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The Chamber of Tax Consultants

THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XII | No. 10 | July 2024

TAX AUDIT REPORT & ITR FOR AY 2024-25

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(Missing in the picture Vipul Choksi)

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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

My Brothers and Sisters,

कायेन वाचा मनसेन्द्रियैर्वा।
बुद्ध्यात्मना वा प्रकृतिस्वभावात् ।
करोसि यद्यत्सकलं परस्मै।
नारायणेति समर्पयामि।

At the outset, I offer all my work, past, present, or future, intentional or unintentional, and the fruits thereof, at the feet of the Almighty. I seek the Almighty's blessings as I embark upon performing yet another challenging but fulfilling role for our beloved Chamber.

I feel extremely humbled and privileged to be appointed as the Editor of one of the most useful publications to tax professionals, "The Chamber's Journal". I acknowledge with humility, that I may not be able to live up to the standards that some of my predecessor editors, who not only have been outstanding tax professionals but exemplary human beings as well, have set. I seek their blessings and good wishes to be able to discharge the functions of this prestigious post, suitably.

I also profusely thank my very dear friend and immediate past editor, CA Vipul K. Choksi, for his sterling contribution to the Journal's success over the last two years. His work and dedication will be difficult to emulate.

I congratulate CA Vijay Bhatt who has taken up the office of the Chamber's President for the year 2024-25, and his well-balanced team at the helm of affairs for this year; and wish them all the very best for a great and successful year of service to Chamber's members the tax professionals at large.

I encourage all those who read the Journal, to put in their best efforts to add more members to the Chamber's family by spreading knowledge, awareness and the minutest details of the Chamber's yeoman service in the field of tax and allied laws, to as large a number of persons in their circle of influence as possible. Only conscious dissemination of this, will give the Chamber the fillip to not only successfully enter and cross the centenary year, in 2025-26, but also be prepared to take fresh guard for the next century, with a young and dynamic member base.

Our much loved and valued Journal, a jewel in the collection of most tax practitioners, has come of age with insightful special stories and informative regular features that keep readers wanting more each month. It will be my endeavour to try and not only retain this interest, but try and add that something more, which will make it more sought after in the years to come. For this, I will rely on the sage advice of the members of the Editorial Board and bank upon the dynamic wisdom and relentless quest for excellence, of the Journal Committee chaired by CA Ameya Kunte, a young, entrepreneurial, and selfless Chairman and his team of dedicated members. The role of the Assistant Editors, who have so far been the custodians of quality of the Journal's content, will also be crucial as we try and embark on a mission to substantially augment our reader base.

As we all are aware, a significant milestone of the completion of 100 years of the Chamber is just around the corner. As will be the case with other parts of the Chamber, the Journal also will have something special for its readers in that year. Plans have already been developed and execution, begun, in this regard. Watch this space for more.

We eagerly await the record breaking seventh consecutive budget presentation from our Hon. Finance Minister, Smt. Nirmala Sitharaman on 23 July 2024. I have not been able to recall any Finance Bill, in the recent past, which had less than 100 proposals to amend the direct tax laws. Nor, do I expect anything less, in this budget. The only hope and request to her is, that these proposals may be well intended, well drafted and well researched. The common man eagerly waits for some relief to come his way, but more often than not, ends up disappointed. One hopes this will not be the case this year. Our Law & Representation Committee had made a detailed representation to the then Chairman of the Central Board of Direct Taxes and had got good facetime with him. We hope atleast some of the suggestions so thoughtfully voiced by all of you, are accepted and we see appropriate and well-meaning amendments. Needless to add, in the next issue of the Journal. We will see a special story on the Finance (No. 2) Bill, 2024.

While we continue to look forward to a balanced and growth oriented budget, it is also the right time to pay due attention to return filing and tax audit for the Assessment Year 2024-25. A very timely and thoughtful special story on this subject, has been conceived and brought out by the Journal Committee that deals with important issues in relation thereto. I trust you will find this issue, not only useful but insightful. I sincerely express my gratitude to the Journal Committee, the authors and each and every contributor thereto for their efforts on bringing this issue to you.

As I bring this first communication to a close, I cannot but help in making one observation on the current malaise that plagues our educational framework, corruption. The proceedings in the Court of the Hon. Chief Justice of India in respect of the medical UG-NEET petitions, give us a glimpse of this deep rooted cancer. I do hope and pray that the Hon. Chief Justice, whose career I have watched with keen interest, delivers a verdict that will be in line with the principles of justice, pragmatism, and empathy.

Let me end this communication with a quote from **Swami Vivekananda**, who has always taught me so much…

"Character is repeated habits and repeated
habits alone can reform character".

Please do make it a repeated habit to read the Journal's issues. Please also, do strive to make our communication, a two-way one. Please do freely and frankly comment on this editorial and the ones that will follow. Feedback is important for me to continue on the journey of continuous improvement.

ANISH M. THACKER
Editor

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From the President

OM

SHRI GANESHAY NAMAH

श्री वक्रतुण्ड महाकाय सूर्य कोटी समप्रभा
निर्विघ्नं कुरु मे देव सर्व-कार्येशु सर्वदा।।

या कुन्देन्दुतुषारहारधवला या शुभ्रवस्त्रावृता
या वीणावरदण्डमण्डितकरा या श्वेतपद्मासना।
या ब्रह्माच्युत शंकरप्रभृतिभिर्देवैः सदा वन्दिता
सा मां पातु सरस्वती भगवती निःशेषजाड्यापहा।।१।।

Dear Members,

Before starting my first President's communication, I seek blessings of the Almighty.

At the outset, I feel very humbled to embark on my journey as the President of this prestigious institution which is now 98 years **"Young"**. Yes, you read it right. Our Chamber is Young because the Chamber has many feathers in its cap in the form of a lot many young members.

The new team of the Managing Council comprises of many young leaders, who have innovative ideas and dreams to serve the Chamber. The vast experience of some of the Past Presidents and Seniors in Managing Council are always a guiding factor to the youngsters.

My immediate predecessor CA Haresh Kenia has played an exemplary innings as the President last year, with full dedication in every area affecting the interest of the Chamber. His wonderful team of Managing Council Members and more than 300 core group members also stood by him with the commitment to rise for every opportunity. My heartiest congratulations to Shri Haresh Kenia and his team for a successful completion of an eventful year 2023-24.

In the month of June 2024, the CTC organized the 17th Residential Conference on International Taxation at The Leela, Gandhinagar. The Conference was very well attended by 295 Delegates. I congratulate CA Kirit Dedhia, the Chairman of the International Tax Committee and his team for the successful conference. Senior Experts of our profession contributed immensely in this knowledge sharing event of the CTC, for which I thank each of the faculty members. The Keynote address by Dr. Gyanvatsaldas Swamiji on the subject of "Positivity in Adversity" was highlight of the RRC.

During the RRC, we learned about sad demise of our senior member and dear friend of the Chamber, Advocate Shri Hiro Rai. The news came as a shock to many of us. His contribution to the Chamber's various educational activities was immense. He was regular faculty in the RRC and other programmes of the Chamber. At the RRC, we observed silence for a few moments as a mark of respect to him. May the departed soul rest in peace and may God give courage to his family members.

On 29th June, 2024, The Chamber had an opportunity to welcome and felicitate the Honorable Union Law Minister Shri Arjun Ram Meghwal during his visit to the Income Tax Appellate Tribunal, Mumbai

In June, 2024, The Student Committee of the CTC organized the 7th Dastur Moot National Direct Tax Moot Court Competition in association with Government Law College, Mumbai.

As many as 20 colleges from across the country participated in the Moot Court Competition.

The Semi Final Rounds were judged by Honorable Members of ITAT, Mumbai Shri Anikesh Banerjee (JM), Shri Girish Agarwal (AM), Shri Rajkumar Chauhan (JM) and Shri Sunil Kumar Singh (JM).

The Final Round was presided over by the Division Bench of the Honorable Shri Justice K. R. Shriram and Honorable Dr. Justice Neela K. Gokhale, Bombay High Court. I congratulate the winning team and all the other participants.

I thank the Honorable Judges of the Bombay High Court, the Authorities of Income Tax Appellate Tribunal, Mumbai, the Honorable ITAT Members, Dr. Asmita Vaidya , the Principal of Government Law College and Moot Court Association of GLC for their support to us in organizing the event.

The Student Committee also organized the 13th Dastur Essay Competition, the results of which were announced during the Chamber's AGM by Honorable Justic Shri M. S. Karnik on 9th July, 2024. I congratulate all the Winners and other participants.

I congratulate Advocate Niyati Mankad, Chairperson of the Student Committee and her team for successfully organizing these events. I also acknowledge the support and guidance of Respected Past President Shri S.E. Dastur Sir to encourage Students for various events.

The Honorable Finance Minister is going to present the Budget on 23rd July, 2024. The Chamber has presented suggestions on Direct Tax through Pre-Budget Memorandum 2024-25 to the Honorable Finance Minister and CBDT on 22nd June, 2024. I appreciate the timely efforts of CA Ketan Vajani, Chairman, Law & Representation Committee, CA Mahendra Sanghvi, Past President and their entire team.

1st July, 2024 will be remembered as a Historic Day for the Indian Judiciary System. With effect from 1st July, 2024, three new Criminal Laws have been made effective viz. The Bharatiya Nyaya Sanhita, 2023, The Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023, replacing the old laws in existence since the British Era.

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4th July, 2024 was talk of the town in Mumbai due to the Open Bus Parade of the Indian Cricket Team from Nariman Point to Wankhede Stadium (Garware Club House) after winning the T-20 World Cup held in West Indies/USA. Thousand of cricket fans gathered at Marine Drive to greet the team. As per the directions from the Authorities on 3rd July, The Chamber's Annual General Meeting, which was to be held on 4th July at Garware Club House, had to be adjourned to 9th July, 2024. Thanks to the prompt action by the President Shri Hareshbhai and the Managing Council Members through its urgent zoom meeting on 3rd July night itself.

At the AGM on 9th July, 2024 the Honorable ITAT Member Shri Girish Agarwal presented a Key Note Address on the topic " From Doing to (Human) being". The attendees highly appreciated his interesting talk.

When this Journal reaches you, many of you must be busy in completing the first batch of Income Tax Returns due on 31st July, 2024.

This month's Journal is comprising of Special Story on the Subject "Key updates affecting Tax Audit Report and ITR for A.Y. 2024-25", including the Impact of the newly introduced Clause (h) in Section 43B (MSME), amongst other clauses. CA Ameya Kunte, Chairman of the Journal committee and his team, have selected this unique topic very aptly for the benefit of the readers. I thank all the authors for their immense contributions.

21st July, 2024 will be celebrated as the auspicious "Guru Purnima" across the country. We seek blessings of all our Gurus be it school teachers, college professors, arts-music-dance teachers or professional experts for molding our lives in the field of education, profession and art.

Before I end my first communiqué, I assure you that I will do my best to follow the path led by my predecessors for the positive growth of the Chamber in all the directions. Me and my new team are committed to the cause of the Chamber and its members.

I end with the ever-followed shloka from Srimad Bhagwat Geeta...

कर्मण्येवाधिकारस्ते मा फलेषु कदाचन ।
मा कर्मफलहेतुर्भुर्मा ते संगोऽस्त्वकर्मणि ।।

You have the right to perform your actions, but you are not entitled to the fruits of the actions. Do not let the fruit be the purpose of your actions, and therefore you won't be attached to not doing your duty.

Jai Hind

VIJAY BHATT
President

x

Navigating through Form 3CD: Recent amendments, Key clauses and Rulings

CA Vrushti Galani CA Priyank Gala

Overview

This article provides a review of recent amendments to Form 3CD by the CBDT, focusing on clauses such as 8a, 12, 18, 19, 21(a), 21(b)(ii)(B), 22 and 32(a). These amendments are primarily align with amendments introduced vide FA 2023, rectifying some typographical error, and ensure compliance with existing Income-tax provisions. Few key clauses of TAR such as clause 18, 26, 21, 34 and 44, are briefly discussed, focusing on reporting requirements, methodologies, and commonly challenges faced. This article also provides a brief overview of on few recent judicial precedents impacting TAR, covering topics such as limits on the number of tax audits, mandatory requirement of UDIN in TAR, Interpretation of MFN clause, treatment of telecom license fees, depreciation rates, and take over under IBC. To ensure compliance and maintain the integrity of audit, it becomes crucial for TA to remain vigilant, conduct thorough examinations, stay up to date on laws and judicial precedents, including disclaimers/disclosures, and maintain meticulous documentation.

'Tax Audit' is a statutory examination of a taxpayer's financial records and accounts to ensure compliance with the provisions of the Income-tax Act, 1961 ("the Act"). Sec. 44AB of the Act specifies which taxpayers must have their accounts audited by a chartered accountant (hereinafter referred to as "Tax Auditor" or "TA"). According to Rule 6G of the Income-tax Rules, 1962 ("the Rules"), the Tax Audit Report ("TAR") should be furnished in Form 3CA/CB along with a statement of particulars in Form 3CD. The TA is required to provide an opinion whether the prescribed particulars in Form 3CD, as furnished by the taxpayer are **'true and correct'** subject to observations and qualifications, if any, in Form 3CA/CB.

The Central Board of Direct Taxes ("CBDT") updates Form 3CD from time-to-time to reflect amendments in the Act. This article broadly examines the recent amendments in tax audit clauses[1], and their impact on the taxpayers and TA. It briefly discusses key clauses of the TAR and highlights recent judicial precedents which may impact the tax audit.

1. Notification No. 27 of 2024 – F No. 370142/3/2024 – TPL dated March 5, 2024 and its Corrigenda dated March 19, 2024

Recent amendments in tax audit clauses

Cl. No.	*Text of Form 3CD (amendments in bold and italics)*	*Analysis*
8A	Whether the assessee has opted for taxation under section 115BA/ 115BAA/ 115BAB/ 115BAC/ 115BAD/ *115BAE*?	The First Schedule to Finance Act provides for normal tax rates applicable on total income of an assessee. However, optional new tax regime has been prescribed u/s 115BA, 115BAA, 115BAC and 115BAD[2], subject to compliance with specific requirements. Vide Finance Act 2023, a new Sec. 115BAE was included in the new tax regimes for newly incorporated resident co-operative society. Consequently, reference to Sec. 115BAE has been incorporated in clauses 8A and 32(a). The TA is not responsible for determining whether the new tax regime applies to the assessee or ensuring its proper compliance. If the assessee has opted or wishes to opt for the new tax regime but has not filed the requisite form till the date of signing TAR, then the TA must make appropriate disclosure in Form 3CA(3) or Form 3CB(5), after taking management representation and accordingly report in Cl. 8A. The TA must also be mindful of the impact of special rates on other section/clauses, such as Cl. 18 – Sec. 32(i)(iia), Cl. 33 – Chapter VIA, Cl. 19 – various deductions. Further, since Sec. 115BAC has become the default tax regime w.e.f. AY 2024-25, the concerned assessee should indicate yes in Cl. 8A, unless chosen to opt out.
32(a)	Details of brought forward loss or depreciation allowance.....: In the table, column (5) All losses/ allowances not allowed under section 115BAA/ 115BAC/ 115BAD/ 115BAE column (6) Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAC/ 115BAD/ 115BAE^ ***^To be filled only in AY 2021-22 & 2024-25***	

2. Introduced Sec. 115BAA vide Taxation Laws (Amendment) Act 2019, Sec. 115BAC, 115BAD vide Finance Act 2020

SS-X-2

Cl. No.	*Text of Form 3CD (amendments in bold and italics)*	*Analysis*
18	Particulars of depreciation allowable..... .... ~~(ca) Adjustment made to the written down value under section 115BAC/ 115BAD (for assessment year 2021-2022 only)~~ ***(ca) Adjustment made to the written down value—*** ***(i) under the proviso to sub section (3) of section 115BAA (for assessment year 2020-21 only);*** ***(ii) under the first proviso to sub-section (3) of section 115BAC or the proviso to sub-section (3) of 115BAD (for assessment year 2021-22 only);*** ***(iii) under the second proviso to sub-section (3) of section 115BAC (for assessment year 2024-25 only).***	If an assessee opts for new tax regime u/s 115BAA, 115BAC or 115BAD, then certain deductions are not permitted in the computation of total income. Particularly, deduction for additional depreciation u/s 32(1)(iia) is not allowed. Deduction for unabsorbed depreciation ("UAD") or brought forward losses, to the extent attributable to additional depreciation for past years are also not permitted. Such loss and depreciation are generally deemed to be given full effect to. However, if one opts for the new tax regime in the year of its introduction or amendment, then these sections provide for adding back the depreciation allowance to the block of assets, which is dealt with in Cl. 18(ca). It is crucial to note that if the option of new tax regime is exercised in subsequent years, then on plain reading of the provisions, such adjustment is not permissible. Consequently, the aforesaid depreciation allowance would be lapsed.
12	Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant sections 44AD, 44ADA, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter	This clause deals with profits or gains assessable on a presumptive basis. Previously, Form 3CD did not explicitly mention Sec. 44ADA[3]. However, ICAI Guidance Note on TA (Revised 2023) ("GN") at Para 24.1 recommended to disclose such amount under residual category of 'any other relevant section'.

3. S. 44ADA deals with presumptive taxation for prescribed professionals.

Cl. No.	*Text of Form 3CD (amendments in bold and italics)*	*Analysis*
	XII-G, First Schedule or any other relevant section.	Notably, despite not being officially notified by CBDT, the utility of Form 3CD had included a specific entry for Sec. 44ADA since 2017. Per se this amendment does not alter TA's reporting obligations (i.e. either reporting under separate entry of Sec. 44ADA or residuary entry).
19	Amounts admissible under sections – 32AC, 32AD, 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), ***35ABA***, 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA 35E and ***any other relevant section***	This clause deals with admissibility of deduction under sections specified in the clause. Previously, Sec. 35ABA was not specifically included in notified Form 3CD nor was there any residuary option. However, the utility of Form 3CD did include a specific drop down for Sec. 35ABA. Thus, this amendment primarily corrects the omission in the notified Form 3CD but does not significantly change practical procedures. As regards the amendment introducing 'any other relevant section', there could be differing interpretations. One interpretation is that this entry requires the TA to verify all deductions under the Act (say, Sec. 30 to 37, barring overlap). Another interpretation could be that the term 'relevant'[4] suggests a narrower and restrictive scope, with this entry drawing its meaning from other sections mentioned in the clause such as investment allowances, scientific research expenditure, specific business-related allowance etc., applying the principle of ejusdem generis. This view finds support in Implementation Guide on Revision in Form 3CD and Form 3CEB in March 2024. The TA must make appropriate observation/ disclosure in Form 3CA/3CB.

4. In common parlance, 'relevant' means 'connected with what is happening or being talked about'

Cl. No.	*Text of Form 3CD (amendments in bold and italics)*	*Analysis*
21(a)	Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure, etc. ~~Expenditure by way of penalty or fine for violation of any law for the time being in force~~ ~~Expenditure incurred for any purpose which is an offence or which is prohibited by law~~ • ***Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine for violation of any law (enacted in India or outside India)*** • ***Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India*** • ***Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising as profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the ti***me	Expl. 1 to Sec. 37(1) specifies that expenses incurred for any purpose which is an offence, or which is prohibited by law are not allowable as deduction. Finance Act 2022 inserted Expl. 3 specifying certain cases covered under Expl. 1. These cases are now incorporated in Cl. 21(a). For the purpose of verifying expenses incurred on offences or those prohibited by law, the TA may consider the following points: • Obtain in writing from assessee details of all payments related to penalty, fine or violation of any laws for the time being in force; • Verify any orders or notices received under various regulations such as FEMA, SEBI, GST, Customs etc. and portals for TRACES, GST, etc.; • Thoroughly scrutinize ledger accounts, especially rates and taxes, legal and professional, miscellaneous expenditure, etc.; • This clause covers payment in penal nature and not compensatory, contract breach or liquidated damages; • Given the complexities of Indian and Foreign laws, TA may rely on expert opinion obtained by the assessee or prima facie examine the documents, notices, orders, etc. as referred above before commenting or reporting under this clause.

Cl. No.	*Text of Form 3CD (amendments in bold and italics)*	*Analysis*
	being in force, governing the conduct of such person	
21(b) (ii) (B)	Amount inadmissible u/s 40(a) …………… …………… (ii) as payment referred to in sub-clause (ia) (A) …………… (B) – Details of payment on which tax has been deducted but has not been paid on or before due date specified in sub-section (1) of section 139: ….. (IV) name and address of the ~~payer~~ ***payee***,….	This amendment simply corrects typo error in the notified Form 3CD. The utility of Form 3CD had always referred the said column as 'name and address of payee'.
22	Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 or *any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961.*	Earlier, interest paid/payable to Micro and Small Enterprises ("MSEs") which was inadmissible expense as per Sec. 23 of the MSMED Act, 2006, was to be reported in Cl. 22. To encourage timely payments to MSEs, Finance Act 2023 inserted clause (h) u/s 43B of the Act. Sec. 43B(h) provides that any sum payable to an MSE beyond the time limit specified in Sec. 15 of the MSMED Act, 2006 shall be allowed in the year when such sum is actually paid. Thus, any disallowance u/s 43B(h) is to be reported under Cl. 22 and not Cl. 26 which pertains to Sec. 43B of the Act. Since specific reporting columns are not available under Cl. 22 for claiming deduction of amounts disallowed in past years but allowed on actual payment basis in subsequent years, the TA may consider reporting net disallowance with break-up in notes to Form 3CD.

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Cl. No.	*Text of Form 3CD (amendments in bold and italics)*	*Analysis*
		Further, a dedicated chapter provides detailed guidance on MSEs and Sec. 43B(h).

Overview of key clauses of Tax Audit Report

Clause 18 – Particulars of depreciation allowable as per the Income-tax Act

This clause requires reporting of all the components relevant for calculating the amount of depreciation allowable u/s 32 of the Act. This includes description of the asset/block of assets, rate of depreciation, adjustments to the written down value, additions, deletions, etc.

Points to consider for the Tax Auditor

- Ownership & Put-to-Use: To claim depreciation under the Act, the twin conditions of 'ownership' and 'put-to-use' must be satisfied. This criterion requires careful evaluation, particularly in cases involving assets transferred between group entities, right-of-use assets, mortgage assets in banks, etc.
- Classification of assets, additions/deletions: Classification of assets into blocks should be based on its usage and legal principles, guided by courts decisions and expert opinion. Challenges typically arise in distinguishing between Plant and Machinery eligible for 15% or 40% depreciation rate, say in case of renewable energy devices, classifying intangibles like computer peripherals, software licenses, differentiating between Plant and Machinery and Furniture and Fixtures.
- Reconciliations & Documentations: Verify the opening block of WDV with previous year's ITR & TAR. Any additions to the block should be reconciled with Property, Plant, Equipment ("PPE"), Capital Work-in-Progress Schedules and Cash Flow statement in financials. Ensure that capital expenditure on scientific research assets for which deduction is claimed u/s 35 of the Act are not included in the depreciation block. When verifying asset deletions, refer cash flow statement for actual sales receipt and the P&L A/c to verify the profit or loss on sale of assets. Only assets actually sold should be disclosed under 'deletions', excluding those written off, discarded, abundant etc. Lastly, verify supportings such as invoices, minutes and put to use certificates.
- Capitalization of materiality policies, borrowing cost, adjustment: The Act does not specify any threshold for capitalizing assets. Thus, even if assessee's internal policy is to expense out nominal capital assets (say for example up to ₹ 10,000), such assets should be capitalized in Cl.18 and added back to P&L. Borrowing costs incurred upto date of capitalization be added to cost of assets.
- Impact of other provisions: TA must consider impact of other provisions like Sec. 43A, Sec. 43AA, Sec. 36(1)(iii), ICDS, new tax regime, etc.

In case of any disputes or discrepancies, TA should obtain written representations, make requisite disclosures and if necessary, include appropriate disclaimers or qualifications in Form 3CA/CB.

Clause 26 – Sums referred under clauses (a) to (g) of Sec. 43B

The clause requires reporting of liabilities specified in clauses (a) to (g) of Sec. 43B of the Act in four parts: pre-existing liabilities on the first day of the previous year ("PY"), paid during the PY and not paid during the PY; and the liabilities incurred during the previous year, paid by the due date for filing the return of income or those not paid by that time.

Points to consider for the Tax Auditor

- In relation to the liabilities pre-existing on the first day of the PY, any reversals made during the PY may be considered as 'actually paid'.
- Ensure that the liability recorded in the books of account aligns with the amounts disclosed under this clause. In case of difference, maintain appropriate reconciliation.
- Determine whether the interest liability converted into loan qualifies for deduction in the year it is 'actually paid' or in the year of conversion. In this regard, refer ***M.M. Aqua Technologies Ltd. vs. CIT [2021] 436 ITR 582 (SC)***.
- Assess whether liabilities such as professional tax, property tax, license fees, electricity duty, contribution to national pension scheme, benevolent funds, etc. need to be reported under this clause.
- Review the year-end outstanding liability ledgers to identify liabilities falling u/s 43B and verify payment proofs such as challans/bank statements for actual payments eligible for deduction u/s 43B of the Act.

Clause 21(b) & 34 – Non-compliance with TDS or TCS provisions

Clause 21(b) primarily deals with reporting of amounts inadmissible u/s 40(a) due to non-deduction of applicable TDS. Clause 34 pertains to identifying the amount on which TDS or TCS provisions have been defaulted and the interest leviable thereon.

Points to consider for the Tax Auditor

- Tax deducted at source based on lower deduction certificate u/s 197 should be reported in column (6) which pertains to tax deducted at specified rates and not column (8) which deals with tax at lower than specified rates.
- Reporting under clause 34(a) should align with any revised statements/ returns filed. Whereas reporting under clause 34(b) should reflect details from the original return filed.
- For domestic payments, disallowance u/s 40(a)(ia) (reported in clause 21(b)(ii)) is limited to 30%, and not 100% of the amount.
- Short deduction of tax may not be reported under clause 21(b). Appropriate disclosure could be given in this regard.
- Be careful in evaluating TDS default in case of year-end provisions. It is crucial to determine whether payees are identifiable, and liability is crystalised.
- Receipt of advances must be considered to determine applicability of TCS u/s 206C(1H) which mandates the taxpayer to collect tax when the payment is received.

- Assess the impact of Sec. 206AB and Sec. 206CCA for higher TDS or TCS in case of non-filers of income-tax return.
- Evaluate impact of Sec. 206AA when PAN becomes inoperative due to non-linkage with PAN.
- Considering the voluminous data involved, TA may conduct verification on a test-check basis, ensuring appropriate disclosures. TA should obtain a copy of the TDS/TCS returns filed by the assessee for reporting purposes and also scrutinize the relevant expense ledgers to ensure compliance.

Clause 44 – Break-up of total expenditure of entities registered or unregistered under GST law

This clause requires reporting break-up of total expenditure into expenditure in respect of entities registered under GST and those unregistered. If registered, the clause further requires break-up of the same into exempt category, composition scheme entities and others.

Points to consider for the Tax Auditor

- Reporting could be of total expenditure under this clause. Head-wise or nature-wise details are not envisaged.
- Depreciation, bad debts, remuneration to employees, etc. may not be reported.
- Year-end provisions must also be appropriately reported.
- Advisable to maintain 3-tier reconciliation viz. amounts reported in this clause vis-à-vis statement of P&L (for revenue expense) and CWIP schedule (for capital expense) vis-à-vis GST returns.
- Obtain the break-up of total expenditure including purchases in the format as required under this clause and maintain a reconciliation of the same with the statement of P&L for the year.

Key rulings recently issued which may have an impact on Tax-Audits

- The Supreme Court in the case of ***Shaji Poulose vs. ICAI [2024] 162 taxmann.com 685 (SC)*** has affirmed the validity of the guidelines laid down by the ICAI under the Chartered Accountant Act, 1949 which limit each CA to conduct maximum 60 tax audits. The Court considers such restriction to be reasonable for the right to practice of profession by CAs. However, these guidelines are made effective from April 01, 2024.
- In the case of ***Patelpurta Agro Farm vs. State of Uttarakhand [2023] 153 taxmann.com 153 (Uttarakhand HC),*** the High Court held that the TARs must compulsorily have a Unique Document Identification Number ("UDIN"). The Court emphasised that the authenticity of TARs not bearing UDIN cannot be verified and established.

  Thus, it is crucial for TA to generate UDIN at the time of signing the TARs or within 60 days thereafter. As a good practice, the TA may also consider mentioning the UDIN on the supporting Notes/Annexures uploaded along with the TAR.
- In case of ***AO(IT) vs. Nestle SA [2023] 458 ITR 756 (SC)***, the Supreme Court held that a separate notification u/s 90(1) is required to apply the beneficial effect of any Most Favoured Nation ("MFN") clause. Further, the Court held that to determine the MFN benefit *qua* a third country, the relevant date is the date when that country enters into a treaty with India and not a later date,

when, after entering into treaty with India, that such country becomes an OECD member.

The impact of this case law would be critical in terms of identifying potential TDS defaults related to foreign remittances and reporting thereof under Clause No. 21(b) and 34, as the case maybe. One should also take into consideration Circular No. 3/2022 dated February, 03, 2022.

- The Apex Court in case of ***CIT vs. Bharti Hexacom [2023] 458 ITR 593 (SC)*** held that the entry fee and variable annual license fee paid by telecommunication business under New Telecom Policy, 1999 would be capital in nature and thus, to be amortized in accordance with Sec. 35ABB of the Act. The review petition against the said decision has been dismissed by SC.

  The TA must diligently examine how any assessee engaged in telecommunication business treats similar charges and appropriately report under Clause No. 19 of Form 3CD.

- In relation to depreciation, the Delhi High Court in ***PCIT vs. Kuantum Papers Ltd. [2023] 154 taxmann.com 255 (Del HC)*** ruled that 'Brand Names' are a specie of trademark and qualifies as intangible assets eligible for depreciation u/s 32(1)(ii) of the Act. In ***PCIT vs. Nestle India Ltd. [2023] 153 taxmann.com 201 (Del HC)***, the High Court upheld the claim of depreciation on UPS @60% since UPS supports a computer system.

  The TA must carefully verify the classification of different assets into appropriate blocks keeping in mind the rules prescribed under New Appendix I coupled with various judicial pronouncements.

- In the case of ***Surya Exim Ltd. vs. UOI [2024] 161 taxmann.com 749 (Guj HC)***, the High Court held that on date of approval of resolution plan by adjudicating authority all such claims which were not part of resolution plan shall stand extinguished and no person was entitled to initiate or continue any proceeding in respect to a claim which was not part of resolution plan. Catena of rulings have been rendered on this issue including that by the Supreme Court.

  In cases where the assessee acquires businesses under IBC, the TA must carefully examine the resolution plan including specific tax related prayers, check whether NCLT/NCLAT has granted blanket approval or with conditions, assess tax implications related to writing-off of liabilities read with the resolution plan, etc.

The amendments in TAR brought by the CBDT may not be that significant, but they highlight the need for TAs to adopt a diligent and informed approach. Remaining vigilant, conducting comprehensive examination, staying abreast with legislative amendments and judicial rulings, making appropriate disclaimers and disclosures, and maintaining meticulous documentation including engagement letter, management representations, query sheet, are crucial to ensure compliance. These practices uphold the credibility, reliability, integrity of tax audits and the TAs.

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Introduction of clause (h) in Section 43B of the Act – Opportunities and Challenges Ahead

CA Narendra Joshi

Overview

The Union budget of 2023 introduced amendment to Sec 43B of the Income Tax Act 1961 whereby the payments made to MSMEs are brought under the ambit of Sec 43B. Interestingly, the benefit of deduction towards payment made to MSME is not available if the payment is made up to the date of filing of return of income under section 139(1) of the Act. It is important to understand connection between clause (h) of section 43B and MSMED Act 2006. Clause (h) of section 43B refers to section 15 of MSMED Act 2006 which interalia provides for the time limit for payment to the supplier if the supplier is micro and small enterprise. This interplay between the laws has imposed many practical difficulties in implementation of the amendment. The compliance challenges need implementable solutions which will help in achieving intended goal of the Government to pass on benefits to arising sector.

The Central Government has been promoting micro, small and medium enterprises as it contributes nearly whopping 30% to India's GDP[1]. After the introduction of Udyam registration in 2020, Micro Small and Medium ('MSME') registrations have increased 2.4 times. To empower this sector further, the Union Budget of 2023 introduced amendments to section 43B of the Income Tax Act 1961 (the Act) under socio economic welfare section. Interestingly, the amendment borrows definition of micro and small enterprises ('MSE') from Micro, Small And Medium Enterprises Development Act, 2006 ('MSMED Act 2006').

Extract of the budget memorandum introducing the beneficial provision related to payments made to MSE is as follows:

> *Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income.*
>
> *In order to promote timely payments to micro and small enterprises, it is proposed to include payments made to such enterprises within the ambit of*

1. D&B and UGro Capital report February 5, 2024.

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> *section 43B of the Act. Accordingly, it is proposed to insert a new clause (h) in section 43B of the Act to provide 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.*

Intent of the provision is to grant benefit to the enterprises registered as MSE. It is important to understand the finer aspects of this new clause (h) and relevant provisions of MSMED Act 2006.

Relevant excerpts of section 43B of the Act is provided below:

43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(h) 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 Act, 2006 (27 of 2006),

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him

***Provided** that nothing contained in this section except the provisions of clause(h) shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return*

Explanation 4 – for the purpose of this section-

"*micro enterprise*" *shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)*

"*small enterprise*" *shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)*

Section 43B starts with a non-obstante clause which gives an overriding effect over other sections of the Act. Therefore a deduction with respect to certain expenses where supplier is MSE shall be allowed only if the payment is made within the time limit prescribed under MSMED Act 2006. The section is applicable from the assessment year 2024-25 relevant to previous year 2023-24. Unlike other clauses of section 43B, the benefit of deduction towards payment made to MSME is not available if the payment is made up to the date of filing of return of income under section 139(1) of the Act.

It is important to understand connection between clause (h) of section 43B and MSMED Act 2006. Clause (h) of section 43B refers to section 15 of MSMED Act 2006 which *inter alia* provides for the time limit for payment to the supplier if the supplier is micro, small and medium enterprise. Extract of section 15 of MSMED Act 2006 is provided below:

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Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

***Provided** that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.*

Who is a Supplier under MSMED Act 2006?

As per section 2(n) of MSMED Act 2006, supplier means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8. The term supplier as per section 2(n) of MSMED Act 2006 includes:

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

The word "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services. Interestingly, the definition of "enterprise" covers entities engaged into manufacture production of goods or providing/rendering of services. Any other enterprise which is not engaged into manufacture/production or providing/rendering of services shall not be considered as an enterprise under MSMED Act 2006 and accordingly will not be entitled to benefit of payments under section 43B clause (h) of the Act. The question therefore arises whether traders will be entitled to get registered as MSE under MSMED Act 2006? The issue has been addressed by office memorandum dated September 1, 2021 issued by the office of development commissioner, Ministry of Micro, Small and Medium Enterprises thereby allowing retail and wholesale traders to be registered on Udyam Registration portal. However, as per the office memorandum, the benefits of Udyam registration shall be restricted to priority sector lending only. Thus, any wholesale or retail enterprise which is registered on Udyam Portal will not be entitled to any benefits under MSMED Act 2006.

As per D.O. No 16/11/2019-P&G/policy issued by Ministry of Micro, Small and Medium Enterprises, the central government has notified Udyam Registration Process. Udyam Registration form is also called "memorandum" as specified under section 8(1) of MSMED Act 2006. In other words any enterprise willing to avail benefits under MSMED Act 2006 is required to apply for Udyam.

Who is a Buyer under MSMED Act 2006?

A buyer means whoever buys any goods or receives any services from a supplier for consideration. Buyer is a broad definition and covers all types of enterprises.

Other critical terms used in section 15 of MSMED Act 2006

It is also important to understand the other key terms such as appointed day, day of acceptance and deemed acceptances which is critical for availing benefit of deduction under section 43B of the Act.

The term "appointed day" is defined to mean the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Example - If the date of acceptance is March 1, 2024, then appointed date would be March 16 i.e. 15 days from the date of acceptance or deemed acceptance.

Further, the day of acceptance means:

a) the day of the actual delivery of goods or the rendering of services or

b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier

The day of "deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

Example, if buyer is in receipt of goods on February 1, 2024 and there is no communication with respect to defect in the goods, then date of delivery would become deemed acceptance date.

Therefore the contours of the deduction under section 43B of the Act is based on the following:

1. Supplier's status under MSMED Act 2006
2. Udyam registration form provided by the Supplier
3. Pre-existing arrangement between Supplier and Buyer. In the form of purchase order or agreement clearly specifying due date.
4. In absence of pre-existing arrangement between Supplier and Buyer, due date of payment shall be 15 days from the date of acceptance or deemed acceptance
5. The buyer must inform defects in the products if any in writing and reject the goods supplied or services rendered. Formal communication about potential dispute would be important to analyse implications of benefit available under section 43B to the buyer. Supplier shall be under obligation to cure defect and the communicate the same to the buyer.
6. Due date as per MSMED Act 2006 cannot exceed 45 days from the date of acceptance of deemed acceptance.

Therefore, due date for claiming deduction under section 43B for payments made to micro & small (herein after referred to as "MSE") shall be within 15 days from the appointed day or such number of days basis the arrangement between supplier and buyer

but not exceeding 45 days. The newly inserted provision would only apply to those assessee who are following mercantile system of accounting and not others. The assessee who follow mercantile system of accounting and follow the conditions stipulated under section 15 the MSMED Act 2006 shall be entitled to deduction if the payment made is made within the due date in the same financial year or if the payment is made beyond due date then the financial year in which it is actually paid. The relevance of due date and its importance from deduction perspective can be understood based on an illustration provided below:

Illustration

Date of delivery	Credit period as per the agreement	Due date	Date of payment	Deduction in FY
March 1, 2024	45 days	April 14, 2024	April 13, 2024	FY 2023-24
March 1, 2024	45 days	April 14, 2024	April 20, 2024	FY 2024-25
March 1, 2024	60 days	April 29, 2024	April 25, 2024	FY 2024-25
March 1, 2024	60 days	April 29, 2024	May 05, 2024	FY 2024-25
March 1, 2024	Not applicable	March 16, 2024	March 27, 2024	FY 2023-24

Challenges ahead for the assessee

Identification, classification and reporting of MSME

From the assessee's perspective, it will now become important to keep updating the list of suppliers on a yearly basis to identify MSE. Further upward and downward upgradation of MSE suppliers may pose a practical challenge. Buyer is also required to be aware how MSE are classified under MSMED Act 2006. Ministry of Micro Small and Medium enterprises on June 26, 2020 made changes to the recognition criteria of micro, small and medium enterprises.

Revised criteria for identification of MSME is as follows:

Relevant section of MSMED Act 2006	Micro Enterprise	Small enterprise	Medium enterprise
Manufacturing or production of goods 7(1)(a)(i) and	Investment in plant and machinery does not exceed ₹ 1 crore	Investment in plant and machinery up to ₹ 10 crore	Investment in plant and machinery up to ₹ 50 crore
Providing or rendering of services 7(1)(a)(ii)	Annual turnover up to ₹ 5 Crores	Annual turnover up to ₹ 50 Crores	Annual turnover up to ₹ 250 Crores

Apart from revision of ceiling with respect to investment in plant and machinery and turnover, the new process for registration of MSME was also introduced. The process was called Udyam registration wherein the enterprise will be assigned a permanent identity number to be known as Udyam Registration Number. On July 1, 2020, the Ministry of Micro Small and Medium enterprises launched system of facilitation for registration of Udyam process under Udyam registration scheme. After introduction of new registration process, Udyam registration number is a must have for all the enterprises willing to avail benefits as MSME.

In the absence of any specific identification process under the Act, one may argue that the registration obtained by the supplier under Udyam Registration Scheme should be considered as proof of identification of MSE under MSMED Act 2006. The assessee (buyer) who is dealing with MSE is now required to verify status of MSE based on the Udyam Registration number on the Udyam Registration website. The identification and confirmation process would be cumbersome for the buyer and may have practical challenges.

Further, the status of downward and/or upward migration of MSE would not be known based on the Udyam certification number provided by the supplier. The assessee (Buyer) may consider the process of obtaining self-declaration at the start of the year and end of the year from the supplier to ensure compliance with MSMED Act 2006 and section 43B of the Act. Additionally, the year-end monitoring of outstanding dues of MSE, updating process of issuing Purchase orders/ agreements to have clear understanding about the payment terms will gain importance now. Given the fact that the MSMED Act 2006 is very specific about the due date of payment when a buyer is purchasing goods or services from a supplier, it is unclear at the moment whether parties can have a separate arrangement to extend the due date of payment in contravention of the provisions of MSMED Act 2006. One may argue that if buyer and supplier have agreed for a different credit period then section 15 of MSMED Act 2006 cannot be enforced. However, it would be interesting to see how this issue unfolds and how these provisions would be interpreted when the matter reaches to the judiciary. Till that time, it would be responsibility of the Buyer to ensure compliance with MSMED Act 2006 and consequently with the Act.

Impact for corporate assessee

A Company form of the assesses is required to follow Schedule III – Division I, II and III of the Companies Act 2013 which relates to the format of preparation and presentation of the financial statements. Schedule III provides a format to report due MSME and non MSME trade creditors as at the year end. The reporting requirement also requires providing breakup of dues with pre-existing dispute with the supplier. Even though the Companies Act reporting requirement is comprehensive and requires reporting of outstanding amount due to MSME suppliers, it would be important to identify outstanding dues for each category of MSME to ensure compliance with section 43B and MSMED Act 2006. New tax audit report form has included reporting requirement in clause 22 which requires the auditor to report amount now allowable under clause (h) of section 43B of the Act.

Reporting requirement under Schedule III and clause 22 of tax audit report, its consequential effect on the tax assessment will require lot of preparation at the assessee's end to ensure that the assessee is able to explain the position

taken while reporting the amount payable to MSE in clause 26.

Purchase of material which is not consumed or booked as expense

In a practical world, not each item of goods is consumed but something may remain in the unbilled inventory or work in progress. This scenario will arise in case of manufacturers who have multi-level process of manufacturing finished products. Such assessees may face challenge in identifying the material which is issued to production but not booked as consumption as the finished product is not ready. The assessee following mercantile system of accounting will recognise the consumption as expense when the corresponding income (sales/revenue) is earned. The issue may arise with respect to items of inventory lying at various levels of manufacturing process. It would pose a great challenge to identify such invoices where material is not accounted for as an expense. This will equally apply to the services availed from MSE suppler where the corresponding income is not recognised using fundamental principle of Accrual.

Purchase of capital goods from MSE suppliers.

As the capital goods are capitalised in the books of accounts and are not claimed as expenses one can argue that there should not be any disallowance under clause (h) as the depreciation is an allowance and no expenditure is booked when the capital asset is purchased. One can also rely on the judgements related to failure to deduct tax under section 40(a)(i) and consequent disputed related to disallowance of expenses capitalised. it's a settled view now and there are good number of favourable judgements which have held that depreciation is not an expenditure but an allowance, failure to deduct tax with respect to expenses which are capitalised in the books will not attract any disallowance under section 40(a)(i) of the Act.

The above paragraphs have dealt with the definitions, interplay between the Act and MSMED Act, difficulties which the assessee (buyer) may face. Now let's deal with the practical ways to handle the situation for the assessee and auditor.

Recommendations for the assessee (buyer)

1. Make suitable changes in the accounting reporting package, software or ERP to capture details of MSME status including the number and the date of updating the status.

2. Follow supplier confirmation process and ask for Udyam at the end of each year. It is recommended to start the process well in advance in order to provide sufficient time to the supplier to provide necessary details.

3. Strengthen the process of supplier registration and standardise the format of purchase order or agreement.

4. Reporting of material rejection or service rejection to the supplier promptly and creating a track record to substantiate the case. The assessee may consider parking the disputed dues in case of defect in material or service to a separate general ledger or under different sub ledger if practically possible.

5. Given the fact that the requirement to maintain audit trail has become mandatory now (at least for Company assessee) passing accounting entries at the time of origination of dispute may help to avoid any non-compliances.

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6. Maintain reconciliation of balances under different categories of trade payables (Micro, Small, Medium and Other than MSME) with invoice wise due dates. It is also recommended to knock off outstanding invoices against payments made either using First in First Out Method or any other method which is more suitable to identify invoices where delay has occurred under MSMED Act 2006.

