; • Gift/Donation; • Maintenance of relatives abroad; • Business Trips	₹ 7 Lacs	5%	No Limit	20%

As per figures shared in Business Standard on 19.01.2023, in FY 22-23 (till November - 2022), remittances under LRS were around $17.28 billion and in FY 21-22, such remittances were $19.61 billion, which were at an all-time high, aided by overseas education and rise in international travel. Clearly, there is a paradigm shift on the approach of Government in levying TCS on such payments/remittances from a monitoring mechanism [with 5% rate] to considering it to be a tool for tax collection or resource mobilization [increasing rate to 20%].

5. Section 194R – Expanding Scope to Benefits/Perquisites in Cash

Section 28(iv) sought to tax the value of benefits or perquisite, whether convertible into money or not, arising from business or exercise of profession. Although, the practice of providing benefits or perquisites, such as foreign trips, expensive gifts, prizes etc, which were emanating from the business of the recipient or on account of exercise of the profession, was in vogue, however, as such benefits or perquisites were mostly in kind, the same, in majority of the cases, were not reported as income by the recipients, in their tax returns. Also, the provider of such benefits or perquisites, claimed expenses, in relation thereto, as business expenditure. This led to wide spread evasion of tax. In order to plug this leakage, Section 194R was inserted by Finance Act, 2022, providing for deduction of TAS, at the rate of 10%, by the provider, on such transactions. Section 194R provided for deduction of TAS, whether the benefits or perquisites were in cash or in kind.

Supreme Court in the case of ***Mahindra and Mahindra Ltd. [2018] 404 ITR 1 (SC),*** while interpreting the provisions of Section 28(iv) held that in order to invoke the provision of Section 28(iv), benefit which is received has to be in kind, i.e. in form other than in cash/money. Therefore, in case where benefits or perquisites were in cash, provisions of Section 28(iv) were not attracted. Thus, although Section 194R, sought to tax the incomes arising out of Section 28(iv), it was not in alignment with such charging section, as it sought to deduct TAS on both cash or kind, however, scope of Section 28(iv) was only in relation to benefits in kind. Subsequent to insertion of Section 194R, in order to remove such ambiguity, it was again clarified by way of Circular No. 12/2022, by Central Board of Direct Taxes (“CBDT”), by giving reference to the proviso to Section 194R that TAS has to be deducted whether the benefit or perquisite is in cash or in kind. This clarification was seen as having travelled beyond the interpretation given by the Supreme Court and sought to rewrite the main provision of Section 194R and therefore beyond the powers of CBDT.

Finance Bill, 2023 now proposes to expand the definition of benefit or perquisites under Section 28(iv) and Section 194R to expressly cover those benefits or perquisites which are provided in cash or partly in cash and partly in kind. Accordingly, Explanation has been inserted in Section 194R, w.e.f. 1.04.2023, to provide such position. Resultantly, benefits/perquisites in the form of cashbacks/cash transfers, waiver of loan etc, which are provided in cash, would now get covered within the purview of Section 28(iv) on which TAS would have to be deducted under Section 194R.

6. Section 196A – DTAA Relief on TDS for Non-Residents

Section 196A provides for deduction of TAS on the payment made to Non-Residents, of any income in respect of units of Mutual Fund [Section 10(23D)] or from specified company [Explanation to Section 10(35)]. Presently, rate of TDS, as prescribed in Section 196A, is 20% [plus applicable surcharge and cess],

unlike Section 195, which specifies TDS to be deducted at the "rates in force". Rates in force is defined in Section 2(37A) and provides, the rates as prescribed under the Act or the relevant Double Taxation Avoidance Agreement ("DTAA"), whichever is more beneficial to the assessee/payee, by also referring to Section 90/90A of the Act. As specific rate is provided in Section 196A, without any express provision for application of beneficial DTAA rate, TAS is deducted at 20%.

In the context of Section 194E, which also specifies a fixed rate of TDS, in the case of PILCOM [2020] 425 ITR 312 (SC), it was observed by the Supreme Court that the taxability under the DTAA is not relevant in determining the tax deduction obligation of the payer. Accordingly, irrespective of the taxability under the DTAA, TDS was to be deducted at the rate specified in Section 194E.

Finance Bill, 2023, proposes to insert a proviso to Section 196A(1), with effect from 1.04.2023, to provide, that TDS will have to be deducted at rate which is lower of 20% and the rate or rates provided in the relevant DTAA, giving reference to Section 90/90A, provided the payee furnishes Tax Residency Certificate. With the proposed amendment to Section 196A, tax deduction from the payments to Non-Resident, of the nature as specified therein, would be at the beneficial rate either under the Act or the applicable DTAA. Similar amendment was made in Section 196D, vide Finance Act, 2021, providing relief on payments made to Foreign Institutional Investors.

However, there are other sections which also prescribe fixed rate of TDS on payments made to Non-Residents, such as Section 194E - Payments to non-resident sportsmen or sports associations; Section 196B - Income from units payable to an Offshore Fund Section 196C - Income from foreign currency bonds or shares of Indian company; etc. In the absence of similar such amendment, as proposed in Section 196A, TDS will have to be deducted, at the rates prescribed in such sections, without DTAA benefit.

7. Credit of TDS – Year in Which Income Offered For Tax

Credit for TDS, to the assessee is available in accordance with Section 199, read with Rule 37BA of the Income Tax Rules, 1962. Credit of TDS per se is provided in the year in which the assessee has offered the corresponding income for tax. However, there have been lot of scenarios, wherein, assessee offered particular income for tax in a particular year based on the method of accounting followed by it, however, TAS is deducted, by the deductor, in the subsequent year based on its own accounting treatment and payment. This results into mismatch in the years in which the assessee offers the income for tax and the year in which the corresponding TAS is deducted and reflected in its Form 26AS. Also, in many such cases, it is seen that the assessee is unable to set right this mismatch as by such time the TAS is deducted, in subsequent years, the time limit for revising the return of income for the year in which income is offered for tax expires. This mismatch resulted into lot of hardship for the assesses. It was also seen that when in the subsequent year, the TDS credit was claimed by the assesses, it even resulted into addition of income in the hands of the assessee while processing of return, for such year, under Section 143(1) due to the receipts as per returned income being less than the income as reflected in Form 26AS. This was for the reason that in most of the cases the assessee had already offered income for tax in the preceding years.

In order to remove this difficulty of mismatch, amendment has been proposed

by the Finance Bill, 2023, by the way of insertion of Sub-Section (20) to Section 155. Section 155 considers certain scenarios for which application can be filed before the Assessing Officer to give appropriate effect in the return of income. It is proposed under Section 155(20), that in case of mismatch, an application can be made by the assessee with the Assessing Officer to provide credit of the TDS amount, reflected in subsequent year, to the year in which the income was offered, by such assessee, for tax. Such application has to be filed within two years from the end of the financial year in which the tax was deducted at source in the subsequent year. Once an application is made by the assessee to the Assessing Officer, within the period of two years, then the Assessing Officer can make appropriate changes. within a period of four years, from the financial year in which TDS was deducted. The period for rectification, under Section 154, for the purpose of Section 155(20) is to be reckoned from the end of the financial year in which the tax was deducted.

Claiming of TDS credit in the year in which income was offered for tax and when return is already filed, may result into refund for the assessee. It has been proposed in the Finance Bill, 2023, that the interest on such refund, in accordance with Section 244A, shall be available for the period from the date of application to the date on which refund is granted to the assessee by the Income Tax Department.

8. Section 271C - Penalty for Failure to pay TDS

Section 271C provides for levy of penalty on any person under two scenarios, (i) if the person, who is required to deduct TAS, fails to deduct either whole or part of such tax amount; or (ii) if such person fails to pay either the whole or any part of the tax as is required to be paid under proviso to Section 194B. Penalty under Section 271C can be levied on the amount equal to the tax not deducted [as per Scenario (i)] or paid [as per Scenario (ii)]. Scenario (ii) covers situation, wherein, payment is made in kind, or partly in cash and partly in kind, such as winnings from lottery or crossword puzzle etc. In such a situation, if the cash component is not there or is not sufficient to meet the liability for deduction of tax, then the person responsible for paying, before releasing the winnings, has to ensure that the tax amount has been paid in respect of such winnings, to the Government, on behalf of the recipient.

Finance Act, 2022, introduced Section 194R, in relation to TDS on Benefits and Perquisite, and Section 194S, in relation to TDS on transfer of Virtual Digital Asset. Further, Finance Bill, 2023 proposes to insert Section 194BA, in relation to TDS on Winnings from Online Gaming. All the three sections, envisage a situation, similar to Section 194B, wherein, payment can be made in kind or partly in cash and party in kind, in which case if there is any shortfall in the cash component or if it is not available, then the payer has to ensure that the due tax amount is paid to the Government. However, situation of non-payment of such tax amount, under such sections, was not covered in Scenario (ii) of Section 271C, as discussed above, even though Section 194R and Section 194S were already in force w.e.f. 1.07.2022. In order to plug this gap, amendment has been proposed in Section 271C, w.e.f 1.04.2023, to even cover such situations of non-payment of tax under Section 194R and Section 194S. Also, since Section 194BA is proposed to be introduced w.e.f. 1.07.2023, corresponding amendment is proposed in Section 271C, to include such section from the date of its coming into force. Similar such amendments have been proposed in Section 276B, which deals with prosecution in case of non-deduction and non-payment of due TDS amount.

Levy of penalty under Sections 271C is subject to the provisions of Section 273B. Section 273B provides that penalty under such section shall not be imposable if there is "reasonable cause" for the failure.

9. Section 192A - TDS on Payment of Accumulated Balance Due to an Employee

Section 192A provides for deduction of TAS on payment of accumulated balance, due to an employee under the Employees' Provident Fund Scheme, 1952 ("EPF"). As per Section 192A, TAS is deducted on the EPF withdrawal, if the money is redeemed within 5 years of the opening of the EPF Account. If the Permanent Account Number ("PAN") is available with the Employees' Provident Fund Organisation, then TAS is deducted at the rate of 10%, if the withdrawal amount exceeds ₹ 50,000. However, 2nd proviso to Section 192A, specifies that if PAN is not available, then TAS is to be deducted at Maximum Marginal Rate. Maximum Marginal Rate ("MMR") is defined under Section 2(29C) to mean the rate of income tax, including surcharge and cess, if any, applicable in relation to the highest slab of income in case of individual. Accordingly, MMR applicable for previous year 2022-23 was 42.74%. Thus, TAS on such EPF withdrawal by low paid employees, not having PAN was deducted at the highest rate of 42.74%. To avoid TAS on the EPF withdrawal, an individual could submit Form 15G/Form 15H, as applicable. However, Form 15G/Form 15H also required furnishing of PAN of the individual for avoiding TDS on EPF withdrawal amount. Thus, to provide relief to employees, not having PAN, thereby TDS being deducted at the MMR, Finance Bill, 2023, proposes to omit the 2nd proviso to Section 192A, w.e.f 1.04.2023. Resultantly, in case of failure to furnish PAN by the person relating to payment of accumulated balance, tax will be deducted at the rate of 20%, in accordance with Section 206AA, similar to a scenario in other non-PAN cases, instead at the MMR.

10. Section 193 – TDS on Interest on Listed Debentures

Section 193 cast responsibility on the person making payment to a resident, any income by way of "Interest on Securities" to deduct TAS at the "rates in force". Clause (ix) of the proviso to Section 193, provided exemption from deduction of TAS by Indian companies on any interest payable to a resident on securities issued by such company (i) in Dematerialized Form; and (ii) listed on a Recognized Stock Exchange in India. Essentially, interest income earned by resident investors, on listed debt securities, such as Debentures, was exempt from being subjected to deduction of tax at source at the time of payment. Not being subjected to deduction of TAS, it was observed by the Government that there has been under reporting of interest income by recipients. Accordingly, Finance Bill, 2023 proposes to remove the exemption of TDS on such interest payments on listed debt securities, w.e.f 1.04.2023. TAS, as per Section 193 will have to be deducted by the issuing company at the rates in force, defined under Section 2(37A), which is 10% on interest income earned on listed debt securities.

11. Section 206AB, Section 206CCA - Relief for Non-ITR Filers from Higher TDS/ TCS

Finance Act, 2021, introduced Section 206AB and Section 206CCA, prescribing higher rates of deduction and collection, respectively, of Tax at Source for those assesses who did not file their Return of Income ("ROI")/non-filers. These assesses/ non-filers were referred to in Section 206AB and 206CC as "Specified Person". One of the conditions for being classified as specified person was that if

such person has not filed ROI within the time limit prescribed under Section 139(1). Specified Person also excluded Non-Resident who did not have Permanent Establishment in India. However, nothing was clarified for those assessees who were not required to file their ROI, within the time limit prescribed under Section 139(1), for the reason of their Income being less than the maximum amount not chargeable to tax. There being no clarity, such type of assesses were also getting covered within the definition of specified persons and were subjected to higher rate of TDS and TCS. In order to remove such hardships, it has been now been proposed, by Finance Bill, 2023, w.e.f. 1.04.2023, that such types of assesses, who were not required to file their ROI within the due date as prescribed under Section 139(1), will be outside the purview of being categorized as "specified person" and accordingly, they would not be subjected to higher rate of TDS and TCS as prescribed under Section 206AB and 206CCA respectively.

12. Section 271FAA - Penalty for Furnishing Inaccurate Statement of Financial Transaction or Reportable Account

Section 285BA, read with Rules 114F to 114H of the ITR provides for due diligence to be followed for identification and reporting of non-resident account holders for US Foreign Account Tax Compliance Act (FATCA) and the Common Report Standard (CRS) of the Organization for Economic Cooperation and Development (OECD). Section 285BA provides for furnishing of statement by the prescribed Reporting Financial Institution in respect of a Specified Financial Transactions or Reportable Accounts to the prescribed Income-Tax Authorities. Rule 114H lays out the specific guidelines for conducting due diligence of Reportable Accounts i.e. US Reportable Accounts and other Reportable Accounts. The due diligence procedure is aimed at ensuring that all Reportable Accounts and transactions are adequately identified by the Reporting Financial Institution. Rule 114H mandates for self-certification by reportable persons and the account holders for different purposes, which inter-alia include cases where new accounts are opened (to certify the country of tax residence), cases involving curing indicia for pre-existing accounts (to certify the country of tax residence) etc.

While, Section 271FAA provides that penalty of ₹ 50,000 shall be payable by the Reporting Financial Institution, where it provides inaccurate information in the statement, however, there is no penal provision for submission of false self-certification, by the account holder, which in-turn leads to furnishing of inaccurate information by Reporting Financial Institution. Accordingly, it has been proposed, by the Finance Bill, 2023, to insert a new Sub-Section (2) to Section 271FAA to provide that if there is inaccuracy due to false or inaccurate information submitted by the account holders, a penalty of ₹ 5,000 shall be imposable on the Reporting Financial Institution, in addition to the ₹ 50,000 levied under Sub-Section (1) of Section 271FAA. The penalty so levied on the Reporting Financial Institution under Sub-Section (2), as proposed, may be recovered by the Reporting Financial Institution from the account holder. These penal provisions would help in account holders not resorting to false self-certification.

13. Section 197 to Cover within its Ambit Section 194LBA

Section 197 provides for the facility of nil or lower rate of deduction of TAS. To avail this benefit, assessee whose TDS is likely to be deducted on certain receipts has to make an application before the Assessing Officer (TDS) who has jurisdiction over such assessee's case. Section 197 provides for assessee to

apply to the Assessing Officer for TDS at zero rate or lower rate, if the tax is required to be deducted under certain sections. If the Assessing Officer (TDS) is satisfied that the total income of the recipient justifies the deduction of income-tax at nil or lower rate, Assessing Officer (TDS) is required to give an appropriate certificate to the assessee.

Section 194LBA provides that Business Trust shall deduct and deposit tax at the rate of 5% on interest income of Non-Resident Unit Holders. However, in some cases rate of deduction may be required to be reduced due to exemption, for instance exemption under Section 10(23FE), allowed to notified Sovereign Wealth Funds and Pension Funds. However, since certificate for lower deduction under Section 194LBA could not be obtained under Section 197, Section 194LBA not being specified therein, benefit of exemption was not available at the time of tax deduction. Accordingly, it is proposed, in Finance Bill, 2023, to amend Section 197(1), w.e.f. 1.04.2023 to provide that the sums on which tax is required to be deducted under Section 194LBA shall also be eligible for certificate for deduction at nil/lower rate.

14. Section 194N – Increase in Threshold Limit for Cooperative Societies

Section 194N specifies that any Banking Company, Co-Operative Society [carrying on banking business] or Post Office, responsible for paying any sum to a recipient, from one or more accounts maintained by such recipient with them, are required to deduct TAS, whenever such amount, or aggregate of amounts withdrawn/paid exceeds a particular threshold limit. Finance Bill, 2023 proposes to increase such threshold limit, for applicability of Section 194N, for Co-operative Society, being the recipient. Snapshot of Section 194N prior and subsequent to the Budget proposal is as under:-

Recipient	Present Position		Budget Proposal	
	Threshold Limit	Rate of TDS	Threshold Limit	Rate of TDS
Any person other than cooperative Society	Aggregate withdrawal > ₹ 1 crore	2%	No Change	
Co-operative society			Aggregate of amounts > 3 crore	2%
Non-Filer of ROI – 3 preceding years	Aggregate withdrawal > ₹ 20 lacs	Aggregate withdrawal > ₹ 20 Lacs: 2% Aggregate withdrawal > ₹ 1 crore: 5%	No Change	

15. Conclusion

Amendments related to TDS/TCS provisions proposed in the Finance Bill, 2023, are a testimony to the intention of Government to broaden the tax net and push for greater compliance. Probably we should brace ourselves for many more such amendments to come in the Amrit Kaal.

CA Nehal Sampat CA Vandit Shah CA Sarvesh Chaurasia

Budget 2023 - IFSC Related Proposals

Backdrop

Promoting the growth of international financial services in India, especially India-focused Inbound and Outbound financial services, has been high on the agenda of the Government. The creation of a unified financial services regulator in the form of the International Financial Services Centres Authority ('IFSCA') followed by a flurry of new regulations and taxation amendments in relation to various IFSCA initiatives reflect the same.

With respect to the Asset Management sector and Investments Funds in IFSC, the IFSCA introduced the IFSC (Fund Management) Regulations, 2022 ('IFSCA FM Regulations') to provide a comprehensive regulatory framework for Asset Managers operating in an IFSC. The Government and the IFSCA have been seeking to promote IFSC as a jurisdiction to Domicile Funds, Fund Managers and Investment Advisors in IFSC. Amendments were also made to the relevant Regulations and to the Income-tax Act, 1961 ('the ITA') to encourage the 'relocation' of offshore Funds to IFSC. Similarly, the ITA was amended to address certain tax challenges arising from the issue of swaps/Offshore Derivative Instruments ('ODIs) to foreign investors.

The amendments to the ITA proposed in the Finance Bill, 2023 ('the FB') are efforts in continuation of the above initiatives of the Government.

I. Clause 5(a) of the FB – Proposed amendment to clause (4D) of section 10 of the ITA

Existing provisions

Section 10(4D) of the ITA was introduced to provide tax exemptions to certain Funds domiciled in IFSC that are similar to the tax exemptions enjoyed by Funds domiciled in certain tax-favourable jurisdictions. The Section exempts any income accrued or arisen to, or received by a 'specified fund' which is attributable to units held by non-residents (not being the permanent establishment of a non-resident in India) from:

- Transfer of a capital asset referred to in clause (viiab) of Section 47, on a recognised stock exchange located in any IFSC and where the consideration for such transfer is paid or payable in convertible foreign exchange;
- Transfer of securities (other than shares in a company resident in India);

- Securities issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India; or
- From a securitisation, trust which is chargeable under the head 'Profits and gains of business or profession'.

Further, clause (c) of the Explanation to clause (4D) of Section 10 of the ITA defines a 'specified fund' to mean, inter alia, a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate —

(I) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or International Financial Services Centres Authority Act, 2019 (50 of 2019);

(II) which is located in any International Financial Services Centre; and

(III) of which all the units other than the unit held by a sponsor or manager are held by non-residents.

Proposed amendment

It is now proposed to expand the scope of the expression 'specified fund' to include a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate, which has been granted a certificate of registration as a Category III Alternative Investment Fund and **is regulated under the IFSCA (Fund Management) Regulations, 2022** made under the International Financial Services Centres Authority Act, 2019 of which all the units other than unit held by a sponsor or manager are held by non-residents.

Impact of the proposed amendment

As mentioned above, the IFSCA introduced the IFSCA FM Regulations which replaced the erstwhile SEBI (Alternative Investment Funds) Regulations, 2012 and its guidelines and circulars as regards its applicability to Funds in IFSC. The amendment in the FB seeks to update references in the section to new the IFSCA FM Regulations. Since the IFSCA FM Regulations are effective from 19th May 2022, the proposed amendment has been sought to be made effective from Assessment Year 2023-24 (i.e., Financial Year 2022-23).

In addition to Alternative Investment Funds (AIFs), the IFSCA FM Regulations have also introduced other Funds such as retail schemes and Exchange Traded Funds in the Regulations. Interestingly, these schemes/Funds have not been referenced in the amendments sought to be introduced to the ITA. Thus, there may not be an express, unambiguous taxation framework for the schemes/Funds in the ITA akin to AIFs.

Similar referencing changes are sought to be introduced in other provisions in the ITA, which have been summarised below.

II. Clause 21(a)(ii) and Clause 58 of the FB – Proposed amendments to section 47(viiad) and section 115UB of the ITA

Existing provisions

As per the provisions of clause (viiad) of section 47 of the ITA, any transfer by a shareholder or unit holder or interest holder, in a 'relocation', of a capital asset being a share or unit or interest held by him in the

original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as a taxable transfer. Further, as per clause (c) of explanation to clause (viiad) of section 47 of the ITA, the term 'resultant fund' has been defined to mean a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which—

(i) has been granted a certificate of registration as a Category I or Category II or Category III AIF, and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or International Financial Services Centres Authority Act, 2019 (50 of 2019); and

(ii) is located in any International Financial Services Centre as referred to in sub-section (1A) of section 80LA;

Proposed amendment

Similar to the above, it is now proposed to expand the scope of the expression 'resultant fund' to include a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which has been granted a certificate of registration as a Category I or Category II or Category III AIF and is **regulated under the IFSCA (Fund Management) Regulations, 2022** made under the International Financial Services Centres Authority Act, 2019.

Amendment to section 115UB of the ITA

Existing provisions

Section 115UB of the ITA provides a special tax regime for levying tax on the income of an investment fund and its unitholders. As per clause (a) of explanation 1 to section 115UB of the ITA, 'investment fund' is defined to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II AIF and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or under the International Financial Services Centres Authority Act, 2019 (50 of 2019).

Proposed amendment

It is now proposed to expand the scope of the expression 'investment fund' to also include any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II AIF and **is regulated under the IFSCA (Fund Management) Regulations, 2022** made under the International Financial Services Centres Authority Act, 2019.

Impact of the proposed amendments

Given that AIFs set-up in IFSC is now registered/regulated under the IFSCA FM Regulations and not under the SEBI AIF Regulations, the proposed amendments will ensure that AIFs registered/regulated under the IFSCA FM Regulations also qualify as 'specified fund', 'resultant fund' and 'investment fund' under the ITA.

Interestingly, a similar referencing update to the IFSCA FM Regulations has not been made to Category I and II AIFs mentioned under section 56(2)(viib) of the ITA. Section 56(2)(viib) of the ITA states that, where a

company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be deemed to be the income of the concerned company chargeable to tax under the head Income from other Sources for the relevant financial year. However, section 56(2)(viib) of the ITA does not apply to the issue of shares to Category I and II AIF registered under SEBI (AIF) Regulations, 2012. With the provisions of section 56(2)(viib) now being extended to non-residents, it would be appropriate to extend the exemption to IFSC-based AIFs.

III. Relocation of offshore funds to IFSC

Existing provisions

To encourage offshore Funds to 'relocate' to IFSC, the Finance Act, 2021 introduced measures seeking to provide tax neutrality in case of relocation of offshore fund/original fund or wholly owned special purpose vehicles of an offshore fund to a resultant fund in an IFSC. This has been done through amendments to section 47 of the ITA by way of inserting clause (viiac) to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as a transfer for capital gain tax purpose, and clause (viiad) to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the existing offshore fund in consideration for the share or unit or interest in the resultant IFSC fund shall not be treated as a transfer for capital gains.

The above measures were accompanied by a 'sunset' clause which required the transfer of assets to take place on or before March 31, 2023.

Proposed amendment

It is now proposed to amend clause (viiad) of section 47 of the Act to extend the 'sunset' clause for tax-neutral relocation of assets of offshore fund/original fund or of its wholly owned Special Purpose Vehicle to the resultant fund in the IFSC till 31 March 2025.

Impact of the proposed amendments

The process of relocation of an offshore Fund requires time as various approvals including approvals from investors, overseas regulators, etc. may be required. The provisions allowing tax-neutral relocation of offshore Funds to IFSC were introduced only in 2021 and provided a two-year window. While the Government has announced a slew of proposals to make IFSC an attractive destination to investors and Asset Managers, to facilitate the 'relocation' of more Funds to IFSC in a tax-neutral manner, the timeline for relocation has sought to be extended by two more years to 31 March 2025. This will encourage more offshore Funds and Asset Managers to evaluate and consider IFSC as an alternative Fund domicile.

IV. Income distributed on Offshore Derivative Instruments (ODIs) by an offshore banking unit of an IFSC to non-residents

Existing provision

The Finance Act, 2021 introduced a new clause (4E) in section 10 of the ITA to provide tax exemption on income accruing or arising to or received by a non-resident as a result of the transfer of non-deliverable forward

contracts entered into with an offshore banking unit in an IFSC ('IBU'). Thereafter, the Finance Act, 2022 amended the clause to extend the scope of the tax exemption to the transfer of ODIs and over-the-counter ('OTC') derivatives entered into by a non-resident with an IBU.

ODIs are contracts wherein the returns are generally referenced with respect to some other underlying security. By way of an illustration, a non-resident enters into an ODI contract with an IBU to earn returns from shares of say, Infosys Ltd. The IBU may hedge its position by registering itself as a Foreign Portfolio Investor ('FPI') and buying shares in the underlying i.e. Infosys Ltd. In this case, the IBU will be contractually obliged to provide returns to the non-resident as flowing from investment in Infosys Ltd. including any dividends, etc. The non-resident could transfer the ODI contract to another non-resident (subject to certain regulatory conditions).

In the above illustration, the IBU would be taxable on the income earned from its hedged position in India in accordance with section 115AD of the ITA (i.e. FPI taxation provisions). After considering potential taxes payable on the underlying, the IBU usually passes returns to the ODI holder. Presently, the exemption under section 10(4E) of the ITA covers only income arising to a non-resident on the transfer of ODIs and does not expressly include income distributed, otherwise than on a transfer. This could result in potential double taxation of income distributed to the investor. Section 10(4D) is proposed to be amended to address this issue, as highlighted in the Memorandum explaining the provisions in the FB.

Proposed amendment

The FB seeks to amend clause (4E) of section 10 of the ITA to also exempt any income accrued or arising to or received by a non-resident as a result of the distribution of income on ODI with an IBU as referred to in sub-section (1A) of section 80LA, which fulfils such conditions as may be prescribed. However, a proviso has also been added to curtail the exemption to only that amount of distributed income which has been charged to tax in the hands of the IBU under section 115AD of the ITA.

Impact of the proposed amendments

The proposed amendment seeks to address potential double taxation issues in the hands of investors in an ODI structure and provides parity in taxation for ODI issuers who may be undertaking such business from outside India to consider undertaking such ODI business from IFSC. Interestingly, the proviso sought to be introduced along with the amendment may create ambiguity with respect to the taxation of income distributed to investors which are not chargeable to tax in the hands of the IBU. Such income which is otherwise not chargeable to tax could suffer taxation at the time of distribution of investors.

Conclusion

The above tax proposals coupled with the slew of other IFSC-related announcements by the Honorable Finance Minister will encourage foreign investment participation in IFSC and enhance Asset Management/capital market activities from IFSC.

Priyanshi Desai
Advocate

Appeals

New post of Joint Commissioner (Appeals) and related procedures

As per the current scheme for appeals under the Income-tax Act, 1961 ["the Act"], the first appellate authority for an assessee aggrieved by any order passed under the Act is the Commissioner of Income-tax (Appeals) ['CIT(A)']. Section 246A of the Act lists the orders against which the appeal can be filed before the Commissioner (Appeals).

The amendments proposed in relevant provisions of the Act for the functioning of the new post of the Joint Commissioner (Appeals) are in alignment with that of the Commissioner (Appeals) are discussed as follows.

Section 2(19B) – Definition of "Deputy Commissioner (Appeals)"

The existing clause (19B) of section 2 of the Act defines Deputy Commissioner (Appeals) which means a person appointed to be a Deputy Commissioner of Income-tax (Appeals) or an Additional Commissioner of Income-tax (Appeals).

It is proposed to amend clause (19B) of the said section to omit "Additional Commissioner of Income-tax (Appeals)" from the definition.

The purpose behind this omission is that the Additional Commissioner of Income-tax (Appeals) will now fall within the ambit of the newly inserted definition of "Joint Commissioner of Income-tax (Appeals)" under clause (28CA) of section 2 of the Act.

Section 2(28CA) – Definition of "Joint Commissioner (Appeals)"

It is proposed to insert a new clause (28CA) in section 2 of the Act to provide for the definition of Joint Commissioner (Appeals). It means a person appointed to be a Joint Commissioner of Income-tax (Appeals) or an Additional Commissioner of Income-tax (Appeals).

It was observed that the Commissioner (Appeals) being the first appellate authority is currently overburdened due to the huge number of appeals and the pendency being carried forward every year. To clear this bottleneck a new authority for appeals is being proposed, in the Finance Bill, 2023, to be created at Joint Commissioner/Additional Commissioner level to handle a certain class of cases involving a small amount of disputed demand. Such authority has all powers, responsibilities and accountability similar to

that of Commissioner (Appeals) with respect to the procedure for the disposal of appeals.

Section 116 – Income-tax Authorities

Section 116 of the Act specifies classes of income-tax authorities responsible for the implementation and administration of the provisions of income-tax laws.

It is proposed to consequentially amend clause (cca) of the said section to include Joint Commissioner of Income-tax (Appeals) within the ambit of classes of income-tax authorities.

Section 246 – Appealable Orders

The current section 246 provided for the orders appealable before Deputy Commissioner (Appeals). That institution was discontinued in the year 2000.

The Finance Bill, 2023 proposes to substitute the current section 246 with the new section 246 to provide for orders appealable before the new post Joint Commissioner (Appeals).

The proposed section 246 – Appealable Orders before Joint Commissioner (Appeals) is as follows:

Sub-section (1) of the proposed section 246 seeks to provide that any assessee aggrieved by any of the following orders of the Assessing Officer ('AO') below the rank of the Joint Commissioner may appeal to Joint Commissioner (Appeals):

- An order being an intimation under section 143(1)
- Original assessment order under section 143(3)
- Best judgment assessment order under section 144
- Reassessment order under section 147
- An order being an intimation under section 200A(1)
- Order deeming an assessee in default and order for levy of interest under section 201
- Order being an intimation under section 206C(6A)
- Order under section 206CB(1)
- Penalty orders under Chapter XXI and
- Rectification Order under section 246 or an order under section 155 amending any of the orders mentioned above.

However, as per the proviso to sub-section (1) of the proposed section 246, an appeal cannot be filed before the Joint Commissioner (Appeals) if the above-mentioned orders are passed by or with the approval of an income tax authority below the rank of Deputy Commissioner.

Sub-section (2) of the proposed section 246 seeks to provide that where any appeal filed against an order referred to in subsection (1) is pending before the Commissioner (Appeals), the Board or an income-tax authority so authorised by the Board in this regard may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending to the Joint Commissioner (Appeals) who may proceed with such appeal or matter from the stage at which it was before it was so transferred. This will enable the transfer of certain existing appeals filed before the Commissioner (Appeals) to the Joint Commissioner (Appeals).

Sub-section (3) of the proposed section 246 seeks to provide that notwithstanding anything

contained in sub-section (1) or sub-section (2), the Board or an income-tax authority so authorised by the Board in this regard may transfer any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending to the Commissioner (Appeals) who may proceed with such appeal or matter from the stage at which it was before it was so transferred.

