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The Chamber of Tax Consultants

Chamber's CADRE

THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XII | No. 9 | June 2024

Kalash Pujan at Chamber's Newly Acquired Office (Additional) at REWA Chamber, New Marine Lines, Mumbai

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THE CHAMBER'S JOURNAL

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Editorial

Dear Readers,

India, as the largest democracy in the world, witnessed one of the most fiercely contested LOKSABHA elections, wherein as many as 64.2 crore citizens have casted their votes to choose the Government. From the seven phases of election to exit poll and finally counting day, it was totally an unpredictable affair. The elections threw up a surprise result and has a clear message that no one can take the people of the Country for granted and they have the ultimate power of displacing ruling combination ! It is unfortunate that despite the mass appeal on social media and through other media, the average voting percentage was less than the previous elections.

The India Economy is doing quite well in the global ranking and is set to become the third largest economy in the world. In that direction, the outgoing Government had drawn an ambitious plan to be implemented in the first 100 days of formation of the new Government. Now, with a coalition Government, not only it may be difficult for the new Government to implement fully what was planned but also to take measures necessary to maintain the growth rate and the momentum of sustained growth. We can only hope for the best !

One of the reasons for relatively lesser percentage of voting is attributed to extreme heat in various parts of the Country. It is a known fact that the entire world is plagued by the problem of climate change and global warming. The World Environment Day which is celebrated on 5th June across the globe to reinforce and sustain awareness around environmental action, therefore, has a

great significance. Together, people can make a difference by adopting sustainable lifestyle, conserving resources, and promoting eco-friendly practices. Whether it's planting trees, reducing plastic/electronic waste or supporting renewable energy.

World Environment Day is one of the most important international day, for the environment. Led by the United Nations Environment Programme (UNEP), and held annually since 1973, it has grown to be the largest global platform for environmental outreach and is celebrated by millions of people across the world. Through campaigns, events, and initiatives, World Environment Day inspires individuals and communities to make changes, fostering a sense of urgency and addressing environmental challenges for a sustainable future. According to the official website of the event, people from more than 150 countries participate in this United Nations international day.

The World Environment Day is celebrated with different themes every year Saudi Arabia was the host of World Environment Day 2024 with a focus on land restoration, prevent desertification and drought resilience.

Though there is a steady increase in awareness of environmental protection in India, still lot needs to be done in this area. Environment assessment of the projects undertaken and Business responsibility and sustainability reporting by the top 1000 listed companies, therefore, is a step in the right direction. We, as the informed citizens need to do basic things such as conserving water, say no to plastic, planting more trees etc to protect the environment.

Central Processing Centre (CPC) has been a “game-changer” in the tax administration in India. CPC has been much more efficient, compared to the erstwhile manual tax administration. At the same time, with any technology implementation of the same on one hand and evolving law and dynamic behaviour of taxpayer and tax officers on the other hand, give rise to disputes and difficulties faced by the honest taxpayers. The current issue of the Journal “Central Processing Centre(CPC) -Law and Practice” is aimed to examine the legal framework on the CPC. More importantly, the edition is intended to serve as a practice guide for CPC related issues. Compliments to the Journal Committee for bringing an issue on this topic which is extremely important for the professionals as well as other stakeholders. Also compliments to Avinash Rawani for efforts

put in by him in designing the sub topics. I express my sincere thanks to all the authors for sharing their expert views on various topics.

I take this opportunity to express my deepest thanks and sincere gratitude to Shri Ameya Kunte, Chairman of the Journal Committee for very ably leading the Committee. Under his able leadership, the Committee has brought out the issues on some unconventional topics, to name a few, "The Tax Spin on Sporing Event", "Agriculture- Tax, Legal, Accounting,Business and More", "Overview of Tax Incentives". Besides these issues, the Committee also brought out issues on traditional topics which are relevant for the professionals for their regular practice. I am sure the readers would have found all the issues useful in terms of its technical contents.

My since gratitude to all the contributors for their contribution throughout the year for regular columns on Direct Tax, Indirect tax, International Tax, FEMA Allied Laws and Corporate Law. But for their timely and invaluable contribution, the Journal would have been incomplete.

I also put on record appreciation for all the members of the Editorial Board, for their valuable advise on various topics and overall contents of the Journal. Heart felt gratitude to all the Assistant Editors for reviewing all the articles by taking time from their busy schedule and also giving their valuable suggestions for the contents of the journal.

I end with some thoughts of Late Shri Nani Palkhivala on India :

> *"We shall reach out for the years ahead with assurance, sustained by the conviction that this country has a future far more glorious that its present. Let us have an unquenchable faith in the future and unswerving confidence in our power to mould it"*

VIPUL K. CHOKSI
Editor

From the President

Dear Members

As India's political landscape evolves, so must our economic strategies. Over the past decade, the Modi government has elevated the nation despite numerous challenges. The shift towards coalition governance now necessitates a nuanced approach to maintain and accelerate growth. The coalition model complicates implementing economic reforms, as securing support from partners can delay critical decisions needed to achieve our goal of becoming a developed nation by 2047. This shift demands that the government adapts its strategies to new political realities.

External Affairs Minister Jaishankar highlights the evolution of India's development stages from basic needs to issues like electricity, environmental sustainability, energy security, and AI advancements. Addressing these in the next five years will be challenging amid global tensions.

The Modi government's five-year economic agenda is ambitious and multi-faceted. Key initiatives include enhancing manufacturing through increased Production Linked Incentives (PLI), significant capital expenditure on infrastructure, GST reforms, digitization of land deals, and promoting electric vehicles and tourism. Labor law reforms and support for MSMEs will strengthen business conditions, while facilitating trade in Indian rupees aims to reduce foreign currency dependency. Focusing on Gift City and startups will foster innovation and rapid growth.

Recent high GDP figures support economic momentum. Maintaining fiscal discipline with the Reserve Bank's backing is crucial. However, coalition governance requires balancing fiscal policies with partners' interests.

The era of single-party dominance is waning, giving rise to coalition governance. These new dynamic demands consensus from allies for bold reforms and may shift spending priorities from infrastructure to social programs, potentially delaying public sector disinvestment. In this evolving environment, the BJP must be adaptable. Flexibility and compromise are essential to navigate coalition dynamics effectively. Securing support from key allies like Chandrababu Naidu and Nitish Kumar will be crucial for implementing the economic agenda.

As we embark on this journey, collaboration with coalition partners is vital for maintaining India's economic momentum. By strategically addressing these challenges, we can ensure robust growth and achieve our vision of becoming a developed nation by 2047

I'm excited to announce Chamber's two upcoming webinars by the IT Connect Committee. On June 11, 2024, we'll explore "Top 5 Cyber Security Threats for 2024: Insights and Solutions," where experts will discuss top cybersecurity trends and strategies to protect your organization. Following that, on June 17, 2024, we'll present "Mastering Custom GPTs: Building Your Personal AI Assistants," featuring a live demo on creating custom GPTs without coding and customization tips. Don't miss these opportunities to enhance your knowledge and skills in cybersecurity and AI.

The International Taxation Committee is hosting a virtual Study Circle Meeting on "Recent Important Judgements on International Taxation," presented by CA Jinal Shah, on June 27, 2024. This session will provide insightful analysis of significant recent judgements, keeping our members up-to-date with the latest developments in international taxation. Additionally, we are thrilled to announce the overwhelming response to our 17th Residential Conference on International Taxation at The Leela, Gandhinagar, in June 2024. The registration has surpassed the double-century mark and is nearing the triple-century milestone. Due to this enthusiastic participation, registration is now closed

As I pen this message, my heart is filled with immense gratitude. July 4th, 2023, seems like just yesterday, but here we are in June 2024. Leading this valued institution, the Chamber of Tax Consultants, has been a profoundly fulfilling experience. Reflecting on the journey, I'm overwhelmed by the support and enthusiasm each of you has shown, which has been instrumental in driving

our chamber towards significant achievements. Despite initial anxieties about meeting expectations, I focused on sincere efforts and pure intentions, trusting the results to the Lord. Today, as my tenure ends, I feel a deep sense of satisfaction and pride in our collective achievements.

During the tenure, the Chamber secured and took possession of a new office space adjacent to our current premises, now being equipped with cutting-edge technology to enhance operational capabilities. The Chamber also revised the Journal policy, establishing clear guidelines for editors and the editorial board to improve quality and impact. Additionally, a Task Force reviewed potential amendments to the Chamber's bye-laws and concluded that no changes were necessary at this time. Furthermore, the Chamber enhanced the website and Learning Management System (LMS) to provide a more user-friendly experience, facilitating easy access to resources, webinars, and virtual events.

The Chamber launched a series of highly successful webinars, workshops, and joint seminars, including comprehensive virtual courses on Transfer Pricing, GST Law, IBC Law, and Internal Audit. These initiatives have greatly enhanced the professional development of our members, demonstrating our commitment to providing valuable learning opportunities and fostering continuous growth.

The Chamber's efforts to enhance its social media presence across crucial digital platforms have achieved new heights, significantly broadening our reach and engagement. We also organized impactful events, including the first-ever Chamber of Tax Consultants Indirect Tax Moot Court Competition at National-level in collaboration with ILS Law College, Pune, marking a significant milestone in our outreach and student educational initiatives.

The Chamber has significantly expanded its reach and enhanced its Journal by appointing a non-Mumbai member to lead a key committee, diversifying representation and nearly doubling the network of outstation contributors. This strategic move has elevated the journal's quality and bolstered the Chamber's reputation. Furthermore, the Journal has ventured into innovative topics such as the intersection of tax and sports, financial instruments, and state incentives. These unique themes have set the Chamber apart, showcasing our commitment to pioneering new areas of thought and taking the Journal to new heights. I express my sincere thanks to Shri Vipul Choksi, Shri Ameya kunte, and the entire team for their outstanding contributions and dedication, which have been instrumental in achieving these milestones.

As we approach the celebration of our Chamber's centenary year, I am confident that the strong foundations we have built together will support the next generation of leadership. This journey has been incredibly inspiring, marked by learning, overcoming challenges, and significant growth. The leadership and dedication of Chairperson Shri Anish Thacker have been instrumental in guiding us through this journey, ensuring that we remain resilient and forward-thinking. With his vision and our collective efforts, we are well-positioned to continue our legacy of excellence and innovation into the future.

I do not wish to recount various activities and achievements here, as they will be detailed in the Annual Report, which will be available on the website shortly. However, it would be remiss of me to claim that we accomplished everything we set out to do. I acknowledge that there may have been areas where we could have performed better and decisions that may not have been ideal. As the saying goes, "to err is human, to forgive is divine." I take full responsibility for any shortcomings and humbly ask for your understanding and forgiveness for any deficiencies you may have experienced during this past year. It's the time for a change of guard at the Chamber. As the President, it's now time for me to reflect on my experiences and prepare my term-ending report for the incoming team, complete with all my suggestions. It's the moment to step back from the driver's seat of this enormously powerful vehicle that is the Chamber and to hand over the reins to my successor. I eagerly anticipate our Chamber reaching new heights under its next leadership. Thank you once again for the honor of serving as your President. Let us continue to pursue excellence and leave a lasting legacy in the professional world

I would like to extend my heartfelt appreciation to my office bearers: Vice President Shri Vijay Bhatt (now President-elect), Joint Secretaries Ms. Neha Gada and Shri Vitang Shah, and Treasurer Shri Mehul Sheth, for their unwavering support. I am deeply grateful for the continuous guidance I received from my predecessors Shri Parag Ved, Shri Anish Thacker, Shri Hinesh Doshi, Shri Vipul Choksi, Shri Ketan Vajani, Shri Kishor Vanjara, and Shri Pradeep Kapasi. Special thanks are due to the Chairpersons of all the committees for their dedication and hard work, which have been vital to the activities of the CTC. I also wish to thank the other council members for their support and guidance, as well as the CTC staff and core group members who played a crucial role in our successful year. I am confident that the CTC will reach even greater heights under the dynamic leadership of CA Vijay Bhatt. I wish Shri Vijay Bhatt and his team the very best for the coming year.

I take this opportunity to pledge my unwavering and unconditional commitment to the Chamber, and I will be at its service whenever needed for any of its activities.

This month's special feature is on "Centralised Processing Centre (CPC) – Law and Practice," a topic of great relevance to tax professionals. I extend my gratitude to all the authors for their insightful and informative articles. I hope you find this edition enriching and wish you all continued success and happiness in both your professional and personal lives.

I look forward to staying connected with all of you and pray to the Almighty for a life filled with happiness and blessings for each of you.

With best wishes,

HARESH KENIA
President

x

CPC – Legal Framework & Judicial Intervention

Vipul Joshi
Advocate

Prashant Ghumare
Advocate

Overview

Conceptualized with a simple, and sole, object of merely smoothening the process (not the law) of filing return of income and processing under section 143(1) - with the generation of demand / refund being only consequential – the scope of Centralised Processing Centre (CPC) is getting widened from time to time, and also getting confusing, conflicting and complex. Though there is no reference of the CPC in the entire Income-tax Act or Rules, the scope of CPC is formulated - and modified from time to time – vide issuances of various circulars, instructions, orders, etc., over the period of last fifteen years. However, there is lack of clarity about the exact scope of the CPC and its interactions with the provisions of the Act. There also exists considerable confusion / conflict within the Department itself about the interplay between the CPC and the jurisdictional assessing officers, as well as about its powers. Till the time such scope and status of the CPC is clearly identified and the overlapping / conflicts are removed, the only recourse for the hapless assessees is to seek judicial intervention.

Though the topic for the present Article may appear to be a dry one, it has considerable practical ramifications, affecting assesses across the board apart from involving some interesting legal aspects. Interestingly, though Centralized Processing Center ['CPC'] is the nerve center for the entire process of filing returns of income, processing the returns, raising demands/refunds, etc., this word does not find any place in the entire Income-tax Act, 1961 ['the Act'] or in the entire Income-tax Rules, 1962 ['the Rules']. Further, though the CPC Scheme has modified/overridden few provisions of the Act, no actual corresponding amendment is carried out in any of such sections of the Act. This is a classic case of legislation by a delegated authority. To add misery, there is no single fixed set of provisions concerning the CPC. Instead, what we see is plethora of Circulars, Notifications, Instructions, press releases, etc. issued by the Central Board of Direct Taxes ['CBDT'] from time to time - right from 2010 – clarifying/ modifying the scope of the CPC periodically. As it appears, there is still some confusion about the exact legal status of the CPC, including its scope and the powers under the Act. Its relationship with the provisions of the Act and, particularly, the powers of jurisdictional assessing officer cannot be regarded as smooth or cordial! The lack of full clarity has led to conflicts within the scheme of the Act, leading to litigations. One of the most troublesome headaches for

a common tax practitioner in charge of filing return of income for his clients, is the denial/ delay in getting back legitimate refunds on account of lack of coordination between the Jurisdictional Assessing Officer ['JAO'] and the CPC. Instances galore where a JAO himself, out of sheer frustration, expresses his inability to do anything to help the assessee in this regard.

As such, in order to try to understand the legal framework of CPC under the Act, one has to necessarily scan through host of such Instructions, etc., just in order to understand the scope of the CPC. Unfortunately, however, all such circulars, notifications, instructions, are not easily accessible on the official website of the Income Tax Department/CBDT. Nonetheless, an attempt is made in this Article to analyze some of such Instructions, etc. – as available - to decipher the web. Due to the obvious constraints, this article is confined to the role of CPC vis-a-vis processing of return and the consequential management of demand/ refund.

I. LEGISLATIVE BACKGROUND

1.1. The Government of India, on the recommendations of Business Process Re-engineering Committee ['BPR Committee'], approved establishment of Centralized Processing Center ['CPC'] for bulk processing of income tax returns.

1.2 The Finance Act, 2008 amended the Income tax Act, 1961 ['the Act'] by inserting sub-sections (1A), (1B) & (1C) under section 143 with effect from 01.04.2008, empowering the Central Board of Direct Taxes ['CBDT'] to make a scheme for centralized processing of income tax returns with a view to expeditiously determining the tax payable by, or the refund due to the assessee.

"Assessment.

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

.....

.....

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section.

(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the 31st day of March, 2012.

(1C) Every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

***Provided** that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the* 1st day of April, 2017.

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1.3. FINANCE ACT, 2008 – CIRCULAR EXPLAINING THE AMENDMENTS [CIRCULAR NO. 01/2009]

"Further, it is clarified that above adjustments {under section 143 (1)} would be made only in the course of computerized processing without any human interface. In other words, the software would be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income. For this purpose, the Department is in the process of establishing a system for Centralized Processing of Returns. To facilitate this, sub-sections (1A), (1B) and (1C) have been inserted in section 143 to provide that —

(a) the Board may make a scheme with a view to expeditiously determine the tax payable by, or refund due to, the assessee;

(b) the Central Government may issue a notification in the Official Gazette, directing that any of the provisions of this Act ***relating to processing of returns*** *shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, such direction shall not be issued after 31-3-2009;*

(c) every notification shall be laid before each House of Parliament as soon as such notification is issued. Along with the notification, the scheme referred above is also required to be laid before each House of Parliament."

Accordingly, Income Tax Department (ITD) established CPC in Bengaluru for centralized processing of income tax returns received through e-filing website.

1.4. DIRECTOR OF INCOME TAX (SYSTEMS) - AST INSTRUCTION NO. 82, DATED 13-08-2010

CPC was set up in 2009 as a back-office facility to process e-filed and paper returns in a jurisdiction free manner and expeditiously determine the tax payable by or refund due to the taxpayer. The Director of Income Tax (Systems), New Delhi, vide AST Instruction No. 82 dated 13-08-2010 highlighted the functionality for uploading the arrears of demands by the A.O.s on the CPC's accounting portal. The A.O.s were instructed to extract the then existing demands and verify if such were actually paid or not by the taxpayers. The A.O.s were then instructed to issue letters to taxpayers inquiring about the status of the demand and whether the amounts were paid or rectification requests were submitted. Based on the reply of the taxpayers, the demands were verified and accordingly reduced or confirmed. Such demands were accordingly certified as per the then CBDT instruction. Subsequently, the A.O were instructed to upload such list of arrears of demands on the CPC portal. The intention was to enable CPC to adjust subsequent refunds generated at the CPC against such demands.

1.5. In exercise of the powers conferred under section 143(1A) of the Act, CBDT notified "Centralised Processing of Returns Scheme, 2011" ['the Scheme'] for the purpose of centralized processing of income tax returns. The Scheme, notified *vide* Notification No. S.O 16(E), dated 04.01.2012, accorded powers

to the Director General of income – tax (Systems) and the Commissioner of Income-tax, Centralised Processing Centre, for specifying/adopting appropriate procedures and processes for processing of ITRs. As per the scope of the Scheme, the same was made applicable in cases where return of income has been furnished in, - (i) electronic form; or (ii) paper form, in case of a class or classes of persons, as notified by the Board in this behalf.

It was on the basis of this Scheme that consequential Notification was issued, by invoking the power u/s 143 (1B) of the Act, to effect "amendments" in certain sections of the Act.

1.6. SPECIFIED PROVISIONS OF THE ACT WHICH SHALL APPLY TO CENTRALISED PROCESSING OF RETURNS SCHEME, 2011 IN ACCORDANCE WITH SECTION 143(1B)

Without making any formal amendment in the Act, vide this Notification, provisions of certain sections of the Act were sought to be modified in accordance with the Scheme.

Gist of the relevant parts of Notification No. S.0. 17(E), dated 04.01.2012

The following provisions of the Act relating to processing of returns shall not apply or apply with such exceptions, modifications and adaptions as specified hereunder…..

(i) Section 139

The provisions of section 139 of the Act shall apply to returns received under Centralised Processing of Returns Scheme, 2011 subject to the following, namely:-

All ITR-V (acknowledgement) forms duly verified shall be sent to the Centralised Processing Centre, either through ordinary or speed post, within such period of uploading the electronically filed return as may be specified by the Director General in this behalf.

Section 139 (9) - Invalid or defective return.

(i) The Commissioner (that is CIT – CPC) may declare-

(a) A return invalid for non-compliance of procedure for using any software not validated and approved by the Director General.

(b) A return defective under sub-section (9) of section 139 of the Act on account of incomplete or inconsistent information in the return or in the schedules or for any other reason.

(ii) In case of a defective return, the Centre shall intimate this to the person through e-mail or by placing a suitable communication on the e-filing website.

(iii) A person may comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice.

*(iv) The Commissioner may, in order to avoid hardship to the person, condone the dela*y in uploading of rectified return.

Note – No opportunity to an assesssee to raise objection and no provision in the Scheme to

consider the objections of the assessee.

(ii) Section 143 (Processing of Return)

The provisions of section 143 of the Act shall apply to all returns received under the Centralised Processing of Returns Scheme, 2011 subject to the following, namely:-

(i) the sum payable to, or the amount of refund due to, the person shall be determined after credit of such Tax collected at Source (TCS), Tax Deducted at Source (TDS) and tax payment claims.....;

(ii) an intimation shall be generated electronically and sent to the person by e-mail specifying the sum determined to be payable by, or the amount of the refund due to, the person which shall be deemed to be a notice of demand within as for the provisions of section 156. in the Act.

(iii) The Commissioner may –

(a) adopt appropriate procedures for processing of returns; and

(b) decide the order of priority for processing of returns of income based on administrative requirements.

(iv) The Centre may call for such clarification, evidence or document as may be required for the purpose of facilitating the processing of return and all such clarification, evidence or document shall be furnished electronically.

(v) Wherever a return cannot be processed in the Centre for any reason, the Commissioner shall arrange to transmit such return to the Assessing Officer having jurisdiction for processing.

(vi) The Centre may call for such clarification, evidence or document as may be required for the purpose of facilitating the processing of return and all such clarification, evidence or document shall be furnished electronically.

(iii) Section 154 (Rectification of mistake)

The provisions of section 154 of the Act shall apply to all the returns received under the Centralised Processing of Returns Scheme, 2011 subject to certain notification, mainly with respect to the manner of communication.