7. In most of the cases for regular supplier, invoice knocking process is not carried out.

Interestingly, not just the assessee but the auditors dealing with these difficulties have to be more vigilant and find ways to cope with the emerging scenario. Following are few recommendations for the auditors :

Recommendations for the auditors

As per ICAI Guidance note on tax audit (2023 version), the Income-tax Law requires the taxpayer to get the audit of the accounts of his business/profession from the view point of Income-tax Law. One of the objectives of tax audit is to ascertain/derive the requirement of Form No. 3CD and report in Form Nos. 3CA/3CB. Apart from reporting requirements of Form Nos. 3CA/3CB, an audit for tax purposes would ensure that the books of account and other records are properly maintained, that they reflect the true and correct particulars in Form No. 3CD. Keeping the above in mind, it is recommended to follow work steps:

1. For the assessee following mercantile system of accounting, the auditor is required to verify details of expenses allowable on payment basis under section 43B, reconcile the same with the previous year tax audit report/financial statements and the record pertaining to the year under tax audit.

2. The auditor may consider to put an observation with respect to the responsibility of the assessee/auditee concerning the maintenance of accounting and other record related to MSE suppliers.

3. The auditor may carry test checks to understand the process of identification of MSE suppliers check the relevant controls developed by the auditee.

4. The auditor may verify the payment made for the invoices booked in the year and the payments made.

5. The auditor may consider carrying cut off process to identify the payments made beyond the stipulated due date under section 15 of MSMED Act 2006 to MSE suppliers.

In the end, this amendment has a great potential to pass on the so called socio economic benefit to the rising MSE in our country but the success will highly depend on coping up with the practical challenges.

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Key Updates Affecting Tax Audit Report & ITR for AY 2024-25

CA Nehal Sheth   CA Neena Sharma

Overview

The Supreme Court's recent ruling in the case of the Assessing Officer (International Taxation) v. Nestle SA on the MFN clause within various DTAAs has critical implications for Indian tax authorities and taxpayers. This ruling settles previous disputes over the applicability and interpretation of MFN clause. The Court clarified that MFN benefits are applicable only if the third country was an OECD member at the DTAA signing and require specific notification under Section 90(1) of the Income Tax Act, 1961. This decision overturns prior Delhi High Court positions, emphasizing the need for official notifications for the MFN clause to take effect.

The recent amendment to Section 56(2)(viib) of the Income Tax Act 1961, as enacted vide Finance Act, 2023, now includes consideration received from non-resident investors, broadening its scope. Effective from April 1, 2024, this impacts closely held companies, with exemptions for certain entities and start-ups. Recent CBDT notifications have provided additional exemptions and valuation methods, aligning compliance requirements for both resident and non-resident investors.

The Finance Act 2023 amended Section 206C(1G) of the Income-tax Act, increasing TCS rates on foreign remittances and overseas tour packages. Following this, the Government issued certain clarifications and modifications in the proposed amendments in line with stakeholders' feedback, through clarificatory circulars, FAQs, and press release – which were made effective vide consequential amendments in the Finance Act 2024.

Ensuing paragraphs detail the aforementioned judicial pronouncement and amendments.

Implications of the Supreme Court's Ruling on the Non-Applicability of the MFN Clause for Withholding Taxes.

The recent Supreme Court's judgment[1] interpreting the Most Favoured Nation (MFN) clause within various Double Taxation Avoidance Agreements (DTAAs) has significant implications for both the Indian tax authorities and taxpayers. This ruling addresses the long-standing disputes over the applicability and

1. [2023] 155 taxmann.com 384/458 ITR 756 (SC)

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interpretation of the MFN clause in DTAAs, where authorities have often taken divergent views based on the specific facts of each case.

The controversy has now been settled by the **Hon'ble Supreme Court** in the case of ***Assessing Officer (International Taxation) vs. Nestle SA.*** Supreme Court's decision, being law of the land, is binding across India.

Understanding the MFN clause

The general provision of MFN clause is that if India, after entering into DTAA with one country, subsequently enters into a DTAA with third country, wherein India limits its source taxation rights in relation to specific income items (such as dividends, interest income, royalties, fees for technical services, etc) to a rate lower or a scope more restricted than that provided for those items of income in the DTAA with the first country, such beneficial treatment should also be extended to the first country.

Essentially, an MFN Clause allows a treaty partner country to import benefits from a subsequently signed Indian Income Tax treaty, provided certain conditions are met.

The MFN principle ensures that a treaty partner is not subjected to less favourable treatment compared to other treaty partners under similar agreements. Typically, benefits under MFN clause in Indian tax treaties are restricted to a specific group like organization for Economic Cooperation and Development (OECD) countries or developing countries.

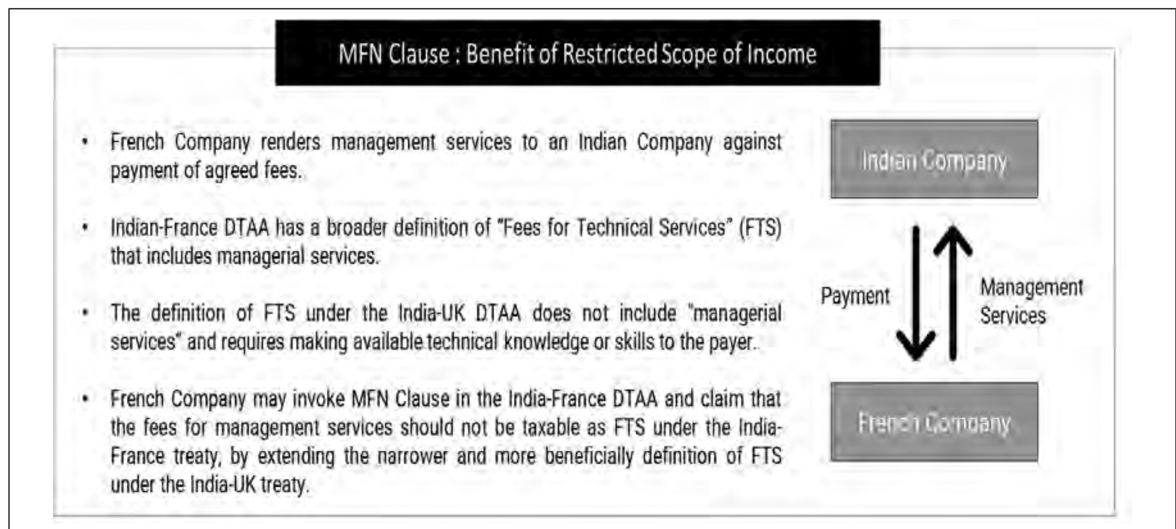
MFN clauses can be incorporated as an integral part of the DTAA at the inception or may be introduced later through an amendment protocol.

Indian tax treaties with MFN Clauses –

- ***OECD Member Countries:*** Belgium, France, Netherlands, Spain, Sweden and Switzerland, etc.
- ***Non-OECD Countries:*** Saudi Arabia, Philippines etc.

In the Indian context, for tax treaties with OECD countries, the MFN provision requires that the countries involved must be OECD members. This ensures that any country granted MFN status receives treatment that is at least as favourable as that given to other OECD nations.

Illustration:



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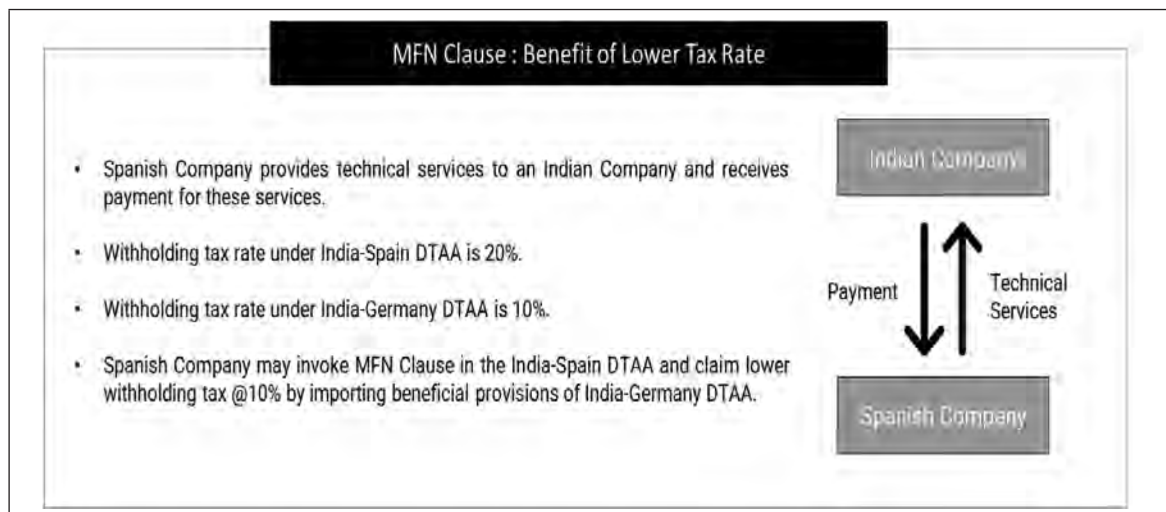

Deconstructing the issues clarified by the Supreme Court

1. **OECD Membership Timing:** Whether a taxpayer has the right to invoke an MFN clause if the third country was not an OECD member when the treaty with India was concluded but became a member later? Must the third country be an OECD member both at the time the DTAA is concluded and when the MFN clause is applied?

   Supreme Court's Decision: For MFN benefits to be extended, the third state must have been an OECD member at the time the DTAA was signed. Accordingly, the third country must be an OECD member both at the time of signing the DTAA and at the time of applying the MFN clause.

2. **Operative Nature of the MFN Clause:** Is the MFN clause self-operative and automatically effective, or does it require a separate notification from the Indian tax authorities to take effect?

   Supreme Court's Decision: The enforceability of DTAAs and their protocols in Indian courts requires a specific notification under Section 90(1) of the Income Tax Act, 1961 ("the Act"). Thus, the MFN clause cannot be automatically applied without an official notification from the Indian government and the Parliament.

Erstwhile position before the Supreme Court Ruling

The Delhi High Court in various judgements[2], had previously held that as the MFN clause, whether integrated into Treaty initially as the primary text or subsequently as a protocol, is notified alongside the DTAA, there is no need for a separate notification to be issued additionally each time it is activated. Additionally, it held that the OECD

2. High Court Rulings:
   — [2016] 72 taxmann.com 1/241 Taxman 268/386 ITR 390 (Delhi);
   — [2021] 127 taxmann.com 43/434 ITR 516 (Delhi);
   — (2021) [W.P. (C) No. 3243 of 2021] (Delhi HC)

membership status should be assessed at the time of applying the MFN clause, not at the time of signing the DTAA.

Clarificatory Circular

While the Supreme Court's decision was pending, the Central Board of Direct Taxes (CBDT) issued a clarificatory circular[3] in 2022, outlining the conditions for claiming benefits under the MFN clause in a DTAA:

- The treaty with the third country must be concluded after the first treaty is signed/entered into force;
- The third country must be a member of the OECD at the time the treaty is signed;
- India must limit its taxing rights on relevant income items in the treaty with the third country; and
- Indian tax authorities are required to release a distinct notification to incorporate the benefits of the treaty with a third country, in accordance with the provisions of section 90(1) of the IT Act.

The Circular also stated that it would not affect the implementation of court orders favourable to taxpayers if any court had already made a decision on the subject issue mentioned in this circular.

Impact of the Supreme Court Ruling

The Supreme Court has overturned the previous position adopted by the Delhi High Court and taken a contrarian stance regarding the subject matter.

This judgment indirectly upheld the validity of the conditions as set out in the CBDT's Circular, mandating a distinct notification for the operation of MFN clause. Consequently, for India's tax treaties containing an MFN clause, the clause will not be relevant without a notification issued by the Indian tax authorities.

Illustration:

Treaty Partner	Treaty in force	Dividend Withholding Tax Rate [WHT] Rate	OECD Membership	Whether notification issued by Indian Tax Authorities to extend beneficial tax rate under MFN?
Netherlands	1989	15%	1961	Yes
Germany	1997	10%	1961	Not Applicable
Slovenia	2006	5% (10% shareholding)	2010	No
Lithuania	2013	5% (10% shareholding)	2018	No
Colombia	2015	5%	2020	No

As per the principles laid down in Supreme Court ruling, the favourable rates in India's DTAAs with Slovenia, Lithuania and Columbia cannot be extended to the India-Netherlands tax treaty by applying the MFN clause therein because (i) Slovenia, Lithuania and Columbia were not

3. Circular No. 3/2022 [F.NO. 503/1/2021-FT&TR-I]

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members of the OECD when their respective DTAA with India were signed, meaning their subsequent OECD membership is irrelevant for MFN clause applicability; and (ii) there is no notification from the Indian authorities to support this interpretation.

In contrast, the lower withholding tax rate of 10% prescribed under the India-Germany treaty is applicable to the Netherlands due to (i) Germany being an OECD member at the time the India-Germany DTAA was signed; and (ii) the Indian tax authorities had issued a notification[4] on 30th August 1999, lowering the dividend WHT rate under the India-Netherlands DTAA by operation of the MFN clause, relying on the dividend WHT rate in India-Germany DTAA.

Recent Development: Notification pursuant to the MFN clause under the Spain Treaty

Aligned with the CBDT Circular and the Supreme Court Ruling, the Ministry of Finance has recently issued a notification on 19th March 2024, invoking the MFN clause under the India-Spain DTAA.

Prior to this notification, under the India-Spain DTAA, the tax rate was 10% for equipment royalty and 20% for other types of royalties and fees for technical services (FTS). The tax rate for royalty and FTS under the India-Germany DTAA is 10%. Germany was an OECD member at the time at the time of signing of India-Germany DTAA.

As per the notification, the Central Government modified the India-Spain DTAA by importing a lower tax rate of 10% for royalties and FTS from the India-Germany DTAA, essentially standardizing the tax rate for all types of royalties and FTS under the India-Spain DTAA to 10% (based on the favourable rate under the Germany Treaty). This MFN Notification is effective from Financial 2023-24.

Article 13 in the India-Spain DTAA prior to the notification	Article 13 in the India-Spain DTAA after the notification
'2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged shall not exceed : (i) in the case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment, ***10 per cent of the gross amount of the royalties****; (ii) in the case of* ***fees for technical services and other royalties, 20 per cent of the gross amount of fees for technical services or royalties'****.*	*'2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services the tax so charged* ***shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services'****.*

4. Notification No. S.O. 693(E) dated 30th August 1999

Going Forward

Currently, a review petition is pending with the Supreme Court that requires reconsideration of the subject ruling. Depending on the subsequent developments and outcome of this petition, the interpretation of the MFN clause under tax treaties will need to be based on the CBDT Circular and the principles established by the Supreme Court.

Supreme Court's ruling is binding on assessee as well as on tax authority including appellate authority, ITAT and High Court.

Going forward, claim of MFN should be taken by taking guidance from CBDT circular and Supreme Court Ruling, basis the facts of the case.

Implications of the Supreme Court Judgement

> *"MNCs seek amnesty scheme; firms asked to cough up Rs 11,000-cr after SC ruling" – Financial Express Newsletter*

Ongoing/Pending Assessments: It is well-settled that principle of law enunciated by the Supreme Court is the law from inception. Hence, this interpretative judgement of Supreme Court will be retrospective in nature, it will automatically cover all the cases/ assessments that are currently open where litigation is pending on the interpretation of MFN clause. Consequently, additional tax liability may arise for cases where the MFN benefit was claimed contrary to the Supreme Court's ruling.

Impact of Supreme Court Ruling in case of Payee Entity

S. N.	*Particulars*	*Impact of Supreme Court Ruling*
1	Reassessment for previous transactions where MFN benefit was claimed	• Given the Supreme Court's judgment, non-resident taxpayers may be subject to reassessment for transactions in prior tax periods, ranging up to 10 years.
2	Updated Return	• Can be filed in relation to FY 2021-22 or later. • Additional tax of 25%/50% may be levied. • If the payer revises the TDS return and pays the incremental tax, additional tax may not be levied.
3	Incremental Tax (Difference between actual withholding and withholding without MFN benefit)	• Yes, applicable regardless of whether the return is filed initially or not.
4	Interest u/s. 234A (1%) of the IT Act	• Not charged if the original tax return was filed on time. • Charged if no prior return is file and subsequently filed under sections 148/139(8A).
5	Interest u/s. 234B (1%) of the IT Act	• Applicable, but can be argued based on the case's bona fides defending the inability to foresee adverse SC ruling.

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S. N.	*Particulars*	*Impact of Supreme Court Ruling*
		• Alternatively, the payer can deposit the incremental tax by filing revised TDS return and the payee can claim credit against the same. Post claiming TDS, section 234B can be defended due to the inapplicability of proviso to section 209(1)(d) even if delayed.
6	Interest u/s. 234C (1%) of the IT Act	• Interest will be levied upon filing a return as belated/updated or in response to a notice u/s 148. • Where MFN benefit of lower tax was claimed in the past and return of income was filed by the Payee Entity, there would be shortfall in tax payable even with respect to returned income, and Section 234C should apply. • In case where MFN benefit of scope restriction was claimed (for example, by importing the "make available" clause in respect of FTS), the returned income would be nil, and hence in such case Section 234C should not be triggered.
7	Interest u/s. 234D (0.5%) of the IT Act	• May be levied if the tax liability increases due to the SC ruling, reducing any previously granted refund.
8	Late Fee u/s. 234F of the IT Act	• May be levied if the original return was not filed initially.
9	Interest Waiver	• Possible if the taxpayer did not deposit tax pursuant to a favourable HC ruling reversed by SC, subject to application before CCIT/DGIT. • Prerequisites: Filing the return for the relevant assessment year and payment of principal component of demand due on the assessed income.
10	Penalty u/s. 270A of the IT Act	• Case 1: No previous return filed – advisable to file an updated return to demonstrate bona fides and substantiate there is no under-reporting of income. No penalty may be levied. • Case 2: Previous return filed initially; updated return due to change in tax rates – no penalty if there is no income variation. If income varies due to MFN clause, position may be defended based on bona fides and previous HC rulings.

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S. N.	*Particulars*	*Impact of Supreme Court Ruling*
11	Prosecution u/s. 276CC for wilful delay/non-filing of return	• No prosecution if the original return is filed since 276CC applies to wilful default/delay. • If no return was filed initially, it is advisable to file an updated return.
12	Prosecution u/s. 276C for wilful attempt to evade tax	• No prosecution if bona fides and previous MFN claims can be substantiated, showing no wilful intent to evade tax. • Onus on the taxpayer to prove the absence of wilful intent if no initial return was filed. • Filing an updated return can mitigate prosecution risk. • Additional defenses may be available if no income variation is reported and only a lower tax rate was claimed. • Evaluate filing an application for compounding offenses to further mitigate prosecution risk.

Impact of Supreme Court Ruling in case of Payer Entity

S.N.	*Particulars*	*Impact of Supreme Court Ruling*
1	Deemed as Assessee in Default u/s 201(1) of the IT Act	• Shortfall in tax/incremental tax can be recovered from Indian Payer Entities. • Indian payers who used the MFN benefit to deduct and deposit withholding tax at lower rates may be deemed as assessee in default and face tax demands u/s 201(1). • Further, wherein lower withholding has been carried basis the certificate issued u/s 197 of the IT Act, a view may be taken that since the assessee relied on the certificate, which was valid at the time of withholding, the assessee cannot be treated as an assessee-in-default for the said period.
2	Applicability of Limitation Period Prescribed u/s 201(3) of the IT Act	• Section 201(3) stipulates a 7-year limitation period for proceedings u/s 201(1) in case of resident payees, but there's no explicit time limit for non-resident payees. Opinions vary on whether the 7-year limit applies to payments made to non-residents.

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S.N.	***Particulars***	*Impact of Supreme Court Ruling*
		• Tax authorities at various levels have held[5] that the limitation period prescribed in Section 201(3) is equally applicable for payments made to non-residents as well. • However, there are case laws[6] wherein it was held that where no time limit is prescribed for taking an action under the statute and since it may be administratively difficult to recover tax from the non-residents, proceedings must be concluded within a reasonable period even beyond the prescribed 7 years' timeframe. • Considering the divergent views and available jurisprudence, both interpretations are possible.
3	Payer's liability to pay interest u/s 201(1A) from the due date of deduction till the actual date of payment	• Payers may be liable to pay interest u/s 201(1A). • Reference is invited to CBDT Circular[7] dated 24 March 2017, which provides that where any tax was not deducted on the basis of any order passed by the Jurisdictional High Court and subsequently such tax was held to be deductible by the Supreme Court, the Chief Commissioner of Income tax/ Director General of Income tax may grant waiver of interest. • This benefit applies if the non-deduction was backed by a High Court judgement later overturned by the Supreme Court. • A prerequisite for interest waiver is the payment of principal TDS u/s 201. • Basis the CBDT Circular, the interest waiver can be considered, and a refund may be given if interest u/s 201(1A)(i) was already paid.

5. Delhi High Court in *Bharti Airtel Ltd. vs. Union of India [2016] 76 taxmann.com 256 (Delhi); ITAT Mumbai in Tata Power Co. Ltd. vs. Income tax Officer [2019] 111 taxmann.com 238 (Mumbai-Trib); ITAT Bangalore in Mphasis Ltd. vs. Deputy Director of Income tax [2022] 136 taxmann.com 160 (Bangalore-Trib).*
6. *Bombay High Court in DIT vs. Mahindra & Mahindra Ltd, [2014] 365 ITR 560; Allahabad High Court in Mass Awash vs. CIT [2017] 83 taxmann.com 306 (Allahabad); Telangana High Court in Dr. Reddys Laboratories Limited vs. DCIT [2023] 155 taxmann.com 97 (Telangana).*
7 CBDT Circular No. 11/2017

S.N.	***Particulars***	*Impact of Supreme Court Ruling*
4	Penalty u/s 271C of the IT Act	• Section 271C of the IT Act provides for penalty for failure to deduct tax at source. However, it is a settled position that penalty cannot be imposed on an assessee if he had a reasonable cause for non-deduction of tax at source. • In view of the Nestle SA judgment, a view may be taken that penalty cannot be imposed owing for the reason such non-deduction/lower deduction was on account of favourable High Court rulings.
5	Risk of Expenditure Disallowance u/s 40(a)(i) of the IT Act	• Yes, expenses may be disallowed in the relevant past year but may be claimed as expenditure in the year of incremental tax payment.
6	Incremental tax paid in the current year by the Payer Entity in case of "Net of Tax" contractual arrangements – whether allowed as a deduction	• In a "net of tax" contract, the tax borne by the Payer Entity is essentially the Payee's liability, but is agreed to be paid by the Payer as part of the overall consideration. • Since the Payee is taxed on the grossed-up sum under section 198, the Payer should be allowed a deduction for the tax paid on this grossed-up amount under section 195A. • If the incremental tax due to the Supreme Court ruling is paid directly by the Payer Entity (either as Representative Assessee or as TDS) and the Section 40(a)(i) disallowance was not made in the past year, this incremental tax may be allowed as a deduction in the current year, subject to auditor confirmation.

Non-resident entities affected by the Supreme Court ruling must assess potential exposure to additional taxes, interest, and penalties, and to formulate a strategy for dealing with Indian tax authorities. This may include examining the possibility of claiming additional foreign tax credits in the payee's country of residence.

In cases where the interpretation of Indian tax authorities diverges from that of the non-resident entity's home country—such as in the Netherlands, Switzerland, France, and others which have issued unilateral decrees affirming the applicability of the MFN clause in relevant treaties— entities may consider invoking the mutual agreement procedure (M.A.P.) article under the applicable tax treaty.

Entities also need to determine if provisions for past taxes are necessary in the books of accounts based on available information.

Further clarification is essential and awaited from the Indian tax authority to address the ambiguities and understand the applicability of the Supreme Court's decision in case of prior transactions.

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Impact of the Amendment to Section 56(2)(viib) of the Income-tax Act, 1961: Implications for Companies Issuing Shares to Non-Residents and Compliance Requirements

Background

Prior to the amendment, Section 56(2)(viib) of the IT Act, *inter alia*, provided that if a closely held company receives any consideration for issuing shares from a **resident** that exceeds the face value of such shares, the excess over the fair market value (**FMV**) is taxable under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules prescribes the method for computation of the FMV of unquoted equity shares for the purposes of the Section 56(2)(viib) of the IT Act.

Section 56(2)(viib) was inserted by the Finance Act, 2012, as an anti-abuse provision 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, these provisions were not applicable for consideration received from non-resident (NR) investors.

Amendment by the Finance Act, 2023: Bringing the non-resident investors within the ambit of section 56(2)(viib) to eliminate the possibility of tax avoidance

The Finance Act, 2023 has omitted the words "being a resident" in Section 56(2)(viib).

The relevant provision now reads as under:

"(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely: —

.....

where a company, not being a company in which the public are substantially interested, receives, in any previous year, ***from any person****, 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."*

These amendments will be effective from the 1st April 2024 and shall apply to the assessment year 2024-25 and subsequent assessment years.

Impact of amendment

Previously, Section 56(2)(viib) did not apply to consideration received from NR investors. The amendment has broadened the scope of Section 56(2)(viib) to cover consideration received from NR Investors. Consequently, the provision applies to the consideration received from any person (subject to specified exceptions as discussed below) regardless of the residential status.

Applicability of the amended provision of Section 56(2)(viib)

(a) It does not apply in case of shares issued by a widely held company (Public Company or Listed Company or Subsidiary of Listed Company);

(b) It applies to a closely held Indian Company;

(c) It must receive any consideration for the issuance of shares (Equity or Preference);

(d) Such consideration is received from any person (Resident or NR);

(e) The issue price of shares exceeds the face value of such shares as prescribed under Rule 11UA (Face Value < FMV < Issue Price).

If the above conditions are satisfied, the consideration exceeding the FMV of the shares

is considered as income from other sources, taxable in the hands of Indian Company issuing the shares.

Exemptions to applicability of Section 56(2)(viib)

The exceptions outlined in the proviso to Section 56(2)(viib), prior to the amendment, will remain in effect:

(a) Consideration is received by a Venture Capital Undertaking from a Venture Capital Company or Venture Capital Fund or Category-I or Category-II Alternative Investment Fund (AIF), including funds specified in Indian IFSC[8];

(b) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Recent Exemptions: Pursuant to the exercise of Central Government's power as mentioned above, the Central Board of Direct Taxes (CBDT) has issued two recent notifications dated 24th May 2023, specifying certain exceptions from the applicability of section 56(2)(viib) of the IT Act.

Notification 1: CBDT has notified[9] the following classes of persons to be excluded from the ambit of section 56(2)(viib) of the IT Act, effective from 24th May 2023:

- **Government Category:** Government and Government-related entities like central banks, sovereign wealth funds, international or multilateral organisations or agencies, and entities where the government's direct or indirect ownership is 75% or more;

- **Banking and Insurance Category:** Banks or insurance entities which are subject to applicable regulations in jurisdictional country;

- **Entities from specified jurisdictions:** Any of the following entities, which is a resident of any of the 21 specified countries listed in the Annexure to th notification, and such entity is subject to applicable regulations in the resident country:

  (a) Category-I Foreign Portfolio Investors registered with Securities and Exchange Board of India (SEBI);

  (b) Endowment funds associated with a university, hospitals or charities;

  (c) Pension funds created under the law of the specified country;

  (d) Broad-based pooled investment vehicle or fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

Notification 2: CBDT has notified[10] certain investee companies to be excluded from the ambit of section 56(2)(viib) of the IT Act, effective from 1st April 2023.

- Previously, the CBDT had notified[11] exemption from applicability of Section

8. International Financial Services Centre
9. CBDT Notification No. 29/2023, dated 24 May 2023
10. CBDT Notification No. 30/2023, dated 24 May 2023
11. CBDT Notification No. 1131(E) dated 5 March 2019

56(2)(viib) of the IT Act to eligible start-up companies registered with Department for Promotion of Industry and Internal Trade (DPIIT) which fulfil specified conditions[12], in respect of shares issued at premium to resident investors. Para 4 of the aforesaid notification issued by the DPIIT, inter-alia, specifies the following prerequisites for availing exemption:

(a) Recognised by DPIIT as a start-up;

(b) Aggregate paid up share capital and share premium after proposed issue of shares does not exceed INR 25 Crores (excluding investments from Non-Residents, Venture Capital Company or Venture Capital Fund, or a Specified Listed company);

(c) Not invested in the specified non-qualifying assets such as shares, residential house, jewellery etc.

- Following the expansion of section 56(2)(viib) scope to include Non-Resident investors in the Finance Act 2023, CBDT has now extended this exemption to start-up companies for shares issued to any person (resident or Non-Resident) under the same conditions applicable earlier to resident investors.

The taxation implications of share premium exceeding the fair market value of shares post-amendment are outlined in the accompanying table:

Issuing Company	***Shares issued to***	***Whether Section 56(2)(viib) is applicable?***
Venture Capital Undertaking	Venture Capital Company	No
	Venture Capital Fund	No
	Category-I or Category-II AIF	No
Eligible Start-up	Any person (in compliance with the DPIIT Notification)	No
	Any person in any other case	Yes
Closely held company not being an eligible start-up	Any person (Resident or Non-Resident)	Yes (if the issue price is more than prescribed FMV under Rule 11UA)

Computation mechanism vide Rule 11UA

Rule 11UA(2) of the Income-tax Rules, 1962 outlines the methodologies for determining the fair value for the purpose of section 56(2)(viib) of the IT Act. The erstwhile Rule 11UA prescribed two methods viz. Net Asset Value or Discounted Cash Flows (**DCF**) for determining the FMV of equity shares issued to resident investors.

Additional Valuation Methods for NR Investors: The amended Rule 11UA, in line with the CBDT Notification[13] dated 25th September 2023, has provided the following additional methods for valuation of equity

12. CBDT Notification No. G.S.R 127(E) dated 19 February 2019

13. CBDT Notification No. 81/2023

shares for the consideration received from NR as below:

- Comparable Company Multiple Method;
- Probability Weighted Expected Return Method;
- Option Pricing Method;
- Milestone Analysis Method;
- Replacement Cost Methods.

Permissible valuation methods as applicable in case of Resident and NR Investors under Section 56(2)(viib) of IT Act is summarised below:

Instruments	***Resident Investor***	***Non-Resident Investor***
Equity Shares	– Net Asset Value Method; – DCF Method as certified by Merchant Banker Report	– Net Asset Value Method; – DCF or any of prescribed additional optional methods as certified by Merchant Banker Report
Compulsorily Convertible Preference Shares	– DCF Method as certified by Merchant Banker Report	– DCF or any of prescribed additional optional methods as certified by Merchant Banker Report

Flexibility Introduced in Rule 11UA(3) for Valuation Reports

The erstwhile Rule 11UA mandated a merchant banker DCF valuation report as on the date of share issuance. The amended Rule11UA(3) provides flexibility by allowing the valuation report to be issued up to 90 days before the share issuance date. This applies to investments by both resident and NR investors.

Benchmarking

The amended Rule 11UA provides a price matching facility for both resident and NR investors to determine the FMV for Section 56(2)(viib). This means that the price at which shares are issued by an Indian company to notified NR entities/venture capital funds/ venture capital company/specified funds may be adopted as FMV for the purposes of benchmarking investments by both resident and NR investors, provided the following conditions are met:

(a) The consideration from such FMV does not exceed the total consideration received from the notified NR entities/ venture capital funds/venture capital companies/or specified funds, and

(b) The consideration has been received by the company from the notified NR entities/venture capital funds/venture capital company/specified funds within a 90 days window before or after the date of issue of shares that are being valued.

Illustration

If a venture capital undertaking receives a consideration of INR 50,000 from a venture capital company for issue of 100 shares at the rate of INR 500 per share, then such an undertaking can issue 100 shares at this rate to any other investor within a period of 90 days before or after the receipt of consideration from venture capital company.

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Safe Harbor Limit: Amended Rule 11UA prescribed safe harbor limit of 10% for valuation of equity shares and CCPS for both resident and NR investments, where if the issue price of the shares exceeds the value of shares up to 10% then issue price shall be deemed to be FMV. The safe harbor limit of 10% is applicable only in case of NAV, DCF and five additional valuation methods. It is not extended to situations wherein price matching facility is availed basis shares issued to notified NR entities/venture capital funds/ venture capital company/specified funds (as discussed above).

Resident Investor	Non-Resident Investor
10% in case NAV or DCF method is opted	10% if NAV or DCF or any of prescribed additional optional valuation methods is opted
Safe harbor limit is not applicable in cases where FMV is adopted basis the price matching facility	

Valuation Conundrum: Interplay with Other Laws

When receiving investments from non-residents, a valuation report is required under three different statutes, potentially leading to disparity unless shares are issued exactly at the fair value arrived commonly under all laws. The differences are outlined below:

Applicable Law	Specified Valuer	Prescribed Valuation
Companies Act, 2013	Registered Valuer	**Minium Floor Price i.e.,** Issue Price should be ≥ Fair Value
Foreign Exchange Management Act, 1999, read with Non-Debt Instrument Rules, 2019 and FDI Policy	CA/CMA/Merchant banker	**Minium Floor Price i.e.,** Issue Price should be ≥ Fair Value determined using any internationally accepted valuation methodologies
Income Tax Act, 1961, read with Rule 11UA	Self-determination or by a Merchant Banker as applicable	**Maximum Ceiling Price i.e.,** Issue price should be ≤ Fair Value, otherwise, the excess amount would be subject to tax

Since the share valuation methodologies under these regulations are not aligned, it can be challenging to satisfy all requirements. Additionally, in practice, the infusion and pricing of equity shares in investment rounds are typically determined through independent negotiations between the involved parties.

The process of valuing shares for business purposes involves judgment based on various assumptions. Valuation is subjective and not an exact science, and the price paid for shares often results from negotiations between the buyer and seller.

Compliance Requirement

Income Tax Return (ITR): Income taxable u/s 56(2)(viib) of the IT Act must be disclosed under the 'Other Sources' Schedule of the ITR Form. Additionally, Schedule SH-1 (for unlisted companies excluding notified start-ups) and Schedule SH-2 (for notified start-ups) should be updated with the relevant details of share issuance by the Company. Provided below are the relevant extracts from ITR Form-6 for reference:

SCHEDULE SH-1 — **SHAREHOLDING OF UNLISTED COMPANY** *(other than a company that is registered under section 8 of the Companies Act, 2013 (or section 25 of the Companies Act, 1956) or a company limited by guarantee under section 3(2) of Companies Act, 2013 or a start-up for which Schedule SH-2 is to be filled up)*

If you are an unlisted company, please furnish the following details;-

Details of shareholding at the end of the previous year

Name of the shareholder	Residential status in India	Type of share	PAN /Aadhaar No.	Date of allotment	Number of shares held	Face value per share	Issue Price per share	Amount received

Details of equity share application money pending allotment at the end of the previous year

Name of the applicant	Residential status in India	Type of share	PAN/Aadhaar No.	Date of application	Number of shares applied for	Application money received	Face value per share	Proposed issue price

Details of shareholders who is not a shareholder at the end of the previous year but was a shareholder at any time during the previous year

Name of the shareholder	Residential status in India	Type of share	PAN/Aadhaar No.	Number of shares held	Face value per share	Issue Price per share	Amount received	Date of allotment	Date on which cease to be shareholder	Mode of cessation	In case of transfer/sale, PAN of the new shareholder

SCHEDULE SH-2 — **SHAREHOLDING OF START-UPS**

If you are a start-up which has filed declaration in Form-2 under para 5 of DPIIT notification dated 19.02.2019, please furnish the following details of shareholding;-

Details of shareholding as at the end of the previous year

Name of the shareholder	Category of shareholder *(drop down to be provided- non-resident/ venture capital company/ venture capital fund/ specified company/ any other person)*	Type of share	PAN/Aadhaar No.	Date of allotment	Number of shares held	Face value per share	Issue Price per share	Paid up value per share	Share premium

Details of share application money pending allotment as at the end of the previous year

Name of the applicant	Category of applicant *(drop down to be provided- non-resident/ venture capital company/ venture capital fund/ specified company/ any other person)*	Type of share	PAN/Aadhaar No.	Date of application	Number of shares applied for	Face value per share	Proposed issue price per share	Share application money	Share application premium

Details of shareholder who is not a shareholder at the end of the previous year but was a shareholder at any time during the previous year

Name of the shareholder	Category of shareholder *(drop down to be provided- non-resident/ venture capital company/ venture capital fund/ specified company/ any other person)*	Type of share	PAN/Aadhaar no.	Date of allotment	Number of shares held	Face value per share	Issue Price per share	Paid up value per share	Date on which ceased to be shareholder	Mode of cessation	In case of transfer, PAN of the new shareholder

NOTE — **For definition of expressions– "venture capital company", "venture capital fund" and "specified company", please refer DPIIT notification dated 19.02.2019.**

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Tax Audit Report: Details of share premium taxable under Section 56(2)(viib) of the IT Act must be reported under **Clause 29 of Form No. 3CD**. This clause covers share premiums received by closely held companies in excess of FMV.

It is recommended that the details furnished under Clause 29 of the Tax Audit Report shall align with the details provided under Schedule SH-1 and Schedule SH-2 (as captured above) of the ITR Form and include corroborating documents such as the Valuation Report, Secretarial Filings, and Board Resolution.

Amendments to Section 206C(1G) of the Income-tax Act: Implications for Tax Collection on Foreign Remittances and Overseas Tour Program Packages

Background

Liberalised Remittance Scheme of RBI: An Individual person who is resident in India as per FEMA is permitted to remit outside India funds up to USD 2,50,000 per financial year (April to March) without any approval of RBI for any permitted current account or capital account transactions or both. The threshold of INR 700,000 for LRS is a combined threshold for the applicability of the TCS on LRS irrespective of the purpose of the remittance and such threshold applies for the whole of the financial year. This scheme is available only to Individuals, and not to other entities such as corporates, firms etc.

Pre-Amendment Position: Section 206C (IG) of the IT Act, prescribed tax collection at source (TCS) by a seller of an overseas tour program package from a buyer, at the rate of 5% of the amount of the package. Similarly, TCS at the rate of 5% was applicable on foreign remittances exceeding INR 7 Lakhs under the RBI's Liberalised Remittance Scheme (**LRS**).

Overseas tour program package, for the purpose of Section 206C(1G), means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

Subsequent Amendments

The Finance Act 2023 introduced the following changes to Section 206C(1G), effective from 01st July 2023:

- The monetary threshold of INR 7 Lakhs for triggering TCS on LRS remittance was removed.
- Applicable TCS rates for LRS remittances and purchase of overseas tour package was increased from 5% to 20%.
- Concessional TCS rate of 5%, required to be collected in case where the aggregate remittance exceeds Rs. 7 lakhs, was introduced in case remittances for education or medical treatment.

Following stakeholder feedback, the Central Government announced revisions to these provisions, vide Press Release dated 28th June 2023, further clarified by CBDT's Circular[14]. The key changes included:

- Reinstating the INR 7 lakhs threshold for all LRS payments, through all modes of payment, with no TCS for remittances up to this amount. Beyond this, the applicable TCS rates are as follows:

14. Circular No. 10/2023, dated 30 June 2023

- 0.5% for education financed by loans;
- 5% for other education or medical treatment remittances;
- 20% for all other purposes.

- For overseas tour package purchases, a 5% TCS applies to the first INR 7 lakhs per individual annually, with 20% TCS on amounts above this limit.
- The increased TCS rates, initially set for July 1, 2023, were deferred to October 1, 2023, with the mentioned modifications.

To align with the announced changes in the Press Release, the Finance Act 2024 enacted the necessary amendments to Section 206C(1G) of the IT Act.

Insertion after the Fifth Proviso

The Finance Act 2024 also introduced a new proviso to Section 206C (1G) of the IT Act to validate TCS collection under Section 206C(1G) according to the provisions as of April 1, 2023, during the interim period from July 1, 2023, to September 30, 2023.

These amendments ensure that the TCS provisions align with the government's earlier press release and stakeholder feedback, providing clarity and consistency in the tax collection process.

Implications of the Amendment

TCS obligations under Section 206C (1G) of the IT Act subsequent to the aforementioned amendments, stands as follows:

Nature of Remittance	*Position up to 30-09-2023*	*Position after 30-09-2023*
Education (loan-financed from financial institution as mentioned u/s 80E of the IT Act)	– Nil up to INR 7 Lakhs – 0.5% above INR 7 Lakhs	– Nil up to INR 7 Lakhs – 0.5% above INR 7 Lakhs
Education (other)	– Nil up to INR 7 Lakhs – 5% above INR 7 Lakhs	– Nil up to INR 7 Lakhs – 5% above INR 7 Lakhs
Medical Treatment	– Nil up to INR 7 Lakhs – 5% above INR 7 Lakhs	– Nil up to INR 7 Lakhs – 5% above INR 7 Lakhs
LRS (Other Purposes)	– Nil up to INR 7 Lakhs – 5% above INR 7 Lakhs	– Nil up to INR 7 Lakhs – 20% above INR 7 Lakhs
Purchase of overseas tour program package	– 5% (without threshold)	– 5% up to INR 7 Lakhs – 20% above INR 7 Lakhs

Credit Card transactions done abroad are excluded from LRS Coverage

The coverage of international credit card transactions during foreign travel under the LRS has been temporarily postponed. Initially, these transactions, in terms with the Government's notification dated 16th May 2023, were set to be included within the LRS framework with a capped limit of USD 250,000, subject to TCS. However, the Government has decided to delay the implementation of this change to allow Banks and Card networks sufficient time to implement necessary IT solutions. Therefore, for now, the use of International Credit Cards while traveling abroad remains excluded from the LRS and will not be subject to TCS.

Considerations for ITR Filing

Taxpayers must ensure TCS transactions by Sellers/Authorized Dealer Banks align with their Annual Income Statement (AIS) to prevent tax department queries and claim relevant credits in their income tax returns. Special attention is needed for online transactions via debit/credit/forex cards, cross-referencing TCS filings for LRS transactions and Specified Financial Transactions (SFT) from reporting entities.

15. Notification No. GSR 369(E) dated 16-05-2023

"When he first began to abuse me, I thought, "I am going to be angry". Anger was one thing, and I was another; but when I became angry, I was anger. These feelings have to be controlled in the germ, the root, in their fine forms, before even we have become conscious that they are acting on us."

— *Swami Vivekananda*

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Implications of the Legal Entity Identifier (LEI) and SBO Requirement in New ITR Forms: Enhancing Financial Transparency and Compliance

CA Siddharth Banwat

Overview

With every passing year, Central Board of Direct Taxes (CBDT) has been adopting measures to include information or disclosures in income tax returns forms to capture and strengthen the data collected in respect of taxpayers through the forms. In future, the data collected through the income tax return forms could be used for different analysis and matching of information qua different taxpayers. On one hand some changes have been brought in - to align with other regulatory requirements and are not really meant for data collection while on other hand some requirements (though existing even in past) are meant for data validation and confirmation with the requirements imposed under other laws. One such reporting obligation is reporting in respect of ownership/beneficial ownership. This article explains the reporting obligations in respect of Legal Entity Identifier and Beneficial ownership.

1. Legal Entity Identifier ('LEI')

1.1. LEI is a unique 20-character alphanumerical identifier (code) of a Legal Entity assigned in compliance with the international standard as notified to create a global reference data system that uniquely identifies every Legal Entity (in any jurisdiction) that is a party to financial transaction. The LEI is intended to facilitate identification of the contracting parties of any financial market transaction across jurisdictions.

1.2. In India, Legal Entity Identifier India Limited ('LEIL'), a wholly owned subsidiary of The Clearing Corporation of India Limited, acts as Local Operating Unit (LOU) for issuing and renewing globally compatible LEIs in India and maintaining LEI Records and is also referred to as LEI Issuer. LEIL has been accredited by the Global Legal Entity Identifier Foundation (GLEIF) as a LOU for issuance and management of LEIs in India. Reserve Bank of India (RBI) has recognised LEIL as "Issuer" of LEI under the Payment and Settlement Systems Act 2007.

1.3. LEI serves as a proof of identity for a financial entity, enables transacting entities to identify, report and abide by regulatory requirements, and facilitate transaction reporting to trade repositories. Accordingly, LEI is issued to any legal identity including but not limited to all intermediary institutions, banks, mutual funds, partnership

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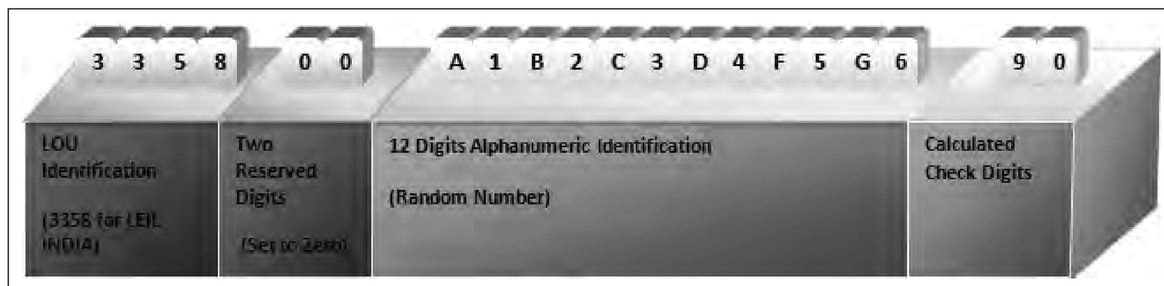
companies, trusts, holdings, special purpose vehicles, asset management companies and all other institutions being parties to financial transactions.