Sub-section (4) of the proposed section 246 seeks to provide that where an appeal is transferred under the provisions of sub-section (2) or sub-section (3), the appellant shall be provided an opportunity of being reheard.

Sub-section (5) of the proposed section 246 provides that for expeditious disposal of appeals and for eliminating the interface between the Joint Commissioner (Appeals) and the Appellant in the course of the appellate proceedings, the Central Government may by way of a notification in the Official Gazette make a Faceless Appeal Scheme as is prevalent for the appeals before the Commissioner (Appeals).

Sub-section (6) of the proposed section 246 empowers the Central Board of Direct Taxes ('CBDT') to specify any case or any class of cases in respect of which an appeal cannot be filed before the Joint Commissioner (Appeals).

It is also proposed to insert an Explanation in this section to define "status" to mean the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

Section 249 – Form of appeal and limitation

Section 249 specifies the provisions for the form of appeal, verification of appeal, the quantum of fees to be accompanied with the appeal, conditions to be fulfilled before filing the appeal, and the limitation period for filing the appeal before Commissioner (Appeals).

The provisions of section 249 are also made applicable to the appeals filed before the Joint Commissioner (Appeals) by way of the amendment made in the said section through Finance Bill, 2023.

Accordingly, the appeal to be filed before Joint Commissioner (Appeals) should be in Form 35. The said appeal should be accompanied by the fees as stipulated in section 249(1) of the Act. The appeal before Joint Commissioner (Appeals) should be filed within the period of limitation envisaged in section 249(2) of the Act. However, the Joint Commissioner (Appeals) is also empowered to admit an appeal after the expiry of the aforesaid period of limitation if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

Further, no appeal shall be admitted by the Joint Commissioner (Appeals) unless, at the time of filing the appeal, the assessee has paid the tax due on the income returned by him where the return has been filed by the assessee or the assessee has paid an amount equal to the amount of advance tax where no return has been filed by the assessee. However, the Joint Commissioner (Appeals) may exempt the appellant from the payment of advance tax for the admission of the appeal before him on an application made by the appellant on this behalf.

Section 250 – Procedure in appeal

Section 250 specifies the provisions regarding the conduct of proceedings of the hearing of the appeal before the Commissioner (Appeals), adjournment of the appellate proceedings, the inquiry by Commissioner (Appeals) before

disposal of the appeal, appellate order of Commissioner (Appeals), communication of appellate order to the appellant and A.O. etc.

The provisions of section 250 are also made applicable to the appeals filed before the Joint Commissioner (Appeals) by way of the amendment made in the said section through Finance Bill, 2023.

Accordingly, the Joint Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the AO against whose order the appeal is preferred under the proposed section 246 of the Act. The Joint Commissioner (Appeals) is also empowered to adjourn the hearing of the appeal before him from time to time and also to conduct a further inquiry as he thinks fit before disposing of any appeal.

Further Joint Commissioner (Appeals) would at the hearing of the appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal if the Joint Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable. The appellate order of the Joint Commissioner (Appeals) would also be a speaking order stating therein the points for determination, the decision thereon and the reason for the decision.

Further the current sub-section (6A) of section 250 is substituted with the new sub-section (6A) which proposes that the Joint Commissioner (Appeals) may hear and decide the appeal within 1 year from the end of the financial year in which such appeal is filed before him under sub-section (1) or transferred to him under sub-section (2) of the proposed section 246.

The Commissioner (Appeals) may hear and decide the appeal within 1 year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A or transferred to him under sub-section (3) of the proposed section 246.

Section 251 – Powers of the Commissioner (Appeals)

Under section 251, the Commissioner (Appeals) has the power to confirm, reduce enhance or annul/cancel an order of assessment or an order of penalty against which an appeal is filed before him.

Finance Bill, 2023 proposes to amend section 251 of the Act. The amended section 251 now provides for Powers of the Joint Commissioner (Appeals) or Commissioner (Appeals).

A new sub-section (1A) is inserted in section 251 which empowers the Joint Commissioner (Appeals) to do the following while disposing the appeal before him:

- To confirm, reduce, enhance or annul the assessment in an appeal against an order of assessment
- To confirm, cancel, enhance or reduce the penalty in an appeal against an order imposing a penalty
- To pass such orders in any other appeal as he thinks fit.

However, the Joint Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the Appellant was given a reasonable opportunity of showing cause against such enhancement or reduction.

Further, in disposing of an appeal, the Joint Commissioner (Appeals) may consider

and decide any matter arising out of the proceedings in which the order appealed against was passed even if such matter was not raised before the Joint Commissioner (Appeals) by the appellant while filing an appeal under the proposed section 246 of the Act.

Accordingly, the powers of the Joint Commissioner (Appeals) are co-terminus with that of the Commissioner (Appeals) while disposing of the appeal.

Section 119 – Instructions to subordinate authorities

Section 119 of the Act empowers CBDT to issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of the Act and the said income-tax authorities employed in the execution of the Act, shall observe and follow such orders, instructions and directions.

However, clause (b) of the proviso to sub-section (1) of section 119 debars the CBDT from interfering with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions by way of issuance of orders, instructions or directions.

Further clause (b) of sub-section (2) of section 119 empowers CBDT to issue general or special orders in any case or class of cases to authorise any income-tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified for such application or claim.

However, the expression “any income-tax authority” appearing in the aforesaid clause specifically excludes Commissioner (Appeals). The exclusion of the Commissioner (Appeals) implies that CBDT is not empowered to issue general or special orders to authorise Commissioner (Appeals) to admit any application or claim after the expiry of the specified period.

Finance Bill, 2023 proposes to insert the words “Joint Commissioner (Appeals) before the words “Commissioner (Appeals)” in clause (b) of the proviso to section 119(1) of the Act. Accordingly, the CBDT is also debarred from interfering with the discretion of the Joint Commissioner (Appeals) in the exercise of his appellate functions by way of issuance of orders, instructions or directions.

It is also proposed to insert the words “Joint Commissioner (Appeals)” before the words “Commissioner (Appeals)” in section 119(2)(b) of the Act. Consequently, the CBDT is not empowered to issue general or special orders to authorise Joint Commissioner (Appeals) to admit any application or claim after the expiry of the specified period.

Section 131 – Power regarding discovery, production of evidence etc.

Section 131(1) of the Act vests, inter-alia, Commissioner (Appeals) with the powers of the court under the Code of Civil Procedure 1908 with regard to the discovery and inspection, enforcing the attendance of any person etc.

It is proposed to insert the words “Joint Commissioner (Appeals)” before the words “Commissioner (Appeals)” in section 131(1) of the Act. Accordingly, Joint Commissioner (Appeals) is also vested with the aforesaid powers so as to enable it to exercise the appellate functions efficiently and hassle free.

Section 133 – Power to call for information

Section 133 empowers, inter-alia, Commissioner (Appeals) to call for information from firms, HUF etc in the exercise of its appellate functions.

It proposed to insert the words "Joint Commissioner (Appeals)" before the words "Commissioner (Appeals)" appearing in section 133. Consequently, section 133 also empowers Joint Commissioner (Appeals) to call for information in the exercise of its appellate functions.

Section 134 – Power to inspect registers of companies

Section 134 empowers, inter-alia, the Commissioner (Appeals) to inspect and take copies of the register of the members, debenture holders or mortgagees of any company.

It is proposed to insert the words "Joint Commissioner (Appeals)" before the words "Commissioner (Appeals)" appearing in section 133. Accordingly, section 134 also empowers Joint Commissioner (Appeals) to inspect the registers of the companies.

Section 154 – Rectification of mistake

Section 154(1) of the Act empowers, inter-alia, Commissioner (Appeals) to amend its appellate order passed under section 250 of the Act with a view to rectify any mistake apparent from the record. As per sub-section (2) of section 154, the appellate order under section 250 can be rectified by the Commissioner (Appeals) either on its own motion or on an application filed either by the assessee or the AO.

It is proposed to insert the words "Joint Commissioner (Appeals)" before the words "Commissioner (Appeals)" appearing in section 154(2). Consequently, Joint Commissioner (Appeals) is also vested with the power to amend its appellate order passed with a view to rectify any mistake apparent from the record either on its own motion or on an application by the assessee or A.O.

Revisionary powers of Joint Commissioner (Appeals) under section 264

Section 264 – Revision of other order

Under section 264(4) of the Act, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner shall not revise an order under this section if

- An appeal against the said order lies to, inter-alia, Commissioner (Appeals) under section 246A of the Act or
- An appeal has not been made to Commissioner (Appeals) under section 246A of the Act and the time within which such appeal may be made has not expired or
- The assessee has not waived his right of appeal, inter-alia, under section 246A of the Act.

Section 264(4) is amended to provide similar provisions for Joint Commissioner (Appeals) as is prevalent for Commissioner (Appeals)

Accordingly, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner shall not revise an order under this section if

- An appeal against the said order lies to, inter-alia, Joint Commissioner (Appeals) under the proposed section 246 or
- An appeal has not been made to the Joint Commissioner (Appeals) under the proposed section 246 and the time

within which such appeal may be made has not expired or

- The assessee has not waived his right of appeal, inter-alia, under the proposed section 246

Initiation of penalty proceedings by Joint Commissioner (Appeals)

Finance Bill, 2023 has also empowered Joint Commissioner (Appeals) besides, inter-alia, Commissioner (Appeals) to initiate penalty proceedings under the following sections

- Section 270A – Penalty for under-reporting and misreporting of income
- Section 271 – Penalty for failure to furnish returns, comply with notices, concealment of income etc.
- Section 271A – Penalty for failure to keep, maintain or retain books of accounts, documents etc.
- Section 271AAC – Penalty in respect of income under section 68/69/69A/69B/69C/69D
- Section 271AAD – Penalty for false entry in books of accounts
- Section 271J – Penalty for furnishing incorrect information in reports or certificates

Further Joint Commissioner (Appeals) is also empowered to grant immunity from the penalty imposed under section 270A and from initiation of prosecution proceedings under section 276C/276CC upon fulfillment of certain conditions stipulated therein.

Initiation of prosecution proceedings with the previous sanction of Joint Commissioner (Appeals)

Section 279 is amended to provide that prosecution proceedings under section 275A/275B/276/276A/276B/276BB/276C/276CC/276D/277/277A/278 should be initiated with the previous sanction of Joint Commissioner (Appeals).

Section 267 – Amendment of assessment on appeal

Section 267 is amended to provide that where as a result of an appeal before the Joint Commissioner (Appeals) under the proposed section 246, any change is made in the assessment of a body of individuals or an AOP or a new assessment of a body of individuals or an AOP is ordered to be made then the Joint Commissioner (Appeals) shall pass an order authorising the A.O. either to amend the assessment made on any member of the BOI or AOP or make a fresh assessment on any member of BOI or AOP.

Section 177 – Association dissolved or business discontinued

As per section 177(2) of the Act, the Commissioner (Appeals) is empowered to initiate penalty proceedings, during the course of the appellate proceedings before it, in respect of an AOP whose business or profession is discontinued or where such an AOP is dissolved. Such penalty proceedings are initiated if the Commissioner (Appeals) is satisfied that the AOP is liable to any of the penalties enlisted in Chapter XXI of the Act.

It is proposed to insert the words "Joint Commissioner (Appeals)" before the words "Commissioner (Appeals" appearing in section 177(2) of the Act. Accordingly, the Joint Commissioner (Appeals) is also empowered to initiate penalty proceedings in respect of the AOP whose business or profession is discontinued or where such an AOP is dissolved.

Section 189 – Firm dissolved or business discontinued

As per section 189(2) of the Act, the Commissioner (Appeals) is empowered to initiate penalty proceedings, during the course of the appellate proceedings before it, in respect of a firm whose business or profession is discontinued or where such a firm is dissolved. Such penalty proceedings are initiated if the Commissioner (Appeals) is satisfied that the firm is liable to any of the penalties enlisted in Chapter XXI of the Act.

It is proposed to insert the words "Joint Commissioner (Appeals)" before the words "Commissioner (Appeals" appearing in section 189(2) of the Act. Accordingly, the Joint Commissioner (Appeals) is also empowered to initiate penalty proceedings in respect of the firm whose business or profession is discontinued or where such a firm is dissolved.

Rationalisation of appeals to the Appellate Tribunal

Section 253 – Appeals to the Appellate Tribunal

Section 253 of the Act contains provisions relating to the filing of appeals to the Appellate Tribunal. Sub-section (1) of the said section details the types of orders passed under various sections of the Act against which an aggrieved assessee may appeal to the Appellate Tribunal. The said sub-section provides that any assessee aggrieved by any order passed by a Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271J or section 272A may appeal to the Appellate Tribunal. Therefore, the Appellate Tribunal is the first level of appeal for such orders of the Commissioner (Appeals).

Sections 271AAB, 271AAC and 271AAD are penalty provisions under Chapter XXI of the Act for the imposition of penalty. Section 271AAB of the Act provides for the imposition of penalty by the Assessing Officer in a case where a search has been initiated under section 132 of the Act. Section 271AAC of the Act provides for the imposition of penalty by the Assessing Officer in a case where income determined includes any income referred to in sections 68, 69, 69A, 69B, 69C or 69D of the Act for any previous year. Section 271AAD of the Act contains provisions for imposition of penalty by the Assessing Officer if during any proceedings under the Act it is found that in the books of account maintained by any person, there is a false entry or an omission of any entry which is relevant for computation of total income of such person to evade tax liability.

Vide Finance Act, 2022, sections 271AAB, 271AAC and 271AAD were amended to enable Commissioner (Appeals) also to pass an order imposing penalty under the said sections. However, as the reference to the same has not been inserted in sub-section (1) of section

253 of the Act, an aggrieved assessee cannot appeal to the Appellate Tribunal against such penalty orders passed by Commissioner (Appeals) which may lead to taxpayer grievance. Therefore, it has been proposed to amend the provisions of section 253 of the Act to provide that appeals against penalty orders passed by Commissioner (Appeals) under the sections 271AAB, 271AAC and 271AAD shall be made to the Appellate Tribunal.

Further, vide Finance Act, 2021, section 263 of the Act was amended to enable Principal Chief Commissioner and Chief Commissioner to also pass an order of revision under the said section. However, in the absence of any reference to such orders passed under section 263 of the Act in sub-section (1) of section 253 of the Act, an assessee aggrieved by any order under section 263 of the Act passed by a Principal Chief Commissioner and Chief Commissioner or an order under section 154 of the Act rectifying such order under section 263 of the Act cannot appeal against such orders to the Appellate Tribunal. Therefore, it has been proposed that section 253 of the Act may be amended so that appeal against an order passed under section 263 of the Act by the Principal Chief Commissioner or Chief Commissioner or an order passed under section 154 of the Act in respect of any such order shall be made to the Appellate Tribunal.

Sub-section (4) of section 253 of the Act allows the respondent in an appeal against an order of the Commissioner (Appeals) to file a memorandum of cross-objections before the Appellate Tribunal. However, it is pertinent to note here that appeal can be made to the Appellate Tribunal against orders of authorities other than the Commissioner (Appeals) also like revision orders under section 263 of the Principal Commissioner/Commissioner or orders passed by the Principal Commissioner or Commissioner under section 12AA/12AB/80G(5)(vi)/270A/271/272A or orders passed by A.O. under section 143(3)/147/153A/153C in pursuance of the directions of the Dispute Resolution Panel. However, in absence of any reference to the orders passed under the aforesaid sections in sub-section (4) of section 253, the respondent whether it is Revenue or the assessee cannot file a memorandum of cross-objections against an appeal filed before the Appellate Tribunal against the aforesaid orders. This creates grievances as well as reduces the fair and equitable dispensation of judgement in such cases. Therefore, it is proposed that an amendment may be made in sub-section (4) of section 253 to enable the filing of the memorandum of cross-objections in all classes of cases against which appeal can be made to the Appellate Tribunal. For example, where the assessee files an appeal to the appellate tribunal against an order passed by the A.O. under section 143(3)/147/153A/153C in pursuance of directions of the Dispute Resolution Panel, the A.O. would be able to file a cross objection to such appeal which cannot be filed presently.

CA Ashok Mehta

Changes in Assessments and Reassessment in Budget 2023

1. Special Audit Section 142 (2A)

1.1) The existing section provides for a special audit by an Accountant as per section 288(2) if the Assessing officer is of the opinion that the special audit is necessary "having regard to the nature and complexity of the accounts, the volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of the business activity of the assessee, and the interests of the revenue,"

1.2) The assessee should be given a show cause as to why the special audit should not be carried out. The audit can be carried out only with the prior permission of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. The accounts are already audited by an Accountant as per the Income Tax Act is of no consequence. The cost of such an audit was to be borne by the central government and the report will be given by the accountant in such time as may be prescribed by the AO but not later than 180 days from the date on which Audit is initiated.

1.3) Clause 68 of the Finance Bill amends section 142. The amendment introduces for the first time the valuation of inventory by a Cost Accountant in the cases specified above. The new sub-section introduced gives the AO the option to call for a special audit and stock valuation or either for stock valuation or for a special audit of accounts individually.

1.4) It is to be noted that the accountant in a special audit has to look at the stock valuation as the valuation of stock is one of the most important ingredients to establish the correct profit for tax purposes. Thus, over the years the accountants were valuing stock in the Special Audit. The said valuation was used by the department to ascertain the correct profit.

1.5) It is also going to be an issue where the AO orders a special audit but not a stock valuation, will the assessee be right in arguing that the special auditor should not look at the stock valuation? In the alternative, if both are ordered then the special auditor will have to wait for the cost auditor to value the stock and give its report in form 6B (as the form specifically requires the auditor to give the method of valuation in clause 3 of the Annexure) and then give the special audit report as it would form

part of its special audit. He will also have to follow the Auditing standard 620-Using the work of the Auditor's Expert.

1.6) There also would be an issue in the stock valuation, as valuation is generally done by the assessee following a standard valuation method followed over a period of time and the cost accountant may not accept the same. There is likely to be serious litigation where the market value of products is to be ascertained or the impairment of the stock value of the old stock is to be ascertained and there is a difference of opinion with the cost auditor.

1.7) The need for the said amendment is stated in the memorandum to avoid perpetual deferral of taxes in the valuation of inventory. However, the ICDS -II and the accounting standard provide for valuation methods and the special auditor does cover this aspect of valuation hence the amendment is likely to increase the compliance burden to the assessee. The memorandum does refer to the maintenance of cost records by certain companies as per the Companies Act 2013 by cost auditors in some cases, thus it is not clear whether stock valuation only in these cases is to be made to a cost auditor? If not, then the companies which are not maintaining cost records where it is not prescribed by the Companies Act 2013 would face a lot of difficulty in providing cost records as may be sought. Clarification about the issue would help in compliance and avoid litigation.

1.8) Section 153 has also been amended. The section provided the time limit for the completion of the assessment. The section provides that the period for special Audit be excluded from the period available for completion of the assessment. The amendment provides for the exclusion of the period of the special audit and the stock valuation from the period available for assessment. The other amendments under section 153 are discussed separately. The provisions are applicable from A Y 2023-24.

2. Extension of Time limit for completing assessment.-Sec. 153 and reduction of time to provide details by the taxpayers.

2.1) Section 153 provides for the time limit for the completion of assessments and reassessment under various sections. The time limit for completing the assessment for assessment years 21-22 and thereafter was to be done within a period of nine months from the end of the relevant assessment year or in case of reassessment twelve months from the end of the financial year in which notice u/s 148 was issued.

2.2) The section also provided that where an updated return was filed under section 139(8A) the assessment should be completed within a period of nine months from the end of the financial year in which the return is filed.

2.3) The budget proposes to amend the section and provide for greater time to complete assessments. The period for completion of the regular assessment is now proposed to be extended to twelve months from nine months from the end of the relevant assessment year and the period for completion of assessment in case of return filed u/s. 139(8A) is proposed to be extended to twelve months from the end of the financial year in which such a return was filed.

2.4) The assessment for search cases prior to 2021 was done under sections 153A,

153B and 153C which provided for abatement of all pending assessments. However, from Finance Act 2021, the assessment was to be done under section 147 like a normal re-assessment. The reassessment under section 147 does not provide for the abetment of the pending assessments. This would make it very difficult for an officer to consider the information discovered in the course of search u/s 132 or requisition u/s 132A in the course of the assessment already being conducted at the time of such search or requisition.

2.5) The budget has therefore provided for the extension of time to complete assessment for twelve months of all assessments which are pending on the date of search u/s 132 or making requisition under section 132A. **The amendments will be applicable from A Y 2023-24.**

3. Reduction in the time to submit transfer pricing details by assessee.

3.1) Section 92D provides for the maintenance and provision of prescribed information and documents by a person who has entered into an international transaction or specified domestic transaction. The sub-clause 3 of the said section provides that the Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under the Act, require any person who is required to maintain records as above to furnish any information or document referred therein, within a period of thirty days from the date of receipt of a notice issued in this regard.

3.2) The budget proposes to reduce the time of 30 days as provided in the subsection to 10 days. The said period of 10 days can further be extended for a period not exceeding 30 days. The memorandum seems to accept the representation by the department that enough time is not available for verification if the period allowed under section 92D(3) is provided. The intention is to counter decisions of ITAT Mumbai (JSW ENERGY LTD 220 TTJ 1) and Delhi ITAT (Cargill India (P) Ltd. vs. Dy. CIT 116 TTJ 1) where notices of less than 30 days issued by the TPO was held to be invalid.

3.3) It has been a trend that the time provided to the assessee for compliance with tax laws has been reduced over the last few budgets (case in point being:- return filing deadlines, deadlines for revised returns and belated returns) as he is always looked at with suspicion. The difficulty in compiling details and filing returns is becoming a strain on the common man. The TDS credit if missed in return filling is lost and there is no way of claiming the same in a simple and easy manner. The TDS returns are allowed to be revised indefinitely but the credit for the same is not allowed to be taken by rectification though the income is offered to tax by the assessee. Onerous responsibility is put on the assessee to comply within a short time, but a long rope is given to the department to pass assessments, then reassessments and then review under section 263. The government's overzealous approach to collecting taxes and fees ignoring the inconvenience of the taxpayers is becoming more and more blatant.

3.4) **The provisions will apply from A Y 2023-24.**

4. Power to make Rules for inventory valuation and submission of evidence.

4.1) Section 295 provides power to the Board to make rules about the items listed under the section.

4.2) The Budget amends the clause (eec) and clause (mm) of sub-section 2 to

enable the CBDT to make rules about the inventory valuation by a cost auditor (introduced in the current budget) and also the circumstance and conditions under which the assessee can produce additional evidence before Commissioner Appeal or the Joint Commissioner Appeal(introduced in the current budget).

4.3) The amendments will be applicable from A Y 2023-24

5. Power to seek assistance from any person for search.

5.1) Section 132 makes provisions for search and seizure. The section makes detailed provisions for the search of an assessee by Income Tax Authorities (authorization), powers of the officers in the course of the search, the procedure to be followed, requisition of services of other officers, examination of books or documents, the procedure for taking custody of books, documents, money or bullion, attachment and also the timelines to be followed by the authorities.

5.2) The sub-section (2) provides that the officer can requisition the services of any police officer or any officer of the Central Government, or both, to assist him for all or any of the purposes specified.

5.3) However over the years, due to the increased use of technology and digitisation in every aspect including management and maintenance of accounts, digitisation of data, cloud storage etc. The process of search and seizure has become complicated and the department has felt the need to take the help of outside professionals like IT experts who were not in employment by the central government or the police. The department could not legally take the help of such persons and hence it was felt that this was a constraint in finding the undisclosed income. Further, the assessee's have started investing in diversified assets the undisclosed assets which are held digitally. There have been instances where IT professionals who were not in government employment being used in the search were objected to by the assessee.

5.4) The budget in order to remove the above constraint felt by the department, has now amended section 132 sub-section (2) and has taken the power to requisition the services of persons who are not government employees. However only those persons "as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure" will be allowed to assist the authorities in the search.

5.5) The said step would enable the department now to use professionals in the IT field or the finance field or experts in securities or persons like blacksmiths to break locks and experts to break into digital devices or emails or phones in course of the search procedure. In a recent case, the court has held that a person cannot be forced to give the password of his phone or asset seized by the department but can crack the password to look at the content of seized phone or asset. Thus, it was imperative that the government make the appropriate amendment to enable the use of outside experts. The provisions will be applicable from A Y 2023-24.

6. Valuation to persons other than the Department valuation officer.

6.1) Sub-Section 9(D) provides for reference by an authorized officer, in the course of a search or sixty days after the last

authorization, the valuation of any asset to a valuation officer U/s 142A. The said person will submit an estimation of the value of the asset to the assessing officer or the authorized officer within a period of sixty days. This would be then used by the officer in the search investigation or the search assessment.

6.2) The budget now amends the above sub-section to provide that the reference under the sub-section can also be made to **any other person or entity or any valuer registered by or under any law for the time being in force,** as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General.

6.3) The person to whom the valuation is referred shall estimate the fair market value of the property in the manner as may be prescribed, and submit a report of the estimate to the authorised officer or the Assessing Officer, as the case may be, within a period of sixty days from the date of receipt of such reference.

6.4) The said amendment is likely to give wide powers to give references to outside persons to do valuation. This could lead to huge valuation disputes and addition based on the perceptions of the valuer and authorized officer. The provisions will be applicable from A Y 2023-24.

7. Definition of last Authorization for search assessments

7.1) The search assessments prior to 1st April 2021 were done under sections 153A, 153B and 153C which was a code in itself. However, from Finance Act 2021 the assessments for search are done under section 147 as a normal reassessment. The time limit to complete assessment or reassessment for search cases is fixed from the date of the last authorization. Section 153B defined the last authorization which was to be used to complete the assessment under sections 153A and 153C.

7.2) Since the assessment or reassessment is now not to be done under section 153A or section 153B. The budget inserts the definition of the last authorization by replacing explanation 1 under section 132. The said explanation state that the last authorization in case of search would be the last panchnama drawn in relation to any person in whose case the warrant of authorization (for search) has been issued. The explanation further provides that in case of requisition under section 132A the last authorization would be the actual receipt of the books of account or other documents or assets by the authorized officer.

7.3) The provision is retrospectively effective from A Y 2022-23 to avoid any technical issue in search cases

8. Assessment in case of reorganization of the Business.

8.1) Section 170A was introduced from Finance act 2022 for the assessment year 2022-23. The section provided to give effect to the order of reorganization issued by a tribunal or court or an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016. The section provided that where the successor has filed a return of income under section 139 for any assessment year, relevant to the previous year to which such order applies. A such successor will file a modified return within six months from the end of the month in which the order is issued. Rule 12AD was notified to prescribe the form and manner of furnishing the modified return by the successor. (Notification No. 110/2022 dated 19.09.2022.)

8.2) Similarly, section 170(2A) was inserted to provide that the assessment or reassessment or initiation did on the predecessor during the pendency of the succession shall be deemed to have been made or initiated on the successor and all the provisions of this Act shall, so far as may be, apply accordingly.

8.3) However, there was no procedure prescribed after the modified return is filed by the successor to process the same.

8.4) The budget, therefore, has added a new section 170A replacing the old return. The section provides for the successor to file a return within six months from the issue of the order for the relevant period of the order. The assessing officer on receipt of the modified return of the relevant period applicable to the order will modify the assessment or reassessment order based on the modified return in case the order of assessment or reassessment is already passed.

8.5) In case the assessment or reassessment is in progress then he will consider the modified return and pass an order on the successor taking into account the modified return.

8.6) The amendments now take care of all the aspects of assessment or reassessment in case of reorganization other than death. The provisions apply from A Y 2023-24.

9. Power to modify directions related to faceless schemes

9.1) The government has taken a number of steps to make the entire process with the Income-tax Act 1961 faceless without any interaction with the officers of the department. The assessment has shifted from officer-based assessment to a team-based assessment. The government has come with various schemes

A. Section 135A-Faceless collection of information 2021

B. Section 254MA-Dispute Resolution Scheme 2022

C. Section 245R-Advance Ruling Scheme 2022

D. Section 250 - Faceless Appeal Scheme 2021

E. Section 275 – Faceless Penalty Scheme 2022

9.2) While introducing these schemes, time limitations were also incorporated in to the scheme to issue directions with an intention to implement the scheme immediately.

9.3) The budget amends these time limitations and gives the power to make adjustments in order to overcome any issues arising in their implementation. Section 245MA and 245R have been amended to provide for the power to the Central Government to amend any direction, issued under this sub-section on or before the 31st day of March 2023, by notification in the Official Gazette.

9.4) The budget also amends retrospectively Section 135A faceless collection information scheme, Section 250 Faceless Appeal Scheme, Section 274 Faceless penalty by introducing proviso to amend any clarifications issued before 1st April 2022 by the central government.

10. Reassessment Proceedings.

10.1) Section 148 provides for the issue of notice for filing of return of income where he has information that the income liable to tax has escaped tax in the case of assessee. The said section requires that the return be filed by the

assessee within such time as may be specified in the notice under section 148, and that such return would be treated as the return under section 139(1). The said section provides discretion to the assessing officer to provide time to file return under section 148.

10.2) The Budget replaces the discretion and provides a fixed time of "three months" from the month in which notice is issued by the assessing officer or such further period as may be allowed by the assessing officer based on an application by the assessee to file the return of income. Further, it is provided that a return filed beyond the period as provided by the assessing officer will not be treated as a return of income under section 139(1).

10.3) The amendment would mean that if a return is not filed within the time provided then the assessing officer need not issue a notice under section 143(2) and is free to pass an ex parte order under section 144.

10.4) There was no provision for the return filed late against 148 to be ignored or to be treated as not under section 139(1). This created a difficulty for the assessing officer who would have to consider all returns even if filed after the period of notice. The current amendments according to the department would help complete the assessment in time and a seamless manner.

11. Provision of more time for issue of notice under section 148.

11.1) Section 149 provides for the period of limitation for issuance of notice under section 148 of the Act for the commencement of proceedings under section 147 of the Act. The section provides that in case of a search action under section 132 of the Act, requisition under section 132A of the Act and cases for which information emanates from the above proceedings are deemed to be information and the procedure under section 148A is not required.

11.2) It was contention of the department that when the search u/s 132 or requisition u/s 132A or survey under 133A is carried out after the 15th March of any year and information is received for a year which is going to be time-barred on 31st march, it becomes practically impossible to issue the 148 notice in a short period of time available as the notice is to be issued by the Jurisdictional Assessing officer and the search and survey action may have been carried out by the investigation wing. The budget with the intention to avoid the assessment becoming time-barred and the information available becoming redundant has amended section 149.

11.3) The budget amends section 149 (1) to add a proviso after the second proviso, to allow the department a further period of 15 days in cases where the search is initiated u/s 132 or a search under section 132 for which the last of authorization is executed or a requisition is made under section 132A after the 15th day of March and the period for issue of notice under section 148 expirers on 31st March of the such financial year.

11.4) The budget also provides additional fifteen days in cases where information is received which are emanating from a statement recorded or document impounded under section 131 or section 133A as the case may be, as a consequence of a search initiated u/s 132 or a search under section 132 for which the last of authorization is executed or a requisition is made under section 132A after the 15th day of

March and the time for issue of notice under section 148 expires on 31st March of the such financial year.

11.5) Thus the amendment provides that while calculating the time barring under section 149, fifteen days be deducted to enable the department to issue a notice.

11.6) The budget also amends the proviso where seven days were provided to the AO to pass an order under section 148A if the period left for him to pass an order after removing the period of extension sought by the assessee to reply to section 148A. The AO would now be given 15 days where less than 15 days are left to pass an order. The government and the courts have generally given a long rope to the department officers in providing time as government revenue is involved. It would be nice to see the same long rope being given to the assessee who is given unrealistic timelines to file a return and file a revised return. I have to plead that collecting unjustified taxes from an assessee affects his personal liberty to use the hard-earned money the way he likes it and should be looked at as a violation of personal liberty under the constitution.

11.7) A consequential amendment has been made in section 151 to provide that the above extended period would also be excluded when calculating the limitation period of three years.

12. Refund Adjustment and interest on refund due to assessee.

12.1) The section 241A provided for the withholding of refund processed under section 143(1) when a notice is issued for scrutiny under section 143(2) where the assessing officer is of the opinion that the issue of a refund is likely to adversely effect the revenue, after taking necessary permission from the Principal Commissioner of Income Tax or the commissioner of Income Tax.