(iv) Section 245 (Adjustment of refund)

The provisions of section 245 of the Act shall apply to the returns covered under the Centralised Processing of Returns Scheme, 2011 subject to the following, namely:-

The set-off of refund, if any, arising from the processing of a return, against tax remaining payable shall be done by using the details of outstanding tax demand in respect of the person ***as uploaded onto the system*** of the Centre ***by the Assessing Officer***.

(v) Appellate Proceedings [No reference to sections 246/246A]

(i) Where a return is processed at the Centre, the appeal proceedings relating to the processing of the return shall lie with Commissioner of Income-tax (Appeals) [CIT(A)] having jurisdiction over the jurisdictional Assessing Officer and any reference to Commissioner (Appeals) in any communication from the Centre shall mean such jurisdictional CIT(Appeals).

(ii) Remand reports, giving effect to appellate order and any other reports to be furnished before the CIT (Appeals) shall be submitted by the Assessing Officer having jurisdiction as regards the person.

(vi) Section 282 (Service of notice generally)

The service of a notice or order or any other communication by the Centre may be made by :(a) sending it by post;(b) delivering or transmitting its copy thereof, to the person's e-mail address by the Centre's e-mail;(c) placing its copy in the my account menu of the person on the official website for e-filing of returns; or(d) any of the modes mentioned in section 282(1) of the Income-tax Act.

(vii) No personal appearance in the Centre

A person shall not be required to appear either personally or through authorized representative before the authorities at the Centre in connection with any proceedings.

(viii) Power to specify procedure and processes

The Director General may specify procedures and processes from time to time for effective functioning of the Centre in an automated and mechanised environment, including specifying the procedure and processes in respect of the aspects specified. :-

II. FURTHER AMENDMENTS

2.1 Before amendment by the Finance Act, 2016, the provisions of sub-section (1D) of section 143 of the Act [inserted by Finance Act, 2012] specified that the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2) of the said section.

2.2 In order to address the grievance of delay in issuance of refund in genuine cases, a proviso was inserted in section 143(1D) by the Finance Act, 2016 and it was provided that with effect from assessment year 2017-18, processing under section 143(1) of the Income-tax Act is to be done before passing of assessment order.

2.3 The Finance Act, 2017, deleted this proviso by stating that in order to address the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, the provisions of section 143(1D) shall cease to apply in respect of the returns furnished for assessment year 2017-18 and onwards.

2.4 *Vide* the same Finance Act, 2017, in order to address the concern of recovery

of revenue in doubtful cases, a new section 241A was inserted to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under section 143(1) of Act ***and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue,*** he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made.

2.5 However, there was overlapping of the provisions of section 241A with the provisions of section 245 of the Act. In order to smoothen the assessee-department interface, to remove harassment and reduce the inconvenience faced by assesses, the Finance Act, 2023 integrated the two sections by giving sunset clause to section 241A and substituting section 245. Vide new sub-section (2), it is now provided that where a part of the refund has been set off under subsection (1) or where no amount is set off, and refund becomes due to a person and **the Assessing Officer, having regard to** the fact that proceedings of assessment or reassessment are pending in the case of such person, is of the opinion that the grant of refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund till the date on which such assessment or reassessment is made.

2.6 The role of CPC, which was originally confined to only processing of income tax returns under section 143(1) of the Act for expediting the process of consequential refund/demand, has been extended to many other areas from time to time. Some of them are as under-

a. Section 133C - For centralized issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer.

b. Section 206CB- For centralized processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector.

c. Section 200A- For centralized processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor.

d. Section 115WE - For centralized processing of return of fringe benefit with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under that sub-section.

These additional areas are managed by independent departmental officers, though, physically they may be functioning under the same roof of CPC, Bangaluru.

2.7 The CPC also, among other things, manages Demand Facilitation Centre of the Department.

III. CIRCULARS, ETC.

Gist of relevant portions of some of the Circulars/Instructions, etc.:

3.1 CIRCULAR NO. 4 OF 2012, DATED 20-06-2012.

i) The Board has been apprised that in certain cases the assessees have disputed the figures of arrear demands shown as outstanding against them in the records of the Assessing Officer. The Assessing Officers have expressed their inability to correct/reconcile such disputed arrear demand on the ground that the period of limitation of four years as provided under sub-section (7) of section 154 of the Act has expired. Further, in some cases, ***the Assessing Officers have uploaded such disputed arrear demand on the Financial Accounting System (FAS) portal of Centralized Processing Center (CPC), Bengaluru which has resulted in adjustment of refund arising out of processing of Returns against such arrear demand which has been disputed by such assessees on the grounds that either such demand*** *has already been paid or has been reduced/eliminated in the appeals, etc. The arrear demands, in these cases also were not corrected/ reconciled for the reason that the period of limitation of four years has elapsed.*

ii) The Board, in consideration of genuine hardship faced by the abovementioned class of cases, in exercise of powers vested under section 119(2)(b) of the Act, hereby authorize the ***Assessing Officers to make appropriate corrections*** *in the figures of such disputed arrear demands after due verification/ reconciliation and after examining the same on merits, whether by way of rectification or otherwise, irrespective of the fact that the period of limitation of four years as provided under section 154(7) of the Act has elapsed.*

iii) In view of the above the following has been decided:

(a) Where the demand is based on the figure of arrear demand uploaded by the Assessing Officer but disputed by the assessee, and the Centralized Processing Center (CPC), Bengaluru has already adjusted any refund arising out of processing of return, ***the jurisdictional Assessing Officer shall verify the claim of the assessee on merits.*** *After due verification of any such claim on merits,* ***the Assessing Officer shall issue refund of the excess amount, if any, so adjusted by CPC.***

(b) In other cases, where the assessee disputes and requests for correction of the figures of arrear demand, whether uploaded on CPC or not uploaded and still lying in the records of the Assessing Officer, the jurisdictional Assessing Officer shall verify the claim of the assessee on merits and after due verification of such claim, will make suitable correction in the figure of arrear demand

in his records and upload the correct figure of arrear demand on CPC portal.

3.2 DEMAND MANAGEMENT FORTNIGHT- STANDARD OPERATING PROCEDURE (SOP) - LETTER [DIT(S)-III/DMFORTNIGHT/2012-13], DATED 3-9-2012.

The issue of demand management continues to remain an area of grave concern. It has been found that in most of the cases demand uploaded is incorrect and incomplete. Such demands have been uploaded by AOs without due diligence and verification. Adjustment of such demands against refunds is leading to public grievances. It is therefore imperative to correct the demand database and quickly rectify cases, where wrong adjustments have taken place. It has also been ascertained that the demand in a large number of cases has still not been uploaded on the CPC Portal, Correct uploading of such demand is a target in the Central Action Plan for FY 2012-13 to be accomplished by 30-9-2012.

3.3 CLEAN UP OF DEMAND UPLOADED TO CPC FAS BEFORE ISSUE OF REFUND IN CASESPROCESSING OF e-RETURNS OF A.Y. 2012-13

LETTER [F.NO. DIT(S)-III/CPC/2012-13 - 14161-78], DATED 5-11-2012

On the above subject, details of cases where refunds have been claimed in e-Returns for A.Y. 2012-13 and where assessing officers have uploaded demands to CPC Portal,....

***The assessing officers are required to verify uploaded arrear demands in CPC portal** in these cases **and** **certify their correctness** before they are considered for adjustment against refunds.*

3.4 INSTRUCTION [F.NO. DIT(S)-III/CPC/2012-13], DATED 27-11-2012

STEP-WISE PROCEDURE FOR ADJUSTMENTS OF REFUNDS DUE TO MISMATCH OF TAX AND TDS CREDITS-

To mitigate the problem of demand raised due to mismatch of tax and TDS credits, the step by step procedure for adjustment of refunds to be followed by Assessing Officers and Centralized Processing Centre (CPC)

(i) **The JAO shall verify the demands** from IRLA, TMS and Manual Demands prior to 01-04-2010; and Demands from AST, TMS, Manual and CPC and **inform the CPC. The JAO will then provide an opportunity to the assessee for verification** and confirmation and after certifying the demand, he shall upload it on the CPC, along with uploading it on the portal of the assessee.

(ii) In case of refunds due - On the basis of the demand so uploaded on CPC, **CPC shall issue a prior intimation u/s. 245** of the IT Act, 1961 to the assessee to adjust the refund. **Simultaneously, CPC will inform the Chief Commissioners** of Income-tax (CCsIT) concerned regarding the intimation sent for his charge fortnightly. The assessees can approach Assessing Officer regarding grievance relating to demand, if any, within 15 days of receipt of intimation.

(iii) **The AO** within 30 days of receipt of grievance in response to the notice u/s 245 **shall either rectify or confirm the demand. The demand so crystallized shall be communicated back to the CPC**. –[This time period was reduced to 21 days by Instruction No 6/2022, dated 28-11-2022]

(iv) CPC will hold the refunds in the interim period and following confirmation from the AO carry out adjustment of refunds.

3.5 REFUNDS - SET OFF OF REFUNDS AGAINST TAX REMAINING PAYABLE-

DIRECTIONS OF HON'BLE DELHI HIGH COURT

F.NO.DIT(S)-III/CPC/2012-13/ DEMANDMANAGEMENT], DATED 21-03-2013

As per Hon'ble Delhi High Court's Order dated 14-3-2013, {In the writ petition (Civil) No.s 2659 & 5443 of 2012} the Department requires to follow the procedure prescribed under section 245 before making any adjustment of refund payable by the CPC, Bengaluru. Accordingly, ***the assessee must be given an opportunity to file response or reply and the reply will be considered and examined by the Assessing Officer before any direction for adjustment is made.*** *The process of issue of prior intimation and service thereof on the assessee will be as per the law. The assessee will be entitled to file their response before the Assessing Officer mentioned in the prior intimation.* ***The Assessing Officer will thereafter examine the reply and communicate his findings to the CPC,*** *Bengaluru, who will then process the refund and adjust the demand, if any payable.*

Subsequently, addendums were notified vide Instructions dated 13.06.2013 and 05.07.2013.

3.6 REFUNDS - SET OFF OF REFUNDS AGAINST TAX REMAINING PAYABLE

STRICT COMPLIANCE OF SECTION 245 BEFORE MAKING ANY ADJUSTMENT OF REFUND - INSTRUCTION NO. 12/2013 [F. NO. 312/55/2013-OT], DATED 9-9-2013

2. *The Hon'ble Delhi High Court* ***[Court on its Own Motion vs. CIT - [(2012) 25 taxmann.com 131 (Delhi)]*** *in this context had issued interim directions vide its order dated 31-8-2012 as under:*

"13. We issue interim direction ***to the respondents that they shall in future follow the procedure prescribed under section 245 before making any adjustment of refund payable by the CPC*** *at Bengaluru.* ***The assessees must be given an opportunity to file response or reply and the reply will be considered and examined by the Assessing Officer before any direction for adjustment is made.*** *The process of issue of prior intimation and service thereof on the assessee will be as per the law. The assessees will be entitled to file their response before the Assessing Officer mentioned in the prior intimation.* ***The Assessing Officer will thereafter examine the reply and communicate his finding, to the CPC, Bengaluru, who will then process the***

refund and adjust the demand, if any payable. *CBDT can fix a time limit for communication of findings by the Assessing Officer. The final adjustment will also be communicated to the assessees."*

3. *In compliance with the above directions of the Hon'ble Court, CPC Instruction No. 1 dated 27.11.2012 was issued explaining the step by step procedure for adjustment of refunds to be followed by Assessing Officers and CPC, followed by the DIT(Systems)-III letter dated 30.1.2013.*

4. *Vide its final order in the Writ Petition dated 14.3.2013, the Hon'ble High Court in para 24 has confirmed its interim order and issued Second Mandamus as under:*

"24. The said interim order is confirmed. We notice that the respondents have taken remedial steps to ensure compliance of section 245 of the Act as they now give an option to the assessee to approach the Assessing Officer. This is the second mandamus which we have issued. As noticed above, the interim order passed in the writ petition dated 31st August, 2012 has been implemented."

5. *In view of the above directions of the Hon'ble High Court, I am directed to convey that the provisions of section 245 of the IT Act be strictly adhered to before making any adjustment of refund. In respect of adjustment of refund payable by the CPC at Bengaluru, the procedure detailed in Para 2 above may be complied with. The Assessing Officer, in this regard, should respond to CPC within 45 days from the date of communication of issuance of notice u/s 245 by the CPC to the Assessing Officer.*

3.7 INSTRUCTION NO. 4/2014 [F.NO. 225/151/2014/ITA.II], DATED 7-4-2014

STANDARD OPERATING PROCEDURE (SOP) FOR VERIFICATION AND CORRECTION OF DEMAND AVAILABLE OR UPLOADED BY AOs IN CPC DEMAND PORTAL

AOs were required to upload these demands on the CPC Arrear demand Portal after due process of verification and after reducing the taxes paid by Assessee. These demands can be reduced or deleted by AOs only after approval of Range head as per earlier instructions.

Steps for Verification and Confirmation of Demand

The AO should provide an opportunity of being heard to the assessee in case where notice u/s 245 of the Income-tax Act, 1961 ('Act') has been issued.

CPC has developed a new functionality called "CPC Demand Verification Portal" to facilitate verification and confirmation of demand entries of both the categories. The list of demand cases can be viewed on the "CPC Demand Verification Portal".

3.8 PROCEDURE FOR RESPONSE TO ARREAR DEMAND BY TAXPAYER AND VERIFICATION AND CORRECTION OF DEMAND BY AO CIRCULAR 8/2015 – 14-05-2015.

A facility has been made available to taxpayers on the E-filing website (www.incometaxindiaefiling.gov.in) to provide online responses to such demands.

The actions required to be performed by the taxpayer and the AO are being consolidated in this circular.

3.9 SECTION 154 -RECTIFICATION OF MISTAKE - FACILITY FOR ONLINE RECTIFICATION - PRESS RELEASE, DATED 1-4-2016

Taxpayers who are not satisfied with the outcome of processing of their Income Tax Return by the Centralized Processing Centre, Bengaluru can avail of the facility of online filing and tracking of rectification requests available on https://incometaxindiae

3.10 INCOME DECLARATION SCHEME, 2016- DATED 02-09-2016.

Government assured that the information contained in a valid declaration under income declaration scheme, 2016 would be confidential and shall not be shared with any authority. Further, vide Circular No. 31 dated 30.8.2016 an option has been provided to the declarants to file the declaration under the Scheme electronically under digital signature **with the Commissioner of Income-tax, Centralised Processing Centre, Bengaluru [CIT(CPC)]**. In case the declarant exercises the said option, the declaration shall not be shared with the jurisdictional Principal Commissioner/Commissioner under the Income-tax Act.

3.11 EXERCISE TO ENSURE INTEGRITY AND ACCURACY OF STATISTICS OF DEMAND REPORTED IN CAP-I AND THE CPC

F.NO. 17/03/2016/MIS/DOMS/3382, DATED 17.10.2016.

In order to demonstrate the disparity, a study with respect to the demand figures as on 31.03.2016 in respect of all the Pr. CCIT regions was conducted by the Director of Income Tax (Organisation & Management services), and it was found that there existed noticeable differences in the amounts as reported in CAP-I statement and the data appearing on the CPC portal and instructed that the same be reconciled so that the information with CPC becomes reliable for policy formulation. Accordingly, the Directorate instructed the assessing officers to diminish the gap between the figures and upload correct figures of outstanding demands on the CPC portal.

3.12 LAUNCH OF FUNCTIONSALITY TO PASS ASSESSMENT ORDERS IN THE ASSESSMENT MODULE OF INCOME TAX BUSINESS APPLICATION (ITBA)- [ITBA – ASSESSMENT INSTRUCTION NO. 6], DATED 03.10.2017

The Director of Income tax (System) instructed the assessing officers to migrate the cases from AST to ITBA. Among other things, the officers were informed that all the computations of income and tax calculations were to be based on the CPC-ITR processing software logic and rules. The detailed tax computations and interest is to be made as per matching in CPC and returned to the ITBA. Among other, the procedure for refund/adjustment was prescribed.

3.13 ITBA – ASSESSMENT INSTRUCTION NO.7, DATED 03.10.2017.

In continuation to above-mentioned Instructions no. 6, further instructions were issued to the assessing officers regarding the migration from AST to ITBA.

3.14 ITBA – ASSESSSMENT- DEMAND ADJUSTMENT BY AO U/S 245 – INSTRUCTION NO. 13, DATED 19.02.2020

[In continuation of the earlier Instructions on this aspect]

3.15 CENTRAL BOARD OF DIRECT TAXES, F.NO.: 375/02/2023- IT- BUDGET, DATED: 13.02.2024

On February 1, 2024, Hon'ble Finance Minister made an announcement to withdraw direct tax demands up to Rs.25,000 pertaining to the period up to financial year (FY) 2009-10 and up to Rs.10,000 for FY 2010-11 to FY 2014-15. The Directorate of Income-tax (Systems)/**Centralized Processing Centre, Bengaluru (CPC) was directed to implement the order within 2 months.**

IV. CAG'S REPORT ON THE CENTRALISED PROCESSING CENTRE. DATED 25-01-2017.

{Few observations/qualifications reproduced}

1. Scope of audit and methodology

About 40 per cent of the records requisitioned were not provided by the ITD [Income Tax Department]. *The CPC allowed limited access to 'Form View' (read only) of processed individual returns (from the sample made available) in CPC portal, wherein individual PAN-based returns were test checked.*

Further, during the course of audit 138 audit requisition memos were issued to the ITD calling various records/ information necessary for the audit of CPC, Bengaluru. Against these, reply to only 87 audit requisition memos were furnished (some of them partly). Non-production of records/information proved a major impediment in conducting the audit.

2. Selection of Sample Size

With a view to reviewing whether the procedures and processes adopted at CPC are in conformity with the provisions of the Act and the Rules, Audit sought 'Data Dump' relating to returns processed during the three years from 2012-13 to 2014-15. However, the data dump was not made available.

3. Processing of ITRs

CPC processed 9.04 crore returns since its inception in October 2010 to January 2015, with a peak processing capacity of 3.78 lakh returns per day. Faster turnaround time in processing contributed to reduction of interest outflow on refunds.

4. Review of processed ITRs in 'Form view' *was undertaken with a view to ascertaining the availability of Application Controls in the CPC application software, which revealed the following deficiencies:*

(i) Mistake in business rule relating to matching of TDS with offered income

ITD's SOP on "Defective Return" while defining "Core Defects – Notice to be sent" prescribes that a return shall be treated as core defective if "No Income details or tax computation has been provided in ITR, but details regarding taxes paid have been provided". We observed a case where the assessee did not offer any income but claimed credit for TDS. However, this clause of ITD's SOP was not

followed at the time of processing of return in CPC.

(ii) Full potential of CPC not realised due to not changing the definition of "processing"

The Finance Act, 2008 amended the Income Tax Act, 1961 by inserting a subsection 1A under section 143, empowering the CBDT to make a scheme for centralised processing of ITRs to determining expeditiously the tax payable by, or the refund due to the assessee. After this amendment, the ITD has the mandate and the opportunity to exploit the benefits of technology for determining tax/refund payable instead of merely replicating rules that were designed for a manual system with inbuilt limitations. However, ITD so far has failed to exploit this opportunity resulting in non utilisation of information available with ITD. Few such cases are detailed below:

(a) AST – CPC interface for Accessing Demand/Refund Information

It was observed that there was no interface between CPC and AST for updating the position of income/loss determined by the Assessing Officers during scrutiny assessments or on the basis of appellate proceedings.

(b) Information available with AO not used in processing returns u/s 10(23C), 10A, 10AA, 12A(1)(b), 44AB, 44DA, 50B, 80IA, 80IB, 80IC, 80ID, 80JJAA, 80LA, 92E, 115JB and 115VW

CPC processed returns containing claims under above sections during the financial years 2012-13, 2013-14 and 2014-15 respectively. However, the information available in the reports furnished electronically in compliance of the above sections was not available to CPC and thus CPC was not able to make use of the available data in processing returns.

(c) Non-Linking of previous years' ITRs resulting in excess deduction

The existing database of CPC system could be used for pre-filling the returns to make use of taxpayers' claim for deductions such as brought forward loss, unabsorbed depreciation, MAT credit etc., made in previous years. On verification of following cases through Form-View we, however, observed that no such facility was available in the CPC software to use the data of previous years' processed returns, available in the CPC database.

The Ministry stated that CPC does only summary assessment and linking of previous years' ITRs with current year does not come under the purview of Section 143(1). During the Exit Conference it was stated by the Ministry that the objective of the CPC was to process the ITRs and issue the refunds to assessees quickly rather than to deal with the compliance issues. CPC was established as a bulk processing centre and it never intended to investigate the taxpayer. *Business Processing Re-engineering (BPR) objective was only to segregate the compliance from processing.*

5. Deviation from agreed processes relating to matching of TDS/Tax payment claims resulted in increased rectification due to non matching of tax credit

We observed that two deviations were related to deletion of two of the main prescribed processes, viz., "Reconciliation of OLTAS collection at bank branch/ RBI level" and "Reconciliation of TDS payments including interaction with deductors,

In addition, the said deviation has also resulted in increased percentage of assessee-triggered rectification on account of 'non-matching of tax credits'.

6. Performance measurement

An analysis of the information revealed the following:

(i) Processing of Physical ITRs

Out of 2,11,741 Physical ITRs received during FYs 2012-13 and 2013-14, 1,71,173 returns had been processed as at the end of March 2014. Processing status of the balance 40,568 paper returns was not known. In FY 2012-13, 1.59 lakh paper return were received by the SP, against these the SP processed only 1,21,634 returns from the period April 2012 to March 2013. Number of returns processed by the SP was much lower than the specified limit despite the availability of returns. However, no penalty was imposed for not achieving the target as ITD waived the SLA.

The reply is not tenable as this was a significant deviation from the defined parameters and consequently the SLA metrics relating to physical ITRs remained unmonitored and uncertified at any time during the review period.