1.4. The structure of the global LEI with a reference to Local Operation Unit of India is as under:



1.5. The overall framework of LEI is governed by the LEI Rules of Legal Entity Identifier India Limited ("LEI Rules[1]") as amended in 2022. LEI Rules provide for the registration, updation, modification, renewal, porting services and reporting of relationship data of LEIs issued and managed by LEIL.

1.6. At the time of application, an applicant (Legal Entity) is required to electronically accept the LEI Rules and accordingly, acceptance of LEI Rules constitute a binding contract between applicant (Legal Entity) and LEIL. LEI Rules also become applicable to the Legal Entity seeking LEI having an establishment registered in India and is a party to such financial transaction as may be specified from time to time by the Reserve Bank of India.

1.7. LEI is assigned on an application from the Legal Entity after due validation of data filed along with application in accordance with the LEI Rules. However, LEIL does not perform the KYC check on the Legal Entity and issuance of LEI does not constitute a Know Your Customer (KYC) check. LEI services are based on validation of information from Business Registries or authorized public sources.

LEI Online Database

1.8. The LEI search is an online database[2] of Legal Entities managed by LEIL and is publicly accessible online on the world wide web. The database provides information, free of charge, about the identity of Legal Entities to whom LEIs are issued including banks, companies (private and public limited) proprietorships, partnerships, funds, trusts, societies etc.

1.9. The minimum information published on database includes:

a) The official name of the Legal Entity

b) The address of the headquarters of the Legal Entity;

1. Source: https://www.ccilindia-lei.co.in/Documents/LEIL%20Rules%202022-Legal.pdf
2. https://www.ccilindia-lei.co.in/USR_PAGEOUT.aspx?id=b2snwrdw0xohh3vo424gazfe4a056a403fac4194b1db338c6438bd71

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c) The address of legal formation;

d) The date of the first LEI issued;

e) The date of last update of the LEI;

f) The official business registry, where available & where the foundation of the Legal Entity is mandated to be recorded on formation of the entity;

g) such other information that may be prescribed by LEIL as per the Regulatory Guidelines.

1.10. In order to be in line with the RBI regulations, the new ITR Forms have incorporated a column for furnishing details of the LEI number. In the Income Tax Return (ITR) forms applicable to entities [ITR 2, 3, 5 and 6], in Part A – General Information section, requirement to quote LEI has been provided wherein LEI number and its validity date is required to be quoted. LEI information is mandatory only in cases where refund exceeds Indian rupees fifty crores (INR 50 crores). The reporting requirement in ITR is currently only limited for issuance of refunds to legal entities which crosses the threshold of INR 50 crores and does not have any other reporting implications.

2. Ownership/Beneficial Ownership disclosure in ITR

2.1. In *"Part A – General Section"* of Form ITR-6, Company is required to disclose particulars of persons who were **beneficial owners** of shares holding not less than 10% of the voting power at any time of the previous year. The disclosure format requires Company to disclose shareholder's information having 10% or more of the voting power of the Company at any time during the previous year for which return of income is being filed. The particulars sought are name and address of the shareholder, percentage of shares held and PAN of the shareholder. The extract of the table as it appears in Form ITR is as under:

SHAREHOLDERS INFORMATION	Particulars of persons who were beneficial owners of shares holding not less than 10% of the voting power at any time of the previous year			
	S.No.	Name and Address	Percentage of shares held	PAN (if allotted)

2.2. From the reading of instructions (issued in respect of previous years) in respect of 'Shareholder Information' column it appears that it seeks information in respect of major shareholders i.e. holding beneficial ownership in respect of 10% or more of voting power of the Company. Meaning thereby, information in respect of shareholders holding shares directly and carrying voting rights of 10% or more needs to be reported in this section.

2.3. Following the section "Shareholder Information" there is section requiring furnishing of "Ownership Information" wherein details of ultimate beneficial owner are required to be furnished. The description of the table prescribes furnishing of information in case of unlisted company –in respect of ultimate beneficial owners and in case of Foreign Company –in respect of immediate parent company and ultimate parent

company. Therefore, distinction has been made in identification of beneficial owner in case of domestic company and foreign company. In case of foreign company, information in respect of parent and ultimate parent entity is required to be reported whereas in case of domestic company, information in respect of natural person identified as beneficial owner is required to be furnished. The exact structure as provided in ITR-6 is as under:

OWNERSHIP INFORMATION

In case of unlisted company, particulars of natural persons who were the ultimate beneficial owners, directly or indirectly, of shares holding not less than 10% of the voting power at any time of the previous year

S.No.	Name	Address	Percentage of shares held	PAN/Aadhaar No. (if allotted)

In case of Foreign company, please furnish the details of immediate parent company.

S.No	Name	Address	Country of residence	PAN (if allotted)	Taxpayer's registration number or any unique identification number allotted in the country of residence

In case of foreign company, please furnish the details of ultimate parent company

S.No	Name	Address	Country of residence	PAN (if allotted)	Taxpayer's registration number or any unique identification number allotted in the country of residence

2.4. In this regard, it is noteworthy that the term beneficial owner is not defined in general in section 2 of Income-tax Act, 1961 ('ITA'). However, for the purposes of filing income tax returns reference can be drawn from the definition of the term "beneficial owner" as defined in section 139 of ITA. Explanation 4 to section 139 of ITA which defines the term "beneficial owner" in respect of an asset to mean an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. However, it appears that the Explanation 4 was inserted to define beneficial ownership for the purpose of reporting of foreign assets held by individuals. In absence of any specific clarification or instructions, one will have draw inference from the information which Company is required to be maintained by the Company as per corporate laws.

2.5. It may be safe to draw a conclusion that going by the reporting requirements in Form ITR, Company may report shareholder information in respect of shareholders holding shares in the Company directly and ownership information in respect of beneficial owners identified by the Company. For identifying beneficial owners, Company

can rely on the information in respect of identification and declaration of Significant Beneficial Owners ("SBO") requirement as prescribed under section 90 of the Companies Act, 2013 ("CA 2013"), and the Companies (Significant Beneficial Owners) Rules, 2018 ("SBO Rules").

2.6. The SBO reporting obligations under the CA 2013 was introduced based on Recommendations 24 and 25 of the Financial Action Task Force ("FATF") report, which required member countries to ensure that there is adequate and timely information on 'beneficial ownership' and 'control' of legal persons.

2.7. Section 90 of the CA 2013 provides both quantitative and qualitative tests for identification of an SBO. Section 90(1) of the Act provides that every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed (i.e. 10%)[3], in shares of a company or the right to exercise, or the actual exercising of significant influence or control[4] over the company shall make a declaration to the company, specifying the nature of his interest and other particulars, in the manner prescribed in SBO Rules.

2.8. Section 90(1) of the CA 2013 read with Rule 2(1)(h) of the SBO Rules, provides twin tests for identifying the individual who would qualify as an 'SBO' of the reporting company:

a) **Objective test** – An individual who indirectly (or together with direct holdings) holds **10% or more of the shares of the company, or 10% or more of the voting or dividend rights**; OR

b) **Subjective test** – An individual who has the **right to exercise,** or **actually exercises significant influence[5]** or control in any manner, other than through direct holdings only.

2.9. The objective and criteria to determine beneficial ownership for tax compliance and for corporate governance cannot be directly corelated. Further, there is lack of clarity as to what is required to be considered for the purpose of reporting. In such a scenario, best available source of information which is maintained by the Company for the purpose of determining beneficial ownership of its shareholder should be taken into consideration for reporting of information in respect of ultimate beneficial owner in ITR forms. In practical sense, information as captured by the Company in respect of beneficial ownership as per provisions of CA 2013 and SBO Rules should be used for the purpose of uniformity and consistency until specific scope is clearly laid down under Rule 112 or instructions to ITR forms.

3. Prescribed as 10% through Companies (Amendment) Act, 2017
4. As defined in Section 2(27)][2]of Companies Act, 2013
5. Rule 2(1)(i) of the SBO Rules - "significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

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Analyzing other key changes in ITR Forms: Implications for Taxpayers and Compliance Requirements

CA Anita Basrur CA Gaurav Sethiya

Overview

On a year on year basis the ITR forms are amended to incorporate the changes in the Finance Act.

The CBDT has notified the Income-tax Return (ITR) Forms ('New ITR Forms') for the Assessment Year 2024-25 vide Notification No. 105/2023, dated 22-12-2023, Notification No. 16/2024, dated 24-01-2024 and Notification No. 19/2024, dated 31-01-2024.

The applicability of ITR forms to different taxpayers remains unchanged in the new versions. Nevertheless, the new forms require additional details from taxpayers. Further, many changes in the ITR forms are consequential to the amendments made by the Finance Act 2023.

A thorough analysis of new ITR Forms has been done and key changes and new requirements in current ITR forms viz-a-viz last year's ITR Forms are highlighted.

It is important to note that the Government is aiming at reducing litigation and thereby scrutiny assessments and in that endeavour is putting in best efforts to gather as much information as possible so that only cases where there is no clarity about the allowability of deductions/claims are selected for scrutiny assessment.

As we step into the compliance season for the new Assessment Year (AY) 2024-25, chartered accountants across India are gearing up to navigate through the latest amendments in the Income Tax Return (ITR) forms. These changes, introduced by the Central Board of Direct Taxes (CBDT), reflect the evolving landscape of taxation and compliance in India. The amendments aim to enhance the accuracy of tax filings, promote transparency, and align with the government's digital initiatives.

The key changes in the ITR forms for AY 2024-25 as compared to AY 2023-24 are not just incremental but pivotal in ensuring that the tax filing process becomes more streamlined and taxpayer friendly. From the introduction of new schedules to the requirement of additional disclosures, the modifications are set to impact the way tax professionals and taxpayers approach the filing process.

The amendments are not just about adding new fields or sections; they represent a comfortable movement towards a more detailed and comprehensive approach to income reporting. As chartered accountants, it is our responsibility to ensure that our clients are well-informed about these changes and that their filings are fully compliant with the latest requirements.

In line with the above, we would like to highlight some of the key changes in ITR Forms of AY 2024-25 vis-à-vis AY 2023-24, which would have major impact on the ITR filing process and on compliance reporting from Taxpayers perspective:

1. "Receipts in Cash" column added to claim enhanced turnover limit:

The Finance Act, 2023 has enhanced the turnover threshold limit from ₹ 2 crores to ₹ 3 crores for opting for the presumptive taxation scheme under Section 44AD of the Act if the receipts in cash do not exceed 5% of the total turnover or gross receipts for the previous year. It is also provided that the meaning of cash would include the cheque or a bank draft, which is not an account payee.

Similarly, Section 44ADA was amended to enhance the threshold limit of gross receipts from ₹ 50 lakhs to ₹ 75 lakhs, if the receipts in cash do not exceed 5% of the total gross receipts for the previous year.

To give effect to the above amendments, the CBDT has amended ITR forms to include a new column of "receipts in cash" for disclosing cash turnover or gross receipts in cash under the Schedule Business and profession. The relevant extract of ITR Forms for better understanding has been reproduced herewith:

61	COMPUTATION OF PRESUMPTIVE BUSINESS INCOME UNDER SECTION 44AD			
Sr. No	Name of Business		Business Code	Description
1				
2				
3				
(i)	Gross Turnover or Gross Receipts (iA + iB + iC) (61(i) limited to Rs.2 Crores, however if 61(iB) is less than or equal to 5% of 61i then the limit under 61(i) is extended to Rs.3 Crores.)			0
	A	Through a/c payee cheque or a/c payee bank draf t or bank electronic clearing system received before specified date or other prescribed electronic modes before specified date		
	B	Receipts in Cash		
	C	Any mode other than A and B		
(ii)	Presumptive Income under section 44AD (iiA + iiB)			0
	a	6% of 61(iA), or the amount claimed to have been earned, whichever is higher		
	b	8% of (61(iB)+61(iC)), or the amount claimed to have been earned, whichever is higher		
Note—If income is less than the above percentage of Gross Receipts/Turnover, it is mandatory to maintain books of account and have a tax audit under section 44AB				

With the introduction of the **"Receipt in Cash"** column in ITR Forms, there will be increased transparency and enhanced monitoring which will lead to adoption of digitization of various transactions.

Further tax payers may also have to maintain in better record keeping and ensure that data is available to substantiate its claims.

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2. New Schedule 80GGC seeks details of contributions made to political parties

Section 80GGC allows deduction while computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, for the amount of contribution made by any mode other than cash, in the previous year, to a political party or an electoral trust

The new ITR forms include a new Schedule 80GGC, which requires the furnishing of the following details:

(a) Date of Contribution

(b) Contribution Amount (with a breakdown of contributions made in cash and other modes)

(c) Eligible Contribution Amount

(d) Transaction Reference Number for UPI transfer or Cheque Number/IMPS/NEFT/RTGS

(e) IFS Code of the Bank

Unlike the previous ITRs, the new ITR forms require disclosing additional information beyond **just the amount eligible for deduction under Section 80GGC**. The relevant extract of ITR Forms for better understanding has been reproduced herewith:

Schedule 80GGC	Details of contributions made to political parties						
S. No.	Date	Amount of contribution			Eligible amount of contribution	Transaction Reference number for UPI transfer or Cheque number/IMPS/NEFT/RTGS	IFS code of Bank
		Contribution in cash	Contribution in other mode	Total Contribution			
1				0			
2				0			
3				0			
4				0			
5				0			
Total contribution							
Add Rows	(Do note delete blank rows)						

With such introduction of the enhanced columns in ITR Form Schedule 80GGC **"Details of contributions made to political parties"**, taxpayers will be required to not only disclose additional information but also maintain records and documentation for the same. In addition, all contributions will necessarily be needed to be done through legitimate banking channels. ties.

Further, taxpayers may also have to carry out a proper verification of the political party or electoral trust to ensure as o whether or they are registered under section 29A of The Representation of the People Act, 1951 and is eligible to receive the contribution u/s 80GGC of the Act.

3. New Schedule 80DD seeks details towards maintenance & medical treatment of the person with a disability

The recent introduction of Schedule 80DD in ITR Forms signifies a shift in how deductions claimed under Section 80DD for dependents with disabilities are reported.

Section 80DD allows resident individuals and Hindu Undivided Families (HUFs) to claim a deduction for expenses incurred on maintenance, including medical treatment, of a dependent suffering from a disability. An absolute deduction of ₹ 75,000/- and ₹ 1,25,000/- is allowed under the provision if an Individual is suffering from a disability or severe disability respectively.

Even though the amount of deduction has remained unchanged the forms now require additional details to bring about more transparency and accuracy in claiming the said deductions. In the earlier years , the taxpayers were required to mention the amount claimed as a deduction under section 80DD in Schedule VI-A. The new ITR Form have introduced a new "schedule 80DD' seeking details of deduction in respect of maintenance, including the medical treatment of a dependent with a disability. The new details comprise of the following:

a. Nature of the disability

b. Type of dependent (spouse, son, daughter, father, mother, member of HUF etc.)

c. PAN of dependent

d. Aadhaar of the dependent

e. Date of filing and acknowledgement number of Form 10-IA

f. UDID Number

The relevant extract of ITR Forms for better understanding has been reproduced herewith:

Schedule 80DD	Details of deduction in respect of maintenance including medical treatment of a dependent who is a person wi th disability						
Nature of disability	Type of dependent	PAN of the dependent	Aadhaar of the dependent	**Date of filing of** Form 10IA	Ack. No. of **Form 10IA filed**	UDID Number (If available)	Amount (Rs.)
1. Dependent person with disability 2. Dependent person with severe disability	1. Spouse 2. Son 3. Daughter 4. Father 5. Mother 6. Brother 7. Sister 8. Member of the HUF (in case of HUF);						

With such introduction of the enhanced columns in ITR Form, taxpayers have to maintain proper records of the of all expenses incurred and claimed and proper disclosure will need to be made in the returns to avoid discrepancies and disallowances.

Further with introduction of this new column in ITR Forms, the importance of Form 10IA, a medical certificate required for claiming the said deduction would grow exponentially. Overall, these compliance requirements ensure transparency and proper utilization of deductions for dependents with disabilities.

4. Schedule 80U inserted for claiming deduction if the assessee is a person with a disability

Similar to deduction under section 80DD which was for dependents, deduction under Section 80U is allowed to a resident individual (assessee) who is suffering from a disability or severe disability. An absolute deduction of ₹ 75,000 or ₹ 1,25,000 is allowed under this provision if an individual is suffering from a disability or severe disability, respectively.

The additional information for this also is similar to that required under Schedule 80DD.

The relevant extract of ITR Forms for better understanding has been reproduced herewith:

Schedule 80U	Details of deduction in case of a person with disability			
Nature of disability	Date of filing of Form 10IA	Ack. No. of Form 10IA filed	UDID Number (If available)	Amount (Rs.)
1. Self with disability 2. Self with severe disability				

With such introduction of the enhanced columns in ITR Form Schedule 80U **'Seeking towards claiming deduction if the assessee is a person with a disability"**, Similarly like in case of new schedule of 80DD, taxpayers have to face certain implications which may be relating to the increased Scrutiny, maintaining the proper documents which may includes disability certificate, Medical reports, etc.

5. New Schedule 80-IAC seeks details in respect of eligible start-up

Section **80-IAC of the Act** offers a tax incentive to companies or LLPs that are eligible start-ups involved in eligible businesses. It facilitates eligible startups claiming a deduction of 100% of profits and gains resulting from any entitled business engaged in innovation, development, improved products or services, or a scalable business model with a high potential for employment generation or wealth creation. Deduction under Section 80-IAC is available to an eligible start-up for 3 consecutive assessment years out of 10 years at the option of such a start-up. These deductions are allowed subject to the fulfilment of certain conditions.

Further to claim the said deduction Form 10CCB is required to filed with the Income Tax Department before furnishing the return of Income.

Till last year the ITR forms only required the information of the amount eligible for deduction under section 80-IAC. The new ITR Form 5 & 6 now has a new Schedule seeking details with respect to the deductions claimed by companies under Section 80-IAC. This includes the following:

a. Date of incorporation of the start-up

b. Nature of business

c. Certificate number as obtained from Inter-Ministerial Board of Certification

d. First AY in which deduction was claimed

e. Amount of deduction claimed for current AY

The relevant extract of ITR Forms for better understanding has been reproduced herewith:

Schedule 80IAC	Deduction in respect of eligible start-up				
SI . No.	Date of incorporation of Startup	Nature of Business	Certificate number as obtained from Inter Ministerial Board of Certification	First AY in which deduction was claimed	Amount of deduction claimed for current AY
1	2	3	4	5	6

With such introduction of the enhanced columns in ITR Form Schedule 80-IAC 'Details of eligible start-ups", Taxpayers availing benefits under Section 80-IAC must maintain proper documentation and records to substantiate their claims such as Date of incorporation of the start-up, Certificate number as obtained from Inter-Ministerial Board of Certification, working of the claim of deduction u/s 80-IAC, etc.

6. Reporting requirements in Schedule – Tax Deferred on ESOP' newly added in ITR Form

ESOPs are taxable as perquisites in the hands of the employees in the year in which they are allotted. However, in case of an employee of an eligible start up, the liability for payment or deduction of tax on such perquisite is deferred.

Information relating to such tax-deferral as mentioned in Section 17(2)(vi) is now required to be furnished in the 'Schedule – Tax Deferred on ESOP'. This schedule seeks information such as:-

a. Assessment year

b. Amount of deferred tax brought forward

c. Amount of tax payable in the current assessment year

d. Balance amount of tax deferred to be carried forward to next assessment year, etc.

The amendment brings about enhanced transparency as the new ITR forms seek additional details such as the PAN of the employer (an eligible start-ups) and its DPIIT Registration number. The relevant extract of ITR Forms for better understanding has been reproduced herewith:

Schedule ESOP:	Tax deferred on ESOP: Information related to Tax deferred - relatable to income on perquisites referred in section 17(2)(vi) received from employer, being an eligible start -up referred to in section 80-IAC									
PAN of the employer being an eligible startup										
DPIIT registration number of the employer										
	Sl. No.	Assessment Year	Amount of Tax deferred brought forward	Such specified security or sweat equity shares were sold (Specify the date and amount of tax attributed to such sale out of Col 3) (Details to be provided as per utility)	Total Amount of Table before (4ii)	Ceased to be the employee of the employer who allotted or transferred such specified security or sweat equity share?	Date of Creasing	Forty-eight months have expired from the end of the relevant assessment year in which specified security or sweat equity shares referred to in the said *clause were allotted. If yes, specify date	Amount of tax payable in the current Assessment Year	Balance amount of tax deferred to be carried forward to the next Assessment years Col (3-7)
	(1)	(2)	(3)	(4i)	(4ii)	(5)	(5i)	(6)	(7)	(8)
	1	2021-22		(Select)	0	(Select)				
	2	2022-23		(Select)	0	(Select)				
	3	2023-24		(Select)	0	(Select)				
	4	2024-25								

7. Disclosure of information pertaining to the Capital Gains Accounts Scheme

As per the provisions of the Act, in the event a tax payer is unable to utilise the sales proceeds/capital gains immediately it is required to park the same in a designated account under Capital Gains Accounts scheme (CGAS). Till last year tax payer was only required to provide the details of amount deposited in the CGAS.

In order to bring transparency and keep track of the amount of capital gains deposited into bank accounts via CGAS, CBDT had sought details/information pertaining to the sums deposited in CGAS in the newly introduced ITR Forms.

The Schedule-CG of ITR forms seeks information about the capital gains earned by the taxpayer. This schedule requires various details, including information about the capital asset sold, the particulars of the buyer, and specifics regarding the amount spent for claiming exemptions. The modified ITR Forms, Schedule-CG now seeks to gather more information pertaining to sums deposited in the Capital Gains Accounts scheme (CGAS). The revised schedule now requires the inclusion of the following additional details towards CGAS:

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a. Date of deposit

b. Account number

c. IFS code

The relevant extract of the ITR Forms for the ease of understanding is reproduced herewith:

D	Information about deduction claimed against Capital Gains										
	1	In case of deduction u/s 54D/54EC /54G/54GA give following details									
		a	Deduction claimed u/s 54D								
			Sl. No.	Date of acquisition of original asset	Cost of purchase/ construction of new land or building for industrial undertaking	Date of purchase of new land or building	Amount deposited in Capital Gains Accounts Scheme before due date	Date of Deposit	Account Number	IFS Code	Amount of deduction claimed
			1								
			2								
			3								
			Add Rows				Total	0			

The amendment brings about enhanced transparency as the new ITR forms seek additional details such date of deposit, Account number and IFSC code.

8. Disclosure of Winnings from online games chargeable under Section 115BBJ

The Finance Act 2023 has inserted a new Section 115BBJ to tax winnings from online games, w.e.f. Assessment year 2024-25. A corresponding Section 194BA has also been inserted with effect from 01-04-2023 for the deduction of tax from the net winnings from online games. Thus, all winnings from online games on or after 1-4-2023 shall be taxable under Section 115BBJ and subject to TDS under Section 194BA.

To report such income in ITR form, Schedule OS has been amended to specifically disclose income by way of winning from online games chargeable under Section 115BBJ. The relevant extract of ITR Forms for better understanding has been reproduced herewith:

2	Income chargeable at special rates (2ai + 2aii + 2b+ 2c+ 2d + 2e + 2f elements related to sl. no. 1)		2	
	ai	Winnings from lotteries, crossword puzzles, races, card games etc. chargeable u/s 115BB	2ai	
	aii	Income by way of winnings from online games chargeable u/s 115BBJ	2aii	

The amendment ensures that the categorical disclosure is made and the relevant details are readily available to the authorities.

9. New column added to claim deduction under Section 80CCH

The Finance Act 2023 inserted a new Section 80CCH. As per this section, individuals enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund on or after 01-11-2022 will be eligible for a deduction for the amount deposited in the Agniveer Corpus Fund.

New ITR forms have been amended to include a column to furnish the amount eligible for deduction under Section 80CCH. The relevant extract of ITR Forms for better understanding has been reproduced herewith:

3. Part CA and D- Deduction in respect of other incomes/other deduction				
y	80TTA - Interest on saving bank Accounts in case of other than Resident senior citizens	y	0	
z	80TTB - Interest on deposits in case of Resident senior citizens	z		
i	80U - In case of a person with disability (Please fill 80U Schedule. This field is auto populated from schedule	i	0	
ia	80CCH - Contribution to Agnipath Scheme	ia		
ib	Any other Deduction	ib		

The amendment brings about transparency as the new ITR forms seek details of subscription made.

10. New Schedule 80LA seeking details towards offshore banking unit or IFSC

Section 80LA provides deductions in respect of certain incomes of Offshore Banking Units and the International Financial Services Centre (IFSC). A Schedule Bank, a foreign Bank, or a unit of IFSC is eligible to claim a deduction under this provision. In the case of a bank, 100% of the income is deductible for 10 consecutive assessment years. In the case of a unit of an IFSC, 100% of income is deductible for 10 consecutive assessment years out of 15 years.

A new Schedule 80LA has been inserted in the ITR Form seeking the following details from the company:

- Type of entity
- Type of income of the unit
- Authority granting registration
- Date of registration
- Registration number
- First AY during which deduction is claimed
- Amount of deduction claimed for current AY

The relevant extract of ITR Forms for better understanding has been reproduced herewith:

Schedule 80LA	Deduction in respect of offshore banking unit or IFSC							
Sl . No.	Sub-section in which deduction is claimed	Type of entity	Type of income of the unit	Authority granting registration	Date of registration	Registration number	First AY during which deduction is claimed	Amount of deduction claimed for current AY
1	2	3	4	5	6	7	8	9
1	(Select)	(Select)	(Select)					
2	(Select)	(Select)	(Select)					
3	(Select)	(Select)	(Select)					
4	(Select)	(Select)	(Select)					

The purpose of this amendment appears to be to ensure that the claims are correctly made by the taxpayers.

11. Furnishing of the reason for tax audit under Section 44AB

New ITR-3 seeks additional details from the taxpayers subject to audit under Section 44AB. The additional information pertains to the circumstances under which they are obligated to undergo an audit, such as:

- Sales, turnover or gross receipts exceed the limits specified under Section 44AB;
- Assessee falling under Section 44AD/44ADA/44AE/44BB but not offering income on presumptive basis;
- Others.

The relevant extract of ITR Forms for better understanding has been reproduced herewith:

a1	Are you liable to maintain accounts as per section 44AA? (Select)	(Select)
a2	Whether assessee is declaring income only under section 44AE/44B/44BB/44AD/44ADA/44BBA	(Select)

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Updates/changes in ITR-7 and Audit Report in Form 10B/10BB applicable to Charities

Aditya Bhatt
Advocate

Overview

A charitable institution required to file a return of income under section 139(4A)/(4B)/(4C)/(4D) shall file such return in Form No. ITR-7. Similarly, if the total income of a charitable institution [without claiming exemption under section 11/10(23C)] exceeds the maximum amount which is not chargeable to income tax in any previous year, it is also required to furnish an audit report in the revised format of Form 10B/Form 10BB (which was notified on 21.2.2023).

The revised format of ITR-7 for AY 2024-25 has been notified on 1.3.2024 whereby several changes have been made in ITR -7 as compared to ITR-7 for AY 2023-24. Several other updates/changes have also been made relating to audit report in Form 10B/10BB over the past 12 months.

Through this article, an attempt is made to list the important updates/changes relating to newly notified ITR-7 (as compared to ITR for AY 2023-24) and audit report in Form 10B/10BB applicable to charities over the past 12 months.

Introduction

Every person required to file a return of income under section 139(4A)/(4B)/(4C)/(4D) of Income-tax Act, 1961 ("IT Act") shall file such return in Form No. ITR-7 [rule 12(1)(g)]. The Central Board of Direct Taxes (CBDT) has notified ITR-7 applicable for filing of return for the Assessment Year ("AY") 2024-25 (financial year 2023-24) vide Income-tax (3rd Amendment) Rules, 2024, on 1.3.2024[1].

One of the conditions required to be fulfilled by the entities to be eligible to claim exemption under section 11/10(23C) [hereinafter referred to as "charities"] is that where the total income of any charity, as computed under the IT Act [without giving effect to the provisions of section 11/12/10(23C)(iv)/(v)/(vi)/(via)] exceeds the maximum amount which is not chargeable to income-tax in any previous year, it is required

1. E-filing utility for ITR-7 was released on 21.6.2024. However, till the publication of this article, the utility has not been adopted by any of ITR filing software. Hence, the author has not been able to check if such utility is presenting any additional issues, etc.

to get its accounts audited and furnish such report one month prior to the due date of furnishing the return of income under section 139(1) [section 12A(1)(b)(ii)/10th proviso to section 10(23C)].

Vide Income-tax (3rd Amendment) Rules, 2023 (dated 21.2.2023), with effect from AY 2023-24, revised format of audit report in Form 10B and Form 10BB was notified so as to provide that such audit report shall be furnished in-

(a) Form No. 10B where-

  (i) the total income of the charity exceeds ₹ 5 crores during the previous year; or

  (ii) the charity has received any foreign contribution during the previous year; or

  (iii) the charity has applied any part of its income outside India during the previous year;

(b) Form No. 10BB, in other cases.

[rule 17B/rule 16CC]

In this article, an attempt is made to list the important updates/changes relating to ITR-7 (as compared to ITR for AY 2023-24) and audit report in Form 10B/10BB applicable to charities, over the past 12 months.

I. Updates/changes relating to ITR-7

1. Legal Entity Identifier (LEI) details

Background

Legal Entity Identifier (LEI) is a 20-character alpha-numeric code that uniquely identifies parties in financial transactions worldwide. It has been implemented to improve the quality and accuracy of financial data reporting systems for better risk management.

As per the RBI Regulations, all single payment transactions of Rs. 50 crores and above undertaken by entities (non-individuals) should include remitter and beneficiary LEI information. This applies to transactions conducted through the NEFT and RTGS payment systems.

In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (https://www.ccilindia-lei.co.in/), which is also recognised as an issuer of LEI by the RBI.

ITR for AY 2023-24

There was no requirement to mention LEI details.

ITR for AY 2024-25 [Part A-GEN – (A21)]

A taxpayer is required to mandatorily furnish the following details if it is seeking a refund of Rs. 50 crores or more-

(a) LEI Number;

(b) Valid upto date (DD/MM/YYYY).

2. UDIN and acknowledgement number of audit report

Background

Institute of Chartered Accountants of India (ICAI), in its gazette notification dated 2.8.2019, had made generation of Unique Document Identification Number (UDIN) from ICAI website mandatory for every kind of certificate/tax audit report and other attests made by their members as required by various regulators. This was introduced to curb fake certifications by non-CAs misrepresenting themselves as CAs. As directed by ICAI, with effect from 1.4.2019, UDIN was also made mandatory for all tax audit reports issued under IT Act, including audit report in Form 10B/10BB.

Further, an acknowledgement, having a unique e-filing acknowledgement number, is also generated when furnishing audit report in Form 10B/10BB on income tax portal.

ITR for AY 2023-24

Earlier, ITR required details such as name of the auditor signing the tax audit report, membership number of the auditor, etc. However, it did not mandate providing UDIN and acknowledgement number of the audit report.

ITR for AY 2024-25 [Part A-GEN – (A27)]

Now, in addition to the aforesaid details, the auditor is required to mention-

(a) Acknowledgement number of the audit report;

(b) UDIN of the audit report.

3. Depositing back of corpus and repayment of loans or borrowings

Background

Under Explanation 4(i) of section 11(1) (inserted vide Finance Act, 2021), application out of corpus is not to be considered as application for charitable or religious purposes in the year of such application. However, when such corpus is invested or deposited back into one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus from the income of a previous year, such amount is to be allowed as application of income in the previous year in which it is deposited/invested back to corpus.

Similarly, *Explanation 4(ii)* to section 11(1) provides that application from loans and borrowings ("loan") shall not be considered as application for charitable or religious purposes in the year of application. However, when the loan is repaid from the income of a previous year, such repayment shall be allowed as application in the previous year in which it is repaid.

Similar amendments were also made in Explanation 2 to third proviso to section 10(23C).

While implementing the aforesaid amendment, it was noticed that application from corpus or loan could have already been claimed as application prior to 1.4.2021. Hence, allowing such amount to be claimed as application again at the time of re-investment back in corpus, or at the time of repayment of loan, as the case may be, will amount to double deduction. To mitigate this, Finance Act, 2023, with effect from AY 2023-24, amended the aforesaid Explanation to provide that application out of corpus or loans made before 1.4.2021 will not be allowed as application when such amount is subsequently deposited back or invested into corpus or when the loan is repaid.

ITR for AY 2023-24

Schedule J (A1 and A2) of the ITR required the details of corpus and loan. It mandated the disclosure of the amount invested or deposited back into the corpus and the amount of repayment of loans during the year, "which was earlier applied and not claimed as application"; however, there was no additional condition that such original application should not have been made prior to 1.4.2021.

ITR for AY 2024-25 [Schedule J – A1 and A2]

To give effect to the amendment vide Finance Act, 2023, Schedule J now additionally requires that the original application out of corpus/loan, as the case may, should be made on or after 1.4.2021.

4. Reporting of exempted anonymous donations under section 115BBC

Background

Where a person referred to in section 10(23C)(iiiad)/(iiiae)/(iv)/(v)/(vi)/(via)/section 11 receives any income by way of any anonymous donation (as defined in section 115BBC), such donations are taxed @ 30% on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

(A) 5% of the total donations received by the assessee; or

(B) ₹ 1 lakh.

[section 115BBC(1)]

ITR for AY 2023-24

Earlier, Schedule VC required disclosure as follows:

"D. Anonymous donations, chargeable u/s 115BBC [Applicable to assessee claiming exemption u/s 11 or 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via) or 10(23C)(iiiad) or 10(23C)(iiiae)]

i. Aggregate of such anonymous donations received

ii. 5% of total donations received at Sl. No C + Di or 1,00,000 whichever is higher

iii. Anonymous donations chargeable u/s 115BBC @ 30% (i - ii)"

However, there was no provision to separately report anonymous donations that are not subject to taxation under Section 115BBC by virtue of not exceeding the threshold as contained in sub-section (1).

ITR for AY 2024-25 [Schedule VC]

In addition to D. above, another Entry E. has now been inserted in Schedule VC which reads as follows - *"Anonymous donations other than those included at Sl. No. Diii (Di-Diii of Schedule VC)".*

Some observations

(a) Part B-TI – Sr. No. 1 suggests that such exempt anonymous donations reported in Entry E. of Schedule VC will be added to voluntary contributions and also considered while calculating 15% basic accumulation under section 11(1)(a) in Part B TI - Sr. No. 6v.

(b) On the basis of the formula mentioned in the Entry E., it appears that the new entry requires the charity to separately report *"Di – Diii"*, that is, 5% of total donations received or Rs. 1,00,000, whichever is higher. However, it does not appear to require disclosure of anonymous donations which are not taxable by virtue of section 115BBC(2), that is-

(i) anonymous donations received by any trust or institution created or established wholly for religious purposes;

(ii) anonymous donations received by any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

5. Application to the extent of 85% of inter-charity donations

Background

Hitherto, the entire amount of non-corpus donation by one registered charity to another charity registered under section 12AB or approved under section 10(23C)(iv)/(v)/(vi)/(vii) was regarded as application of income. However, with effect from assessment year 2024-25, Explanation 4(iii) to section 11/ Explanation 2(iii) to third proviso to section 10(23C) provides that a non-corpus donation to another charity shall be treated as application towards charitable or religious purposes only to the extent of 85% of such amount.

ITR for AY 2023-24

Schedule A (amount applied to stated objects of the trust/institution during the previous year from all sources) required the charity to disclose at Sr. No. 1 - *"Donation to trust or institution registered u/s 12AB or approved u/s 10(23C) (iv)/(v)/(vi)/(via) – Other than Corpus"*.

ITR for AY 2024-25 [Schedule A]

Now, the disclosure in Schedule A has been amended as follows:

"A. Application towards the stated objects of the trust/institution

1. Donation(s) made to trust or institution(s) registered u/s 12AB or approved u/s 10(23C)(iv)/(v)/(vi)/(via)– Other than Corpus (100% of donations made need to be entered here)

1a. *85% of the donation(s) made to trust or institution(s) registered u/s 12AB or approved u/s 10(23C)(iv)/(v)/(vi)/(via)– Other than Corpus*

...

*12. Total (**A1a** to 11)"*

Thus, the ITR now regards only 85% of non-corpus donation to another registered entity as application of income.

6. Non-taxability of 15% disallowance on inter-charity donations

Background

As mentioned above, with effect from AY 2024-25, a non-corpus donation to another registered charity is to be treated as application towards charitable or religious purposes only to the extent of 85% of such amount. Upon a holistic reading of the law, several concerns were raised as to whether the balance 15% of donation to other charity would be taxable or would be eligible for 15% accumulation (since the funds would not be available having been already disbursed).

Vide Circular No. 3/2024 dated 6.3.2024, CBDT clarified as follows:

"...it is reiterated that eligible donations made by a trust/institution to another trust/institution under any of the two regimes referred to in para 2 shall be treated as application for charitable or religious purposes only to the extent of 85% of such donations. It means that when a trust/institution in either regime donates Rs. 100 to another trust/institution in either regime, it will be considered to have applied 85% (Rs. 85) for the purpose of charitable or religious activity. It is clarified that 15% (Rs. 15) of such donations by the donor trust/ institution shall not be required to be invested in specified modes under section 11(5) of the Act ***as the entire amount of Rs. 100 has been donated to the other trust/institution and is accordingly eligible for exemption under the first or second regime."***

This was followed by an illustration whereby CBDT clarified that entire donation (₹ 100) will be eligible for exemption under section 11/10(23C).

The aforesaid suggests that such balance 15% will also be eligible for exemption under section 11/10(23C) and will not be subject to any tax.

ITR for AY 2023-24

Not applicable.

ITR for AY 2024-25 [Part B-TI – Entry 5]

As mentioned above-

— in Sr. No. A1 of Schedule A, the charity is required to mention 100% of non-corpus donation made to another registered charity;

- in Sr. No. A1a of Schedule A, the charity is required to mention 85% of the non-corpus donation made to another registered charity.

Now, the broad computation of gross income under Part B-TI is as follows:

"1. Voluntary Contributions and anonymous donations taxable u/s 115BBC (Other than Corpus)…

2. …

3. Aggregate of income referred to in sections 11, 12 and sections 10(23C)(iv), 10(23C)(v), 10(23C)(vi) and 10(23C)(via) derived during the previous year excluding Voluntary contribution included in 1 above…

4. Amount eligible for exemption under section 11(1)(c)…

5. ***Income to be applied [1+3-4-(A1-A1a of Schedule A)]***

6. Application of income for charitable or religious purposes or for the stated objects of the trust/institution…

7. Additions…

8. Income chargeable u/s 11(4)

9. Gross income after Exemption u/s 11/10(23C)(iv)/10(23C)(v)/10(23C)(vi)/10(23C)(via) [(5-6vii)+7ix+8]"

Thus, while calculating "income to be applied" at Sr. No. 5, the assessee is required to deduct *"A1 – A1a of Schedule A"*, that is, the balance 15% of the donations. Therefore, in effect, balance 15% of donation is being deducted from income itself and the figure of "income to be applied" (which is considered at Sr. No. 9 for deciding gross income after exemption) is reduced to that extent. This results in the balance 15% of donations escaping taxation.

7. No basic accumulation of 15% on inter-charity donations

Background

Section 11(1)(a) provides that income accumulated or set apart for application to charitable or religious purposes in India is exempt, subject to the limit of 15% of income from property held under trust ("basic accumulation").

As mentioned above, with effect from AY 2024-25, a non-corpus donation to another registered charity is to be treated as application towards charitable or religious purposes only to the extent of 85% of such amount.

However, the amendment does not provide that basic accumulation of 15% under section 11(1)(a) will be allowed after deducting 100% of such inter-charity donations.

Yet, in Circular No. 3/2024 dated 6.3.2024 (supra), by way of an illustration, CBDT denoted that basic accumulation of 15% will be available only on "balance income for application", that is, income minus 100% of donation to the other charity.

ITR for AY 2023-24

Not applicable.

ITR for AY 2024-25 [Part B-TI –Entry 6(v)]

Entry no. 6(v) (which deals with basic accumulation of 15%) reads as follows:

"6 …

*v. Amount accumulated or set apart for application to charitable or religious purposes or for the stated objects of the trust/institution to the extent it does not exceed 15 per cent of income derived from property held in trust/institution under section 11(1)(a)/11(1)(b) or in terms of third proviso to section 10(23C) {restricted to maximum of 15% of [(1 +3 above) - **(A1 of Schedule A)]**}"*

Applying the above formula, the entire donation (100%) will be deducted from income while calculating 15% basic accumulation under section 11(1)(a).

To illustrate, suppose the income of a charity (Sr. No. 1 + 3 of Part B-TI) is ₹ 15,00,000. It donates ₹ 10,00,000 to another charity (A1 of Schedule A). It will be eligible to claim basic accumulation of maximum 15% under section 11(1)(a) only on ₹ 5,00,000 (₹ 15,00,000 – ₹ 10,00,000), that is, such basic accumulation will be restricted to ₹ 75,000.

Some observations

In ***CIT vs. Programme for Community Organisation, (2001) 248 ITR 1 (SC)***, the Supreme Court held that basic accumulation of 25% (now, 15%) under section 11(1)(a) is available on gross income and not on income after deducting application. Similar view has been taken by the Special Bench of ITAT in ***Bai Sonabai Hirji Agiary Trust vs. ITO, (2005) 93 ITD 70 (Mum)(SB)***, which has been followed in a number of decisions.

Applying this, it could be argued that in the absence of any explicit amendment in the law supporting the position adopted in the CBDT Circular as well as ITR-7, the requirement to deduct 100% donation to another charity from income before calculating basic accumulation of 15% is invalid as being against the language of law as upheld by the Supreme Court.

8. Schedule IE-1 extended to Section 10(46A) and 10(46B)

Background

Vide Finance Act, 2023, with effect from AY 2024-25, two new exemption provisions were inserted-

Section 10(46A) exempts income arising to a body or authority or Trust or Commission, not being a company that the Central Government notifies in the official gazette for this purpose and when it is established or constituted by or under a Central Act or State Act with specified purposes (such as housing accommodation, planning of cities, etc.).

Section 10(46B) exemption is available to National Credit Guarantee Trustee Company Limited (NCGTC), Credit guarantee funds established and wholly financed by the Central

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Government and managed by NCGTC and Credit Guarantee Fund Trust for MSMEs (CGTMSE) created by CG and SIDBI.

ITR for AY 2023-24

Not applicable.

ITR for AY 2024-25 [Schedule IE-1]

Schedule IE-1 is for reporting the Income & Expenditure statement of exempt entities that are not subject to computational or heads of income conditions. This schedule now applies to entities whose income qualifies for exemptions under sections 10(46A) and 10(46B).

Some observations

Though Finance Act, 2023 added exemption provisions section 10(46A)/(46B), no consequential amendments were made in section 139(4C) requiring such exempt entities to furnish a return of income. However, since a specific reference to entities notified under section 10(46A)/(46B) have been made in ITR-7, it is advisable for such entities to also furnish their return of income in ITR-7 and fill the relevant Schedules.

9. Residuary head of disallowances

ITR for AY 2023-24

There was no specific head to voluntarily disclose disallowances which were not subject to any specified disallowances.

ITR for AY 2024-25 [Part B-TI]

In Part B-TI, under the heading "Additions", a residuary sub-heading titled *"Any other income on which exemption is not allowable under the Income-tax Act"* has been inserted to allow the charity to voluntarily disclose any other disallowances it deems appropriate, which may not fit into any of the specified disallowances.

10. Separate headings for specified income taxable under section 115BBI and other income taxable at normal rates

When ITR 7 for AY 2023-24 was first released, there was no separate heading to disclose income which was taxable at normal rates and not at the higher rate of 30% in case of income chargeable under section 115BBI [such as upon violation of section 13(1)(c)/ 13(1)(d), etc.]. Consequently, all taxable income was automatically being taxed under section 115BBI @ 30%.

Therefore, vide Income-tax (27th Amendment) Rules, 2023 (dated 31.10.2023), ITR-7 for AY 2023-24 was amended to permit separate taxability of specified income chargeable under section 115BBI @ 30% and other income taxable at normal rates.