Similarly, section 245 provides for adjustment of the refund of a particular year against the demand due for prior years. The section provides for a notice to be issued to the assessee before the adjustment is done to raise objections if any to the adjustment of the refund. It is felt that the two sections overlap and hence the same be merged.

12.2) The budget proposes to discontinue the operation of section 241A from 1st April 2023 and incorporate the provisions in the amended section 245 as sub-section (2), however, the new section gives greater power to the officer to withhold refunds.

12.3) Section 245 has been replaced from 1st April 2023 and a new section has been introduced. The sub-section (1) provides the same powers to withhold a refund after giving notice to the assessee for adjustment of the refund against the demand of prior years.

12.4) The sub-section (2) introduced provides for the power to withhold a refund due to an assessee if the officer feels that the issue of a refund is likely to adversely affects the revenue. Section 241A earlier allowed withholding of refund only if the notice under section 143(2) was issued in the case of the assessee for that previous year. Thus the refund can be withheld even if there is an assessment or reassessment being conducted in case of the assessee for any other year and not just the year of refund.

12.5) The provisions are likely to lead to the withholding of all refunds where assessment or reassessment is due, in the interest of revenue.

12.6) Section 244A provides for interest on refunds to be issued by the department.

Subsection (1A) of the section provides for additional interest of 3% where the assessee was to receive a refund after giving appeal effect and the same was delayed beyond the period of three months from the date of receipt of the order by the department.

12.7) The budget provides for the amendment of section 244A(1A) by inserting a proviso. The proviso provides that the assessee will not be provided an additional interest of 3% for the delay in issue of refund beyond three months by withholding of the same by the department under section 245(2) to protect the interest of revenue. The said amendment seems to be unfair as the department has withheld the refund on its perception of likely demand which may be created and should be ready to provide additional interest if there is refund of the amount withheld.

13. Decriminalization of law against the liquidator.

13.1) The section 276A provides for prosecution of the liquidator appointed by court or otherwise where he fails to either notify the department about his appointment within 30 days or fails to set aside the amount as required by the section or parts with an asset of the company or properties in his hands in contravention of the provision of the section 178.

13.2) The budget initiates the process of decriminalization and has withdrawn the power to prosecute under section 276A of liquidators from 1st April 2023. The government needs to look at many more such prosecution sections and see that prosecution is launched in the rare of the rarest case and not in a routine manner.

14. Pending rectification under section 245D.

14.1) The section 245D lays down the procedure for settlement commission upon receiving the application for settlement from the assessee.

14.2) The Act was amended from Finance Act 2021 and the settlement commission was abolished from 1st February 2021. The Central Government however formed a Interim Boards of Settlement (IBS) for disposal of pending settlement applications as on 31st January 2021, in view of various writ petitions filed in various courts.

14.3) The section 245D(9)(iv) provides that where the time limit for amending any order of settlement commission or its rectification expires after 1-2-2021 then the period from 1-2-2021 to the date of appointment of IBS(10-8-2021) will be excluded in computing the time limit for filling application.

14.4) The budget in order to remove the difficulty faced in filling this amendment application or rectification application has extended the date for filling such application upto 30th September 2023 only for those persons where the time-limit for amending an order or for making an application under sub-section (6B) expires on or after 01.02.2021 but before 01.02.2022.

14.5) The said amendment has limited application to pending matters, and is only for amendment or rectification of order already passed by the settlement commission.

CA Kishore Phadke

CO-OPERATIVE SOCIETIES

In some earlier budgets / finance bills, a veiled view was emerging that, Legislature was becoming stern towards Co-operative societies. But, in the present Budget of year 2023, a contrary situation is emerging. There are some welcome measures towards Co-operative societies. Here are some crucial aspects.

1. **Concessional tax regime for the new manufacturing co-operative societies**

   To promote the growth of manufacturing activity in the co-operative sector, it is proposed to extend the benefit of 15% concessional tax rate (as available to new manufacturing companies) to new manufacturing co-operative societies. As such a new section 115BAE has been inserted to provide concessional basic tax rates @ 15% for cooperative societies. The effective tax rate with a surcharge of 10% and with cess of 4% will be **17.16%.** If concessional tax regime is opted, specified incentives / deductions would not be available.

   The new section 115BAE would be applicable only to a Co-operative Society which is set-up and registered on or after the 1st April 2023. The Co-operative Society has to commences manufacturing or production of an article or thing on or before the 31st March 2024. Production of electricity is also expressly permitted. As per further conditions, the business ought not to be formed by splitting up, or the reconstruction, of a business already in existence. The business should not use any second hand (i.e. previously used) machinery in excess of 20% of the total value of the machinery or plant used by the company. Machinery or part previously used outside India shall not be regarded as previously used in India. Further, the business ought not to use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed. Eligible Articles which can be manufactured / produced are defined inclusively as well as exclusively. Domestic **Transfer Pricing would be applicable** for these new co-operative societies opting for concessional regime as so provided in section 92BA.

   Profit based incentives are reintroduced, albeit, for co-operative societies. It is interesting to observe shifts in thinking of law-makers. Couple of years back, it was expressly stated that, profit based incentives were to phased out. But now, some new approach is transpiring. Going by peculiar form of a co-operative society, profits generated from new

manufacturing activities will not get concentrated in select private hands. This will be a great boost to co-operative movement. For example, there are many Co-operative Sugar industries in Maharashtra, which do not use bagasse for generating power; or which do not use molasses for making ethanol and so on. Many industrial products could be developed from these by-products in sugar industries. It appears, the new incentive given to co-operative forms will induce many Sugar industries to start making ethanol, a much-needed input for using as a fuel for automobile industry. This amendment will give fillip to employment, especially, in rural areas.

2. **Addressing tax problems faced by Co-operative Sugar industries as regards payment of Sugarcane price**

Almost all Sugar co-operatives in Maharashtra are facing uncalled for threat of disallowance of "excess" cane price paid for purchase of cane from it's members. Typically, these members are Farmers or Agriculturists. Sugar factories in certain Indian states that operate in the cooperative sector pay sugarcane growers a final amount known as the Final Cane Price (FCP), which is higher than the Statutory Minimum Price (SMP) set by the Central Government under the Sugarcane Control Order, 1996. FCP is determined based on the working results of the specific factory, which include all revenues and expenditures incurred by the factory. Due to acute competition, and due to race of paying higher cane price farmers / sellers of cane, Sugar co-operative entities were facing a unique challenge. The co-operative sugar factories' payment of FCP in excess of the SMP for the purchase of sugarcane was being disallowed year after year. Problem was, the model evolved for determining price of Sugar-cane. In the said model, costs of growing cane were considered along with reasonable / fair profit margin on the same. Due to presence of the plausible margins of growing cane, a far-fetched view was developed that; the cane price paid to farmers includes profits of the Co-operative Society producing Sugar.

On one hand, these Co-operative Sugar factories were duty bound to discharge cane price approved by Government; and on the other hand; there was a disallowance out of such Government approved prices u/s 40A(2) of ITA, 1961. Considering identical business model deployed by the Co-operative Sugar factories, disallowances occurred in all such cases, leading to massive litigation. Part relief was granted after insertion of section 36(1)(xvii) from AY 2016-17. It was provided that, cane price, approved by Government was eligible deduction. But problem continued for years prior to AY 2016-17. In circular no. 18 of 2021 dated 25th October 2021, it was clarified that, the phrase 'price fixed or approved by the Government' in clause (xvii) in sub-section (1) of section 36 of the Act includes price fixation by State Governments through State-level Acts / Orders or other legal instruments that regulate the purchase price for sugarcane, including State Advised Price, which may be higher than the Statutory Minimum Price/ Fair and Remunerative Price fixed by the Central Government

In the same spirit, a new provision is introduced u/s 155(19). Now, I-T authorities are directed to permit deduction of cane prices incurred for all past years, if such price is equal to

or less than the price approved by the Government. All pending litigations on the same issue for the years prior to AY 2016-17 are likely to conclude. A period of 4 years for rectification is provided, from the end of the previous year commencing on the 1st day of April 2022.

This is a most encouraging amendment, leading to reaching **"quietus"** by almost all Co-operative Sugar factories operating, especially in, Maharashtra.

3. Increasing threshold limit for co-operatives to withdraw cash without TDS

Section 194N has been amended to provide that where the person withdrawing money is a co-operative society, the requirement to deduct tax applies only when the withdrawal of amount or aggregate of amount in cash during the year exceeds INR 3 crores. The amendment will take effect from April 1, 2023.

Despite the said provision setting better threshold limit, issue remains, whether the TDS provision is in right perspective or not. On first principles, TDS and related income ought to travel and march, hand-in-hand. Making of TDS, on such transactions, which do not involve any plausible taxable income, is incorrect on principle basis. Yet, TDS procedures exist for transactions, which do not have any potential taxable income. When a Co-operative society makes CASH withdrawals from a bank, per se, there is no any likelihood of taxable income at all. One wonders, at what stage, will TDS u/s 194N will be done away with.

4. Relief u/s 269SS & 269T for accepting / repayment of cash loan / deposit for primary agricultural co-operatives.

Section 269SS has been amended to increase the limit for accepting loans or deposits to INR 2,00,000 as against the existing limit of INR 20,000 for Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") by its members. Penalty shall be impossible if the amount of such loan or deposit exceeds INR 2,00,000. These amendments will take effect from 1st April, 2023

"Learn everything that is good from others but bring it in, and in your own way absorb it; do not become others."

— Swami Vivekananda

"Great work requires great and persistent effort for a long time. …Character has to be established through a thousand stumbles."

— Swami Vivekananda

CA Rajesh S. Athavale

Other Key Provisions

Under this article, we shall discuss various other key provisions of the Finance Bill, 2023.

Gift received by Resident but non ordinarily resident

Section 5 of the Income Tax Act (Act) provides that the total income of any previous year of a resident or a non-resident includes all income from whatever source derived which-

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Section 9 provides a list of items of income which are deemed to accrue or arise in India. Section 9 is, therefore, a deeming provision nothing but an extension of Section 5(2)(b) of the Act.

Finance (No. 2) Act, 2019 inserted clause (viii) to sub-section (1) of Section 9 of the Act to provide that any sum of money as defined in Section (24)(xviia) received by a non-resident without consideration from a person resident in India, on or after the 5 July 2019, shall be income deemed to accrue or arise in India. This amendment was introduced as an anti-abuse provision, as certain instances were observed where gifts were being made by person residents in India to non-residents and were claimed to be non-taxable in India by such non-residents.

It has now come to notice that certain persons being not ordinarily residents are receiving gifts from a person resident in India and not paying tax on it. In view of this, it is proposed to amend clause (viii) of sub-section (1) of Section 9 of the Act so as to extend this deeming provision to a sum of money exceeding INR 50,000, received by a not ordinarily resident, without consideration from a person resident in India. Therefore, gifts in excess of INR 50,000 given by a resident Indian to non ordinarily residents, without consideration, would now be taxable in India. However, the existing provision for exempting gifts as provided in the proviso to clause (x) of sub-section (2) of Section 56 will continue to apply for such gifts deemed to accrue or arise in India.

This amendment will take effect from 1 April 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

Advance Tax while filing Updated Return

The Finance Act, 2022 inserted sub-section (8A) in Section 139 of the Act enabling the

furnishing of an updated return by assessees up to 2 years from the end of the relevant assessment year subject to fulfilment of certain conditions as well as payment of additional tax. For the determination of the amount of additional tax on such updated returns Section 140B was inserted in the Act.

The sub-section (4) of Section 140B of the Act provides for the computation of interest under Section 234B of the Act on the tax on the updated return. The said sub-section (4) provides that interest payable under Section 234B of the Act shall be computed on an amount equal to the assessed tax or the amount by which the advance tax paid falls short of the assessed tax. This implied that interest was payable only on the difference between the assessed tax and advance tax. Further, the sub-clause (i) of clause (a) of the said sub-section also provides advance tax which has been claimed in the earlier return of income shall be taken into account for computing the amount on which the interest was to be paid.

Therefore, in order to clarify the provisions of the sub-section (4) of Section 140B of the Act, an amendment is proposed in the said sub-section that interest payable under Section 234B shall be computed on an amount equal to the assessed tax Further for the purpose of calculating the assessed tax, the amount of relief or tax referred in section 140A which is claimed in earlier return, if any should be reduced.

This amendment will take effect retrospectively from 1 April 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

Perquisite for Residential House

As per clause (2) of Section 17 of the Act, "perquisite" inter alia includes the value of rent-free accommodation or the value of any concession in the matters of rent provided to employees by the employer. The employer may be either a Central/State Government or other than that, with different methodologies of valuation of perquisites for the two categories of employers.

However, the methodology to compute the value of rent-free accommodation is prescribed in Rule 3 of the Income-tax Rules, 1962 (the Rules), while the methodology to compute the value of any concession in the matters of rent provided to employees by the employer is prescribed in the Explanations to the clause (2) of Section 17.

In order to rationalize this provision by prescribing a uniform methodology in the Rules for computing the value of perquisite and to clearly classify the two categories of perquisites with respect to accommodation provided by the employers, it is proposed to amend sub-clauses (i) and (ii) of clause (2) of Section 17 of the Act. It is proposed to take the power of prescription of the method for computation of the value of rent-free accommodation provided to the assessee by his employer and the value of any accommodation provided to the assessee by his employer at a concessional rate.

Further, it is proposed to amend Explanation 1 to sub-clause (ii) of clause (2) of Section 17 of the Act so as to provide that accommodation shall be deemed to have been provided at a concessional rate if the value of the accommodation computed in the prescribed manner exceeds the rent recoverable from, or payable by, the assessee.

Further, it is proposed to delete Explanation 2, Explanation 3 and Explanation 4 of sub-clause (ii) of clause (2) of section 17 of the Act to rationalize the section and specify the method of computation for the value of

accommodation provided to the employee by his employer through the proper prescription of the Rules.

This amendment will take effect from 1 April 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

It is surprising to see that amendment in Rule 3 has been prescribed since 2001 and it took so many years to realise that there is a need to rationalize and prescribe a uniform methodology for computing the value of perquisite in the case of rent-free accommodation and accommodation provided at concessional rate to the employee. In fact, the amended Rule 3 of the Income-tax Rules, 1962 has also been challenged by filing an appeal with the Supreme Court against the decision of High Court of Jharkhand in Tata Workers' Union v. Union of India [2002] 123 Taxman 426, where the officers and executives of TISCO, a reputed public sector company, had been provided with residential accommodation in the company's township at Jamshedpur and around its plants. Each occupant was charged a fixed licence fee. However, after the amendment of Rule 3 for the purpose of reckoning the taxable amount of perquisite, the company adopted an increased amount, as per the value specified in said Rule 3. That met with resistance from the employees and disputes with the revenue. On hearing the case, the Apex Court resolved/ adjudicated upon the main points of controversy and commented that the amendment of Rule 3, as made in 2001, is valid, in law, and if the accommodation is company owned and provided to an employee on a rent-free basis, the value of taxable perquisite requires to be taken into account at an amount equal to 10/7.5% of the employee's salary, as specified in Table 1 under the amended Rule 3; and if rent is paid by the employee, he can claim that the rent paid is not of a concessional rate and the Assessing Officer will examine that if no concession is given in rental, then no such perquisites are to be taxed; however, if there is a concession, then the value of perquisites is required to be determined in accordance with the amended Rule 3.

We need to wait and watch for the amended Rules for a method of computation in determining the value of perquisite for the rent-free accommodation and accommodation provided to an employee by his employer at a concessional rate.

Start-ups

Extension of the period of incorporation of eligible start-ups

The existing provisions of the Section 80-IAC of the Act, inter alia, provides for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an eligible start-up for 3 consecutive assessment years out of 10 years, beginning from the year of incorporation, at the option of the assessees subject to the condition that,

(i) the total turnover of its business does not exceed INR 1 crore;

(ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and

(iii) it is incorporated on or after 1 April 2016 but before 1 April 2023.

In order to further promote the development of start-ups in India and to provide them with a competitive platform, it is proposed to extend the period of incorporation of eligible start-ups to 1 April 2024 from 1 April 2023.

Carry forward Losses

Section 79 of the Act restricts carrying forward and setting off losses in cases of companies, other than the companies in which the public is substantially interested. It prohibits setting off of carried forward losses if there is change in shareholding. The carried forward loss is set off only if at least 51% shareholding (as of the last date of the previous year) remains the same with the company on the last date of the previous year to which the loss belongs. However, some relaxation has been provided in the case of an eligible start-up as referred to in Section 80-IAC of the Act. The condition of continuity of at least 51% shareholding is not applicable to the eligible start-up, if all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off. There is an additional condition that the loss is allowed to be set off, under this relaxation, only if it has been incurred during the period of 7 years beginning from the year in which such company is incorporated.

In order to align this period of 7 years with the period of 10 years contained in sub-section (2) of Section 80-IAC of the Act, the time period for loss of eligible start-ups to be considered for relaxation is proposed to be increased from 7 years to 10 years from the date of incorporation so that the carried forward loss of eligible start-ups shall be considered for set off if the such loss has been incurred during the period of 10 years beginning from the year in which such company was incorporated.

Both the above amendments relating to start-ups will take effect from 1 April 2023 and will accordingly apply to the assessment year 2023-2024 and subsequent assessment years.

Exemption to Development Authorities, etc.

Clause (46) of Section 10 of the Act provides an exemption to any specified income arising to a body or authority or Board or Trust or Commission, or a class thereof which—

(a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;

(b) is not engaged in any commercial activity; and

(c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

The restriction on undertaking commercial activities by anybody or authority or Board or Trust or Commission notified under clause (46) of Section 10 has been a litigated issue. Recently, the Hon'ble Supreme Court of India in the case of ACIT (Exemptions) v. Ahmedabad Urban Development Authority in 143 taxmann.com 278 vide its order dated 19 October 2022 held that in sub-clause (b) of clause (46) of Section 10 of the Act, "commercial" has the same meaning as "trade, commerce, business" in clause (15) of Section 2 of the Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity". However, the Hon'ble Court has also made a fine distinction in respect of statutory authorities, boards etc. which have been established by the State government or Central governments, for achieving essentially "public functions/services". In such cases, the court has held that the amounts or any money whatsoever charged for the public services are prima facie to be excluded from the mischief of business or commercial receipts as their objects are essential for the advancement of public purposes/ functions.

It appears that in order to overcome the above observation of the Supreme Court on "Commercial activity" it is proposed to amend the Act so as to exclude income of a body or authority or Board or Trust or Commission, not being a company, from the scope of clause (46) of Section 10 of the Act and insert a new clause (46A) in section 10 of the Act for their income. The new clause (46A) proposes to exempt any income arising to a body or authority or Board or Trust or Commission, not being a company, which has been established or constituted by or under a Central or State Act with one or more of the following purposes, namely: -

(i) dealing with and satisfying the need for housing accommodation;

(ii) planning, development or improvement of cities, towns and villages;

(iii) regulating, or regulating and developing, any activity for the benefit of the general public; or

(iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

This is also required to be notified by the Central Government in the Official Gazette for the purposes of this clause. A consequential amendment is also proposed in the Explanation to the 19th proviso of clause (23C) of Section 10 and in sub-section (7) of Section 11 of the Act.

These amendments will take effect from 1 April 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

Conclusion

The budget presented by Finance Minister Nirmala Sitharaman offers a roadmap for the holistic development of the nation, as we enter 'Amrit Kaal'. Although, there are no surprises and retrospective amendments leading to uncertainty, one could see the political touch to some part of the Finance Bill and bureaucratic approach to a larger extent.

Mr. N. V. Raman

Goods and Services Tax (GST)

UNION BUDGET 2023-24 - INDIA IS A SHINING OASIS. A SNAPSHOT OF GST IMPACT

It is said that the world is a global village. Right now, the global village is going through a phase of difficulty. Post pandemic, the conflict in Ukraine has taken its toll on the GDP of the global village. And the shining spot with an amazing growth story is India standing out like an Oasis in the middle of the looking desert. And one of the sweet spots for India is the ever-growing collections of Goods and Service Tax (GST) especially in the current fiscal year.

Close on the heels on the Economic Survey of 2022-23 that was submitted before the Hon'ble Parliament on 31st January which focused on the medium-term outlook for India, the Hon'ble FM submitted the Union Budget 23-24 before the Parliament on the 1st of February 2023.

On Input Tax Credit

In relation to ITC on CSR activities

Input tax credit has been one of the thorny issues in the GST ecosystem. Every passing year, there has been a tightening restriction on availment of Input Tax credit (ITC).

There are companies which are mandated to spend a percentage term towards Corporate Social Responsibility. It involves in a set of permissible activities of both supply of goods and services or either of the one where basically the supply is affected without any consideration towards fulfilments of the CSR activities mandated by law. Section 17(5)(h) of the IGST Act stipulates reversal of the Input Tax credit where the goods have been given inter-alia as a "gift"

There have been certain interpretations based on advance rulings that CSR activities is mandated by law to the business and that the same cannot therefore be treated as a "gift" in order to fall under the reversal clause of the Section referred supra.

The Finance Bill of 2023 seeks to specially block the credit in terms of Section 17(5) of goods and or services that are used for effecting CSR obligations.

Reversal by holding value as exempted supplies

Earlier, explanation to Section 17(3) of the CGST Act provided for instances when the value of certain transactions would not be included in factoring the value of exempt supplies for reversal of common ITC (ITC on inputs and input services used for effecting both taxable and exempt supplies) as per Section 17(2).

The said transactions which would not form part of the value of exempt supplies, would be the value of those activities falling under Schedule III of the CGST Act except for value attributable for sale of land and building (para five of Schedule III). In other words, the value attributable to the sale of land and building would be included in the value of exempt supplies for the purpose of calculating the ITC attributable to exempt supplies which had to be reversed.

The following activities have been included in the Schedule III of the CGST Act of 2017 (activities that are considered as neither supply of goods nor supply of services) with retrospective effect from 1st July 2017:

a) Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India

b) Supply of warehoused goods to any person before clearance for home consumption.

c) Supply of warehoused goods to any person before clearance for home consumption.

Prior to the earlier amendment (which had prospectively included the above activities in Schedule III from 1st Feb 2019), taxpayers may have paid tax due to lack of clarity on the tax position to be adopted.

The activities of supplies of goods from a place outside the taxable territory to a place outside the taxable territory were kept outside the purview of GST with effect from 01.02.2019. The amendment sought to be brought in the Union Budget of 2023 seeks to include the value of supply of warehoused goods to any person before clearance for home consumption (entry 8 (a) of Schedule III) to be included in the value of exempt supplies for calculating the common ITC reversal attributable to exempt supplies. An explanation has also been added that no refund is to be available if tax has been paid on such supplies till 31st January from the inception of GST.

In the ecosystem of E-com operators.

India is fast moving to the digital world. The synergies which the E-com operators and aggregators have brought to the fast forward of the economy are indeed momentous. Some of the GST impact specifically addresses and impacts the operations of an E-Commerce ecosystem.

Earlier, a registered supplier of goods, making intra-state supply of goods through an e-commerce operator (who collects TCS), was not allowed to opt for payment of GST under composition scheme.

Amendment

This restriction is sought to be removed now. An intra-state supplier of goods making supplies through e-commerce operators is now eligible to opt for the composition scheme, provided his aggregate turnover in the preceding financial year does not exceed INR 50 lakhs.

In relation to penalties on defaulting e-commerce operators:

The responsibility of the underlying supplier (the original supplier of the goods on the e-com platform) would be to discharge the GST on the supply of such goods. However, there has been a thrust on the e-com aggregators to undertake the fiscal policing of the same by way of Tax collected at Source (TCS) to ensure that the ecosystem is compliant of the same.

A new penalty has been introduced via Section 122(1b) of the CGST Act of 2017, for defaulting e-commerce operators who:

a) Allow the supply of goods or services or both on the e-commerce portal to be affected by an underlying unregistered person, other than a person who is

exempted from registration by a specific notification issued in this regard.

b) Allow an inter-state supply of goods or services or both on the e-commerce portal to be affected by an underlying supplier who is not eligible to make such inter-state supply (For E.g.: composition taxpayers, any person who is not eligible to file returns via cancellation of registration are not eligible to make inter-state supplies)

c) Fails to furnish in Form GSTR-8, the correct details of outward supply of goods effected via the e-commerce portal by an underlying unregistered supplier who is exempted from obtaining registration.

The said penalty shall be an amount of INR 10,000 or an amount equivalent to the amount of tax involved had such underlying person been registered (except a registered composite taxpayer), whichever is higher.

This would effectively increase the burden on the e-commerce operator to keep track of categories of suppliers making suppliers through their portal.

Decriminalizing certain offenses

The following offences by a registered supplier as specified under Section 132 of the CGST Act has now been decriminalized post amendment:

a) Obstructing or preventing an officer from the discharge of duties.

b) Tampers with or destroys any material evidence or documents.

c) Fails to supply any information which he is required to supply under this Act, or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information.

Earlier, an imprisonment term of 6 months for the first two offences mentioned above and an imprisonment term of 1 year – 5 years based on the quantum of offence for the third aforementioned offence was mandated.

The monetary threshold for launching prosecution for offences mentioned in Section 132 of the CGST Act has now been enhanced to INR 2 Cr from the erstwhile INR 1 Cr limit. The said list of offences has been reproduced below for ease of reading:

a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax.

b) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill.

c) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.

d) evades tax fraudulently obtains refund and where such offence is not covered under clauses (a) to (c).

e) falsifies or substitutes financial records, produces fake accounts, documents, or furnishes any false information with an intention to evade payment of tax due under this Act.

f) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder.

g) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of

services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder.

h) Attempts to commit or abets the commission of any of the offences mentioned above.

The monetary limit for initiating prosecution for offences relating to issuance of invoice is still INR 1 Cr.

So as to rationalize the amount for compounding of various offences both in terms of minimum as well as maximum amount, the said proviso of Section 138 of the CGST Act now also excludes certain persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of offences.

Details to be furnished – manner and prescription to be provided

In a move to change the manner and prescription of various details of information to be furnished by a registered person in his return or in his application of registration or in his statement of outward supplies or details uploaded by him for generation of e-invoices or e-way bill, it is to be notified to provide for the prescription of the manner and condition in terms of new Section 158 to be introduce in the CGST Act.

The union budget 2023 through the finance bill has now sought to introduce a new concept of enabling certain returns to be filed up to a period of three years.

On Furnishing of details of Outward Supplies

As part of the Section relating to Furnishing details of outward supplies in Section 37 of the CGST Act, a new sub-Section 5 is sought to be inserted in order to provide that a registered person shall be allowed to furnish the details of outwards supplies for a tax period before the expiry of a period three years from the due date of furnishing the said details.

The said sub section also provides for recommendation of the council by notification to provide for the details of the outward supplies for a tax period even after the expiry of the said period of three years.

On Furnishing of Returns

In terms of Section 39 of the CGST Act, a new sub-Section 11 is being added to enable a registered person to furnish a return for a tax period for three years from the due date of furnishing the said return.

The said sub section also provides for recommendation of the council by notification to furnish the return for a tax period even after the expiry of the said period of three years.

On Furnishing Annual Return

A registered person is allowed to furnish an annual return for a financial year before the expiry of a period of three years from the due date of furnishing the said annual return. This is brought in by way of new amendment to Section 44 of the CGST Act

The said sub section also provides for recommendation of the council by notification to furnish an annual return for a tax period even after the expiry of the said period of three years of the due date of furnishing the said annual return.

On collection of Tax at Source

It is now sought to be put in framework that an operator may be allowed to furnish a Statement (containing the details of outward supplies of goods or services or both effected through it including such supplies return through it and the amount collected during a month) till a period of three years from the due date of furnishing the said statement. The said proviso is sought to be inserted by way of Sub Section 15 of Section 52 of the CGST Act.

The said sub section also provides for recommendation of the council by notification

to furnish a statement even after the expiry of the said period of three years of the due date of furnishing the said statement.

On Refund of Tax

Section 54 (6) which relates to Refund of tax and the subsection being a non-obstante clause is being amended to remove the reference of "excluding the amount of input tax credit provisionally accepted" since GST ecosystem has moved away from the concept of Provisional credit of ITC per se. This pertains to only a realignment and not an impact per se.

On Interest on Delayed Refunds

There is a liability to pay interest on delayed refund the delay being if the applicant is not refunded within sixty days from the date of receipt of application at this point of time. This is sought to be changed with the new insertion of the words "for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restriction as may be prescribed." It would be quite interesting to understand the manner and the conditions and the restrictions that are prescribed and it is hoped that the same does not impede the release of the refund claims which are due and in order.

OIDAR – Online Information Database Access and Retrieval services

The definition of non-taxable online recipient is being sought to be revised with the removal of the condition for receipt of OIDAR for purposes other than commerce, industry, or any other business so as to make OIDAR taxable provided by a person located in non-taxable territory to an unregistered person received the said services and located in a taxable territory. This change is sought to be done by way of clause (16) of Section 2 of the IGST Act amendment.

Further it is interesting that the very definition relating to OIDAR is undergoing a change to remove the condition of rendering the said supply which is essentially automated and involving minimal human intervention in terms of Clause 17 of said section of the IGST Act.

Place of Supply

The place of supply of services in respect of transportation of goods when both the supplier and recipient are in India, in the case of transportation of goods to a place outside India by mail or courier shall be:

a) In case the recipient is a registered person, shall be the location of such person.

b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

Earlier, the place of supply of services, in respect of transportation of goods to a place outside India, was the destination of the goods.

Exclusion from requirement of registration under GST

The following categories of persons have now been explicitly excluded from the requirement of registration with retrospective effect as per section 23(a):

a) A person exclusively making exempt supplies of goods or services or supply of goods or services that are not liable to tax (non-GST supplies)

b) An agriculturalist, to the extent of supply of produce out of cultivation of land.

It is also a welcome move not to have undertaken too many changes since it provides for business continuity per se.

Mr. Krishna Barad

Rohan Shah
Advocate

Decoding Union Budget 2023 from Customs Perspective

Introduction

The Union Budget 2023 was the last complete budget of the present Government, ahead of the upcoming parliamentary elections. The Hon'ble Finance Minister, in her Budget Speech, outlined seven (7) priorities which included Inclusive development, Reaching the last mile, Infrastructure and investment, Unleashing the potential, Green growth, Youth power and the Financial sector, which would act as 'Saptrishi' guiding the country towards better economic growth and brighter future. The Union Budget 2023 proposed amendments to the Indirect tax to promote exports, boost domestic manufacturing, enhance domestic value addition, encourage green energy and mobility. The tax amendments focused on simplifying the tax structure and improving tax administration. Though the industry was expecting some major announcements with respect to the amnesty scheme under Customs Law and Foreign Trade Regulations, clarifications under MOOWR scheme, extending RODTEP benefits to all exports, etc., the Budget remained silent on such industry demands. The Budget 2023 has proposed minuscule changes in the Customs Law with specific changes in the Customs duty rates.

The proposed amendment in the Customs Act, 1962

Exclusion of certain Customs exemptions from the Sunset clause

A proviso is proposed to be inserted into Section 25(4A) of the Customs Act to provide that two (2) years default validity period shall not apply for exemption notifications in respect of bilateral/multilateral trade agreements, international agreements/ treaties/conventions, schemes under FTP, constitutional authorities, central government schemes with a validity of 2 or more years, re-imports/temporary imports, gifts or personal baggage and customs duty imposed under any law, including GST and CTA (except Section 12 of Customs Act, 1962). The proposed amendment aims to dispense with the requirement of continuous revalidation of exemption notifications which are intended for a longer duration from the very beginning.

Customs Settlement of cases

Section 127 of the Customs Act is proposed to be amended by the insertion of sub-clause (8), which provides for time-bound settlement of cases by the Settlement Commission, within

a period of nine (9) months from the date of the application, with a further extension for three (3) months for reasons to be recorded in writing. Suppose the matters are not settled within the prescribed time limit. In that case, the settlement proceedings will stand abated, and the adjudicating authority will adjudicate the case as if no such settlement application was ever made. The change has been proposed to address the issue faced by the assessee on account of prolonged adjudication of proceedings by the Settlement Commission in the absence of a specified timeline for the conclusion.