(ii) Processing of Electronic ITRs

The monthly SLA metrics prescribed overall processing of 5 lakh and 2.50 lakh e-ITRs during peak months and non-peak months respectively. During the period under review the count of e-ITRs processed ranged from 2.57 lakh (July 2012) to 51.31 lakh (December 2014) in non-peak months and 12.04 lakh (August 2012) to 30.41 lakh (October 2014) in peak months.

The achievement far exceeded the defined monthly targets which led to skewed results while measuring achievement of SLA metrics resulting in unrealistic comparison. It has been observed that though the number of e-filing of ITR had been increased as compared to projected, however, SLA was not revised and the performances of the SP continued to be compared against the original targets.

(iii) High percentage of data entry errors in respect of physical ITRs

The baseline metric 'mismatch cases' was fixed at less than one per cent, whereas the performance was considered as 'breach' if it exceeds five per cent. Mismatch cases were defined as "the number of cases sent to the Mismatch Operator, after being determined as 'mismatch' based on comparison of completed data entry of the first and second Data Entry Operator".

The breach performance attracted a negative score of two.

It was seen that in all the months in which the paper ITRs were received and processed, the mismatch cases referred to Mismatch Operator constituted a very high percentage viz., between 12.9 per cent and 42.7 per cent in FY 2012-13 and more than 55 per cent and 63 percent in FY 2013-14.

V. JUDICIAL INTERVENTION

5.1. *Court on its Own Motion vs. CIT - [2012] 25 taxmann.com 131 (Delhi)]*

By way of instant public interest litigation, the general problems faced by the taxpayers regarding issue of refunds which were denied on the basis of wrong or bogus demand or incorrect record maintenance and the problem faced by them in getting full credit of the tax, which was deducted from their income and paid to the Revenue were raised before the Court.

One of the issues raised before the Court was of adjustment of refund arising out of processing of the returns against arrears of demand by the CPC without following due procedure laid down in the Act. In the counter-affidavit, the Revenue had accepted that when a return is processed under section 143(1), the CPC itself adjusts the refund due against the existing demand but without following the procedure prescribed under section 245, which requires prior intimation so that the assessees can respond or give their explanation. The Counsel for the Revenue stated that in cases where prior intimation was given, the assessees were required to get in touch with the Assessing Officer and file response, but the Assessing Officer did not accept the reply/response on the ground that the assessee should approach CPU, Bengaluru. At the same time, CPU, Bengaluru, did not accept the reply/response on the ground that the assessee should approach the Assessing Officer. The Court issued interim direction to the Respondents that they shall in future follow the procedure prescribed under Section 245 before making any adjustment of refund payable by the CPU at Bengaluru. The assessees will be entitled to file their response before the Assessing Officer mentioned in the prior intimation. The Assessing Officer will thereafter examine the reply and communicate his findings to the CPC, Bengaluru, who will then process the refund and adjust the demand, if any payable.

The Court observed that section 245 postulates and mandates a two-stage action. Prior intimation, and then a subsequent action when warranted and necessary of adjustment of the refund towards arrears. Dealing with the issue of direct adjustments made by the CPC, Court held that the Revenue cannot take a stand that they can make adjustments contrary to the procedure prescribed under Section 245 of the Act based on the wrong data uploaded by the Assessing Officers.

5.2 Vodafone Idea Ltd. v.s DCIT - [(2018) 99 taxmann.com 57 (Bombay)]

The assessee had filed an application for processing the return of the assessee-company for assessment year 2017-18 and to issue the refund due. The Department submitted that a notice under section 143(2) had been issued for assessment years 2014-15, 2015-

16 and 2016-17. Hence, in view of the provisions of section 143, the processing of the returns for these three assessment years 2014-15, 2015-16, 2016-17 was not necessary. However, the return of assessment year 2016-17 was processed and pushed to the Centralised Processing Centre (CPC) for computation, which was still pending at the end of the CPC for computation. The Assessee filed Writ Petition and contended this would delay the proceedings unnecessarily.

Hon'ble High Court did not appreciate that the return, as stated to have been processed by the J.A.O., was forwarded to the CPC for computation of income and calculation of refund, if any.

Hon'ble High Court held that it failed to understand as to why somebody who is in-charge of making and framing assessment, namely, the Assessing Officer and who can process the return and who is ordinarily empowered to finalize it as well, must forward it or push it to the CPC for computation. The High Court further observed that it was not clarified before it as to why, if computation is such a difficult task, if not an important task, it cannot be performed by the Assessing Officer. The High Court ultimately directed the CPC to take a decision and as regards the computation and communicate it to the concerned Assessing Officer within a period of four weeks.

5.3 Vodafone Idea Ltd. vs. DCIT - [(2020) 119 taxmann.com 337 (Bombay)]

Following the earlier directions of the Hon'ble Court in the Assessee's case, the return for A.Y. 2016-17 was processed u/s 143 which resulted into a refund of ` 207 crores. The Department however at the time of processing the return, also initiated proceedings u/s 245 of the Act and appended following note with it –

*"**NOTE**:- As per the records of CPC, the following demands are outstanding. An intimation under Section 245 of the Income Tax Act, 1961 has been issued separately proposing to adjust the outstanding demands against the refund determined as per this order. Since, the release of the refundable amount will be considered on the basis of your response/compliance to the Intimation U/s 245, you are requested to submit your response expeditiously."*

The Assessee objected to the proposed adjustment on the ground of the demands being stayed by Tribunal. Thereafter, the Department did not proceed with such adjustment. However, the Deputy Commissioner of Income Tax, Mumbai initiated proceedings u/s 281B of the Act against the amount of refund.

Held by Hon'ble High Court as follows -

"Permitting the department to provisionally attaching the petitioner's refund for the current year on the ground that in the final assessment, the demands are likely to be confirmed, would amount to ignoring the hard fact that for the earlier assessment years, the Tribunal has suspended the recoveries arising out of the demands made by the assessing officer on similar issues. It may be that before doing so, the Tribunal has either put the petitioner to some terms or has found itself satisfied that the deposits already made are sufficient. Nevertheless, looked from any angle, the occasion for the competent authority to exercise the

drastic power under section 281B of the Act has not arisen. We do not doubt his power, however, we do not find proper further justification for exercise of such power."

5.4 Vodafone Idea Ltd. vs. CIT - [(2019) 110 taxmann.com 185 (Bombay)]

The return filed by the assessee was scrutinized and the assessment order gave rise to refund of certain sum. Since the refund was not forthcoming, the assessee wrote several letters to the Department but with no avail. The assessee pointed out that TDS mismatch of as small as Re. 1 (on account of rounding off of the figure) was cited as reason more than once for not releasing the refund. The Counsel for the Department stated that the petitioner's refund claim has not been released on account of computer glitch at the CPC, presumably on account of the fact that though the concerned demands are stayed by the appellate authority, the system is not accepting such position.

5.5 Sarda Paper Ltd. vs. PCIT - [(2024) 161 taxmann.com 362 (Bombay)

The Assessee had filed a rectification Application under section 154 of the Act against the intimation under Section 143(1) of the Act. The CPC did not make any change in the income computed under Section 143(1) of the Act. Assessee thereafter filed an application under Section 264 of the Act. This application came to be rejected by PCIT -5, Mumbai on the ground that DCIT- CPC is not reporting to the PCIT - 1, Mumbai. Therefore, he cannot be treated as subordinate to PCIT - 1, Mumbai and therefore the application to the rejected.

Held by Hon'ble High Court as follows–

"CPC only acts as a facilitator to the Jurisdictional *Assessing Officer (JAO) who holds jurisdiction over assessee under Section 120 of the Act.* ***Merely because the return is processed by CPC, the regular jurisdiction of the JAO is not curtailed*** *and he continues to hold the same jurisdiction. This is evident from the fact that a demand resulting from the processing of a return under Section 143(1) of the Act by CPC is also enforced by the JAO. It is JAO who issues a notice under Section 143 (2) of the Act if the return is to be selected for scrutiny and frames the assessment. We would also add that even under the faceless regime, once the assessment has been framed by the Faceless Assessing Officer (FAO), all records are transferred to the JAO for recovery of demand and other incidental matters. In fact in many matters before us PCIT have exercised jurisdiction in identical situation.*

Moreover, the CBDT has issued directions on 18th September 2020 (F No.187/3/2020-ITA-1) in which it is noted that the power under Section 263 and 264 of the Act will be exercised by the Jurisdictional Principal Commissioners of Income Tax concerned. Therefore, certainly if the powers can be exercised by the Jurisdictional Principal Commissioners of Income Tax and the faceless regime, certainly it only confirms our view expressed above that CPC only acts as a facilitator to the JAO and merely because the return is processed by CPC the regular jurisdiction of the JAO is not curtailed and he continues to hold the jurisdiction.

PCIT - 5, who was present in the court, states that it was uncertain whether

he could exercise jurisdiction but if the court directs he shall certainly exercise jurisdiction. His reluctance should not be construed as a reluctance to exercise jurisdiction.

Since we have already expressed our view that the JAO will have jurisdiction, we hereby quash and set aside the impugned order dated 25th March 2022. Respondent No.1 - PCIT - 5 is directed to dispose petitioner's application under Section 264 of the Act in accordance with law."

5.6 Carboline (India) (P.) Ltd. vs. A.O - [2024] 158 taxmann.com 171 (Madras)

The assesse had filed a rectification application u/s 154 of the Act before the JAO against a mistake apparent from the record of the intimation passed u/s 143(1) of the Act by CPC. The A.O. rejected the assessee's application stating that he had no jurisdiction and only the CPC had jurisdiction to consider the rectification application.

Hon'ble High Court directed the assessee to file rectification application before the Centralized Processing Center.

5.7 Coda Global LLC vs. DCIT (International Taxation) – [(2024) 158 taxmann.com 458 (Madras)]

Upon examining the return, an intimation was issued under section 143(1) informing the petitioner that it is entitled to a refund. An assessment order was issued thereafter on 8-12-2022. Since the refund was not made, the petitioner raised grievances with the CPC. Not getting relief, the petitioner filed Writ petition.

Held by Hon'ble High Court as follows–

"After the assessment order was issued, since the refund was not made, the petitioner raised grievances through the CPC. *The grievance raised on 22-4-2022 is of particular relevance. The petitioner specifically called upon the respondents to enable the petitioner to update the bank account details of its foreign bank account. Significantly, the respondent did not inform the petitioner that only a bank account with an Indian bank is eligible for receipt of refund. In any event, the press release dated 24-7-2017 of the CBDT enables a non-resident to provide a foreign bank account for purposes of refund.*

This writ petition is therefore disposed of by directing ***the respondents through the Central Processing Centre to pay interest on the sum*** *of ` 2,27,20,180/- at the rate specified in section 244-A of the Act."*

5.8 Ambala Central Co-operative Bank Ltd. vs. ITO - [(2012) 21 taxmann.com 443/52 SOT 233 (Chd.)]

The assessee had e-filed its return and claimed set off of losses to the extent of ` 9,53,75,262 out of total brought forwarded losses of ` 12,43,94,853 and the balance amount of loss was carried forwarded to the future years. The figure of brought forward, set-off and carry forward of losses was evident from the schedule of losses carried over to future years. The first Column in the intimation u/s 143(1) of the Act– "as provided by tax payer in return of income" reflected the loss of previous year adjusted was at ` 9,53,75,262/-, which clearly showed that the assessee had made a claim of loss. However, in

the electronic processing, the loss set off was shown at zero. Accordingly, the assessee made an application u/s 154 of the Act for rectification of the mistake. The application was rejected by stating that the assessee had filed return declaring income and no loss was claimed by the assessee. On appeal, the ld. CIT(A) dismissed the appeal application by stating that the scope of rectification proceedings was limited and it was also observed that set off of losses cannot be a matter of rectification. Aggrieved by the above order, the assessee filed an appeal before the Tribunal.

Appreciating the evidences in the form of copy of return of income and the intimation generated by CPC, the Tribunal held as follows-

"However, we would like to take this opportunity to bring to the notice of CBDT that after the procedure of Central processing of returns, many issues have come before various forums where unnecessary demands have been raised due to non-grant of TDS, wrong computation of income, adjustment of the previous year demand which have already been deleted by the jurisdictional assessing officer. ***Therefore, we would like to urge the CBDT to take up this matter urgently and establish proper coordination between the assessing authority and Central Processing Authority so that these problems are immediately solved and unnecessary litigation can be avoided.****"*

5.9 Durgapur Passengers Carriers Association vs. ITO – [(2023)150 taxmann.com 171 (Kolkata - Trib.)]

The assessee was an association of bus and mini bus passenger carriers. In the return filed by the assessee, it had shown total receipt of certain sum against which a deduction was claimed as amount applied to charitable or religious purposes in India. The return was processed by the CPC, wherein it found that the return was defective, as the income of assessee exceeded ` 2 lacs and audit flag was mentioned as 'NO'. Thereafter, CPC issued a notice under section 139(9) which was served on the assessee on its registered e-mail, affording the opportunity to the assessee to rectify the defects within 15 days from the receipt of the said notice. Since there was no compliance by the assesse, an order under section 139(9) was passed treating the said return as invalid return. In the return so processed by CPC, the deduction claimed by the assessee was not allowed and the total income was assessed, thereby raising a demand.

Held by the Hon'ble Tribunal as follows–

In the present case, an order under section 139(9) dated 9-3-2017 is on record by which return of income filed by the assessee has been treated as invalid return. Despite treating the return as invalid return, it has been processed by CPC, under section 143(1)(a) by disallowing the claim of the assessee. It is also noted that there is a pre-requisite of return to be available under section 139 or 142(1) for issuance of an intimation under section 143(1). Since the return has been held to be invalid by CPC, there exists no return under section 139 which could have been processed under section 143(1). Accordingly, the processing done by CPC of an invalid return is improper and not in accordance

with the provisions of the Act and rule 8 of the aforesaid scheme.

5.10 Tech Mahindra Ltd. vs. DCIT - [(2023) 153 taxmann.com 342 (Bombay)]

A refund of ` 153.8 crores had became due to the Assessee for A.Y. 2018-19. Also, there was an outstanding demand of R` 266.73 crores for earlier assessment years. Further, a demand of ` 163 crores was erroneously raised and adjusted. Also, a short credit of TDS of ` 1.39 crores was erroneously granted. The Assessee filed a rectification application against such mistakes. The aforesaid application was allowed and consequently, a refund of ` 153.8 became due. However, this rectification order could not be uploaded in the ITBA systems due to technical glitches. Not having received the said refund, the Petitioner raised a grievance on the 'Centralized Public Grievance Redress and Monitoring System', known as 'CPGRAMS'. Thereafter, the rectification order was uploaded on the ITBA portal. Further, the assessee filed a stay petition for demands of the earlier years, which was accepted subject to adjustment of 20% of such demands against the admitted due refund of Rs. 153.8 crores for A.Y. 2018-2019. Even after such an adjustment, the Assessee was entitled to receive a net sum of ` 100.49 crores being the balance refund for A.Y. 2018-2019. However, the Assessee was informed that all the clearances at the end of the jurisdictional officers were duly completed and no further action was required to be taken by the officers. The refunds were pending at CPC's end and that it is the CPC which will take necessary steps to release the due amount. The counsel for the Department stated that the CPC could not see the stay granted. The Assessee approached Hon'ble High Court since the refund was not released even after fourteen months of the refund being determined. Under such circumstances, Hon'ble Court directed the Director of Income Tax, CPC, to release ` 100.49 Crores along with interest, if any, in accordance with law, to the Assessee's account within one week from the date of the order.

5.11 G. E. Power India Ltd. vs. ACIT - [(2024) 158 taxmann.com 173 (Bombay)]

The Assessee was entitled to a refund of Rs. 27 crore for A.Y.s 16-17 and 17-18. Such refund was adjusted against the demand for A.Y. 2014-15 without the issue of intimation under section 245 of the Act, which was also admitted by the CPC. Also, such demand was stayed by the Hon'ble Tribunal. The counsel for the Department argued that it was only a procedural infirmity and intimation could not be given due to technical reasons and the same may be condoned. Under such circumstances, Hon'ble Court held that the requirement of prior intimation under section 245 of the Act was a mandatory requirement and failure to comply with this mandatory would make the entire adjustment illegal.

5.12 ITO vs. Camellia Educare Trust – [(2023) 152 taxmann.com 304 (Kolkata - Trib.)]

The assessee trust, registered under section 12AA, was running an educational institution. The assessee filed its return reporting total receipts of ` 5.67 crores and total income at ` nil by claiming application of income under section 11 on 30-3-2021. The extended due date for filing return of income was

15-2-2021. Since the return of income of the assessee was a belated return, the CPC made an adjustment by not allowing the exemption under section 11. The CPC computed total income of the assessee as the total receipts for the year under consideration. In appeal, the Assessee contended that before making the adjustments, an intimation was to be given as contained in the 1st proviso to section 143(1).

Held by Hon'ble Tribunal as follows-

There are two aspects which emerges on this issue as to whether the disallowance made is a permissible adjustment contained in sec. 143(1)(a) and whether this adjustment, if permissible, has been made in compliance to 1st proviso to sec. 143(1)(a) of the Act.

Considering the facts on record and the perusal of the provisions contained in sec. 143(1)(a) of the Act, we find that on both the aspects, the revenue fails. This position has not been controverted by Ld. Sr. DR also. Even if we assume for a moment that such an intimation was given to the assessee in accordance with the 1st proviso, then the second proviso stipulates that if any response is received from the assessee then, the same should be considered before making any adjustment or disallowance. In case, where there is no response received from the assessee then, within thirty days of the issue of such intimation, department is free to make such adjustment or disallowance.

Further, without prejudice to our above finding, we are in agreement with the submission made by the ld. Counsel that income should be understood in its commercial sense and computing the total income of the assessee equal to the total receipts for the year is not in accordance with the commercial prudence and commercial sense....

From the above section, it is noted that total income or loss of the assessee shall be computed after making the adjustments listed therein. However, before making the adjustments, an intimation is to be given to the assessee in respect of such adjustments either in writing or in electronic mode, as contained in the 1st proviso. Ld. Counsel submitted that in the present case, no intimation has been given to the assessee for making the adjustment/disallowance either in writing or in electronic mode. According to Ld. Counsel, there is an absolute failure on the part of the CPC by not following the condition prescribed in proviso to sec. 143(1)(a).

VI. LEARNING FROM ITS MISTAKES, OR MAYBE NOT –

6.1 In 2010, the CPC generated notices of recovery for lakhs of salaried employees by mistake. They were asked to pay Rs. 1,200 – 5,000, individually.

6.2 In 2012, again a system error created demand notices, which were sent to many taxpayers. The reason was that the CPC records had not been updated.

6.3 Even today, when the CPC celebrated fifteen years of working from its back office back in 2009, the lack of awareness regarding the scope of the powers and duties delegated to the CPC is evident amongst the jurisdictional officers as well with the CPC. The issues are not just limited to mandatory requirement of issue of notice under section 245 and adjustment of refunds, but also the inability or unwillingness of the CPC to stop flirting with arrears

of demands stayed by Courts. Recently, before the Bombay High Court, the issue of jurisdiction to entertain application under section 264 against an order passed by CPC was raised, for which even the PCIT present before the Hon'ble Court did not have immediate answer.

VII. SOME AREAS OF CONFUSION/ CONFLICTS

The elaborate narration of the concerned provisions of the Act, circulars, instructions, etc. as well as judicial precedents as above necessitated just to gain understanding of the CPC Scheme has already covered much space of this Article. Constrained thus, some of the issues (not necessarily exhaustive) are raised hereunder for munching-

7.1 At the outset, the very powers bestowed to the CPC through circulars, etc. can come under judicial scrutiny. The CPC Scheme has sought to override quite a few provisions of the Act, without making any such amendment in the Act. An exercise which is purely within the legislative domain is done by a subordinate government body, under the apparent delegation of power. The legality for example of such delegated legislation is not free from doubt. In any case, it may suffer from excessive delegation of power or the delegatee exceeding the power delegated. The Courts have frowned upon such practice. It should be remembered here that the very basis and the scope of establishing the CPC was only to expeditiously determine tax payable or refund due to the assessees, and to assist in smooth processing of return in the electronic regime, nothing more.

7.2 It is also interesting to note that with respect to the returns to be filed under Income Declaration Scheme, 2016, an option was given to the declarants to file the declaration under the scheme with the CIT (CPC), purportedly to preserve confidentiality. Similarly, in the latest move, the task of implementing the scheme of remitting and extinguishing small demands is assigned directly to the CPC and not involving to JAO.

7.3 Some of the provisions of the scheme may not be actually consistent with the main provision of the Act. For example, in the matter of defective returns, where there is a variation between the language of the parent Act (section 139(9) of the Act) and of the Scheme.

7.4 Further, in the Notification prescribing the sections of the Act that are to be read subject to what has been mentioned in the said Notification, there is no specific reference to sections 246/246A concerning the appealable orders against which an appeal can be filed, unlike other affected sections which are specifically mentioned.

7.5 Another area is the aspect of the mode of service of communication. The provisions concerning the mode of service of communications of the CPC are at variance with the provisions of section 144B and section 282 of the Act. Similarly, the total bar on personal hearing is at variance with such right given to the assesses under Faceless Assessment Scheme under section 144B of the Act. This creates complete miscarriage of justice many times. It has been held by the Apex Court from time to time, unless specifically

excluded, the basic principles of Natural Justice, more particularly *audi alteram partem*, are to be regarded as integral part of each and every enactment and cannot be dispensed with. Even where the limited opportunity is given to the assessees under the CPC Scheme for example, in the matter of adjustment under section 143(1) of the Act the scope of the raising objections is very limited and, that too, in writing only and, consequently, most likely to remain not considered. In any case, the fundamental issue that remains is with respect to the areas assigned to the CPC - whether human intervention is unnecessary entirely and in all cases It may not be so. For example, keeping in mind the wider scope now given for the adjustments to be made under section 143(1) of the Act, due to the very nature of the issues involved, sometimes human intervention becomes inevitable and the very limited manner of raising objections may not do the justice. Similar is the case with respect to the defective returns under section 139(9) of the Act.