Similar separate headings have also been retained in ITR-7 [Part B-TI/B-TTI] for AY 2024-25.

11. Details of all bank accounts held in India

ITR for AY 2023-24

Part B-TTI of last year's ITR required the assessee to list details of bank accounts held in India at any time during the previous year (excluding dormant accounts). It also required the assessee to indicate the bank account in which the amount of refund should be credited.

ITR for AY 2024-25 [Part B-TTI]

Part B-TTI continues to require the assessee to list details of such bank accounts held in India. However, the column allowing the

assessee to choose the account wherein refund may be credited has been removed. Also, a note has been added below the table stating – *"In case of multiple accounts, the refund will be credited to one of the validated accounts after processing the return"*.

Some observations

In case of a charity registered under Foreign Contribution (Regulation) Act, 2010 ("FCRA"), it is mandatorily required to maintain a designated bank account exclusively for receiving the foreign contribution. It is also permitted to open utilisation bank accounts exclusively for utilizing such foreign contribution. Under FCRA, no credits except that of foreign contribution is permitted to be made in such bank accounts. These bank accounts will be required to be mentioned in this table.

However, it is noticed that even though the assessee mentions a particular domestic bank account for credit of refund, the Central Processing Centre (CPC) inadvertently credits such refund in one of the FCRA bank accounts and thereby violating FCRA. This issue may now be compounded since ITR for AY 2024-25 no longer allows the assessee to select a particular bank account for credit of refund and therefore, it is possible that CPC may credit such income tax refund in the FCRA designated/utilisation account without any control of the assessee.

With a view to mitigate this, post filing of ITR, it may be advisable for the charity to write to its jurisdictional Assessing Officer requesting him or her to credit the refund in a particular bank account or atleast refrain from crediting such refund in any of FCRA bank accounts.

II. Audit report in Form 10B/10BB

1. Clarification regarding electronic modes of payment

Form No. 10B requires the auditor to bifurcate certain payments or application in electronic modes and non-electronic modes. "Notes" to the said Forms provides that "electronic modes" shall be the following modes referred in rule 6ABBA of the Income-tax Rules, 1962:

(a) Credit Card;

(b) Debit Card;

(c) Net Banking;

(d) IMPS (Immediate Payment Service);

(e) UPI (Unified Payment Interface);

(f) RTGS (Real Time Gross Settlement);

(g) NEFT (National Electronic Funds Transfer); and

(h) BHIM (Bharat Interface for Money) Aadhaar Pay.

The above description of "electronic modes" did not include – account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

Therefore, vide CBDT Circular No. 6 of 2023 dated 24.5.2023, it was clarified that for the purposes of Form No. 10B/10BB, "electronic modes" also includes –

(a) account payee cheque drawn on a bank; or

(b) an account payee bank draft; or

(c) use of electronic clearing system through a bank account.

2. Substitution of schedule relating to section 269ST

Original schedule in Form 10B concerning section 269ST was very extensive and required the auditor to report numerous details relating to the payee, transaction, mode of repayment, etc.

Vide Income-tax (11th Amendment) Rules, 2023, Form 10B was amended to substitute "Schedule 269ST" with effect from 23.6.2023 to provide only the following details of amount received exceeding the limit specified in section 269ST, from a person in a day; or in respect of a single transaction; or in respect of transactions relating to one event or occasion from a person during the previous year-

(a) Name of payer;

(b) PAN of payer, if available;

(c) Address of payer;

(d) Amount of payment.

3. Clarification regarding substantial contributor under section 13(3)(b)

Form 10B/10BB requires the assessee to fill details of *"any person who have made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees"* (as referred to in section 13(3)(b) of the IT Act) and also their relatives/interested concerns. On a literal reading, the auditor was required to disclose names of all donors who had donated more than ₹ 50,000 to the charity in the lifetime of the charity, and also names of their relatives/concerns. This was practically impossible to obtain especially in case of old trusts.

Considering this difficulty, vide Circular No. 17/2023 dated 9.10.2023, CBDT clarified that, for AY 2023-24, for the purpose of the relevant clauses in Form 10B/10BB-

(a) the details of persons making substantial contribution may be given with respect to those persons whose total contribution <u>during the previous year</u> exceeded ₹ 50,000;

(b) details of relatives of such person, as referred to in (a) above may be provided, if available.

(c) details of concerns in which such person, as referred to in (a) above, has substantial interest may be provided, if available.

Thus, the Circular clarified that the details of only those donors who have contributed more than ₹ 50,000 "in the relevant previous year" (and their relatives/concerns, if available) is required to be reported in the audit report. This clarification also aligned the disclosure in audit report in line with the requirement under ITR-7 (Part A- Gen, A29).

While the aforesaid Circular applied to AY 2023-24, in the absence of any contrary clarification, it appears that the Circular may also be applicable to audit reports for AY 2024-25.

4. No separate disclosure regarding inter-charity donations

No additional disclosure/reporting requirements have been added in the audit report in Form 10B/10BB concerning inter-charity donations and effect of Explanation 4(iii) to section 11(1) inserted with effect from AY 2024-25.

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Leveraging the Tax Technology for Income Tax Returns and Tax Audit Process for 2024 Compliance reason

CA Manoj Rathi

Overview

"Get ready to be captivated by the digital transformation that's sweeping through India's tax administration! This isn't just an update; it's a complete overhaul that's setting the stage for a futuristic approach to managing Income Tax Returns (ITR) and Tax Audit Reports (TAR). Picture a seamless blend of compliance and cutting-edge technology, where granular disclosures, including GST and cross-legislation data, are effortlessly woven into your financial tapestry.

Discover the power of enterprise-level platforms that bring to life the thrill of real-time collaboration, the security of cloud-based technology, and the foresight of regulatory adaptability. With these platforms, tax professionals can anticipate changes, strategize with precision, and embrace the dynamic nature of tax compliance.

But the excitement doesn't stop there. Dive into the world of analytics and AI, where predictive tools aren't just about crunching numbers—they're about crafting a narrative of your company's financial future. This is where strategy meets technology, and where tax reviews become a strategic advantage.

Join the vanguard of corporations that are already harnessing the power of automation to align compliance with better risk management opportunities. The horizon is bright with the potential of predictive compliance tools, the transformative power of blockchain, and the intelligence of AI, all seamlessly integrated with your business operations.

Explore the full article and immerse yourself in the exhilarating possibilities that lie ahead. For tax professionals, it's time to elevate your digital prowess and embrace the tools that will define the future of tax."

Introduction

In the intricate web of fiscal governance, the Indian Tax Administration has embarked on a journey of modernization, aiming to fortify the nation's tax infrastructure with technological prowess. As we stand on the threshold of the 2024 compliance season, tax professionals are witnessing a paradigm shift in the Income Tax Returns (ITR) and Tax Audit Report (TAR) processes. This transformation is not merely a change in procedure but a fundamental reimagining of tax compliance - a shift from traditional methods to a digital-first approach.

The recent expansions in reporting requirements have introduced a new level of complexity to ITR and TAR filings. Tax professionals must now navigate an environment where the scope of disclosures has widened, and the granularity of data sought by authorities has deepened to include cross legislation information.

Amidst these developments, the need for robust technology enablement has never been more pronounced. Companies are compelled to adopt enterprise-level solutions that ensure a single source of truth, enabling consistent reporting and minimizing the risk of discrepancies. The use of analytics and predictive tools has become indispensable in pre-empting mismatches and streamlining the assessment process. Furthermore, the advent of new-age technologies like Artificial Intelligence (AI) is transforming the way tax professionals conduct reviews, identify outliers, and address potential tax adjustments.

As we delve into the intricacies of leveraging tax technology for the ITR and TAR process, this article will explore the various facets of this digital evolution and lay the landscape that Indian tax professionals must master to thrive in the 2024 compliance season and beyond.

Expansion of reporting in ITR and TAR

The interplay between various legislative frameworks has become a cornerstone of the Indian tax administration's strategy to ensure comprehensive compliance. This success is attributable to the Tax Administration's keen emphasis on gathering detailed transactional data through the Goods and Services Tax (GST) regime. The strategy was further reinforced by the implementation of Section 194Q of the Income Tax Act, 1961, which mandates Tax Deducted at Source (TDS) obligations for the purchase of goods. This interconnectedness is epitomized by the inclusion of GST data in the TAR, as mandated by clause 44, which has set a precedent for integrating indirect tax information into the direct tax audit process. The implications of these expanded reporting requirements are profound. Tax professionals must now possess a deeper understanding of direct as well as indirect tax laws and the ability to dissect and present data in the precise format prescribed by the authorities.

The rationale behind this integration is clear: it enables tax authorities to cross-verify information, identify discrepancies, and ensure that the reported data is consistent across different filings. For businesses, this means that the data reported in GST returns must align with the income and expenses declared in the ITR and TAR. Any mismatch can trigger inquiries and potentially lead to tax disputes, making accuracy and consistency in reporting more critical than ever. The implementation of the Annual Information Statement (AIS) and the Taxpayer Information Summary (TIS) marks a significant advancement in aligning shared data points and monitoring discrepancies. This progress is further supported by the provision of an extended opportunity for taxpayers to file an Updated Return if they identify any discrepancies after submitting their original return. The inclusion of dividend and interest income details in the AIS and TIS has notably assisted the Tax Administration in enhancing the accuracy of reporting by pre-populating individual tax returns.

Clause 34(a) of TAR, on the other hand, requires a detailed reconciliation of tax withholding positions covering all business

transactions, which pursuant to legislative changes in the recent years, now covers almost all items reported in the financial statements. This necessitates a granular analysis of expenses and their TDS treatment. Similarly, the reconciliation of income and TDS credit as per books with Form 26AS has become more stringent, requiring a meticulous review to ensure that every transaction is accounted for and reported accurately.

The Tax Administration's recent practice of invoking section 263 for revision proceedings to revisit settled years, based on the Tax Auditor's qualifications or comments, underscores their determination to enforce stringent reconciliations by taxpayers. Hence, it is imperative for both taxpayers and Tax Auditors to transition from the traditional approach of including disclaimers in Tax Audit Reports to a more thorough method. This would involve delving into the underlying data to conduct comprehensive reconciliations, thereby enhancing the significance and reliability of the reporting process. This is where technology becomes an indispensable ally.

Technology enablement for consistency

In the era of digital tax administration, technology enablement has emerged as the linchpin for achieving consistency and accuracy in reporting. Traditionally, desktop software applications hosted on local servers have been favoured by customers under the assumption that they are more secure than cloud-based solutions. However, the transition from desktop-centric tax software to advanced, secured and enterprise-grade technology platforms has dispelled this misconception. This is also a reflection of the growing complexity and volume of tax data that businesses must manage. These platforms are not just tools but strategic assets that empower companies to maintain a single source of truth for all tax-related information.

The importance of a unified data repository cannot be overstated. With the increased scope of reporting, tax professionals must ensure that the information presented in ITR and TAR filings is harmonious and free from contradictions. Enterprise-level technology solutions address this challenge by offering robust data management capabilities, including in-built validations and controls that automatically check for inconsistencies and ensure compliance with tax laws.

These platforms also facilitate a more collaborative approach to tax reporting. By allowing multiple stakeholders to access and work on the same data set in real time, they eliminate the silos that often lead to errors and miscommunication along with comprehensive audit trail.

Another critical aspect of technology enablement is the ability to adapt to regulatory changes swiftly. Tax laws and reporting requirements are not static; they evolve in response to economic, political, and social factors. Enterprise-level platforms are designed with flexibility in mind, enabling tax professionals to update their systems as new regulations come into effect without disrupting their existing workflows.

Analytics and Predictive Tools

Analytics, in its various forms, serves as the backbone of modern tax reporting. Descriptive analytics provides a retrospective view of tax data, allowing professionals to understand the 'what' and 'why' behind historical tax positions. This could include analysis of vast datasets to identify potential mismatches in TAR and ITR filings, TDS vs GST data, vendor

tax analytics, etc. Diagnostic analytics takes this a step further by identifying patterns and correlations, enabling tax professionals to map year on year trends for ETR and other tax matrices to delve deeper into the underlying causes of compliance issues.

Predictive tools, powered by sophisticated algorithms and machine learning, can simulate various scenarios and predict the likelihood of queries from tax authorities, enabling businesses to prepare responses in advance and reduce the time and effort spent on back-and-forth communications. These tools can also suggest optimal tax positions and strategies by analysing trends and outcomes from similar past situations.

In the context of the Indian Tax Administration's expanded reporting requirements, the role of analytics and predictive tools becomes even more critical. They serve as the navigational compass for tax professionals, guiding them through the complexities of compliance and enabling them to make informed, strategic decisions that align with the government's push for a more transparent and efficient tax system.

AI-powered tax reviews

Artificial Intelligence (AI) powered tools can process vast amounts of structured or unstructured data at speeds unattainable by humans, identifying patterns, anomalies, and outliers that may require further investigation. For example, distinguishing between capital and revenue expenditure - a task that is both critical and complex - can be streamlined with AI algorithms that have been trained to recognize the nuances of tax classifications. This not only saves time but also ensures that expenditures are accurately reported, reducing the risk of misstatements in financial and tax reporting.

Moreover, a proficiently trained artificial intelligence model can provide valuable assistance in identifying indicators for particular tax adjustments, whether they pertain to alterations in capital structure, the presence of items from previous periods, adjustments in accordance with Indian Accounting Standards (Ind-AS), or any elements necessitating adjustments under the Income Computation and Disclosure Standards (ICDS). By periodic monitoring General Ledger (GL) entries, AI tools can alert tax professionals to transactions that may have tax implications, allowing for timely and proactive adjustments to tax filings.

The use of AI extends beyond mere detection; it also includes the ability to learn and improve over time. Machine learning algorithms, a subset of AI, can adapt to the unique tax profile of a company, becoming more accurate and efficient with each review cycle. This self-improving capability is particularly valuable in the context of evolving tax regulations and business transactions.

Navigating Tax Technology innovations amidst local and international regulatory shifts

The landscape of tax compliance is in a state of perpetual evolution, with regulatory changes introducing new complexities and challenges for businesses. As these regulations change, tax technology must be updated to reflect new reporting standards, calculation methodologies, and filing requirements.

Further, in an increasingly globalized economy, tax compliance transcends national boundaries, necessitating alignment with international reporting standards. The

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introduction of BEPS 1.0 and 2.0 by the OECD has ushered in stringent cross-border reporting demands, compelling multinational corporations to navigate a labyrinth of tax disclosures. With the implementation of Pillar Two's Global Anti-Base Erosion (GloBE) proposal, companies will need to report an array of financial and non-financial data points in GloBE return to comply with the global minimum tax framework. This intricate reporting landscape necessitates the adoption of advanced technology solutions to ensure consistent, accurate, and efficient management of tax data across all group entities, aligning with the global tax reform's push for transparency and uniformity.

This necessitates a tax technology framework that is both flexible and modular, allowing for quick adjustments without overhauling the entire system. One of the key benefits of modern tax technology is its ability to incorporate regulatory updates almost in real-time. Tax professionals can access cloud-based tax applications from anywhere, at any time, enabling them to work collaboratively across different locations. The scalability of cost efficient cloud-based solutions is particularly relevant for tax functions that experience high attrition or fluctuating workloads, especially during peak filing seasons. This is a significant improvement over traditional desktop based software programs, which had limited capabilities and often required manual updates and could lead to discrepancies in compliance across different users.

Moreover, tax technology equipped with artificial intelligence and machine learning can assist in interpreting new regulations and guiding users through the necessary changes to their processes.

The adaptability of tax technology also extends to its user interface and experience. As regulations change, the way tax professionals interact with technology must also evolve. Intuitive design and customizable workflows are essential features that allow users to navigate new functionalities with ease, reducing the learning curve and minimizing the risk of errors.

Case studies and success stories

The theoretical advantages of tax technology are compelling, but it is the real-world applications and success stories that truly demonstrate its transformative impact. Case studies of businesses that have embraced tax technology provide valuable insights into the practical benefits and lessons learned from implementation.

One such success story involves a multinational corporation that faced the challenge of reconciling its tax data across multiple locations and legislations. By adopting a cloud-based tax platform, the company was able to centralize its data, automate the reconciliation process, and ensure consistency in its reporting. The platform's advanced analytics capabilities also allowed the company to identify tax-saving opportunities and optimize its tax strategy. As a result, the company not only achieved greater degree of compliance but also realized tangible cost savings by unlocking working capital efficiencies.

Another case study highlights a mid-sized enterprise that leveraged AI to enhance its GL review process. The AI tool was trained to detect anomalies and classify expenditures with a high degree of accuracy. This led to a more efficient audit process, reduced the risk

of errors, and freed up the tax team to focus on strategic planning rather than routine data analysis.

These case studies serve as a roadmap for other businesses looking to embark on a similar journey, providing inspiration and confidence that the investment in technology will yield tangible benefits.

Future trends in Tax Technology

As we stand at the intersection of tax compliance and technological innovation, it is crucial to look ahead and anticipate the future trends that will shape the tax technology landscape. The rapid pace of technological advancement promises a future where tax compliance is more integrated, intelligent, and intuitive.

One of the most anticipated trends is the increasing use of blockchain technology in tax compliance. Blockchain's inherent characteristics of transparency, security, and immutability make it an ideal candidate for managing tax data. It has the potential to streamline the collection and verification of transactional data, reduce fraud, and enhance the efficiency of tax audits. In the near future, we may see tax authorities and businesses adopting blockchain to maintain tamper-proof records of transactions, thereby simplifying the compliance process.

Another emerging trend is the rise of predictive compliance tools. Leveraging big data and machine learning, these tools can analyse historical and real-time data to predict future tax liabilities and compliance risks. This forward-looking approach enables businesses to make proactive adjustments to their tax strategies, minimizing liabilities and ensuring compliance in a constantly evolving regulatory environment.

Artificial intelligence will continue to play a pivotal role in tax technology, with AI systems becoming more sophisticated and capable of handling complex tax scenarios. As AI algorithms become more refined, they will be able to provide deeper insights, automate more nuanced tasks, and even offer recommendations for tax planning and decision-making.

The integration of tax technology with ERPs and other business systems will become the minimum standard. This holistic approach to data management will provide a more comprehensive view of a company's financial and tax position, facilitating better decision-making and strategic planning.

Training and Skill Development

The integration of sophisticated tax technologies into the compliance process necessitates a parallel investment in training and skill development for tax professionals. As the tools and platforms evolve, so must the capabilities of those who wield them. The proficiency required to navigate the digital tax landscape extends beyond traditional tax knowledge to encompass a range of technical skills and digital literacy.

The importance of continuous learning in the tax profession cannot be overstated. With the introduction of advanced analytics, AI, and cloud computing, tax professionals must become adept at using these technologies to enhance their work. This means understanding not only the functionalities of the software but also the underlying principles that drive their algorithms and data processing capabilities. By simulating real-world scenarios, tax professionals can learn how to extract insights from data, automate routine tasks, and apply predictive analytics to forecast potential compliance issues.

Moreover, as tax technology becomes more integrated with other business systems, tax professionals must develop a broader understanding of enterprise IT architecture. This includes knowledge of data security, privacy regulations, and the ethical use of AI, ensuring that tax functions are aligned with the wider organizational values and compliance standards.

As new technologies emerge and integrate with existing systems, it becomes imperative for tax professionals to take up online courses for data visualization and emerging technologies like AI to be to contribute to the strategic success of their organizations.

ESG reporting integration

The integration of Environmental, Social, and Governance (ESG) considerations into corporate reporting is a trend that has gained significant momentum in recent years. As stakeholders increasingly demand transparency around a company's ESG performance, tax technology is evolving to meet this need by embedding ESG factors into the tax reporting process.

The integration of ESG reporting into tax processes also reflects a broader shift towards responsible business practices. By leveraging technology to provide a comprehensive view of their ESG performance, companies can enhance their reputation, build trust with stakeholders, and potentially gain a competitive advantage.

Tax technology can play a pivotal role in ESG reporting by enabling companies to collect, analyse, and disclose ESG-related data with the same rigor and precision as financial data. By quantifying these impacts, tax technology allows companies to demonstrate how their ESG strategies contribute to their overall tax profile and fiscal responsibilities.

Concluding remarks

As the tax compliance landscape undergoes a digital revolution, tax practitioners face a significant paradigm shift. Expanded reporting in ITR and TAR, and the need for reliable cross-legislation data, have made technology central to tax compliance. Advanced analytics, AI, and predictive modelling are now essential for navigating complex tax reporting.

Tax professionals must prioritize enhancing their digital literacy through online courses to stay abreast of technological and regulatory developments. This upskilling is crucial for effectively utilizing enterprise-level technology, which is key for accurate reconciliations and bolstering assessment readiness.

As we move towards the 2024 compliance season, tax functions must seize the opportunity to harness these innovations, ensuring they not only meet current compliance challenges but also build a foundation for ongoing success in a digital-first world.

Fresh disclosure requirements – An added burden on the Tax Auditor's Cap

CA Ashwin R.   CA Rony Antony

Overview

The jargons tax planning, tax avoidance, tax evasion has always been debatable and litigative with the taxpayers and tax authorities being on loggerheads. While the landmark judgements have attempted to attribute a definition to these terms, the law as it stands today has not done that so far. However, the object behind the codification of the Income-tax Act, 1961 (Act) has always been clear with several rules of restrictions and penal provisions in place against tax avoidance. Some of these rules are very transaction specific which target arrangements of tax avoidance having very limited scope of application and do not grant any iota of discretion to the taxpayers or the tax authorities equally. These are, in other words, called Specific Anti Avoidance Rules (SAAR). The transfer pricing regulations is a classic example of SAAR. In order to close the loop, the Act has also on boarded General Anti Avoidance Rules (GAAR) which are broader in scope and empower the tax authorities to scrutinise and deny tax benefits in transactions or arrangements which lack commercial substance. GAAR has been introduced into the code despite the presence of SAAR and judicial anti-avoidance rules. While these measures are certainly a landmark move on the part the tax authority to check revenue leakages, it is equally important to administer them to avoid any obvious misses on the part of the Revenue.

In light of the above backdrop, we wish to discuss in this article two specific anti avoidance rules namely sections 56(2)(x), 94B of the Act and the GAAR followed by the potential challenges which the tax auditors may face with the reporting requirements being introduced in the Form 3CD and return of income.

Setting the context

The Government of every country requires funding to aid it in carrying out its necessary functions and duties. These would include operating public institutions, developing the country's infrastructure and financing public welfare initiatives and schemes. In exchange for providing these amenities, a government generates the revenue required for them by taxing its citizens. To make this process efficient, every country has a proper taxation process laid out by its government. India, with its wide distribution of income earners and sources of revenue, is no different. It places value in the importance of taxes across the board and marks an important distinction between its major types of taxes.

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India has a structured tax system, and the importance of taxes are defined by two attributes - progressive and proportional. It is progressive in that the tax is levied at increasing rates to increasing brackets of income and revenue. Meanwhile, it is proportional in that the rate of tax levied is in proportion to the amount of income or revenue it is being levied upon. Any changes in tax rates, brackets and slabs are determined largely by the central and state governments and must be accompanied by a law passed by the Parliament or State Legislature. The taxes levied in India can broadly be categorised into Direct and Indirect taxes. The former is levied directly on the income earned by the individuals and corporates, and these make up a significant portion of the Government's revenue as these are directly deposited into the revenue's exchequer and the embargo to deposit this is directly on the taxpayers themselves.

The Central Board of Direct Taxes is a part of the Department of Revenue under the ministry of finance which provides inputs for policy and planning of direct taxes in India and is also responsible for administration of direct tax laws through the Income Tax Department. The Income-tax Act, 1961 (Act) is the law that governs the levy of income tax in India. This law has been undergoing several amendments on a year on year basis and today it is not the same as what it was at the time of inception while it continues to largely retain its structure and objective.

Welfare of citizens is always at the forefront

While levy and collection of taxes is a non-negotiable condition in India, the law has put in place several exemptions and deductions for all the taxpayers across the board reasonably keeping in mind the welfare of its citizens. These provide financial advantages to the taxpayers such that they do not end up spending all their disposable income towards taxes. For instance, in the case of individual taxpayers, chapter VI-C deductions are in place alongside various exemptions. Similarly, corporate taxpayers enjoy several expense and income based deductions and exemptions (viz. section 80JJAA, 80-IA/80-IB etc.). These incentives are generally introduced to encourage businesses to achieve a significant economic development. Over the last few years, the Government has introduced the system of new tax regime which stipulate lower rates of tax for domestic manufacturing companies (Section 115BAB) and other domestic companies (Section 115BAA) as against the existing rate of 30%.

Circuit over tax planning, avoidance and evasion

Tax planning is a legitimate and ethical process of organizing ones finances to minimize tax liability while ensuring compliance with the tax laws and regulations of your country. It involves making informed financial decisions that take advantage of various tax incentives, deductions, and exemptions provided by the government. Effective tax planning allows individuals and businesses to optimize their tax liability without resorting to illegal or unethical practices. The primary objective of tax planning is to strategically manage your financial affairs to legally reduce your tax burden. This, in other words, called as Tax Mitigation is permitted under the Act.

Tax avoidance is the practice of arranging your financial affairs in a way that exploits legal loopholes and inconsistencies within the tax system to minimize tax liability. Unlike tax evasion, tax avoidance stays within the bounds of the law. While tax avoidance may involve complex financial manoeuvres, it remains a legitimate way of optimizing tax liability.

Tax avoidance can take various forms, such as restructuring business transactions, utilizing offshore accounts, or engaging in strategic financial planning. However, it's important to note that tax avoidance strategies must not breach the spirit of the law or involve artificial arrangements solely for tax benefits. Courts often assess the substance of a transaction to determine its legitimacy in the eyes of the law.

Tax evasion, on the other hand, involving illegality, wilful suppression of facts, misrepresentation and fraud; is a serious offense that involves deliberately evading taxes by using illegal means. This can include underreporting income, inflating deductions, hiding money in offshore accounts, or providing false information to tax authorities. Tax evasion not only violates the law but also undermines the integrity of the tax system and leads to unfair distribution of the tax burden.

The landmark judgement of the Supreme Court in the case of ***M/S McDowell and Company Limited vs. CTO*** merits a special mention in this context. In this case, the Apex Court of India observed as follows:

"Tax planning is permissible provided it is within the four corners of law, but colourable devices are not part of tax planning and such a transaction should be disregarded without giving benefits of such transaction to the Assessee. It is wrong to honour the dubious methods of tax avoidance as every person is bound to pay tax without taking recourse to subterfuges."

The above observation of the SC is clearly in contradiction with the "Westminster principle" which held that each person is entitled to manage his affairs so as to lessen the tax liability attached under the appropriate act. While the British courts are also moving away from this principle, for a welfare state like India, following this principle would certainly not be feasible owing to the following manifold consequences:

- Substantial loss to the economy, especially in welfare state like India that demands substantial public revenue to accommodate financial needs a large population
- Non-Payment of taxes will pile up/ aggregate an amount of black money which will eventually disturb the economy
- "Perpetual war" between some smart brains of country together with their expert team of lawyers on one side and tax authorities on the other which eventually would mean 'large hidden loss to the community at large.'
- Sense of injustice & inequality among sections of the society that are unable to profit from such transactions. Most importantly there would be a problem of increasing tax liability on good citizens of country.

The above ruling in the case of McDowell was referred by the SC subsequently in the case of ***UOI vs. Azadi Bachao Andolan*** and ***Vodafone International Holdings Ltd vs. Union of India & Ors.***

It becomes clear that tax planning/avoidance/ evasion need not necessarily take place within the territorial limits of India. Cross border taxation has always been in the limelight considering the existence of Double Taxation Avoidance Agreements in the pre MLI era.

There are several anti-avoidance rules in place in the law as it stands today viz. section 92 of the Act, section 56 of the Act etc. to cite a few. Subsequently, the OECD brought out the BEPS Action Plans which aims to eliminate shifting of profits to tax free or lower

jurisdictions by virtue of the inappropriate availment of treaty benefits. While India is not a member of OECD, it has adopted the recommendations of BEPS Action Plan through the insertion of section 94B in the Act. Despite these measures, the Indian legislature has further tightened the unintended loopholes, if any, in the law through the introduction of General Anti Avoidance Rules which will holistically dissect a transaction to check if the sole intent behind the transaction is to obtain a tax benefit. This measure is on similar lines as "lifting of corporate veil under the Companies Act" In light of the above backdrop, we wish to dig deep into the aspects of GAAR and the sections namely 94B and 56(2)(x) with specific emphasis on what a tax auditor needs to consider while handling his reporting obligations.

2. Understanding of the Specific Anti Avoidance Rules [section 94B and 56(2)(x)] and General Anti Avoidance Rules followed by the nuances of the disclosure requirements in Form 3CD and the Return of Income

2.1 Section 94B of the Act

The Central Government introduced the thin capitalisation rules through the insertion of section 94B of the Act mainly applicable to companies that are thinly capitalised (i.e. debt heavy over equity). When the capital structure of a company comprises of debt as compared to equity, i.e., the ratio of debt to equity is high, it is called highly leveraged or thinly capitalized. The reason why companies may opt to operate with a highly leveraged capital structure is simple. In case of investment by way of equity in an Indian company by a foreign parent, the foreign parent repatriates the return on its investment by way of dividends. Dividends are taxed in the hands of the shareholders. Interest being a deductible expenditure, it would incentivise holding companies located in low tax/tax free jurisdictions to infuse debt into an Indian company which would pay interest on such debt. In case the Indian company is capitalised by way of a loan or any other form of debt from its foreign parent, the foreign parent receives interest on such debt. Such interest payment will be subject to a withholding tax in India, generally ranging from 5% to 20% on the gross amount, depending upon the nature of debt (subject to beneficial rate as per applicable tax treaty) which is deductible from the total income for computing income-tax, thus giving an arbitrage to foreign parents to thinly capitalise their Indian subsidiaries in order to save tax costs in the absence of any rules or norms to govern such thinly capitalized companies in India.

The presence of thinly capitalised companies causes erosion of tax base and shifting of profits to foreign jurisdictions, typically with a lower tax rate. This helps MNEs to reduce their overall tax costs at the group level.

Section 94B of the Act will be applicable to a borrower being (a) an Indian company; or (b) a permanent establishment (PE) of a foreign company in India in respect of interest expenditure or any other payment of similar nature incurred in respect of any debt3 issued by a non-resident, being an associated enterprise (AE) of such borrower.

Further, the proviso to Section 94B(1) of the Act creates a deeming fiction to recognise a debt to be issued by an AE of the borrower where the lender is not an AE of the borrower but an AE of the borrower either explicitly or implicitly provides a guaranty to the lender in respect of such debt or deposits a corresponding or matching amount of funds with the lender. It is interesting to note here that the proviso does not qualify the term

AE by the words 'non- resident'. Thus, on a strict reading of the provision, cases where a guarantee is provided by a resident AE may also be caught within the rigours of Section 94B of the Act.

Section 94B of the Act is triggered only when interest is paid to a non-resident AE in excess of INR 1 crore. It provides for disallowance of any interest expenditure or payment of similar nature, claimed as tax deductible to the extent such expenditure arises from excess interest. Excess interest shall mean either (a) amount of total interest paid/payable in excess of 30 per cent of earnings before interest, taxes, depreciation and amortisation (EBITDA) of the borrower in a particular year; or (b) interest paid/payable to the AE for such year, whichever is less. Where in a particular year interest is not wholly deductible as discussed above, such interest or part of interest may be carried-forward and set-off to the extent of the maximum allowable interest expenditure in any subsequent year for a maximum period of 8 subsequent years from the year in which such interest expense was first computed.

Lacuna – Section 94B is applicable for the purpose of computing the total income under the head profits and gains of business or profession. In other words, this would apply for companies required to pay tax under normal provisions of the Act. There is no clarity as on date as how this would operate in case of companies paying tax on book profits.

The operation of section 94B has been explained by way of an illustration below:

S no	***Particulars***	***Amount (INR)***
(a)	Revenue from operations	1000
(b)	Operating costs	900
(c)	EBITDA	100
(d)	30% of EBITDA	30
(e)	Interest towards AE	5
(f)	Interest for non AE	35
(g)	Total interest	40
(h)	Total interest in excess of 30% of EBITDA	10
(i)	Interest paid or payable to AEs	5
(j)	Lower of (h) and (i)	5
(k)	Interest expense to be disallowed	5

2.1.1 Disclosure requirements brought on board

While this section is evolving, for the first time, clause 30B of Form 3CD requires the following disclosure. All along, the companies have disclosed the total interest expense charged to revenue during a particular previous year and claimed the same as deduction for the purpose of computing the income under the head PGBP. While this is a welcome move, the following issues are still open and require further clarity from the legislature.

B.a. Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B ?	No

b. Please furnish the following details

Sl. No.	Amount of expenditure by way of interest or of similar nature incurred(i)	Earnings before interest,tax, depreciation and amortization (EBITDA) during the previous year(ii)	Amount of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above.(iii)	Details of interest expenditure brought forward as per sub-section (4) of section 94B.(iv)		Details of interest expenditure carried forward as per sub-section (4) of section 94B.(v)	
				Assessment Year	Amount	Assessment Year	Amount
No records added							

2.1.2 *Potential challenges for the tax auditor*

i. This clause is silent on the exclusion of companies that are in the business of insurance or banking from the purview of section 94B of the Act. Therefore, every taxpayer (including the banking and insurance companies) may be required to provide the said details. Ideally, the Form should have contained a "Not Applicable" option for such companies.

ii. Should the assessee disclose interest expenditure which has been incurred towards capital expenditure?

iii. It is also not clear whether a taxpayer can take shield under a treaty if the treaty provides a narrower definition of the term interest as compared to the definition of interest given under section 2 of the Act.

iv. Taxpayers may seek shelter under the nationality non discrimination clause of a tax treaty; the same being highly litigative at lower levels.

v. The Section does not stipulate a methodology to compute EBITDA. There is no clarity whether EBITDA referred herein is an accounting term.

vi. Further clarity is required on the purview of the terms "or of similar nature". By applying the principles of Ejusdem Generis, one may infer that these terms refer to expenses which are in the nature of interest or sums which are closely connected with debt/ borrowings from the non-resident AE. BEPS Action Plan 4 also does not throw any light on what could be included within the ambit of these expenses.

vii. There is no clarity whether amount of expenditure by way of interest or of similar nature (i) would include interest paid to Resident AE and Non Resident Non AE as well or is it restricted only to interest paid or payable to Non Resident AE.

viii. Adequate clarity is required whether interest paid or payable an Indian resident need to be disclosed if the debt is guaranteed by a Non Resident AE. In cases of payments to Indian residents, technically; a case of base erosion or

profit shifting does not arise. In other words, no tax arbitrage or revenue leakage is involved.

ix. No clarity has been provided as yet on whether the "actual" amount of interest paid or payable to Non Resident AE needs to be reported or the amount benchmarked under the Transfer Pricing regulations needs to be reported.

x. In the event of non-deduction of tax at source on the interest paid or payable to non-resident AE, the same would entail a disallowance under section 40(a)(i). Another disallowance under section 94B would imply a double disallowance in the hands of the payer.

xi. Further, in cases of brought forward unabsorbed interest expenditure, clarity is required on whether the brought forward amount needs to be set off first over the interest paid or payable for that particular year to the extent of 30% of EBITDA or vice versa.

xii. There is no specific provision in the tax audit report to provide the details of the guarantee provided by the NR AE.

xiii. For the purpose of computing excess interest, there is no reference to expenses of similar nature. Excess interest computation houses words namely "total interest" and "interest paid or payable to AE". This may lead to an implication that even interest paid to resident AE or non AE are being covered by this section which is certainly not the intent of BEPS Action plan 4.

xiv. In case of loss making companies, a conservative view to take would be that the entire amount of interest is being offered as disallowance.

The tax auditors will need to be extremely cautious and mindful of the above open issues while reporting in Form 3CD. A timely clarification (including a FAQ) in this regard to the CBDT would be of a great help to the tax auditors and taxpayers at large.

2.2 Section 56(2)(x) of the Act

2.2.1 Brief history of section 56

Gift-tax Act,1958, was in force in India and gifts made by a person were chargeable to tax. Vide Finance (No. 2) Act, 1998, it was provided that no tax will be leviable in respect of the gifts made on or after 1-10-1998. The reason for deleting the levy of gift tax on the gifts made by a person was that provisions had neither yielded any substantial revenue nor had fulfilled the objective of combating the tax evasion. It was also stated that provisions of Income-tax Act were sufficient to take care of an attempt for tax evasion. Practically, however, after provisions of Gift-tax Act ceased to be in force, influential persons were able to get gifts from large number of persons and, accordingly, huge money received by an assessee was being shown as gift and same was not considered in the nature of income chargeable to tax under the Gift-tax Act. In view of misuse of exemption available under the Income-tax Act from chargeability of the tax, it had become necessary to insert deeming provisions in section 56(2) of the Act. Clause (v) was inserted vide Finance (No. 2) Act, 2004 w.e.f. 1-4-2005 in section 56(2) of the Act to provide that any sum of money received by an assessee being individual or HUF exceeding ₹ 25,000/- will be deemed to be income and will be chargeable to tax as income under the head "Income from Other Sources". In order to provide exemption to receipt of money in genuine circumstances, it was provided in aforesaid clause (v) that any amount received from a

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relative or on the occasion of marriage or in certain other circumstances specified therein same will not be taxable. Subsequently, w.e.f. 1-4-2007 the limit of ₹ 25,000/- was increased to ₹ 50,000/-. Again w.e.f. 1-10-2009 provisions were amended and in addition to taxability of money received, receipt of immovable property or any other property either without consideration or for a consideration less than the stamp duty value or fair market value was also brought within the tax net. W.e.f. 1-6-2010 further amendment was made and a clause (viia) was inserted to bring a firm and a company also in tax net and value of shares received by a firm or a company of any other company, not being a company in which the public is substantially interested, was made chargeable to tax as deemed income if same is received without consideration or for a consideration less than the fair market value if the amount was exceeding ₹50,000/-. Further, clause (viib) was inserted to check introduction of unaccounted money in companies by way of share premium exceeding the fair market value of the shares issued by the companies, in which public are not substantially interested, w.e.f. 1-4-2013. Still it was felt that provisions applicable to individuals, HUF or even to companies for receipt of any money, immovable property or movable property were not effective and in order to further strengthen the provisions and cover all Assessees in the tax net, clause (x) was inserted in section 56(2) of the Act in supersession of earlier provisions except clause (viib) of the Act applicable in case of issue of shares by the companies w.e.f. 1-4-2017. Accordingly, presently, the provisions of clauses (viib) and (x) of section 56(2) are in force and governs taxability of deemed income under above section.

2.2.2 *Insertion of section 56(2)(x)*

Section 56(2)(x) provides that the receipt of the following by a person during a previous year would be taxable under the head income from other sources.

- Any sum of money that is received without consideration, in aggregate exceeding Rs. 50,000 during the financial year.
- Any immovable property without any consideration, the stamp duty value of which exceeds Rs. 50,000 or for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50,000 the stamp duty value of such property as exceeds such consideration.
- Any movable property without consideration where aggregate fair market value whereof exceeds Rs. 50,000 or for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50,000, the aggregate fair market value of such property as exceeds such consideration.

Disclosure requirement in ITR-6

d	Income of the nature referred to in section 56(2)(x) which is chargeable to tax (di + dii + diii + div + dv)		1d	0
	di	Aggregate value of sum of money received without consideration	di	0
	dii	In case immovable property is received without consideration, stamp duty value of property	dii	0
	diii	In case immovable property is received for inadequate consideration, stamp duty value of property in excess of such consideration	diii	0
	div	In case any other property is received without consideration, fair market value of property	div	0
	dv	In case any other property is received for inadequate consideration, fair market value of property in excess of such consideration	dv	0

Disclosure requirement in Form 3CD

B.a. Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56 ? No

b. Please furnish the following details:

Sl. No.	Nature of income	Amount
	No records added	

SCHEDULE VDA - INCOME FROM TRANSFER OF VIRTUAL DIGITAL ASSETS						
Sl. No.	Date of Acquisition	Date of Transfer	Head under which income to be taxed (Business/Capital Gain)	Cost of Acquisition (In case of gift; a. Enter the amount on which tax is paid u/s 56(2)(x) if any b. In any other case cost to previous owner)	Consideration Received	Income from transfer of Virtual Digital Assets (enter nil in case of loss) (Col. 6 - Col. 5)
(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)
A	Total (Sum of all Positive Incomes of Business Income in Col. 7)				A	0
B	Total (Sum of all Positive Incomes of Capital Gain in Col. 7)				B	0

Potential challenges to the tax auditor

Particulars	*Auditor's consideration*
Aggregate sum of money received without consideration	The auditor is required to carefully scrutinise the cash ledger, highlight and seek an explanation from the company for every receipt in cash exceeding INR 50,000. However, there is no clarity on whether the receipt should be from a person or in a day or in connection with a transaction or an event. Further clarity is required from the CBDT on what

Particulars	*Auditor's consideration*
	would constitute "without consideration" or without "adequate consideration". Nonetheless, the term consideration itself is neither defined in the Act and is very subjective in nature. The Indian Contract Act defines consideration as *"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise…."*
Property other than immoveable property	The focal point of the tax auditor in this case would be the shares and securities obtained by way of a transfer from another person and not the ones obtained by way of fresh issue. Buyback of shares and securities by the company would not attract this section as held by the Mumbai bench of the ITAT in the case of ***M/s. Vora Financial Services P. Ltd. vs. ACIT, ITA No. 532/Mum/2018 (ITAT Mumbai).*** Similarly, the receipt of bonus shares is not without consideration as held by the Mumbai ITAT in the case of ***Dr. Rajan Pai (2016) 48 ITR (Trib.).*** In another case of ***Sudhir Menon HUF vs. ACIT (2014) 148 ITD 260 (Mum.)***, it was held that where right shares are issued on the basis of original holding, it cannot be said that same have been allotted at a price less than the fair market value without consideration.
Immoveable property	If the difference between transaction value and the stamp duty value is more than INR 50,000, the same needs to be reported. However, whether company has adequate evidence to substantiate that the FMV does not exceed the actual consideration by more than INR 50,000 and that it intends to contest the FMV under the provisions of section 50C(2), a management representation letter maybe obtained in this regard. Some of the practical issues that may arise in this case are listed below: - Should the term property necessarily satisfy the definition of capital asset enunciated under section 2(14) of the Act in order for this section to be invoked? - Immoveable property includes land and building. However, do leasehold rights constitute immovable property?

Particulars	*Auditor's consideration*
	- Property has a specific definition and not an inclusive definition. 'Property' has been specifically defined to mean immovable property, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art and bullion. Does this imply that receipt of vehicles, electronic items, furniture etc. will not be covered?

The tax auditor would however be watchful of the following transactions:

- Waiver of loan received in an earlier year
- Date to be reckoned for the purpose of receipt of immoveable property – Date of registration of sale deed or allotment letter?
- Receipt of stock in trade
- Does receipt connote actual or also includes constructive receipt
- Amalgamations and demergers
- Interplay with section 50CA of the Act

2.3 General Anti Avoidance Rules (GAAR)

General Anti Avoidance Rules is a provision which empowers the revenue authorities to ensure that no tax benefit is achieved through a transaction or arrangements which do not have commercial purpose and rather have been entered into for the purpose of obtaining a tax benefit. Chapter X-A of the Act deals with GAAR. Under this provision, any arrangement entered into by the assessee, may be declared to be an impermissible avoidance arrangement (IAA) if the main or one of the main purposes of entering into such an arrangement is to obtain tax benefit and such an arrangement creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length; results, directly or indirectly, in the misuse or abuse of the provisions of this Act; lacks commercial substance or is deemed to lacks commercial substance and is not carried out in a bona fide manner.

The onus of proving an arrangement as an impermissible avoidance arrangement is on the Revenue authorities. However, once the revenue authorities prove that the arrangement is an Impermissible Avoidance Arrangement, then the burden of proof shifts on the taxpayers to prove that the arrangement was entered into with a bona fide business purpose. No prescribed norm has been laid down in the proposed GAAR to determine the main purpose of an arrangement.

While GAAR has become applicable with effect 01 April 2017 in a codified form, the Courts have always held that where transactions were found to be 'colourable' or 'dubious', such transactions could be disregarded by applying doctrines including piercing of the corporate veil and substance over form. GAAR empowers the Revenue authorities to deal effectively with and guard against schemes that are meant to avoid tax. It strengthens their arms by giving them sweeping powers to disregard or recharacterize the transaction and re determine the resulting tax consequences. The thin line that exists between tax mitigation and tax avoidance now becomes the real challenge to identify exposing the taxpayers to potentials risks.