The proposed amendment in the Customs Tariff Act, 1975

Countervailing Duty and Anti-Dumping Duty

Section 9 and 9A of the Customs Tariff Act are proposed to be amended retrospectively with effect from 01 January 1995 to clarify the intent and scope of these provisions that the Central Government has been vested with discretionary powers to accept or not, the finding of the review conducted by the 'Designated Authority' in terms of Customs Tariff (Identification, Assessment And Collection Of Countervailing Duty On Subsidized Articles And For Determination Of Injury) Rules, 1995/ Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, for the imposition of levy, beyond the initial five (5) year period. It further clarifies that the Central Government shall only ascertain the amount of subsidy/ margin of dumping as determined by the 'Designated Authority' after necessary inquiry and is not bound to provide any reasoning for acceptance or rejection of the recommendations of the 'Designated Authority'.

Further, suitable changes have been proposed in the appeal provisions in Section 9C to provide that an appeal before the CESTAT can be made only against the final findings issued by the 'Designated Authority' determining the amount of subsidy in countervailing duty investigations or the margin of dumping in anti-dumping duty investigations and that no appeal can lie against the Notification issued by the Central Government for the levy of Countervailing and Anti-Dumping duty.

The proposed amendments will ensure that the decision of the Central Government of India to impose or not impose the Countervailing duty/ Anti-Dumping duty shall be beyond the appeal mechanism.

First Schedule (Import Tariff)

The First Schedule is proposed to be amended to introduce new tariff lines or modify existing tariff lines with effect from 01 May 2023 in Chapters 3, 4, 9, 10, 12, 13, 19, 27, 29, 31, 38, 39, 48, 52, 54, 57, 61, 62, 63, 69, 71, 84, 85 and 87 without any change in the rate of duty.

Second Schedule (Export Tariff)

The Second Schedule is proposed to be amended from 01 May 2023 to align the entries under Chapter Heading 1202 (Groundnut in shell/kernel) with that of the First Schedule.

General Rules for Interpretation

The General Explanatory Note to the General Rules for Interpretation Is proposed to be amended with effect from 01 May 2023 to align the abbreviations and tariff with complementary amendments to HS 2022.

Changes in Effective Rate of BCD

As a part of the rationalization of the Customs duty rate structure, Union Budget 2023 proposed to reduce rate slabs from the current 21 numbers to 13 on goods other than textiles and agriculture. Key changes in the effective rate of BCD are highlighted below:

HSN Code	Commodity Description	Old Rate (%)	New Rate (%)	Revision in tariff rates
2902 50 00	Styrene	2	2.5	↑
2903 21 00	Vinyl Chloride Monomer	2	2.5	↑
4005	Compounded Rubber	10	25 or ₹ 30 per kg., whichever is lower	↑
7113, 7114	Articles of precious metals	20	25	↑
7117	Imitation Jewellery	20 or ₹ 400 per kg., whichever is higher	25 or ₹ 600 per kg., whichever is higher	↑
8414 60 00	Electric Kitchen Chimney	7.5	15	↑
8712 00 10	Bicycles	30	35	↑
9503	Toys and parts of toys (other than parts of electronic toys)	60	70	↑
4011 30 00	New or retreaded pneumatic tyres, of rubber, of a kind used on aircraft of heading 8802	3	2.5	↑
7107 00 00	Base metals clad with silver, not further worked than semi-manufactured	10	10	—
7108	Gold (including gold plated with platinum) unwrought or in semi- manufactured forms, or in powder form	12.5	10	↓
7109 00 00	Base metals or silver, clad with gold, not further worked than semi- manufactured	10	10	—

HSN Code	Commodity Description	Old Rate (%)	New Rate (%)	Revision in tariff rates
7110 11 10 7110 11 20 7110 19 00 7110 21 00 7110 29 00 7110 41 00 7110 49 00	Platinum, unwrought or in semi-manufactured form, or in powder form	10	10	—
7111 00 00	Base metals, silver or gold, clad with platinum, not further worked than semi- manufactured	10	10	—
7112	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal other than goods of heading 8549	10	10	—
7118	Coin	10	10	—
8802 20 00 8802 30 00 8802 40 00	Aero planes and other aircrafts	3	2.5	↓
7106	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	7.5	10	↑
0802 99 00	Pecan nuts	100	30	↓
1504 20	Fish lipid oil for use in manufacture of aquatic feed	30	15	↓
1520 00 00	Crude glycerin for use in manufacture of Epichlorohydrin	7.5	2.5	↓

HSN Code	Commodity Description	Old Rate (%)	New Rate (%)	Revision in tariff rates
2102 20 00	Algal Prime (flour) for use in manufacture of aquatic feed	30	15	↓
2207 20 00	Denatured ethyl alcohol for use in manufacture of industrial chemicals	5	Nil	↓
2301 20	Fish meal for use in manufacture of aquatic feed	15	5	↓
2301 20	Krill meal for use in manufacture of aquatic feed	15	5	↓
2309 90 90	Mineral and Vitamin Premixes for use in manufacture of aquatic feed	15	5	↓
2529 22 00	Acid grade fluorspar (containing by weight more than 97 of calcium fluoride)	5	2.5	↓
2710 12 21, 2710 12 22, 2710 12 29	Naphtha	1	2.5	↑
7102, 7104	Seeds for use in manufacturing of rough lab-grown diamonds	5	Nil	↓
7106	Silver Dore	6.1	10	↑
25, 28, 32, 39, 40, 69, 73, 85	Specified chemicals/items for manufacture of Pre-calcined Ferrite Powder	7.5	Nil	↓
3824 99 00	Palladium Tetra Amine Sulphate for manufacture of parts of connectors	7.5	Nil	↓
Any Chapter	Camera lens and its inputs/parts for use in manufacture of camera module of cellular mobile phone	2.5	Nil	↓
8529	Specified parts for manufacture of open cell of TV panel	5	2.5	↓

HSN Code	Commodity Description	Old Rate (%)	New Rate (%)	Revision in tariff rates
8516 80 00	Heat Coil for use in the manufacture of Electric Kitchen Chimneys	20	15	↓
8703	Vehicle (including electric vehicles) in Semi-Knocked Down (SKD) form.	30	35	↑
8703	Vehicle in Completely Built Unit (CBU) form, other than with CIF more than USD 40,000 or with engine capacity more than 3000 cc for petrol- run vehicle and more than 2500 cc for diesel-run vehicles, or with both	60	70	↑
8703	Electrically operated Vehicle in Completely Built Unit (CBU) form, other than with CIF value more than USD 40,000	60	70	↑
39, 40, 58, 70, 72, 73, 83, 84, 85, 87, 90	Vehicles, specified automobile parts/components, sub-systems and tyres when imported by notified testing agencies for the purpose of testing and/or certification, subject to conditions	As applicable	Nil	↓
84, 85	Specific capital goods/machinery for manufacture of Lithium-ion cell for use in battery of electrically operated vehicle (EVs)	As applicable	Nil	↓
2701,2702,2703	Coal, peat, lignite	1	2.5	↑
7108	Gold Dore	11.85	10	↓

HSN Code	Commodity Description	Old Rate (%)	New Rate (%)	Revision in tariff rates
7110 11 10 7110 11 20 7110 19 00 7110 21 00 7110 29 00 7110 41 00 7110 49 00	Platinum, unwrought or in semi- manufactured form, or in powder form other than those used in manufacture of noble metal compounds, noble metal solutions and catalytic converters	10	10	—
71 or 98	i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	12.5	10	↓
71 or 98	Silver, in any form including ornaments, but excluding ornaments studded with stones or pearls, imported by the eligible passenger	7.5	10	↑

Changes in Agriculture Infrastructure and Development Cess (AIDC)

HSN Code	Commodity Description	Old Rate (%)	New Rate (%)	Revision in tariff rates
270, 127, 022, 703	Coal, peat, lignite	1.5	Nil	↓
40113000	New pneumatic tyres, of rubber, of a kind used on aircraft as mentioned in Entry 280 A of Notification No. 50/2017-Cu	Nil	0.5	↑

HSN Code	Commodity Description	Old Rate (%)	New Rate (%)	Revision in tariff rates
7108 or 98	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form	2.5	5	↑
71	Gold Dore	2.5	4.35	↑
7110	Platinum other than rhodium and goods covered under S. Nos. 415(a) and 415A of the Table in notification No. 50/2017-Customs, dated the 30 June 2017	1.5	5.4	↑
8802 2000 8802 30 00 8802 40 00	Aero planes and other aircraft covered under S. No. 543A of Notification No. 50/2017-Cus	Nil	0.5	↑
7106, 98	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	2.5	5	↑
71	Silver Dore	2.5	4.35	↑

Exemption from Social Welfare Surcharge (SWS)

Sr. No.	Commodity Description
1.	Silver (HSN 7106), Gold (HSN 7108) & Imitation Jewellery (HSN 7117)
2.	Platinum (HSN 7110) other than rhodium and goods covered under Sl. Nos. 415(a) and 415A of Notification No. 50/2017-Customs, dated 30 June 2017
3.	All goods falling under HSN 7113 (Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal), other than the goods covered under Sl. Nos. 356, 357 and 364C of Notification No. 50/2017-Customs, dated 30 June 2017
4.	All goods falling under HSN 7114 (Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal), other than the goods covered under Sl. Nos. 356 and 357 of Notification No. 50/2017-Customs, dated 30 June 2017
5.	Bicycles (HSN 8712 00 10)
6.	Motor vehicle including electrically operated vehicles falling under HSN 8703 covered under Sl. Nos. 526(1)(b), 526(2)(b), 526A(1)(b) and 526A(2)(b) of Notification No. 50/2017-Customs dated 30 June 2017

Sr. No.	Commodity Description
7.	Aeroplane and other aircrafts falling under tariff items 8802 2000, 8802 3000 and 8802 4000 covered under Sl. No. 543A of Notification No. 50/2017-Customs dated 30 June 2017
8.	Toys and parts of toys (HSN 9503) other than goods covered under Sl. No. 591 of Notification No. 50/2017-Customs dated 30 June 2017

Customs Exemption Notifications extended for one more year upto 31 March 2024

Notification No.	Particulars
16/1965-Cus	Exemption to goods exported to foreign countries for display in showrooms of Government of India
80/1970-Cus	Exemption to articles supplied free under warranty as replacement for defective ones
46/1974-Cus	Pedagogic material for educational or vocational training courses
248/1976- Cus	Exemption to precious stones imported by posts on 'approval or return' basis
207/1989- Cus	Exemption to foodstuff and provisions, imported by foreigners
134/1994-Cus	Exemption to goods for carrying out repairs, reconditions , testing calibration or maintenance
147/1994-Cus	Exemptions to firearms & ammunition by renowned shot
148/1994-Cus	Exemptions to specified free gifts, donations, relief and rehabilitation material imported by charitable trusts, Red Cross, CARE and Govt of India
151/1994-Cus	Exemption to aircraft equipment, tanks, fuel and lubricating oils by Indian Airlines, United Arab Airlines, Indian Air Force
152/1994-Cus	Exemption to imports for handicapped person, charitable or social welfare purposes and research and education programme
153/1994-Cus	Exemption to goods for foreign origin imported for repair and return
39/1996-Cus	Imports relating to defence, internal security forces& air forces
50/1996-Cus	Exemption to specified equipment, instruments, raw material etc imported for R&D projects
51/1996-Cus	Exemption to research equipment by publicly funded and research institutions, Govt. Dept., laboratory, IIT etc
25/1998-Cus	Effective rate of duty for goods of Chapter 70,84,85 or 90

Notification No.	Particulars
97/1999-Cus	Exemption to Gold bars under Gold Deposit Scheme of RBI
113/2003-Cus	Exemption to castor oil cake and castor de-oiled cake manufactured from indigenous castor oil seeds on indigenous plant and machinery by unit in SEZ and brought to DTA
30/2004-Cus	Exemptions to second-hand computers/accessories received as donation by schools, charitable institutions
45/2005-Cus	Exemption from Special Additional duty of Customs to goods cleared from SEZ and brought to any other place in India
81/2005-Cus	Exemption to machinery/components for initial setting up of non-conventional power generation plan
102/2007-Cus	Exemption from Special CVD to all goods imported for subsequent sale when IGST, CGST, SGST or UTGST paid by importers
26/2011-Cus	Exemption from Special CVD to all goods imported for subsequent sale when IGST, CGST, SGST or UTGST paid by importer
23/2016-Cus	Effective rates for parts of aircraft imported under the Standard Exchange Scheme
05/2017-Cus	Exemption to machinery, components for setting up fuel cell-based power generation plant
16/2017-Cus	Exemption to specified drugs & medicines supplied free of cost to patients under Patient Assistance program of Pharma Companies
29/2017-Cus	Exemption to specimen, models, wall pictures and diagrams for instructional purposes
30/2017-Cus	Exemption to motion picture, music, gaming software for use in gaming console printed or recorded on media
32/2017-Cus	Exemption to art work created abroad by Indian artist, sculptor, antiques books more than 100 years
37/2017-Cus	Imports relating to defence & internal security forces
49/2017-Cus	Exemption to special Additional Duty on specified goods of fourth schedule to Central Excise Act
52/2017-Cus	Effective rate of Additional duty for goods under Chapter 27

Keshav B. Bhujle
Advocate

DIRECT TAXES

Supreme Court

1 *S. M. OVERSEAS PVT. LTD. Vs. CIT; [2022] 450 ITR 1 (SC): Dated 07/12/2022*

Reassessment — Rectification of mistake — Notice u/s. 148 — Notice for reopening assessment not permissible during pendency of proceedings for rectification — Appeal to High Court against reassessment proceedings — Nothing to show rectification proceedings withdrawn — Presumption that rectification proceedings invalid being beyond limitation not called for — Reassessment proceedings not sustainable: Ss. 147, 148, 154ITA 1961: A. Y. 1995-96:

For the A. Y. 1995-96, the assessee claimed the benefit u/s. 80HHC of the Income-tax Act, 1961. For the subsequent assessment year, the assessee claimed deduction of bad debt on the ground that, in the earlier year, the export did not materialise. Proceedings u/s. 154 of the Act were initiated by the Department for the A. Y. 1995-96. During the pendency of the proceedings, the Department also reopened the assessment for the assessment year.

The Tribunal set aside the reassessment proceedings u/s. 148 of the Act holding that as the proceedings u/s. 154 initiated against the assessee were pending, no reopening proceedings u/s. 147/148 of the Act could have been initiated.

The High Court allowed the Department's appeal and remanded the matter to the Tribunal observing that as the proceedings u/s. 154 were beyond the period of limitation prescribed u/s. 154(7) of the Act, the reopening proceedings u/s. 147/148 were maintainable. A review application preferred by the assessee was dismissed.

The Supreme Court allowed the appeal filed by the assessee and held as under:

"i) The proceedings u/s. 154 of the Act were not the subject-matter before the High Court. There was nothing on record to show that, in fact, the notice u/s. 154 of the Act was withdrawn on the ground that it was beyond the period of limitation prescribed u/s. 154(7) of the Act. In the absence of any specific order of withdrawal of the proceedings u/s. 154 of the Act, the proceedings initiated u/s. 154 of the Act could be said to have been pending. In that view of the matter, during the pendency of the proceedings u/s. 154 of the Act, it was not permissible on the part of the Department to initiate proceedings u/s. 147/148 of the Act.

ii) The High Court was wrong in presuming that the proceedings u/s. 154 were invalid because they were beyond the period of limitation. The judgment of the High Court was unsustainable. The order passed by the Tribunal was to be restored."

Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

DIRECT TAXES

High Court

Deduction at Source – Section 40(a)(ia) of the Income Tax Act, 1961 – TDS was deducted on year-end provisions - the reversal of year-end provisions in immediately next year - parties not identified - addition under Section 40(a)(ia) for non-deduction of TDS under Section 194J is unjustified.

Facts

The assessee, was engaged in the software business and had made certain year-end provisions for legal and professional fees. These provisions were created on an estimate basis to comply with the accrual system of accounting and were reversed subsequently on the first day of the next year. The provision made was not identifiable to any specific party.

Revenue noted that the Assessee made the provision for legal and professional charges, whereon no tax was deducted and made addition under Section 40(a)(ia) of the Income-tax Act, 1961 ('the Act') which was deleted by the Disputes Resolution Panel ('DRP').

In the course of Revenue's appeal before the Income-tax Appellate Tribunal ('ITAT'), it sustained the addition under Section 40(a)(ia) of the Act holding that the assessee was liable to deduct tax on the provision made for legal and professional charges in the books of accounts on an accrual basis when credited even if not paid.

Aggrieved by the verdict, the assessee preferred the present appeal before the Hon'ble High Court.

Assessee's Argument

It was contended by the assessee that TDS being a vicarious liability, is required to be deducted only if there is income in the hands of the recipient. Since the provisions were reversed subsequently and do not relate to any party, there was no specific income and accordingly, TDS liability did not crystalize. Reliance was placed on the ruling in the case of ***Volvo India Pvt. Ltd. vs. ITO [ITA No. 369/2018]*** and ***Karnataka Power Transmission Corporation Ltd. vs. Deputy Commissioner of Income Tax ITA Nos.750 and 758759/2009(Kar),*** wherein it was held that if no income is attributable to the payee, there is no liability to deduct tax at source and that the existence or absence of entries in the books of accounts is not decisive or conclusive factor in deciding the right of the assessee claiming the deduction. Reliance was also placed by the assessee on the decisions in the case of ***KPTCL vs. DCIT [2016] 383***

ITR 59 (Kar) and ***Toyota Kirloskar Pvt Ltd. vs. ITO [2021] 434 ITR 719 (Kar)*** wherein it was held that no TDS is required for year-end provision which has been subsequently reversed.

Department's Contention

The Revenue argued that the TDS obligation arises on payment or credit to the books of accounts whichever is earlier and though the assessee had credited in the books of account, it had not deducted TDS. Reliance was placed in the case of ***Palam Gas Service vs. CIT [2017] 394 ITR 0300 (SC)*** and ***Associated Cement Co. Ltd. vs. CIT. 67 Taxman 346 (SC).***

The decision of the Court

Hon'ble High Court allowed the assessee's appeal by observing that the provisions made at the end of the accounting year were reversed at the beginning of the next year and no payees were identified nor the exact amount payable identified. Further, the fact that the TDS on these amounts has been discharged when the said parties were paid has not been disputed by the revenue. Accordingly, the addition u/s 40(a)(ia) of the Act for non-deduction of TDS on year-end provisions were set aside.

Subex Limited vs. DCIT [I.T.A NO.787 OF 2017 Date of Order-22.12.2022] (Karnataka High Court)

Reassessment - Section 148 of the Income Tax Act, 1961 - Validity of notice - non-supply of material forming reason to believe that income has escaped assessment - reopening notice invalid.

Facts

The assessee before the Hon'ble Rajasthan High Court was served with a notice dated 30.03.2021 under Section 148 of the Act for reopening its assessment for the year 2017-2018 on the ground that there are reasons to believe that its income for the relevant year has escaped assessment. The sole reason for issuing the reopening notice was that the assessee had received bogus loan/sale/purchase entries as per certain information received from the Investigation Wing. The assessee strongly objected to the reasons recorded on the ground that it has not been provided with the necessary documents such as the books of account showing the alleged bogus entries in its name or the statement of parties purported to have been recorded under Section 132(4) of the Act. The Ld. A.O., however, rejected the objections raised by the assessee. The assessee being aggrieved by the said order approached the Hon'ble Rajasthan High Court by way of a Writ Petition. In the meantime, the assessee was served with the final assessment order passed pursuant to the above notice. The assessee also challenged the final assessment order before the Hon'ble Court by making the necessary amendments to the writ petition.

Assessee's Argument

The proceedings were based on the information available on the Insight Portal and the statements recorded during the search and seizure operations of a third party. The assessee contended that these documents were never provided to it and it was therefore a case of violation of the principles of natural justice.

Department's Argument

The department raised a preliminary objection that against the re-assessment order, the assessee has a statutory remedy of appeal under the Act. Therefore, the writ petition is not maintainable and the challenge to the notice under Section 148 of the Act is now

meaningless in view of the re-assessment order being passed.

The decision of the Hon'ble Court

Hon'ble High Court quashed the reassessment notice, as well as reassessment order, passed pursuant to the above notice on the ground that the supply of documents referred to in the reasons to believe is inevitable and in the event, such documents are not supplied, it would be a flagrant violation of the principles of natural justice. Placing reliance on the decision of the Hon'ble Bombay High Court in the case of ***Tata Capital Financial Services Limited vs. Assistance Commissioner of Income Tax [WP No. 546/2022 (Bom)]*** and ***SABH Infrastructure Ltd. vs. Assistant Commissioner of Income Tax (2017) 398 ITR 198 (Del.),*** the Hon'ble High Court observed that where the documents relied upon in the reasons recorded for reopening of an assessment are not accompanied along with the reasons, the reasons so provided on the face of it are incomplete and do not afford the assesses due and proper opportunity to file objections against such reassessment. The High Court observed that non-supply of the material referred to in the reasons to believe would be enough to render the proceedings bad, even though the material for forming the opinion may be sufficient. The Hon'ble High Court also noted that a statement of a person, which is not relatable to any incriminating document or material found during a search and seizure operation cannot, by itself, trigger the assessment.

It was further held that even though a statutory remedy of appeal against the re-assessment order existed for the assessee to avail if the notice issued under Section 148 of the Act was quashed, the assessment order passed on that basis would become null and void. (A.Y. 2017-18).

Micro Marbles Private Limited vs. ITO [D.B. Civil Writ Petition No. 13747 of 2021 order dated 04.01.2023] (Rajasthan High Court)

Offences and prosecutions - Section 276B of the Income Tax Act, 1961 - Compounding application can be filed during the pendency of appeal after conviction – CBDT's guidelines prescribing the time for submitting compounding application as within twelve months from the end of the month in which prosecution complaint has been filed in the court is of no effect on Income-tax authorities, who are free to decide the application on merits. [Sec. 278B and Sec. 279 of the Act]

Facts

In Financial Year 2009-10, the company deducted income tax to the tune of Rs. 25,02,336/- from the salaries of its employees, under the provisions of Section 192 of the Income Tax Act, 1961 ('the Act'), but had failed to deposit the tax so deducted to the credit of the Central Government within the time prescribed under Section 200 r/w. Section 204 of the Act. The company claimed that this situation arose due to accumulated losses and delays in receiving tax refunds from the Income-tax department during the period 1 April 2009 to 31 March 2010. The said sum was voluntarily deposited, along with statutory interest liability thereon, without any prior notice of default or demand from the Income-tax department.

However, the Income-tax department issued a notice calling upon the company to show cause as to why prosecution should not be launched for offences committed under Section 276B, r/w. Section 278B, of the Act for failure to deposit tax deducted to the credit of the Central Government, within the statutory timeframe. The notice also required the company to nominate its Principal Officer.

Thereafter, upon hearing the company, sanction was granted for launching prosecution against the company and its Principal Officer. A Criminal Complaint was lodged before the 38th Court of Additional Chief Metropolitan Magistrate, Ballard Pier, Mumbai alleging an offence punishable under Section 276B, r/w. Section 278B, of the Act. The learned Magistrate convicted the company and its Principal Officer, under Section 248(2) of the Code of Criminal Procedure, for the offence punishable under Section 278B, r/w. Section 276B of the Act, whereby both were sentenced to pay the fine of ₹ 10,000/- each and imposed a sentence of rigorous imprisonment for one year on the Principal Officer.

Aggrieved by this Judgment and Order of the Additional Chief Metropolitan Magistrate, the assessee filed a Criminal Appeal before the City Sessions Court at Greater Mumbai. Along with Criminal Appeal, Criminal Miscellaneous Application, for stay and suspension of sentence, was also filed before the same court. The sentence was suspended by an order dated 14 January 2020 of the Additional Chief Metropolitan Magistrate. The Criminal Appeal was pending adjudication.

In this set of facts, an application, under the provisions of Section 279(2) of the Income Tax Act, came to be filed on 5th February 2020 for compounding of offence with the Income-tax department. Along with this application, an application for condonation of delay, if any, in filing the application for compounding of offence was also filed.

The compounding application was rejected by the Income-tax department and the said order was challenged by the company and the Principal Officer before the Hon'ble Bombay High Court by way of a Writ Petition.

Assessee's arguments

It was argued on behalf of the company and the Principal Officer that the provisions of Section 279(2) of the Act do not impose any fetters on Income-tax authorities from considering the application for compounding of offence, even when the Court of Metropolitan Magistrate had convicted them and when an appeal before the Sessions Court was pending. It was further contended that plain reading of the provisions of sub-section (2) of Section 279 allowed compounding of offence either before or after the institution of proceedings and the word "proceedings" encompasses all stages of the criminal proceedings i.e., to say before the Magistrate and even after the Magistrate has convicted the concerned party or when the proceedings are pending before the Sessions Court in appeal. The appeal which is pending, is a continuation of the original criminal case, accordingly, there is a "proceeding" for compounding of offence within the meaning of the words "institution of proceedings" incorporated in Section 279(2) of the Act and, therefore, refusal by the Income-tax authorities to exercise jurisdiction vested in them, is an act contrary to the mandate of Section 279(2). The Circulars of the CBDT, relied upon while rejecting the application for compounding of offence, which provided that the application for compounding of offence is required to be filed within twelve months from the end of the month in which the complaint was filed, cannot operate as a rule of limitation since the same cannot override the provisions of the statute i.e., Section 279 of the Act.

Department's arguments

On behalf of the Income-tax department, it was contended that these circulars are issued pursuant to powers vested in the Board under Section 119 of the Act as guidelines

issued to the officers of the Income Tax Department exercising jurisdiction under various provisions of the Income Tax Act and the officers are bound by the same.

The decision of the Court

After hearing the parties, the Hon'ble Bombay High Court held that the Explanation to sub-section (6) of Section 279, provides power to the Board to issue orders, instructions or directions under the Act to other income tax authorities for the proper composition of offences under the section. The Explanation does not empower the Board to limit the power vested in the authority under Section 279(2) to consider an application for compounding of an offence specified in Section 279(1). The orders, instructions or directions issued by the CBDT under Section 119 of the Act or pursuant to the power given under the Explanation will not limit the powers of the authorities specified under Section 279(2) of the Act in considering such an application, much less place fetters on the powers of such authorities in the form of a period of limitation.

The Hon'ble Bombay High Court further held that to the extent CBDT Guidelines dated 14th June 2019 create a limitation on the time, within which application under Section 279(2) of the Act is required to be filed, is of no consequence and does not take away the jurisdiction of authorities, referred to in sub-section (2) of Section 279, from entertaining an application for compounding of offence at any time during the pendency of the proceedings, be they before the Magistrate or on conviction, in an appeal before the Sessions Court. As long as a proceeding, as referred to in subsection (1), is pending, an application for compounding of offence would be maintainable under sub-section (2) of Section 279 and will have to be dealt with by the authorities on its own merits.

The Hon'ble Bombay High Court noted that the Guidelines/Circular of 2019 sets out "Eligibility Conditions for Compounding" in para 7 thereof. In paragraph 7(ii), the guidelines state that no application of compounding can be filed after the end of twelve months from the end of the month in which the prosecution complaint has been filed in court. Guideline 7(v) prescribes that the person seeking compounding of the offence is required to give the undertaking to withdraw any appeals that may have been filed by him relating to the offences sought to be compounded. Guideline 9.1 contains powers to relax the time period prescribed under para 7(ii) and refers to situations where there is a pendency of an appeal. A conjoint reading of these provisions leaves no doubt that the condition specified in clause 7(ii) is not a rule of limitation, but is only a guideline to the authority while considering the application for compounding. The guidelines issued by CBDT in no manner take away the jurisdiction of the authority under Section 279(2) of the Act to consider the application for compounding on its own merits and decide the same. Accordingly, the Hon'ble Bombay High Court, remanded the compounding application back to the Income-tax authority for determination afresh.

Footcandles Film Pvt. Ltd. & Ors. vs. ITO (TDS – 1 & Ors.) [WP No. 429 of 2022 dated 28.11.2022]

Tanmay Phadke
Advocate

CA Viraj Mehta

CA Kinjal Bhuta

DIRECT TAXES

Tribunal

1 *Karan Jain vs. ITO [ITA No. 14/Mum/2022]*

Section 56(2)(x): Purchase value along with other incidental/statutory charges must be taken into account for deciding the applicability of Sec. 56(2)(x) and if a difference between the total cost and stamp duty value does not exceed 10%, section does not apply.

Facts

The Assessee had purchased a flat for a consideration of ₹ 81,70,600/-. Out of ₹ 81,70,600/-, ₹ 75,00,000/- is for basic value for the flat and ₹ 6,70,600/- is paid for the various statutory payments and fees. The Stamp Duty Value as on agreement for the flat is ₹ 83,69,000/-. The AO made addition u/s 56(2)(x) on the difference amount of ₹ 83,69,000/- and ₹ 75,00,000/-. The CIT(A) confirmed the addition. Being aggrieved, the Assessee filed an appeal.

Held:

The ITAT held that the AO by invoking the provisions contained u/s 56(2)(x) of the Act made an addition on account of difference between amount of Rs.83,69,000/- and Rs.75,00,000/- by excluding the amount of Rs.6,70,600/- paid by the assessee against the statutory payment and fees qua the flat in question/s 56(2)(x) of the Act difference between the stamp value and consideration paid has to be added only if difference exceeds 10%. However, in the instant case difference is less than 5% when we take the value of the flat at Rs.81,70,600/- (Rs.75,00,000/- is for basic value of the flat + Rs.6,70,600/- being the statutory payments and fees). The AO as well as Ld. CIT(A) erred in excluding the amount of Rs.6,70,600/- paid by the assessee on account of various statutory payments and fees. Since the difference is lesser than 10%, sec. 56(2)(x) of the Act was not applicable.

2 *Direct Logistics India Pvt. Ltd. v. ITO [ITA No.805/MUM/2020]*

Section 68: Share Application Money – Addition u/s 68 cannot take place on a third-party statement when an assessee establishes identity, creditworthiness and genuineness.

Facts:

The AO received information from the Investigation Wing that assessee had taken accommodation entries under the garb of share application money from concerns

operated by Shri Pravin Kumar Jain (PKJ). The information so received of transactions of share application money on ₹.50 lakhs in the name of the one of the companies controlled by PKJ namely M/s. Olive Overseas Pvt Ltd. and the same company has provided accommodation entries to the assessee. Hence the reopening u/s 147 was made. The AO after considering the reply filed by the assessee rejected the same by reference to the statement recorded from PKJ and in one of the questions (Q.No.10) in which the names of the concern operated by PKJ are listed in which the name of the M/s. Olive Overseas Pvt Ltd. Hence, by relying on the third-party statement addition was made u/s 68 without considering the submissions of the assessee. The CIT(A) also sustained the order of AO and hence, the said appeal.

Held:

The ITAT held that no doubt the assessee had received share application money from the alleged company operated by PKJ. However, the same was refunded back within the same Financial Year. The AO merely initiated the proceedings because the assessee had received some funds from the company operated by the alleged operator from PKJ and made the addition u/s. 68 of the Act. It is fact on record that assessee had submitted relevant details to prove the identity, creditworthiness and by refunding the share application money assessee has also proved the genuineness of the transaction The ITAT deleted the addition and allowed the appeal in favour of the Assessee.

3 ***ACIT (Int Tax) v/s. Shri Vijaykumar Vasantbhai Patel (ITA No. 40/Ahd/2021 & C.O.26/Ahd/2021)***

Section 69: CIT(A) has powers u/s. 250 to remit the matter and direct AO to review the documents to be filed by the Appellant and thereafter to give effect to the appellate order. Investments made from funds sourced outside India are not taxable in India.

Facts:

The assessee is a non-resident individual and had filed a nil return of income. The assessment was completed u/s. 143(3) with determining some small taxable income by making some additions. Later on, the AO re-opened the case for the year u/s. 147 on the grounds that there was an investment made by the assessee amounting approx. to Rs.23.06 cr which according to him was not disclosed in the return. The AO had also called information from the fund manager to confirm the investments made by the assessee with the fund. In the last notice sent by the AO, there was no reply furnished by the assessee and therefore the entire amount was considered as unexplained investment u/s. 69 of the Act. Before the CIT(A), the assessee contended that the reply could not be furnished as it took time to extract information from bank as the matter was very old and it was pleaded that since the investment was made from NRE account, it was not taxable in India. The CIT(A) remanded the matter to the AO, and after obtaining the report passed the order directing AO to check the documents from assessee received from the bank and then delete the addition once it is found that source of the investment is fund outside India. The revenue went in appeal against such directions of the CIT(A).