7.6 However, the most serious problem is with respect to denial of refund/ unjust adjustment of refunds and with respect to the intimation to be sent under section 245 of the Act. This is specially in a case where the refund arises not out of the processing of a return of income u/s. 143(1) of the Act but on account of, say, for example, an order passed giving effect to direction of an appellate authority. It must be highlighted that the Legislature has granted no explicit or even implied powers upon the CPC for its intervention in many aspects. There is also utter chaos and confusion on this aspect within the Department itself. There is no full transparency either. There are countless cases where, in spite of the assesses pointing out wrongful withholding/adjusting the legitimate refund and the concerned JAO also pointing out so, wrongful adjustments are still being made by the CPC. One has to just glance through various Instructions that the CBDT itself has to issue from time to time, acknowledging the confusion as well as directing urgent remedial measures to be taken by the concerned authorities. One also has to similarly glance through various decisions, depicting the compulsion on the part of the judiciary to intervene in such matters. Unfortunately, the problem still persists. In fact, in one case pending before the Hon'ble Bombay High Court where the CPC wrongfully adjusted a huge refund against the demand that was already stayed by the JAO, the JAO has, in his Affidavit – in – Reply filed before the Court, placed on record that he had, in fact properly flagged the demand as having being stayed but it was the CPC which still went ahead and adjusted the demand. It is altogether a different thing that in a very informal chat with the assessee, the JAO himself had suggested the assessee that the only way out would be to file a writ petition against the CPC.

7.7 It is also another matter that such retention/adjustment of refund may be held as violative of Article 265 read with 300A of the Constitution of India.

■●■

Computerised Processing of ITRs at Central Processing Centre (CPC) Bengaluru – A Bane or Boon

CA Parveen Kumar CA Gaurav Bhuddi

Overview

The article discusses CPC's impact on the processing of Income Tax Returns (ITRs) in India. Though CPC has been instrumental in increasing efficiencies and accuracy with respect to tax return processing, but still there are areas of improvisation which have been highlighted in our article. Such key areas/issues include:

(i) Processing Time taken.

(ii) Limitation of Submission of detailed documents on the portal in response to CPC notice/orders.

(iii) Technical Glitches in the system leading to erroneous processing

(iv) Communication Gaps

(v) No mechanism at present for manual review of CPC orders

(vi) Intimations u/s 143(1) passed without providing opportunity to respond.

(vii) Others

Suggestions are also incorporated in the article to address these issues.

The Central Processing Centre (CPC) in Bengaluru has been instrumental in revolutionizing and streamlining the income tax processing system in India. Through the implementation of advanced technologies and robust infrastructure, CPC has significantly enhanced the efficiency, accuracy, and transparency of tax return processing operations in very short time. Its sophisticated data processing systems and automated workflows have not only expedited the processing of tax returns but also minimized errors and discrepancies, ensuring fair and equitable taxation for all citizens.

It is worth acknowledging the remarkable transformation brought about by CPC in recent times. CPC has completely overhauled the process of handling Income Tax Returns (ITRs), rectifications, and demands. However, there is always scope for improvisation. Through this article we have pointed out certain issues/areas where improvements need to be done by CPC. Some of such issues/areas of improvement are as under:

1. Processing Time for ITRs

While CPC has made significant strides in expediting the processing of income tax returns, issuing intimation orders under section 143(1) within a day or less mostly in cases of individuals, though there remains a notable number of cases where taxpayers (mostly corporates) encounter prolonged waiting periods. This delay raises concerns regarding the certainty of tax refunds or liabilities for taxpayers. For instance, if a taxpayer has claimed a substantial refund amount, the processing of their ITR tends to take longer period as compared to a taxpayer who has claimed no refund or a minimal amount. The tax payer has no clue as to why the processing of the return is on hold in such cases and how much time it will take to get processed. Section 143(1)(e) second proviso provides maximum timeline of 9 months from the end of FY in which ITR was filed for processing of such ITR. This period is too long and it should be reduced considerably to 3 months or 6 months from end of the month in which ITR is filed. Since, the ITR processing at CPC is a complete automated system, we see no reason as to why such processing timeline cannot be reduced in today's world of advanced technology.

2. Limitation on submitting information/ documents to CPC in response to notice u/s 143(1)(a) or while filing rectification u/s 154

CPC now extensively cross-references the details provided in ITRs filed with the data available with them regarding taxpayer's transactions. Occasionally, disparities may arise between the taxpayer's information and the data available to CPC, including TDS (Tax Deducted at Source) details, AIS, TIS, or employer-reported income. In such cases, CPC issues notices or communications to taxpayers under section 143(1)(a) to notify them of the discrepancies and request their responses. However, limitations such as word or character limits, the inability to submit documents, or provide detailed explanations restrict the completeness of responses by taxpayers. Consequently, replies submitted by taxpayers are often not fully considered by CPC, leading to additions or disallowances in the intimation processed under section 143(1) and consequential litigations. The rectification process faces a similar issue, as it only offers three options/methods: (i) reprocessing the ITR, (ii) data correction in already filed ITR and (iii) tax credit mismatches. There is no mechanism provided whereby tax payers can submit detailed explanatory letters to the CPC along with necessary documents during the rectification process. This often results in mistakes remaining uncorrected, leading to rectification orders being issued with the same errors as initially identified in the 143(1) process. To address this issue, CPC could enhance its procedures by lifting these restrictions and allowing taxpayers an option to submit detailed responses with documentary evidences which should be processed by CPC team before passing any order u/s 143(1) or u/s 154.

3. Technical Glitches/System Errors

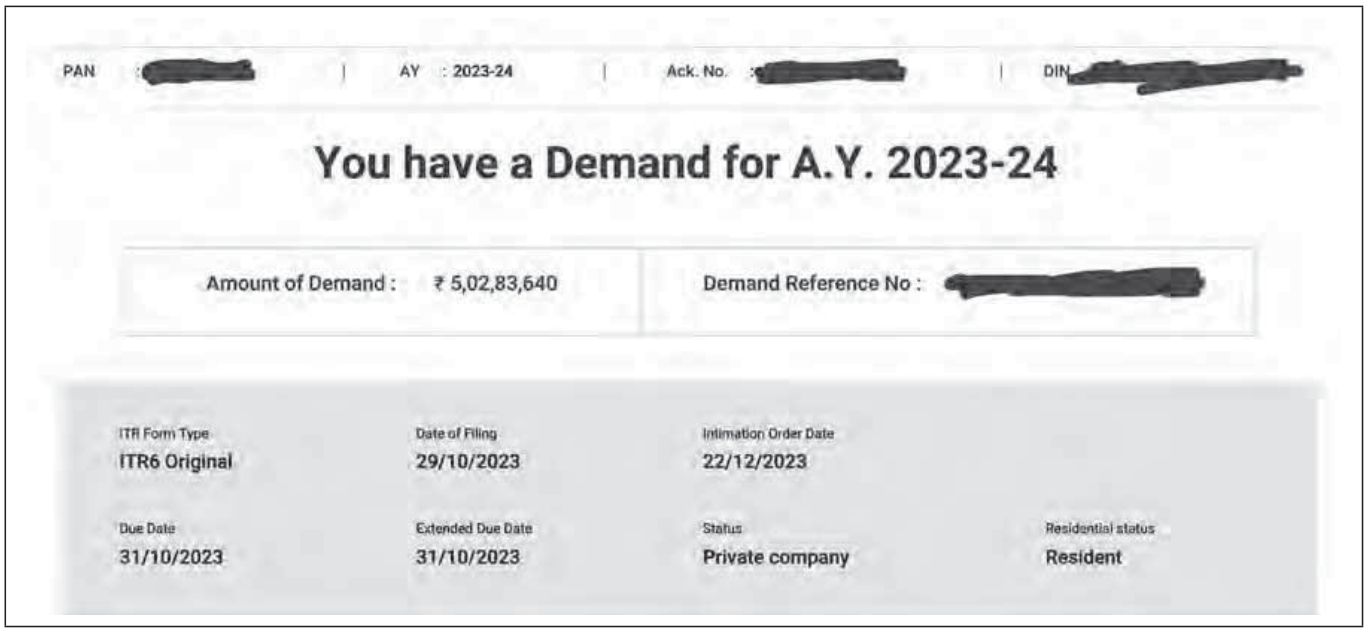
Despite the unprecedented pace of development in CPC's infrastructure, taxpayers still tend to encounter certain technical challenges while performing various actions such as filing online returns, downloading ITRs for different years, checking the status of ITR/rectification processing, or communicating with CPC. These issues lead to inconvenience for taxpayers attempting to file returns, accessing previously filed ITRs, or monitoring their processing status. Example:–

(i) Sometimes it is seen that some technical error prevents ITR or related forms from being uploaded on portal and the error code is not understandable. Tax payers repeatedly verifies the form filled but still have no clue as to what is the error

preventing the ITR from being uploaded. Sometimes such errors are also related to the digital signatures being appended. In such cases, taxpayers approach the CPC customer care which then at back end resolves such errors by taking the system of the tax payers on AnyDesk. This leads to loss of precious time.

(ii) Instances have been seen where regarding any order u/s 143(1)/154, text message is received but no order received by email or on portal. Also, there are cases where such order received by email but not reflected in portal for sometime resulting in delay in taking further action against such order such as filing further rectifications.

(iii) Also, there are instances where taxpayer submits a rectification request in response to section 143(1), and after several days discovers that the outstanding demand has been removed. However, the status of the rectification request still indicates that it is being processed. Refer sample screen shots below:



RETURN DETAILS

Sl.No.	Particulars	Reporting Heads	Amount in ₹ As provided by Taxpayer	Amount in ₹ As Computed u/s 143(1)
01	Taxation option	Opted for 115BAA	Yes	Yes
02	Income Details	Total Income	2,22,08,780	22,20,60,430
03	Tax Details	Tax Liability after relief	55,48,132	5,11,48,080
04	Interest and Fee Payable	Total Interest And Fee (234A, 234B, 234C & 234F)	0	61,75,520
05	Pre-paid Taxes	Total Taxes Paid (Advance Tax, TDS, TCS, Self Assessment Tax)	70,50,127	70,39,960
06	Tax Payable	Net Amount Payable Click Here to E-PAY TAX	0	5,02,83,640

A.Y. 2023-24

Filing Type
Rectification

- Under Processing
  Mar 29, 2024
- Return is no more in PFA and it is under processing
  Jan 19, 2024
- Under Processing
  Jan 19, 2024

View More

ITR : **ITR-6**
Acknowledgement No : [redacted]
Filed By : **Director**
Filing Date : **Dec 23, 2023**
Filing Section : **154**

View Details

Download Form

SS-IX-28

We understand that these issues are rectifiable by system engineers by making appropriate upgradation/changes in the system. We look forward to appropriate action by technological team of CPC.

4. Communication Gap

Despite the provision of toll-free numbers, email addresses, and an online grievance portal by the CPC for taxpayers to communicate and address grievances, challenges persist in effectively engaging with the CPC. Taxpayers do encounter difficulties in obtaining updates on their returns, seeking clarification on processing issues, or resolving discrepancies. The current communication channels often lack direct engagement with the technical team at the CPC. Customer care representatives typically acknowledge the concerns raised by taxpayers and assure them that their feedback will be forwarded to the relevant team. However, there is a need for more interactive communication methods, such as video conferencing, to facilitate direct discussions between taxpayers and the technical team responsible for addressing their concerns.

5. Lack of detailed justification for additions/disallowance made/sustained in the order by CPC u/s 143(1)/154

The processing of income tax returns and rectifications is conducted mechanically. The taxpayer's response to proposed adjustments under section 143(1)(a) or along with rectification applications is neither considered nor is any response provided for rejecting the taxpayer's contention. Orders issued by the CPC under sections 143(1) or 154 does not mention detailed reason/justification for making additions/disallowances and for rejecting taxpayer’s response to such proposed adjustments. Such orders passed u/s 143(1)/154 should include detailed comments from the relevant officer who reviewed the taxpayer's response to notices under section 143(1)(a).

6. Provide mechanism for review of orders passed by CPC by higher authorities

It may please be noted that at present assessee has not option other than to file an appeal before CIT(A) against the wrongful additions made by CPC vide order u/s 143(1) or wrongful rectification order passed u/s 154. Many times, the quantum and demand/stake involved for the tax payer is very high and the issues involved is clearly and apparently in favour of assessee. In such cases the assessee

has to go through the hardship of long drawn litigation before CIT(A). There must be some mechanism of review of the orders of CPC by a higher reviewing authority atleast in the cases of high stake say exceeding 10 lakhs so that unnecessary litigation can be curtailed.

7. Orders u/s 143(1) passed without opportunity

It has been noticed in many cases that CPC has passed orders u/s 143(1) and made additions/disallowances without first issuing notice u/s 143(1)(a) for proposed adjustments and providing opportunity to the assessee to file its response against the adjustment to be made. Such orders and additions made therein are unlawful and against the well-known principle of natural justice. Although section 143(1) itself provides that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode, still sometimes it is not followed religiously. Such orders passed does not stand in appeal before appellate authorities. Please refer to some of the ITAT judgements mentioned below wherein such orders of CPC are quashed/set aside:

- *Arham Pumps vs. DCIT_140 taxmann.com 204 (ITAT Ahmedabad)*
- *ITO vs. Camillia Educare Trust_152 taxmann.com 304 (ITAT Kolkata)*

Suggestion: CPC should enhance their systems to ensure that whenever adjustments to an assessee's return are proposed, whether regarding income or tax calculations, the assessee is given an opportunity to respond in each case.

8. Option should be provided to transfer the rectifications rights to Jurisdictional Assessing Officer (JAO)

Many times, it is seen that the mistakes involved in orders passed by CPC is such that it would have been corrected if the assessee had chance to file detailed reply with documents and explain the case to the officer in personal interaction. However, CPC being computerised processing lack personal interface. Thus, there is need of a system/ mechanism whereby the assessee has option to get its case transferred to the JAO on a click of a button in its e-filing portal. At present there is no such option available on online portal. At present assessee has to visit the office of its JAO and request him to call for rectification rights from CPC which sometimes takes too much time.

9. Challan Correction Option

The taxpayers sometimes make inadvertent mistakes while depositing the taxes like assessment year, Tax Applicable (Major Head), and Type of Payment (Minor Head) wrongly mentioned. Due to such inadvertent mistakes, the taxpayers have to suffer unwanted tax demands. The process of correction of challans by CPC is available only from AY 2020-21 onwards. So, for mistakes in challans prior to AY 2020-21, the taxpayers are facing issues in getting demands rectified from CPC in such years. Therefore, CPC should come with an option to rectify the challans of years prior to AY 2020-21.

10. Disclosure of information of Carried forward losses & Mat Credit

As present intimation order u/s 143(1) does not provide information as to how much brought forward/carried forward losses or MAT credit available to assessee as per the records of Income Tax Department which leads to unnecessary litigation at a later stage when the assessee adjusts the said losses/Mat Credit due to difference of amount as per the records of department and as per the assessee.

Suggestion: CPC should include a table in order u/s 143(1) providing the details of brought forwarded/carried forwarded losses

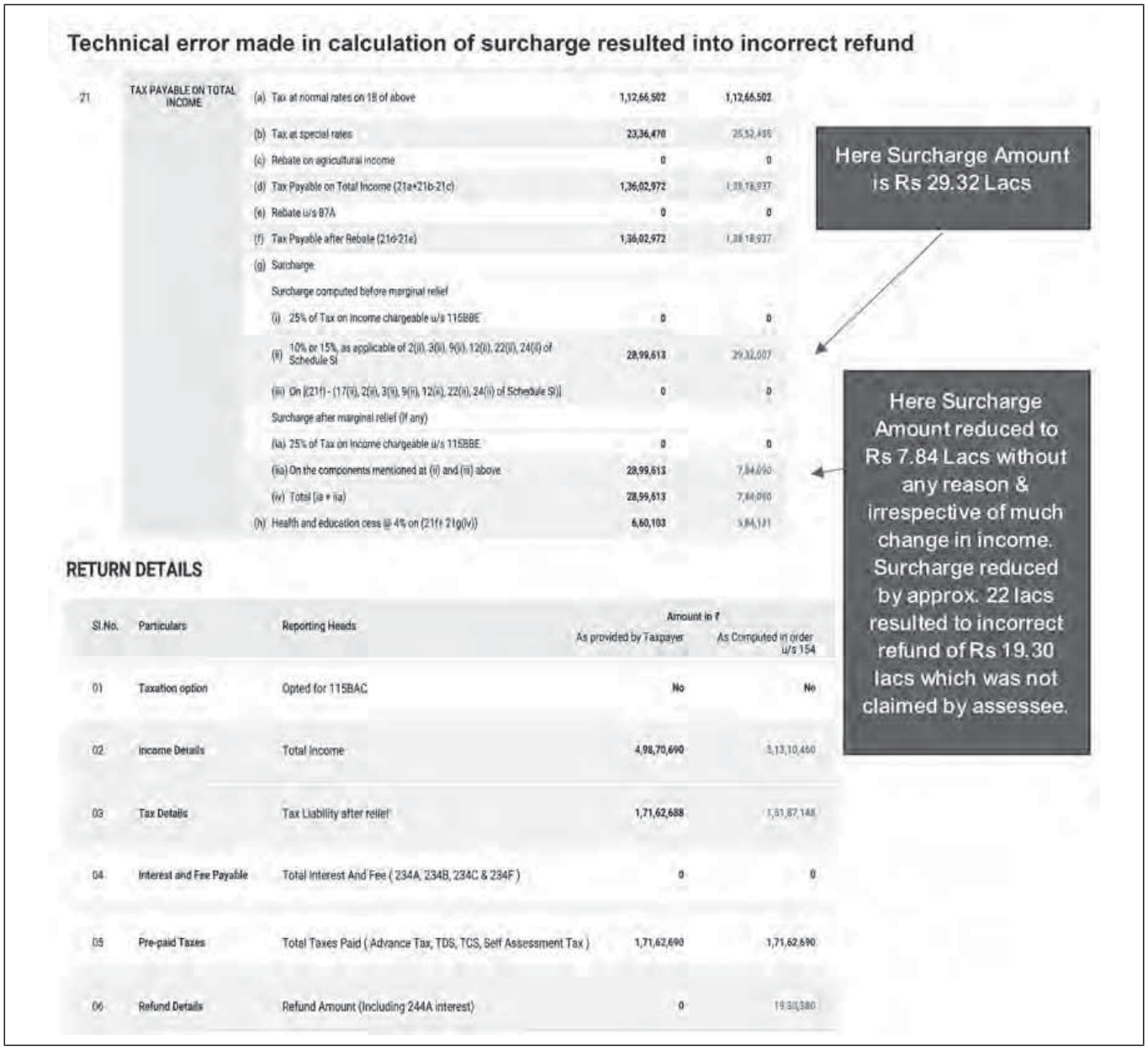
and MAT credit available to the assessee for set off so that the assessee can take further action in case of any difference.

Common mistakes seen in intimation order passed u/s 143(1) or rectification order passed u/s 154 by CPC

Mistakes in Total Income Calculation

Though in vast majority of cases returns are processed correctly, there are still instances where, perhaps due to technical glitches in the system or other factors, CPC's tax computations are inaccurate resulting in incorrect demands and lower refunds. For example, please refer to the following relevant extract from intimation processed in some cases:

Technical error made in calculation of surcharge resulted into incorrect refund



21	TAX PAYABLE ON TOTAL INCOME	(a) Tax at normal rates on 18 of above	1,12,66,502	1,12,66,502
		(b) Tax at special rates	23,36,470	25,52,435
		(c) Rebate on agricultural income	0	0
		(d) Tax Payable on Total Income (21a+21b-21c)	1,36,02,972	1,38,18,937
		(e) Rebate u/s 87A	0	0
		(f) Tax Payable after Rebate (21d-21e)	1,36,02,972	1,38,18,937
		(g) Surcharge		
		Surcharge computed before marginal relief		
		(i) 25% of Tax on income chargeable u/s 115BBE	0	0
		(ii) 10% or 15%, as applicable of 2(ii), 3(ii), 9(ii), 12(ii), 22(ii), 24(ii) of Schedule SI	28,99,613	29,32,007
		(iii) On [(21f) - (17(ii), 2(ii), 3(ii), 9(ii), 12(ii), 22(ii), 24(ii) of Schedule SI)]	0	0
		Surcharge after marginal relief (if any)		
		(ia) 25% of Tax on income chargeable u/s 115BBE	0	0
		(iia) On the components mentioned at (ii) and (iii) above	28,99,613	7,84,090
		(iv) Total (ia + iia)	28,99,613	7,84,090
		(h) Health and education cess @ 4% on (21f+ 21g(iv))	6,60,103	3,84,121

RETURN DETAILS

Sl.No.	Particulars	Reporting Heads	Amount in ₹ As provided by Taxpayer	Amount in ₹ As Computed in order u/s 154
01	Taxation option	Opted for 115BAC	No	No
02	Income Details	Total Income	4,98,70,690	5,13,10,460
03	Tax Details	Tax Liability after relief	1,71,62,688	1,51,87,148
04	Interest and Fee Payable	Total Interest And Fee (234A, 234B, 234C & 234F)	0	0
05	Pre-paid Taxes	Total Taxes Paid (Advance Tax, TDS, TCS, Self Assessment Tax)	1,71,62,690	1,71,62,690
06	Refund Details	Refund Amount (Including 244A interest)	0	19,30,380

Technical error made in calculation of surcharge resulted into huge incorrect demand

RETURN DETAILS

Sl.No.	Particulars	Reporting Heads		Amount in ₹ As provided by Taxpayer	Amount in ₹ As Computed u/s 143(1)
01	Taxation option	Opted for 115BAC		Yes	Yes
02	Income Details	Total Income		3,47,20,430	3,48,72,040
03	Tax Details	Tax Liability after relief		92,81,145	3,30,31,990
04	Interest and Fee Payable	Total Interest And Fee (234A, 234B, 234C & 234F)		1,19,354	45,89,930
05	Pre-paid Taxes	Total Taxes Paid (Advance Tax, TDS, TCS, Self Assessment Tax)		94,00,500	94,00,500
06	Tax Payable	Net Amount Payable	Click Here to E-PAY TAX	0	2,82,21,420

22	TAX PAYABLE ON TOTAL INCOME	(a) Tax at normal rates on 16 above	12,22,863	12,22,863
		(b) Tax at special rates	59,18,693	59,49,016
		(c) Rebate on agricultural income	0	0
		(d) Tax Payable on Total Income (22a+22b-22c)	71,41,556	71,71,879
		(e) Rebate u/s 87A	0	0
		(f) Tax Payable after Rebate (22d-22e)	71,41,556	71,71,879
		(g) Surcharge		
		Surcharge computed before marginal relief		
		(i) 25% of Tax on income offered u/s 115BBE in Schedule SI	0	0
		(ii) 10% or 15%, as applicable of 2(ii), 3(ii), 9(ii), 12(ii), 22(ii), 24(ii) of Schedule SI	17,82,622	17,90,202
		(iii) On [(22f) - (17(ii), 2(ii), 3(ii), 9(ii), 12(ii), 22(ii), 24(ii) of Schedule SI)]		
		Surcharge after marginal relief (if any)		

Here Surcharge Amount is Rs 17.90 Lacs

Sl.No.	Particulars	Reporting Heads	Amount in ₹ As provided by Taxpayer	Amount in ₹ As Computed u/s 143(1)
		(ia) 25% of Tax on income chargeable u/s 115BBE	0	0
		(iia) On the components mentioned that (i) and (iii) above	17,82,622	2,45,89,650
		(iv) Total (ia + iia)	17,82,622	2,45,89,650
		(h) Health and education cess @ 4% on (22f+22g(iv))	3,56,957	12,70,461
		(i) Gross Tax Liability [22i=(22f+22g(iv)+22h)]	92,81,145	3,30,31,990
23		Gross tax payable (higher of 21d and 22i)	92,81,145	3,30,31,990
		(a) Tax on income without including income on perquisites referred in section 17(2)(vi) received from employer, being an eligible start-up referred to in section 80-IAC (Schedule Salary)	92,81,145	3,30,31,990
		(b) 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 (Schedule Salary)	0	0
		(c) Tax deferred from earlier years but payable during current AY (total of col 7 of schedule Tax deferred on ESOP)	0	0
24		Credit u/s 115JD of tax paid in earlier years (applicable if 22i is more than 21d) (5 of Schedule AMTC)	0	0
25		Tax payable after credit u/s 115JD [25=(23a+23c-24)]	92,81,145	3,30,31,990

Here Surcharge Amount increased to Rs 2.46 Crores without any reason & irrespective of much change in income. Surcharge increased by approx. 2.28 Crores resulted to incorrect huge demand of Rs 2.82 Crores.