Disclosure requirement in Form 3CD

C.a. Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year ? No

b. Please furnish the following details

Sl. No.	Nature of the impermissible avoidance arrangement	Amount of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement
	No records added	

The CBDT issued a notification No. 33/2018/F. No. 370142/9/2018-TPL, dated 23 July, 2018 amending Form 3CD with effect from 20 August 2018 which includes disclosures on GAAR which was kept in abeyance until March 2022.

Potential challenges to the tax auditor - The above requirement leaves the tax auditors with several open questions/challenges as follows:

- How would a tax auditor determine whether the main purpose of an arrangement was to obtain a tax benefit if the benefit was incidentally obtained. For instance, A ltd. in India has presently obtained a loan from a bank situated in country A. The rate of interest charged by this bank is 25% per annum. The withholding tax rate on interest as per the India's DTAA with country A is 10%. Subsequently, it decides to shift the loan arrangement to a bank in country B which charges 15% as the rate of interest on similar loan. Incidentally, the withholding tax rate as per India's DTAA with country B is Nil. In this case, it is evident that loan arrangement with the bank in country B is more commercially feasible for the company as against country A. The Nil withholding tax rate with country B is purely incidental and yet another parameter to shift the loan arrangement. In this case, the tax authorities may take a view the nil withholding rate as the primary motive and invoke GAAR if the threshold limit is exceeded.
- Should a tax auditor conclude that an arrangement to be "misuse" or "abuse" of powers where the benefit obtained was legally allowed under the Act read with the treaty?
- Where there are multiple purposes behind an arrangement, is the tax auditor expected to disregard all the benefits and consider only the tax benefit to report the same as IAA?
- Is the tax auditor expected to report even the transactions like mergers, demergers where the holding company is located in a low tax jurisdiction or cash repatriation strategies, trust structures etc. which were otherwise considered genuine?
- What are the parameters in place for a tax auditor to decide whether or not a particular right/obligation is ordinarily created between persons dealing at Arm's length?
- There are judicial precedents in place which state that the tax authorities should not step into the shoes of a businessman and judge the commercial rationale behind a transaction. In that case, what would empower the tax

auditor to make a determination by stepping into the shoes of a business and declare an arrangement to be devoid of commercial substance.

- IAA subjective in nature and, as such, cannot be defined objectively. What constitutes an ordinary right and obligation cannot be defined with precision. This is because the same set of arrangements can be normal or ordinary in one set of circumstance but not so in the other. Therefore, in order to determine whether the rights and obligations are ordinary or not, the tax auditor needs to put himself in the shoes of the taxpayer.

- While the law states that GAAR will be invoked only in cases where the quantum of tax benefit obtained is equal to or greater than INR 3 million, it is unclear whether the tax auditors are required to report all the arrangement resulting in tax benefits or only if the same crosses this threshold.

- **Recommended approach** – With the recent ruling of Telangana High Court in the case of ***Ayodhya Rami Reddy Alla***[1] which held that GAAR can be applied despite SAAR being in place, the reporting under this clause will now become all the more critical and significant. It is recommended that the tax auditor before commencement of this work engages in a debrief meeting with the client to get a complete listing of all the special transactions or arrangements that have been undertaken during the year and maintain a strong documentation covering the following to substantiate the reasons as why the arrangement was or was not reported in Form 3CD

    - o Commercial viability
    - o Reasons for choosing a particular arrangement over an alternative
    - o Bonafide nature of the transaction and its role in furtherance of the business
    - o Non-involvement of round tripping
    - o Benefit conferred by the law has been availed on a "as is where is" basis

This reporting requirement is at its nascent stage, and one will need to keep a close watch on how the reporting under this clause is being perceived by the tax authorities in the course of scrutiny and/or appellate proceedings.

3. Concluding remarks

The above stated reporting requirements are fairly new and are at a nascent stage. All of these still have open issues and several unanswered questions. Hence, it is imperative on the part of the tax auditor to remain cautious about reporting them in the Form 3CD and the Income tax return. More importantly, adequate documentation must be maintained to substantiate why a reporting was done or not done. Management representations will need to be adequately worded and obtained wherever required in cases where adequate testing cannot be carried out or the management represents that a reporting under one or more of the aforementioned clauses is not warranted. One would receive clarity only upon the receipt of further guidance from CBDT in this regard or practically through scrutiny or appellate proceedings.

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HOT SPOT

Dematerialization of Securities of Public and Private Companies (other than Small Companies)

CS Kaushik Jhaveri

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1. Background

- Dematerialization of Securities is the process of converting physical certificates of Securities into digital/ electronic form. Every type/class of Securities has unique ISIN code and an account of certificate holder with the Depository (NDSL/CSDL) and Dematerialization is nothing but similar to depositing cash in a bank account and doing electronic transactions in that account.
- A depository generally holds all the securities in electronic form, and registered owner and certificate holder will be the beneficial owner, like every normal bank holds cash of any account holder in bank account maintained with its branch.
- In India, currently, there are only two depositories, National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL).
- The Depository does not extend its services directly to the companies, shareholders or investors. They appoint depository participants (DP) which act as an intermediary between them to provide services. DP is also registered with SEBI under section 12 of the Securities and Exchange Board of India Act, 1992.

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- Dematerialization has its own benefits including eliminating the risk of any kind of fraud, loss of physical certificate, transparency among securities holders, proper record of issuance, transfer and disposal of any security, etc.

2. Purpose

- Dematerialization of Securities is covered under E-Governance and Digital India initiative to curb black money in the economy of the Country. Dematerialization leads to linking the PAN and Aadhaar Number of the holder/s of the securities, which further helps the regulators to keep a track of the holder/s of the securities. This also helps the government to identify the chain of benami transactions.

- The existence of shell companies and impersonation of shareholders is not a rare scenario, and such a situation is likely to be more common in case of a private company, unlike a public company where the dematerialization of securities is already a mandatory requirement. With the present amendments being notified by introduction of new rule, private companies have also been covered for the mandatory dematerialization requirements.

- As on 31st January, 2023, more than 14 lakhs companies registered with MCA comprising 95% of the total active companies are private companies, out of which approximately 50,000 companies are small companies Thus, with the mandatory dematerialization for private companies coming into existence, a large number of companies will be forced to move towards dematerialization of securities. Further, the companies are be held accountable for the mandatory dematerialization of securities held by promoters, directors and KMPs.

- Further, in no way such a mandatory dematerialization for private companies can be taken to mean that the restriction on transfer of shares of such a company is relaxed. Adequate systems can be implemented at the depository's level to ensure compliance with the basic distinguishing characteristic of a private company and thereby have filters before executing any transfer of securities.

3. Introduction of Provisions

- The Ministry of Corporate Affairs ('MCA') is empowered under section 29(1A) of the Companies Act, 2013 ('the Act') to prescribe such classes of companies which can hold or transfer the securities only in dematerialized form with effect from 10th September, 2018 with the insertion of Rule 9A by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 dated 10.09.2018; the Rules have been subsequently amended and with the last amendment dated 22nd May 2019, Rule 9A came into effect from 30th September, 2019.

- Further, pursuant to such power, MCA, inserted Rule 9B in Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, which came into effect from 28th October, 2023 i.e. date of publication in official Gazette of India and by this amendment, all the Private Limited Companies other than Small Company and One Person Company, are required to dematerialize all of its securities latest by 30th September, 2024.

- Summary of the provisions in respect of Dematerialization of Securities are

specified under Companies (Prospectus and Allotment of Securities) Rules, 2014: -

- ✓ Rule 9 – Dematerialization of securities for **all the Public Companies** (effective from 1st April, 2014) particularly for issue of convertible securities and **Every public company which issued share warrants** prior to commencement of the Companies Act, 2013 (18 of 2013) and not converted into shares
- ✓ Rule 9A – Dematerialization of securities for all the Unlisted **Public Companies** (effective from 2nd October, 2018)
- ✓ Rule 9B –Dematerialization of securities for Private Companies, effective from 28th October, 2023, **all the Private Limited Companies other than Small Company and One Person Company,** are required to dematerialize all of its securities latest by 30th September, 2024.

4.A. Rule 9A Provisions Interpretation

- ***Rule 9A sub-rule (1)***
  The unlisted public company, shall
  1. Issue the securities only in dematerialized form; and
  2. Facilitate dematerialization of all its existing securities as per provisions of the Depositories Act, 1996.

- ***Rule 9A sub-rule (2)***
  It is mandatory that before any of the following corporate action transactions i.e. **issue of Securities, Buyback of Securities, Issue of Bonus Shares** and **Rights offer are undertaken**, the entire holding of the securities (Equity Shares, Preference Shares, Debenture, etc) of the promoters, director, and KMP needs to be in dematerialized form.

- ***Rule 9A sub-rule (3)***
  It is mandatory for the unlisted public company to dematerialize its securities but also for its securities holders. With effect from 02nd October, 2018 If any security holder wants to transfer its securities, then it needs to have such securities in dematerialized form.

  Further, on or after 02nd October, 2018 (whether by way of private placement or bonus shares or rights offer) a new subscriber of securities of an unlisted public company shall ensure that its existing securities are in the dematerialized form before subscribing any new securities.

- ***Rule 9A sub-rule (4)***
  It is mandatory for the unlisted public company to facilitate dematerialization of their shares for its existing shareholdersand Companies have to obtain the International Security Identification Number ("ISIN") for all classes of its securities.

- ***Rule 9A sub-rule (5) & (6)***
  The Rule also makes it mandatory for the Company;
  1. To make payment to the Depository and RTA both one time and annual payment in a timely manner.
  2. In addition to the above, the company also needs to maintain a security deposit with Depository and RTA, which shall not be less than two years' fees.
  3. The company also needs to follow the circulars issued by SEBI and

Depository from time to time, in respect of dematerialization of shares of unlisted public companies and matters incidental or related thereto.

Further the unlisted public company will not be able to come up with the offer of any securities, Buy-back of securities, Bonus issue; Rights issue; until the payments to depositories or registrar to an issue and share transfer agent are made.

- ***Rule 9A sub-rule (7)***
  All the provisions of The Depositories Act, 1996, SEBI (Depositories and Participants) Regulation, 2018, SEBI (RTA) Regulations 1993 shall be applicable mutatis mutandis to the dematerialization of the securities of the unlisted public company.

- ***Rule 9A sub-rule (8)***
  The company also needs to file form PAS-6 for the Reconciliation of Share Capital Audit Report within 60 days from the end of each half-year duly certified by a Company Secretary in practice or Chartered Accountant in practice.

  The details which need to be provided in PAS-6 include ISIN number, the period for which it is being filed, shares held with depository and in physical form, change in the share capital during the period for which form is being filed, etc. In case there is any discrepancy between issued capital and capital held in the dematerialized form then the company shall bring such discrepancy to the notice of the depository at the earliest.

- ***Rule 9A sub-rule (9) & (10)***
  The Shareholders of the unlisted public company can file their grievances with Investor Education and Protection Fund Authority(IEPF) with the prior consultation of SEBI which may take action against Depository, DP, Registrar, and Share Transfer Agent in case of any default by these intermediaries.

- ***Rule 9A sub-rule (11)***
  The Rule 9A does not apply to the following company;

  (a) a Nidhi,

  (b) a Government company, or

  (c) a wholly-owned subsidiary.

B. Rule 9B Provisions Interpretation

- ***Rule 9B sub-rule (1) & (2)***
  This provision for Dematerialization of its Securities either preference share or equity share or debentures etc. under Rule 9B is applicable only to the Private Limited Company who does not fall under the definition of "Small Companies " as per Section 2(85) of the Companies Act, 2013 read with Rule 2(t) of Companies (Specification of definitions details) Rules, 2014 and such private company has to convert its physical securities in to Demat form within 18 months of closure of financial year i.e. on or after 31st March, 2023:-

  As per Section 2 (85) "small company'' means a company, other than a public company, —

  (i) paid-up share capital of which does not exceed four crores' rupees or such higher amount as may be prescribed which shall not be more than [ten crore rupees]; [and]

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(ii) turnover of which as per profit and loss account for the immediately preceding financial year] does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than [one hundred crore rupees:]

Provided *that nothing in this clause shall apply to—*

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

- ***Rule 9B sub-rule (3)***
  For Every Private Limited Company who does not fall under the definition of "Small Companies" Post completion of 18 months' timeline the entire holding of securities of its promoters, directors, key managerial personnel shall be required to be in Demat form before any of the following corporate actions:

  a. making any offer for issue of any securities.

  b. buyback of securities.

  c. issue of bonus shares.

  d. right issue of securities

- ***Rule 9B sub-rule (4)***
  Private Limited Company who does not fall under the definition of "Small Companies" Post completion of 18 months' timeline if,

  a. *Any Shareholder/Securities holder wants to transfer its securities held in physical form, then first they have to convert such physical securities into Demat form before execution of the proposed transfer.*

  b. *Any existing shareholder intended to subscribe to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer shall have its existing securities in demat form before subscriptions to new securities.*

- ***Rule 9B sub-rule (5)***
  Every Private Limited Company who does not fall under the definition of "Small Companies" shall facilitate dematerialization of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure international security Identification Number (ISIN) for each type of security and shall in-form all its existing security holders about such facility.

  Further every Private Limited Company who does not fall under the definition of "Small Companies" shall ensure that _

  a) it makes timely payment of fees (admission as well as annual) and maintains security deposit at all times, of not less than two years fees to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

  b) Further complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialization of shares of

unlisted public companies and matters incidental or related thereto.

If Company does not ensure above mentioned compliance in point no (a) and (b) it shall not make offer of any securities or buyback its securities or issue any bonus or right shares until payment of fees made to depositories or registrar to an issue and share transfer agent.

Every Private Limited Company who does not fall under the definition of "Small Companies" governed by this rule shall submit **Form PAS-6** *to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.*

Further a subsidiary or whole owned subsidiary companies is not provided any exemption under Rule 9B from dematerialization of its securities.

5. Advantages in Dematerialization of Securities

- Allotment of Securities only after a person has complied with KYC norms while opening the demat account. Now, ***no more dummy/ghost shareholders,*** while in physical form of securities There was a practice to allot Securities to dummy/ghost shareholders.
- ***Pledging of Securities become fraud free***, while in physical form of securities Multiple sets of same securities certificate were created and pledged with different banks/financial institutions for taking of loans.
- ***Securities/Shares in demat ensure total transparency in shares related transactions*** thereby causing reduction in disputes/oppression cases. While in physical form of securities It is a common practice in family run companies either not to issue share certificates or all the share certificates were held in the custody of a single person.
- ***Minimal disputes on transfer of Securities/shares held in demat form,*** while in physical form of securities there were disputes on transfer of shares and many times Shares were issued in back date.
- ***No need to split certificates to transfer/sell only a part of securities***, while in physical form of securities it is practically not possible to transfer the securities in fraction.

6. Challenges in Dematerialization of Securities

- Additional cost for the company: -
  - ✓ Initial joining fees payable to RTA, Depository for demat of Securities.
  - ✓ Annual maintainance fees to RTA, Depository for demat services.
  - ✓ Payment of charges to the Depository on every corporate action.
- More procedural work in respect of opening of demat account by each subscriber, shareholder.
- The Depositories Act, 1996 stills provides the option to hold securities/ shares in physical form. Thus, even today all shares of listed companies are not in demat form and SEBI has not been able to enforce this due to the provisions of the Depositories Act, 1996. Hence the non-obstante clause contained in section 29 is applicable

only in respect of the Companies Act, 2013 and does not have overriding effect over the provisions of the Depositories Act, 1996.

7. Suggestions and Way Forward

- The cost of dematerialization of Securities are very high currently, so the cost to the Company should be minimised.
- Streamlining and simplification of the systems and processes for demat accounts.
- Section 8 limited Companies having nature of private limited can be granted exemption under Rule 9B of Companies (Prospectus and Allotment of Securities) Rules.
- Dematerialization of Securities may also be made compulsory in respect of a company which takes funding from banks/financial institutions or receiving FDI even though they are Small companies.
- Insertion of Provisions for providing specified timeline to Public Limited Companies to dematerialization of its securities as provided in Rule 9B for Private Limited Companies.

8. Action/Steps by Private Companies to Demat its Securities

Step no. 01 :- Appointment of RTA by Issuer (Private Limited Company) and entering into a Bipartite Agreement with RTA on Rs. 600/- non-judicial stamp paper.

Step no. 02:- Application to Depository for obtaining ISIN, including:

- Board Resolution to appoint RTA and Depository.
- Tripartite Agreement between RTA, Company, and Depository on Rs. 600/- non-judicial stamp paper.
- Master Creation Form on letterhead, duly digitally signed.
- CTC of Memorandum of Association (MoA)/Articles of Association (AoA).
- CTC of Certificate of Incorporation/ Certificate of incorporation subsequent to name change.
- Copy of Annual Report for the last financial year as of the financial year.
- Copy of GST Registration and PAN, TAN of the Company.
- Net worth Certificate from a Practicing Chartered Accountant/ Practicing Company Secretary as of the financial year.
- Declaration of freeze/unfreeze of ISIN.
- Security details in soft and hard copy.

Step no. 03:-Duly verified documents will be uploaded to the Depository by RTA for obtaining ISIN.

Step no. 04:-After due verification, the depository will issue/allot ISIN.

Step no. 05:-The company needs to inform its shareholders about ISIN and request them to start dematerializing their physical shares.

Ensure that the entire holding of its promoters, directors and KMPs are held in dematerialized form only, prior to making any offer for issuance or buyback of securities on or after September 30, 2024.

9. Consequence if the Company Fails to Comply with the Provisions of Rule 9B

There is no specific penalty specified under Section 29 of the Act and therefore, penalty as per **Section 450** of the Companies Act will apply.

As per Section 450 of the Companies Act:- Company and every officer of the company who is in default will be liable to a penalty of Rs. 10,000. In case of continuing contravention, with a further penalty of Rs. 1,000 for each day after the first during which the contravention continues, subject to a maximum of Rs. 2,50,000 in case of a company and Rs. 50,000 in case of an officer who is in default or any other person.

10. Important FAQ'S

1. Which types of Private Companies are covered under Rule 9B and mandatory to demat its securities?

- All Private Companies, ***excluding*** small companies and government companies.

  Section 2(85) of the Companies Act, 2013 read with Rule 2(t) of Companies (Specification of definitions details) Rules, 2014:- Small Company ,means a company, other than a public company, having paid up share capital not exceeding Rs. 4 crores and turnover not exceeding Rs. 40 crores. However, a holding company or a subsidiary company, a company registered under section 8, a company or body corporate governed by any special Act will not be considered as a small company.

2. What is the time period within which Private Company required to demat its securities?

- *Private companies have to convert its physicals securities in to Demat form within 18 months of closure of financial year on or after 31st March, 2023:-*

- **01st Example:**-if ABC Pvt Ltd is does not fall under definition of Small Company as on 31st March, 2023 then have to demat its securities on or before 30th September,2024 i.e. within period of 18 months of closure of financial year.

- **02nd Example**:-if ABC Pvt Ltd does not fall under definition of Small Company as on 31st March,2024 then have to demat its securities on or before 30th September,2025 i.e. within period of 18 months of closure of financial year.

3. What are the ROC Compliance under Rule 9B?

- Private companies will be required to file Form PAS-6 to the ROC within sixty days from the conclusion of each half year. Therefore, for the half year period from April to September, the due date to file Form PAS-6 will be 29th November and for the period from October to March the due date will be 30th May.

- However, the provisions of the Rule 9B are applicable after 18 months from the closure of FY 22-23 i.e., from October 01, 2024 and therefore the companies will be required to file form PAS-6 for the

half year beginning from October 2024 and therefore the first PAS-6 shall be filed for half year ended March 2025.

4. *What is the process of Dematerialization of Physical Securities held by Shareholders?*

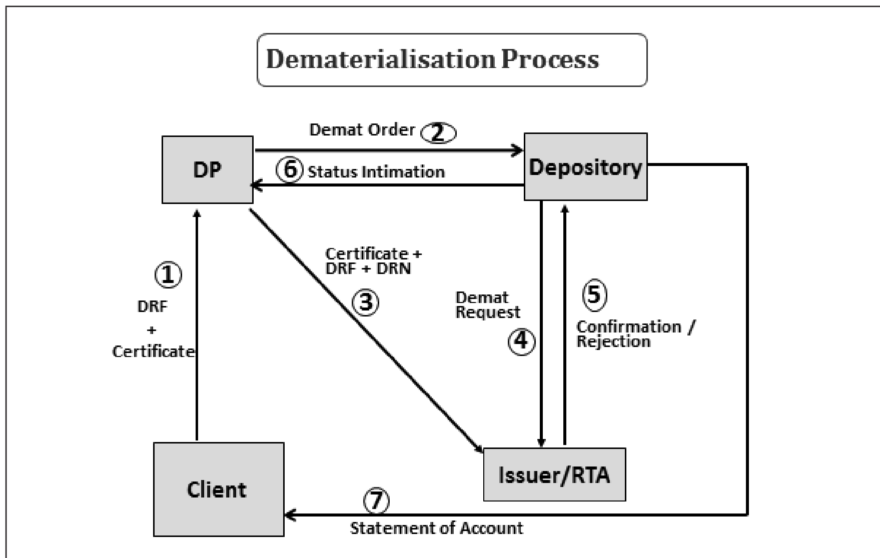
- In order to dematerialize certificates:-

  i. Shareholder needs to open a Demat account.

  ii. Once the demat account has been opened, shareholders need to fill up a 'Dematerialization Request Form' in prescribed form and submit to their Depository Participant (DP) i.e. with whom the demat account of shareholder is held along with the security certificates and signature/s attested and self attested identity and address proofs.

  iii. Then (DP) will forward the demat request to the concerned issuer company or its Registrar and Transfer Agent (RTA) for further processing.

  iv. Once the request is confirmed by the concerned Company or RTA, it results in credit of electronic securities in the demat account of the respective investor. The process of dematerialization is shown in the diagram below –



5. *What would be the process for Dematerialization of Securities held by foreign shareholder?*

- The process would be same as stated above; however, the foreign shareholder has to provide KYC documents duly certified by apostille or notary from the country of origin.

THE DASTUR ESSAY COMPETITION 2024

Winners

Rank	*Participant Name*	*Topic*	*Name of the Institution / Firm*
1	Ms. Hetvi Shah	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	K C Mehta & Co. LLP
2	Ms. Deeksha Rao	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	Government Law College, Mumbai
3	Ms. Beauty Gupta	Was revocation of Article 370 of the Constitution of India justified and desirable?	National Law University Delhi
4	Ms. Priyal Doshi	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	Pravin Gandhi College of Law
5	Ms. Manasi Bankar	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	Government Law College, Mumbai
6	Mr. Rahil Shah	Was revocation of Article 370 of the Constitution of India justified and desirable?	KC Law College, Mumbai
7	Mr. Kamlesh Patel	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	Rajendra & Co.
8	Ms. Devanshi Jhaveri	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	Government Law College, Mumbai
9	Ms. Shreya Dixit	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	Government Law College, Mumbai
10	Ms. Tanvi Dave	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	K Kumar & Co. (Chartered Accountants)

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The Dastur Essay Competition 2024

Abortion Law Worldwide : Comparative Analysis and Ethical Consideration

Hetvi Shah

> ***"Human rights are women's right and women's rights are human rights."***
>
> **- Hillary Clinton**

Hillary's words emphasize the fundamental principle that all individuals, regardless of gender, are entitled to the same inherent rights and freedoms simply by virtue of being human. Despite these claims of progressiveness, women often find themselves facing unequal treatment. This raises fundamental questions about our society's true commitment to forward-thinking ideals. Are biases still entrenched in our systems, hindering women's autonomy and rights? The global discourse on gender equality and women's bodily autonomy is fraught with emotion and controversy. Women worldwide engage in battles for reproductive rights, including the contentious issue of abortion. As we delve into the complexities of abortion laws, we confront broader issues of power, autonomy and justice. This essay seeks to explore the intricate landscape of abortion laws, shedding light on the challenges and implications they pose for women's rights and societal progress.

Abortion

A medical procedure that terminates pregnancy in its early stages, is generally regarded as safe when detected and managed promptly. It involves a decision made by the pregnant individual who, for personal reasons, determines they are not prepared to carry a child at that point in their life. This decision leads to the termination of the pregnancy before the birth of the child.

So the question is, if abortion is just a medical treatment, what exactly is the controversy all about?

The controversy surrounding abortion arises from the question of individual rights and autonomy. Advocates argue that every person has the right to make decisions about their own body, including whether to continue a pregnancy. They assert that no government or authority should impose laws or restrictions in this regard. However, opposing views often stem from various ethical, religious and societal perspectives. **What are the theories about abortion and what is the thought of people for the same when they opt for or oppose the act of abortion?**

There exist myriad reasons why individuals may opt for abortion, each rooted in deeply

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personal and intricate circumstances shaped by a multitude of factors. One significant scenario where abortion becomes imperative is when a woman has been subjected to the trauma of rape, resulting in an unintended pregnancy that is emotionally and physically burdensome. Financial constraints also play a pivotal role, particularly for single mothers or those in strained relationships, where the prospect of providing for a child's education and future seems unattainable. Additionally, health considerations, such as the inability to carry a child or contraceptive failures leading to unintended pregnancies, further underscore the complexities surrounding the decision to terminate a pregnancy.

However, while these reasons may be compelling for individuals navigating such situations, they may not necessarily be viewed as valid or justifiable by those who hold strong religious or cultural beliefs regarding the sanctity of life. For many, the notion of abortion conflicts with deeply ingrained beliefs that equate childbirth with a divine gift, rendering the act of terminating a pregnancy morally reprehensible regardless of the circumstances. The perspective of those who are against this right comes from various backgrounds like:

Religious Perspective

Indeed, many religious doctrines explicitly denounce abortion as a sin, asserting that the unborn child possesses inherent value and should not be deprived of the opportunity to live. In some cultures, the pressure to conceive and bear children is immense, with familiar and societal expectations dictating a woman's reproductive choices. Consequently, the decision to undergo an abortion can be met with condemnation and ostracism from one's community, further complicating an already fraught situation.

National Interest

When a child with the potential to contribute significantly to the nation and foster its growth is denied the right to life, it represents a profound loss for the country as a whole. The future of any nation lies in the hands of its next generation. Therefore, advocating for abortion poses a significant risk to the future and development of the country. In such circumstances, opting for abortion can be viewed as a moral transgression. It undermines the inherent value of human life and disrupts the natural order of societal progress. Moreover, it sets a detrimental precedent that can erode the ethical fabric of society.

Sexual Awareness

Additionally, promoting abortion may inadvertently perpetuate a cycle of irresponsibility and disregard for reproductive health. Without comprehensive education and awareness about contraception and responsible sexual behavior, individuals may engage in unethical activities, leading to an increase in unplanned pregnancies and subsequent abortions. This trend not only undermines the moral foundation of the country but also jeopardizes its stability and values. As the prevalence of abortion rises, so too does the erosion of fundamental morals and beliefs. Ultimately, this erosion extends beyond national borders, contributing to a global decline in stability and consistency in values and beliefs.

Global Infertility Issues

Today, numerous couples between the ages of 26 and 49 encounter challenges with infertility and experience difficulties in conceiving and carrying a child. These couples often pursue a range of treatments in hopes of building their own family. However, many find themselves turning to surrogacy or adoption because

of health issues related to childbirth. This highlights the stark reality that some families face significant struggles in their quest for parenthood, while others who are capable of bearing children may consider abortion, presenting a striking contradiction in society.

The conflict between individual rights over one's body and religious, ideologies and value convictions has compelled every nation to establish its own framework of laws, principles and criteria governing the practice of abortion. This leads to the question - **Isn't it crucial to delve deep into the workings of powerhouse nations, those driving global progress, regarding a debatable issue like abortion, which profoundly impacts countless lives?** These regulations are shaped by the unique cultural, social and ideological perspectives prevalent within each country, leading to a diverse array of approaches to addressing the complex issue of abortion. Consequently, the legal landscape surrounding abortion varies not only from country to country but also among individual states or regions within those countries and this has been presented below by considering the laws of super powers in a sequence from countries allowing complete autonomy to countries having stringent rules, respectively:

i. India

Abortion has been legal in India under various circumstances since the introduction of the Medical Termination of Pregnancy (MTP) Act, 1971[1]. The MTP Regulations, 2003 were issued under the Act to enable women to access safe and legal abortion services[2]. Before 1971, abortion was criminalized under Section 312 of the Indian Penal Code, 1860, describing it as intentionally "causing miscarriage." Except to save the life of the woman, it was a punishable offense and criminalized women/ providers, with whoever voluntarily caused a woman with a child to miscarry[3], facing three years in prison and/or a fine and the woman availing of the service facing seven years in prison and/or a fine. It was in the 1960s, when abortion was legal in 15 countries, that deliberation on a legal framework for induced abortion in India was initiated. *A study in 2018 estimated that 15.6 million abortions took place in India in 2015. A significant proportion of these are expected to be unsafe*[4]**.**

Improvements

In order to increase the availability of safe and legal abortion services, it has been recommended to increase the base of **legal MTP providers** by including medical practitioners with bachelor's degrees in Ayurveda, Siddha, Unani or Homeopathy. These categories of Indian System of Medicines (ISM) practitioners have obstetrician and gynecology (ObGyn) training and abortion services as part of their undergraduate curriculum. Changes have been made in the **provision of the gestation period** since the permission of abortion and it is recommended to increase the gestational limit for seeking abortions on grounds of fetal abnormality beyond 20 weeks. This would result in making abortion available at any time during the pregnancy, if the fetus is diagnosed with severe **fetal abnormalities**. In addition to the above recommendations, it is also proposed to

1. https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-1971
2. https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-regulations
3. https://compass.rauias.com/current-affairs/medical-termination-pregnancy-amendment-act-2021/
4. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5953198/

include increasing the gestation limit for safe abortion services for **vulnerable categories** of women expected to include survivors of rape and incest, single women (unmarried, divorced, or widowed) and other vulnerable women (women with disabilities) to **24 weeks**. Another significant change made in the MTP Act is that earlier it permitted termination of the pregnancy by only a married woman in the case of failure of a contraceptive method or device. With the amendment, **unmarried women** can now seek safe abortion services on grounds of contraceptive failure.

Challenges

According to data from India's National Family Health Survey (NHFS) - fourth round (2015-2016), married women who experienced **intimate partner violence** were more likely to have abortions through self-management. Additionally, women, particularly adolescent girls and those who are poor and/or live in rural areas, often **lack information** about the legal status of abortions in their country and where to seek safe abortion services. They may also frequently lack the decision-making power and **financial resources** to seek such services or they might be discouraged by healthcare providers' negative attitudes and a lack of confidentiality and privacy. Moreover, the stigma associated with abortions, especially in unmarried women, may prevent women from accessing safe abortion services. Healthcare providers who offer these services may perceive discrimination causing them to be reluctant to provide them. These conflicts may cause moral distress and undermine the doctor-patient relationship. *Research says that over 95% of women are unaware of new abortion rules - The MTP Act, 1971 was amended a year and a half back legalising abortion up to 24 weeks in cases of substantial foetal abnormalities*[5].

This indicates that India, being a developing economy, possesses significant challenges educating women about medical treatments and their rights.

Viewpoint of women in India

India has made significant strides in empowering women to assert their rights over their bodies and careers, largely attributed to the rise in female education. Presently, women across India are excelling in various sectors, competing with men on an equal footing. This progress signifies a promising future where gender bias will diminish and women will have ample opportunities for growth. Thus, the right to autonomy over one's body paves the way for women to make numerous decisions independently, enhancing their overall agency.

"A woman who is in control of her body is more likely to have more control over other aspects of her life." - Diene Keita

ii. China

Abortion in China is legal throughout pregnancy and generally accessible nationwide. Abortions are available to most women through China's family planning program, public hospitals, private hospitals and clinics nationwide. China was one of the first developing countries to permit abortion when the pregnant woman's health was at risk and make it easily accessible under these circumstances in the 1950s[6]. Following the Chinese Communist Revolution and the

5. https://www.thehindu.com/news/national/over-95-women-unaware-of-new-abortion-rules-study/article66563998.ecex
6. https://www.scmp.com/news/china/politics/article/3182106/abortion-legal-china-how-common-it-and-why-it-controversial

proclamation of the People's Republic of China in 1949, the country has periodically switched between more restrictive abortion policies to more liberal abortion policies and reversals. Abortion regulations may vary depending on the rules of the province. In an effort to curb sex-selective abortion, Jiangxi and Guizhou restrict non-medically necessary abortions after 14 weeks of pregnancy[7], while throughout most of China elective abortions are legal after 14 weeks. Although sex-selective abortions are illegal nationwide, they were previously commonplace, leading to a sex-ratio imbalance in China that still exists.

Improvements

In the past, virtually universal access to contraception and abortion for its citizens by a national government service was a common way for China to contain its population in accordance with its now-defunct one-child policy[8]. It was scaled back when the policy was removed in 2015 in favor of a two-child policy which was in turn replaced by a three-child policy in 2021[9]. In 2022, in an effort to boost the country's birth rate, the National Health Commission announced that it would direct measures toward reducing non-medically necessary abortions through a number of measures, including expanded pre-pregnancy healthcare, infant care services and local government efforts to boost family-friendly work places. Hence, China, the most populated country in the world, has liberalized abortion and has taken steps for the betterment of health care of women in the nation.

iii. United States

In United States, *around 28 states give access to abortion which is currently limited depending on gestational age, with bans ranging from six weeks to more than 24 weeks. Abortion is almost completely banned with limited exceptions in another 14 states*[10]. Abortion was a fairly common practice in the history of the United States and was not always controversial.

In the mid-1700s, Benjamin Franklin included a recipe for an abortifacient in a math textbook[11]. In 1728, Franklin condemned publisher Samuel Keimer for publishing an article on abortion. According to biographer Walter Isaacson, Franklin did not have a strong view on the issue[12]. In The Speech of Polly Baker, Franklin places the blame for abortion and infanticide on the sexual double standard against women. In 1716, New York passed an ordinance prohibiting midwives from providing abortion[13]. In 1829, New York made post-quickening abortions a felony and pre-quickening abortions a misdemeanor[14]. This was followed by 10 of the 26 states creating similar restrictions within the next few decades, in particular by the 1860s and 1870s[15] with the intention of protecting women from real or perceived risks. After World War II, the regulations were tightened to encourage a return to traditional family

7. https://www.theguardian.com/world/2018/jun/22/china-new-rules-jiangxi-province-prevent-sex-selective-abortions
8. https://www.nejm.org/doi/abs/10.1056/NEJMhpr051833
9. https://en.wikipedia.org/wiki/Council_on_Foreign_Relations
10. https://www.usnews.com/news/best-states/articles/a-guide-to-abortion-laws-by-state
11. https://www.npr.org/2022/05/18/1099542962/abortion-ben-franklin-roe-wade-supreme-court-leak
12. https://www.snopes.com/news/2022/05/16/ben-franklin-abortion-math-textbook/
13. https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1291&context=concomm
14. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2798&context=faculty_scholarship
15. https://www.journals.uchicago.edu/doi/10.1086/410954

life. Since then, a few states have reduced their restrictions on abortion realizing that it is completely an individual's choice and the remaining still believe that abortion is an offense and should not be permitted even at the cost of the lives of pregnant women. Roe v. Wade legalized abortion nationwide in 1973. *In 1972, 41% of abortions were performed on women outside their state of residence, while in 1973 it declined to 21% and then to 11% in 1974*[16].

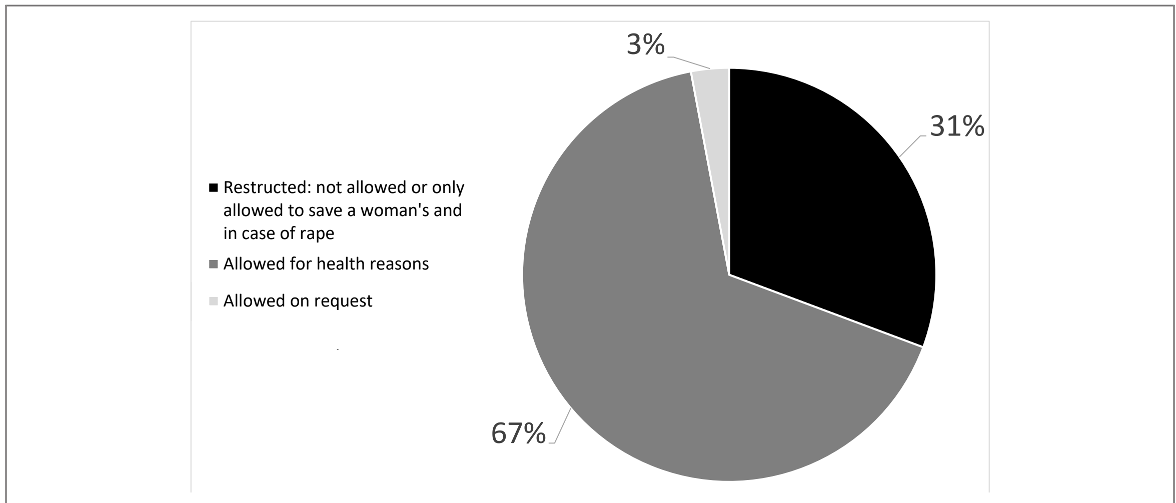
Therefore, one can observe that the journey of abortion in the US has traversed various stages, from being widely accepted to facing restrictions imposed on females within families, to eventually permitting it. Currently, there exists a divisive landscape across states with differing regulations either allowing or prohibiting abortion. However, despite its crucial role in gender development and societal progress, there is a lack of comprehensive clarity in the nation's abortion laws. Ambiguous guidelines pose the risk of erroneous decisions. Hence, it becomes imperative for the country to establish a clear and coherent vision on this matter.

Do You Know?

The absence of clear guidance on abortion laws hinders healthcare practitioners from offering optimal care options to their patients.

iv. Arab countries

Christianity and Islam are recognized as the two largest religions globally, both having a significant presence in Arab countries, encompassing approximately 22 nations and these countries collectively account for approximately 6% of the world's population[17]. It is imperative to understand the regulatory and legal landscape concerning abortion in these nations, given their substantial population size and influence.



16. https://www.pewresearch.org/short-reads/2024/03/25/what-the-data-says-about-abortion-in-the-us/
17. Calculated based on population data provided on https://datacommons.org/place/Earth?utm_medium=explore&mprop=count&popt=Person&hl=en

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[18]These Arab nations adhere to the doctrines of their respective religions and often align their stance on abortion with the teachings of their religious leaders. However, as times evolve and nations develop, some of these countries have amended their laws regarding abortion, while others remain steadfast in their adherence to religious guidance. For instance, Section 2 of Algeria's Criminal Code criminalizes abortion and those who contribute to its realization. Articles 525-530 of Syria's Criminal Code criminalize any act leading in a direct or indirect way to abortion and the person committing those acts and anyone assisting a woman to abort. Sections 260–264 of Egyptian Penal Code of 1937 prohibit abortion in all circumstances. Early marriage persists in certain regions of the area, particularly in the least developed countries, where approximately one-third of girls are married before reaching the age of 18. In Sudan and Yemen, one in three girls is married before turning 18, with similar rates in Iraq, Egypt and Palestine[19].

Viewpoint of women in the Arab region

Girls married at a young age face increased lifetime risks of unintended pregnancies, often leading to early childbearing. Due to their youth and lack of autonomy, these girls typically lack the agency to make decisions about their health and may struggle to access family planning services. The limitations on women's rights in these predominantly male-dominated societies pose significant threats to their health. Consequently, women in these regions often face formidable challenges in accessing life-saving medical treatment.

Nevertheless, despite significant religious influence, it has been observed that Arab regions permit abortions under circumstances such as endangerment to the woman's health, instances of rape or to save the woman's life. This suggests room for improvement, where legal frameworks can become more liberal towards women in society as development progresses.

v. Brazil

Abortion in Brazil is a crime, with penalties of 1 to 3 years of imprisonment for the pregnant woman and 1 to 4 years of imprisonment for the doctor or any other person who performs the abortion on someone else. In three specific situations in Brazil, induced abortion is not punishable by law:

i) in cases of risk to a woman's life;

ii) when the pregnancy is the result of rape; and

iii) if the fetus is anencephalic (absence of a major portion of the brain, skull and scalp that occurs during embryonic development)[20].

In these cases, the Brazilian government provides the abortion procedure free of charge through the Unified Health System. This does not mean that the law regards abortion in these cases as a right, but only that women who receive abortions under these

18. The percentages are calculated based on 2015 population data from UN Population Division's World Population Prospect 2017 and abortion laws.
19. https://arabstates.unfpa.org/sites/default/files/pub-pdf/addressing_unintended_pregnancy_in_the_as_report.pdf
20. https://www2.senado.leg.br/bdsf/bitstream/handle/id/529748/codigo_penal_1ed.pdf

circumstances and the doctors, will not be punished[21].

Recent studies published in the International Journal of Gynecology and Obstetrics suggest that, despite Brazil's severe legislation, 500,000 illegal abortions are estimated to occur every year among women aged 18–39 years - or one in five Brazilian women. *In a survey conducted in 2018, by the Datafolha Institute, 41% of Brazilians declared themselves in favor of a complete ban on abortion, 34% said they wanted to keep the legislation as it is, 16% said that they wanted to expand it to more situations and 6% said they were in favor of legalizing abortion under any circumstances*[22]. This shows that the majority of medical health practitioners are against the legalization of abortion.

However, upon closer examination of why Brazil maintains stringent laws on abortion, it becomes apparent that there is insufficient justification for the country to impose such restrictions on women's rights. Therefore, it is essential for a country to establish a clear ideology that informs its regulations on emotionally charged societal issues like abortion.

Impact on health

In 2010, it was reported that 200,000 women a year were hospitalized for complications due to abortion (which includes both miscarriages and clandestine abortions). More recent figures estimate that around 250,000 women are hospitalized every year due to illegal abortion complications or 50% of all illegal abortions estimated per year. Those figures contrast with 2- 5% of women requiring medical care after an abortion in countries where abortion is legal. The majority of women admitted to the hospital after an illegal abortion are uninsured, representing a government cost of more than US$10 million every year. ***More than 200 women die every year in Brazil, as a direct consequence of unsafe abortions***.

This reflects that prohibiting such a major concern that affects the whole gender of the country is harming women at large and creating an unfavorable environment where the health of an individual is not considered as important and the same has not been prioritized.

After knowing about the situation in major economies around the world, the critical inquiry revolves around **whether stringent regulations imposed on women seeking abortion, often causing them considerable physical and emotional distress due to inadequate access to proper healthcare, effectively deter individuals from seeking abortions?** The resounding answer appears to be NO! *About 91 million women of reproductive age live in about 24 countries or territories that prohibit abortion under all circumstances*[23]. Those who find themselves in desperate need of abortion services will go to great lengths to obtain them, regardless of legal restrictions.

This reality prompts the question: **Do countries that outlaw abortion witness a decrease in the practice?**

21. https://www.editoracrv.com.br/produtos/detalhes/3088-detalhes
22. https://en.wikipedia.org/wiki/Abortion_in_Brazil
23. https://www.axios.com/2022/05/05/only-3-countries-have-rolled-back-abortion-rights-since-1994

Statistics paint a revealing picture. In nations where abortion is entirely prohibited or only permitted under strict circumstances such as to save a woman's life, *the abortion rate stands at 37 per 1,000 people. Conversely, in countries with more permissive abortion laws, the rate is slightly lower at 34 per 1,000 people*[24]. These figures suggest that outlawing abortion does little to dissuade women from seeking termination; instead, it pushes them towards clandestine and unsafe procedures.

Do You Know?

28% of transgender and gender non-conforming individuals report facing harassment in medical settings and 19% report being refused medical care altogether due to their transgender status.

The data underscores a troubling truth: banning abortion does not address the underlying issues driving women to make such difficult decisions. Rather, it serves to restrict access to safe and regulated healthcare services, compelling women to resort to illegal and dangerous alternatives. Studies indicate that the risk of death associated with illegal abortions can be as much as 30 times higher than that of legal abortions. Consequently, imposing stringent abortion laws not only fails to curb the practice but also poses grave risks to the health and well-being of women and their unborn children. In fact, such policies may even lead to an increase in maternal mortality rates, highlighting the urgent need for comprehensive and compassionate reproductive healthcare policies.

Does this imply that countries shouldn't enforce laws either for or against abortion rights?

If a woman, as an individual, possesses full autonomy over her body, it suggests that abortion shouldn't carry significant societal weight and should be readily available to all individuals without discrimination or the requirement to disclose reasons for termination. This prompts a broader reflection on whether legal frameworks should incorporate provisions that protect both the mother's and the child's future, aiming to mitigate societal judgment.