Held:

One of the grounds raised by the revenue was that directing the AO to check the documents and remitting the matter to AO was beyond the scope of Section 250 of the Act. This was one of the unique grounds on the power of remitting the case by CIT(A) to AO. The ITAT held that it was established that the investments were made from funds outside India from the NRE account. The assessee had taken loan in the NRE Account in USD

currency for making the said investment. Since the source of investment was outside India, it was not taxable in India. Beyond holding on the merits, it was also observed by the ITAT that there is no infirmity in the directions made by CIT(A) to the AO to verify the documents before giving effect to the appellate order. The CIT(A) was satisfied with the documents submitted before him and took a conscious decision.

4 *Ravindranath J. Mishra v/s. ITO (ITA No.271/SRT/2022)*

Sections 144 & 44AD: If the profit rate cannot be determined by the lower authorities, a reasonable rate of 8% as given by the statute u/s. 44AD ought to be applied instead of taxing the entire receipts as income.

Facts:

The assessee in this case was a contractor and provided labour for job work. During the assessment year, the assessee had earned contractual receipts and offered the same by filing return of income under presumptive taxation and offered 12.5% of the contractual receipts as revenue. The case for the year was re-opened on the grounds that assessee has received the contractual receipts as can be seen in the Form 26AS and there is TDS on the same too, however no return of income is being filed. The assessee was not aware of any re-assessment proceedings as all the notices were sent to a different address. The AO therefore, made best judgement assessment and passed order u/s.144 by adding 100% of the receipts as income. The case came up before the CIT(A) and assessee made submissions mentioning that re-opening is bad in law as return is filed and on merits also income has been offered on presumptive basis. The case was transferred to NFAC, and NFAC without taking into account the submissions physically filed, confirmed the additions made by the AO. The assessee had filed appeal before ITAT on grounds that NFAC and AO, both authorities have not exercised best judgment while passing the order and have ignored the facts of the case.

Held:

Before the ITAT, it was contended that the ROI was filed physically and though the return of income copy could not be provided because it was misplaced, the assessee did have the acknowledgment number of return of income filed. It was held by the ITAT that since the reasons recorded for re-opening were based on non-filing of return of income, the same itself is not valid as the return as filed by the assessee being apparent from the acknowledgment number provided to them. Though the assessee could not appear before the AO and the NFAC, the NFAC knowing that return of income was filed and receipts were brought to tax did not direct the AO to find out further facts. On merits it was held that it's a trite law that entire receipts cannot be brought to tax, and the decision of Del HC in case of Subodh Gupta (54 taxmann.com 343) relied upon by assessee was considered. In absence of any material to show the net profit rate, the AO has to adopt the presumptive tax rate of 8% as stipulated u/s. 44AD of the Act for estimation and closing the assessment

5 *ACIT vs. Dhar construction company [ITA No. 181/Gau/2020]*

Sections 192 and 194H and 40(a): TDS is not applicable to remuneration, commission paid by a partnership firm to its partner and no disallowance u/s 40(a) can be made.

Facts:

During the course of assessment proceeding, the AO observed that the assessee being a partnership firm made payments in the form

of remuneration/commission to its partners but no tax was deducted thereon. The AO was of the view that since the assessee had failed to deduct tax, the disallowance of the remuneration/commission was to be made u/s 40(a)(i). Being aggrieved, the Assessee filed an appeal before the CIT(A) and succeeded. Thereafter, the revenue preferred an appeal before the ITAT and held as under:

Held:

The ITAT carefully perused the order of the CIT(A) and noted that the CIT(A) had held that Explanation 2 to Section 15 of the Act specifically provides that salary, bonus, commission, remuneration etc by whatever name called due to or received by a partner of a firm from the firm shall not be for regarded as "salary" ruling out any question of the applicability of Sec. 192. With regard to Sec. 194H, the ITAT observed that the CIT(A) had reached the conclusion about its non-applicability on the point that partners and partnership firm are not two distinct persons. It was further observed by the ITAT that the CIT(A) referred to the earlier judgements of the ITAT while reaching the aforesaid observation. Whereas, on the contrary, before the ITAT in the appeal, The Revenue could not pinpoint as to how the order of the CIT(A) was incorrect requiring the interference. Concurring with the observations of the CIT(A), the ITAT dismissed the appeal of the Revenue and upheld that TDS was not applicable to the remuneration/ commission paid by the Assessee to its partners.

6 ***Hampi Expressways (P) Ltd vs. DCIT - [ITA No.895/Mum/2022](Mum)(Trib.)***

Section 199 - TDS – When entire receipts of the Assessee are passed on to a sub-contractor which is evident from a separate ledger maintained by the Assessee, a TDS credit cannot be denied merely on the fact that the Assessee does not route the entries of receipts through P&L account.

Facts:

The assessee entered into a contract with the National Highway Authority of India (NHAI) for the construction of a national highway and was responsible for shifting utilities. The assessee appointed a sub-contractor for carrying out the said utility shifting work. It received the net amount after the deduction of tax from NHAI which was passed on to the sub-contractor. The Assessee maintained a separate ledger and routed all the transactions therefrom. Since there was no net income, the Assessee neither showed the receipts of NHAI as income nor claimed the amount paid to the sub contractor as expenses. However, It had claimed credit of a certain sum being tax deducted at source by NHAI. The AO held that the assessee had failed to offer corresponding income to tax during the relevant assessment year. Thus, it was not entitled to claim credit of tax deducted at source in terms of section 199 read with rule 37BA. On appeal, the CIT(A) upheld the order of AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

Held:

The ITAT perused the facts and held that the revenue cannot be allowed to retain tax deducted at source without credit being available to any body, and therefore, either the deductee or the person in whose hand income is assessable should be allowed to claim credit of tax deducted at source by granting purposive interpretation of the provisions of section 199and rule 37BA de hors the procedural requirements specified therein which should give way to substantial justice. Objection of the revenue is that the assessee is claiming credit for tax deducted at source corresponding receipts of which have not

been credited to the profit and loss account and, therefore, not offered to tax. While the stand of the assessee is that there was back-to-back arrangement with the sub-contractor and, therefore, the entire receipts were passed on to the sub-contractor leaving Nil income to be disclosed in the return of income. It further held that while the assessee cannot be denied the credit for tax deducted at source, the revenue cannot be denied opportunity to examine the receipts and corresponding payments. The assessee has placed on record, separate ledger account maintained showing receipts from NHAI and corresponding payments to sub-contractors. Accordingly, the Assessing Officer is directed to verify the receipts and deducibility of the corresponding payments reflected in the aforesaid ledger account during the relevant assessment year, and, thereafter, allowed the claim of credit of tax deducted at source by NHAI.

7 *Lokmangal Nagri Sahakari Path Sanstha Maryadit v/s. PCIT (ITA No.231/Pun/2022)*

Section 263: A debatable issue cannot be revised u/s. 263 by considering the assessment as erroneous. Interest from a cooperative bank is allowable as deduction.

Facts:

The assessee is credit co-operative society and had filed original return of income without claiming any deduction u/s. 80P. Later a revised return of income was filed claiming a deduction of Rs.6.32 crore u/s. 80 P and declaring nil income. The AO completed the assessment u/s. 143(3) accepting the returned income as per revised return of income. The PCIT issued a show cause notice u/s. 263 on the grounds that the AO had not examined the taxability of interest earned on investments with co-operative banks which constitutes business income. The PCIT directed the AO This appeal has been file challenging the revision proceedings under section 263 of the Act.

Held:

It was argued by the assessee that the AO had applied his mind while passing the assessment order and therefore the order cannot be considered as prejudicial or erroneous and explanation 2 of section 263 cannot be invoked. It was contended by the assessee before the Bench that the issue of allowability of interest earned from investments into co-operative banks is allowable u/s. 80P (2)(a)(i) is covered in favour of the assessee by multiple decisions of the co-ordinate bench. It was held by the ITAT that, the powers of revision conferred upon the Commissioner of Income Tax is only in case of the order of AO is erroneous and prejudicial to the interest of revenue. Both the two conditions are to be satisfied cumulatively to invoke the provisions of section 263. The error in the assessment should be the one which is not debatable. If the AO took one of the views which is plausible, the order cannot be considered as erroneous. Beyond deliberating on the jurisdictional issue of invocation of section 263, the ITAT also observed that, any interest earned from co-operative bank which is also a specie of a co-operative society qualified for deduction u/s. 80P(2)(d) of the Act. The revision order was quashed by the ITAT and the appeal was allowed.

Dr. CA Sunil Moti Lala
Advocate

INTERNATIONAL TAXATION
Case Law Update

A. TRIBUNAL

1 ***Adore Technologies (P.) Ltd vs ACIT - [(2022) 145 taxmann.com 597 (Delhi-Trib)]***

Sums received by Singapore co. from Indian customers for the provision of Disaster Recovery up-linking services and playout services cannot be taxed in India as Royalty/ FTS under the DTAA.

FACTS

i) The assessee, a Singapore-based Company did not have a Permanent Establishment (PE) and/or business connection in India in the year under consideration and was eligible for beneficial provisions of India-Singapore DTAA ('DTAA').

ii) The primary business of the assessee was to provide broadcasters with state-of-art media technology solutions. The assessee offered a wide spectrum of satellite-based telecommunication services to media and entertainment businesses under the license from Info-Communications Development Authority of Singapore. The assessee had receipts majorly from the following activities from India:a) Up-linking Service and allied services b) Playout Services c) Sale of Equipment.

iii) The AO held that the considerations received by the Assessee from India for its activities relating to up-linking services and playout services were taxable as Royalty under Explanation 2 to section 9(1)(vi) of the Act and in particular under Explanation 6 thereto which provides that "for the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite including up-linking, amplification, conversion for down-linking of any signal, cable, optic fibre or by any other similar technology whether or not such process is secret"

iv) The AO held that the nature of disaster recovery up-linking service provided by the assessee was nothing but part of a process wherein signals were taken from the playout equipment and sent to the satellite for broadcasting them to cable operators/direct to home operators.

v) The Assessing Officer concluded by holding that income received under the head 'Disaster recovery up-linking service' was Royalty as per provisions of section 9(1)(vi) Explanation 2(iii) of the Act.

vi) In relation to income from Disaster Recovery Playout Service, the AO took a leaf from the submissions of the assessee wherein it had submitted that "Playout services are inextricably linked to up-linking services and encompass the provision of equipment infrastructure and manpower, to manage continuous playing of channel content based on minute to minute schedule. The AO, thus held that the playout service was of managerial and technical nature and fell within the ambit of the definition of Fees for Technical Services as defined in Explanation 2 under section 9(1)(vi) of the Act as well as Article 12(4)(a) of the DTAA.

vii) The DRP dismissed the assessee's objections. Aggrieved, the assessee filed an appeal before the Hon'ble ITAT.

DECISION

i) The Hon'ble ITAT noted that as per Article 12(3) of DTAA, Royalty has been defined to include, inter alia, use or right to use of secret formula or process and use or right to use of industrial, commercial or scientific equipment.

ii) It observed that the customers of the assessee were neither in possession of any equipment nor had any control over the equipment used by the assessee for providing up-linking and playout services to its customers and that while providing these services, the assessee was the sole bearer of the risks in relation to the said equipment.

iii) It held that the term process can be understood as a sequence of interdependent and linked procedures or actions consuming resources to convert inputs into outputs and that various tangible equipment and resources may be employed in executing a process but 'process' per se, just like a formula or design, is intangible. Further 'use of a process' envisages that the payer must use the 'process' on its own and bear the risk of its exploitation. However, in the case at hand, the 'process' was used by the service provider himself who bore the risk of exploitation or liabilities for the use as an entrepreneur and therefore, the said income could not be characterized as royalty. It relied on the following judgements of the Hon'ble Delhi High Court viz. New Skies Satellite [382 ITR 114], NEO Sports Broadcast Pvt Ltd. [264 Taxmann.com 323] and Asia Satellite Telecommunications Co. Ltd [332 ITR 340].

iv) As regards the receipts from Disaster Recovery Playout Services being treated as FTS, it held that the service was nothing but the broadcasting and/ or transmission of channels by the assessee for its customers, without any involvement in decision-making with respect to the playlists and the content being broadcasted. Moreover, the assessee did not have a right to edit, mix, modify, remove or delete any content or part thereof as provided by the customer. Thus, the disaster recovery playout service merely involved the provision of uninterrupted availability of the playout service at a predetermined level. Therefore, receipts from disaster recovery playout services were not in the nature of FTS as envisaged under Article 12(4)(a) of the DTAA as they were not ancillary or subsidiary to disaster recovery up-linking and allied services.

v) It further added that the receipts from disaster recovery playout services were not in the nature of FTS as they did not make available any technical

knowledge, experience, skill, know-how, or process nor did it consist of the development and transfer of any technical plan or technical design. It relied on De Beers India Pvt Ltd [346 ITR 467 (Karnataka)], Guy Carpenter & Co. [346 ITR 504 (Delhi)] and Atos Information Technology, Singapore [ITA Nos. 7144/MUM/17 and 5744/MUM/18].

vi) Further, the Hon'ble Tribunal also concluded that the said receipts were also not in the nature of FTS as per Explanation 2 of section 9(1)(vii) of the Act.

vii) Accordingly, the assessee's appeal was allowed.

2 *Sameer Malhotra v. ACIT [(2022) 144 taxmann.com 180 (Mum- Tribunal]*

Where assessee held a Singapore driving license, Overseas bank account, tax residency certificate issued by Singapore authorities and the centre of vital interest also lay in Singapore because the assessee shifted to Singapore with his wife and daughters for employment and resided in Singapore and had habitual abode therein only, it was held that assessee could be treated as a resident of Singapore and not a resident of India for purpose of taxation of global income as per article 4 of India-Singapore DTAA.

Facts

i) The assessee declared a total income of Rs.1,59,36,999/- earned from DBOI Global Services Pvt. Ltd. (in short DBOI) in India from 01.04.2014 to 25.11.2014 and from J.P. Morgan Chase & Co., Singapore(in short "JPMC") during 15.12.2015 to 31.03.2015. Subsequently, the assessee revised his return of income whereby he restricted his income to Rs.47,82,630/- as earned only in India and claimed that income earned in Singapore was not taxable in India consequent to the relief u/s. 90 of the Act.

ii) The AO observed that the assessee was physically present in India for 182 days or more in F.Y. 2014-15 (A.Y. 2015-16) and as per section 6(1)(a) of the Act, " an individual is said to be resident in India in any previous year if he is in India in that year for a period or periods amounting in all to 182 days or more". Consequently, the AO determined that the assessee was resident in India in F.Y. 2014-15 (A.Y. 2015-16), as he was employed in India till November 2014 and thus consequently his global income was taxable in India.

iii) Before the AO, the assessee also submitted a tie-breaker questionnaire to make it's claim towards Singapore Residency and based on that the assessee claimed that income earned by him in Singapore could not be taxed in India. The AO, in order to analyze the "Tie Breaker Questionnaire" also considered Article 4 of India-Singapore DTAA ('DTAA').

iv) The CIT(A) held that if any individual was a resident of both the Contract States, then he shall be deemed to be a resident of the State in which he has a permanent home available to him. Article 4(2) of the DTAA was clearly applicable to the assessee, as he had a permanent home' available in India, though the same had been given on lease while leaving for Singapore, but the fact could not be denied that the ownership rights were with the assessee only, as the property was rented only for a period of 11 months (w.e.f. Dec. 01, 2014, to Oct. 31, 2015, to the tenant Mr Joy Ghosh). The assessee had taken on rent the property situated at Singapore

only for a limited period w.e.f. 1st Jan. 2015 till 31st Dec. 2016. Thus, on the above facts, the CIT(A) held that it was evident that the permanent home available to the assessee, was only in India and not in Singapore. In the tiebreaker questionnaire, it had been submitted by the assessee that after completion of the foreign assignment, he was residing in India only.

v) The CIT(A) further held that even if for a moment, the assessee's claim was accepted that a permanent home was available to him in both the States, then he shall be deemed to be the resident of the State in which his personal and economic relations are closer (centre of vital interests). There was no doubt that even the centre of vital interests of the assessee was with India only and not with Singapore. In the tie-breaker questionnaire, mentioned in the assessment order, it had been explained by the assessee that the majority of savings, investments and personal bank accounts were in India. Even the test of 'habitual abode' was in favour of India, as the assessee was living in India after completion of a foreign assignment and there was no denial of the fact that the assessee was an Indian National. The ld. Commissioner also perused the provisions of Article-4 of the OECD Model Convention dealing with the definition of the term "resident" and held that it was evident that if the assessee was considered a resident of both the countries, even then, his status shall be determined as per OECD Model Convention, which makes it evidently clear that the assessee was resident of India and not of Singapore since (i) he had permanent residence in India; his economic interests were located in India; returned to India after completing foreign assignment; (ii) He had spent a substantial part of the time (i.e., more than 182 days) in India during the year under consideration; and (iii) he was an Indian National and did not have any domicile or any kind of economic or personal interest (in Singapore) and had permanent residence in India.

vi) The CIT(A) dismissed the appeal. Accordingly, the assessee filed an appeal before the Hon'ble ITAT.

Decision

i) The Hon'ble ITAT noted that the case of the assessee was that he was a resident of both India and Singapore and had Tax Residency Certificate from Singapore Revenue Authorities for the calendar Year 2014-15. Also, the Assessee was having Singapore driving License and an Overseas bank account and a house in India was not available to the assessee during the Singapore assignment period, as the same was on rent. Therefore, the permanent home test for the period i.e. 6th December 2014 to 31st March 2015 went in favour of the assessee. Further vital interest of the assessee was also lying in Singapore because he shifted there with his family and started employment and earnings and savings there. Accordingly, the assessee qualified as the ultimate Tax Resident of Singapore from 15th December 2014 onwards as per Article 15(1) of the Treaty, which reads as under:

> *"Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised,*

such remuneration as is derived therefrom may be taxed in that other State. "

ii) It further noted that the assessee further claimed that as he qualified to be a resident of both India and Singapore under Article 4(1) of the Treaty, the residency would need to be determined as per Article 4(2) of the Treaty on the below-mentioned criteria which provides –

4(1)................

4(2) Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode ;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national ;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement."

iii) Further, it noted that as per UN Model Commentary, the concept of home has been defined as under :

"13. As regards the concept of home, it should be observed that any form of home may be taken into account (house or apartment belonging to or rented by the individual, rented furnished room). But the permanence of the home is essential; this means that the individual has arranged to have the dwelling available to him at all times continuously, and not occasionally for the purpose of a stay which, owing to the reasons for it, is necessarily of short duration (travel for pleasure, business travel, educational travel, attending a course at a school, etc.). "

iv) It noted that the assessee along with his family members shifted to Singapore on 06.12.2014 and thereafter remained there during the period under consideration and earned the income while serving in Singapore itself. Further, in the Tie-Breaker Questionnaire, the assessee specifically mentioned that the apartment is on rent in Singapore as well and his wife and two daughters were also living along with him in the country of assignment, i.e., Singapore. The assessee also held a Driving License in both countries and both countries had been shown as his country of residence on various official forms and documents for the period from December 2015 to June 2016, further he paid taxes in Singapore while working there. Further, he had mentioned that all income which would be paid in future (i.e., bonus for the

period Jan. 2016 to June 2016) for the work period in Singapore, would be taxable in Singapore.

v) It held that no doubt the tie-breaker questionnaire was important in determining the residency of a person, but that could not be exclusively taken into consideration as a base for deciding the residency. The permanence of a home can be determined on a qualitative and quantitative basis. It was not in controversy that the assessee for the period under consideration had shown the income earned in Singapore and paid the taxes in Singapore. Therefore, as per Treaty, he could not be subjected to tax in India in order to avoid double taxation. It relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Raman Chopra vs. DCIT [(2016) 69 taxmann.com 452 (Delhi-Trib.)].

vi) It further noted that both the authorities below had not doubted the tax residency certificate issued by the Singapore authorities for the period under consideration and on the basis of that, the Income-tax had already been paid by the assessee in Singapore. Further, maybe, the assessee has stayed more than 182 days in India, however, he also qualified as a resident of both India and Singapore under Article 4(1) of the Treaty. As per clause (a) of Article 4(2) of the Treaty, a person shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests).

vii) It noted that the CIT(A) based on the tie-breaker questionnaire had held that there was no doubt that even the centre of vital interest of the assessee was with India only and not with Singapore, as the majority of the savings, investments and personal bank accounts were in India, whereas it was a fact that the assessee had worked in Singapore during the period under consideration and stayed therein only. Therefore, his personal and economic relations (Centre of vital interests) at that particular time/ period could not be brushed aside, as the assessee went to Singapore along with his family for earning income and consequently his personal and economic relations remained in Singapore only.

viii) As per Article 4(2)(b) of the DTAA, the habitual abode was also available for consideration in deciding the residency of a person. Habitual abode does not mean the place of permanent residence, but in fact, it means the place where one normally resides. During the period under consideration, the assessee resided in Singapore and had a habitual abode therein only. Therefore, for this reason, as well, the assessee could be treated as a resident of Singapore. Section 90(2) of the Act read with the DTAA. Consequently, the addition was deleted and the AO was directed to accept the revised return of income filed by the assessee.

3 | ***Aaradhana Realties Ltd. v. DCIT [(2022) 145 taxmann.com 628 (Mumbai- Trib.)]***

NAV method adopted by the assessee was accepted by Tribunal for computing ALP for the international transaction of sale of shares held in the investment company by the assessee to its AE.

Facts

i) The assessee undertook an international transaction of sale of equity shares of Essar Capital Limited (ECL) to its AE, i.e., Essar Capital Holdings Limited, Mauritius (ECHL, Mauritius) and bench-marked the aforesaid International Transaction by applying CUP methodology based upon the valuation certificate obtained by the assessee from an external valuer which determined the value of equity share of ECL at INR 4.797/- each as per NAV method. The independent valuer had also determined the value of the share by using Profit Earning Capacity Value (PECV) Method, however, since the same was coming as 'Nil', it was ignored. Since the assessee had sold shares of ECL to its AE at INR 10/- each, it was contended by the assessee that the transactions were at arm's length. The assessee contended before the TPO that the valuation undertaken by it was as per the guidelines issued by the erstwhile Comptroller of Capital Issues (CCI).

ii) The TPO rejected the external CUP Method adopted by the assessee and concluded that DCF Method was the correct method to be employed in the facts and circumstances of the case without specifying that the NAV method was incorrect. The TPO simply stated that CCA guidelines were not binding and that the same had been prescribed for a different purpose. Further, the difference between the arm's length price determined by the assessee and arm's length price determined by the TPO was treated as a loan/credit facility provided by the assessee to its AE and adjustment was made in respect of the arm's length interest thereon.

iii) Aggrieved, the assessee filed objections before the DRP which were rejected and consequently appeal was filed before the Hon'ble ITAT.

Decision

i) The Hon'ble Tribunal noted that the TPO/DRP had adopted DCF Method for determining the ALP of the transaction of sale of shares of ECL to ECHL, Mauritius by considering the actual published results instead of projected future cash flows as of the date of the transactions. It placed reliance on the decision of the Hyderabad Bench of the Hon'ble Tribunal in the case of DQ (International) Ltd (141 Taxmann.com 188) wherein it was held by the Hon'ble Tribunal that while computing the value of an intangible asset by using the DCF Method the future projections cannot be substituted with the actual figures.

ii) As regards the decision of the co-ordinate bench of the Hon'ble Tribunal in Ascendas (India) Private Ltd. (ITA No. 1736/MDS/2011), relied upon by the Revenue, it noted that the Tribunal had preferred the use of the DCF Method over the use of CCI Guidelines for arriving at the value of shares for the purpose of determining ALP. However, it accepted the plea of the assessee that in the present case, the DCF Method could not be adopted since ECL was an investment company with an inconsistent and unpredictable stream of revenues.

iii) It further placed reliance on the Indian Valuation Standard 2018 issued by the Institute of Chartered Accountants of India (ICAI), wherein in paragraph 52 it has been recommended that the use of other valuation approaches instead of income approach be adopted in cases where there was significant uncertainty about the amount in the timing of income/future cash flows.

iv) The Hon'ble Tribunal concluded that the DCF Method could not be adopted in the facts and circumstances of the present case as the assessee was an investment company incorporated on 30.01.2007 with unpredictable income/ cash flows. As regards the method adopted by the assessee for determining the value of shares of ECL, it noted that the shares of ECL were sold by the assessee on 23.06.2008, whereas the valuation report was based upon the audited financial statements of ECL as on 31.03.2008. In the synopsis of arguments filed before the Hon'ble Tribunal, since the Assessee had on without prejudice basis, stated that the value of shares determined on 23.06.2008 by following the method prescribed in Rule 11UA of the Income Tax Rules, 1962 was INR 112/- and this was accompanied by unaudited financial statements as on 23.06.2008, the Hon'ble Tribunal accepted the without prejudice submission of the assessee and adopted the value of INR 112/- as the fair market value of the share of ECL representing the ALP. Thus, the ground of the assessee was partly allowed.

v) As regards the adjustment on the amount of ALP of interest not charged on the deemed loan given by the AO to the AE (being the adjustment made for the shortfall in consideration received for the sale of shares to AE), the Hon'ble Tribunal relied on the judgement of the Hon'ble Bombay High Court in the case of Besix Kier Dabhol SA [26 taxmann.com 169 (Bom)], wherein it was held that in absence of a specific provision in the Act incorporating thin capitalization rules, the TPO was not permitted to re-characterize debt as equity for making transfer pricing adjustments. It further observed that it was admitted position that for the relevant assessment year there were no provisions in the Act providing for secondary transfer pricing adjustment and/or for making transfer pricing adjustment by treating debt as equity (such as general/specific anti-avoidance rules). The amount of receivable outstanding had arisen on account of a transfer pricing adjustment made by the TPO/Assessing Officer. Thus, the transfer pricing adjustment made by the TPO/Assessing Officer (w.r.t interest on outstanding receivables) was clearly in the nature of secondary adjustment and could not be sustained in the absence of a specific provision in the Act providing for the same. Accordingly, the said adjustment was deleted by the Hon'ble Tribunal.

CA Naresh Sheth

CA Jinesh Shah

INDIRECT TAXES
GST – Recent Judgments and Advance Rulings

A. DECISIONS BY HIGH COURT

1 *Yokohama India Private Limited vs. The State of Telangana – Telangana High Court [(2022) 145 Taxmann. com 130]*

Facts and issue involved

Petitioner is engaged in manufacture and sale of passenger car tyres. During the period January 2018 to August 2018, petitioner supplied goods to one of its distributors M/s. Bade Miyan Wheels. However, while filing GSTR-1 for the said period, the details of distributor were wrongly mentioned i.e. details of M/s. Hyderabad Service Station were mentioned instead of M/s. Bade Miyan Wheels.

Because of the aforesaid error, M/s. Bade Miyan Wheels was not able to avail and utilize the input tax credit as the same was not reflected in its GSTR-2A.

Petitioner, in order to rectify its mistake, made a representation before GST authorities vide its letter dated 15.03.2021. No decision was taken by GST authorities as the time prescribed under the provisions of CGST Act for rectification of errors for the returns covering the period January 2018 to March 2018 had expired on 31st March 2019 and for the months of April 2018 to August 2018 on 30th September 2019.

Petitioner, thus, preferred a writ petition before Honorable Telangana High Court.

Revenue's submissions

As per proviso to Section 39(9) of the CGST Act, rectification of any omission or incorrect particulars cannot be allowed after due date for furnishing of the return for the month of September or the second quarter following the end of the financial year.

Legislature has consciously prescribed limitation period to enable taxable person to claim rectification of any omission / incorrect particulars. Once the limitation period is over, it is not open for the taxable person to continue seeking rectification of omission / incorrect particulars.

Reliance was placed on the decision of Honorable Supreme Court in case of ***Union of India vs. Bharti Airtel Ltd. (2021 (54) G.S.T.L. 257 (S.C))*** wherein Supreme Court has negatived a similar request on the ground

that acceding to such a request would be contrary to the statutory mandate.

Petitioner's submissions

Petitioner distinguished the decision of Supreme Court in ***Bharti Airtel Ltd. (supra)*** and instead submitted that the case is squarely covered by the decision of the Gujarat High Court in ***Siddharth Enterprises vs. Nodal Officer [2019 (29) G.S.T.L. 664 (Guj.)]***.

Petitioner also placed reliance on Single Bench decision of the Madras High Court in ***M/s. SUN DYE CHEM vs. The Assistant Commissioner (ST) (W.P.No.29676 of 2019, decided on 06.10.2020)*** wherein Court has allowed rectification of inadvertent human error.

Observations and Discussion by Court

The moot question is whether petitioner at this stage is entitled to claim rectification of omission / incorrect particulars in GSTR-1 filed by the petitioner for the period January 2018 to August 2018.

Section 39(1) of CGST Act provides that every registered person for every calendar month or part thereof, furnish a return electronically of inward and outward supplies, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed.

Section 39(9) of CGST Act provides that if after furnishing such return, registered person discovers any omission or incorrect particulars other than as a result of scrutiny, audit etc., he shall rectify such omission or incorrect particulars in such form and in such manner as may be prescribed, subject to payment of interest etc.

The proviso says that no such rectification of any omission or incorrect particulars shall be allowed after due date for furnishing of return for the month of September or second quarter following the end of financial year to which such details pertain.

In other words, such rectification could be carried out after the due date for furnishing of return up to the following month of September.

Insofar decision of the Madras High Court in ***M/s. SUN DYE CHEM (supra)*** is concerned, learned Single Judge of the Madras High Court did not examine the limitation introduced by the statute under sub-section (9) of Section 39 of the CGST Act to rectify omission/errors in GSTR-1 form.

Supreme Cout in case of ***Union of India vs. Bharti Airtel Ltd.*** observed that law provides for rectification of errors and omissions in specified manner. Beyond the statutorily prescribed period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in electronic records. Allowing assessee to carry out rectification of errors and omissions beyond the statutorily prescribed period would lead to complete uncertainty and collapse of the tax administration.

Decision of High Court

Accordingly, High Court dismissed the writ filed by the petitioner.

2 *ABI Egg Traders vs. Assistant Commissioner of CGST – Madras High Court [W.P. No. 3773 Of 2020]*

Facts and issue involved

Petitioner is a sole proprietary concern engaged in export of eggs. The commodity 'egg' attracts GST at 'nil' rate. Petitioner was entitled to claim refund of ITC that had accumulated on the export of eggs.

Petitioner had inadvertently opted for export 'with payment of tax' instead of export 'without payment of tax' while filing GSTR-3B for the period 01.08.2017 to 31.03.2018 in May 2018. As on 31.03.2018, the ITC available in the Electronic Credit Ledger was ₹ 7,04,851/-, whereas on filing of the return in May 2018 the ITC balance was ₹ 11,63,200.

Petitioner filed the refund application on 12.08.2019 for the period 01.08.2017 to 31.03.2018. The refund application was filed under 'Residual category' instead of 'Export of goods/services – without payment of tax category' as the latter option was unavailable due to error made while filing Form GSTR-3B.

Notice for deficiency was issued on 05.09.2019 wherein the officer pointed out that refund application has been filed under wrong category and the quantum of refund was also disputed.

The petitioner responded on 09.10.2019 explaining the reasons under which it had been constrained to opt for the residuary category. As regards the alleged discrepancy in the quantum of ITC, the petitioner submitted that it was entitled for refund for the credit in the ECL as on the date of refund application and not the ITC balance as on 31.03.2018.

The officer passed the order rejecting refund on the ground that application for refund was filed under residual category.

Being aggrieved with the refund rejection order the petitioner has filed the present writ petition.

Observations and Discussion by Court

Rejection of refund solely on the inadvertent procedural error would be hypothetical and the conclusion of the officer to this effect is thus set aside. The respondent officer granted refund to another assessee 'Shri Shakti Exports' in similar circumstances.

Decision of High Court

High Court allows the present writ petition.

3 *Manappuram Finance Limited vs. Assistant Commissioner of CGST – Kerala High Court [WP(C) No. 27373 of 2022]*

Facts and issue involved

Petitioner filed the present writ petition challenging the order of appellate authority which upheld adjudicating authority's order rejecting refund of GST paid on notice pay recovery. The refund was rejected on the ground that petitioner was liable to pay GST on notice pay received from the former employees.