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11. Denial of TDS Credit for TDS Credit Transfer

Sometimes it happens that TDS on any income is deducted in the name of a person say A but the corresponding income is taxable in the hands of other person say B. In such cases section 199 r.w Rule 37BA provides that the credit of TDS deducted be given to other person B who is showing the corresponding income in his ITR. While ITR forms also permit a taxpayer (A) to transfer TDS credit to another taxpayer (B) who includes the income in its return, the CPC does not allow this credit during processing of ITR of such other taxpayer (B). As a result, demands are raised against the taxpayer (B). This needs to be looked into and corrected.

12. Denial of Tax Credit in Returns filed pursuant to Amalgamation/demerger etc.

In cases of amalgamation/mergers/ demergers, the amalgamated company or resulting company files its income tax return incorporating the incomes of the amalgamating company or demerged company and claims the credit of TDS/TDS deducted or advance tax/ self-assessment tax paid by the amalgamating/ demerged company. In such cases, the tax payers face an issue that the credit of such TDS/TCS/Advance tax/Self-assessment tax is not allowed by CPC while processing the ITR of amalgamated/resulting company as the corresponding TDS is not reflected in Form 26AS of such amalgamated/resulting company but the same is reflected in the Form 26AS of amalgamating company or demerged company. Such denial of tax credits results in raising of substantial unlawful demands. The ITR form already includes details of such restructuring including Name/PAN etc of amalgamating/ demerged companies. Therefore, there should be an automated process for transferring tax credits in cases of amalgamation/demerger, where details of the amalgamating/demerged companies are provided in the ITR form.

13. Benefit of lower tax rate u/s 115BAA/115BAB etc not allowed despite filing requisite forms

Section 115BAA/115BAB provides for lower tax rates to the companies subject to the fulfilment of the prescribed conditions and subject to filing of Form 10IC/10ID alongwith ITR in the first year when such option is opted. Instances have been seen where CPC has not computed tax liability as per the beneficial provisions of sec. 115BA/115BAB even if the requisite forms are filed within the due dates and the assessee has duly selected the option of 115BAA/115BAB in ITR form. This is despite the fact that in past years such benefit was duly allowed. It is not known as to how such benefit can be denied in subsequent years when in past/first year it was duly allowed. This is completely a system error in processing by CPC resulting in huge demands and hardship to the assessee. We have given below some instances:

Example:

Assessee filed its return for AY 2023-24 in November 2023. Thereafter, the assessee received intimation u/s 143(1) in December 2023 raising demand of ` 3.54 Crores denying the benefit of lower rate u/s 115BAB despite the fact that the assessee has claimed and CPC has allowed the benefits of concessional tax rates as per section 115BAB in AY 2022-23 i.e. preceding assessment year. Relevant extracts of intimation order u/s 143(1) passed for AY 2023-24 are as under:

RETURN DETAILS

Sl.No.	Particulars	Reporting Heads		Amount in ₹ As provided by Taxpayer	As Computed u/s 143(1)
01	Taxation option	Opted for 115BAB		Yes	No
02	Income Details	Total Income		17,50,95,920	17,50,95,920
03	Tax Details	Tax Liability after relief		3,00,46,460	6,11,85,518
04	Interest and Fee Payable	Total Interest And Fee (234A, 234B, 234C & 234F)		6,85,563	50,10,859
05	Pre-paid Taxes	Total Taxes Paid (Advance Tax, TDS, TCS, Self Assessment Tax)		3,07,32,035	3,07,32,035
06	Tax Payable	Net Amount Payable	Click Here to E-PAY TAX	0	3,54,64,340

Relevant extracts of intimation order u/s 143(1) passed for preceding AY i.e. AY 2022-23 are as under:

RETURN DETAILS

Sl.No.	Particulars	Reporting Heads	Amount in ₹ As provided by Taxpayer	As Computed u/s 143(1)
01	Taxation option	Opted for 115BAB	Yes	Yes
02	Income Details	Total Income	3,95,35,190	3,95,35,190
03	Tax Details	Tax Liability after relief	67,84,238	67,84,238
04	Interest and Fee Payable	Total Interest And Fee (234A, 234B, 234C & 234F)	2,35,170	2,35,172
05	Pre-paid Taxes	Total Taxes Paid (Advance Tax, TDS, TCS, Self Assessment Tax)	70,19,408	70,19,408
06	Balance		0	0
07	Net Amount Payable / Refundable		0	0

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Furthermore, when the assessee applied for rectification u/s 154, then in the order passed u/s 154 also, CPC has not provided the benefit of 115BAB resulting into huge tax demands. This needs urgent attention and resolution. Screenshot of rectification order u/s 154 is as under:

SUMMARY

Amount in ₹

Sl.No.	Particulars	Reporting Heads	As provided by Taxpayer	As Computed in order u/s 154
01	Taxation option	Opted for 115BAB	Yes	No
02	Income Details	Total Income	17,50,95,920	17,50,95,920
03	Tax Details	Tax Liability after relief	3,00,46,460	6,11,85,518
04	Interest and Fee Payable	Total Interest And Fee (234A, 234B, 234C & 234F)	6,85,563	50,10,859
05	Pre-paid Taxes	Total Taxes Paid (Advance Tax, TDS, TCS, Self Assessment Tax)	3,07,32,035	3,07,32,035
06	Tax Payable	Net Amount Payable Click Here to E-PAY TAX	0	3,54,64,340

14. Wrong additions/disallowances on the basis of matching of ITR with Tax Audit Report (TAR)

Section 143(1)(a)(iv) allows adjustment in income of the assessee based on reporting in TAR. This clause reads as under:

(a) the total income or loss shall be computed after making the following adjustments, namely:—

.....

(iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;

In view of the above provision, during the processing of ITRs, CPC mechanically compares the reporting done in ITR (Allowances and disallowances made) with reporting done in TAR and make additions/ disallowances if any mismatch found between ITR and TAR. Though in many cases such adjustments would be correct but there are vast number of cases where such adjustment is completely wrong on facts. This being the result of computerised processing which has its own limitations. Some examples are outlined below:

a. ***Double addition/taxation:*** Sometime it happens that a particular disallowance is reported by Tax Auditor under one provision whereas the same was disallowed by the tax payer in ITR under some other provision.

Example:- Provision for gratuity reported to be disallowed by Tax auditor u/s 40A(7) but the same was disallowed by taxpayer in ITR u/s 43B. In such cases, CPC mechanically comes to the

conclusion that the assessee has not disallowed the amount u/s 40A(7) as reported by the Tax Auditor and makes the addition in intimation u/s 40A(7). And the problem is that such addition is made ignoring the reply filed by the taxpayer in response to notice u/s 143(1)(a) that it has already disallowed the same though under different provision being 43B. It is the trite law that there cannot be double taxation of same amount. Refer Hon'ble Supreme Court's ruling in case of ***Laxmipat Singhania vs. CIT [1969] 72 ITR 290***.

In such cases, though taxpayers should also be cautious that they should make disallowance under same head as done by tax auditor, but CPC also should not ignore the submissions of the assessee that it has already disallowed the item under different head/section.

b. Addition u/s 41 for cessation of trading liability: Section 41 requires any profit or benefit obtained from the cessation or remission of trading liabilities previously claimed as deductions to be treated as taxable income in the year of remission or cessation. . For example – Write back of trading liabilities shall be taxable as per Section 41.

Disclosure of Write back amount in Audited Financials – Trading liabilities written back is generally credited to P/L and thus becomes the part of Profit before taxes (PBT) as per P/L.

Disclosure in TAR – Tax Auditor has to report profit chargeable to tax u/s 41 in Clause 25 of TAR and therefore, Tax Auditor reports the written back amounts in the said clause.

Disclosure in ITR – Assessee is required to report "Any amount of profit chargeable to tax under section 41" in clause 14 of Part A -OI of ITR and in clause 20 of Schedule BP of ITR. However, as the Schedule BP starts with PBT which already includes the written back amount, so there is no need to report the said amount again in the in clause 14 of Part A -OI of ITR and in clause 20 of Schedule BP of ITR because the same will result into double taxation of the same amount.

Issue in processing of ITR – The issue here is that CPC compares the amount reported at Clause No. 25 of TAR with the amount reported in Clause 14 of Part A-OI of ITR and in clause 20 of Schedule BP of ITR. So, when CPC compares the said clauses of TAR & ITR, it proposes addition of amount reported in clause 25 of TAR due to the reasons that nothing was found reported at in clause 14 of Part A-OI of ITR and in clause 20 of Schedule BP of ITR.

Suggestion: CPC should come up with a solution either in form of making changes in clause no. 25 of Tax Audit Report by specifying that only amount which are not included in P/L are required to be reported or make changes in format for tax auditor to specify for each amount being reported in clause 25 of TAR whether the said amount is included in PBT or not and then compares the amount which are not included in PBT with amount reported at Clause 14 of Part A-OI of ITR & in clause 20 of Schedule BP of ITR. This will help in mitigating the hardship caused to assessee in form of addition made for amount reported at clause 25 of TAR leading to double taxation of same amount.

c. ICDS adjustment: Clause 13 of the Tax Audit Report requires Tax Auditor to provide details of adjustments in income

required due to application of income computation and disclosure standards (ICDS) notified under section 145(2). In the TAR, the Tax Auditor has to report for each ICDS, increase in profit, decrease in profit and the net effect on income due to application of each ICDS. Thus, in TAR there is sum total of "increase in income" and "decrease in income" and "net increase/decrease" due to application of ICDS. However, in clause 3a of Part A -OI of ITR related to effect of ICDS, there is no option to report increase in profit, decrease in profit for each ICDS. Rather there is option to only report the net effect only (whether increase or decrease after adjustment). So, the assessee reports the net effect of ICDS adjustments in ITR.

CPC while processing ITR, compares the amount reported in "increase in profit" in TAR (ignoring decrease reported) with the amount reported in clause 3a of Part A -OI of ITR being net effect of ICDS which cannot be the same in any case. Based on such erroneous comparison CPC proposes the addition of the differential amount. CPC ignores the "decrease in profit" amount reported in Tax Audit Report while processing ITR resulting into unlawful additions. Moreover, additions are being made without considering the online response filed by the assessee.

Example

As seen from the following screenshot taken from TAR of an assessee, the Tax Auditor has reported increase in profit of ` 70,44,987, decrease in profit of ` 99,59,463 and net effect of ` 29,14,476 in context of ICDS adjustments. Therefore, as per the Tax Auditor ` 29,14,476 should be reduced from the income of the assessee. Relevant extracts of TAR

(d). Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2) ? **Yes**

(e). If answer to (d) above is in the affirmative, give details of such adjustments:

Sl. No.	ICDS	Increase in profit	Decrease in profit	Net effect
1	ICDS I - Accounting Policies	₹ 70,44,987	₹ 99,59,463	₹ -29,14,476
Total		₹ 70,44,987	₹ 99,59,463	₹ -29,14,476

The assessee has done the right treatment by reporting the figure of ` 29,14,476 clause 3b of Part A-OI of ITR and clause 34 of Schedule BP which resulted in reduction of income by ` 29,14,476 as reported by Tax Auditor. Relevant extracts of ITR are as under:

Part A-OI		**Other Information**	*(optional in a case not liable for audit under section 44AB)*					
OTHER INFORMATION	1	Method of accounting employed in the previous year	(Tick)	R	R	mercantile	0	Cash
	2	Is there any change in method of accounting	(Tick)	R	0	Yes	R	No
	3a	Increase in the profit or decrease in loss because of deviation, if any, as per Income Computation Disclosure Standards notified under section 145(2) [column 11a(iii) of Schedule ICDS]					3a	**Nil**
	3b	Decrease in the profit or increase in loss because of deviation, if any, as per Income Computation Disclosure Standards notified under section 145(2) [column 11b(iii) of Schedule ICDS]					3b	**2914476**

Schedule BP

34	Decrease in profit or increase in loss on account of ICDS adjustments and deviation in method of valuation of stock (Column 3b + 4e of Part A- OI)	34	**2914476**

However, without comparing the net effect of TAR with amount reported in ITR, CPC is comparing the increase in profit figure with the net figure reported in ITR which is incorrect and based on the said comparison, CPC is issuing notices u/s 143(1)(a) proposing the additions as seen from the following screenshot:

Part - A
Adjustments u/s 143(1)(a)

Part - A
Adjustments u/s 143(1)(a)(iv)

Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return-143(1)(a)(iv)

Sl. No.	Particulars	Amount in Income Tax Return	Amount mentioned in Form Annexure 3CD	Proposed adjustment to total income
1	There is inconsistency in amount mentioned at Sl. No. 3(a) of Part A OI "Increase in the profit or decrease in loss because of deviation, if any, as per Income Computation Disclosure Standards notified under section 145(2)" in return as compared to amount mentioned in clause 13 (e) of audit report.	0	7044987	7044987

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Resolution: Solution of the above is simple that CPC must compare the amount reported in "net effect" column in TAR rather than the increase amount only and pursuant to the correct comparison, the said issue will automatically be resolved.

d. Addition of club expenses reported in clause 21 of TAR: Clause 21(a) of the TAR requires Tax Auditor to provide details of various expenses incurred at clubs. In our view, the said clause required only reporting of the club expenses. Such reporting per se does not mean that such expense is disallowable. Many times, it is the contention of the taxpayers that such club expenses are incurred in routine course of their business for business promotion etc and thus duly allowable u/s 37 of the Act.

But CPC while processing of ITR, assumes as if such expenses are disallowable in each case once reported by Tax Auditor. This leads to undue hardship to tax payers and prolonged litigation.

Suggestion: - CPC should not make this addition simply based on reporting in TAR. They should call for history of assessment on such issue. If in past such additions are made and sustained in appeal, then only CPC should make such additions.

Disclaimer

The above summary note is based on our observations in certain cases. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice, or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, howsoever caused or sustained, by the person who relies upon it.

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"We are responsible for what we are, and whatever we wish ourselves to be, we have the power to make ourselves. If what we are now has been the result of our own past actions, it certainly follows that whatever we wish to be in the future can be produced by our present actions; so we have to know how to act."

— Swami Vivekananda

CPC and Tax Demands & Refunds

CA Tarini Chaudhary Tandan

Overview

In today's fast-paced and digital world, the Indian Tax Authorities have ensured that the processing of income-tax returns is equally expeditious and intuitive, through the efficient deployment of the CPC. Over the years, the functions of the CPC have expanded from the mere processing of returns of income, to issuing refunds to taxpayers, processing rectifications etc. With this expanded scope of work of the CPC, the amenities and benefits provided to the taxpayers have been manifold and have enabled the ease of business, which is the overarching objective of the Indian Government.

However, there have been practical challenges faced by the taxpayers on account of the functioning of the CPC, especially in the matter of tax demands and refunds. Some of these challenges are capable of being resolved at the field level itself, whereas others have been escalated to the Higher Courts of law, requiring legal intervention. In order to ensure that the taxpayer obtains the desired result, it is important to be equipped for any kind of situation and to be aware of the resources at the taxpayers' disposal for resolving these complications that arise in tax demands and refunds due to the functioning of the CPC. This article aims to cast light upon some of these issues routinely faced, and the quick-fix solutions that may be used by taxpayers to resolve the same.

The Centralized Processing Centre, better known as 'CPC', has emerged as the rightful flagship unit in the Indian Tax authorities' journey towards digitalization. While CPC is tasked with a horde of different functions, its main raison d'etre i.e., reason for being, is the expeditious processing of returns of income. It is in this parameter that CPC has exceeded expectations – the return processing time has reduced from approximately 14 months (during manual filing) to a mere 10 days this year (as announced by the Hon'ble Finance Minister while presenting the Union Budget 2024). This speedy processing of returns of income has several benefits for the taxpayers, on one hand, in the form of direct credit of refund to their bank account and the Indian Tax authorities, on the other hand, in the form of substantial savings in interest payments.

It goes without saying that the CPC bears the massive onus of accuracy, speed and consistency in the return processing cycle in India. With all high-performing assets, it is expected that there may be some side-effects to its efficient functioning as well, and CPC

is no exception to this, as elucidated in the specific challenges encountered during CPC's functioning in the ensuing paragraphs.

Challenges in CPC's Functioning Leading to Issues in Tax Demands and Refunds

Broadly speaking, due to the rules formulated for the functioning of CPC, taxpayers often face several hurdles that lead to issues in processing of their returns of income. One of the main reasons for this is integration with legacy system i.e., with the Income Tax Department Applications System (ITD Apps) of which the Assessment Systems (AST) was a major component. Other than this, there are several basic issues such as, CPC does not allow any personal hearing, instead, there is only the provision of online submission of taxpayer's reply on the online income-tax portal, which is sometimes not sufficient for the taxpayers to explain their contention. Moreover, while there is only the provision of an online response, even that response is restricted to 500 characters, which impedes the justification that the taxpayer may like to give in support of their tax position. In fact, the CPC does not permit the submission of any documentary proof/evidence that may be furnished by the taxpayer to substantiate its claim. While the reason these facilities are not extended to CPC may be on account of the limited powers of the CPC as defined in Section 143(1)(a) of the Act, however, it poses great difficulties for the taxpayer to correct the faulty intimations issued by the CPC and has a cascading effect on the litigation that is created because of such intimations.

There are several challenges that may be encountered in determination of tax demands and refunds due to CPC's functioning, but for the ease of discussion, the most frequently encountered challenges have been classified in the following three categories: (A) Disclosure related challenges (B) Inherent System challenges (C) Pervasive challenges. Each category of challenges has different instances to demonstrate the nature of issues that occur.

(A) Disclosure Related Challenges

(i) Mismatch of Section 43B Items in Return of Income ('ROI') and Tax Audit Report ('TAR')

The format for the ROI and TAR is fixed and released by the Income Tax Authorities periodically. These forms, particularly, the ROI and TAR, contain several inter-related disclosures i.e., pertaining to the same items of disallowance/allowance. One such item of disallowance that is often identified by CPC as an inconsistency due to different disclosure treatments adopted in the ROI and TAR is disallowance/ allowance under Section 43B of the Act.

At this juncture, it is important to understand the operation of Section 43B of the Act, whereby certain items of expenditure, such as contribution to gratuity fund, bonus, interest on loan from bank etc. are permitted only on payment basis before the due date of filing the ROI. Accordingly, while accounting principles require the recognition of such expenses on accrual basis, when it comes to filing the ROI, the provision for expense created is normally disallowed whereas the sums actually paid are treated as an allowance from taxable income.

The problem occurs when the taxpayer adopts the above method of disclosure in the ROI but chooses to present this adjustment differently in the TAR. This implies that the taxpayer may disclose the opening and closing balances in the TAR in view of the specific language of Clause 26 of the TAR, as the net impact of the opening and closing balances shall remain the same i.e., yield the

same result as arising in the manner of disclosure adopted by the taxpayer in the ROI. In other words, irrespective of the different manner of presentation adopted in the ROI and TAR, the net impact, i.e., the net disallowance/ allowance on the computation of taxable income arising from Section 43B items shall remain the same.

However, the CPC does not have the capability to view this adjustment and difference in disclosure between the ROI and TAR on a holistic basis and often raises an inordinate demand on account of mismatch in Section 43B items in the ROI vis-à-vis the TAR.