As we adhere to the principle of law being definitive, without shades of ambiguity, it prompts consideration of whether laws could encompass clauses that allow individuals to safeguard their interests and the well-being of the child. This would potentially mitigate societal condemnation towards both the mother and the child. The law, traditionally, operates in a binary fashion, devoid of moral considerations. When a crime such as murder is punished, the motive behind it is typically disregarded, as justice is concerned with the act itself. This is why the legal system distinguishes between murder and attempted murder, acknowledging the difference in the severity of the actions despite potentially sharing similar motivations. Hence, while the intentions may align, the legal ramifications recognize the distinct nature of the acts, with one resulting in loss of life and the other in an attempt to inflict harm.

It is a matter of great pride to acknowledge that India is a country that permits abortion

24. https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/#

without imposing any unnecessary restrictions or prohibitions. In India, women have the autonomy to make decisions regarding abortion within medically prescribed time limits for safe procedures.

One significant aspect of India's approach is that one cannot ask for abortion after knowing the gender of the child, thereby addressing the critical issue of female infanticide and promoting gender equality in population demographics. It is imperative for all nations to consider adopting similar laws to ensure the protection and well-being of all individuals involved in childbirth.

Additionally, a procedure or protocol could be implemented wherein a woman seeking an abortion undergoes a session with a gynecologist. During this session, the gynecologist would inquire about the reasons for the abortion, provide information regarding the potential consequences and seriousness and guide her through the process. This approach aims to reduce the percentage of abortions sought by women who may be unaware of the future implications or who are taking the step out of fear of pregnancy.

Understanding the importance of a woman's ability to make decisions about abortion is crucial, especially considering the potential consequences for the child if born into unfavorable circumstances. It marks the beginning of two distinctly contrasting realities for the child after birth - one is when he/she is put for Adoption and another is when he/she is raised in an unhealthy (unpleasant) environment.

When a child is put for Adoption

It is observed that when a woman is unable to take care of a child due to personal reasons, she may opt for adoption, inadvertently exposing the child to risks such as becoming a victim of child abuse or becoming ensnared in the web of human trafficking. Homeless children are among the most vulnerable populations, often lacking the protection and support systems that would shield them from exploitation and they become easy targets for traffickers who exploit their desperation and lack of resources. Research says that *one-fifth of homeless youth are victims of human trafficking*[25]. This could result in a life filled with suffering, prompting the child to perceive death as an alternative rather than enduring such hardships.

When a child is raised in an Unpleasant Environment

Furthermore, when a child is raised in an unhealthy environment, where the father is engaged in gambling or alcoholism, having struggles to provide for the family, or is absent altogether, or if the woman faces harassment or is denied the opportunity to work, the situation becomes even more dire. Particularly distressing is when the newborn is a girl, as she may face additional challenges due to societal biases and gender discrimination. Growing up in such circumstances can severely impact a child's mental health, leading to issues like depression, anxiety, panic attacks and bipolar disorder, among others. *Globally, nearly 15% of young people ages 10-19 experience a mental health disorder,*

25. https://penntoday.upenn.edu/news/one-fifth-homeless-youth-are-victims-human-trafficking

accounting for 13% of the global burden of disease in this age group[26]. The child becomes helpless and his life becomes miserable.

The preceding observation highlights that prioritizing the birth of a new child over the mother's choice can lead to the sacrifice of the newborn's life, sometimes resulting in a profoundly unhappy existence. Aware of this grim reality, she may opt against bringing a child into a potentially pitiable and wretched existence.

From our journey's beginning, topics like abortion, adoption, single motherhood and surrogacy stir deep emotions, resonating profoundly with those navigating challenging circumstances. It's crucial to recognize that irrespective of religion or nationality, a person's autonomy over their own body is paramount. Why is it that while men face no scrutiny over decisions regarding their physical appearance - whether it's building muscle, gaining weight or getting tattoos - **the choices women make regarding their bodies ignite global controversy?** - Each woman holds sovereign rights over her body, superseding the claims of her family or partner. It's time we grasp this truth, offering unwavering support and admiration for women who demonstrate strength and resolve in such decisions.

Nations should prioritize providing resources and guidance to empower women in their choices, rather than perpetuating discord based on religious or cultural differences. While respecting religious teachings, we must prioritize humaneness and individual rights above all else, recognizing the inherent dignity of every person. We often overlook the fundamental humanity within us, allowing superficial differences to cloud our judgment. Whether woman or man, the decision of self-care remains a deeply personal one, transcending societal norms and expectations.

By embracing this understanding, we can strive towards a more compassionate and inclusive society, where individuals are empowered to make choices that align with their own values and aspirations.

“No woman should be told she can't make her own decisions about her body. If women's reproductive rights come under attack, I will be standing up for women.”

– Kamala Harris

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"Truth can be stated in a thousand different ways Yet each one can be true"

— *Swami Vivekananda*

ML-534

Keshav B. Bhujle
Advocate

1 *CIT vs. AD2PRO Media Solutions Pvt. Ltd.; [2024] 463 ITR 700 (SC): dated 10-11-2023*

Deduction of tax at source — Payment to non-resident — Payment for marketing services — Non-resident not having permanent establishment in India — Finding that foreign company had not rendered technical services to Indian company — Amount remitted not taxable — No tax deductible on amount remitted — Supreme Court dismissed special leave petition filed by the Revenue: Ss. 9(1)(vii) and 201 of ITA 1961

The assessee-company was engaged in the business of providing graphic design solutions for advertising and marketing communications. The assessee remitted huge amounts to a company in the U.S.A. without deduction of tax at source. The Assessing Officer passed an order u/s. 201(1) and (1A) of the Act, holding that the payments made by the assessee for marketing services to the U. S. company were taxable in India as fees for technical services.

The Commissioner (Appeals) partly allowed the assessee's Appeal, holding that the payments received by the U. S. company were both royalty and consultancy services and taxable under the Act as well as the Double Taxation Avoidance Agreement. The Tribunal allowed the assessee's Appeal holding that the payments made could not be considered as royalty or fees and, hence, no tax was required to be deducted at source.

The Karnataka High Court upheld the decision of the Tribunal and held as under:

"i) Section 9 of the Income-tax Act, 1961, provides for income deemed to accrue or arise in India. The exception carved out in the latter part of clause (b) of section 9(1)(vii) applies to a situation when fee is payable in respect of services utilised for business or profession carried out by an Indian payer outside India or for the purpose of making or earning of income by the Indian assessee, i. e., the payer, for the purpose of making or earning any income from a source outside India. On a studied scrutiny of the clause, it becomes clear that it lays down the principle basically known as the "source rule" that is, the income of the recipient is to be charged or chargeable in the country where the source of payment is located, to clarify, where the payer is located. The clause further mandates

and requires that the services should be utilised in India.

ii) The language employed in the definition of "fees for included services" in the Double Taxation Avoidance Agreement between India and the United States of America is clear and unambiguous.

iii) The undisputed facts of the case were that the U. S. company did not have any permanent establishment in India. The assessee had made payments to the U. S. company. The Tribunal had noted in its order that the scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process or develop and transfer technical plan or technical design. In view of the admitted fact that the services were utilised in the U. S. A., the Tribunal was right in holding that the payments made by the assessee were not taxable in India. Tax was not deductible at source on such payment."

The Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

"i) Delay in filing the special leave petition is condoned.

ii) The special leave petition is dismissed."

2 *ACIT vs. Serajuddin and Co.; [2024] 463 ITR 698 (SC): dated 28-11-2023*

Search and seizure — Assessment in search cases — Condition precedent — Approval of Commissioner — Approval granted without application of mind — Orders of assessment were in violation of technical manual of office procedure — Order of assessment not valid — Supreme Court dismissed special leave petition filed by the Revenue: Ss. 153A and 153D of ITA 1961: A. Ys. 2003-04 to 2009-10

Against the order u/s. 153D of the Income-tax Act, 1961 the assessee filed appeals before the Commissioner of Income-tax (Appeals). One of the grounds for the challenge was the non-compliance with section 153D of the of the Act, which requires prior approval of the Additional Commissioner of Income-tax (Additional CIT). The stand of the Revenue was that such approval had been sought by the Assessing Officer and granted by the Additional Commissioner of Income-tax prior to the passing of the assessment order. The Commissioner of Income-tax (Appeals), held that it is not necessary that the fact of approval of the Additional Commissioner of Income-tax was required to be mentioned in the body of the assessment order. The Commissioner of Income-tax (Appeals) observed that there was a consolidated approval order dated December 30, 2010, given by the Additional Commissioner of Income-tax for the A. Ys. 2003-04 and 2009-10, and therefore, this ground had no merit.

The assessee filed further appeals before the Income-tax Appellate Tribunal contending that the guidelines contained in Circular

No. 3 of 2008 dated March 12, 2008 ([2008] 299 ITR (St.) 8) issued by the CBDT had not been followed. It was further contended by the assessee that the so-called approval of the Additional Commissioner of Income-tax u/s. 153D of the Act had been granted in a mechanical manner without application of mind. Reference was made to the letter dated December 29, 2010, of the Assessing Officer addressed to the Additional Commissioner of Income-tax, Range-1, seeking approval u/s. 153D of the Act and the letter dated December 30, 2010, of the Additional Commissioner of Income-tax addressed to the Assessing Officer communicating the approval. Reference was also made to the decision dated November 29, 2019, of the Income-tax Appellate Tribunal in IT (SS) A Nos. 66 to 71/CTK/2018 (***Dillip Construction Pvt. Ltd. vs. Asst. CIT***), which held the guidelines contained in the aforementioned circular to be mandatory and binding on the Department.

The Income-tax Appellate Tribunal referred to the decision of the Bombay High Court in Akil Gulamali Somji and other decisions of the Income-tax Appellate Tribunal to come to the conclusion that the approving authority did not apply his mind to the relevant assessment records or the draft assessment orders prior to granting approval to the Assessing Officer u/s. 143(3)/144/153A. The assessment orders were accordingly set aside.

In the Appeal filed by the Revenue before the High Court, the following question was framed for consideration:

> "Whether on the facts and circumstances of the case, the Income- tax Appellate Tribunal was correct in holding that the approving authority has not applied his mind for giving approval u/s. 153D ?"

The Orissa High Court held as under:

"i) Among the changes brought about by the Finance Act, 2007 was the insertion of section 153D of the Income-tax Act, 1961. The Central Board of Direct Taxes circular dated March 12, 2008 ([2008] 299 ITR (St.) 8) refers to the various changes and, *inter alia*, also to the insertion of a new section 153D . Even prior to the introduction of section 153D in the Act, there was a requirement u/s. 158BG of the Act, which was substituted by the Finance Act of 1997 with retrospective effect from January 1, 1997, of the Assessing Officer having to obtain previous approval of the Joint Commissioner/ Additional Commissioner by submitting a draft assessment order following a search and seizure operation. The requirement of prior approval u/s. 153D of the Act is comparable with a similar requirement u/s. 158BG of the Act. The only difference is that the latter provision occurs in Chapter XIV-B relating to "Special procedure for assessment of search cases" whereas section 153D is part of Chapter XIV. A plain reading of section 153D itself makes it abundantly clear that the legislative intent was for the Assessing Officer when he is below the rank of a Joint Commissioner, to obtain "prior approval" before he passes an assessment order or reassessment order u/s. 153A(1)(b) or 153B(2)(b) of the Act. An approval of a superior officer cannot be a mechanical exercise. While elaborate reasons need not be given, there has to be some indication that the approving authority has examined the draft orders and finds that it meets

the requirement of the law. The mere repeating of the words of the statute, or mere "rubber stamping" of the letter seeking sanction by using similar words like "seen" or "approved" will not satisfy the requirement of the law. This is where the Technical Manual of Office Procedure becomes important. Although, it was in the context of section 158BG of the Act, it would equally apply to section 153D of the Act.

ii) There are three or four requirements that are mandated therein: (i) the Assessing Officer should submit the draft assessment order "well in time"; (ii) the final approval must be in writing; and (iii) the fact that approval has been obtained, should be mentioned in the body of the assessment order. The Manual is meant as a guideline to Assessing Officers. Since it was issued by the Central Board of Direct Taxes, the powers for issuing such guidelines can be traced to section 119 of the Act. The instructions u/s. 119 of the Act are binding on the Department.

iii) It was an admitted position that the assessment orders were totally silent about the Assessing Officer having written to the Additional Commissioner seeking his approval or of the Additional Commissioner having granted such approval. Interestingly, the assessment orders were passed on December 30, 2010 without mentioning this fact. These two orders were therefore not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure. The requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of section 153D of the Act and such approval is not meant to be given mechanically. In the present cases such approval was granted mechanically without application of mind by the Additional Commissioner resulting in vitiating the assessment orders themselves."

The Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

> "Having regard to the facts and circumstances of the case, we are not inclined to interfere in the matter. The special leave petition is dismissed."

> "In modern times this millennial aspiration takes the form of equality--of liberty, equality, and fraternity. This is also fanaticism. True equality has never been and never can be on earth."
>
> — *Swami Vivekananda*

ML-538

DIRECT TAXES
High Court

Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 ***Dinesh Khaitan vs. Union of India [2024] 163 taxmann.com 39 (Calcutta)***

Section 148A(d) read with section 147 – Income escaping assessment – right to cross examine third party without making any application for issuance of summons for production of third party – reassessment proceedings are valid

Facts

The assessee was served with a show cause notice under section 148A(b) of the Act wherein it was alleged that during the course of search and seizure conducted on a third party and post search inquiry, it was found that the assessee had given cash loans which is not recorded in the books and also received back the payment in cash from such third party. In reply to the said notice, the assessee submitted that as the notice was issued relying on the evidence collected from third party evidence, he should be provided with an opportunity to cross examine the said third party for rebuttal. The Assessing Officer passed an order under section 148(A)(d) of the Act holding that there is no scope under the Act to provide an opportunity of cross examination of the third party at the notice stage. The department had also issued notice under section 148 of the Act to initiate the reassessment proceedings. Subsequently, the assessment order was passed under section 147 of the Act read with section 144B of the Act.

Being aggrieved by the denial of an opportunity to cross examine the third-party, the assessee filed approached the Hon'ble Calcutta High Court under Article 226 of the Constitution of India.

Ruling of the High Court

Hon'ble High Court dismissed the writ petition filed by the assessee by observing that a writ petition against the re-assessment order cannot be entertained as the assessee failed to approach the Court earlier and also did not make any specific prayer for cross-examining the third party before the assessing officer at the stage of the assessment proceeding under Section 147 of the Act. Hon'ble Court further held that the assessee failed to make any request for issuance of summons, despite participating in the assessment proceeding wherein the assessing office provided an opportunity to respond and also opportunity of hearing. Additionally, Hon'ble High court also held that it shall be open to the petitioner to apply before the appellate authority in

terms of the observation made by the Hon'ble Supreme Court in the case of ***ITO vs. M. Pirai Choodi*** for an opportunity to cross examine the said Amit Kumar Agarwal. If such request is made, the appellate authority shall consider the same having due regard to the judgment delivered by the Hon'ble Supreme Court in the case of ***ITO vs. M.Pirai Choodi***.

2 *Sanjeev Goyal vs. Union of India [2024] 163 taxmann.com 122 (Delhi)*

Set off losses – Section 71 of the Income Tax Act 1961 - Amendment made in section 71 by the Finance Act, 2017 restricting set-off of loss under the head "Income from house property" against any other head of income is constitutionally valid

Facts

The assessee had constructed a house property by obtaining a loan from a bank. The assessee was also earning rental income by letting out the aforesaid property. As the house property was constructed from borrowed capital, the amount of interest payable on such capital was eligible for deduction under section 24 of the Act from the head "Income from house property". The income chargeable under the said head was required to be computed after making deduction of the interest payable on such capital. The said deduction was also eligible for set off as per the provisions of Section 71 of the Act. The amount of interest payable on the loan obtained was much higher than the rental income earned by the assessee. Therefore, the assessee returned a loss under the head "Income from house property".

By virtue of Finance Act, 2017, the threshold limit for set-off of loss under the head Income from house property against any other head of income was restricted to an amount of INR 2 lakhs for a particular assessment year w. e. f. 1st April 2018.

The assessee challenged the applicability of amendment being retrospective in nature and as such ultra vires the constitution of India. The assessee also contended that the said amendment has caused him a financial burden leaving him with meager disposable income to earn his livelihood.

Ruling of High Court

Hon'ble Delhi High Court upheld the constitutional validity of amendment to section 71 of the Act by inserting sub-section (3A) by observing that the amendment under dispute only aims at capping the amount of loss under the head house property that can be set-off against income from any other head. Thus, with the insertion of sub-section (3A), instead of an indefinite amount which could have been set off as per section 71 earlier, an assessee can now only set off a maximum amount of ₹ 2 lakhs in the manner mentioned in the said section *qua* the 'Income from house property'. The amendment is applicable to all the category of persons without any apparent or real discriminatory classification. Therefore, the impugned legislation does not fall foul of the test of manifest arbitrariness. The changes introduced by the legislation were well intended and were based on relevant considerations, including abuse of erstwhile provisions and financial health of the economy. The Legislature was guided by verifiable data and had not proceeded in a whimsical manner.

3 ***M/s. Aditya Institute of Technology and Management vs. The State of Andhra Pradesh and Others [Criminal Petition No. 1207 of 2020, Order dated 21.06.2024, AP High Court)***

Offences and prosecutions - Section 276B of the Income Tax Act 1961 - Failure to pay to the credit tax deducted at source due to reasonable cause – prosecution proceedings quashed.

Facts

The assessee before the Hon'ble High Court is an Education Institution which is an Engineering College. During the assessment years 2014-15, 2015-16 and 2016-17, the assessee had deducted TDS on contracts payments. However, the same was not credited into Central Government's treasury within time. The assessee had deposited the TDS belatedly along with applicable interest under section 201(1)(a) of the Act. In the absence of sufficient cause on the part of the assessee for not depositing the TDS within the due dates, the department had initiated prosecution proceedings against the assessee under the provision of section 276B of the Act. The department has filed private complaints before the Additional District Judge. The assessee being aggrieved by the registration of complaints, filed a writ petition for quashing of the proceedings.

Ruling of the Hon'ble High Court

Hon'ble High Court was pleased to allow the Criminal Petition of the assessee by observing that to prosecute any person for violation of the provisions under Section 276B, is subject to Section 278AA of Act in a case where the assessee is able to establish the reasonable cause for the delay in remittance of the TDS amount to the Central Government Account. It is a case of appreciation of a point on factual aspect as to the satisfaction of the Authorities on the point of reasonable cause. In the present case, learned Commissioner for Income Tax conveniently ignored the material placed by the Petitioners to establish that there was a reasonable cause for their failure to remit the amount within a stipulated time due to delay in grant of fee reimbursement by the Government of Andhra Pradesh. There is no dispute that the assessee had paid the taxes along with late payment interest. In view of the above discussion, this Court is of the view that there are no tenable grounds to continue the proceedings against the assessee in all the three cases and hence, the same is liable to be quashed.

"Our duty is to encourage every one in his struggle to live up to his own highest ideal, and strive at the same time to make the ideal as near as possible to the truth."

— *Swami Vivekananda*

ML-541

DIRECT TAXES
Tribunal

CA Nikhil Mutha CA Viraj Mehta CA Kinjal Bhuta
Advocate

1 ***M/s. IHHR Hospitality Pvt. Ltd vs. Addl. CIT (ITA No.3109/DEL/2018 dated 30 May 2024) (AY 2014-15)***

Section 37 – Project cost pending capitalization written-off – Held Revenue in nature

Facts

The assessee company is engaged in the business of construction & managing of hotels, restaurants, entertainment areas, etc. During FY 2013-14, the assessee company decided not to go ahead with projects located in specified locations on account of higher cost of funds. Accordingly, except the land cost and connected expenses, balance amount of INR 7.71 crores was written-off to the profit & loss account which comprised of consultancy fees, contractor payments and other expenses.

The Assessing Officer ('AO') treated these expenses to be of capital nature. The AO observed that the assessee has itself shown expenditure as "Capital work in progress" till 31.03.2013. Hence, the AO held that merely because in the FY 2013-14, the assessee company decided not to proceed with the project, the nature of expenditure would not change from capital to revenue. The AO relied upon the decision of the Hon'ble Delhi HC in the case of ***Triveni Engineering Works Ltd (232 ITR 639)***.

Held

The Hon'ble Tribunal observed that the proposed units in specified locations were not an individual business but expansion of the present business and there was a commonality of administration and common fund. The Hon'ble Tribunal relied on the decision of the Hon'ble Delhi High Court in case of ***CIT vs. SRF Ltd 59 taxmann.com 180***, wherein it has been held that "After considering the existing business and expansion, there was an element of interlacing before new venture and existing venture and consequently the expenses had to be treated as revenue expenditure". Accordingly, the Hon'ble Tribunal allowed the appeal of the assessee.

ML-542

2 *M/s. Egberts India Private Limited vs. ITO [ITA No. 1369/Chny/2023 dt. 10.06.2024] (AY 2018-19)*

Section 40A(2)(b) – AO had disallowed salary paid to director based on lower salaries paid of previous years – AO could not bring any material to demonstrate the that remuneration is excessive as per market rates – disallowance to be deleted.

Facts

The AO disallowed around ₹ 74 lakhs out of consultancy charges paid to one of the directors of the company. The said director was the only resident director of the assessee company, while the other two directors were non-residents. The resident director was paid consultancy charges of approximately 94 lakhs, justifying the director's experience and that he engaged in the day-to-day management and development of the company. Assessee also contended that during the current year, a commercial project of the assessee company had commenced and that the company was receiving approximately, 6 crores in revenue from this project alone. The director being the only resident director had additional responsibility and the said increase in his payment was justified. However, AO contended that all permissions and other formalities were completed by the assessee before the commencement of the project. There was no significant change in the other employee cost. No material was placed to show that the director assumed greater responsibilities. In earlier years, the assessee paid a sum of ₹ 20 Lacs and therefore, increase in payment by ₹ 78 Lacs was disallowed invoking the provisions of Sec. 40A(2)(b). The CIT(A) affirmed the order of the AO.

Held

It was observed by the Hon'ble Tribunal that, the AO cannot sit on the armchair of the businessman to judge the reasonableness of the expenditure incurred by the assessee unless it was proven that the said expenditure was excessive having regard to the market price of such goods or services procured. The Hon'ble Tribunal placed reliance on the case of ***Computer Graphics Pvt. Ltd. (155 Taxman 612) (Madras HC)***, where it was held that reasonableness of the expenditure for the purpose of business had to be adjudged from the view point of a businessman and not that of the Revenue while invoking Section 40A(2). The Hon'ble Tribunal noted that the income of 6 crores could be seen from the financial statements provided by the assessee and that the increased payment of the director was justified, as he would have had a greater role to play being the only director present in India. It was also observed that assessee had deducted due TDS on such payments, and the director had offered the payment received in his income tax return. Since the AO could not bring any material to indicate that the payment was unreasonable, the AO had merely disallowed differential of remuneration in two years and the such disallowance was deleted by the Hon'ble Tribunal.

3 *Brett Lee. vs. ACIT, Circle 2(2) (1) [ITA No. 867/DEL/2023 dated 29.05.2024] [AY 2013-14]*

Section 148 – Re-opening notice not received by the assessee – the emails sent bounced back – uploading notices on ITBA portal cannot be considered as service of notice.

Facts of the case

Assessee is a non-resident individual and received money from three Indian entities during the relevant assessment year. The assessee being a tax resident of Australia did not file any return u/s. 139(1) of the Act. A notice u/s. 133(6) of the Act was issued to obtain information relating to the transaction. As there was no compliance from the assessee's side, the AO re-opened the assessment. The AO issued a notice u/s. 148 on 30.03.2021 and subsequently issued other notices u/s. 142(1). Since there was no compliance by the assessee, the AO completed the proceedings, ex-parte. The AO then called for information from the three Indian entities, on perusal the AO had received an amount of around 3 crores. As no response was received from the assessee against the same, the AO added the whole receipt u/s. 115BBA of the Act, while framing the draft assessment order. Against the said assessment order, the assessee raised objections before the DRP. However, the objections were rejected. The AO then passed a final assessment order, retaining the addition.

Held

Before Hon'ble Tribunal, the AR stated that the assessee never received any notice u/s. 148 of the Act, he further submitted documents showing that the said notice was never communicated to the assessee on the correct email ID and instead was sent to an unknown email ID. The AR further stated that the assessee could not even access the ITBA Portal, as the assessee had registered his email ID on ITBA Portal on 31.03.2022. The DR accessed the ITBA Portal in the courtroom to show on which email ID was the notice issued and also contacted the Systems Directorate. The DR argued that, the assessee never raised this issue before DRP. DR also argued that once the notice is was generated on ITBA Portal, it must have been visible to the assessee and is to be construed as valid service upon assessee.

The Hon'ble Tribunal observed that the notices were sent to another email ID, which were not served to the assessee but bounced, and the ID did not belong to the assessee. It was also seen that the AO then sent the notice to another email ID however, it was not triggered by the system. These email IDs were generated by the ITD User (the AO). Thus, it was seen that the notice u/s 148 of the Act generated on 30.03.2021, on ITBA portal was not served on the assessee. Moreover, as the assessee was given access to login to the ITBA portal in March, 2022, he could not have viewed the notice u/s 148 of the Act prior to it. The Hon'ble Tribunal held that it is an established fact on record that notice u/s. 148 of the Act was never served on the assessee within the period of limitation prescribed under the Statute. It is now fairly well settled that service of notice u/s 148 of the Act is a mandatory statutory requirement for framing an assessment u/s 147. The date of issuance should be considered the date of viewing by the assessee on the portal and not the date it was generated. In absence of a valid service of notice u/s 148 of the Act, the assessment was quashed.

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4 *Swarn Singh vs. ITO – ITA No. 160/ ASR/2024 (AY 16-17)*

Sec. 148 – Reopening notice issued – Validity of Notice u/s 148 – Notice u/s 148 to be issued by the Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer – Notice invalid as not issued by Faceless Assessing Officer

Facts

Assessee has filed appeal against the faceless appeal order before the Hon'ble Tribunal. Before the Hon'ble Tribunal, assessee challenged the validity of notice issued u/s 148 by raising additional grounds on account that notice u/s 148 is issued by Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer which is in violation of law.

Held

Hon'ble Tribunal held that as per the provisions of Section 151A and scheme framed u/s 151A ("E-Assessment of Income Escaping Assessment Scheme, 2022") both issue of notice u/s 148 and completion of assessment or reassessment u/s 148 shall be made in a faceless manner. Hon'ble Tribunal analyzed the clause 3(b) of the said scheme - "The Scheme provides that – (a) assessment, reassessment or recomputation under section 147 of the Act (b) issuance of notice under section 148 of the Act, shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee. Hon'ble Tribunal made the following key observations: (i) The notice u/s 148 shall be in a faceless manner and the term "to the extent provided in Section 144B of the Act" is not relevant for issue of notice. The said phrase is applicable only with reference to assessment or reassessment. (ii) The phrase "to the extent provided in Section 144B of the Act" would mean that the restriction provided in Section 144B of the Act, such as keeping the International Tax Jurisdiction or Central Circle Jurisdiction out of the ambit of Section 144B of the Act would also apply under the Scheme. Relying on Hon'ble Telangana High Court in the case of ***Kankanala Ravindra Reddy vs. Income Tax Officer 14*** has held that in view of the provisions of Section 151A of the Act 14 (2023) 156 taxmann.com 178 (Telangana) read with the Scheme dated 29th March 2022 the notices issued by the JAOs are invalid and bad in law. Considering the same, notice was held to be bad in law.

5 *Ravi Nirman Nigam Ltd vs. ACIT - ITA Nos.4140 & 4141/MUM/2023 - AY 11-12 and AY 10-11*

Sec. 271D & 271E – Penalty initiated vide Assessment Order u/s. 143(3) r.w.s. 147 – Assessment order was quashed by Hon'ble Tribunal – Satisfaction recorded for penalty u/s. 271D & 271E shall not survive – penalty to be deleted

Facts

Assessee's case was reopened u/s. 147 of the Act based on information received from the office of, ACIT, Central Circle-2(4), Ahmedabad. A search was conducted at the premises of Dharmadev Infrastructure Limited, and 36 benami accounts were identified out of which one of them belonged

to the asssessee. There were deposits in this account which included cash deposits. In the same reassessment proceedings, the AO had alleged that there were certain transactions of loan taken and repaid, which were carried out by the assessee in violation of section 269SS and 269T of the Act. AO was not satisfied by the explanations furnished by the assessee and hence initiated penalty proceedings u/s. 271D and 271E of the Act. Consequently, a penalty order was passed confirming the penalty. Meanwhile, assessee had challenged the reassessment proceedings u/s. 147 of the Act before Hon'ble Mumbai Tribunal. Before the Hon'ble Tribunal, assessee took a specific ground for the penalty levied. Hon'ble Tribunal quashed the reassessment order by holding that any material found during the search can be applied to initiate proceedings u/s. 153C of the Act, not u/s. 147 of the Act.

Against the penalty order, the assessee filed an appeal before CIT(A) wherein it was argued that when the reassessment proceeding itself has been quashed, the penalty proceedings so initiated by the AO should not survive. CIT(A) did not accept the claim of the assessee and confirmed the levy of penalty.

Being aggrieved by the same, said appeal is being filed.

Held

Hon'ble Tribunal held that the reassessment proceedings, u/s. 147 of the Act in the course of which penalty proceedings u/s. 271D and 271E were initiated have been quashed as void ab initio by the Co-ordinate Bench. Relying on Apex Court decision in the case of ***Jayalakshmi Rice Mills [2015] 379 ITR 521 (SC)*** and Hon'ble Tribunal held that with the quashing/annulling of the reassessment order passed in the case of the assessee by the Hon'ble Tribunal, the penalty initiated there in u/s. 271D did not survive. Therefore, penalty was therefore deleted.

6 *Nisha Goel vs. Income Tax Officer (ITA No. 2767/Del/2023 dated 4 June 2024) (AY 2012-13)*

Section 147 – Reopening of assessment – Quashed on account of non-application of mind having regard to reasons recorded

Facts

The assessee filed an appeal against the order for AY 2012-13 passed under section 144 read with section 147 of the Act, challenging, *interalia*, the validity of reassessment proceedings. For initiating reassessment proceedings, the AO recorded reasons on the following lines:

(a) The assessee has made cash deposits of INR 1,125,46,000/- in HDFC bank account.

(b) System generated notices were sent on the subject of non-filing of its return of income for the concerned year but the assessee did not respond.

(c) Thus, it is the fit case for proceeding under *Explanation* 2(a) of Section 147 of IT Act, 1961.

The AO relied upon the decisions of ***CIT vs. Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011 dated 15.02.2012) (Delhi HC)*** and ***Rajesh Jhaveri Stock Brokers Pvt Ltd (2007) (291 ITR 500) (SC)***.

Perusal of the assessment order revealed that ultimately on verification of bank statement the AO could only find cash deposition of INR 64,67,000/-.

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The CIT(A) confirmed the order of the AO. The assessee filed an appeal before the Hon'ble Tribunal and raised multiple arguments challenging the validity of reassessment proceedings, relying on various precedents of the Hon'ble Delhi High Court and the Hon'ble Tribunal, which included non-application of mind, relying on wrong facts, borrowed satisfaction, mechanical approval, reason merely being suspicion, etc.

Held

The Hon'ble Tribunal observed that on perusal of reasons, it is noticed that the AO nowhere stated which branch of the HDFC Bank and the account number of bank account in which cash was deposited. The AO was not in possession of the bank statements. The assessment order also reveals that ultimately on verification of bank statement the AO could only find cash deposition of INR 64,67,000. It appears that the AO has not cross verified the information which he possessed with the bank statement. The reasons suggests that reopening was attempted on mere suspicion that the income to the tune of INR 1,25,46,000/-.

The Hon'ble Tribunal relied on following judicial precedents which had distinguished between the reasons where there is non-application of mind and where the reasons recorded by the AO were upheld:

(a) ***Rajiv Aggarwal vs. ACIT (395 ITR 255)***

(b) ***RN Khemka Enterprise Pvt Ltd vs. ITO (ITA No.7244/Del/2019 dated 12.08.2021)***

(c) ***PCIT vs. RMG Polyvenyl (396 ITR 5)***

Accordingly, the Hon'ble Tribunal held that in the facts of the present case and having regard to the aforesaid judicial precedents, there is complete non-application of mind by the AO while recording the reasons for reopening and hence, the reassessment made under section 143(3) r.w.s 147 is quashed.

7 ***Kepler Healthcare Private Limited vs. PCIT [ITA No. 565/Ahd/2024 dt. 12.06.2024] (AY: 2018-19)***

Sec. 263 – AO passed an order making an addition of 10% of the entire marketing expenses- PCIT treated the order as erroneous and passed an order u/s. 263 adding 100% of the said expenses– the PCIT cannot pass an order without making any inquiries and without application of mind.

Facts

Assessee company is engaged into business of trading of its own branded pharmaceuticals products on PAN India basis. In order to promote and market its products, certain items such as working bags, hand sanitizer, shirt tie, ball pen, wallet, LED torch etc. were distributed as gifts to distributors, stockists, chemists, including doctors etc. The Assessing Officer, after examining the matter, had disallowed 10% of the expenditure in the course of assessment. The PCIT called for assessment records and after perusal found the order passed by the AO erroneous and prejudicial. According to the PCIT, expenditure like gifts was required to be disallowed at 100% of such expenses. Subsequently, he passed an order u/s. 263 of the Act, setting aside the order of the AO for passing a fresh order after examining the facts and the issues as discussed in the order u/s 263 of the Act. The assessee filed appeal before the Hon'ble Tribunal against the revision order.

Held

In the hearing before Hon'ble Tribunal, the AR argued that since the matter was already examined by the AO, the finding of the PCIT that order was erroneous and prejudicial to the interest if revenue was not correct. It was further stated that the revision order u/s. 263 of the Act was passed based on an audit objection, which indicated that there was no independent application of mind by PCIT. Whereas, the DR argued that the AO had not examined the nature of expenses correctly and had only made an ad-hoc disallowance. The DR then relied on a decision ***Mafatbhai Bhikhabhai Parmar vs. PCIT and others, in ITA Nos. 463-471/Ahd/2023***.

On the issue of whether the order of AO was erroneous, it was observed that No cogent reason has been given by the ld. PCIT as to why the entire marketing expenses were required to be disallowed. The ld. PCIT has formed his opinion and given the direction to the Assessing Officer to disallow the entire expenses on the presumption that the entire marketing expenses was in the nature of gifts distributed to doctors. However, no material has been brought on record to establish that the entire gifts were given to the doctors.

It was observed that, though there is no dispute in the fact that gifts to the doctors are now prohibited and liable to be disallowed u/s 37(1) of the Act. However, before giving the direction to disallow the entire marketing expenses, no material has been brought on record to establish that the entire marketing expenses was given to doctors only. As per finding of AO gifts were also given to chemists, stockists, distributors etc. Since some component was given to doctors, an estimated 10% addition was made on that account. It was held that no enquiry was caused by the PCIT to establish that 100% expenditure was done on doctors. AO had taken a reasonable view to disallow only 10% of the entire expenditure following treatment given in the previous years too. As the AO had a consistent view, it could not be said that the order of the AO was erroneous. It was held that since nothing adverse was brought on record by PCIT and therefore the order of AO was neither erroneous nor prejudicial to the interest of the revenue.

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8 ***Hatch Tact Innovations Private Limited vs. Pr. CIT (ITA No. 1261/Del/2021 dated 4 June 2024) (AY 2016-17)***

Section 263 - Taxability of premium under section 56(2)(viia) of the Act – Not a case of no inquiry – proceedings held to be invalid

Facts

The assessee is a technology start up based at Gurgaon incorporated on 05.02.2015. The assessee company received share premium of ₹ 41,90,400/- from different persons. The case was selected for limited scrutiny to examine whether the funds received in the form of share premium are from disclosed sources and have been properly offered to tax.

The AO raised specific questions around receipt of premium and identification of shareholders. The same were verified and the return of income declaring a loss of ₹ 1,36,008 was accepted.

The Principal Commissioner of Income-tax ('PCIT') initiated revision proceedings observing that the assessee received share premium of ₹ 1,070 per share issuing 3880 no. of shares during AY 2016-17. The assessee adopted fair market value of ₹ 1,080 per share as per Discounted Cash

Flow Method (DCF). However, as per rule 11UA(2) of Income Tax Rules, 1961, the fair market value of shares stands at ₹ 306. Thus, the assessee has received excess share premium of ₹ 29,64,320/- [(1070X3880) -(306X3880)]. The assessee is a start-up but No Certificate is obtained from Inter-Ministerial Board of Certification for exemption under section 56(2)(viib) of the Act. Keeping in view of these facts the amount of share premium of ₹ 29,64,320/- should have been taxed under section 56(2)(viib) of the Act.

The PCIT also discredited the valuation report on the basis that the assessee had not prepared financial statement from date of incorporation (05.02.2015) to 31.03.2015 but only prepared from 05.02.2015 to 31.03.2016. Accordingly, he observed that the values considered in DCF calculation for year ending 31.03.2015 is fictional and not reliable.

The PCIT accordingly set aside the assessment order passed by the AO on the ground that the AO did not conduct sufficient inquiries and verifications on the main issue selected for scrutiny. The order passed by the PCIT was challenged by the assessee before the Tribunal.

Held

The Hon'ble Tribunal observed that notice issued u/s 143(2) was on the question of 'whether the funds received in the form of share premium are from disclosed sources and have been correctly offered to tax.' Thereafter, the AO issued notice u/s 142(1) calling specifically for information around the same including details around identification of parties and valuation report. The assessee responded to the same.

The Hon'ble Tribunal held that the valuation report cannot be discredited on the ground that the financial statements were prepared from 05.02.2015 to 31.03.2016 without showing how such statements in anyway are incorrect especially also when the Companies Act permits the assessee to make accounts upto 31 March of the next following year in which assessee was incorporated. The Hon'ble Tribunal distinguished the decision in the case of ***Trimex Fiscal Services (P) Ltd (2022) (141 Taxmann.com 524) (Cal HC)***, wherein the Hon'ble Court basis the manner in which the AO had ascribed certain observations has held that no satisfaction was recorded for acceptance of valuation of shares. Whereas, in the case under consideration, relevant queries were raised and after taking into consideration the valuation report as per the Rule 11UA, the fair market value of shares was accepted.

The Hon'ble Tribunal relied on the decision of the Hon'ble Delhi High Court in the case of ***M/s Cinestaan Entertainment Pvt Ltd (433 ITR 82)***, wherein it has been held that valuation is a question of fact which would depend upon appreciation of material or evidences. Hence, the Hon'ble Tribunal held that unless it is established that AO has not made any enquiry or enquiry made is eye wash, disputing certain facts and figures from the financials alone, the assessment order cannot be said to be erroneous and prejudicial to the interest of the revenue, so as to give revisional authority power under section 263 of the Act to substitute his valuation of shares.

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INTERNATIONAL TAXATION
Case Law Update

Dr. CA Sunil Moti Lala
Advocate

A. HIGH COURT

1 ***PCIT vs. Sarens Heavy Lift India (P.) Ltd. [2024] 163 taxmann.com 447 (Delhi)***

Where the assessee procured cranes from its AE, adoption of WDV of the said cranes as reflected in the books of the AE, by the TPO while computing ALP was liable to be rejected in view of the provisions of rule 10B which requires identification of ALP from point of view of uncontrolled price method as being referable to a comparable uncontrolled transaction. The Hon'ble HC upheld the orders of the Hon'ble ITAT/DRP directing the TPO to accept the valuation report of the assessee company supporting its transaction of procurement of cranes to be at ALP

Facts

i. The assessee had procured cranes from its associated enterprise.

ii. The Transfer Pricing Officer (TPO) while computing the ALP, took into consideration the Written Down Value (WDV) of the assets as reflected in the books of the AE.

iii. The DRP observed that the WDV of cranes in the books of the AE could not be considered as ALP as it was not derived from the transactions between enterprises other than associated enterprises. The DRP directed the TPO to accept the valuation report of the assessee company and to delete the addition made on account of the ALP of cranes.

iv. On appeal, the Tribunal upheld the order of the DRP.

v. Aggrieved, the Revenue filed appeal before the Hon'ble HC.

Decision

i. The Hon'ble HC noted that the TPO had while computing the ALP, taken into consideration the WDV of the assets as reflected in the books of the AE and the said decision was neither accepted by the DRP nor by the ITAT.

ii. The WDV methodology appeared to have been rejected bearing in mind the undisputed mandate of rule 10B which requires the identification of ALP from the point of view of the uncontrolled price method as being referable to a comparable uncontrolled transaction.

iii. It held that the expression "uncontrolled transaction" has been defined in rule 10A(ab) as being a transaction between enterprises other than associate enterprises and that admittedly, the equipment had been purchased from the AE of the assessee. Resort to WDV

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would have thus fallen foul of this fundamental precept.

iv. In any case, the WDV as may be reflected in the books would clearly not be liable to be taken into consideration while answering the issue of ALP.

vi. It noted that the Hon'ble ITAT while dealing with the aforesaid aspect had ultimately held that the ALP was to be determined on the basis of transaction value

vii. Although, it was vehemently argued on behalf of the Revenue that the methodologies which were taken into consideration by the assessee were wholly alien to the scheme of rule 10B of the Rules, it noted that ultimately the Hon'ble ITAT had on an overall consideration taken into account the transaction value as identified.

viii. Since there was an apparent failure on part of the Revenue to bring forth any other comparable or any other methodology which may have been examined by the TPO, the Hon'ble HC upheld the order of the Hon'ble ITAT and dismissed the Revenue's appeal.

B. TRIBUNAL

2 *Denso (Thailand) Co. Ltd. vs. ACIT (International Taxation) [2024] 163 taxmann.com 257 (Delhi-Trib)*

The Hon'ble Tribunal held that where a Double Taxation Avoidance Agreement (India-Thailand DTAA, in the instant case) does not make a reference for taxability of Fees for Technical Services (FTS) as a separate item, then Article 22 which vests residuary powers, cannot be invoked. The amount of FTS would be governed by the provisions of Article 7 dealing with business profits and the same would not be taxable in the absence of a PE.

3 *BNP Paribas vs. ACIT (International Taxation) [2024] 163 taxmann.com 601 (Mumbai-Trib.)*

i. Higher rate of tax prescribed for foreign company is not to be regarded as violation of non-discriminatory clause, i.e., article 26 of DTAA between India – France, in light of the explanation in the Section 90, inserted in the IT Act with retrospective effect from 01-04-1962 which provides that the higher tax rate in case of foreign company, should not be regarded as violation of the Non-discrimination clause.

ii. Where Indian branches of assessee, a French bank, paid data processing charges to its Singapore branch office, the Hon'ble Tribunal held that said payment could not be taxed as fees for technical services under Article 13 of the India-Singapore DTAA

iii. The Hon'ble Tribunal held that interest paid by Indian branch/PE of assessee, a French bank, to its head office (a foreign company) would not be taxable in India under the India-France DTAA - since branch had borrowed from overseas head office and the debt claim of head office was connected to PE branch in India. It was held that Article 7 provides that the profit of an enterprise shall be taxable only in that contracting state unless the enterprise carries on business in the other contracting state through a PE situated therein. Further Article 7(3) provides for deduction of expenses to the PE and para 7(3)(b) provides that in the case of banking enterprises, if the head office provides any money on interest, then to determine the profit of a PE, interest on such money paid to the head office can be reduced from the income attributable to the PE. Thus,

the provisions of Article 12 and 7 of the India-France DTAA demonstrate that interest payment made by the PE to the head office would not be taxable in the hands of the head office as provided in Article 12(5) of the treaty.

4 ***Huwaei International Co. Ltd. vs. ACIT (International Taxation [2024] 163 taxmann.com 633 (Mumbai-Trib.)***

Where assessee, a Hong Kong based company, received reimbursement from AE, its Indian subsidiary, for provision of connectivity services for international communication, the Hon'ble Tribunal held that since assessee paid for connectivity services which were ancillary to enabling provision of inter-connect services and part of processing product, same could not be taxed as FTS under section 9(1)(vii)

Facts

i. The assessee, a company incorporated under the laws of Hong Kong was engaged in the business of distribution of telecommunication products.

ii. During the year under consideration, the assessee received reimbursement of connectivity charges from its AE i.e. Huawei Telecommunications (India) Company Pvt. Ltd ('Huawei India') for provision of connectivity services for international communication.

iii. As India and Hong Kong did not have any DTAA during the concerned assessment year, the AO held that the international services rendered by the assessee fell within the ambit of 'Consultancy' or 'Managerial Services' and was taxable as fee for technical services u/s 9(1) (vii) of the Act.

iv. The DRP upheld the order of the AO.

v. Aggrieved, the assessee filed appeal before the Hon'ble Tribunal.