Petitioner's submissions

CBIC Circular No. 178/10/2022-GST dated 03.08.2022, had clarified that notice pay recovery from employees is not liable to GST. Though the Circular was issued only on 3.8.2022, it is settled law that the beneficial Circular must be applied retrospectively. In this regard, petitioner relies on Hon'ble

Supreme Court's decision in case of ***Suchitra Components Ltd. vs. Commissioner of Central Excise [(2006) 12 SCC 452]***.

Hon'ble Madras High Court in case of ***GE T & D India Limited v. Deputy Commissioner of Central Excise [2020 (35) G.S.T.L. 89 (Mad.)]*** had held that notice pay received from employees does not amount to a rendition of service for the purposes of the Finance Act, 1994.

Respondent Department's submissions
Circular was issued two and half months after the issuance of order, and hence is not applicable to petitioner's case.

Observations and Discussion by Court
GST Circular No. 178/10/2022-GST dated 03.08.2022 clarifies that the amount of money received by the petitioner as notice pay from erstwhile employees is not a taxable transaction for the purposes of the GST laws. In view of Hon'ble Supreme Court's decision in case of ***Navnit Lal C. Javeri vs. K.K. Sen [1965 (56) ITR 198]*** (which was applied and followed in ***K.P. Varghese vs. Income Tax Officer, Ernakulam and another (1981) 4 SCC 173)***, beneficial circulars are binding on the Department and no officer can take a view contrary to stipulations contained in such Circulars.

Circulars, being clarificatory in nature and only clarifies the existing law, would be applicable retrospectively as held by Hon'ble Supreme Court in case of ***Suchitra Components Ltd. vs. Commissioner of Central Excise [(2006) 12 SCC 452]***.

Decision of High Court
Petitioner is not liable to pay GST on notice pay recovery made from former employees and hence is entitled to refund of tax paid thereof.

B. RULINGS BY APPELLATE AUTHORITY OF ADVANCE RULING

1 ***Deccan Transcon Leasing Private Limited - Telangana Aaar [AAAR/07/2022]***

Facts and Issue involved
Appellant, a Non-vessel owner container carrier / Operator (NVOCC) based in India, has leased containers from suppliers situated outside India and in turn uses the same for transportation of bulk chemicals.

Appellant pays lease rentals every month and is entitled to purchase the containers during the period of lease or at the end of the lease period by paying the agreed rate.

Appellant was of the considered view that the said transaction, being akin to hire-purchase transaction, is that of goods and not services. Further, as the said goods have never entered the territory of the country, same is not liable to GST in India.

Appellant had sought an advance ruling as to whether GST is required to be paid on leasing of tank containers taken from a supplier i.e. lessor is located outside India and the said tank containers do not reach India?

Ruling of AAR
The authority ruled that appellant is liable to pay IGST on importation of lease services into India.

Appeal to AAAR and appellant's contentions:
Aggrieved by ruling of AAR, appellant preferred an appeal to AAAR on following grounds:

- Article 366(29A) of Constitution of India specifically provides hire purchase transaction shall be classified as ' deemed sale of goods' and hence, impugned transaction should also be classified as 'supply of goods'.
- Further, "the transaction of purchasing the containers during/end of the lease period is 'supply' under section 7 of CGST Act, 2017 and would be classified as 'supply of goods in terms of Sl. No. 1(c) of Schedule II to section 7 as all the following ingredients are satisfied:

  a. There shall be a transfer of title in goods;

  b. Such transfer is at future date as per the pre-existing agreement; and

  c. Such transfer is after payment of full consideration.
- The said transaction is nothing but a hire purchase transaction as it squarely fits in the definition of Hire Purchase Agreement as defined under section 2(c) of Hire Purchase Act. In a hire purchase agreement, the possession of goods is delivered by owner to hirer on condition of payment of agreed number of instalments.

  Appellant relied on CBIC FAQs dated 15.12.2018 (Sr. No. 18) wherein it was clarified that Hire Purchase transaction is to be treated as supply of goods.
- The transaction of purchasing the containers during/end of the lease period is 'supply' under section 7 of CGST Act and would be classified as 'Finance Lease' in terms of Accounting Standard – 19 "Leases".

  Further, the substance should prevail over the form of transaction which means that the actual usage should prevail when compared to terms of the agreements. Hence, the transaction should be treated as a 'supply of goods.' These containers are recognized as asset in appellant's books of account from the inception of the lease due to the certainty of acquisition at a future date.
- The scope of IGST Act, 2017 is limited to territorial jurisdiction to which it extends. Thus, IGST can be levied only to supplies occurred within the territorial jurisdiction of the IGST Act, 2017 qua Indian Territory. The present transaction is taking place outside India and hence, GST is not leviable in India on the same.
- The impugned transaction falls under Sr. No. 7 of Schedule III to CGST Act, ibid which provides that Supply of goods from one place to another place in non-taxable territory without bringing into India is neither supply of goods nor supply of services.

Discussions by and observations of AAAR

According to the terms of 'Lease purchase agreement', appellant is obtaining the containers on lease for a period of 5 years and after expiry of 5 years or prior to five years the appellant has an option to purchase the container on payment of certain amount as per the contract. On exercising the option to purchase and payment of corresponding amount, the ownership of the container passes on to the appellant from the lessor.

The ownership of the containers lies with M/s Tankspan Leasing Ltd until the appellant exercises option to purchase the container

as per the agreement. Thus, there is no such transfer of title in goods.

Taxation statutes should be interpreted strictly, For supplies falling under Entry 1(c) there should be immediate transfer of title in goods as per the agreement and property should be passed automatically on payment of full consideration at a future date. Thereby, where there is a future title transfer, the supply cannot be classified under entry 1(c) of Schedule –II.

GST Act doesn't differentiate between the type of leases as to whether it is a Hire-purchase, financial lease or Operating Lease. Transfers are classified only under Entry 1 of Schedule- II, Entry 1 (c) being a conditional entry. Here, terms of the present agreement do not meet with the conditions laid out in Entry 1(c).

Appellant contended that the substance of an agreement prevails over its form. However, substance prevails over form when Substance of an agreement doesn't align with its form. Here in this case, form of the agreement (leasing agreement) aligns with the substance (intention to lease). The intention of the parties was to lease the containers with an option to purchase.

The supply is squarely covered under Entry 1(b) of Schedule –II i.e. *"any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services", as here in this case, there is a transfer of rig*ht in goods without the transfer of title.

Therefore, the transaction is decided to be "Supply of Service". Further as per the provisions of Section 13 of IGST Act,2017 where the location of the supplier of services or recipient of services is located outside India, the place of supply is the location of recipient of services. Therefore, the transaction is taxable under reverse charge basis, and hence liable to pay IGST.

Ruling of AAAR

Appellant is liable to pay IGST on importation of leasing services into India.

C. RULINGS BY AUTHORITY OF ADVANCE RULING

1 *Capfront Technologies Pvt Ltd – Karnataka Aar [2022-TIOL-151-AAR-GST]*

Facts and Issue involved

Applicant is engaged in providing data analytics, digital marketing services & product development services. It has developed its own fintech mobile application "Loan Front" which is used as digital platform to facilitate lending of short-term personal loans. It intends to transfer the said mobile application to their wholly owned subsidiary M/s. Vaibhav Vyapaar Private Limited (VVPL) whereby it will sell & assign the rights, obligations, source codes, development specifications along with the end user manuals and instructions. After the said transfer, it will continue its business of lead generator and continue to earn its revenue through outsourcing agreements, any technical support with regard to the software and similar others. M/s VVPL would use the mobile application / intend to carry on the business in the same manner as that of the applicant.

Applicant has sought an advance ruling on taxability of aforesaid transfer of mobile application.

Applicant's submissions

Transfer of mobile application to M/s. VVPL satisfies all the following condition of 'service by way of transfer of business as a going concern' and hence is exempt under Entry 2 of Notification No. 12/2017-CTR dt. 28.06.2017 ('exemption notification'):

a. the assets must be sold as a part of business,

b. the purchaser intends to use the asset to carry on the same kind of business as the seller;

c. Where only part of the business is sold, it must be capable of separate operation;

d. there must not be series of immediately consecutive transfer.

Discussions by and observations of AAR

The agreement states that the transfer of mobile application was made on slump sale basis. The agreement states that the business proposed to be transferred includes assets, liabilities, employees, intellectual property and any right that the transferor of business may have against third parties with respect to the said business.

The agreement conveys that the transfer of business sought to be sold is a fully functional part of business and the transaction contemplates the transfer of the entire aforesaid business who would not only enjoy rights of the business but shall also takeover liabilities.

It thus appears that there will be a continuity of business, as the said part of business is said to be functional and is decided to be transferred as a whole to a new owner, and thus amounts to transfer of a going concern, of the said independent part of the business.

Ruling of AAR

Transfer of mobile application 'Loan Front' qualifies to be transfer of going concern which is exempted from GST vide entry 2 of exemption notification.

2 ***Rajasthan Housing Board – Rajasthan AAR [2022-TIOL-154-AAR-GST]***

Facts and Issues involved

Facts, Issues involved and Query of the applicant:

Applicant is established and constituted by the Rajasthan State Government u/s 4 and 5 of the Rajasthan Housing Board Act, 1970 ('RHB Act'). It is involved for the framing and execution of housing Schemes subject to the control of the State Government through its Board.

Applicant has sought advanced ruling for:

1. Whether the applicant is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 vide notification no.12/2017-Central Tax (Rate) dated 28.06.2017?

2. Whether the services provided by the Rajasthan Housing Board as governmental authority such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. are exempt as per Entry 4 of Notification no. 12/2017 CTR dated 28.06.2017?

Applicant's submissions

Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the constitution is exempt under entry 4 of the Notification No. 12/2017-CTR dt. 28.06.2017 ('exemption notification')

Above exemption entry has two parts:

1. Services must be provided by Governmental Authority; and

2. That service should be in relation to any function entrusted to a municipality under Article 243W of the constitution.

"Governmental Authority" as defined under para 2(zf) of exemption notification means an authority or a board or any other body, -

(i) Set up by an Act of Parliament or a State Legislature; or

(ii) Established by any Government,

With 90 percent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

Applicant is set up by State Government u/s 4 of RHB Act. State Government is empowered to appoint Chairman and other members of the Board. Administrative cost of the applicant is borne by State Government by making grants. Investment of funds of applicant is also subject to State Government's approval.

In view of Section 60 of RHB Act, all the acts of Applicant are under supervisory control of State Government.

Section 62 of RHB Act, empowers State Government to dissolve applicants' board by publishing the notification in the official gazette. Pursuant to such dissolution, all the properties and funds of the board shall stand transferred to the State Government. Thus, applicant is the instrumentality of State Government and is discharging the statutory functions assigned to it under the statute or entrusted by State Government. In view of above, it is evident that State government exercises 100% control over the Applicant.

Applicant is set up with the object of promoting affordable housing for weaker sections of the society and for upliftment of slums. The said acts are also carried out to fulfill the duties of State Government under the constitution and more specifically under Article 243W of the Constitution of India r.w. 12th Schedule thereof.

It is imperative to State that as per the settled proposition of law it is not mandatory that the functions stipulated in Article 243W of the Constitution are required to be performed only by the municipality; rather the State is empowered to authorize any other local authority to carry out the similar functions. In furtherance of this, RHB has been constituted by the State Government for setting up a specialized body for urban planning and development of townships.

Hon'ble Rajasthan High Court in the case of ***Ram Chandra Kasliwal vs. State of Rajasthan and Ors [2004 (4) WLC 17]*** held that "Article 243W enable the State to endow power & responsibilities on the Municipal Corporations. But no binding directions have been issued to the legislatures to endow powers & responsibilities on the municipalities. It is, however, another matter that the State legislature has conferred the powers & responsibilities on the municipalities through the RM Act. At the same time, it does not mean that the State

legislature could not have conferred similar powers on any other local authority under Article 246(3), read with List II of the seventh Schedule."

Chhattisgarh Advance Ruling Authority in case of M/***s Dhananjay Kumar Singh [2019-TIOL-23-AAR-GST]*** ruled that Chhattisgarh Housing Board is a Government Authority fully owned by the State Government and hence services provided by applicant appear to fall in the list of services in 12th Schedule r.w. Article 243W of the Constitution.

Gujarat AAR in case of ***Gujarat State Road Development Corporation (GSRDC) [2021-TIOL-240-AAR-GST]*** held that applicant is a governmental authority.

Services or functions of RHB such as granting permission for Building construction, approval of Building Map, permission for additional Floor Area Ratio, Services of Leasing of Land etc. is covered under the functions entrusted to a Municipality under Article 243W of the Constitution and therefore, exempt under GST under entry 4 of the exemption notification.

Discussions by and observations of AAR

Applicant is established by State Government. It is constituted by the State Government u/s 5 of RHB Act. RHB is constituted by State Government under Rajasthan Housing Board Act 1970 (Act No. 4 of 1970) and fully controlled by state government, Thus, it is amply clear for us that RHB is Governmental Authority under GST.

Duties of applicant are well defined in Sec 26 and 28 of RHB Act. Services provided them such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. The said services provided by the applicant by their very nature appear to fall in the list of services enumerated under serial no. 1, 2, 4, 9, 12 of 12th schedule of Article 243W of the Indian Constitution, thus qualifying for exemption under entry 4 of exemption notification.

Ruling of AAR

Applicant is covered under the definition of "Governmental Authority" as defined in clause Para 2(zf) of exemption notification and services provided by them is in relation to function entrusted to a municipality under article 243W of the Constitution and hence, exempt from GST vide Entry 4 of exemption notification.

3 ***Eden Real Estates Private Limited – West Bengal AAR [2023 TAXSCAN (AAR) 108]***

Facts and issue involved

Applicant is engaged in construction and sale of residential apartments in the project named ‘Eden City Mahestalla’ wherein customers are given an option to opt for car parking space along with apartment being booked for an additional consideration. Applicant is treating ‘right to use car parking area’ as composite supply of construction services and avails rebate towards land value.

Applicant has sought advance ruling on whether granting right to use car parking area be considered as composite supply of construction services and hence rebate towards land value is available.

Applicant’s Submissions

Granting right to use car parking area is naturally bundled with sale of apartments

and hence is composite supply of construction services.

Press release of the 47th GST Council meeting clarified that preferential location charges are a part of consideration charged for long term lease of land and shall get the same GST treatment as that of long-term lease of land.

Contentions of Jurisdictional officer

Car parking space is granted only to those customers who have opted for such facility and it is apparent that a customer can opt for such right only after purchasing the property. Hence, granting right to use car parking space cannot be considered as composite supply.

Discussions by and observations of AAR

Construction services are entitled for rebate towards land value as prescribed under paragraph 2 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017. Price of the apartment and consideration charged for right to use parking space have been separately mentioned in the allotment letters. Payment schedule for the aforesaid services have also been specified in a separate manner.

Prospective buyers of apartments are given option to avail themselves of the right to use parking space for a separate consideration. The said fact delineates that such supply is altogether a separate service and cannot be treated as naturally bundled with construction service.

Further the press release of 47th GST council meeting provides clarification only in respect of preferential location charges collected in addition to long term lease premium. The said clarification cannot be applied to facts of the applicant who provides car parking space along with sale of residential apartment.

Ruling of AAR

Granting right to use car parking space cannot be considered as composite supply of construction services and hence will be liable to GST at 18%.

GST is payable even if right to use car parking is granted after receipt of completion certificate.

4 *Ridhi Enterprise – Gujarat AAR [2023-TIOL-06-AAR-GST]*

Facts and issue involved

Applicants operates a restaurant wherein it procures the requisite raw materials, services etc. to prepare food and beverages in their kitchen. It also supplies readily available food products over its counter. Customers have choice of consuming the food and beverages (both cooked food and over the counter products) in the restaurant or take away and consuming elsewhere. Element of service i.e. the customers using the restaurant's infrastructure to consume the food and beverages is included in the pricing of the food irrespective of whether the customer choose to consume food in the restaurant or take away for consuming elsewhere.

Applicant has sought an advance ruling for:

1. Whether food and beverages prepared and supplied by Applicant whether consumed by customer in the restaurant or by way of takeaway, qualifies as 'restaurant services' leviable to GST @ 5% with no input tax credit?

2. Whether the readily available food and beverages (not prepared in the

restaurant) sold over the counter by the Applicant to the customer qualifies as 'restaurant services' leviable to GST @ 5% with no input tax credit?

Applicant's Submissions

Food and beverages (whether cooked or readily available over the counter) supplied to the customer (whether consumed in the restaurant or by way of takeaway) qualify as 'restaurant services' classifiable under SAC 996331 and leviable to GST @ 5% without input tax credit for following reasons:

- Definition of 'restaurant services' defined under para 4(xxxii) of Notification No. 11/2017-CTR dt. 28.06.2017 ('service rate notification');
- Para 3.3. of GST Circular No. 164/20/2021-GST dated 06.10.2021 wherein it was clarified that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service;
- Minutes of 23rd GST Council meeting wherein it was decided that all stand-alone restaurants irrespective of being air conditioned or otherwise as well as food parcels or takeaways shall attract GST @ 5% without ITC.

Applicant relied on ***M/s. Kundan Mishtan Bhandar [2019-TIOL-29-AAAR-GST***] in support of its contentions.

Discussions by and observations of AAR

In view of definition of 'restaurant services' under service rate notification, GST Circular No. 164/20/2021-GST dated 06.10.2021 and minutes of 23rd GST council meeting, supply of cooked food (whether consumed in restaurant or by way of take away) qualify as restaurant services taxable at 5% without ITC.

Supply of already cooked/prepared food items. purchased from local market does not cover under 'restaurant service'. It is supply of goods.

Applicant has misinterpreted the ruling in case of ***M/s. Kundan Mishtan Bhandar [2019-TIOL-29-AAAR-GST]*** wherein it was held that supply of sweets, namkeens, cold drinks and other edible items not cooked/prepared in the restaurant but purchased readily eatable from outside and supply over the counter is treated as supply of goods.

Ruling of AAR

1. Food and Beverages prepared and supplied by an applicant for consumption in the restaurant or supplied as a take away, will qualify as a 'restaurant service' leviable to GST @ 5% without ITC.
2. Sale of readily available food & beverages not prepared by applicant and sold over the counter does not qualify as 'restaurant service' and will be taxable supply of goods liable to GST at applicable rates.

CA Rajiv Luthia

CA Keval Shah

INDIRECT TAXES

Service Tax – Case Law Update

1 ***M/s Sumeru Builders v/s Commissioner Of Central Excise And Service Tax,***

Rajkot [2023-Tiol-58-Cestat-Ahm] (Cestat Ahmedabad)

Facts of the Case:

1. M/s Sumeru Builder **("Appellant")** is engaged in the business of building of residential complex. In terms of clarification issued by CBEC bearing no. 108/02/2009-ST-F.No. 137/12/2006-CX.4 dated 29th January, 2009 Appellant was exempted from payment of service tax in capacity of "*Builders*".

2. By virtue of amendmend to Finance Act, the liability to discharge service tax arose on builders with effect from 1st July, 2010. Accordingly, the Appellant obtained ST registration on 6th August, 2010 however did not start paying service tax owing to certain doubts and uncertainty regarding such levy.

3. Appellant received summons during April, 2011 regarding payment of tax on advances received. On being pointed out by department and having explained the levy, the Appellant voluntarily discharged service tax amounting to Rs.13,71,476/- along with interest – Rs.47,925/- and late fees – Rs.2,000/- through various challans. The Appellant also filed the ST returns on 20th April, 2011

4. Acceptance of said liability and payment made thereof was duly communicated to the officers concerned vide the Appellant letter dated 25th April, 2011.

5. Show Cause Notice was issued to the Appellant in January, 2012 without granting the Appellant benefit of cum tax calculation of tax liability in terms of Section 67(2) of the Finance Act, 1994 thereby denying benefit of Section 73(3) of the Finance Act, 1994.

6. The order passed by the Adjudicating Authorities upheld that the benefit shall not be granted since the payment of tax was not voluntary but only when found and pointed by the tax authorities.

Appellant contention:

1. The Appellant has not argued/challenged the service tax liability alleged to have been unpaid. The present Appeal was filed merely with a plea to waive off the penalty imposed vide impugned SCN

denying the benefit Section 73(3) of the Finance Act, 1994

2. The Appellant strongly argued that entire service tax liability along with interest has been duly discharged before the issuance of impugned SCN and thus the benefit of cum duty should not be denied

Decision of Hon'ble CESTAT

1. It was noted that the appellant had discharged the liability to service tax soon after the same was pointed out by revenue.

2. The argument of Appellant that there was some confusion in their mind regarding liability to service tax in terms of CBEC was agreed since they had taken registration immediately after the amendment clause (zzq) and (zzzh) of sub-section 105 of Section 65 of the Finance Act, 1994. This clearly shows that the Appellant had no intention to evade payment of tax.

3. It was held that Section 67(2) clearly provides for treating the amount charged by the service provider as inclusive of service tax payable unless it is specifically mentioned in the documents. In the instant case no evidence has been produced by the revenue to hold that the amount collected by the appellant is exclusive of service tax or it has been separately collected by the appellant.

4. In view of the above, it was held that no merit is found in the department's stand that benefit of Section 67(2) could not be extended. Considering the facts and background of instant case, it was held that Appellant discharged entire service tax along with interest soon after the same was pointed out and in this circumstances the benefit of Section 73(3) should not have been denied

2 ***M/s. Shekhar Resorts Limited (Unit Hotel Orient Taj) Versus Union Of India & Ors. 2023 (1) Tmi 256 - Supreme Court***

Facts of the Case:

1. M/s Shekhar Resorts Limited (Unit Hotel Orient Taj) ("Appellant") is engaged in providing hospitality services and is registered for payment of service tax.

2. The department conducted investigation and thereafter issued impugned SCN demanding service tax under various categories such as Accommodation in Hotels, Inn, Guest House, Restaurant Services, Mandap Keeper services etc

3. However, proceedings under the Insolvency and Bankruptcy Code were already initiated against the Appellant. The chronology of events under IBC proceedings are as follows –

Application filed by Financial Creditors under Section 7 admitted by NCLT, Delhi	11th September, 2018
Moratorium under Section 14 of IBC commenced from	**11th September, 2018**
CoC approved the resolution plan	4th June, 2019
Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 introduced u/s 125 of Finance Act	1st September, 2019
Last date to made application under SVLDR scheme	31st December, 2019
Application made by Appellant under SVLDR scheme and was issued Form No. 1	27th December, 2019

Designated Committee issued Form 3 requiring the Appellant to pay Rs.1,24,28,500/- under the scheme	25th February, 2020
Appellant to make said payment under SVLDR on or before	30 days (extended upto 30th June, 2020 due to the CoVID – 19 pandemic)
NCLT approved resolution plan vide order dated	24th July, 2020
Moratorium ended and the insolvency proceedings came to end as on	**24th July, 2020**
Appellant conveyed the conclusion of IBC proceeding and its willingness to discharge tax as ascertained by the Designated Committee vide letter dated	9th October, 2020
Joint Commissioner vide its letter rejected the request of Appellant by stating that the payment ought to have been made within the time specified under the scheme	19th October, 2020

4. Since the Appellant could not obtain permission for payment of dues post lifting of the moratorium, the appellant approached the Hon'ble Allahabad High Court by way of Writ petition. By the impugned judgment and order the Hon'ble High Court dismissed said writ petition on the grounds that

   i) the High Court shall not issue a direction contrary to the Scheme;

   ii) the relief sought cannot be granted as the Designated Committee under the Scheme is not existing.

5. Aggrieved by said decision of Hon'ble Allahabad High Court the Appellant filed Appeal before the Hon'ble Supreme Court seeking relief in this matter

Appellants Contentions

1. The Appellant submitted that during the moratorium period, no payment could have been made as per the provisions of IBC. Thus, at the time when Form No.3 was issued and even during the period under the Scheme 2019, the appellant was subjected to the rigor of the provisions of the IBC by virtue of the moratorium period which ended only on 24th July, 2020 i.e. when the NCLT approved the Resolution Plan.

2. Thus, the appellant bonafidely could not deposit settlement dues, on or before 30th June, 2020 on account of operation of law. It is contended that if any payment would have been made during the mortarium period the same would have been in breach of the provisions of the IBC.

3. Appellant specifically mentioned that as per the Resolution Plan, Applicant is required to deposit the amount payable to creditor in an escrow account within 6 months from the effective date and that said deposit shall be treated as effective payment to the relevant Operational Creditor. In instant case, effective date is 24.07.2020, the date on which the Resolution Plan was approved by the NCLT. So, Service Tax dues along with other statutory dues were deposited in an escrow account on 8th January, 2021 before the expiry of the period of six months.

4. The Appellant submitted that Designated Committee under the Scheme was formed as per Rule 5 of the Scheme,

2019 and comprised of the Joint Commissioner and the Commissioner who are officers associated with the offices of Respondent in present case. That the Designated Officers continue to act as the Designated Committee under the Scheme till the completion of the proceedings under the Scheme. Also, the DC under the Scheme is being constituted on a need basis to comply with the orders of the courts across the country. That in many cases the DC rejected the applications under the Scheme, 2019 erroneously and the different courts set aside the decisions of the DC after 30.06.2020 and directed the DC to consider the case of the respective applicants under the Scheme, 2019. It is submitted that to reconsider the cases pursuant to the orders passed by the courts/High Courts, the CBEC issued the instructions dated 17.03.2021 allowing for manual processing of declarations under the Scheme by the respective DC. It is submitted that therefore even after 30.06.2020 the respective DC carried out their functions under the Scheme, however by manual processing.

5. It was submitted that the reasoning given by the Hon'ble High Court that the Designated Committees are not in existence after 30.06.2020 and therefore the appellant is not entitled to any relief, may not be accepted, as even after 30.06.2020 and even as per the instructions issued by the CBEC, the respective Designated Committees continued to function and processed the declarations manually.

6. Making the above submissions and owing to the legal disability, it was prayed that the instant appeal be allowed and the payment of Rs.1,24,28,500/- be appropriated towards settlement dues under the Scheme 2019 by issuance of discharge certificate in this matter.

Decision of Hon'ble Apex Court

1. On going through the facts of present case the Hon'ble Apex Court was of the opinion that the short question which is posed for consideration before this Court is, whether,

   i. when it was impossible for the appellant to deposit the settlement amount in view of the bar and/or the restrictions under the IBC, the appellant can be punished for no fault of the appellant?

   ii. Can the appellant be made to suffer for no fault of its own, and be rendered remediless and denied the benefit/relief though it was impossible for the appellant to carry out certain acts, namely to deposit the settlement amount during the moratorium?

2. It was thus held that in light of the law laid down by this Court in various decisions to the facts of the case on hand, the Appellant cannot be punished for not doing something which was impossible for it to do. There was a legal impediment in the way of the appellant to make any payment during the moratorium. Even if the appellant wanted to deposit settlement amount within the stipulated period, it could not do so in view of the bar under the IBC as, during the moratorium, no payment could have been made. In that view of the matter, the appellant cannot be rendered remediless and should not be made to suffer due to a legal impediment which was the reason for it and/or not doing the act within the prescribed time. The Courts are

meant to do justice and cannot compel a person to do something which was impossible for him to do.

3. So far as the other ground given by the High Court, that the DC are not in existence, is concerned, it is required to be noted that the CBCE has issued a circular that in a case where the High Court/courts have passed an order setting aside the rejection of the claim under the Scheme after 30th June, 2020, the applications can be processed manually. In many cases the High Courts have remanded the matter to the Designated Committees which consist of the officers of the Department and the applications thereafter are processed manually.

4. It was thus held that the appellant was otherwise entitled to the benefit under the Scheme as the Form No.1 submitted by the appellant has been accepted, the Form No.3 determining the settlement amount has been issued, the High Court has erred in refusing to grant any relief to the appellant as prayed.

5. By allowing the present appeal, the impugned judgment and order passed by the High Court was quashed and set aside. The payment of Rs.1,24,28,500/- already deposited by the appellant was directed to be appropriated towards settlement dues under the SVLDR scheme and the appellant be issued discharge certificate.

3 *Drishty Communication Private Limited Versus C.c.e. & S.t. – Rajkot (2023 (1) Tmi 297 - Cestat Ahmedabad)*

Facts of the Case:

1. M/s DRISHTY COMMUNICATION PVT LTD (**"Appellant"**) is engaged in the business of providing advertising service to get customized and was registered as the "The Indian Newspaper Society" (INS).

2. The Appellant was remitting 85% of total amount received from its customers on getting space/time from media agencies or news papers or various publications. Remaining 15% of the amount was being retained by Appellant as commission. Appellant had duly paid tax on Commission received by it.

3. Show Cause Notice was issued to the Appellant seeking clarification as to why the services provided by it should not be classified under the category of "Advertising Agency service" and thereby taxable under Section 65(105)(e) of the Finance Act, 1994

4. Impugned SCN sought to levy tax on the payments received by the Appellant from its sub-agents for purchase of time and space for advertising by alleging that the same falls under the category of Advertising Service.

Arguments by Applicant:

1. It was alleged that though the services provided by one of Appellants sub agents M/s. Surya Publicity, to their client/customers were exempted by way of Exemption Notification, the services provided by Appellant to M/s. Surya Publicity were not exempted as the appellant was not exempted under said notification.

2. In response to this it was argued that Appellant has not provided any services to their client / sub agents. It has been argued that it is only the sub agents who provide services to their client and since Appellant is not providing any service, the question of levy and payment of any Service Tax does not arise.

3. Further, the Appellant contended that it was merely acting as an intermediary between the sub agents and the advertising agency/platforms. The Appellant was working on commission basis and thus discharging service tax thereon.

4. The Appellant also relied on Clarification issued by CBEC vide Circular No. 96/7/2007- ST dated 23rd August, 2007 wherein following has been clarified:

Ref. Code	Issue	Clarification
004.01/ 23.08.07	Persons/agencies canvass advertisements for publishing, on commission basis. Such persons/ agencies do not provide any other services like making preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for publicshing on a commission basis by persons/agencies is classifiable as Advertising Agency Service [section 65 (105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105) (e) such services are liable to service tax under business auxiliary service [section 65(105) (zzb)].

5. Reliance was also placed in decision of tribunal in case of Adbur Pvt. Ltd.- 2017 (5) GSTL 334 (Tri. – Del.) and H. K. Associates – 2009 (14) STR 543 (Tri.- Del.)

Decision of Hon'ble CESTAT

1. After hearing both parties it was held that in the instant case M/s. Surya Publicity was providing Advertising Services to its client. M/s. Surya Publicity was not discharged any service tax liability as the same was not liable for the levy of Service Tax.

2. M/s. Surya Publicity was purchasing time and space in the newspaper / media companies through the Appellant. The amount paid by M/s. Surya Publicity to the appellant for purchase of time M/s. Surya Publicity to the appellant for purchase of time and space was sought to be tax by revenue under the category of Advertising Service.

3. It is seen that no evidence has been placed from record to establish that the appellant were providing "Advertising Agency Services." The role of appellant was limited to being an ***intermediary in the sale of space/ time for media agency on commission basis.***

4. Owing to the Tribunal decision in case of H. K. Associates which has also been upheld by the Hon'ble Supreme Court, and the clarification issued by CBEC, the impugned SCN was set aside and the Appeal was consequently allowed.

CS Makarand Joshi

CORPORATE LAWS
Case Law Update

Companies Act, 2013

In the matter of Sonasuman Constech Engineers Private Limited (Company)

Adjudication order passed by Registrar of Companies ("ROC") Patna, dated 04.01.2023

Facts of the case

- Section 129(1) of the Companies Act, 2013 ("**the Act**") provides that the financial statements of a company must give a true and fair view of the state of affairs of inthe company.
- Further, it states that financial statements must comply with the accounting standards notified under section 133 of the Act and must be in a form as provided for in Schedule III to the Act.
- Section 143(3)(e) of the Act provides for a requirement that the auditor must state in his report whether, in his opinion, the financial statements comply with the accounting standards;
- As per Section 137 of the Act, a copy of the financial statements along with all documents which are required to be or attached to such financial statements, duly adopted at the annual general meeting ("**AGM**"), must be filed with ROC within 30 days of AGM in e-Form AOC-4.
- ROC Patna, while scrutinising AOC-4 filed by Sonasuman Constech Engineers Private Limited (the "**Subject Company**"), observed that the auditors of the Subject Company have failed to fulfil their duties as required under Section 143 of the Act for the Financial Years ("**FY**") 2017-18, 2018-19 and 2019-20.
- Therefore, ROC Patna issued a show cause notice ("**SCN**") for default under Section 143 of the Act but did not receive any reply from the respective auditors.