Potential resolution: Taxpayers may consider aligning the disclosures in the ITR and TAR as far as Section 43B items are concerned to mitigate the risk of demand being raised by the CPC due to difference in disclosures.

(ii) Mismatch in Income Computation & Disclosure Standard ('ICDS') disclosures in ROI and TAR

Stemming from the same core issue highlighted above, i.e., difference in disclosures in ROI and TAR, is another such adjustment that pertains to the net impact of ICDS on the taxable income of the taxpayer. ICDS refers to 10 tax accounting standards that were notified in 2016 and are to be followed by taxpayers from AY 2017-18 onwards. ICDS specifically applies to those taxpayers who follow mercantile system of accounting and is applicable for 'business income' and 'other income'.

ICDS adjustments are identified as an inconsistency in intimations issued by the CPC due to the difference in manner of disclosure in ROI and TAR. Clause 13(e) of TAR requires ICDS adjustments to be reported in the columns namely 'increase in profit', 'decrease in profit' and 'net effect' on taxable profit. Contrary to this, in the ROI, the ICDS Schedule of ITR Form only provides an option to report the 'net effect' amount. In the intimations issued by CPC, the amount reported in 'net effect' column in the ICDS schedule of ROI is being matched with the 'increase in profit' column reported in TAR instead of 'net effect' column, thereby leading to a mismatch and consequential inordinate, often large demands. Irrespective of the method of disclosure, the net impact on the taxable income of the taxpayer on account of ICDS adjustments remains the same. Similar to the above case, the CPC is unable to comprehend this adjustment due to difference in disclosure formats for ICDS adjustments between the ROI and TAR.

Potential resolution: Taxpayers may consider alternative methods of disclosure in the ITR, such as disclosing the 'decrease in profit' under the field of 'any other sum allowable as deduction', to align the same with the amounts appearing in the TAR. This is likely to reduce the possibility of a demand being raised by the CPC on account of alleged mismatch in ICDS adjustments between the ROI and TAR.

(iii) Mismatch in disclosure of GST component in stock valuation in ROI and TAR

On the same lines as the above issue, there is one more common adjustment that is often selected by the CPC based on different disclosure treatments in the ROI and TAR. This adjustment pertains to the GST component in stock valuation of the taxpayer. In this respect, it is pertinent to note that

there are two methods of accounting for GST component in stock valuation i.e., exclusive method of accounting (*where sales and expense is recorded exclusive of GST) and inclusive method of accounting (where sales and expense is recorded inclusive of GST*). Irrespective of the method adopted, the net result/ impact on the taxable income of the taxpayer is the same.

Herein, the mismatch arises because of different principles regulating the disclosures in TAR and ROI. Section 145A of the Act requires 'profits and gains from business and profession' to be computed after taking into consideration tax, duty, cess and fees, thereby including GST as well. However, for taxpayers preparing financial statements in accordance with Indian Accounting Standards, IND-AS 2 requires the adoption of exclusive method of accounting. Accordingly, such taxpayers do not make any adjustment for GST in the ROI, but disclose the output GST liability, input tax credit utilized, and differential GST liability paid in Clause 14(b) of the TAR.

CPC picks up on this mismatch to raise a corresponding tax demand, without appreciating that the net impact on taxable income is the same in both scenarios, irrespective of the method of accounting adopted for GST component in stock valuation. This is especially relevant for those taxpayers who discharge the output GST liability in full either through input tax credit or payment of differential GST liability.

Potential resolution: Taxpayers may consider disclosing the increase in profit/decrease in profit in 'Part A – Other Income' of the ROI in line with the amounts disclosed in the TAR, so as to demonstrate that both compliances are in sync as far as GST component in stock valuation is concerned.

(iv) Mismatch in gross receipts as per ROI and Form 26AS

Variance in gross receipts as per ROI and Form 26AS may arise due to several reasons such as reimbursements, difference in manner of computation where foreign income is concerned (application of Rule 115 of the Income-tax Rules, 1962), reversals/returns on which TDS is deducted, TDS returns not filed by the customers etc. Due to these practical reasons, there is often a difference in the gross receipts reported in the ROI and the gross receipts as per Form 26AS.

In fact, this situation is specifically covered in Section 143(1)(a)(vi) of the Act, as per which one of the adjustments to be made during processing of the ROI is the addition of income appearing in Form 26AS, which has not been included in computing the total income of the taxpayer, after giving the taxpayer an opportunity of being heard. In certain cases, instead of exercising this provision, the ROI may be treated as a defective return of income u/s 139(9) of the Act, which is potentially problematic for a taxpayer as an order u/s 139(9) of the Act is not appealable before the CIT(A) as per Section 246A of the Act.

There is a judgement on this issue in the case of John Deere India Private Limited rendered by the Pune Tribunal [ITA No. 178/PUN/2021], wherein DCIT(CPC) was reprimanded for issuing order u/s 139(9) of the Act on account of mismatch of income as per ROI and Form 26AS, thereby leaving the taxpayer remediless. It was held

that no technicality can be allowed to operate as a speed breaker in the course of dispensation of justice, and so the CIT(A) was directed to grant the taxpayer an opportunity of being heard in this regard. Thus, such mismatches of gross receipts as per ROI and Form 26AS can have a significant impact on the tax liability, if not properly dealt with.

Potential resolution: Taxpayers may consider monitoring the Form 26AS on a frequent basis to map it with the gross receipts to be disclosed for the purposes of computing taxable income and coordinate with customers on a real-time basis for ensuring that sums not subject to TDS (returns, reversals etc.) are not processed after withholding taxes on the same.

(B) Inherent System Challenges

(i) Non-reflection of credits in the system

One of major pain points of several taxpayers is the non-reflection of credits of taxes paid in the system. This may be in the form of denial of self-assessment tax credit or non-reflection of necessary TDS/TCS credits. In certain cases, entries of challan/recovery details are not updated in the system. Further, there may be mismatch in details of the earlier refunds issued available with the Income Tax Authorities vis-à-vis the information with the taxpayers.

This genuine difficulty was recognized by the Delhi High Court in the case of Court on its Own Motion [W.P. (C) 2659/2012 & W.P. (C) 5443/2012] pursuant to which Instruction No. 5/2013 [F. No. 275/03/2013-IT(B) dated 8 July 2013] was released wherein it was directed that a taxpayer who presents requisite details in the form of TDS certificates as evidence against any mismatched amount, ought to be permitted credit of the same upon verification by the Assessing Officer.

On similar lines, pursuant to the above judgement, Instruction No. 11/2013 [F. No. 275/03/2013-IT(B) dated 27 August 2013] identified that the unmatched challans in TDS statements arises as TDS statements prior to FY 2011-12 were processed by the Jurisdictional TDS Assessing Officers whereas statements pertaining to FY 2012-13 onwards are processed by CPC(TDS). This Instruction directed CPC(TDS)/AO(TDS) to immediately issue letters to deductors in whose cases TDS challans were unmatched, with the view to rectify and correct these challans.

Potential resolution: Taxpayers may resort to raising CPGRAMS before the concerned authority for obtaining credit of prepaid taxes. Alternatively, taxpayers may request the jurisdictional assessing officer to raise a ticket in the relevant module to the concerned authority on the ITBA Helpdesk. Further, a mail can also be sent by the jurisdictional assessing officer to the concerned authority for escalation of the issue, on the request of the taxpayer.

(ii) Adjustment of refund due with non-existent demand

In situations where processing of refund itself takes considerable time; adjustment of refund determined due to the taxpayer against a non-existent demand poses grave challenges for the taxpayer. Not only is the taxpayer deprived of the refund, but now has to make additional efforts to demonstrate that there was no demand that existed in the first place.

There have been genuine cases of taxpayers facing difficulties due to such actions of the CPC. The Delhi High Court in the case of Court on its Own Motion [W.P. (C) 2659/2012] recognized this as an apparent, real and enormous problem. It held that this issue was escalated because of centralized computerization and problems associated with the incorrect and wrong data uploaded on the system. The taxpayers affected by the wrong and incorrect data of 'past arrears' amounted to INR 2.33 Lakh Crores for the period prior to 1 April 2010, as per the above decision passed in August 2012.

When these matters reach higher levels of adjudication, it is seen that the Courts tend to side with the taxpayer in lieu of the inconvenience caused to them. For instance, the Delhi High Court in the case of Clix Capital [W.P. (C) 9203/2023] dealt with a situation where a refund was determined for AY 2022-23 and was adjusted with past settled demand pertaining to AY 2007-08. Directions were issued for refund to be processed within six weeks of the decision. Similar directions for processing of refund were issued by the Delhi High Court in the case of Nokia Solutions [W.P. (C) 10342/2023], wherein determined refund for AY 2010-11 was adjusted with non-existent demand of AY 2010-11 and incorrect demand of AY 2021-22, causing undue hardship to the taxpayer.

Potential resolution: Apart from adopting the steps outlined in part (B)(i) above, the taxpayer may place reliance on Instruction No. 6/2013 [F. No. 312/53/2013-OT dated 10 July 2013], which was released pursuant to the Delhi High Court decision in Court on its *Own Motion (supra)*. As per this instruction, all cases of adjustment of refund with past arrears are to be transferred to the Assessing Officers, who are required to follow the due procedure and process laid down in Section 245 of the Act. The two-stage process includes providing the taxpayer an opportunity to respond to such proposed adjustment and passing of an order u/s 245 of the Act within the prescribed time-frame after considering the reply of the taxpayer.

(iii) Restriction over rectification rights

Primarily, rectification rights are with the CPC for processed returns. Once the intimation is issued, if there is any error/mistake in the same, the taxpayer can easily raise a "reprocessing request" on the online income-tax portal. However, when the matter is selected for scrutiny, the rectification option available with the CPC is disabled. Practically, this makes sense as the jurisdictional assessing officer who is already looking through the records of the taxpayer is best placed to rectify any errors/mistakes therein.

Nonetheless, the grievance in this situation arises when the rectification rights are disabled for the CPC but are not transferred to the jurisdictional assessing officer. This places the taxpayer in an impossible situation as the taxpayer is unable to apply for a rectification either through the CPC or through the jurisdictional assessing officer.

Potential resolution: Taxpayers may exercise the option of filing grievance/ e-Nivaran on the online income-tax portal requesting for transfer of jurisdictional rights to the jurisdictional assessing officer.

(iv) Manual issue of refunds

One of the objectives of setting up CPC was also to ensure expeditious credit of refunds directly to the taxpayers upon successful processing of returns of income. However, there were certain situations encountered whereby issuance of refund electronically from the system was not possible. While there is a manual order functionality already available in the system, it was seen that in many situations, even after uploading of order in the system, there was an issue in processing the refund thereafter. In this regard, ITBA – Assessment Instruction No. 11 dated 18 June 2019 addresses the issues of manual processing of refunds.

As per this Instruction, a positive illustrative list of cases is defined whereby refund is unable to be issued from the system such as refund to representative of non-resident assessee, refund to successor of business in amalgamation, refund to foreign national not having bank account in India etc. This list contains a residuary clause as per which any other situation wherein refund cannot be issued through system may be considered for manual issue of refund.

For instance, in the case of Macrotech Developers Limited [Writ Petition (L) No. 33920 of 2023], the Bombay High Court acknowledged that refund determined was unable to be issued to the assessee due to technical glitches faced by CPC and accordingly, directed the assessing officer to issue the refund through manual order. One of the challenges associated with manual issue of refund is that there is no timeline associated with it and so, it can take a considerable amount of time for such refund to be released.

Potential resolution: ITBA – Assessment Instruction No. 11 dated 18 June 2019 provides certain safeguards and best practices to be followed during manual issue of refunds. This includes a four-tier approval for such manual issue of refund from the assessing officer, additional commissioner of income-tax, commissioner of income-tax and chief commissioner of income-tax. Further, matter can be escalated to DGIT(Systems) or PCIT(ITBA) in case there are challenges being encountered in manual issue of refunds.

(C) Pervasive Challenges

(i) Lack of coordination between Assessing Officer and CPC

With the overarching goal of digitalization of the Indian Tax department, all proceedings are slowly being migrated to the online income-tax portal. This trajectory has been gradual and centered around ensuring that all parties involved are prepared for this transition. However, in view of significant changes to the functioning of the Indian Tax Authorities, there are certain issues faced between the officers at the field level and the system.

Where the orders are processed through the system, there is lesser room for error. However, where the proceedings are conducted by the assessing officer who is then required to upload the order on the system, it is often seen that there is a miscommunication between the assessing officer and the CPC which results in inconsistent information, absence of details, mistakes or errors in the orders uploaded etc. due to which the taxpayer ends up facing a multitude of challenges.

One such case was examined by the Delhi High Court in the matter of Intertek India Private Limited [W.P.(C) 6361/2021] whereby the jurisdictional assessing officer had passed a rectification order, however, due to some technical glitches, the credits allowed in the rectification order were not granted by the CPC. Accordingly, the taxpayer had to file several rectification applications and was denied the rightful refund for a period of 4 years. The Delhi High Court adopted a stern view here and directed that the issue of lack of coordination between the assessing officer and the CPC ought to be examined at the highest level. Thereafter, it was directed that this issue was to be presented before the Chairman, CBDT so that a proper standard operating system is put in place and orders passed by the Assessing Officer are given effect to within a time frame and no inconvenience is caused to the assessee as well as to the Court.

Potential resolution: While the above standard operating system is developed, the taxpayer may place reliance on Instruction No. 3/2013 [F. No. 225/76/2013/ITA.II dated 5 July 213] released pursuant to the decision of the Delhi High Court in the case of Court on its Own Motion [W.P. (C) 2659/2012]. It provides guidelines for coordination between the assessing officer and CPC, especially in the context of rectifications whereby, CPC is required to identify whether action can be taken on rectification applications filed by itself and update the same within the prescribed time-frame. If not, the rectification applications are to be passed to the assessing officer and the assessing officer is required to dispose off the same and update it in the online rectification register.

(ii) Withholding of refunds under Section 245(2) of the Act by CPC

Section 245(2) of the Act is a new provision, introduced vide Finance Act, 2023 whereby the assessing officer has the discretionary power to withhold the whole or part of refund in case assessment or reassessment proceedings are underway for the taxpayer, and the assessing officer is of the opinion that grant of refund shall adversely affect the interests of the revenue. This provision is tough on the taxpayers as it results in withholding of refunds in case of anticipatory demands i.e., demands that have not even crystalized as yet.

Even though it is a recently introduced provision, it is being used widely by the Indian Tax Authorities to withhold the refunds of the taxpayers, wherever any assessment/reassessment is ongoing. Typically, taxpayers receive two communications from the Indian tax Authorities simultaneously upon processing of intimation. The first communication confirms the amount of refund determined after considering all outstanding demands as on date, with the conclusion that such refund shall be released for credit. The second communication relates to action proposed u/s 245(2) of the Act, as per which it is communicated to the taxpayer that the refund has not been released for credit to the bank account but is presently pending before the assessing officer for clearance u/s 245(2) of the Act, for which response is required to be submitted by the taxpayer. This causes undue hardship to the taxpayer, especially in cases of

genuine refunds that are determined to be due and payable to the taxpayer.

Potential resolution: Taxpayers may place reliance on Instruction No. 2/2023[F. No. 312/82/2022-OT dated 10 November 2023] which provides for a monetary limit of INR 10 Lakhs or more for applying the provisions of Section 245(2) of the Act. Furthermore, approval of the jurisdiction Principal Commissioner of Income-tax is required and prescribed time-limits have been provided to the Income Tax Authorities for completing this process.

Conclusion

From the above practical experiences of issues faced in processing of refunds by CPC, it is apparent that while on one hand, CPC has brought in a sense of cohesiveness in the Indian Tax Authorities through its automation and digitalization, but on the other hand, it has led to a fair share of challenges and avoidable issues in the processing of demand and refunds. In normal circumstances, refunds are expected to be credited within 45 days of processing of ROI, wherein refunds under INR 10,000 are immediately processed and credited, whereas refunds above INR 10,000 are processed in tranches. In addition to the above challenges, other administrative reasons that may contribute to the delay in refunds is failure in bank account validation, tax demands for past years etc.

It is important to understand that the above potential resolutions suggested for each challenge are either pre-emptive measures that taxpayers can adopt or safeguards that may be implemented by the taxpayer. Other than the above, taxpayers may always respond to an intimation containing an unjustified demand, adjusted refund etc. due to errors in the functioning of the CPC by adopting the traditional route i.e., by filing an appeal before the CIT(A) against the faulty intimation, filing a rectification application before the CPC/assessing officer and a stay of demand application before the assessing officer.

Alternatively, the taxpayer may choose to exercise the constitutional remedy under Article 226 by filing a writ petition in case the hardship caused due to functioning of CPC in respect of tax demands and refunds is significant enough to do so. In fact, a common thread that emerges in the analysis of the applicable judicial precedents in all the challenges discussed above is that taxpayers seem to have obtained resolutions/directions from the Indian Tax Authorities by filing a writ petition in most cases. However, there is always the possibility of rejection of writ due to availability of appellate/alternate remedy, and one must have strong reasons to justify Court intervention in case of such issues.

In summary, it is important to acknowledge that there are challenges associated in processing of tax demands and refunds by CPC. However, at the same time, it is equally relevant to consider that there are seemingly simple solutions that may be put in place to mitigate the risk of errors being encountered during processing of tax demands and refunds by CPC, or efforts already being made by the Indian Tax Authorities to correct the actions of the CPC, in a time-bound and focused manner, to ensure that benefits and ease of use is extended to the taxpayers at large.

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TDS Reconciliation Analysis and Correction Enabling System (TRACES)

CA Aditi Gupta CA Nehal Kumar

Overview

Back in the year 2013, the department Tried Reimagining A Computer Enabled Service and came up with the TRACES portal. Though digitisation essentially began with the advent of computers in the mid-20th century, the department forayed into the re-engineering of the manual processes of TDS in the 21st century. The transformation served as a big boon to both the taxpayer (for matching of TDS credit) and the government (to help TDS collection) and was an important step towards streamlining of the processes, improving efficiency and reducing time & cost. With unique features like detailed pictorial guides, toll free numbers for addressing grievances and by offering a host of services to all stakeholders, it presented additional features as opposed to the TIN-NSDL website. As they say, 'not everything needs to be perfect to be wonderful', the portal, though a welcome step, is still marred by technical glitches, processes requiring manual intervention as well as processing delays. The hope is that all limitations are resolved proactively through a more robust grievance redressal system and everyday technological advancements so that the taxpayer does not have to knock on the court's door.

The TRACES portal which is a web-based TDS application was introduced by the then Hon'ble Finance Minister on 23rd February 2013 calling it a 'big boon' to the two people it would serve: the taxpayer (for matching of TDS) and the government (to help collection of the said TDS). It was presented as a technology-driven engine of Centralised Processing Cell (TDS) to provide comprehensive solutions on TDS related aspects. Digitisation of the process of TDS was an important step for streamlining the procedures, improving efficiency, reducing time & cost, plugging tax leaks, for faster data analysis, and for enhanced data security and customer experience.

The application was to provide an interface to all stakeholders with unique features like e-tutorials, toll-free call centre numbers to address queries and grievance redressal, and thus offered additional features compared to the TIN-NSDL website. At that time, the portal was introduced to the taxpayers as a mechanism that would mitigate the problem between the tax deducted and claimed in the return.

Presently, TRACES website serves as a comprehensive portal for three stakeholders i.e., the Taxpayers, the Deductors and the Pay and Accounts Office (PAO – who maintain the payment records of different government

employees and is generally required to file Form 24G). For the purpose of this article, we would be dealing with the first two stakeholders being the Taxpayers and the Deductors.

An Overview of TRACES

TRACES is an online platform accessible at www.tdscpc.gov.in and offers a convenient platform for performing tax-related tasks, replacing the cumbersome paper-based processes. The registration process to TRACES has been made user-friendly and the following persons can register on the portal: a deductor, a taxpayer, a PAO or an authorised person for a deductor, who is a foreign national.

As an example, for a taxpayer, registration as a new user is made hassle-free by entering his or her name, PAN and date of birth/ incorporation. Along with the said mandatory details, any of the following also needs to be filled - details of TDS deducted/collected, details of Form 26QB filed (through the e-filing portal) or challan details of tax deposited. Thereafter, on the email ID and mobile number provided earlier, an activation link/ code is sent and after confirmation on the same, voila! the taxpayer's account is created, as opposed to standing in long queues to just file the registration form.

A host of services are offered at TRACES portal to both deductor and taxpayer:

(a) An illustrative list of services that can be availed by the taxpayer are:

- Viewing Form 26AS and downloading the same in PDF/Text/ Excel format:

  The following requests can be placed:

  — Request for Form 13 (application for NIL or lower TDS/TCS) or request for Form 15C/15D (application for NIL deduction of TDS under section 195(3) of the Act).

  — Request for Justification Report (showing potential errors in the statements).

  — Request for correction of an original statement.

  — Request for refund.

  — Request for resolution (when unable to view Form 26AS or there are transaction details mismatch or a transaction not related to taxpayer's PAN or TDS Certificate not issued).

  — Request for consumption status of Nil/Lower Deduction Certificate u/s 197 (Annexure II).

- View default summary for challan cum statement 26QB, 26QC, 26QD and 26QE.
- Verifying TDS certificate (Form 16/16A/16B/27D/16E).
- **Download**: Taxpayer can download TDS certificates in Form 16B/16C/16D/16E and Nil/Lower deduction certificates u/s 197, 206C(9), 195(3) and 195(2).

(b) An illustrative list of services that can be availed by a deductor are:

- **PAN verification:** Deductor can verify PAN of deductee before furnishing the same in TDS/TCS statements.