Decision

i. The Hon'ble Tribunal noted the contention of the assessee before the A.O. that the services provided neither constituted managerial services, nor consultancy services as there was no human intervention involved in provision of connectivity services and thus, the services rendered did not constitute technical services.

ii. It went through the Reimbursement of the connectivity charges placed in the Paper Book, Invoices produced and the statement showing computation of income and the agreement containing the Responsibilities as per the purchasing service agreement between the assessee and Huawei India and the clauses mentioned therein w.r.t services rendered.

iii. It noted that the Revenue treated the said services as not only technical in nature but also managerial and consultancy services against the fact that assessee had only paid for connectivity services and the services were merely ancillary to enabling the provision of inter-connect services and part of processing the product. Accordingly, it held that, the amounts could not be treated as technical or managerial or consultancy services by placing reliance on the judgment of the Hon'ble Apex Court in the case of ***CIT vs. Bharti Airtel Ltd. 159 taxman 315***.

iv. Further, it noted that the assessee had earned 1% markup on the reimbursement of connectivity charges which was the amount earned by the assessee in the entire transaction. Accordingly, it directed that the AO may invoke relevant provisions of the Income Tax Act and the DTAA for taxing of the said income earned.

v. Thus, appeal filed by the assessee was partly allowed for statistical purposes.

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INDIRECT TAXES

GST – Recent Judgments and Advance Rulings

CA Naresh Sheth CA Jinesh Shah

A. WRIT PETITON

1 ***Rajshi Processors vs. State of UP [2024] 162 taxman.com 770 (Allahabad) – Allahabad High Court***

Facts and issues involved

Petitioner is engaged in manufacturing and sale of aluminum casting and machinery parts. The petitioner had filed GSTR 3B for the month of May 2019, August 2019 and December 2019.

Deputy Commissioner, Special Investigation Branch had conducted survey of place of business of petitioner. During survey, it was found that petitioner had claimed ITC from vendors (namely Riddhi Siddhi Enterprises; Siddhartha Trading Company; Satvik Enterprises) who were found to be non-existent and bogus.

Adjudicating authority had issued a notice u/s 74 on 03.08.2021. In support of its claim of actual receipt of inward supplies, the petitioner had submitted invoices, copies of GR (goods receipts), e-way bill, laser and bank statements of the firms, evidence of transaction of amounts through RTGS and evidence of physical receipts of goods. The inward supplies received by the petitioner have been entered in the stock register.

The adjudicating authority declined the benefit of I.T.C. to the petitioner and imposed penalty on the petitioner and fixed the liability of interest also. The petitioner filed an appeal against the aforesaid order of the adjudicating authority.

Adjudicating Authority found that GR No. 213/ dated 13.05.2019 and 1363/dated 15.12.2019 had been issued on a similar format, whereas GR No. 694/dated 21.08.2019 and 696/dated 21.08.2019 had been issued on a different format, whereas all of those have been issued by the same transport company and it had no other branch. When an enquiry was conducted on the basis of GSTIN number mentioned on the transport Bilty, the GSTIN was found to be not valid as per the information available on the common portal. The phone number mentioned on the transport Bilty, was found to be in use of some lady at Kasganj.

Appellate Authority, keeping in view the aforesaid facts, did not make any interference in the order passed by the adjudicating authority. Petitioner has therefore preferred the present writ petition.

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Submissions of Petitioner

Petitioner submitted that it had actually received inward supplies which was established from the records produced before the adjudicating authority. The supplier firms were having valid GSTIN registration when the petitioner had received the supplies. In case GSTIN registration of the firm is cancelled subsequently, the petitioner cannot be penalized for the same.

Further, petitioner submitted that they had complied with Section 16(2) of CGST Act, 2017 as well as Rule 36 of CGST Rules. Further, petitioner placed reliance on decision of Delhi High Court passed in ***W.P.(C) 6093/2017 (On Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi & Others)*** wherein it was held that *"there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective."*

Discussions by and Observations of High Court

Section 16 of the GST Act provides the eligibility conditions for taking ITC. Section 162(b) provides that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods unless he has received the goods. "Received the goods" means the person claiming input tax credit must have actually received the goods. Where a person merely produces document, mentioned in Rule 36 regarding receipt of goods, he has actually not received any goods and it is established that the transaction of goods was merely a paper transaction, without any actual supply of goods, the person will not be entitled to get the benefit of input tax credit in view of the provision contained in Section 16(2)(b) of the GST Act, 2017.

Undisputedly, the petitioner had fulfilled the requirements and, therefore, the input tax credit was claimed and was granted to him. However, when an enquiry was conducted by the Special Investigation Branch subsequently, it came to light that the firms from which the petitioner claimed to have received inward supplies, were non-existent and bogus. Neither the firms were found on the addresses claimed by them, nor was any godown or other premises of those firms could be found out. The firms existed on paper only.

Although the registration of the firms existed when the petitioner claimed to have obtained inward supplies, the investigation revealed that the firm itself does not exist. In given case, GSTIN registration has been obtained in the name of any non-existent firm. It being a non-existent firm, could not have made any actual supplies. Merely because the firm was registered on the date of transaction, it cannot be said that the department is bound to give ITC benefit to the petitioner, even though it has been revealed later on the firm was non-existent and it could not have made any actual supplies.

It is settled law that fraud vitiates even the most solemn proceedings and the mere fact that the ITC benefit had earlier been granted to the petitioner merely because the firms were registered, would not create any estoppel against the authority taking appropriate action for claiming refund of the benefit wrongly availed by the petitioner on the ground of receiving inward supplies from non-existent firms.

Decision of Allahabad High Court

The petition filed by the petitioner got dismissed, affirming the department's right to recover ITC claimed on the basis of transactions with non-existent entity.

2 ***Vuram Technology Solutions Pvt. Ltd. vs. Additional Commissioner of GST [W.P. (MD) No. 15092 of 2022 dated 10.04.2024] – Madras High Court***

Facts and issues involved

Petitioner is engaged in providing software services to its subsidiary Vuram Australia Pty. Ltd. situated in Australia. Petitioner filed a refund claim on the account of export of services, but the claim was rejected on the grounds that Vuram Australia Pty Ltd. is an extended arm of petitioner; thereby, both the supplier and the recipient of services are 'merely distinct persons' as per the legal matrix and that it does not tantamount to export of services as defined u/s 2(6) of IGST Act.

The petitioner filed an appeal relying on Circular No. 161/17/2021-GST dated 20.09.2021, which clarified that a subsidiary in India and its foreign holding company are distinct entities and thus, their transactions qualify as exports. However, the said appeal was also rejected.

Hence, petitioner has preferred the present writ petition.

Petitioner's submissions

Para 5.1 and 5.2 of CBIC Circular No. 161/17/2021-GST dated 20.09.2021 clearly clarifies that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "*merely establishments of a distinct person in accordance with Explanation I in section 8.*"

Further, petitioner relied on decision of Honorable Delhi High Court in case of ***Xilinx India Technology Services (P) Ltd. vs. Special Commissioner Zone VIII reported in (2023) 99 GST 948 (Delhi); (2023) 78 GSTL 24 (Delhi)*** wherein Para 5.1 and 5.2 of above circular was specifically referred.

Discussions by and Observations of High Court

Petitioner has satisfied the requirements of Section 2(6)(i) to (iv) of the IGST Act, 2017. Respondent's interpretation of Section 2(6)(v) and Explanation 1 in Section 8, stating that the petitioner and its subsidiary are distinct entities is incorrect. Admittedly, the petitioner and its subsidiary are two distinct entities and therefore, it cannot be said that the petitioner has not satisfied the requirements of Section 2(6)(v) of IGST Act, 2017.

It cannot be said that the petitioner and its subsidiary are not merely establishment of a distinct person in accordance with the explanation I in Section 8 of the IGST Act, 2017. The issue now stands clarified by Circular No. 161/17/2021-GST dated 20.09.2021 bearing Ref. F. No. CBIC-20001/8/2021-GST, content of which has been extracted above.

This view has also been followed by the Delhi High Court in ***Xilinx India Technology Services (P) Ltd., vs. Special Commissioner Zone VIII reported in (2023) 99 GST 948 (Delhi):(2023) 78 GSTL 24 (Delhi)***. That apart, the Revenue cannot argue against its

own circular, although such clarification in Circular of the Board are much binding on the petitioner nor on this Court. The view expressed in the said circular is correct and clarifies the legal position and therefore, this Court is not inclined to take a different view, though such a circular is not binding on Court.

Decision of High Court

Petitioner's services to Vuram Australia Pty Ltd. qualify as an "export of services" under the IGST Act, 2017. The impugned order was set aside, and the respondent was directed to process the petitioner's refund claim along with interest.

B. RULINGS BY APPELLATE ADVANCE RULING AUTHORITY

1 ***Wago Pvt. Ltd. [Advance Ruling No. Guj/GAAAR/Appeal/2024/02 dated 29.05.2024] – Gujarat AAAR***

Facts and Issues involved

Appellant are establishing new factory in Gujarat. Appellant had sought an advance ruling as to whether they are entitled to claim ITC of GST paid for procuring and installing air conditioning and ventilation systems in their new factory.

The G-AAR ruled that such expenses fall under the category of blocked credits u/s 17(5) of the CGST Act, 2017 and hence, ITC thereon is not available. Dissatisfied with the ruling, appellant has preferred an appeal to the G-AAAR.

Appellant submission's

Air conditioning system is nothing but a group of inter-related and inter-dependent machine performing a desired task. The HVAC system is also a machine. Different machines may become part of air conditioning and cooling system and that each machine has a role to play like the chiller provides cool air, pumping system provides cool waler, exhaust system ensures that there is sufficient ventilation etc.; that they become part of an Air Conditioning System and the individual machines do not lose their identity.

Even if all the machines are part and parcel of HVAC System, the HVAC system is also a machine entrusted to provide cooling for all production processes and area and hence ITC cannot be disallowed under section l7(5)(c) of CGST Act.

Since all the parts/machines can be dismantled and taken elsewhere without any substantial damage, the machines/assets forming part of HVAC system are movable.

Discussions by and observations of AAAR

'Immovable property' is not defined under GSI'. On co-joint reading of definition of immovable property under General Clauses Act and Transfer of Property Act, 'immovable property' means something which is attached to earth, or permanently fastened to anything attached to earth, or forming part of land and not agreed to be severed before supply or under a contract of supply.

The AAAR analyzed whether the air conditioning and ventilation systems installed by Wago Private Limited could be classified as "plant and machinery" or whether they constituted immovable property. The systems were found to be integral to the building, forming an immovable property once installed. As per the CBIC's Order No. 58/1/2002-CX, systems like refrigeration and air conditioning plants are considered as systems rather than

standalone machines and hence are not excisable goods once installed. The systems, upon installation, becomes a part of the building structure and loses their identity as individual machines.

The AAAR referred to the Supreme Court's ruling in the case of Globus Stores P. Limited, which classified air conditioning plants as immovable property.

Since the air conditioning and ventilation systems are deemed to be immovable property, they do not qualify as "plant and machinery" under the CGST Act. Consequently, ITC on these systems is blocked under Section 17(5)(c) as the expenditure relates to works contract services for constructing an immovable property.

Ruling of AAAR

The appeal filed by appellant is rejected and appellant is not entitled to claim ITC on supply of air cooling and cooling system since it ceases to be plant and machinery and is blocked u/s 17(5)(c) of CGST Act.

C. RULINGS BY ADVANCE RULING AUTHORITY

Landmark Cars East (P.) Ltd [(2024) 162 taxmann.com 318] - West Bengal AAR

Facts and issue involved

Applicant is an authorized agent of Mercedes Benz India (MB India) for supply of cars, related spare parts and is also engaged in providing various services such as repairs, warranties, roadside assistance and servicing.

Applicant is responsible for facilitating the sales of Mercedes-Benz passenger vehicles. The applicant functions as a self-employed commercial agent with the responsibility of brokering the sales of vehicles on behalf of MB India.

According to the Authorized Agent Agreement entered by the applicant with MB India, MB India will make available the authorized agent with a sufficient number of Demo vehicles, which are essential for demonstrating the Contract Goods, i.e., the cars, to prospective customers.

Some of the terms and conditions relating to the above provision are:

1. Upon request of the authorized agent, MB India may sell the demo vehicles to the authorized agent at a discount as per relevant policies and guidelines.

2. The rights of title to and ownership of the Demo vehicles shall vest with the authorized agent in its own capacity and not in its capacity as an Agent.

3. The authorized agent shall use the Demo vehicles only for the purpose of providing a demonstration of Contract Goods (i.e., cars).

4. The authorized agent may request MB INDIA for de-fleeting the Demo vehicle and MB INDIA shall allow de-fleeting the Demo vehicle in accordance with the applicable Demo vehicles Guidelines.

5. Once the Demo vehicle is de-fleeted, the authorized agent shall liquidate and sell the Demo vehicle to the end customer only and not to a reseller or a broker in its own capacity and not in the capacity as an Agent.

6. In case the authorized agent incurs losses on sale of Demo vehicles, MB

INDIA shall reimburse the authorized agent for such losses.

7. If a demo car has not completed the required number of kilometers as per the policy, the demo discount initially provided will be reversed with GST interest as a cost.

With the above background, applicant has applied for an advance ruling for the following issues:

i) Whether the applicant is entitled to claim input tax credit charged and paid on inward supply of car from MB India which are used for demonstration purpose to the potential customer interested in buying Mercedes Benz Car, commonly known as Demo cars?

ii) Whether amount received by the applicant from Mercedes Benz INDIA towards reimbursement of "Loss on Sale of Demo Car" constitute as supply? If yes, what is the classification and rate of tax of the same under GST?

Discussion by and Observations of AAR

On perusal of Section 17(5) of the CGST Act, ITC on motor vehicles used for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), can be availed only when such motor vehicles are (i) supplied further, or (ii) used for transportation of passengers, or (iii) used for imparting training on driving such motor vehicles.

The vehicles purchased by the applicant for demonstration purposes qualify the specified seating capacity and the applicant also makes further supply of such vehicles, though at a later point in time.

The condition of a demo vehicle at the time of its further supply has undergone some deterioration does not detract from the reality that the vehicle when supplied by the applicant has ceased to be a demo vehicle that was purchased. The demo vehicles are purchased all along for further supply on the condition that they will be kept for a specific period of time.

Therefore, ITC on purchase of demo cars is allowed under Section 17(5)(a) of the CGST Act, 2017.

To answer the second question of the applicant, Authority observed that 'Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' is a supply of service as per clause 5(e) of Schedule II of the CGST Act.

On perusal of Circular No. 178/10/2022-GST dated 03.08.2022, it appears that any activity or transaction as specified in para 5(e) of Schedule II of the GST Act would constitute a supply of services if the said activity or transaction fulfills two parameters, (i) there must be a "consideration", and (ii) the activity or transaction is made or agreed to be made "in the course or furtherance of business".

In the given case, MB INDIA enters into the agreement with a promise to compensate where the applicant would suffer a loss on sale of demo vehicle. This compensation is paid as a result of the contract and therefore would qualify to be a 'consideration'.

Therefore, applicant has entered into the agreement to tolerate the act of suffering loss for consideration in the course of furtherance of business. "Agreeing to tolerate an act" having SAC 999794 is classifiable under 'Other Miscellaneous services' and is taxable @ 18%

vide serial number 35 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

Ruling of AAR

Applicant is entitled to claim input tax credit of tax paid on inward supply of cars which are used for demonstration purpose and supplied further after a specified time period.

The amount received by the applicant from Mercedes Benz India towards reimbursement of "Loss on Sale of Demo Car" shall be regarded as consideration received against supply of services of 'agreeing to tolerate an act' (SAC: 9997974) and would be taxable @ 18%.

2 *Hitesh Gwalani [Advance Ruling No. Raj/Aar/2024-297/02] Rajasthan AAR*

Facts and issue involved

Applicant intends to sell various types of scrap like old used Iron scrap, used Lead Acid Batteries, old and used brass and aluminum utensils and so on. Applicant proposes to procure said goods from unregistered suppliers and subsequently sale them to various manufacturers. Applicant proposes to charge GST on difference between selling price and purchase price in accordance with Rule 32(5) of CGST Rules.

Applicant sought an advance ruling on following questions:

1. Whether sale of scrap qualifies as sale of second-hand goods and thus, will it be covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017?
2. If the answer to the above is affirmative, is the margin scheme applicable only on either intra-state supply or inter-state supply or is it applicable on both?

Discussions by and Observations of AAR

Rule 32(5) of CGST Rules is applicable where person is dealing in buying and selling of secondhand goods. Though the term 'secondhand goods' is not defined under GST, its common parlance meaning is 'any new or used property that has been sold, traded, exchanged, consigned or otherwise disposed of by its original owner'.

Applicant is dealing in scrap products which cannot be covered under secondhand goods as basically these items are termed as scrap which is consumed/melted for manufacture of new items and thus nature of goods changes.

Further, Government has issued Notification No. 8/2018-CT(R) in respect of Margin Scheme u/R 32(5) which is available only in respect of Motor Vehicles and that items dealt with by applicant is different from Motor Vehicles.

Thus, items to be dealt with by applicant does not qualify as secondhand goods and hence, not eligible for margin scheme under Rule 32(5) of CGST Rules.

Ruling of AAR

Items dealt with by the applicant do not qualify as second-hand goods and thus the applicant is not eligible to operate under the Margin Scheme in terms of Rule 32(5) of CGST Rules, 2017.

Since the items dealt with by the applicant do not qualify as second-hand goods, the benefit of the Margin Scheme is neither available for intra-state supply of goods nor inter-state supply of goods.

3 *Center for International Admission and Visas (CIAV) [(2024) 162 taxmann.com 681] – Telangana AAR*

Facts and Issues involved

Applicant has entered into an agreement with foreign universities/colleges to provide referral services.

Broadly, under the scope of services, the Applicant provides referrals of the aspirants who wishes to apply and study aboard to the universities/colleges located outside India. Applicant is responsible to prepare the case of the aspiring student and refer it to the concerned foreign college and university, as per the requirement of the aspiring student and the fitment to the college/university. The college/university retains full and complete discretion about whether to accept a student applicant for enrolment. Applicant has no authority to accept an applicant or guarantee a student applicant's acceptance by the college/university. Thus, the Applicant works as an independent contractor providing its own service of 'marketing/recruitment/referral' to the foreign colleges and university.

Applicant has sought an advance ruling on following questions:

1. Whether in view of the given facts and circumstances the activity of providing services of 'Marketing/Recruitment/Referral Consultant' to foreign universities/colleges on principal-to-principal basis would qualify as 'intermediary' as defined under section 2(13) of the IGST Act, 2017 or whether the same would be considered as an independent service of 'Marketing/Recruitment/Referral Consultant' by the Applicant to foreign universities/colleges?
2. Whether Applicant would be liable to levy of GST or would it qualify as 'export of services' in terms of Section 2(6) of the Integrated Goods and Services Tax Act, 2017?

Discussions by and Observations of AAR

Applicant has contended that in terms of agreement executed with the foreign college and university, it has a 'privity of contract' only with the foreign college and university. Applicant is nowhere contractually connected with the prospective students, who it refers to the foreign college and university. It is the foreign college/university which renders consideration to the Applicant for undertaking engagement as per the agreement.

Section 2(93) of CGST Act defines recipient of supply to mean person who is liable to pay consideration. In the present case, as per the terms of the underlying agreement, consideration is payable in convertible foreign exchange by foreign college and university for the services rendered to it by the Applicant. Even in terms of the agreement, the Applicant cannot have any contractual arrangement with the prospective students for activities which the Applicant has to do for the foreign college and university. Therefore, the recipient of the services of the Applicant, undisputedly, is the foreign college and university and not the students.

Coming to the concept of 'intermediary', defined in Section 2(13) of the IGST Act "Intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person

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who supplies such goods or services or both or securities on his own account.

It is pertinent to mention that a person would qualify as 'intermediary' only if he facilitates the supply of service between two or more persons. A person who provides the service on principal-to-principal basis without facilitating a service between two persons will not be termed as 'intermediary'.

The relationship between the applicant and foreign colleges and university has been defined, impliedly or explicitly, as of principal to principal. Most important conditions for qualifying as 'intermediary' i.e., presence of three parties and provision of main service with ancillary service by the facilitator acting as an agent or broker, as per Section 2(13), are not fulfilled by the applicant.

The applicant is providing services to their clients namely foreign colleges and universities who are paying commission/fees to the applicant. Therefore, the Applicant cannot be considered as 'intermediary' for the purpose of Section 2(13) of IGST Act

Section 2(6) of IGST Act defines "Export of services" to mean the supply of any services when,-

i. Supplier of service is located in India.

ii. Recipient of service is located is located outside India.

iii. Place of supply of service is outside India;

iv. Payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

v. Supplier of service and the recipient of service are not merely establishments of a distinct person.

In the instant case, the applicant (Supplier) is located in India while the recipient of services i.e., foreign colleges and university are located outside India. Since the activity of the applicant is an independent service of 'marketing/recruitment/referral consultant', the same will fall under section 13(2) of the IGST Act to determine its place of supply. Accordingly, the place of supply of the services of the Applicant shall be location of recipient of it services i.e., location of foreign colleges and university which is outside India. Further, the Applicant and foreign colleges and university are nowhere related to each other and thus, cannot be treated as establishment of a distinct person in accordance with Explanation 1 to Section 8 of IGST Act.

Therefore, the activity of the Applicant for foreign college and university should qualify as 'export of service' in terms of Section 2(6) of IGST Act provided the payments are received in convertible foreign exchange.

Ruling of AAR

Applicant should not be considered as 'intermediary' for the purpose of Section 2(13) of the IGST Act.

The activity of the Applicant for foreign college and university should qualify as 'export of service' in terms of Section 2(6) of IGST Act provided the payments are received in foreign exchange.

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INDIRECT TAXES

Service Tax – Case Law Update

CA Rajiv Luthia CA Keval Shah

1 *Karur Vyasa Bank Ltd vs. CCE, Trichy 2024-6- TMI- 851-CESTAT-Chennai*

Backgrounds and facts of the case

- The department alleged that appellant bank collected certain charges being the cost of reimbursement received from insurance companies for the supply of infrastructure like table chair, network, electricity, telephone, etc, to the personal of M/s Bajaj Alliance and M/s Sun Life Insurance for providing insurance service during the period from 01/04/2010 to 30/06/2011 and from 01/07/2011 to 31/03/2012.
- The SCN demanded service tax under the category of Business Support Service.
- The CCE(Appeals) upheld the demand & therefore the appellant has filed present appeal.

Arguments by Appellant Assessee

- That they are acting as corporate agents for the insurance companies. That it was agreed that the bank will provide insurance helpdesk in all their branches, which will be used for servicing of the insurance business of the insurance companies.
- The insurance companies undertook to reimburse the bank of the charges reasonably incurred for servicing of the insurance business procured through the bank or other business of the insurance company. The insurance company also undertook to impart training to the appellants employees. It was also agreed that the insurance company may jointly with the bank conduct campaigns, roadshows, or any other marketing initiative with the objective of creating awareness about the insurance products and generating interest on the importance of insurance, which may ultimately help to improve the business of the insurance company.
- That the insurance business done through these companies, who are the service providers, is covered under ‘Insurance Auxiliary Service and the insurance company, which appointed the bank as an agent, is the person liable to pay service tax under RCM.

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- As per rule 6 of STR,1994 the value of taxable service includes all payments made by the insurance company to its agent and that the service tax is paid by the insurance company on the whole amount and that the bank does not have any liability to service tax regarding the reimbursement of expenses from the insurance companies.

- Further, It was only after the legislature amended the Finance Act 2015 with effect from 14/05/2015 that reimbursable expenditure whose cost could also form part of valuation of taxable services for charging service tax.

Arguments by Revenue

- That the service of providing infrastructural and communication facilities by the appellant to insurance companies is a service distinct from the 'Corporate Insurance Agent Services' provided by them to the insurance companies.

- They also received payment for the supply of infrastructure support facilities, like table, chair, telephone, etc, to the personnel of the insurance companies who visited the bank in furtherance of insurance business.

- Companies pay the agent a commission usually as a percentage of the insurance premium on periodic basis, which is not so in this case. Only when payments are linked to volume of business procured, they would amount to deliberation for soliciting business. Payments made by insurance companies agents are governed by statutory provisions of the Insurance Act. Hence, the actual role played by the appellant was in supporting the business of the insurance companies and that the charges do not relate to insurance services.

Decision of the Hon'ble Tribunal

- Since the matter involves the interpretation of an agreement, it would be relevant to refer to the Apex Courts judgment in ***DLF Universal Ltd. & Anr. vs. Director, Town and Country Planning Department, Haryana & Ors., [(2010) 14 SCC 1]*** which explains the interpretation of a contract as " that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises the joint intent of the parties."

- The question of agency is always a mixed question of law and fact. As held by the Hon'ble Supreme Court of India in ***Assam Small Scale Ind. Dev. Corp. Ltd. & Ors. vs. M/s. J.D. Pharmaceuticals & Anr. [Appeal (Civil) 6324 of 2005, dated 07/10/2005]***, the expressions 'principal' and 'agent' used in a document are not decisive. The nature of transaction is required to be determined on the basis of the substance there and not by the nomenclature used. It is no longer in doubt or dispute that while interpreting the terms of agreement, it is necessary to look to the substance of the matter rather than its form. Use of a terminology may not be sufficient

to lead to a conclusion that the parties to the contract in fact intended that the said status would be conferred.

- The 'Agreement' between the appellant and the insurance companies we find that although the buying and selling of insurance is mentioned in the Agreement a separate, distinct and severable part relates to providing support to the insurance companies and their staff.

- The appellant has not stressed or brought out their role in the selling of insurance policies on their own apart from stating that they provide 'insurance help desk'. By acting jointly with the insurance companies to conduct campaigns, roadshows, or any other marketing initiative with the objective of creating awareness about the insurance products and generating interest on the importance of insurance, which may ultimately help to improve the business of the insurance company will not amount to a principal – agent relationship. Nor will providing the insurance companies leads and references of clients for sourcing insurance business, calculating the premium of the insured, etc. or providing space and other facilities to the insurance companies in their bank branches. These are separate and distinct activities.

- In legal phraseology, every person who acts for another is not an agent. A person does not become an agent just because he gives advice or supplies information in matters of business. The crucial test of the status of an agent is that his acts bind the principal. No such binding action of interacting on behalf of the insurance companies for selling insurance policies to third parties has been demonstrated to have been undertaken by the appellant. Nor are the payments received as a percentage of the business generated. The payments are received against specific support activities undertaken by the appellant

- The appellant is not an agent of the insurance companies. Hence by merely calling an amount received as reimbursement would not make it reimbursements. Even to claim exclusion of expenses incurred as an agent, it should be clear from the terms of Agreement that the payments are not for a contractual obligation and that the insurance companies were required to incur such expenditure in the course of business outside the Agreement, which was incurred by the appellant on the insurance companies behalf, and the same would be reimbursed to them.

- Further, coordinate Bench of this Tribunal in the appellants own case [2019 (22) GSTL 63 (Tri-Chennai)], has held their impugned services to be Business support services. Hence, the present appeal must fail.

- Once the matter was within the knowledge of the department leading to the issue of an earlier SCN, the question of suppression of information

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with intention to evade payment of duty leading to equal penalty will not arise on the same facts, in the subsequent SCNs. Hence the penalty under section 78 of FA 1994 merits to be dropped.

2 *Balaji Insulations India Pvt Ltd vs. CCE, Bhiwandi 2024-6-TMI-771-CESTAT- Mumbai*

Backgrounds and facts of the case

- The SCN was issued for the period October,2013 to March, 2014 on differential turnover reported in income tax return and ST-3 returns, demanding ST of ₹ 88,98,383/-.
- The CCE Appeals dropped part demand and confirmed demand to the tune of ₹ 43,98,518/-.

Arguments by Appellant Assessee

- That the entire demand is presumptive. He has further submitted that it is well settled principle of law that corroborative evidence to prove charges of demand of service tax is essential and that except the figure shown in income tax return, nothing has been relied upon to prove that the appellant has provided services which were liable for payment of service tax.
- The appellant has submitted that as all required documents like sale & purchase summary, copy of the sale & purchase sample bills, reconciliation statement of amount not liable to service tax, copies of balance sheet, profit and loss account and copies of ST-3 returns were submitted and the same were not taken into consideration and as a result, the process of adjudication has not taken place.
- That it is no more res integra that only on the basis of difference between figures reflected in ST-3 return and the income reflected in income tax return, demand of service tax on differential value cannot be determined unless the assessee's records are scrutinized and on the basis of the activities of the assesse unless it is established that a particular consideration was received for providing service and the same was not covered in ST-3 return, demand cannot be raised.

Decision of the Hon'ble Tribunal

- There are three issues for determination by us –
  - a) Whether for determination of service tax not levied or not paid under the provisions of Section 73 of Finance Act, 1994, it is essential to determine the value of taxable services for charging service tax as provided under Section 67 of the said Act.
  - b) Whether the value of taxable services for charging service tax is properly determined during the proceedings of this case.
  - c) Whether the impugned order is sustainable in law or whether any part of the said impugned order is not sustainable. We take up the issues one by one.

- That charging Section 66B of Finance Act, 1994 provides for levy of service tax at 14% on the value of service. Section 67 of Finance Act, 1994 provides that where service tax is chargeable on any taxable service with reference to its value, then such value shall be the consideration in money charged by the service provider. Therefore, it is primarily important to determine the value on which service tax shall be levied as a specific percentage and such value should be the value of taxable service. Therefore, we come to a conclusion that for arriving a amount of service tax not paid or not levied arriving at correct value of taxable service which has not suffered service tax needs to be determined as the first step.

- This Tribunal has held in the above stated case of Sharma Fabricators & Erectors Pvt. Ltd. that the charges in show cause notice have to be on the basis of books of account and records maintained by the assessee and other admissible evidence. The said decision of this Tribunal has been affirmed by Hon'ble Allahabad High Court.

- We note that in the case of Kush Constructions (supra), this Tribunal had held that without examining the records for difference in the figures reflected in income tax returns and ST-3 returns, Revenue cannot raise demand without establishing the entire amount received by the appellant as reflected in the income tax returns is consideration for providing services.

- We, therefore, hold that the subject show cause notice is not sustainable in law.

3 *Reliable Automotive Pvt. Ltd. vs. Commissioner of CGST & Central Excise, Mumbai 2024-4-TMI-66-CESTAT- Mumbai*

Backgrounds and facts of the case

- The appellants are engaged in he business of providing sales of commercial vehicles manufactured by Tata Motors Ltd. and also sales of passenger vehicles manufactured by Hyundai motors Ltd. Further, the appellants were also engaged in providing servicing of aforesaid vehicles of Tata and Hyundai Brand from their various automobile service centers situated at different places under the tradename of 'Kamal Motors'. The appellants were also providing trucks on hire basis to various Goods Transport Agencies (GTA) for transportation of goods. Besides these activities, the appellants were also engaged in trading of 'tyers and cement' under the name and style of 'Bindhiya Trading Company (BTC)'. For the purpose of payment of service tax on taxable services the appellants had registered separately for various locations of their business with the jurisdictional Service Tax Commissionerate.

- The department conducted EA 2000 Audit for the period FY 2011-12 to FY 2014-15 it was noticed by the department that they were providing

taxable services as well as exempted services; they had availed Cenvat credit on common input services within each of the registered locations, which in certain cases the credit was foregone and had also reversed certain amount of Cenvat credit taken on common inputs which the audit identified to be as violative of Rule 6(3A) of Cenvat Credit Rules, 2004 resulting in short payment of service tax.

- The Ld. Commissioner during adjudication, summarized the issues arising in dispute which are required to be decided by him and listed these as follows:

  (i) whether the services in relation to providing vehicles to associates, in course of its business activities falls under the category of 'Business Support Services' (BSS) as defined under Section 65(104c) read with Section 65(105)(zzzq) of the Finance Act, 1994;

  (ii) whether the services in relation to business promotion activities provided/rendered in the course of business activities falls under the 'Business Auxiliary Services' (BAS) services as defined under Section 65(19) read with Section 65(105)(zzb) *ibid*;

  (iii) whether the services involved in 'servicing of vehicles' during the 'free warranty' period provided/ rendered during the course of its business activities falls under the 'Authorised Service Station' services as defined under Section 65(62) (72) & (73) read with Section 65(105)(zo) *ibid*;

  (iv) whether the method adopted by the appellants assessee by foregoing certain amount of Cenvat credit in respect of provision of exempted service is correct in terms of provisions of Rule 6(3A) of CCR, 2004; and

  (v) whether penalty is impossible on appearance under Section 77, 78/76 ibid.

- The Ld. Commissioner had decided these issues by confirmation of the service tax demands along with imposition of penalty, with the exception of dropping the demand raised in respect of the issue of taxability of services in relation to vehicles provided to its associates by holding that the same cannot be made liable for service tax under the category of 'Business Support Services'. Feeling aggrieved the appellants preferred these appeals before the Tribunal.

Arguments by Appellant Assessee

- The service tax is not applicable in respect of various sales promotion activities involved in sale of vehicles, appellants are engaged in the sale of heavy commercial vehicles and passenger vehicles. They have entered into separate agreements with the manufacturers of automobile vehicles *viz.*, Tata Motors Ltd., (TATA) and Hyundai Motors Ltd. (HYUNDAI); that in order to achieve higher sales or target, the manufacturers bring

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out various schemes and incentive programs for which they had offered discounts to their dealers by way of reduction in price.

- The incentives/discounts offered depends on bulk quantity of purchase or lifting of new vehicles during the period in terms of number of vehicles and its variants. They stated that TATA and HYUNDAI had announced the incentives/discounts periodically/monthly basis by conveying it to the various dealers by email, who had passed on the benefit to the ultimate buyers of automobiles. These incentives/discounts include Note for approval scheme, Flat retail payout, Early bird offtake, Target linked incentives, offtake target link, Gold coin scheme, Captive loyalty, Welcome scheme etc. The appellants had not retained any benefit of such incentives/discounts with them. The agreement entered by the appellants with the manufacturers of automobiles provides clearly that sale of vehicles is made at Net Dealer Price, and in case of the appellants dealer becomes eligible to various discounts/incentives, then the Net Dealer Price to customers in such case shall be the discounted price of the vehicles. Thus, the discounts/incentives offered by TATA and HYUNDAI are nothing but reduction in final purchase price of vehicles which is subjected to applicable VAT and there are no services involved in these sales of vehicles.

- They also stated that the appellants also incur various expenses, jointly by dealers and manufacturers, for promotion of sales of vehicles and such expenses are shared among them in agreed ratio. Further, while arranging loan for purchase of vehicles by customers through banks/financial institutions certain amount was offered as interest subvention, by reimbursement from manufacturers to the appellants, to the benefit of ultimate customers.

- Further, every sale of new vehicles is provided with free services during the warrant period as a part of standard sale arrangement and the value of such services are embedded in the selling price of vehicles. Thus, these transactions are not in the nature of service but is a sale which is subject to State VAT. As regards reversal of Cenvat credit, he stated that the appellants render no services in the premises dealing with sale of vehicles and hence there is no common inputs or input services requiring reversal of Cenvat credit; the appellants had taken Cenvat credit only at workshops where the activity of maintenance and repair services have been carried out; however, in certain premises where the service of motor vehicles and sale of spare parts is carried on, they had reversed the Cenvat credit attributable to input services on non-taxable activity.

Decision of the Hon'ble Tribunal

- The learned Commissioner had heavily relied upon the Order of the Tribunal in the case of ***Tata Motors Ltd. vs. Commissioner of Central Excise,***

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Pune vide Final Order Nos. A/200-203/2014-WZB/C-II(EB), dated 25-3-2014. On perusal of the facts of the above referred case, we find that the said order is clearly distinguishable from the present set of facts.

- The invoice for sale of vehicle issued by manufacturer of vehicles to appellants indicate the special discounts offered by them which in turn have been reflected in the tax invoices issued by the appellants. Whereas in the case of Tata Motors referred by the learned Commissioner, there was also no evidence on record to show that the goods on which the discounts were given while effecting sales to the dealers were passed on to the customers, that is, buyers of the cars. There was also a case of false/fabricated circulars claimed to have been issued to the dealers, the receipt of which has been denied by all the dealers, in that referred case. Thus, we are of the view that the ratio of the said decision cannot be applied in the present case before us, as the facts of the case are entirely different.

- CBIC has *vide* its circular No. 87/05/2006-ST dated 06.11.2006 has also clarified on the service tax issues relating to authorized motor vehicle dealers and service stations, which have also been discussed elaborately in the case of ***My Car (Pune) Pvt. Ltd. vs. Principal Commissioner of Customs, Central Excise and Service Tax, Pune-I – (2023) 9 Centax 285 (Tri.- Bom.)***, wherein the Tribunal has observed that the discount/commission/incentives given for sale of cars, is no way comparable to services provided to customers at "free of charge" for which reimbursement charges are given by the car manufacturer. Such services have been distinguished from sales promotion which have been explained by stating that this is not the case where the appellant is advising the end customers to buy the cars supplied by the manufacturer amongst various choices available to the customer in the car market for earning the commission/incentives which could be treated as sales promotion. Accordingly, the Tribunal have held that the incentives/commission is solely related to trade discounts for sale of cars in accordance with the regular practice as well as the agreement/schemes that were in vogue in the industry, and these cannot be treated as compensation received by the appellant for any services provided to the car manufacturer.

- On the issue of free services provided during the warranty period, we find that the issue had also been decided by the Tribunal in the case of ***Commissioner of Central Excise, Pune-I vs. Sai Service Station Ltd. (supra)***, by setting aside the service tax demand.

- On the issue of reversal of Cenvat credit in terms of Rule 6(3A) of Cenvat Credit Rules, 2004, we find from records of the case, in particular from the Final Audit Report No. 236/2016-17 submitted by the Deputy

Commissioner, Service Tax Audit-III, Mumbai, it has been specifically mentioned that the during the course of audit, the Audit wing had observed that the appellants had maintained CENVAT registers as per Service Tax registrations obtained for various premises.

- The Audit wing had also observed that the appellants had not availed Cenvat credit on inputs services which have been utilized only for exempted services; however, Cenvat credit has been availed common input services within each of the registered location. It is also explained by the appellants that they had not obtained service tax registration in respect of two premises, since no service is rendered in these places and they only undertake trading of vehicles for which they are discharging appropriate VAT before the jurisdictional Sales Tax Authorities. Further, the details submitted by the appellants indicate that they have already reversed the Cenvat credit on input services availed at locations from where both service of vehicles and sale of spare parts was carried out to the tune of ₹ 17,68,172/- and the same has been disclosed to the Department. In this regard, we also find that the impugned order do not provide any basis or evidential documents, upon which the incorrect availment of Cenvat credit could be determined in terms of CCR, 2004. Further, learned Commissioner at page 60 of the impugned order has recorded that "the assessee have submitted statement giving details of 'other income' alongwith reason, ledge accounts copies of each head of account under the groupings and taxability thereof with sample supporting evidence/documents." However, we find neither there is any cursory examination of the same nor any specific findings recorded by the learned Commissioner in the impugned order. In the absence of clear finding for demand of reversal of Cenvat credit and for demand of service tax on 'other income' without examination of documents, we find that the same cannot be legally sustainable.

■●■

"Take up one idea Make that one idea your life Think of it Dream of it Live on that idea Let the brain, muscles, nerves every part of your body be full of that idea and just leave every other idea alone"

— *Swami Vivekananda*

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CORPORATE LAWS

Case Law Update

CS Makarand Joshi

CASE – 1 IBC

In the matter of *Fedex Express Transportation and Supply Chain Services (India) Private Limited (Appellant) vs. Zipker Online Services Private Limited (Respondent)* at National Company Law Appellate Tribunal on 1st May 2024

Facts of the Case

- M/s Fedex Express Transportation and Supply Chain Services (India) Private Limited (Appellant) was a provider for integrated and turnkey services in shipping, logistics, supply chain management and project.
- M/s Zipker Online Services Private Limited (Corporate Debtor/CD), availed shipping and logistics services from the appellant.
- In lieu of the service, the appellant raised certain invoices from 7 May 2019 to 8 October 2019 but the CD failed to honour the same and thus the operational creditor sent a demand notice, u/s 8 of the Insolvency and Bankruptcy Code, 2016 (IBC/code), for payment of ₹ 18,34,120.93/- with interest but did not receive any response from the CD and hence, filed the application u/s 9 of the IBC for the resolution of the aforesaid amount mentioned in the demand notice.
- The application, filed u/s 9 of the IBC, by the appellant was dismissed by National Company Law Tribunal (NCLT), vide its order dated 5 September 2023, on the ground that since the name of the CD had already been struck off by the Registrar of Companies (RoC), therefore, the application u/s 9 of IBC cannot be further prosecuted.
- Aggrieved against this order, the present appeal was filed by the Appellant u/s 61 of the IBC.

Arguments of the Appellant

- It was argued that striking off the name of the CD from the register maintained by the RoC was not a bar to initiate the Corporate Insolvency Resolution Process (CIRP) against the CD and a separate application was not required for restoration of the name of the CD.
- Relied upon two decisions of NCLAT *viz., Hemang Phophalia vs. The Greater Bombay Co-Operative Bank*

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Ltd. & Anr., decided on 5 September 2019 and Elektrans Shipping Pte. Ltd. vs. Pierre D'Silva decided on 6 September 2019.

- Further, even if the name of the CD was struck off, its liability would continue towards its creditors in terms of Section 248(7)&(8) and Section 250 of the Companies Act, 2013(the Act).

- It was also submitted that once the application u/s 7 or u/s 9 of IBC is filed and admitted, either by the Financial Creditor or the Operational Creditor, within the period of 20 years from the date when the name of the Company was struck off u/s 248(5) of the Act, the CD and its directors, officers etc., would be automatically restored in terms of section 252(3) of the Act.

Arguments of the Respondent

- It was submitted that once a company is struck off, it ceases to exist as a company. Under Section 3(8) of the IBC, CIRP can be initiated only against a CD. A CD is defined as a corporate person under Section 3(7), which further defines a company in accordance with clause 20(2) of the Companies Act, 2012 *as a company incorporated under this Act or any previous company law*.

- Therefore, for an application under Section 7 or 9 of the IBC to be admitted and CIRP to be initiated, the company must be in existence. In this case, the company ceased to exist pursuant to Section 248(5) of the Act, as its name was struck off by RoC.

- The effect of a company being notified as dissolved under Section 250 of the Companies Act, and the right to sue regarding the liability of the company under Sections 248(7) and 248(8), is unrelated to the filing under Section 9 of the Insolvency and Bankruptcy Code (IBC). Section 9 of the IBC is not intended for recovery proceedings, but rather for the resolution of insolvency.

- It was further submitted that the filing of an application under Section 7 of the IBC does not automatically restore the company under Section 252(3) of the Act. Instead, the order passed by the RoC under Section 248(5) must be specifically challenged through an appeal under Section 252(3). The appeal must demonstrate to the NCLT that, at the time its name was struck off, the company was carrying on business or was in operation, or that it is otherwise just to restore the company's name to the register of the RoC.

- The company comes into existence upon its incorporation under Section 7 of the Companies Act and ceases to exist or is dissolved under Section 248(5). It remains dissolved until it is restored through an appeal filed under either Section 252(1) or 252(3) of the Act.

Held

- The section 252 of the Act was discussed in detailed and it was highlighted that section 252(3) of the Act provides a right of appeal to a company, or any member, creditor,

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or workman aggrieved by the striking off of the company's name from the register of companies.

- The application can be filed within twenty years from the publication of the notice under Section 248(5). To succeed, the applicant must prove that at the time its name was struck off, the company was either carrying on business, was in operation, or that it is just to restore the company's name. The Tribunal has the power to order the restoration of the company and to place it and all related persons in the same position as if the company's name had not been struck off.
- Further, the NCLAT also revisited various provisions under IBC and it was highlighted that the *CIRP can be initiated only against a CD which may be either by the financial creditor, operational creditor or the CD itself.* The corporate debtor, defined under Section 3(8) of the Code, means a corporate person who owes a debt to any person.
- It was further pointed that the factual aspects which have been placed before in an appeal – it was highlighted that *nothing is automatic that as soon as an application is filed under Section 7 or 9 of IBC by a creditor (financial creditor or operational creditor), the order of the Registrar passed under Section 248(5) the Act is to set aside and the name of the company is restored to the register of the RoC.*
- Section 252(3) of the Companies Act provides a right of appeal to a company, member, director, or workman to challenge the Registrar's order passed under Section 248(5). This appeal can be based on three grounds: that the company was carrying on business, was in operation, or that it is just to restore the company's name. These grounds must be established with pleadings and evidence before the Tribunal. An order for restoration can only be passed upon satisfying these grounds and can be further appealed under Section 61 of the IBC. *Therefore, there is no automatic restoration of the company upon the filing of an application under Sections 7 or 9 of the IBC.*
- The discussion also revolved around whether an application u/s 9 of the IBC is intended for winding up or for the initiation of CIRP. Where in it was noted that *Winding up of a company can be initiated either voluntarily by the shareholders through a resolution appointing a liquidator, or by an order of the Tribunal where the Tribunal appoints a liquidator, following procedures defined in the Companies Act and other relevant laws. This process typically occurs when a company is unable to pay its debts or under circumstances deemed just and equitable.*
- In the definition under Section 2(94) of the Act, "winding up" includes both winding up under the Companies Act and liquidation under the IBC, depending on the applicable provisions. Therefore, the winding up mechanism can be employed for debt recovery purposes.