Violations Observed by ROC in Show Cause Notice

The Auditor has failed to comment in auditor's report on certain violations made by the Subject Company, as required under section 129 read with section 133 of the Act and Schedule III to the Act, hence affecting the true and fair view of the state of affairs of the Subject Company:

The violations observed were as under:

For F.Y.	Violation	Not complied with
2017- 2018, 2018-2019, 2019-2020	Failed to disclose the name of the Related Party and nature of the related party relationship where control exists irrespective of whether there has been a transaction or not – As per AS-18	Accounting Standard (AS)-18 – Related Party Transaction
2017-2018, 2018-2019	As per the financial statements the Subject Company had long-term Borrowings amounting to ₹ 51,80,000/- and ₹ 1,13,79,970.50 for the F.Y 2017-18 and F.Y 2018-19 respectively but has failed to sub-classify such borrowings as secured or unsecured and also the nature of security of such borrowings has not been disclosed.	Schedule III to the Act
2018-2019	The Subject Company has shown advances to suppliers under the head of short-term loans and advances amounting to ₹ 40,746.28 however the Subject Company has failed to sub-classify such short-term loans and advances as secured/unsecured. Thus, in this case, the auditor has failed to comment on the classification of the trade payables in his audit report.	Schedule III to the Act
2018-2019, 2019-2020	Missed to disclose in notes to accounts – Break-up of each type of share capital – issued subscribed, paid-up/not fully paid up, face value, reconciliation of the number of shares which are outstanding – at the beginning and at the end of the reporting period	Schedule III to the Act
2018-2019, 2019-2020	Shown advances from relatives and customers under the head long-term borrowings in the financial statements amounting to ₹ 1,13,79,970.50/- • Such advances are not separately classified as advances from relatives and others; • Nor sub-classified as secured/unsecured and the nature of security of loans and advance	Schedule III to the Act
2019-2020	The Subject Company has not disclosed for each class of equity share capital, shareholders holding more than 5% of shares specifying the number of shares held.	Schedule III to the Act

Reply on Show Cause Notice by the Subject Company and Officer in default:

- The relevant auditors to whom the SCN was sent have not replied to the SCN dated 05.12.2022 issued by ROC, Patna for explaining such violations.

Held

- ROC held that it has not received any reply to the SCN, issued by it on 05.12.2022, sent to the auditors of the Subject Company.
- It observed that the provisions of section 143 of the Act have been contravened by the auditors and hence they shall be liable for penalty under section 450 of the Act for the FYs 2017-18, 2018-19 and 2019-20.
- As per records, the Subject Company was categorised as a small company and therefore, the benefits of a small company are extended to the auditors while adjudicating the penalty.
- The penalty imposed on the auditor is as follows:

Violation of section	Penalty Imposed on	Period of default	Penalty Imposed Section 450 read with Section 446B of the Act
Section 143	Shri Ravikant Kumar- Kumar Vivek & Associates (auditors of the company for FY 2017-18 and FY 2018-19)	F.Y 2017-18 F.Y 2018-19	[10,000 * 2= ₹ 20,000] reduced to ₹ 10,000/-
	Shri Basant Kumar Jaiswal- Basant Jaiswal & Associates (auditors of the company for FY 2019-20)	F.Y 2019-20	[10,000 * 1= ₹ 10,000] reduced to ₹ 5,000/-

In the matter of Hotel Holy Crest Bodhgaya Private Limited

Adjudication Order passed by Registrar of Companies ("ROC") Patna, dated 23.12.2022

Facts of the case

- M/s Holy Crest Bodhgaya Private limited (the "**Subject Company**") is a company incorporated under the provisions of the Companies Act, 2013 (**the** "**Act**"), having its registered office situated in Patna, Bihar under the jurisdiction of ROC Patna.
- In the given case, the Subject Company has not filed its annual returns since its incorporation in the year 2014. Therefore, ROC Patna did not have any record regarding the number of board meetings taken place.
- ROC Patna issued Show Cause Notice ("**SCN**") to the Subject Company for default under Section 173(1) of the Act vide letter dated 24.11.2022.

Violations Observed by ROC in Show Cause Notice

- Section 92 (1) (f) of the Act imposes a requirement upon every company to prepare and file a return with the ROC in the prescribed form i.e., MGT-7, containing particulars as at the end of the financial year regarding the items mentioned therein – one of such details being the meetings of members or class thereof, board and its various committees along with the attendance details of such meetings.
- In the given case, the Subject Company had not filed its annual returns since its incorporation in the year 2014. Therefore, ROC Patna did not have any record regarding the number of board meetings taken place.

- Further, Section 173(1) of the Act requires that "*every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.*"

- Taking a cue from the non-filing of annual returns by the Subject Company over all the years since incorporation, ROC assumed that the Subject Company has not conducted the board meetings and Subject Company contravened the provisions of Section 173 of the Act and accordingly sent the SCN to the Subject Company and its directors.

Reply on SCN by the Subject Company and officer in default

- The Subject Company and its directors have not replied to the SCN dated 24.11.2022 issued by ROC, Patna for explaining such violations.

Held

- The provisions of section 173(1) of the Act has been contravened by the Subject Company and its directors/officers and therefore they are liable for penalty under section 450 of the Act for the Financial Years 2014-2015 to 2021-2022.

- The paid-up capital of the Subject Company on incorporation was Rs 1,00,000/- but since no details of turnover have been provided since incorporation i.e., non-filing of Annual Returns, the benefit of being a small company has not been extended to the Subject Company for adjudicating the penalty.

Nature of Default and violation of section	Penalty imposed on under section 450 of the Act	Penalty prescribed as per section 450 of the Act	Total Penalty imposed
Non-holding of Board meetings in Financial Years 2014-15 to 2021-22 as required u/s 173 (1) of the Act	On Subject Company	₹ 10,000/-	₹ 10,000 * 8 years= ₹ 80,000/-
	Shri Prem Sagar	₹ 10,000/-	₹ 10,000 * 8 years= ₹ 80,000/-
	Smt Prabhawati Devi	₹ 10,000/-	₹ 10,000 * 8 years= ₹ 80,000/-

In the matter of Kosher RealHome Private Limited.

Adjudication order Passed by the Registrar of Companies ("ROC") Delhi dated: 16.11.2022

Facts of the case

Kosher RealHome Private Limited (the "**Subject Company**") is incorporated under the provisions of the Companies Act, 2013 (the "**Act**"), having its registered office situated in Delhi under the jurisdiction of ROC, NCT of Delhi and Haryana.

The Subject Company is having a paid-up share capital of ₹ 1,00,000/- and it's turnover for the Financial Year ("**FY**") 2021-22 was Rs 21,200/-. Hence, the Subject Company was

a small company within the ambit of section 2(85) of the Act.

It appears that it had entered into some scheme of arrangement with another company - IceGlory Communication Private Limited, wherein IceGlory Communication Private Limited was the transferee company.

While scrutinising e-form AOC-4, ROC observed that at the time of filing of form AOC-4, the financial statements of the transferee company were attached instead of the financials of the Subject Company.

ROC issued shown cause notice ("**SCN**") to the Subject Company and the officer in default for adjudication of the matter.

Violations Observed by ROC in SCN

One of the directors of the Subject Company was authorised by the Board of Directors for certification of E-Form AOC- 4.

At the time of filing of form AOC-4, the financial statements of the transferee company were attached instead of the financials of the Subject Company.

Rule 8 of Companies (Registration Offices and Fees) Rules, 2014 deals with the authentication of documents including e-forms.

As per said Rule, the director authorised by the Board of Directors of the Subject Company who is signing the form and the professional who is certifying the form shall be liable for the correctness of the content of thee-Form AOC-4 and ensuring that complete and legible attachments are enclosed to the same.

Reply on the part of the Subject Company and officer in Default

The Subject Company had, at the time of filing e-Form AOC 4 dated 11.10.2022, attached the financial statements of IceGlory Communication Private Limited i.e, its transferee company.

The default was admitted to by the Subject Company and the officer in default in its reply to the SCN dated 18.10.2022.

Held

The violation made was of Rule 8 of the Companies (Registration Offices and Fees) Rules, 2014 i.e., Authentication of Documents it reads as under:

(7) It shall be the sole responsibility of the person who is signing the form and the professional who is certifying the form to ensure that all the required attachments relevant to the form have been attached completely and legibly as per the provisions of the Act and rules made thereunder to the forms or applications or returns filed.

Thus, the penalty is hereby levied on such authorised signatory of the Subject Company who had signed the e-form AOC-4for violation of Rule 8 sub-rule (3) of the Companies (Registration offices and Fees) Rules, 2014 under Section 450 of the Act.

The Subject Company being a small company, there was no certification requirement from a professional.

The Subject Company being a small company, and the benefit of the same is extended for the same while adjudicating the penalty under section 446B of the Act.

Violation of section	Penalty imposed on	Penalty specified under section 450 of the Act	Penalty levied under section 450 read with section 446B of the Act
Rule 8(3) of the Companies (Registration offices and Fees) Rules, 2014	Authorised signatory	Rs 10,000/-	₹ 10,000/- reduced to ₹ 5,000/-

SEBI

Order of the SEBI Adjudicating Officer

Name of the Case: Adjudication order in the matter of RAP Media Ltd

Facts of The case

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had carried out thematic/offsite monitoring of RAP Media Limited (hereinafter referred to as "**RML**"/"**the Company**"/"**Noticee**"), a company listed with BSE, for the period January 2021 to December 2021 (hereinafter referred to as the "**Inspection period**"). On investigation, SEBI found that Noticee has a website viz. www.rapmedialtd.co.in and as on March 31, 2022, the Noticee did not disseminate requisite information on the website, except for the following details, "*Annual report till the FY 2018-19, Shareholding pattern till the FY 2018-19, and Quarterly results till March 2021*". SEBI also observed that that details of the new website were not intimated to the exchange. BSE, upon observing that the website of the Noticee was not functional, had issued a warning letter to the Noticee for non-compliance with provisions of Regulation 46 of SEBI Listing Obligations and Disclosure Requirements, 2015 ("**LODR Regulations**") on February 23, 2022, in terms of SEBI circular no SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020, BSE, thereby allegedly violating Regulation 46(1), 46(2)(a), 46(2)(j) to 46(2)(s) and 46(2)(u) to 46(2)(z) of LODR Regulations..

Further, SEBI also found that Noticee did not issue a notice of meetings of the Board of Directors in any of the newspapers, though five Board meetings were held on August 14, 2020, September 5, 2020, October 7, 2020, November 14, 2020, and February 14, 2021, thereby allegedly violating Regulation 47 of the LODR Regulations.

SEBI during the investigation found that BSE had sought clarification on October 14, 2021, from Noticee with reference to significant movement in price in order to ensure that investors have the latest relevant information about the Noticee and to inform the market so that the interest of the investors is safeguarded. The Noticee did not give any response on the same, thereby allegedly violating Regulation 30(10) of the LODR Regulations.

From the audited financial statements for the year ended March 31, 2020, and March 31, 2021, it had been noted that Regulation 24A of the LODR Regulations pertaining to secretarial audit and secretarial compliance report was not applicable to the Noticee. However, the Board of Directors of the Noticee had appointed a secretarial auditor to carry out a secretarial audit under provisions of Section 204 of the Companies Act, 2013. The secretarial auditor had given certain observations in the audit report. SEBI also observed, from the Secretarial audit report dated September 7, 2021, for the FY 2020-21, that the website of the Noticee was not

showing full disclosures as required under the LODR Regulations. The website was not functional for a considerable period of time i.e. at least till March 10, 2022. SEBI further observed that the new website created by the Noticee was not intimated to the Exchange, until the exchange issued an advisory letter to the Noticee on February 23, 2022.

Charges levied

Noticee has failed to comply with the provision of Regulation 46(1), 46(2)(a), 46(2)(j) to 46(2)(s) and 46(2)(u) to 46(2)(z) of the LODR Regulations, Regulation 30(10) of the LODR Regulations and Regulation 47 of the LODR Regulations and hence is subject to penalty under Section 23E of Securities Contract Regulation Act, 1956

Arguments made by Appellant with respect to allegations made by SEBI

1. **Website was attacked by Malware :** Noticee, vide its reply dated March 10, 2022, submitted to the exchange that the official website of the Noticee viz. www.rapmedia.co.in was attacked by malware and therefore the website was discontinued and that a new website of the Noticee viz. www.rapmedialtd.co.in has been made active. The Noticee stated that the management of the Noticee, with the help of an outside consultant was taking necessary steps to update the newly launched website of the Noticee and was in the process of uploading necessary information and other relevant data. Noticee further submitted that due to the malware on the website of the Company, the entire data was erased and hence most of the data was not visible. Noticee further submitted that the Noticee had to build a new website completely and the entire data was collated to be uploaded. It took a certain time to upload the entire data on the website of the Noticee and hence only for an intermittent period, the website of the Noticee had some disclosures lost which was attributable to the malware attack which is a completely technical issue. Noticee further submitted that the Noticee's old website i.e. www.rapmedia.co.in was functional but it came under a malware attack due to which the backend data was lost. During this period the Noticee received a Notice dated February 23, 2022, from BSE Limited, about the non-maintenance of the website. On 10 March 2022, the Noticee replied to the said notice wherein it was abundantly informed to BSE that the website was under malware attack. Further, the Noticee also intimated to BSE in the same mail that a new website www.rapmedialtd.co.in was made active and the management was taking steps to update all the required information on the website. In respect of the Secretarial Auditors Report dated September 07, 2021, the said remarks mention that the website of the Noticee is not showing full disclosure as per the LODR Regulations. The remarks firstly establish the fact that the Noticee had a functional website and only some disclosures were not disclosed. The disclosures which were "not applicable" to the Noticee were not displayed on the website and all other disclosures as mentioned in the table (mentioned in the reply letter) were disclosed.

2. **With respect to clarification sought by BSE on the alleged price movement in the stock price of Noticee :** Noticee submitted that it is alleged that clarification was sought by BSE on October 14, 2021, through email. However, the Noticee did not receive any such email and hence it could not

submit any reply at the relevant time. The Noticee further stated that without prejudice to the same, it is submitted that as a policy the Noticee does not involve itself in any stock price-related matters and does not comment on the market price and the Noticee had nothing to comment on the alleged price movement. In view of the same, Noticee submitted that there was no occasion for the Noticee to revert to the email as the same was not received. Hence there was no non-compliance. Noticee further submitted that due to the difficult market situation the Noticee had not been able to generate any revenues for the last 2 years. Further, the main source of revenue of the Noticee was rent for a property. However, during Covid, due to certain disputes, the rent was discontinued and the Noticee had no cash flow for the last two and half years. The Noticee was facing hardship due to the same even today (as on the date of reply) as the revenue had stopped due to disputes. Despite the same, the Noticee had been compliant with various provisions of the Companies Act, 2013 as well as LODR Regulations. Noticee further submitted that the said non-compliance had not caused any loss to investors nor there had been any gain to the Noticee. Noticee also stated that the Noticee had also taken remedial actions wherever required and was fully compliant.

3. **Non-publication of newspaper advertisement:** In respect of the non-publication of the newspaper advertisement, Noticee submitted that the same was on account of the Covid Period and the sad loss of life of the Company Secretary during those times. Further, in this regard, Noticee placed reliance on the judgement of Hon'ble Securities Appellate Tribunal in *Re Kesar Petro products Limited vs BSE* in Appeal No. 432/2022, dated August 10, 2022; on the judgement of Hon'ble Securities Appellate Tribunal in *Re Sterling Investments vs S.h-73I* in Appeal No. 388/2004, 388A/2004 & 388B/2004 dated September 5, 2005, and on the judgement of Hon'ble Supreme Court in *Hindustan Steel Limited vs State of Orissa* [AIR (1970) SC 523].

Arguments made by SEBI

1. **Website was attacked by Malware:** With regard to the alleged violation of Regulations 46(1) and applicable provisions of 46(2) of LODR Regulations by the Noticee, SEBI noted that the Noticee was having a website viz. www.rapmedia.co.in. SEBI further noted all the submissions made by Noticee. SEBI further stated that from the records available and from the submissions made by the Noticee, the intimation by the Noticee to BSE, vide its letter dated March 10, 2022, regarding the malware attack on the old website and on issues faced by it in maintaining a functional website was made post receiving an advisory letter from BSE dated February 23, 2022. On perusal of the said letter dated March 10, 2022, of the Noticee to BSE, SEBI stated that the Noticee, in its submissions, did not mention the date from when the old website was withdrawn due to the cited malware attack. Further on the functionality of the old website as per the applicable clauses of 46(2)(a), 46(2)(j) to 46(2)(s) and 46(2)(u) to 46(2)(z) of LODR Regulations, SEBI noted that the Noticee in its reply to the Show Cause Notice has made a general submission on the information disseminated on the old website, however, the Noticee has not provided

the relevant documentary evidence of the old website viz. www.rapmedia.co.in being functional with information being disseminated as required under said LODR Regulations. SEBI further noted that the Secretarial audit report of the Company dated September 7, 2021, for the FY 2020-21, states that the website of the Noticee was not showing full disclosures made by the Noticee, as required under the LODR Regulation. SEBI further highlighted that Noticee opted for services of a different provider in this regard and the takeover from the old service provider had delayed the updation of the website for quite some time. Therefore, it is evident that the old website was not updated with full requisite disclosures during the year FY 2020-21. SEBI further highlighted that Noticee has neither provided the date nor the relevant documentary proof from when the new website was fully functional and started disseminating the requisite information. SEBI stated that Noticee has made submissions on the technical difficulties it faced in maintaining a functional website and has stated that the website was not functional only for a short span of time. However, it needs to be noted that the website was not having the requisite disclosures for a considerable period of time both in FY 20-21 and FY 21-22. Further, the Noticee has neither submitted the date nor the evidence to substantiate the submission of maintaining a functional website with requisite disclosures made, even despite the grant of time to submit the proof of documents. Therefore, it is established that the Noticee did not maintain its website, and applicable disclosures were not made, which violated Regulation 46(1), 46(2)(a), 46(2)(j) to 46(2)(s) and 46(2)(u) to 46(2)(z) of the LODR Regulations.

2. **Non-publication of newspaper advertisement:** With regard to the alleged violation of Regulations 47 of the LODR Regulations, SEBI noted submissions made by Noticee. SEBI stated that the provisions pertaining to the publication of newspaper notices have been omitted by SEBI (Listing Obligation and Disclosure Requirements) (Second Amendment) Regulation, 2021, with effect from May 05, 2021. SEBI further stated that the requirement to publish notice of the meeting of the Board of Directors was applicable during the period counting from July 01, 2020, to March 31, 2021. On the basis of the annual report of the Noticee for the FY 2020-21, it was observed that during the period July 01, 2020, to March 31, 2021, five Board meetings were held on August 14, 2020, September 05, 2020, October 07, 2020, November 14, 2020, and February 14, 2021. As per the intimation filed with the exchange by the Noticee, in the meeting dated November 14, 2020, financial results for the quarter and half year ended September 2020 were discussed. However, no publication was made for the same. In view of the above, it is established that the Noticee violated Regulation 47 of LODR Regulations.

3. **With respect to clarification sought by BSE on the alleged price movement in the stock price of Noticee**: With regard to the alleged violation of Regulations 30(10) of LODR Regulations SEBI noted submissions made by Noticee. SEBI also noted that BSE vide letter dated October 14, 2021, had sought clarification by email from the Noticee with reference to significant movement in the price of shares as an Additional Surveillance Measure (ASM) Framework and has also updated the same on its website on October 14, 2021, at 12:09:00 under

the head corporate announcements. The exchange also submitted a copy of an email sent to Noticee. In this regard, from the documents available on file, it is to be noted that SEBI had sought clarification, vide email dated April 06, 2022, on the action taken by the exchange in this matter and advised to submit a report on the price movement to SEBI. BSE, vide email dated April 21, 2022, had replied that, on seeking clarification from the Noticee, no reply was received. Further, it stated that at the end of the day, a market-wide circular was issued and the Noticee's name was included in the list of companies whose reply is awaited. SEBI stated that as per regulation 30(10) of LODR Regulations, it is the responsibility of companies to reply to all the queries raised by the stock exchange. SEBI further stated that proof of delivery of the email to the Noticee has not been provided by BSE. Therefore, it is not clear if the Noticee received the email sent by BSE. However, SEBI stated that it can be seen that BSE had updated the letter sent to the Noticee on the website on October 14, 2021, at 12:09:00 under the head corporate announcements. Further, at the end of the day, a market-wide circular was issued by BSE and Noticee's name was included in the list of companies whose reply is awaited. BSE had communicated through the website and vide a circular that the Noticee has to reply to the query raised by the Exchange on the significant price movement in the price of the security. Even if the benefit of the doubt is extended to the Noticee that the email was not received in the official email id of the Noticee from BSE, the Noticee was required to act on the information provided on the website of BSE and based on the circular issued. In view of the above, violation of regulation 30(10) of LODR Regulations by the Noticee stands established.

Held

Penalty of ₹ 500,000 for violation of Section 23E of the Securities Contract Regulation Act, 1956.

Securities Appellate Tribunal ("**SAT**") vide its order dated 03.05.2021 in ***Suzlon Energy Ltd. and Anr. vs. SEBI (Appeal No. 201 of 2018)*** power of SEBI to levy penalty under Section 23E of the Securities Contract Regulation Act, 1956 was turned down. This SAT order has been challenged by SEBI before the *Hon'ble Supreme Court in Civil Appeal no. 4741 of 2021*. Stay application and appeal is pending before *Hon'ble Supreme Court*. SEBI further stated that in the matter of *M/s NDTV vs. SEBI (Appeal no. 358 of 2015)* dated August 07, 2019, and *Oasis Securities Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018)*, dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under Section 23E of of the Securities Contract Regulation Act, 1956on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of these proceedings is to determine if Noticee has violated provisions of securities laws and if so impose the penalty. However, the enforcement of this order shall be subject to the outcome of the aforesaid appeal before the *Hon'ble Supreme Court of India*.

Order of Adjudicating Officer of Securities and Exchange Board of India

Name of the Case: In the matter of Vivimed Labs Limited

Facts of the case

1. Securities and Exchange Board of India (hereinafter referred to as

"**SEBI**") on receiving a reference from the National Stock Exchange of India Limited (hereinafter referred to as **"NSE"**) pertaining to Vivimed Labs Ltd (hereinafter referred to as **"Vivimed/ the "Company"/Noticee"**), initiated an examination into the fundraising activities carried out by Noticee in its material subsidiary, Vivimed Labs (Mascarence) Limited (now known as Uquifa Sciences (Mascarence) Ltd) (hereinafter referred to as "**Uquifa Sciences"/"USML"**) between September 25, 2017, to March 2019. The period of the aforementioned examination of SEBI was from September 25, 2017, to November 18, 2020 (hereinafter referred to as the **"Examination Period"**).

2. Noticee had carried out fundraising in its wholly-owned subsidiary USML. The events of fundraising in the USML are as mentioned hereunder:

Sl. no	Date of investment	Amount of investment	Mode of investment	Comments
1	September 25, 2017	USD 42.5 Million	Compulsory Convertible Preference Shares (hereinafter referred to as "CCPS")	A press release was made specifying the investment amount and no further details were specified. The press release mentioned that the investment was made in USML which is a holding entity for the Company's API business entity. UQUIFA according to the press release, accounted for 60% of the Company's total consolidated revenue.
2	December 29, 2017	USD 7.5 Million	CCPS	A press release was made specifying the investment amount and no further details were specified.
3	March 28, 2019	USD 18.5 Million	Optionally Convertible Debentures (hereinafter referred to as "OCDs")	No disclosure was made for the aforesaid transaction.

3. In addition to the above, Noticee entered into:-

Shareholders and Share Subscription Agreement dated September 26, 2017 ("**Shareholder's Agreement**");

(ii) Agreement for additional investment in December 2017; and

(iii) Debenture Subscription agreement dated March 27, 2019.

Thereafter, USML, was disposed off in 2020 due to the triggering of terms of the Shareholders' Agreement. Further to this, Noticee sought approval of shareholders for resultant dilution in shareholding of Noticee in USML and its 8 wholly owned subsidiaries as a result of the intention of investor's (i.e., Orbimed Asia III Mauritius Limited) to convert OCDs. Notice was issued in order to comply with

obligations laid down in Regulation 24(5) and Regulation 24(6) of the LODR Regulations. The said approval was sought from shareholders through a postal ballot notice dated July 25, 2020, and some of the aforementioned details regarding fundraising activities in USML were specified in the said postal ballot notice.

4. Upon receiving the postal ballot notice, a complaint was made by a shareholder of Noticee regarding alleged non-disclosure by the Company with respect to the above-mentioned fundraising. The complaint dated November 11, 2020, *inter-alia*, alleged violation of section 102 of the Companies Act, 2013, by Noticee due to non-disclosure of the following matters in the explanatory statement of resolution:-

   (i) issue price of a share of USML to Orbimed Asia III Mauritius limited and

   (ii) original issue price of share USML to Vivimed Labs Mauritius Ltd.

5. The aforementioned complaint was forwarded to NSE for examination. NSE, after examining the complaint, referred the matter to SEBI vide an exceptional report. NSE had raised reference to the events of fundraising at USML and their non-disclosure or inadequate disclosures in the said report. In this regard, SEBI further sought details from Noticee regarding details of disclosure made in relation to the aforementioned fund-raising activities carried out by Noticee.

6. In light of the above observations, SEBI alleged that USML was a material subsidiary of Noticee. On the basis of the foregoing observations and findings, it was alleged that since USML was a material subsidiary of Noticee, the events and details of fundraising at the material subsidiary including details of the Shareholder's agreements as enumerated above, were needed to be disclosed within 24 hours of the occurrence of the event to the stock exchanges.

Charge

Noticee had violated Regulation 4(1)(d), 4(1)(e) of SEBI Listing Obligations and Disclosure Requirements, 2015 ("**LODR Regulations**") and Regulation 30(2) read with Regulation 30(6) and Regulation 30(9) of the LODR Regulations read with clause 2 of the Listing Agreement and read with SEBI Circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015 ("**SEBI Circular**"), and would be liable for penalty under Section 23E of the Securities Contract Regulation Act, 1956.

Arguments/submissions by Noticee

1. **USML is not a material subsidiary of the Noticee in terms of Regulation 16(1)(c) of the LODR Regulations:** Noticee submitted that USML was incorporated on 29 August 2017. As per the definition of the material subsidiary as stated in Regulation 16(1)(c) of the LODR Regulations, the income or net worth of a subsidiary alone (or income or net worth of the subsidiary calculated independently or on a standalone basis) and not on a consolidated basis of all wholly owned subsidiaries, has to be considered for the immediately preceding accounting year, for determining whether it is a material subsidiary or not. However, through fund-raising events in USML, funds of USD 42.5 million and USD 7.5 million were invested in September 2017 and December 2017 and pertinently USML was incorporated on 29th August 2017. Therefore, it is not possible to determine the income or net worth of the USML as

the company/entity was not even into existence in the immediately preceding accounting year.

2. **Noticee has made disclosures of investment obtained by USML:** Noticee submitted that it has disclosed the investment obtained by USML from the investor and the convertible debt in the Annual Report of Noticee for F.Y.2019. Noticee further stated that it had issued a press release dated 26th September 2017 and 1st January 2018 upon completion of the investment of USD 42.5 million and USD 7.5 million into USML by the investor, respectively. Noticee further submitted that a press release is an act of disclosure to ensure complete transparency to its shareholders, though there was not a mandatory disclosure requirement as per Regulation 30 of the LODR Regulations. Furthermore, it is submitted that investment by investor, was made in the ordinary course of business for furthering the business objectives of USML, as determined commercially by the Board of USML. As this borrowing was obtained by USML in the ordinary course of business, and such borrowing was not a material event as per the policy of the Noticee/Listed Entity or as per the regulations under LODR Regulations, the Noticee said that it was not obligated to make any disclosure as per the extant regulations. Noticee further submitted that there was no requirement for any disclosure at the time when borrowing of 18.5 million was obtained by USML as there was no sale which had arisen at the time of borrowing. Noticee further submitted that the Noticee is only liable to make disclosures upon the occurrence of an event (sale) and therefore the requirements under the SEBI Circular do not even apply to Noticee. All the relevant details regarding the fund-raising activities were made in the said press releases and the contact details of the concerned persons were provided for anyone who wants further information with respect to the same. Hence, it is incorrect to say that the Noticee is in violation/non-compliance with the requirements of the SEBI Circular.

3. **Issuance of CCPS on September 25, 2017, and December 29, 2017, cannot be considered as 'sale or disposal of subsidiary' and control of step down wholly owned material subsidiary was not transferred on the date of investment brought in wholly owned step-down material subsidiary:** Noticee further stated that it is absolutely incorrect to say that due to fundraising activities in the USML, '*the control of the Subsidiary Company was transferred to the investor*'. Noticee mentioned that by virtue of entering into (a) the Shareholders Agreement, the Share Subscription Agreement dated September 26, 2017, for the investment of USD 42.5 million, towards subscription of Series A Preference Shares; or (b) the documentation for the investment of the additional amount of USD 7.5 million in December 2017; or (c) entering into the Debenture Subscription Agreement dated March 27, 2019, for the investment of USD 18.5 million towards Series A OCD, has not affected the management or the control of USML. The reason being, even upon the investment of USD 50 million towards subscription of Series A Preference Shares, and convertible debt in the form of Series A OCD raised by USML, the Noticee still held 100% of the equity and voting shares of USML through its wholly owned

subsidiary, Vivimed Labs Mauritius Limited. Therefore, merely upon the investment by the Investor into Series A Preference Shares or the lending of convertible debt in the form of Series A OCD, has not affected the management or control of USML. Therefore, it is submitted that the Noticee was not liable to disclose unless there was a change in management and control of USML. Therefore, the observation of SEBI in the Show Cause Notice that '*the control of the subsidiary was transferred to the investor*' was erroneous and misconceived.

Arguments by SEBI

1. **USML is not a material subsidiary of the Noticee in terms of Regulation 16(1)(c) of the LODR Regulations:** SEBI stated that having regard to the definition of "material subsidiary" as stated in Regulation 16(1)(c) of the LODR Regulations and considering that the income or net worth of the subsidiary, i.e. USML was not available on account of the subsidiary being not into existence at the time of the end of the financial year of the holding company preceding the issuance of CCPS of USD 42.5 million on September 25, 2017 ("**CCPS1**") and issuance of Compulsorily Convertible Preference Shares of USD 7.5 million on December 29, 2017 ("**CCPS2**"), it is inclined to agree with contention of Noticee that USML was not a material subsidiary of Noticee since USML was not into existence at the end of the financial year of the holding company preceding the issuance of CCPS1 and CCPS2 by the subsidiary.

2. **Noticee has made disclosures of investment obtained by USML:** In this regard, SEBI stated that it is pertinent to examine whether the aforesaid events could be said to be material events or information for the purpose of disclosure by Noticee under the provisions of the LODR Regulations. SEBI stated that issuance of CCPS1, CCPS2 and OCDs of a listed entity in its subsidiary/material subsidiary has not been indicated as material event/ information under para A or para B of Part A of Schedule III of the LODR Regulations. However, Regulation 30(12) of the LODR Regulations provides that events other than that given in para A or para B of Part A of Schedule III of the LODR Regulations can also be considered as material. In this regard, SEBI referred to para C of Part A of Schedule III of the LODR Regulations which, *inter alia,* states that any other information which is exclusively known to a listed entity and which may be necessary to enable the holders of securities of listed entity to appraise its position and to avoid the establishment of a false market in such securities can also be considered as material information and would have to be disclosed adequately to the stock exchange. SEBI stated that an investment of USD 42.5 Million and USD 7.5 Million by the investor towards subscription of CCPS1 and CCPS2 respectively, in USML amounts to significant investment in USML. USML was the holding entity of the Noticee's API business; and UQUIFA contributes approximately 60% of the Noticee's total consolidated revenues and a higher proportion of the reported EBITDA. Considering the contribution of USML and its wholly owned subsidiaries to the consolidated income of Noticee, any significant dilution/potential dilution in shareholding of Noticee in USML can

be considered as relevant information to holders of securities of Noticee. Therefore, SEBI held that issuance of CCPS1 on September 25, 2017, and CCPS2 on December 29, 2017, was information exclusively known to the listed entity which was necessary to enable the holders of its securities to appraise its position and to avoid the establishment of a false market in such securities. SEBI further stated that on one hand, Noticee is contending that the aforementioned investment was done in the ordinary course of business and was not material but on the other hand, Noticee considered the event material enough to merit a press release for the attention of its shareholders and potential investors. Considering the above, SEBI held that issuance of CCPS1 and CCPS2 on September 25, 2017, and December 29, 2017, respectively, amounted to material event/information as per Para C of Part A of Schedule III of LODR Regulations.