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- **Request for OLTAS challan correction:** Correction can be made of financial year, Minor head code, Major head code, Section code (for changes in Section code 195 - deductor needs to contact Jurisdictional Assessing Officer)
- **Download**: Deductor can download TDS/TCS certificates in Form 16/16A/16B/16C/16D/27D in reconciliation with Form 26AS as well as certificates u/s 197, 206C(9) and 195(2).
- May view notices/communication from Assessing Officer.
- Request can be placed for:
  - — Justification Report
  - — Default summary
  - — Aggregated TDS/TCS Compliance Report (for knowing defaults against multiple TANs associated with PAN of Deductor/Collector)
  - — TDS/TCS refunds
  - — Challan status query (whether challan is unclaimed or claimed. Deductor can check challan status using BIN details or CIN details).
  - — Resolution

Filing of TDS returns and forms

Since TRACES acts as a processing centre, a TDS return in regular/original statement can be filed by the deductor either through the TIN Facilitation Centre (TIN-FC) or through the e-filing portal. Only the correction statements (of the original statements already filed) can additionally be filed through the TRACES portal. Similarly, challan-cum-statements for a taxpayer also are filed through the e-filing portal and only after processing, the certificate is generated on TRACES. The process for both the deductor and taxpayer is enumerated below.

I. For a deductor (having TAN): The filing of TDS/TCS statements (regular as well as correction, if any) in Form 24Q (salary payments), Form 26Q (payments other than salary), Form 27Q (payments other than salary to NRI and foreigners) and Form 27EQ (TCS return) can be made by the following modes:

(a) Physically through TIN Facilitation Centre (TIN-FC):

The TDS return can be prepared using the Return Preparation Utility (RPU) provided by Protean (formerly NSDL eGov) available at https://www.protean-tinpan.com/downloads/e-tds/eTDS-download-regular.html or any third-party Software (for e.g. CompuTDS) and may be filed physically at the TIN-NSDL facilitation center.

The broad steps are as follows:

i) Firstly, all basic details of the deductor are entered (such as name and address of deductor, TAN, PAN, relevant quarter and financial year to which the return relates, address of the deductor, designation, email ID and mobile number).

ii) Then, challan details are filled (including the amount of TDS deposited, date of deposit, BSR code, challan serial number).

iii) Thereafter, deductee details are filled out (such as PAN, name, amount paid, TDS deducted, date of deduction, date of payment/credit, section under which TDS is deducted, rate at which tax is deducted) and challans added earlier are mapped to these entries.

iv) Then, the return is generated and validated by importing CSI (challan status inquiry) file from the TIN (Tax Information Network) Website.

v) Once the file has been prepared as per the file format, it has to be verified using the File Validation Utility (FVU) also provided by Protean. In case of any errors, the FVU will give a report of errors.

vi) The generated FVU file (having .fvu extension and usually extracted to a pen drive) and Form 27A (generated in pdf format and showing a summary of the TDS return) have to be submitted at the TIN-NSDL facilitation center for verification and processing on payment of a fee.

vii) The said FVU file and Form 27A is then submitted by TIN-FC personnel to the Income Tax authorities for processing. The status of the same can be checked from logging into the TRACES portal.

(b) Electronically through e-filing website by using the upload functionality:

In this case also, the TDS return can be prepared using the Return Preparation Utility (RPU) or any third-party Software (for e.g. CompuTDS) and is filed online on the e-filing portal.

The broad steps are as follows:

i) Visit the e-filing portal (https://eportal.incometax.gov.in/iec/foservices/#/login) and login using deductor's TAN on the e-portal.

ii) From the dashboard, choose 'File TDS Return' option by clicking on e-file >> Income tax form >> File Income Tax Form.

iii) Search the form which you have to file ('Deduction of tax at source (Form TDS)'), click on the "File Now" option.

iv) Proceed to upload TDS form by clicking on the "let's get started" option screen.

v) Enter the following details and then click on proceed to verify:

a) Select a form from the dropdown.

b) Enter financial year and quarter.

c) Select upload type (regular or correction)

d) Upload TDS zip file (prepared through RPU/ third party software)

vi) Validate the return using the OTP/DSC/EVC (as applicable)

II. For a Taxpayer (using PAN): A taxpayer may have to file a challan-cum-statement in the following cases:- TDS on Sale of Property (Form 26QB), TDS on Rent of Property (Form 26QC), TDS on Payment to Resident Contractors and Professionals (Form 26QD) and TDS on Transfer of Virtual Digital Assets (Form 26QE).

The above forms are prepared and filed through the e-filing portal. Firstly, the taxpayer logs into the e-filing portal using his or her PAN, thereafter, navigates to the 'E-file' section on the dashboard and chooses the 'e-pay tax' button. Thereafter, the applicable form (i.e., Form 26QB/Form 26QC/Form 26QD/ Form 2QE) is selected and the necessary details of the forms are filled. After filing of the challan-cum-statement, an acknowledgement is generated which is used by the taxpayer to register himself on the TRACES portal as a new user (if not already done so). Once the form is processed, the TDS certificate (in Form 16B/Form 16C/Form 16D/Form 16E) can be requested and downloaded from the TRACES portal by using the taxpayer credentials.

How Processing takes place through TRACES

According to the information displayed on TRACES website, processing of returns/forms/ statements might take approx. 7 working days from the date of filing. Practically it is seen that in most cases, the same are processed within 2-3 working days, thereby making things faster. Following are the Steps undertaken in processing:

Step 1 : The CPC (TDS) handles the regular TDS statement up to the generation of Form 26AS for the reported deductees.

Step 2a : If no errors are found, the TDS return is processed successfully.

Step 2b : In case any errors (such as short deduction, short payment, mismatch of PAN, mismatch of TDS challans etc.) are detected during the preliminary check, the same are included in a report called the **'Justification Report'**. In such a case, the statements are held for processing for a further period, usually 7 days, providing an opportunity to correct the potential errors through TRACES portal along with payment of applicable interest/fee (if any).

If for a return/statement, correction is undertaken at TRACES, then the status of the correction depicts the following:

- ***Requested***: It indicates the submission of a correction request by the registered user.
- ***Initiated***: CPC cell of TDS is processing the correction request.
- ***Failed***: Due to technical reasons, a correction request cannot be initiated, and the user needs to re-submit the request.
- ***Available***: It indicates acceptance of user correction request, and the statement is available for correction.

- ***Submitted to ITD***: It indicates that the correction request has been furnished to the Income Tax Department for processing.
- ***Rejected***: In indicates TDS CPC has rejected the statement after processing and the 'remarks' column displays the reasons for rejection.
- ***Processed***: It reflects that TDS CPC has processed the request received.

The status & details of demands can be viewed via the default summary which specifies the demand across quarters and form types in a financial year. To rectify the demand, Justification Report may be requested and downloaded, and an online correction may be filed. Now on TRACES, even TDS refund requests can be requested online.

Implications in case of inoperative PAN

To suffer for your own sins is bad but to suffer for the sins of another person is worse. This is what implications of an inoperative PAN ultimately result in. The deductor is obligated to deduct TDS at a higher rate in case of an inoperative PAN of the deductee. The obligation to check whether the PAN is operative or not is ultimately on the deductor or else he will have to bear the consequences of short deduction or no deduction. The Board had made it mandatory to link PAN with Aadhar up to a specified date (30th June 2023), failing which, the PAN became inoperative w.e.f. 1st July 2023.

Practically, it was seen that even after the 'Inoperative' status of the PAN having been rectified by the deductee, if the transaction date fell after 1st July 2023 and the date of rectification was in the Inoperative status, TDS at a higher rate would still apply. Due to this, tax deductors received default notices from TRACES despite the PAN of the deductee being valid and operative.

With a view to redress the grievances faced by such deductors, the Board, in partial modification of its earlier Circular[1] has, vide a recent Circular No. 6/2024 dated 23rd April 2024, clarified that for the transactions entered up to 31st March 2024, in cases where the PAN becomes operative (as a result of linkage with Aadhaar) on or before 31st May 2024, there shall be no liability on the deductor to deduct the tax at a higher rate. This comes as a relief to the deductors where the PAN is operative as on 31st May 2024 and the transaction relates to the year ended 31st March 2024. While this comes as a breather to the deductors, however, transactions w.e.f. 1st April 2024 will still face the above consequences of higher tax deduction even if PAN gets operative at a later date and the mailbox of the deductors may get flooded with default notices from TRACES. The practical challenge faced in this regard has been highlighted in the subsequent paragraphs.

Key challenges faced by the taxpayers, Instances where gap exists between physical and online processes and their possible solutions

In today's world, almost everything within reach is digital. While technology has its advantages but then as they say 'every rose has its thorns'. There is a downside to every

1. Circular No. 3/2023 dated 28th March 2023.

upside and in the case of TRACES, a few such practical problems faced are enumerated below with their possible solutions.

- ***Disposal of taxpayer's application in Form 13 for NIL/Lower tax deduction***

  Previously, the application under Form 13 was an entirely manual process but vide a notification in the year 2018, the rules were amended to provide for electronic filing of the application through TRACES. As per the Citizens' Charter, the timeline prescribed for the issue of a certificate under section 197 of the Act in respect of an application complete in all respects is 30 days. However, practically it has been observed that:

  (a) initially, to keep the file moving, manual intervention is required.

  (b) Subsequently, when the 30-day timeline is expiring, the assessing officer more often than not, issues a clarification (even where all relevant documents have already been uploaded on the portal) to extend the timeline by another 30 days.

  Since, in the case of a non-resident, specially, the certificate required is for a time-sensitive issue (usually for the sale of property in India), the above creates an unnecessary delay and inconvenience for the non-resident applicant and the only resolution (apart from filing a revised application), in respect of a rejection or an adverse order, is filing of a Writ petition before High Court which again leads to increased costs and lost time, resulting in a vicious cycle for the taxpayer.

  Further, in a handful of cases, technical glitches are faced either at the time of uploading the documents or when the documents have been uploaded by the taxpayer, the same do not reflect on the assessing officer's screen, which results in the rejection of a genuine application. In a recent Writ filed before the Hon'ble Madras High Court, both the taxpayer and the department had taken a diametrically opposite stand in regard to the furnishing of the documents where the department's position was that it had not received the documents and the taxpayer maintained that the documents were duly uploaded online while applying for the lower deduction tax certificate. The Hon'ble Court held that being a disputed question of fact, it cannot go in a Writ petition and remitted the matter back to the officer to pass a detailed speaking order.

  A possible solution in the above cases, maybe to make the entire procedure of obtaining the lower tax deduction certificate including application under Form 13 & further enquries, 'faceless' i.e., without any human intervention, like the faceless procedure laid down for assessment proceedings presently, which in our experience has become a pretty efficient exercise optimising both cost and time. Accordingly, the application under Form 13 may continue to be submitted through TRACES and where the application is in order and there is no adverse opinion/variance on the rate requested by the taxpayer, the certificate would be issued online. However, where the assessing officer is opposed to the NIL or lower rate as requested by the taxpayer, a one-time representation

through Video conferencing may be permitted to address the same. This procedure would result in the process becoming more streamlined and saving cost and time of both parties involved.

- ***Manual Intervention required to claim TDS refunds:***

  In an ideal situation, to claim a refund of excess TDS paid, a refund request in Form 26B is to be raised on the TRACES portal along with the filing of relevant documents and if everything is in order, the refunds are processed within a few months of filing. However, practically it is seen that a visit to the department is a must when claiming refunds of excess payment of TDS. Delayed refunds are still the source of a large number of grievances. Further, any follow-up at the department leads to submitting a myriad of additional documents which are not detailed in the online application of the form/statement/request.

  The possible solution may be implementation of a simpler and more integrated procedure employed, for say, Income Tax refunds that are processed under section 143(1) of the Income tax Act, 1961. In case of exceptional scenarios, yes, human intervention may be required however, it may be time to do away with the cumbersome and complex processing of refund for TDS.

- ***Technical glitch in the portal – A glitch in the matrix?***

  Everyone at some point or another has faced a technical glitch, which though technically is a short-lived fault in the system but which leads to a long-spread disruption and inconvenience causing loss of data, time and effort.

  In a recent case before the Hon'ble Jodhpur Tribunal, the tax deductor was in an appeal on account of a technical reason as TRACES was not allowing the filing of a correction statement online, even when the original was filed within time, as a result of which, an altogether new return had to be filed which led to levy of late filing fee under section 234E. The Tribunal held that, it was evidently clear that there is no delay in payment of TDS and since tax payment and return filing was within time, the tax-deductor cannot be saddled with the late fee levy.

  In another case before the Hon'ble Delhi High Court, a petition was filed to remove technical glitches from the TRACES portal to enable the petitioner to file an online refund application. Even the ticket raised by the assessee on this account on the portal was closed without resolving the issue.

  Thus, even in this day and age, such problems are faced by the taxpayers and the department should proactively act on the same and take preventive measures to minimise, if not remove such technical difficulties. For when the assessee faces such technical glitches, the redressal system should be made more robust.

- ***Higher rate of deduction under section 206AA***

  As per an earlier circular of the Board in the year 2023, where a deductee had not linked his PAN to Aadhaar and tax was

deductible in the case of such person, tax was to be deducted at a higher rate as per the provisions of section 206AA of the Act. In consequence, several deductors received default notices from the department on account of the reason that, at the time of deduction, the PAN was 'inoperative' and higher TDS was not deducted irrespective of the fact that when the return was filed and subsequently processed, the PAN status had changed to 'operative' i.e., PAN-Aadhaar linking was complete. Though, to address the several grievances received, this circular was modified in April 2024 for a brief period (i.e., for transactions entered upto 31.03.2024) however till such time, default notices were already received by the deductors and in several cases the demand had already been paid.

Presently, there is no clarity in regard to the process to be followed where such demands have already been paid or where such demands are still reflecting in the default summary of the deductors. Additionally, for the transactions entered from 1st April 2024, the above-mentioned modified circular would not apply and thus, TDS is to be deducted at a higher rate if PAN-Aadhar linking is not complete, thereby making the PAN inoperative. However, presently there is no clarity as to when and how often this list of defaulters (database maintained by the department) is updated on the Insight portal, for the deductor to ensure that a higher rate of TDS is genuinely applicable. The possible solution in such a case would be to obtain a declaration and screenshots of linking from the deductee and that he has in fact linked his PAN & Aadhaar.

Role of grievance redressal systems

In the legacy system, there was limited interface for the resolution of a grievance – either through written communication to the department or through a visit to the Income Tax Office. After the advent of the TRACES portal, a registered user can file a grievance by submitting a 'Request for Resolution' online or through helpline numbers and e-mail ID's provided for real-time support. Though this has resulted in visibility regarding the grievance by virtue of an integrated system, it cannot be candidly said that the time taken for redressal has been minimised.

Concluding Remarks

CPC-TDS was conceptualised to re-engineer the manual process of TDS and take over bulk of the responsibilities of the TDS assessing officers. The intention was to ensure end to end e-enabled services that are accessible 24*7 with no cost to the stakeholders. The efforts to introduce a robust mechanism for tax administration providing a bouquet of services to its various stakeholders as everything around became digitalized with detailed pictorial guides for reference was a step in the right direction and has to be applauded. As time passes, the processes will become more streamlined and various other functionalities may become available on TRACES. The advent of technology should only augment the process.

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AIS - Annual Information Statement & TIS – Tax Information Summary

CA Avinash Rawani

Overview

1. *AIS & TIS – It's purpose of Introduction and Journey till date;*
2. *Procedures to Download, Ways to Verify the contents, Submit the Response and how to get the best out of it;*
3. *Salient Features of AIS & TIS;*
4. *E-Campaigns & E-Verification Project of the Income Tax Department through AIS & TIS, setting up of Compliance Management Centralized Processing Centre (CMCPC) for the benefit of Tax filers;*
5. *Legality of such communications by the CPC under the provisions of Income Tax Act;*
6. *Grievances and Help Centres of the Insight Portal and it's workings;*
7. *Some of the Challenges, Key Issues & Probable Solutions to deal with the issues of Insight Portal.*

Overview

Annual Information Statement (AIS) was introduced through Notification No. 30/2020 dated 28th May, 2020. It's purpose was mainly to widen the scope of providing additional information to the Tax Payer to ensure that accurate and correct information is provided to taxpayers while filing their Return of Income. Rule 31AB has been omitted and Rule 114-I has been inserted after Rule 114H to share Annual Financial Information in respect of each taxpayer not only of taxes paid by of TDS/TCS or otherwise, to ensure that whatever information has been received by the Department through various sources from the Statement of Financial Transactions (SFT), TDS Returns and Other statements filed by the various filers.

AIS is comprehensive view of information for a taxpayer displayed in Form 26AS, whereas Tax Information Summary (TIS) is a summarised information of the details available in AIS. Taxpayer has the option to provide feedback on information displayed in AIS. AIS shows both reported value and modified value (i.e. value after considering taxpayer feedback) under each section (i.e. TDS, SFT, Other information).

The AIS displays the complete information to the taxpayer with a facility to capture online feedback, as per the objectives of the Department stated in the FAQ's. In case any incorrect information is captured then the taxpayer can provide the feedback on the same. This helps not only to promote voluntary compliance but also to enable to provide seamless information in prefilling of return, to deter non-compliance and advance information to the Tax Payer so that the necessary income can be adequately disclosed and tax, if any, payable on such income can be paid. This statement is the extension of Form 26AS and not a replacement as it also contains all the details stated in Form 26AS. Further, if Tax payer identifies that there are any incorrect details, duplicate details or information which are incorrect or inconsistent then he can provide the feedback within the time allocated. Based on the feedback provided, the said statements are updated on the portal and the updated version with the comments are available.

Procedure for Verification and Download

An insight Portal is developed for accessing and verification for AIS and TIS Statements and is not available on the regular Income Tax Department Portal. However, these statements can be downloaded by the Tax filers either login through their IT Return filing credentials from the portal of the Income Tax Department www.incometax.gov.in . In this option, the Tax filer doesn't need any separate User I'd or password to log in as the Tab has been provided to access the Insight portal where these statements are available. Another option available to the Tax filer is to access directly on https://report.insight.gov.in. Here the user is then required to create another User I'd for this portal for verification of these statements. However, both the options are fine,acceptable and are mutually inclusive. Meaning hereby that even if the Tax Payer has created a separate User I'd on the Insight Portal, still Tax Payer can access the Insight Portal through Income Tax Portal.

AIS.TIS can be accessed through AIS Mobile Application, which is available on Google Play Store for Android Phones and Apple App Store for (IOS). The APP has to be registered and activated with basic KYC details like PAN and Date of birth and MPIN is generated. After that, all the functions of viewing, providing feedback etc. will be available.

Salient Features of the AIS

- It includes new data such as interest, dividends, securities transactions, mutual fund transactions, international remittance data, etc.
- Information duplication is eliminated, and a streamlined TIS is generated for easier return filing based on the details filed by the SFT filers.
- Taxpayers can provide the feedback. The feedback can be online feedback on the information provided in AIS. Tax Payer can also download data the in PDF, JSON, and CSV forms. The utilities are available to download the files and insert the remarks and to upload with remarks and feedback. The Acknowledgements are generated on completion of the procedure.

The procedure for downloading the AIS/TIS statements and submission of online/offline feedback is available on the web portal of Insight.

E-Campaigns/E-verification of the Income Tax Department

After introduction of AIS, TIS and SFT, Income Tax Department with the help of the technology have been able to identify non-filers who have entered into high value transactions. As per Insight Portal, certain transactions of the taxpayer reported in their ITR which have been found to be inconsistent with the information received from the third party for a specified Assessment Year are displayed to the taxpayer for feedback. These transactions reported to the Income Tax Department during a financial year that are considered not in line with the profile of the taxpayer based on pre-defined rules are displayed to the taxpayer for feedback, which are based on the criteria set. One of such criteria is who have not filed return of income for a specific Assessment Year and have potential tax liability or who are under obligation to file return of income, are displayed for feedback, based on the amount spent for purchase of capital asset or investments made etc. If such Notices or communication has been received, then it is recommended that it should not be ignored, irrespective of the fact that the information based on which notice or communication is received is incorrect, but the response should be provided.

The Compliance Management Centralized Processing Centre (CMCPC) is one of the Centralized Processing Centres of Income tax Department, operationalized under Project Insight. CMCPC uses campaign management approach which consists of sending emails, SMS, reminders, outbound calls, letters to support voluntary compliance and resolution of compliance issues of tax payers, tax deductors & reporting entities.

Following e-Campaign functionalities are available:

- Significant Transaction: Transactions reported to the Income Tax department during a financial year that are considered not in line with the profile of the taxpayer based on pre-defined rules are displayed to the taxpayer for feedback.
- Non filing of Return: Transactions of the taxpayer who have not filed return of income for a specific assessment year and have potential tax liability or who are under obligation to file return of income, are displayed for feedback.
- High Value Transactions: Transactions of the taxpayer reported by third party information sources which do not appear to be in line with their Income Tax Return of a specified Assessment Year are displayed to the taxpayer for feedback

The procedure to submit the response is as under:

Step 1 : Login to the e-filing portal by using the URL www.incometax.gov.in

Step 2 : Click on the "Compliance Portal" option available under "Pending Actions" tab and select e-Verification.

Step 3 : On clicking the "Proceed" button, user will be redirected to Compliance Portal Homepage.

Step 4 : Click on e-verification prior to A.Y.2019-20 from the e-Verification tab.

Step 5 : Click on View button against the case.

Step 6 : Select and submit response.

Note: - The feedback options are displayed on each Information detail.

Taxpayer can select only one of the available options for submitting feedback.

A. Information is correct.

B. Information is not fully correct.

C. Information relates to other person/year.

D. Information is duplicate/included in other displayed information.

E. Information is denied.

The taxpayer may submit his feedback by clicking on any of the above aforesaid 5 options.

The taxpayer can view the rationale of feedback option by clicking the “i” option on the screen.

In a Press Release dated May 13, 2024, CBDT has informed about rolling out the new functionality in AIS to display the status of information confirmation with regard to the feedback submitted taxpayer has been acted upon whether it has been either, partially or fully accepted or rejected. As a result of this, the time taken for communication will be shorter as it will be available on faster and accordingly decision making also faster.