- On the other hand, it has been repeatedly held by the *Hon'ble Supreme Court that the IBC is not a debt recovery mechanism but a mechanism for revival of a company fallen in debt. It has been held that the IBC is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation*.
- The CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD. The primary focus of the legislation is thus to ensure the revival and continuation of the CD by protecting the CD from its own management and from a corporate death by liquidation. The preamble of the IBC speaks of maximisation of value of assets of the CD and balancing the interests of all the stakeholders with an object to keep the CD as a going concern.
- *Even though rights of recovery are available from the company's assets under Section 248(6), from directors, etc., under Section 248(7), or under the exceptions in Section 250, the application under Section 7 or 9 would not be maintainable because it would effectively constitute an alternative form of recovery governed by winding up provisions*.

Accordingly the appeal was dismissed!

CASE 1- SEBI

Securities And Exchange Board of India's adjudication order in the matter of Ascom Leasing And Investments Limited

Facts of the Order

1. Securities Exchange Board of India ('SEBI') conducted investigation in the matter of M/s Ascom Leasing and Investments Ltd ('Ascom/Company/ Noticee'), a company listed on the SME platform of the National Stock Exchange of India Ltd ('NSE').
2. The investigation was conducted to ascertain whether there was any violation of the provisions of the Securities Contracts (Regulation) Act, 1956 ('SCRA') and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, ('LODR Regulations') by the Noticee for the period from May 12, 2021, to February 09, 2022 ('Investigation period/IP').
3. During the course of the investigation, it was observed that the Noticee had allegedly not classified M/s Saffron Hitech Equipment Pvt Ltd ('Saffron') as part of the promoter group and therefore, allegedly provided wrong shareholding details to NSE w.r.t to its promoter group.
4. SEBI alleged violations of the provisions of Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA by the Noticee and to impose penalties under Section 23A(a) of the SCRA.

Charges Levied

Violations of the provisions of Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA.

Contentions by the Noticee

A. Non-Classification of Saffron as part of the promoter group of the Noticee & providing wrong shareholding details to NSE

1. The Noticee contended that not classifying Saffron as part of its promoter group and providing wrong shareholding details to NSE regarding the promoter group shareholding was technical and venial and there was a bona-fide oversight in classifying Saffron as promoter/promoter group shareholder.

2. However, Noticee mentioned that Saffron was disclosed as a related party in its Annual Reports for the FY 2021-22 and 2022-23.

3. The Noticee further submitted that Regulation 31(1) of the LODR Regulations was not attracted and that Regulation 31(4) was attracted since as per Regulation 31(1), a listed entity was required to submit a shareholding pattern for each class of securities in the format and the timelines specified by SEBI and in the instant case, Noticee had filed its shareholding pattern in the format and timelines specified by SEBI including Saffron in its shareholding.

4. The Noticee further added that the said Regulation 31(1) was attracted only when the shareholding pattern had not been filed in a timely manner or where the shareholding pattern filed did not contain an accurate depiction of the total shareholding of the listed company.

Submissions by the SEBI Adjudication Officer ('SEBI AO')

A. Non-Classification of Saffron as part of the promoter group of the Noticee & providing wrong shareholding details to NSE:

1. From form No. MGT-7A of Saffron for FY 2021-22 & FY 2022-23 obtained from the Ministry of Corporate Affairs (MCA) website, SEBI AO observed that Mr. Tushar Pandya and Mrs. Rupal ben Pandya were holding 800 shares and 200 shares respectively in Saffron whose paid up capital was ₹ 1,00,000/- (1000 shares of ₹ 100/- each). Thus, making it clear that they were promoters of Saffron having 100% shareholding. The said Mr and Mrs Pandya were also the promoters of the Noticee.

2. Further SEBI AO observed that as per the shareholding pattern provided by the Noticee from the half-year ended March 2022 till September 2023 and the details of promoter and promoter group of the Noticee sought by SEBI from its RTA M/s Skyline Financial Services Pvt Ltd, the Noticee had not classified Saffron as a part of its promoter group.

3. SEBI further observed that despite Mr. Tushar Pandya and Mrs. Rupalben Pandya who were the promoters of Noticee and being 100% shareholders of Saffron, the Noticee had allegedly not disclosed Saffron as part of its promoter group in terms of Regulation 2(1)(pp)(iv)(A) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR Regulations').

4. SEBI AO submitted that Mr. Tushar Pandya and Mrs Rupalben Pandya were the promoters of Noticee. Mr and Mrs Pandya were also holding 100% shares in Saffron i.e. holding more than 20% equity shares in Saffron.

5. By virtue of the holding of the promoters of Noticee in Saffron in terms of Regulation 2(1)(pp)(iv)(A) of ICDR Regulations Saffron comes under the promoter group of the Noticee. This necessitated disclosure of Saffron in the promoter group in the shareholding with the exchange filing from half-year ended March 2022 to September 2023.

6. With respect to Noticee's contention that Regulation 31(4) was attracted for the alleged violation in the instant case instead of Regulation 31(1) and that it had correctly filed the shareholding pattern in the format prescribed by SEBI with exchange showing Saffron as its shareholder SEBI AO observed that by not disclosing the shareholding of the promoter group separately in the shareholding pattern as required under 31(4) Noticee had not given correct depiction of the total shareholding as per the format prescribed by Board thus attracting 31(1) of the Regulation. Thus, the submission of the Noticee was not tenable.

7. Accordingly, in view of the above, SEBI AO was of the view that the Noticee had violated Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA by not classifying Saffron as part of its promoter group and provided wrong shareholding details to NSE regarding the promoter group shareholding.

Penalty

Penalty was imposed on Noticee under Section 23A(a) of SCRA of ₹ 2,00,000/- (Rupees Two Lakhs Only).

CASE 2- SEBI

Securities Appellate Tribunals Order in the matter of Shashikant Dalmia of Parag Milk Foods Limited

Facts of the Order

1. Securities Exchange Board of India ('SEBI') had vided its adjudication order dt: January 13, 2023 ('AO order'), penalised Mr. Shashikant Dalmia ('Appellant') for doing insider trading in the shares of Parag Milk Foods Ltd.

2. The Appellant was working as General Manager (finance and accounts) in the Manchar factory of Parag Milk Foods Limited ('the Company') from April 11, 2016, to August 6, 2019. The appellant was alleged to have been in possession of UPSI and traded on the basis of the same during the UPSI period. Also alleged that being one of the designated persons as was declared by the company, the Appellant had not taken pre-clearance from the Compliance Officer as per the Company's PIT policy thereby violating SEBI (Prohibition of Insider Trading) Regulation, 2015 ['PIT Regulation'].

3. The Company was in the process of expanding its business by acquiring Danone's manufacturing facility in Sonipat since January 23, 2018. The

corporate announcement to this effect was made on April 19, 2018.

4. The SEBI [‘Respondent’] in the present matter had stated that the acquisition of Danone’s manufacturing facility was an unpublished price sensitive information (‘UPSI’) and the UPSI period was from January 23, 2018, to April 18, 2018.

5. SEBI noticed that the price of the shares of the company moved from ₹ 273 (closing price) on April 18, 2018, to ₹ 287.45 (closing price) on April 19, 2018, on NSE which was 6.49% increase compared to the closing price of the previous trading day. Accordingly, the previously mentioned corporate announcement was considered positive. Hence aforementioned announcement relating to the acquisition of Danone’s manufacturing facility was UPSI as per Regulation 2 (n)(iv) of PIT Regulations.

6. It was also alleged by the Respondent that, the Appellant who was reporting to the Chief Financial Officers of the Company based in the Corporate Office, Mumbai engaged in the Danone acquisition process.

7. The Respondent was of the view that the Appellant who was in possession of this UPSI traded in the Company’s share on April 18, 2018, by purchasing 5000 shares of the Company.

8. The Appellant sold these shares on May 14, 2018, and earned a profit of ₹ 145,875/- and also had not taken pre-clearance for trading on April 18, 2018 from the compliance officer of the Company.

9. The Appellant was held guilty by SEBI for insider trading and violating the provisions of the SEBI Act, 1992 and PIT Regulation and thereby levying a penalty of ₹ 12 lakhs under Section 15G of the SEBI Act, 1992.

10. On this, an appeal was preferred by the Appellant against the impugned order passed by SEBI before the Hon’ble Securities Appellate Tribunal (‘SAT’).

Charges Levied

SEBI levied the following charges on the Appellant: Section 12A (d) and 12A (c) of the SEBI Act, Regulation 4(1) read with Regulation 4(2) of the PIT Regulations and Clause-6 of Schedule-B read with Regulation 9(1) of PIT Regulation.

Contentions by the Counsel for Appellant

A. Mr. Shashikant Dalmia- General Manger (Finance and Accounts) was not in possession of UPSI

1. The counsel for the Appellant argued that the Appellant was based at the Manchar Factory of the Company while the decision/discussions regarding the acquisition of Danone’s plant took place at the corporate office in Mumbai. The Appellant’s role was confined to accounts operation and coordination with Audit; thus, he was not aware of the UPSI.

2. The counsel for the Appellant argued before Hon’able SAT that, the Appellant was asked to plan to pay and to release a payment of ₹ 1.51

crore to Danone on January 29 and January 30, 2018, however, no details of the purpose of the payment were shared with the Appellant. There was no clear communication of UPSI. Though the Appellant was in receipt of the agenda of the Board meeting scheduled on February 2, 2018, the agenda did not include any item related to the acquisition of Danone.

3. The counsel for the Appellant further brought to the notice of Hon'ble SAT that as per the tabular sequence of events during the UPSI period as mentioned in the impugned order of SEBI, the Appellant's involvement in any matter related to the acquisition could not be made out.

4. The Respondent had held the Appellant guilty erroneously on two grounds: Firstly, Respondent has alleged that the Appellant was in possession of UPSI as he was asked by CFO to plan and make payment to Danone for the purpose of earnest money deposit of ₹ 1.51 crore on January 29 & January 30, 2011 and secondly as Appellant was directly reporting to the CFO who was involved in the Danone acquisition process it was assumed that Appellant might have been also aware of the Danone transaction.

B. Mr. Shashikant Dalmia traded on the basis of a recommendation by his broker on WhatsApp Group

1. The counsel for the Appellant stated that, the Appellant was a regular trader in the equity market and used to trade on the basis of recommendations made by his broker as well as those received on WhatsApp Group.

2. The counsel for the Appellant further argued that the Company's shares purchased by the Appellant on April 18, 2018, were in the ordinary course, as the Appellant was not in possession of any UPSI and even after the opening of the trading window the Appellant held on to the shares. Appellant disposed some of the shares in May 2018 and the remaining in June 2018.

3. The counsel for the Appellant concluded by mentioning that, as the Appellant was never in possession of UPSI, he cannot be considered as an insider under PIT Regulations and cannot be alleged to have engaged in insider trading. Just because the Appellant was reporting directly to the CFO who was part of the acquisition team, it cannot be presumed that the Appellant was in possession of UPSI.

Submissions by the Counsel for Respondent

A. Mr. Shashikant Dalmia- General Manger (Finance and Accounts) was not in possession of UPSI

1. The counsel for the Respondent argued that the Appellant was occupying a senior position as General Manager – Finance and Accounts and reporting directly to the CFO.

2. Further available records indicated that the transfer of ₹ 1.51 crore to Danone on January 30, 2018, was executed by the Appellant on the direction of the CFO as an Earnest

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Money Deposit ('EMD').

3. The fact that the payment was released as an EMD was indicative of the acquisition process and it could have been inferred that the Appellant was aware of the said acquisition transaction.

4. The Compliance Officer of the Company vide their reply dated February 11, 2021, stated that the Appellant was not directly involved in the activities relating to UPSI however this does not mean that the Appellant was neither aware of nor in possession of UPSI.

5. The counsel for the Respondent stated that the Appellant received the minutes of the board meeting dated February 8, 2018, as the Company vide its email dated December 2, 2021 submitted a list of persons with whom agenda/minutes of the meeting were shared wherein the Board of Directors were authorized to go ahead with the transaction to acquire Danone plant.

6. The Company itself vide its letter dated February 11, 2021, had informed the Respondent that the Appellant was having access to and was in possession of the UPSI.

7. Thereafter the counsel for the Respondent brought to the notice of the Hon'ble SAT the sequence of transactions in which the appellant had bought 5000 shares of the Company. The said shares were purchased by the Appellant on April 18, 2021 and the public announcement regarding the acquisition was made on April 19, 2018. The counsel for the Respondent were of the view that the reason of the purchase of shares a day prior to the public announcement was that this announcement was a positive one.

B. Mr. Shashikant Dalmia traded on the basis of a recommendation by his broker on WhatsApp Group

1. It was also brought to the notice of the Hon'ble SAT that though the Appellant contended that he had traded in the Company's shares on the recommendation of his broker, however, the scrip of the Company was not in the list of recommendations made by the broker.

2. The counsel for the Respondent further stated that the Appellant was one of the recipients of the email from the Compliance Officer regarding the closure of the trading window as he was a designated person.

3. The counsel for the Respondent also mentioned that the Appellant had not obtained pre-clearance though he traded in the scrip of the Company with a value of ₹ 13 lakhs.

4. Hence the counsel for the Respondent were of the view that the impugned order did not suffer from any infirmity and had been passed after consideration of all facts, submissions and material on record and the penalty imposed is minimum under the statute.

Decisions by Hon'able SAT

1. Having heard the learned counsel for the appellant and the respondent and considering the material on

record Hon'able SAT believed the Appellant was in possession of the UPSI pertaining to the transaction of acquiring the Danone plant.

2. CFO's email directing the Appellant to release a payment of ₹ 1.5 crore to Danone on January 30, 2018, clearly indicated that the payment was in respect of EMD. The Appellant was holding a senior position in the Company and could not have executed such a payment without being aware that the EMD payment was being made to Danone as part of the process of acquisition.

3. Further, as per Hon'ble SAT's view, the Appellant had not been able to substantiate that the trading done by him on April 18, 2018, was based on a recommendation received from his broker.

4. Hence SAT agreed with the Respondent that although the Appellant was not directly involved in the Danone transaction or in communication with Danone team it cannot be inferred that the Appellant was neither aware of or nor in possession of UPSI pertaining to Danone transaction.

5. However, Hon'ble SAT was of the view that considering that the Appellant had earned a profit of ₹ 145, 875/- and that the Adjudicating Officer had not imposed separate penalties for violation of provisions of Section 12A(d) and 12A(e) of SEBI Act read with Regulation 4(2) of PIT Regulations and Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders") read with Regulation 9(1) of PIT Regulations and Section 12A(e) of SEBI Act, ends of justice would be served if the minimum penalty of ₹ 10 lakhs under Section 15G of SEBI Act and which was more than six times of the profit made by the Appellant was imposed on the Appellant.

6. Accordingly, the penalty of ₹ 12 lakh was reduced to ₹ 10 lakhs.

Link to The Order

https://sat.gov.in/english/pdf/E2024_JO2023411_3.PDF

"A Yogi must avoid the two extremes of luxury and austerity. He must not fast, or torture his flesh. For, says the Gita, "He who fasts and he who eats too much, he who keeps awake and he who sleeps much, he who works too much and he who does no work, none of these can be Yogis."

— *Swami Vivekananda*

FEMA – Update and Analysis

CA Hardik Mehta CA Tanvi Vora

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars and Press Notes & Press Releases.

A. Update through Press Release

1. Regulation of Foreign Trade under Foreign Exchange Management Act (FEMA), 1999 – DRAFT REGULATIONS AND DIRECTIONS

Over the years, RBI has been progressively liberalising policies governing foreign exchange transactions, under FEMA, 1999. In continuation of these efforts, as announced in the Statement on Developmental and Regulatory Policies of June 2024, it has been decided to rationalise regulations that cover export and import transactions.

RBI has proposed draft regulations to promote ease of doing business, especially for small exporters and importers. They are also intended to empower Authorised Dealer banks to provide quicker and more efficient service to their foreign exchange customers.

The draft regulations under FEMA and directions to Authorised Dealer banks are available for public response. Comments/ feedback on the draft proposals (regulations as well as directions) may be forwarded via email by September 01, 2024, with the subject line "Feedback on draft regulations and directions on export and import under FEMA".

Press Release: 2024-2025/615 dated Jul 02, 2024

(*Comments*: In a much awaited update on the import and export regulations under FEMA, the RBI has now released these draft regulations and directions. The RBI has opened up these draft regulations and directions for comments from the public.

While a through study is required of the draft regulations and directions, some salient changes that can be found on a cursory read include (but not limited to):

- **In the past there was no separate regulation for import of goods and services but FEMA 23/23 (R) only included export of good and services. The current proposed regulation includes in its heading both on export and import of goods and services.**
- **The current exhaustive master direction on export of goods and services & import of goods and services would both be superseded in place of which the one single directions on Export and Import of Goods and Services shall be issued**
- **Multiple paragraphs in the current master direction have not made its way to the draft directions and a number of items related to handling payment transactions related to export/ import of goods and services and merchanting trade has been left to each AD bank's board approved policy. The policy should be framed in a manner conducive to international trade and are not discriminatory.**
- **The draft directions have superseded 61 (sixty one) A.P. (DIR Series) circulars related to Export of Goods and Services and 62 (sixty two) A.P. (DIR Series) circulars related to Import of Goods and Services.)**

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Best of The Rest

Rahul Hakani
Advocate

Niyati Mankad
Advocate

THE MAHARASHTRA STATE CO-OPERATIVE RURAL MULTIPURPOSE DEVELOPMENT BANK LIMITED (IN LIQUIDATION) AND ANR. VS. DADAJEE DHAKJEE PVT. LD. – ORDER DT 01/07/2024 PASSED IN CRA/275/2024 [BOMBAY HIGH COURT]

Section 41 of the Presidency Small Cause Court Act, 1882 ('PSCC Act') - Section 3(1)(b) Maharashtra Rent Control Act, 1999 ('MRC Act')- 'co-operative bank' registered under the Maharashtra Co-operative Societies Act, 1960 is neither a scheduled Bank nor a corporation established under the State Act and therefore, it is a protected tenant.

Order VII Rule 11 of the Code of Civil Procedure ('CPC') - When considering an application for rejection of a Plaint under Order VII Rule 11 of the Code of Civil Procedure, the Court must only consider the averments made in the Plaint and not rely on extraneous material - vexatious suits disclosing no cause of action or those barred by law are rejected at the inception to save judicial time and prevent unnecessary litigation

Facts

Plaintiff- landlord filed a suit against the Maharashtra State Cooperative Rural Multipurpose Development Bank Limited seeking recovery of possession of a property in Mumbai. Plaintiff argued that the Defendant is not entitled to protection under the MRC Act and therefore, eviction suit was filed under Section 41 of the PSCC Act. The Defendants filed an application under Order VII Rule 11 of the CPC seeking rejection of the suit, claiming they are protected tenants under the MRC Act. The Small Causes Court allowed the application and rejected the Plaint, but the Appellate Bench reversed the decision and restored the suit. The Petitioners filed the present Civil Revision Application against the decision of the Small Causes Appellate Court.

Issue Involved

Whether the suit filed by the Plaintiff u/s 41 of the PSCC Act was maintainable, given the Defendant's claim of protection under the MRC Act?

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Held

In this case, the Court held that the Small Causes Court was correct in rejecting the Plaint under Order VII Rule 11(d) of the Code and that the Appellate Bench had erred by reversing this decision by considering extraneous material and presuming facts not pleaded in the Plaint. The Court relying upon its earlier judgment in ***Shetkari Sahakari Sangh Ltd., Kolhapur vs. Dilip Shankarrao Patil, Second Appeal No. 126 of 2023, decided on 25 April 2024*** wherein it had categorically held that mere status of a party as society does not automatically make it exempt it under provisions of section 3(1)(b) of the MRC Act and that only a corporation established by or under Central or State Act is exempted from provisions of the Rent Act. In the said judgement, the Court has considered the distinction between corporation formed by association of persons and governed in accordance with provisions of the Central or State Act and corporation established by or under statute a Co-operative Bank, does not qualify as a Corporation under the MRC Act. In view of the same, the Court held that the Suit under Section 41 of PSCC was clearly barred as the Suit should have been filed under Section 33 of the MRC Act. Further, the Court also relied upon the judgments in the case of ***Ramisetty Venkatanna vs. Nasyam Jamal Saheb & Ors. (2023 SCC OnLine SC 521)*** and other cases to emphasize the settled law that provisions of Order VII Rule 11 of the Code are inserted to ensure that vexatious suit disclosing no cause of action or which are barred by provisions of law are thrown at the inception. In the circumstances, the court allowed the Civil Revision Application, set aside the Appellate Bench's order, and confirmed the Small Causes Court's decision to reject the Plaint.

BHARTI AIRTEL LTD. vs MR. JASMEET SINGH PURI (DECEASED) & ANR. – ORDER DT 01/07/2024 PASSED IN FIRST APPEAL NO.-978/2014 [DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION]

Consumer Protection Act, 1986 – Section 7B of the Indian Telegraph Act, 1885 - Disputes related to deficiency in service fall under the purview of the Consumer Commission and are not barred by the Indian Telegraph Act, 1885

Facts

The dispute is regarding the deficiency of service on the part of Bharti Airtel Limited (‘BAL’). Respondent, Mr. Jasmeet Singh Puri alleged that despite the cheque for ₹ 4,995/- being credited to the Appellant's account on 09.03.2013, he and his wife continued receiving calls from the Appellant's executives claiming that the cheque was dishonoured. The Respondent alleged that the internet and landline services were disconnected despite payment, which caused harassment and mental agony. The District Commission ruled in favor of the Respondent, holding that Bharti Airtel's actions showed a lack of coordination and sensitivity towards customer grievances and imposed punitive compensation of ₹ 5 lakhs on BAL. It directed that out of this, BAL will deposit ₹ 3 lakhs to State Consumer Welfare Fund and pay balance ₹ 2 lakhs to the complainant for the extreme and deliberate insult, humiliation, mental agony, harassment, loss of benefit of services due to wrongful disconnection, and litigation expenses. The Respondent filed the present

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Appeal on the ground that this commission does not have jurisdiction to adjudicate the present appeal in view of the recent judgment of the apex court titled as *General Manager, Telecom vs. M. Krishnan & Anr. bearing Civil Appeal No.7687/2004 decided on 01.09.2009,* where is there is special remedy provided in section 7B of the Telegraph Act regarding disputes in respect to telecommunication.

Issue Involved

1. Whether the Consumer Commission has jurisdiction over the dispute under the Indian Telegraph Act, 1885.
2. Whether the District Commission violated the principles of natural justice by not giving the appellant an opportunity to be heard.

Held

The Court that it was well within its jurisdiction to adjudicate the matter, as the dispute was related to deficiency in service rather than the telegraph line, appliance, or apparatus. Moreover, the court noted that the Appellant was given an opportunity to file a reply but failed to do so within the stipulated time. The District Commission's decision did not violate natural justice principles, as the appellant had the opportunity to present their case but failed to comply with procedural requirements. The Court confirmed the decision of the District Commission.

VAIBHAV AGGARWAL VS MR. SUNIL SACHDEVA AND ANR. – ORDER DT. 02/07/2024 PASSED IN COMPANY APPEAL (AT) (INSOLVENCY) NO. 307/2023 [NCLAT, NEW DELHI]

Insolvency and Bankruptcy Code, 2016 – section 9 Application - rent payments under a lease agreement qualify as operational debt under the IBC – held - As all conditions necessary to trigger the Corporate Insolvency Resolution Process (CIRP) under Section 9 were met, admission of the application against the Corporate Debtor was rightly done – as legal notice sent and filing of commercial suit and mediation was done after filing of Section 9 Application – no pre-existing dispute was proved

Facts

A Lease Agreement was entered between the Lessors, Late Shri Ram Prakash Sachdeva and Late Smt. Chand Sachdeva, and the Lessee/Corporate Debtor, Haldiram Fincap Pvt Ltd. (HFPL), on 28.08.2016 for a property at Paharganj, New Delhi. The lease term was for 12 years, from 28.08.2016 to 27.08.2028. The lease was purportedly assigned by HFPL to Haldiram Bhujiawala Inc. (HBI) on 16.12.2016.

Upon the death of the original lessors, their son, Mr. Sunil Sachdeva (Respondent No. 1), claimed the status of the legal heir of the original lessors. Due to non-receipt of rent and GST, Mr. Sunil Sachdeva served a notice on HFPL on 05.02.2019 for an amount of ₹ 52.64 lakhs. This was followed by a notice of termination of the lease on 28.04.2019, claiming a default amount of ₹ 85.44 lakhs. No payments were received from the Corporate Debtor. A Demand Notice under Section 8 of the Insolvency and Bankruptcy Code (IBC) was issued on 17.09.2019 by Mr. Sunil Sachdeva, claiming an amount of ₹ 94.66 lakhs. No Notice of Dispute was received from HFPL.

Mr. Sunil Sachdeva filed a Section 9 application before the Adjudicating Authority on 23.10.2019. HFPL filed their reply to the Section 9 application on 07.02.2020 and also filed a Civil Suit against the Operational Creditor in February 2020. On 14.02.2023, the Adjudicating Authority allowed the Section 9 application filed by Mr. Sunil Sachdeva and admitted the Corporate Debtor into the Corporate Insolvency Resolution Process (CIRP). Aggrieved by the order, the Authorized Representative of the Corporate Debtor preferred the present appeal.

Issue Involved

Whether the Adjudicating Authority was correct in admitting the Section 9 application and initiating CIRP against Haldiram Fincap Pvt Ltd. based on the claims of non-payment of rent and GST by Mr. Sunil Sachdeva.

Held

The Tribunal confirmed that the rent dues qualify as an operational debt under Sections 5(20) and 5(21) of the IBC, meeting the criteria set by the judgement in the case of ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (Civil Appeal No. 9405 of 2017 dated 21.09.2017)*** for an operational debt exceeding Rs. 1 lakh and being due and unpaid. The Tribunal found no genuine pre-existing disputes that could prevent the admission of the Section 9 application. The claims regarding non-payment of conversion charges and issues raised in the email dated 18.01.2018 were deemed insufficient to establish a real dispute. Despite the lease assignment to HBI, HFPL remained the lessee and was held accountable for the rent dues. The NOC provided was for service tax registration purposes and did not alter HFPL's obligations. The legal notice sent by HFPL post the filing of the Section 9 application was seen as a belated and mala fide attempt to evade liability. The commercial suits filed by both parties and the mediation application did not establish a pre-existing dispute as they were initiated post the filing of the Section 9 application or did not proceed substantively. The Tribunal concluded that all conditions necessary to trigger the Corporate Insolvency Resolution Process (CIRP) under Section 9 were met, leading to the admission of the application against the Corporate Debtor.

"There has been more bloodshed in the name of God than for any other cause, because people never went to the fountain-head; they were content only to give a mental assent to the customs of their forefathers, and wanted others to do the same."

— *Swami Vivekananda*

THE CHAMBER NEWS

CA Mehul Sheth
Hon. Jt. Secretary

CA Neha Gada
Hon. Jt. Secretary

BRIEF REPORT OF 97TH ANNUAL GENERAL MEETING

At the 97th Annual General Meeting held on Tuesday, 9th July, 2024, the following business was transacted:

i) The minutes of the 96th Annual General Meeting held on July 4, 2023 were read and adopted.

ii) The Annual Report for the year 2023-24 was approved & adopted.

iii) The Accounts for the year ended 31st March, 2024 were adopted.

iv) CA J. L. Thakkar was appointed as Auditor for the year 2024-25 to hold office up to the next AGM.

v) Results of the elections for the year 2024-25 were declared by the Election Officer, Shri Parimal Parikh, Past President as follows:

- **Vijay Bhatt** was elected as President.
- The following fourteen members were elected to the Managing Council.

1	Ankit Sanghavi	8	Mehul Sheth
2	Ameya Kunte	9	Neha Gada
3	Bhavik R. Shah	10	Niyati Mankad
4	Dipesh Vora	11	Premal Gandhi
5	Hemang Shah	12	Tejas Parikh
6	Jayant Gokhale	13	Viraj Mehta
7	Mallika Devendra	14	Vitang Shah

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THE DASTUR ESSAY COMPETITION

Hon'ble Shri Justice M.S. Karnik, Bombay High Court, was the judge of the Essay Competition.

The Top 3 Winners of the Essay Competition are:

Rank	*Participant Name*	*Topic*	*Associates/College*
1	Ms. Hetvi Shah	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	K C Mehta & Co LLP
2	Ms. Deeksha Rao	Abortion Law Worldwide: Comparative Analysis and Ethical Consideration	Government Law College, Mumbai
3	Ms. Beauty Gupta	Was revocation of Article 370 of the Constitution of India justified and desirable?	National Law University Delhi

The above top 3 winners of The Dastur Essay Competition, 2024 viz Ms. Hetvi Shah (1st Winner) was felicitated by offering Memento, Certificate and Cheque, and Ms. Deeksha Rao (2nd Winner – in abstentia) & Ms. Beauty Gupta (3rd Winner – in abstentia). Ms. Priyal Doshi (4th Winner), Ms. Manasi Bankar (5th Winner), Mr. Rahil Shah (6th Winner – in abstentia), Mr. Kamlesh Patel (7th Winner - in abstentia), Ms. Devanshi Jhaveri (8th Winner), Ms. Shreya Dixit (9th Winner) and Ms. Tanvi Dave (10th Winner - in abstentia) were also felicitated by offering Appreciation Certificate and gift at the 97th Annual General Meeting.

THE NEW TEAM FOR 2024-2025

i) In the first Managing Council Meeting held on Tuesday, 9th July, 2023, the following members were appointed as Office Bearers:

Sr. No.	*Name*	*Designation*
1	Jayant Gokhale	Vice-President
2	Mehul Sheth	Hon. Jt. Secretary
3	Neha Gada	Hon. Jt. Secretary
4	Vitang Shah	Hon. Treasurer

ii) The following nine members were Co-opted to the Managing Council for the year 2024-25:

1	Ashok Mehta	6	Mahendra Sanghvi
2	Karishma Phatarphekar	7	Paresh Shah
3	Ketan Vajani	8	Vipul Choksi
4	Hinesh Doshi	9	Yatin Desai
5	Kishor Vanjara		

iii) Mr. Haresh Kenia, being Imm. Past President, is also part of the Managing Council for the year 2024-2025.

iv) EDITOR & EDITORIAL BOARD OF THE CHAMBER'S JOURNAL

Mr. Anish Thacker was appointed as the Editor of "The Chamber's Journal".

The following were appointed as Editorial Board Members:

1	Kishor Vanjara	4	Mahendra Sanghvi
2	Pradip Kapasi	5	Manoj Shah
3	Vipul Choksi	6	Yatin Desai

The following were appointed as Asst. Editors:

1	Chirag Wadhwa	6	Rakesh Upadhyay
2	Dharan Gandhi	7	Sachin Sastakar
3	Fenil Bhatt	8	Siddharth Parekh
4	Haresh Chheda	9	Vikram Mehta
5	Nikhil Tiwari	10	Yatin Vyavaharkar

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v) COMMITTEES

The following Committees were formed and their Chairpersons were appointed:

	Committees	***Chairman/Chairperson***
1	Accounting & Auditing	Tejas Parikh
2	Centenary Year	Vipul Choksi
3	Commercial & Allied Laws	Mallika Devendra
4	Direct Taxes	Viraj Mehta
5	Indirect Taxes	Hemang Shah
6	International Taxation	Karishma Phatarphekar
7	International Tax Journal	Paresh Shah
8	I.T. Connect & Social Media	Bhavik R. Shah
9	Journal	Ameya Kunte
10	Law & Representation	Ketan Vajani
11	Membership & Public Relations	Premal Gandhi
12	Research & Publication	Ashok Mehta
13	Residential Refresher Course	Ankit Sanghavi
14	Student	Niyati Mankad
15	Study Circle & Study Group	Dipesh Vora

vi) DELHI CHAPTER

The following members were appointed as Core Team of the Delhi Chapter:

1	Prakash Sinha	Chairman
2	Saurav Bhattacharya	Vice Chairman
3	Harpreet Singh	Hon. Jt. Secretary
4	Ruchesh Sinha	Hon. Jt. Secretary
5	Richa Chawla	Hon. Treasurer
6	Smita Patni	Hon. Treasurer

Important events and happenings that took place online/ physical between **June 1, 2024 to June 30, 2024** 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 June 28, 2024 are as under:

Type of Membership	No. of Members
Life Member	4
Ordinary Member	7
Student Member	0
Associate	1
Total	**12**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
INTERNATIONAL TAXATION			
1	International Taxation Course for Beginners (*contd.*)		
a	3.6.2024	Business Connection and Concept of PE, SEP and Equalization Levy	CA Monika Wadhani
b	5.6.2024	Taxation of Commercial Payments, Royalty & Fees for technical services	CA Shabbir Motorwala
c	7.6.2024	Taxation of salaries, Interest, dividends and other income	CA K. Prasanna
d	10.6.2024	Taxation of foreign Shipping & Aircraft Companies in India (including Logistics & Transportation sector)	CA Samir Kanabar
e	12.6.2024	Basics of Transfer Pricing	CA Chaitanya Maheshwari
f	14.6.2024	Form 15CA-15CB, Lower Deduction Certificate, Presumptive Taxation	CA Natwar Thakrar
g	26.6.2024	Cross Border Digital Transactions	CA Bhaumik Goda

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Sr. No.	Date	Topics	Speakers
h	28.6.2024	Brains Trust session / Panel Discussion.	*Panelists*: CA Anish Thacker CA Naresh Ajwani CA Vishal Gada *Moderator*: CA Namrata Dedhia
2	20.6.2024 – 23.6.2024	17th Residential Conference on International Taxation held The Leela, Gandhinagar	
a		**PAPERS FOR DISCUSSION** Taxation of Software Transactions including SAAS & Online Database subscription- latest developments post Engineering Analysis	Mr. P V Srinivasan
b		**PAPERS FOR DISCUSSION** Taxation of Cross border ESOPs from the Employer and Employee Perspective including Transfer Pricing Aspects.	CA H. Padamchand Khincha
c		**PRESENTATIONS** Current Litigation Trends in International Tax	Mr. N. Venkataraman
d		**PRESENTATIONS** A Case Study – tax , succession planning and estate duty aspects of a HNI family	CA Vishal Gada
e		**PRESENTATIONS** International tax and Transfer pricing issues for intangible transactions and business restructuring	Mr. Sanjeev Sharma
f		**FIRE SIDE CHAT** Opportunities in IFSC – Gift City	*Panelist* : Dr. Dipesh Shah CA Suresh Swamy CA Vipul Gandhi *Moderator* : CA Anish Thacker
g		Panel Discussion on Case Studies on International Taxation and dispute resolutions alternatives (including APAs)	*Panelist* : Mr. Sanjeev Sharma CA Gautam Doshi Sr. Adv. Tushar Hemani *Moderator* : CA Karishma Phatarphekar
3	27.6.2024	Recent Case Laws on International Taxation	CA Jinal Jain

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<table>
<tr><th>Sr. No.</th><th>Date</th><th>Topics</th><th>Speakers</th></tr>
<tr><td colspan="4">STUDENT</td></tr>
<tr><td>1</td><td>8.6.2024</td><td>UDAAN – EPISODE 7 – Learning Today — Leading Tomorrow</td><td>CA Shreedhar Muppala
Host - CA Jayant Gokhale</td></tr>
<tr><td>2</td><td rowspan="2">15.6.2024</td><td colspan="2">7th The Dastur National Direct Tax Moot Court Competition, 2024
The Moot Proposition was based</td></tr>
<tr><td>a</td><td>Preliminary</td><td>Judges for Preliminary Round
Adv. Jas Sanghavi
Adv. Jasmin Amalsadvala
Adv. Sushma Nagaraj
Adv. Arjun Gupta
CA Apurva Shah
Adv. Sashank Dundu
Adv. Rupal Shrimal
CA Chirag Wadhwa
CA Suchek Anchaliya
Adv. Dinkle Haria
Adv. Prakash Sinha
Adv. Priyanshi Desai
Mr. Ninad Patade
CA Viraj Mehta
Adv. Roshil Nichani
Adv. Jitendra Singh
CA Prerna Peshori
Adv. Ananya Gupta
Adv. Bhavya Sundesha
Adv. Shruti Desai
CA Raj Khona
CA Abhitan Mehta
CA Prashant Ghumare
Adv. Jeet Kamdar
Adv. Dhaval Shah
Adv. Roshil Nichani
CA Ketki Mittal
Adv. Shashi Bekal
Adv. Tanvi Mate</td></tr>
</table>

Sr. No.	*Date*	*Topics*	*Speakers*
b		Quarter Final Round	**Judges of Quarter Final Round** Adv. K. Gopal Adv. Ajay Singh Adv. Paras S Savla Adv. Rahul Hakani Prof. Kishu Daswani CA Pramod Shingte Adv. Dharan Gandhi CA Kishore Phadke
c	29.6.2024	Semi Final Round	**Judges of Semi Final Round** Mr. Anikesh Banerjee, *Judicial Member* Mr. Girish Agrawal, *Accountant Member* Mr. Rajkumar Chauhan, *Judicial Member* Mr. Sunil Kumar Singh, *Judicial Member*
d		Final Round	**Judges of Final Round** Hon'ble Mr. Justice K.R. Shriram Hon'ble Dr. Justice Neela Kedar Gokhale
INTENSIVE STUDY GROUP			
1	10.6.2024	Recent Important Decisions Under Direct Tax	CA Vijaykumar Puri
I.T. CONNECT			
1.	11.6.2024	Top 5 Cyber Security Threats for 2024: Insights and Solutions	CA Uday Shah CA Maitri Chheda
2.	17.6.2024	Mastering Custom GPTs: Building Your Personal AI Assistants	Mr. Nitish Jain

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Sr. No.	Date	Topics	Speakers
SELF AWARENESS SERIES			
1	14.6.2024	Thirukkurrall on the Art of Health Management	Dr. C.P. Ramaswami
2	19.6.2024	Mental Well being through Yoga	Ms. Sushama Maurya
STUDY CIRCLE & STUDY GOUP			
1	18.6.2024	Key Income Tax amendments in last 3 years applicable for AY 2024-25	CA Abhitan Mehta
DIRECT TAXES			
1	24.6.2024	Relevant Amendments pertaining to non-corporates for AY 2024-25	CA Gautam Mota
		Practical issues in ITR	CA Dipesh Vora
INDIRECT TAXES			
1	25.6.2024	Issues with respect to discounts/incentives and trade promotional schemes in GST	CA Mandar Telang

"If the object is a good one we shall feel friendly towards it; if the object is one that is miserable we must be merciful towards it. If it is good we must be glad, if it is evil we must be indifferent."

— *Swami Vivekananda*

"India must learn to live before she can aspire to die for humanity. The mice which helplessly find themselves between the cat's teeth acquire no merit from their enforced sacrifice."

— *Mahatma Gandhi*

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International Taxation Committee

17th Residential Course on International Taxation 2024 was held from 20th to 23rd June, 2024 at The Leela, Gandhinagar

Inaugural Function

CA Haresh Kenia (President) giving his opening remark

CA Kirit Dedhia (Chairman) welcoming the speakers and the delegates

Dr. Gyanvatsaldas Swamiji giving key note address

Release of Book - Overseas Investment

CA H. Padamchand Khincha

Mr. Sanjeve Sharma

Mr. P. V. Srinivasan

Mr. N. Venkataraman

CA Vishal Gada

Panelist : CA Suresh Swamy, Moderator : Anish Thacker, Dr. Dipesh Shah, Mr Vipul Gandhi & Pareh P. Shah

Moderator : CA Karishma Phatarphekar, Panelist : Sr. Adv. Tushar Hemani, Mr. Sanjeev Sharma, CA Gautam Doshi

International Taxation Team

Group Photo

Glimpses of the 7th The Dastur National Direct Tax Moot Court Competition, 2024 held on 29th June, 2024 held at ITAT Court Room and GLC College Auditorium, Mumbai

Hon'ble Member of the ITAT judging the participant

Hon'ble ITAT Members with Team CTC

Lighting the lamp

Dr. Asmita Vaidya

CA Haresh Kenia

Adv. Niyati Mankad

Justice Smt. Neela K. Gokhale

Justice Shri K.R. Shriram

Best Memorial - Ram Manohar Lohiya Nation Law University, Lucknow

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Glimpses of the 7th The Dastur National Direct Tax Moot Court Competition, 2024 held on 29th June, 2024 held at ITAT Court Room and GLC College Auditorium, Mumbai

Second best speaker - Yashika Sharma, Rajiv Gandhi National Law University, Patiala

Second Best Team - Rajiv Gandhi National University of Law, Patiala

Best Team - Ram Manohar Lohiya Nation Law University, Lucknow

Glimpses of the 97th Annual General Meeting held on 9th July, 2024 at the Garware Club House, Mumbai

Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai felicitating Ms. Priyal Binal Doshi, 4th winner of The Dastur Essay Competition, 2024

Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai felicitating Ms. Manasi Milind Bankar, 5th winner of The Dastur Essay Competition, 2024

Glimpses of the 97th Annual General Meeting held on 9th July, 2024 at the Garware Club House, Mumbai

Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai felicitating Ms. Devanshi Jhaveri, 8th winner of The Dastur Essay Competition, 2024

Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai felicitating Ms. Shreya Dixit, 9th winner of The Dastur Essay Competition, 2024

CA Haresh Kenia, Imm. Past President felicitating with a shawl to Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai

President elect CA Vijay Bhatt presenting a memento to Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai

Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai giving his Keynote address

Members at the 97th AGM

Imm. Past President CA Haresh Kenia with CTC Staff

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Glimpses of the 97th Annual General Meeting held on 9th July, 2024 at the Garware Club House, Mumbai

CA Haresh Kenia (President) lighting the lamp at the 97th Annual General Meeting. Seen from L to R: CA Mehul Sheth, CA Vijay Bhatt, Mr. Kishor Vanjara, CA Vitang Shah

Dignitaries at the Inaugural Session from L to R: CA Avinash Lalwani, CA Anish Thacker, CA Vipin Batavia, CA Mehul Sheth, CA Vijay Bhatt, CA Haresh Kenia, Mr. Kishor Vanjara, CA Neha Gada, CA Vitang Shah, CA Ketan Vajani, CA Parag Ved, CA Manoj Shah, CA Yatin Desai, CA Parimal Parikh, CA Hinesh Doshi.

CA Haresh Kenia welcoming CA Vijay Bhatt as the new President

CA Haresh Kenia (Imm. Past President) delivering his Farewell Speech

President elect CA Vijay Bhatt delivering his Incoming Speech

CA Parag Ved (Past President) offering bouquet to Imm. Past President CA Haresh Kenia

Dignitaries at the Keynot address session - Adv. Niyati Mankad, CA Vijay Bhatt, CA Haresh Kenia, Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai, Adv. Ajay Singh, CA Neha Gada

Address by Chief Guest -Hon'ble Shri Justice M.S. Karnik and announcement of the result of 13th Dastur Essay Competition 2024

Hon'ble Mr. Girish Agrawal- Accountant Member –ITAT Mumbai felicitating Ms. Hetvi Shah, 1st winner of The Dastur Essay Competition, 2024

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Session	Date	Time	Topic
Session 1	24 Aug. Saturday	11:30 AM to 2:30 PM (IST)	Introduction & Overview
Session 2	25 Aug. Sunday	11:30 AM to 2:30 PM (IST)	Articles 1 to 4
Session 3	31 Aug. Saturday	11:30 AM to 2:30 PM (IST)	Articles 5 to 7
Session 4	1 Sep. Sunday	11:30 AM to 2:30 PM (IST)	Articles 8 to 12
Session 5	7 Sep. Saturday	11:30 AM to 2:30 PM (IST)	Articles 13 to 15
Session 6	8 Sep. Saturday	11:30 AM to 2:30 PM (IST)	Other Articles

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Tel.: +91-022-25934806/07/09, 25644807 | Mobile: +91 9322247686, 9619668669 | Email: sales.mumbai@taxmann.com

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