SEBI further stated that the fact of a subsidiary being a material subsidiary can be considered to be one of the criteria for determining whether an event or information originating out of such a subsidiary is material for the listed entity or not. Noticee has further contended that the borrowing was obtained by USML in the ordinary course of business, and such borrowing was not a material event as per the policy of the Noticee/Listed Entity or as per the LODR regulations and therefore, the Noticee was not obligated to make any disclosure as per the extant regulations. However, due to the conversion option of OCDs, the total shareholding of the investor in UMLS increased to 72.22% on a fully diluted basis, and the shareholding of USML decreased to 27.78% on a fully diluted basis and investor acquired a controlling stake in UMSL and its eight wholly owned subsidiaries. Considering that USML was a material subsidiary of Noticee when its income is calculated on a consolidated basis at the time of issuance of OCDs to investor, SEBI held that any development of this nature, i.e., issuance of debt which if converted could lead to investor potentially acquiring a majority stake in the subsidiary, consequently leading to Noticee's stake being reduced to a minority, would be definitely a material event. Considering the above, SEBI held that issuance of OCDs on March 28, 2019, was information exclusively known to Noticee which was necessary to enable the holders of its securities to appraise its position and to avoid the establishment of a false market in such securities. SEBI further stated that as per Regulations 4(1)(d) and 4(1)(e) of the LODR Regulations, disclosures to be made to stock exchanges need to be adequate and explicit.

In light of the above, SEBI stated that the above disclosures vide press release September 26, 2017, and January 1, 2018, made by Noticee pertaining to CCPS1 and CCPS2, i.e., that it had entered into definitive agreements to facilitate the investment of USD 42.5 million and additional investment of USD 7.5 million in USML were not adequate and explicit and not as envisaged in the principles laid down in the aforesaid the LODR Regulations. SEBI further assailed the point of Noticee that, Noticee cannot escape its obligation to make disclosures of material events simply by stating that contact details of the concerned persons were provided in the aforementioned

press releases for anyone who wants to have further information with respect to the same. Noticee was under an obligation to disclose OCDs and CCPS1 and CCPS2 to exchanges within 24 hours of their issuance. SEBI stated that disclosure of the issuance of OCDs at the time of the Postal Ballot dated July 25, 2020, came at a very last stage. LODR Regulations stress on providing adequate and timely disclosure of the information to recognized stock exchange(s) and investors. Hence SEBI held that the aforementioned postal ballot notice stating that as a result of fundraising activities carried out in USML, Noticee had ceded the controlling stake in USML and its eight wholly owned subsidiaries to investor cannot be considered to be a disclosure in terms of Regulation 30(6) of the LODR Regulations and within the timelines specified therein. In light of the above, SEBI stated that the contention of Noticee cannot be accepted.

3. **Issuance of CCPS on September 25, 2017, and December 29, 2017, cannot be considered as 'sale or disposal of subsidiary' and control of step down wholly owned material subsidiary was not transferred on the date of investment brought in, in the wholly owned step-down material subsidiary**: SEBI stated that due to the issuance of CCPS1 and CCPS2, the investor held 36% and 39.83%, respectively, of the share capital of USML only on a fully diluted basis. Thus, prior to the conversion of CCPS, the investor only had rights associated with a preference shareholder in USML. In light of the above, SEBI held that at the time of issuance of CCPS1 and CCPS2, investor could not be said to have acquired control or management of USML and thus, there was no change of control in UQUIFA at the time of issuance of CCPS1 and CCPS2. Considering the above, SEBI took a view that issuance of CCPS1 and CCPS2 cannot be considered as "*sale or disposal of subsidiary*" within the meaning of Clause 1 of Para A of Part A of Schedule III of LODR Regulations at the respective time periods (i.e., at the time of issuance). Further, since the issuance of CCPS1 and CCPS2 on September 25, 2017, and December 29, 2017, respectively were not "*sale or disposal of subsidiary*", the provision of Regulation 30(2) of LODR Regulations and SEBI Circular as applicable to "*sale or disposal of a subsidiary*" would not be attracted for the impugned acquisition of CCPS1 and CCPS2 by Investor on September 25, 2017, and December 29, 2017, respectively.

Penalty

Rs 500,000 on Noticee viz. Vivimed Labs Ltd under Section 23E of Securities Contract Regulation Act, 1956

IBC

In the matter of Bankey Bihari Infrahomes Private Limited ("Appellant") vs Mr. Alok Kumar Kuchchal ("Respondent-1"/"Liquidator") and AKJ Realtech Private Limited ("Respondent - 2"/"Successful bidder") at National Company Law Appellate Tribunal ("NCLAT") dated 6 December 2022.

Facts of the Case

- Corporate Insolvency Resolution Process ("**CIRP**") was initiated against Ratandeep Infrastructure Pvt. Ltd – Corporate Debtor ("**CD**") vide order dated 16 April 2019 passed by the National Company Law Tribunal ("**NCLT**"). The order

was passed on an application filed under section 7 of the Insolvency and Bankruptcy Code, 2016, ("**IBC**"/"**Code**") by Nitin Jain & Anr as Financial Creditor ("**FC**").

- Upon unsuccessful completion of CIRP, the liquidation order of the CD was passed on 31 January 2022 and Mr. Alok Kumar Kuchchal was appointed as the Liquidator.
- The Appellant after an unsuccessful CIRP preferred application under section 60(5) of IBC seeking direction to the Resolution Professional ("**RP**") to place the scheme of Compromise and Arrangement ("**Scheme**") submitted by the Appellant under section 230 of the Companies Act, 2013 (the "**Act**") read with regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**Liquidation Process Regulations**").
- This Interim Application ("**IA**"), whereby the Liquidator was directed to consider the Scheme submitted by the Appellant within a period of three weeks was disposed of by the NCLT vide order dated 13 April 2022
- The Appellant further sought details and information for preparing the Scheme but instead of providing such information to the Liquidator through an e-mail dated 20 April 2022, asked the Appellant to submit a confidentiality undertaking which was provided to the Liquidator.
- The requisite information was provided by the Liquidator on 29 April 2022, but since there were some discrepancies in the list of creditors provided by the Liquidator, the Appellant again sent an e-mail on 21 May 2022 repeating the request to provide a correct list of claims. In the meantime, the Liquidator published a public announcement for initiating the auction process of the CD's assets.
- Thereafter, the Appellant submitted a Scheme to the Liquidator on 24 May 2022.
- The Appellant claimed that the Liquidator continued with the auction process, and hence the Appellant was compelled to file IA before NCLT seeking a stay of the auction scheduled on 19 May 2022 and also direction to the Liquidator to place the Scheme before the Stakeholders Consultation Committee.
- The Appellant had further stated that IA was disposed of by NCLT vide order dated 1 June 2022 whereby the above reliefs sought by the appellant were not granted and directions for the auction process were reinitiated.
- The Appellant then filed an appeal before NCLAT challenging the order of NCLT.

Arguments of Appellant

- The Appellant submitted that they were interested in offering scheme under Section 230 of the Act to enable the CD to avoid liquidation, which would have meant definite corporate death of the CD, and in pursuance of this objective, they had obtained an order on 13 April 2022 from the NCLT directing the Liquidator to consider the Appellant's Scheme in respect of the CD.
- Consequent to that order, they sought details and information from the Liquidator for the preparation of the Scheme but instead of providing such

information the Liquidator through an e-mail dated 20 April 2022, asked the Appellant to submit a confidentiality undertaking which was provided to the Liquidator.

- Post submission of the undertaking, they were provided with some incomplete information which also contained discrepancies in the list of creditors/ claims. Thereafter some emails were exchanged among them which resulted in the delay in the submission of the Scheme.
- The requisite information was provided by the Liquidator on 29 April 2022, but since there were some discrepancies in the list of creditors provided by the Liquidator, the Appellant again sent an e-mail and requested provide a correct list of claims.
- The exchange of emails between them indicated that they were genuinely interested in putting forward a Scheme, but due to various unnecessary and irrelevant issues raised by the Liquidator which resulted in the delay in obtaining the required list of claims, they could not submit the said Scheme in time.
- The Liquidator, without considering the Scheme presented by the Appellant and in total disregard of the directions given by the NCLT for consideration of the scheme, issued a public notice dated 19 May 2022, which was published on 20 May 2022, for auction sale of the land of the CD.
- Further, claimed that NCLT refused to intervene in the process of e-auction of the CD`s land, and further directed the Liquidator to act with the view to maximize the value of the CD’s land.
- The Appellant sent an email dated 21 May 2022 to the Liquidator seeking a clear list of claims in view of the repetition of certain claims in the list already sent to him and upon receiving a final list of creditors they could finally submit the said scheme on 24 May 2022.
- Further, stated that the unreasonable functioning of the Liquidator in moving forward with the e-auction process and not providing any extension of time for consideration of the Scheme stated that it was beyond the power as a Liquidator to provide additional time. Hence, the Appellant had to file an application seeking direction from the NCLT for a stay of the e-auction process and direction to the Liquidator to consider the scheme.
- Further, claimed that the Liquidator was required to act with a view to maximise the value of the CD and the successful bid found in the e-auction was only ₹ 7.45 crores which was much less than the amount offered by the Appellant through the said Scheme; therefore, the Scheme was worth considering as it would lead to maximisation of value of the assets of the CD, which was one of the primary objectives of the IBC.

Arguments of the Respondent – 1 (Liquidator):

- It was claimed that the Appellant was not really interested in submitting a genuine Scheme and the motivation was to only derail the process of liquidation of the CD.
- Further, submitted that Mr. Rakesh Kumar Agarwal, director of the Appellant had earlier filed a request to NCLT in July 2021 through one of the group companies AIG Infratech Pvt.

Ltd for submission of a resolution plan, which was turned down by NCLT vide order dated 7 December 2021

- Further, it was brought to the notice that another application was made by Mr. Rakesh Kumar Agarwal, wherein by an order dated 13 April 2022, the NCLT had granted three weeks' time for submission and complete consideration of the said Scheme but the Appellant neither submitted the said Scheme nor did they inform the Liquidator about the delay.
- Further, it was stated that it was only after the Liquidator published the auction notice on 20 May 2022 that the Appellant again became active and submitted a half-baked scheme which was in no way better than the value of land discovered through the successful bid.
- It was claimed that they had been absolutely fair and unprejudiced in dealing with various requests of the Appellant, but time and again, the Appellant raised frivolous and irrelevant issues to only buy time and derail the process of liquidation, but they were duty bound to complete the liquidation of the CD in view of the time-lines prescribed in IBC and Liquidation Process Regulations.
- The judgment of the *Hon'ble Supreme Court* in the matter of *Arun Kumar Jagatramka vs. Jindal Steel and Power Limited and Anr* highlighted that a Scheme under section 230 of the Act could not have been filed by someone who is trying to take over the CD through 'backdoor'.
- In seeking directions against them for staying the auction process, it was found that FC was acting in collusion with Mr. Rakesh Kumar Agarwal, a director of the Appellant.
- It was also claimed that they had provided all the necessary information sought by the Appellant in time, but they were completely remiss in submitting a full and complete Scheme within the allotted time i.e. by 2 May 2022.
- They were duty-bound and continued with the e-auction process in which eventually the successful bid of ₹ 7.45 crores was received.
- Further, it was contended that the action of the Liquidator was fully above board and in accordance with the various directions received from the NCLT, and therefore e-auction process should be permitted to culminate and the appeal of the Appellant should be dismissed.

Arguments of Respondent 2/Successful Bidder

- That the e-auction process was a validly undertaken process in consonance with the provisions of IBC and Liquidation Process Regulations where they had participated in the e–auction of the sole asset (CDs land). The vague allegation of collusion to sell the CD's land at a throwaway price, was completely false.
- Also, claimed that the Appellant was not able to establish its bonafide intention by timely submission of the scheme.
- Further, stated that the Scheme did not provide a better value to the legitimate stakeholders, since the Scheme proposed to make payments to a number of unrelated parties, whose claims were not admitted during the CIRP and if such claims were disregarded and taken out from the total payments and then the

Net Present Value (NPV) of the amount offered was considered, it would show that the resulting payments would not be better than the payments the bid offered by them.

- The Appellant was never interested in submitting a serious and meaningful Scheme but to only derail and delay the liquidation process.

Held

- The NCLAT reviewed the whole events in detail and after a thorough examination, it was held that the intention of the Appellant for submitting a scheme was doubtful from the fact that the Appellant neither submitted the Scheme within the stipulated time frame nor applied for any extension of the time limit from NCLT. Hence Liquidator was duty-bound to proceed in accordance with the provisions of IBC and Liquidation Process Regulations.

- It was further noted that the purported Scheme proposed to make payments to a number of related parties/unsecured creditors/not submitted claims up to an extent of 100% of admitted claimed amounts. Another issue in the proposed Scheme was that it proposed to make payments within 90 days of approval of the Scheme whereas in the event of an auction-sale the payments would be made promptly to claims in accordance with the 'waterfall mechanism' under section 53 of IBC

- Observation in the *Arun Kumar Jagatramka judgment (supra)* made it very clear that the promoter or those in the management of the company under liquidation cannot be allowed a 'backdoor entry' into the company and hence, would be considered ineligible to submit a proposal under section 230 of the Act.

- In view of the continuous efforts of Mr. Rakesh Kumar Agarwal in seeking to 'takeover' the CD through various stratagems, and also the finding that he was in 'collusion' or acting in concert with the erstwhile management of the CD, the motive or intention in putting forward a useless scheme in respect of the CD becomes seriously doubtful. The observation of the *Hon'ble Supreme Court* regarding 'backdoor entry' in the CD by the erstwhile management then appears to be very distinct, something that cannot be disregarded.

- It was established that the NCLT provided reasonable and sufficient opportunity to the Appellant to submit a credible scheme and the fact that the Scheme so presented by the Appellant was prima-facie found to inflate the total payments by provisioning payments to creditors who are either related to the CD or for such creditors who had not filed legitimate claims in the liquidation process and thus, the proposed payments were in effect not of greater value than the amount being offered by the successful bidder in the e-auction.

- NCLAT upheld the decision of the NCLT observing that the Appellant was provided a reasonable opportunity to submit a credible scheme and had failed to do so.

CA Hardik Mehta CA Tanvi Vora

OTHER LAWS

FEMA – Update and Analysis

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars and Press Notes & Press Releases.

A. Update through A. P. (DIR Series) Circulars

1. Rationalization of reporting in Single Master Form (SMF) on FIRMS Portal

RBI has implemented the following changes w.r.t. reporting of foreign investment in SMF on FIRMS Portal :

i. The forms submitted on the portal will be auto-acknowledged. The AD banks shall verify the same within five working days based on the uploaded documents, as specified.

ii. In cases of delayed reporting, the AD banks shall either advise the LSF to the applicants, which will be computed by the system or advise for compounding of contravention, as the case may be.

Some salient features made to the system are as follows:

a) All the forms submitted along with requisite documents shall be auto-acknowledged on the Portal with a time stamp and an auto generated email will be sent to the applicant.

b) The AD banks will verify the forms within five working days based on uploaded document and ensure that they are in compliance with guidelines.

c) When the delay in filing forms is less than or equal to three years, the AD banks will approve the same with LSF.

d) When the delay in filing forms is greater than three years, the AD banks will approve forms with instructions to approach RBI for compounding the contravention.

e) In cases of where there is delay in reporting AD bank will advise LSF which will be computed by system and email will be sent to applicant and the concerned RO of RBI specifying the amount and timeline within which it is required to be paid to RO of RBI.

f) Once LSF amount is realized, the RO will update the status in the portal and updated status will be communicated to

the applicant through system generated email, which can also be viewed in FIRMS portal – This step has been taking abundant time.

g) The remarks if made by the AD bank for rejection of forms will be communicated to the applicant through a system generated email and can be viewed on FIRMS portal – As was possible earlier.

(*Source*: A. P. (DIR Series) Circular No. 22 dated 4th January, 2023)

(*Comments*: Over and above the change to the system as listed above, RBI has made various changes to the User Manual for SMF FIRMS Application. Some of the important changes are as follows:

i. The process steps have been segregated into 3 types i.e. (A) For forms submitted within the prescribed timelines, (B) For forms submitted with a delay, and (C) For Forms submitted with discrepancy.

ii. Processing of all 3 above categories shall be undertaken by AD Bank and not by RBI as was the case earlier in case of category (B)

iii. BUs have been given the option to pay LSF through Demand Draft (DD)/ NEFT/RTGS. This makes the payment process easier and should save the time taken by RBI to acknowledge receipt of LSF payment

iv. The erstwhile CS certificate also permitted to be obtained from a Chartered Accountant

v. Text of CS certificate has been amended and therefore going forward it should be careful to use the revised format in order to avoid rejection of the forms

vi. Text of Non resident Transferor/ Transferee has been amended and therefore going forward it should be careful to use the revised format in order to avoid rejection of the forms

vii. The revised user manual clarifies in the list of documents that the valuation report should not more than 90 days old as on the date of allotment. This should clear confusion caused by a few AD banks that insisted applicants to provide a valuation report which was not older than 90 days as on the date of filing.

List of Documents to be attached with each type of form has also been updated and we have compared and listed the additional documents below for ready reference:

Form FCTRS
In case of transfer by way of Sale on Stock Exchange (separate category inserted)

i. For sale/ purchase on stock exchange, the contract note may be attached at "Transfer agreement/ Valuation certificate".

ii. Broker's Note – Date of trade/ settlement, No. of shares transferred, Name of Investee Company, Consideration amount should be checked.

iii. NR declaration as per Annex VI

iv. Outward Remittance Certificate.

v. Copy of acknowledgement of FC-GPR/ FC-TRS as applicable for the Equity instruments being sold, to be attached as "other attachment

Form CN

Registration certificate for being a start-up and Document evidencing date of issue of Convertible Note have been added to the mandatory document list

Form ESOP

i. ***Letter of Grant/ Offer to be attached as a mandatory document. It should contain name of the employee in the letter of grant vis a vis name mentioned in the CS certificate. No of shares and exercise price should also be mentioned.***

ii. ***Text of CS certificate and Declaration amened and therefore going forward it should be careful to use the revised format in order to avoid rejection of the form.***

Form DI

Separate format provided for Declaration to be filed by the authorised representative of the Indian company.

Form InVi

Separate format provided for Declaration to be filed by the authorised representative of the Indian company).

When I admire the wonders of a sunset or the beauty of the moon, my soul expands in the worship of the creator.

— Mahatma Gandhi

"Our greatest ability as humans is not to change the world, but to change ourselves."

— Mahatma Gandhi

"Strength does not come from winning. When you go through hardships and decide not to surrender, that is strength."

— Mahatma Gandhi

Rahul Hakani
Advocate

Niyati Mankad
Advocate

Best of The Rest

BIMLA TIWARI VERSUS STATE OF BIHAR & ORS. ORDER DATED JANUARY 16, 2023 PASSED IN SLP (CRL.) NOS.834-835 OF 2023 [SUPREME COURT]

Process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings and cannot be utilised for arm twisting and money recovery, particularly while opposing the prayer for bail – recovery of money is essentially within the realm of civil proceedings

Facts

In the present case, it had been alleged that the marriage of the informant's daughter was fixed with son of the Respondent No. 2 and in the engagement rituals, amongst other things, the informant's husband gave a sum of ₹ 6,00,000/- in cash to the respondents. According to the Petitioner-informant, thereafter, the Respondents demanded further money and vehicle and, for such a demand being found inappropriate, the marriage was called off but the Respondents did not return the money and the articles. Thereafter, Case was registered against the Respondent – Accused for offences u/s 406 and 420 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

The Respondents' prayer for pre-arrest bail was declined by the Court of Additional Sessions Judge-IV, Patna and then, the Petition filed in the High Court bearing No. 5967 of 2019, seeking pre-arrest bail, was also dismissed on 02.04.2019.

Further, after the report of investigation, the Trial Court found enough material to take cognizance of the offences against the accused in its order dated 14.09.2020. The Respondents, thereafter, made yet another prayer for pre-arrest bail which was again declined by the Court of Additional Sessions Judge–IV, Patna on 21.12.2021. Hence, the respondents approached the High Court and their petitions were considered together and decided by the common order dated 14.11.2022, which is sought to be questioned in these petitions by the informant.

One of the submissions before the High Court while seeking pre-arrest bail had been that one of the accused, namely Vijaya Malviya, was granted pre-arrest bail by the High Court in its order dated 10.03.2022 passed in Criminal Misc. No.32384 of 2021 after considering that the money involved in the matter had been returned by a Bank Draft in the sum of ₹ 6,00,000/-, drawn in favour of the informant,

which was handed over to her counsel. The grant of pre-arrest bail was opposed on the ground that the processes u/s 82 and 83 of the Code of Criminal Procedure,1973 ('CrPC') had already been issued and that the money spent in engagement ceremony had not been returned. Thereafter, an offer was made on behalf of the Respondent No. 2 herein that he would make payment of another sum of Rs.75,000/- (seventy-five thousand) by way of Demand Draft within six weeks; and accepting such a submission, the High Court granted the concession of pre-arrest bail subject to the offered payment.

Issues Involved

Whether the order passed by the High Court was liable to be set aside ?

Held

After perusing the Patna High Court Orders, the Apex Court observed that the criminal proceedings were being prosecuted only as money recovery proceedings. The court held that process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings and cannot be utilised for arm twisting and money recovery, particularly while opposing the prayer for bail and that recovery of money is essentially within the realm of civil proceedings. The Court expressed reservations even as regards the aforesaid order dated 10.03.2022 wherein the High Court has proceeded on the propositions of offer made by the co-accused of payment of the sum of ₹ 6,00,000/- and acceptance thereof by the informant (present petitioner). So far as the impugned Order dated 14.11.2022 was concerned, the court viewed that it shall be in the interest of justice to annul the requirement of payment of a sum of ₹ 75,000/- by the accused-Respondent No. 2. Hence, the order granting pre-arrest bail to the Respondents was affirmed but, the condition therein, of payment of ₹ 75,000/- by the Respondent No.2 stood annulled.

M/S. PLATINUM RENT A CAR (INDIA) PVT. LTD. VS. M/S. QUEST OFFICES LIMITED ORDER DATED 12.01.2023 PASSED IN IA NO. 1138/2022 IN COMP APP (AT) (CH) (INS) NO.448/2022 [NCLAT]

Condonation of delay in filing appeal under Section 60 of Insolvency and Bankruptcy Code, 2016 ("IBC") – NCLAT has no power to condone delay of more than 15 days – moreover, IBC is a self-contained and inbuilt one, invocation of Section 12 of the Limitation Act, 1963, will be of no assistance to the Appellant because of the overriding effect of the ingredients of Section 238 of the IBC.

Facts

The Appellant had preferred the instant Appeal against the 'impugned order' which was passed by the NCLT, Bengaluru Bench on 08.06.2022, in CP(IB) No.37/BB/2021 u/S 7 of the IBC against the Corporate Debtor, because of the Default amounting to a sum of ₹ 10,95,01,185/- The present Appeal was filed after a delay of 25 days. The relevant dates for determining the issue of condonation of delay in present case are as under:

08.06.2022	Impugned Order passed by the NCLT, Bengaluru
26.07.2022	The Certified Copy of the impugned order was applied on 21.07.2022 and the 'Appellant', was provided with a 'Certified Copy of the same', on 26.07.2022.

03.08.2022	The instant Appeal u/s 61 of the IBC was filed before the Office of the Registry of the NCLAT on 03.08.2022 as evident from the Challan bearing 'Bharath Kosh' ID No.0308220022486 wherein ₹ 5,000/- was paid by the 'Appellant'.

It is to be noted that the time limit for filing Appeal by an aggrieved person u/s 61 IBC is 30 days. However, as per Section 61(2) of the IBC, if a party / a person is able to exhibit, before the NCLAT that there was sufficient cause for not filing the Appeal, within such period, shall not exceed 15 Days.

Issue Involved

Whether the NCLAT has the power to condone the delay of 25 days in filing the instant Appeal?

Held

While deciding the present Application for condonation of delay, the court observed that there is no second opinion of an established fact that the 'Rules of Procedure' do not create any right to and in favour of a person, and further, it do not create Cause of Action. If a certain remedy is to be exercised in respect of a Statute in a particular manner and time, then, it has to be followed, and the same cannot be done, in any other manner.

The NCLAT held that it has no power to condone the Delay after 30 + 15 = '45 Days' and as the instant Comp App (AT) (CH) (Ins) No.448/2022 came to be filed on 55th day, which is beyond the permissible limit provided under the IBC, the NCLAT cannot extend its Judicial arm of generosity as it does not have the power to do so.

The Tribunal further held that considering the fact that the IBC is a self-contained and inbuilt one, invocation of Section 12 of the Limitation Act, 1963, will be of no assistance to the Appellant because of the overriding effect of the ingredients of Section 238 of the IBC.

Accordingly, the IA No.1138/2022 in Comp App (AT) (CH) (Ins) No.448/2022 was dismissed and consequently, the present Appeal also was rejected.

ELUMALAI @ VENKATESAN & ANR Vs. M. KAMALA AND ORS. & ETC. – ORDER DATED JANUARY 25, 2023 PASSED IN CIVIL APPEAL Nos.521-522 OF 2023 [SUPREME COURT]

When a person has relinquished rights in father's self-acquired property - His Sons are estopped from claiming share

Facts

The controversy in the present case relates to A-Schedule property in a suit for partition filed by two children out of the 6 children born to one, Sengelani Chettiar from his second marriage. The property in dispute was the self-acquired property of Shri. Sengalani Chettiar (who died in 1988). Sengalani Chettiar had married twice. From his first marriage, was born Shri Chandran. Shri Chandran pre-deceased his father in the year 1978. In regard to the said property, during his lifetime Chandran, the father of the appellants had executed a Release Deed. The terms of the Release Deed recites that Shri Chandran had released his share in respect of the property on his having received valuable consideration.

During the relevant time of execution of Release Deed one of the Appellant was a minor and another was not even born.

Thereafter, the suit for partition was filed by two children out of the 6 children born to Sengelani Chettiar from his second marriage. The Trial Court however found that the Release Deed in question was a void document for the reason that Chandran executed the Release Deed in 1975 while his father Sengalani Chettiar was alive. Therefore, the Plaintiffs were allotted 2/7th share.

Accordingly, the Defendants 1, 3 and 6 filed appeal AS No.718 of 2009. By the impugned judgment the High court allowed these appeals and found that the Appellants were not entitled to claim any share in the property of the deceased Sengalani Chettiar. The foundational premise for overturning the decree of the trial court was furnished by the dicta laid down by this court in ***Gulam Abbas vs. Haji Kayyam Ali and others [AIR 1973 SC 554].*** The said Gulam Abbas case arose under the Mohammedan Law and involved facts based on which the principle of estoppel was applied.

Issue Involved

Whether the Appellants i.e. Sons of Shri Chandran (Son of Mr. Sengalani Chettiar) were bound by the Release Deed executed by Shri Chandran during his lifetime and who pre-deceased his father?

Held

While deciding the present case, the Court considered Section 6 and 6(a) of the Transfer of Property Act, and observed that the person who would be entitled to succeed upon the death of their relative would not have a right until such death. It observed that unlike a coparcener who acquires right in joint family property by birth, for separate property of Hindus there exists no such right. Keeping this in mind, the Court stated that the Release Deed would not by itself affect the transfer of rights. Thereafter, the Court examined the conduct of Shri Chandran who had executed the Release Deed and whether receiving consideration for the relinquishment would result in creation of estoppel. On perusal of the Release Deed wherein it was stated that "he did not have any other connection except blood relation", the Court inferred that the intention of the father was to deny any right of the son in regard to the property and that the conduct of the son accompanied by the receipt of consideration would have estopped the son from acquiring rights in the property.

The Court also examined the impact of Section 8 of the Hindu Minority and Guardianship Act, 1956 wherein the natural guardian of a Hindu minor cannot bind the minor by a personal covenant. On the basis of this Section 8, the Appellants had contended that they are not bound by the Release Deed, in the nature of a covenant, as it was executed by their father when they were minors. The Court rejected this argument on the ground that Chandran himself had no right in the property at the time of execution of the release deed.

Accordingly, the Court dismissed the Appeals.

CA Vijay Bhatt
Hon. Jt. Secretary

CA Mehul Sheth
Hon. Jt. Secretary

THE CHAMBER NEWS

Important events and happenings that took place online/ physical between **1st January, 2023 to 31st January, 2023** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on 24th January, 2023 are as under:

Type of Membership	No. of Members
Life Member	11
Ordinary Member	01
Half Yearly Ordinary Member	01
Student Member	02
Total	**15**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topic*	*Speaker*
		DIRECT TAXES	
1.	16.01.2023	Recent Important Decisions under Direct Tax	CA Keiki Mittal
2.	20.01.2023	Nuances of new age shares and securities - Domestic Tax	CA Bhaumik Goda
3.	21.01.2023	Nuances of new age shares and securities - FEMA implications & filing	CA Hardik Mehta
		INDIRECT TAXES	
1.	The Indirect Taxes Committee had planned "11th Residential Refresher Course on GST" at THE WESTIN, Pune from 5th to 8th January, 2023. The session-wise detail of the RRC is as under:		

Sr. No.	Date	Topic	Speaker
	Papers for Discussion		
a.		Case studies covering Place of supply, Time of Supply, Exemption and ITC	K. Vaitheeswaran, *Advocate*
B.		Case studies on scope of supply, Important Definitions and Schedules I, II and III	Tarun Gulati, Senior *Advocate*
	Papers for Presentation		
C.		SEZ, EOU, Bonding and warehousing and it's Customs, FTP and GST implications	Rohit Jain, *Advocate*
d.		Key takeaways of recent Supreme Court Rulings and its implications on GST	S. Ganesh, Senior *Advocate*
e.		Panel Discussion - Real Estate Sector – Interplay of GST and Income Tax	*Panellists*: CA Naresh Sheth CA Jagdish Punjabi *Moderator*: CA Rajiv Luthia
2.	18.01.2023	Issues in Input Tax Credit 'Seamless' or 'Seems Less'	*Group Leader:* CA Rushil Shah *Chairman:* M. H. Patil, Advocate
		INTERNATIONAL TAXATION	
1.	03.01.2023	Permanent Establishment - Intercacies -Part 2	CA Bijal Desai
2.	09.01.2023	Establishment of Liaison Office (LO)/ Branch Office (BO)/ Project Office (PO) in India	Ms. Mitali Gandhi
3.	19.01.2023	Implication under Black Money Act-Schedule FA disclosure	CA Rajesh P. Shah
4.	24.01.2023	UAE Corporate Tax Law	CA Jai Prakash Agarwal
		IT CONNECT	
1.	10.01.2023	Central Bank Digital Currency (CBDC) and Open Credit Enablement Network (OCEN)	CA Dinesh Tejwani CA Uday Shah
		MEMBERSHIP & PR	
1.	04.01.2023	Management Lessons from Mt Everest	Mr. Venkatesh Maheshwari
		STUDENT	
1.	25.01.2023 & 28.01.2023	The 6th Dastur Debate Competition	
		STUDY CIRCLE & STUDY GROUP	
1.	14.01.2023	I) Penalty for under-reporting and misreporting of income Section 270A, 2) Immunity from imposition of PENALTY Section 270AA	Dharan Gandhi, *Advocate*

Indirect Taxes Committee
Workshop on GST Law

Jointly with GSTPAM, AIFTP (WZ), BCAS, MCTC & WIRC of ICAI for the year 2022-23 (Virtual Mode) will be held from 17th January, 2023 to 16th March, 2023

Inaugural Session

CA Parag Ved (President) giving his opening remarks

CA Sunil Gabhawalla (Speaker) addressing the delegates.

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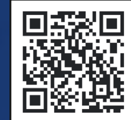

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