Whether such Communication received is legal and binding

One question arises in mind, whether this type of SMS or communication is legal and binding on the part to the communicatee or not. On February 26, 2024 the I-T department clarified that these Intimations under the e-Verification Scheme, 2021 do not constitute tax notice but are only meant to provide an opportunity to the taxpayers to reconcile mismatches, if any, on the I-T portal. Taxpayers will not have to submit any documents while doing this. Further, the Disclaimer portion of the Insight Portal, states that this official web portal "Reporting Portal" under "Project Insight", Central Board of Direct Taxes, Ministry of Finance, Government of India" has been developed to facilitate third party reporting by Reporting Entities under section 285BA of the Income Tax Act 1961. It also states that the documents and information displayed in this web portal are for reference purposes only and do not purport to be legal documents. CBDT does not warrant the accuracy or completeness of the information, text, graphics, links or other items contained within these. CBDT may make changes to the contents, or to the information described therein, at any time without any notice. CBDT makes no commitment to update the contents on its website. In case of any variance between what has been stated and that contained in the relevant Act, Rules, Regulations, Policy Statements etc, the later shall prevail.

However, on introduction of e-verification scheme, 2021, notified by the CBDT on 13.12.2021 vide Notification No. 137/2021 under the provisions of section 135A of the Income-tax Act, 1961 which has explained a detailed procedure to explain any mismatch in the details available in the AIS/TIS and to comply with the same, various options have been given as to how these differences can be dealt with. If these explanations are not considered to be satisfactory, then the information gathered shall be the base for re-opening or re-assessment etc.

But in my opinion, if the details or information cannot be completely ignored

when such information is available, it should be taken into consideration for filing of Return of Income by the Tax Payer. If any incorrect information is provided or any inaccurate particulars are given which are already available in the AIS/TIS and are not adequately disclosed while filing the Return of Income, then such information may lead to legal intricacies and may be the basis for the further legal assessment and penalty proceedings under the Income Tax Act as this is one of the source of information available, based on the nature and amount of default. I also recollect such incidences of the past that salaried individuals filed their returns based on income in Form 16, but during their pilot project of e-campaign in the Assessment Year 2019-20, it was found that many salaried individuals had not reported savings bank interest etc. in their ITR. Notices under Section 142(1) of the Income Tax Act, 1961 for such non-disclosure were sent and the additions were made. Now, when the information is readily available, ignoring the same by not taking appropriate disclosure may lead to financial losses and penalties.

Further, Information request framework enabled under section 133(6) of the Income Tax Act 1961, relates to 'Power to call for information' and as per section 272A(2)(c) of the Act, if any person fails to furnish response on the information request in the prescribed manner and time, a penalty of five hundred rupees for every day during which the failure continues may be levied.

Further, if the explanation is not found sufficient to explain the mismatch in the specific information and the taxpayer may consider to file updating the return of income u/s 139(8A) of the Act, if eligible.

Grievances/Help

The Help Tab is connected with the Grievance Tab wherein the various options are given, a compliant can be lodged online on the Insight portal, where in the Ticket is required to be raised and the Error screen shot is to be uploaded. The Ticket I'd is generated which is linked to the category of grievance which can be viewed later. Status of the Complaint can be checked for the Ticket Raised, the status of the Ticket can be viewed whether it is In Progress, or Closed. The solution is provided for the closed tickets. In case the filer is not satisfied with the solution provided, then the ticket can be re-opened within reasonable time of two to three days and can also raise the query against the solution.

Further dedicated call centre no. 1800-103-4215 is also there which is available from Monday to Friday on office timings i.e. 9.30 AM to 6.00 PM IST. These are the only options available to report the Grievances/ Feedback. However, in some cases, the listed queries are not available, then the filer may use the following option:

What should a user do if its query/problem is not listed in FAQs?	Step -1 : Click on the "Help" icon on the Reporting Portal
	Step-2 : Click on "Contact us" button
	Step-3 Select the issue category and sub-category
	Step 4: Enter details if user is not logged in/registered
	Step 5: Click on "Email Us" and describe the problem being faced and click on "Submit

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Key Challenges & Probable Solutions

The website being a technical and liable to change, it is not practical always to provide a full proof solution to any problem. However, on the Insight Portal, whenever there are any amendments or updates the details are made available and one can take the help of the Help Menu. However, presently we have tried to relate some of the key challenges faced and the probable solutions based on the feedback received from the members of the fraternity at large:

1. Errors seen in the Statements are challenging and repeating. It needs to be addressed, very seriously. The major challenges are

   a) Property sale with numerous owners: There is an overall value of the property listed in each owner's AIS, but not their individual share of the value.

   Probable Solution: To inform about the Joint Holders, give the PAN details of the joint holders and the percentage share.

   b) Joint Accounts: AIS displays the total interest of the joint holders.

   Probable Solution: To inform about the Joint Holders, give the PAN details of the joint holders and the percentage share.

   c) Duplication of entries: Inflated income can be found in the AIS after duplicate entries are discovered by Taxpayers.

   Probable Solution: Click one as correct. To inform other entries as duplicate also state the number of entries appearing for the same transaction.

   d) Capturing of Information for any of the Financial Year like HRA etc: Transactions reported in AIS may relate to the Previous Year, not the current Financial Year for which a return is due.

   Probable Solution: Enter the Financial Year to which it pertains as correct.

   e) Transactions that may not belong to the taxpayer may be reflected in AIS.

   Probable Solution: If the PAN Number of the person to whom the transaction belongs is known that enter than persons PAN, otherwise select reject the transaction.

2. The compliance burden of the Tax Payer is increasing through availability of plenty data and need to respond to same and monitor it on a continuous basis. Further, the said statements being updated on a quarterly basis also needs a continuous monitoring and is not a one-time job.

   Probable Solution: AIS should only be viewed. If there are any changes in the transactions then proceed to TIS. Once it is viewed quarterly and found correct, then it is recommended that final exercise should be done at the year end. Also, if the entries are too many, then help of the software providers to be taken.

3. The quarterly details are made available after a long time, especially for the last

quarter 31st March AIS will be available by 15th June and the due date to file the Return is 31st July. The time left is only 45 days which is very short. Within this short span of time a Tax Consultant or the Tax representative who handles the work of the Tax payer gets very little time to verify the contents, respond and file the return.

Probable Solution: AIS should only be viewed once the reports are generated. If there are any changes in the transactions then proceed to TIS. Once it is viewed quarterly and found correct, then it is recommended that final exercise should be done at the year end. Also, if the entries are too many, then help of the software providers to be taken.

4. Since these information keeps on changing and are not final, some Deductees and filers file their Returns late, these details may not be available in AIS and TIS but the information may be available with the Tax Payer based on which the Returns may be prepared and subsequently the details available in AIS there are mismatches.

   Probable Solution: AIS/TIS should be placed on record based on which Income Tax Returns are filed. Since these statements are updated regularly, there has to be a statement on record. This may help during the stage of assessment proceedings.

5. AIS and TIS captures details for all the parties for the same amount it is also seen that in case of property Joint development agreements where stamp duty value appears, but in such cases, there is no agreement value it is a contract. This type of transactions usually captured as Sales or Purchases, which are generally not.

   Probable Solution: These issues are technical issues and based on the information filed, it is always better to inform as incorrect transaction if reported as sales or purchase in AIS/ TIS. In Remarks column to give the information that being the Contract for Development of Property etc.

6. Many times, a single transaction is captured twice or thrice specially sale and purchase of securities etc. which are directly captured from their software. Recently the AIS for the quarter ended December, 2023 all securities transactions for purchases and sale were reported twice or thrice due to ITD processing error, which resulted in delay in addressing the issue.

   Probable Solution: Click one as correct. To inform other entries as duplicate also state the number of entries appearing for the same transaction. However, if it is identified as software or processing error then in such cases, it is better to raise complaint about the said issue and not provide any feedback till the issue is resolved.

7. The website handling the data is too slow, especially on the last due dates when the returns for Form SFT are to be filed. Insight Portal is unable to handle the load of data. Evert time there is log in issues and password needs to be changed periodically. Insight Portal is not as smooth as Income Tax Portal.

   Probable Solution: Ensure that the work is completed in time. Website being

a technical issue, cannot be resolved. Further, log in and password being a security feature.

8. Way going for data handling, one dedicated person and software will be required to ensure the smooth functioning of this entire system which can handle the filing of data. Person using Department's utility and Insight Portal needs to have appropriate training for data handling and has to ensure that his works get completed in time.

   Probable Solution: Proper Software Training and Data Handling is the best solution.

9. The details sought and the information required to be filled in the utility are little complicated and since related and linked to the third party, the information of the third party to be filled in SFT statements, being the main ingredients of generation of AIS and TIS are generally incomplete with the Tax filers. Without accurate information and complete data, the utility cannot generate valid file for uploading and the processing too is not on a Real Time basis like Income Tax Return. The Return filer gets to know about it's approval generally after 72 hours. The Return may become invalid if the due date for filing is also over, if the return is filed on the last date, if it is not accepted and approved on the system.

   Probable Solution: KYC information are mandatory and the information and details are required and hence the same are readily available. Proper Master data and records are timely updated.

10. The Help Desk system is also very difficult to contact and generally the issues and the concerns raised through Tickets are not resolved properly. The solutions provided are not specific issue oriented but are general which are difficult to resolve.

    Probable Solution: NIL

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"We see then, in the study of Raja Yoga no faith or belief is necessary. Believe nothing until you find it out for yourself—that is what it teaches us. For, truth requires no prop to make it stand."

— Swami Vivekananda

Navigating the Labyrinth: Challenges Faced by Non-Resident Taxpayers while dealing with Income Tax Systems

CA Manish Aggarwal

Overview

The Indian tax landscape has undergone a significant transformation in recent years, propelled by the transformative power of digitalization. This shift has not only streamlined processes and enhanced efficiency but also fostered greater transparency and accountability.

The income-tax administration in India has been a pioneer in introducing technology/ automation in tax. The journey started with the electronic filing of income tax returns and has since, progressed rapidly in terms of introduction of prefilled tax returns, expansive coverage of information in Form 26AS/AIS. Communication with taxpayers has been streamlined with paperless correspondence, faceless assessments and appeals, and a structured income-tax portal.

Digitalisation has redesigned the way information is collected and acted upon by tax administrators and this is evident from new tax policies, TDS/TCS provisions, methods of conducting audits/investigations, and the increase in tax collections and registered taxpayers.

This article explores the features of key tax interfaces which are commonly used by Non-Residents and the issues being faced while dealing with such systems. These systems are:

i) Centralised Processing Centre/Income Tax filing portal 2.0

ii) TRACES - TDS Portal

iii) AIS under Project Insight

For comprehensive and easy reference of the readers. this article is divided into 3 parts covering each of the above systems and issues related thereto.

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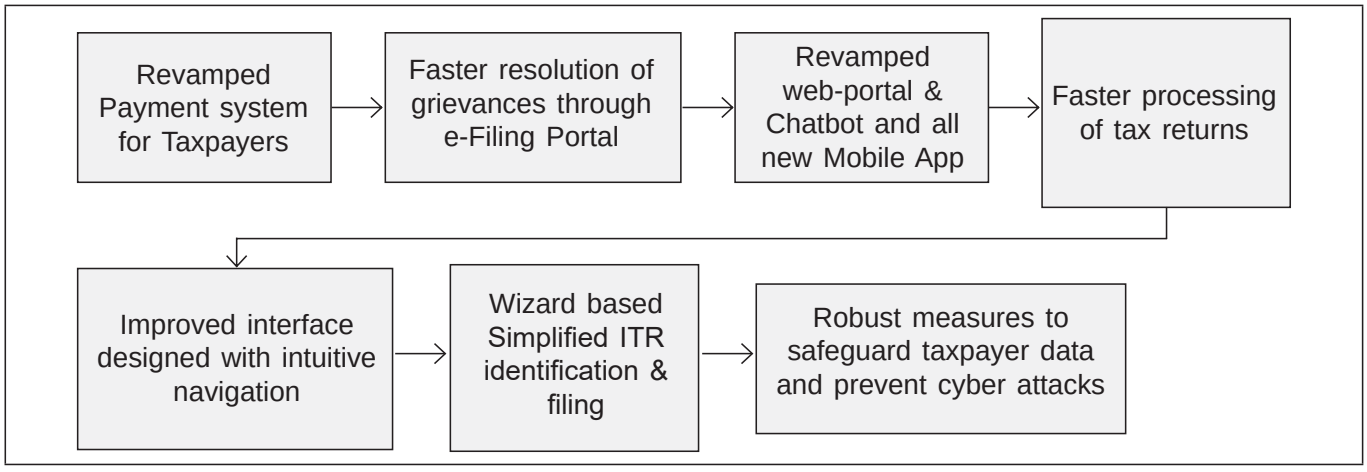
Part-1 — Centralised Processing Centre (Income Tax E-Filing Portal) and Issues

The seeds of digitalization in tax administration were sown in 2004 with the introduction of voluntary online filing of income tax returns (ITRs). This initial step laid the foundation for further advancements. Subsequently, online filing became mandatory for companies and taxpayers subject to audit under the Income Tax Act. Over time, the online filing system expanded to encompass all taxpayers exceeding a specific income threshold, gradually phasing out manual filing methods.

A watershed moment arrived in 2021 with the launch of the revamped Income Tax filing portal. This new platform aimed to address the limitations of the previous system and provide a more user-friendly experience for taxpayers. Here are some key features of the new portal:



The new portal, despite initial hiccups, has significantly improved the accessibility and ease of filing ITRs for taxpayers. The online platform has also facilitated faster processing of returns and refunds, promoting efficiency within the tax administration system.

Notwithstanding, significant benefits to the tax administration and to the taxpayers in general, there still remains certain teething issues that are somewhat not promoting image of India as a business-friendly jurisdiction and these issues are a cause of concern for the non-resident taxpayers.

Challenges being faced in dealing with CPC or Income Tax E-Filing Portal

Issue-1 — Claim of TDS Credit based on Transaction Based Reports

- Let's take a case study to understand the underlying issue and the context.
- U. Inc provides software license services to its Indian customers. During the initial years of its operations in India, it was advised to U Inc., that income from sale of software license is not taxable in India and is accordingly not required to obtain a PAN in India.
- Thereafter, it is seen that that Indian payers while making payment to the non-residents deduct TDS @ 10% on gross basis as per Article-12 of India-USA DTAA. The Indian customers while filing their TDS returns (Form 26Q) did not tag the tax deducted to the PAN of U Inc., since U Inc., does not possess any PAN at that time.
- The deductors provided evidence of tax withholding in the form of Transaction Based Reports that contains the name, details of income paid, and the taxes deducted but do not contain the PAN of the U Inc.
- Subsequently, near to the filing of the return of Income in India, Supreme Court of India in the case of Engineering Analysis (March-2021)[1] concluded that payments to non-resident for sale of software license in India is not subject to tax in India as royalty Income under the DTAAs.
- Considering the impact of the Supreme Court ruling, U Inc. decided that since its income is not subject to tax in India, it should claim the refund of the taxes paid in India in the form of TDS deducted by its Indian customers.
- U Inc. filed its return of income by treating the software license income as exempt and claimed the credit of TDS deducted by Indian customers on the basis of transaction-based reports.
- While processing of the return of income under Section 143(1), CPC denies the credit of the TDS claimed based on TBR's. The reason for denial is the mismatch of Credit as per Form 26AS and as per Return of Income.
- Such action of denial of credit is not as per the provisions of the law and the court rulings (Delhi High Court (Court on Its ***Own Motion vs. CIT [2013] 352 ITR 273***). Non-generation of the form

1. *Engineering Analysis Centre of Excellence (P.) Ltd. vs. Commissioner of Income-tax [2021] 125 taxmann.com 42 (SC).*

16A and reporting of the WHT credits in form 26AS is not in the control of the Company and is a result of the systems designed by the Income-tax department. The taxpayer should not be denied the credit of taxes duly withheld on payments made to it for the reasons not attributable to it and TBR so generated from TRACES should be considered akin to a WHT certificate in form 16A.

Solution for this issue - Similar to Form 16A, a unique number should be generated on the Transaction based reports generated by deductors for cases where payee does not have PAN in India. That unique number can be mentioned by the payee in the Income Tax Return. If the Unique number matches with the one on the Traces Portal, then CPC should allow the credit of taxes deducted.

Issue-2 — Failure of refund credit to foreign bank account of non-residents

- Quoting of bank account details in the Income-tax Return (ITR) is a precondition for direct credit of refund in the bank account. Until 2016, there was no provision in the ITR form for non-residents not having bank accounts in India, to furnish the details of their foreign bank accounts for receiving refund in such foreign bank accounts. Further, the ITR forms notified for financial year 2016-17 and onward required non-residents to furnish the details of their foreign bank accounts.
- There is also a condition that bank account must be pre validated in order to process the refund to the bank account.
- Despite the above functionalities, it is often seen that that bank account validation fails due to the reason that PAN is not linked to the foreign bank account.
- This is quite impractical and away from the ground realities considering that the bank account opened in foreign country would be based on their home country incorporation documents and not the India PAN.

Solution- The Bank account validation should be based on the global banking systems practices like IBAN/Swift Numbers

Issue-3 — Mandatory India Mobile Number for obtaining Electronic Form 10F

- India has entered into tax treaties with multiple countries to avoid instances of double taxation of income. Non-residents can reap benefits of these tax treaties by submitting the necessary documents. As per the provisions of the Income Tax Act, non-residents can claim benefits of tax treaties (e.g. reduced tax withholding, exemption from taxability) only if they furnish a valid Tax Residency Certificate ('TRC'). If the TRC does not contain all the necessary information, then the non-residents are required to file Form 10F. In most of the practical cases, it has been seen that Indian tax deductors insist on Form 10F along with TRC.
- Prior to July 2022, Form 10F can be provided manually by non-residents to Indian tax deductors. However, in July 2022 Central Board of Direct Taxes (CBDT) mandated that Form 10F has

to be generated electronically from the Income Tax Portal. This created multiple challenges for the non-residents including:

— They had to register themselves on the income tax portal to file Form 10F

— PAN was mandatorily required to get registered on the income tax portal

— Digital Signature Certificate (DSC) was mandatorily required to digitally sign Form 10F.

- In order to ease out the above challenges, the CBDT came up with a procedure effective from 01st Oct-2023, wherein non-residents who are not required to obtain a PAN in India, can also register on the tax portal by doing OTP based verification.
- Despite the above relaxations, following issues are still being observed:

— The Portal does not send OTP on the Foreign Mobile numbers, thus invariably forcing non- residents to either obtain India Mobile number.

— If non-residents do not have India Mobile Number they then have to appoint an Indian person having India mobile as authorised signatory for the purpose of E-Verifying Form 10F, creating additional compliance burden.

Solution: Foreign Mobile Numbers should be considered as valid for sending out the OTP or one should retain only Email based OTP verification.

Issue-4 — Set Off of Refunds against past erroneous demands

- Adjustment of refunds due to assessees against erroneous demands shown outstanding in their cases causes a lot of trouble.
- It has been observed that even if assessee disagrees with the demand for the reasons like rectification is being filed, or appeal along with stay of demand is filed, still intimations u/s 245 are being issued proposing to adjust the refund.
- It is also seen that refund adjustment is being proposed also in cases where stay of demand has been granted after payment of 20% of the disputed demand.
- The intimations that are being issued provide only 1-2 days of time to the assessees to respond.
- In the case of non-resident's, it is also seen that the refund adjustment intimations are being issued on the email ids of the persons mentioned in the tax return who may or may not be with the company anymore. Thus, leading to ignorance of intimation and loss of remedy available with the taxpayer
- Even if the assessee responds to the intimation u/2 245 stating that the proposed action of adjustment is erroneous, there is no remedy by which CPC can take a note of the same.
- The refund due to the assessee is adjustment and assessee is left helpless.

Solution: It is suggested proper and clear guidelines should be issued whereby CPC should not propose to

adjust the refund in all cases where assessee has disagreed with the demand due to reasons like rectification is pending or where stay of demand application is pending for disposal or where stay is already granted.

Issue-5 — Increase in Outstanding demands as per portal without issuing any notice u/s 156 or u/s 220 or u/s 221

- The CPC portal after the expiry of the 30 days' time period for paying demand amount, automatically starts computing the interest amount @ 1% on the whole amount of demand (ignoring the amount paid as pre-deposit) starting from the beginning of the assessment year instead of the period after expiry of 30 days as per the demand notice u/s 156.
- In some cases, it is also seen that the interest amount is accrued on the CPC portal beginning from the date of the draft assessment order u/s 144C. This is blatantly incorrect as demand raised in draft assessment order is not crystalised until the final assessment is passed.

  Because of the above errors in computation, inflated figures of outstanding demand reflect on the tax portal. At many times, the statutory auditors require these amounts to be booked as provisions or disclose under the contingent liabilities. This leads to unnecessary administrative work and delays in audit finalisation.
- It is also seen that various demands are being uploaded to the E-Filing portal, against which assessee files the disagreement response. No action is being taken on such response filed by assessee and suddenly on one fine day, assessee find out that these demands are finalised without disposing off the objections filed by the assessee by way of a speaking order. Due to absence of speaking order, assessee is not able to either file a rectification application or appeal as there is no order. Also, as a result of these erroneous outstanding demands, the refund amounts due to the assessee 's are adjusted against u/s 245(1).

  Solution- The interest computation methodology of the CPC should be updated to take into account the amount pre deposit amounts and the correct start date. Also, whenever the objections of taxpayer are rejected against the outstanding demand, a speaking order should be passed against which taxpayer can file rectification request or appeal before the Commissioner (Appeals) or Joint Commissioner (Appeals).

Issue-6 — Denial of TDS Credit to timing mismatch of income as per assessee and as per deductor (Online Form-71 Procedure)

- It is often seen that; Non-Residents offer their income tax in India on accrual basis (e.g. royalty/FTS) however some of the deductors report the income in TDS returns only upon the payment or issuance of certificate as per Form 15CA/CB. The time to revise the Income tax return would have already lapsed in many of these cases.
- As a result of the above mismatch, non-residents are not able to take credit of TDS reported by the deductor in the next year, since the income was offered to tax in earlier year and not in the year in which TDS was reflecting in Form 26AS.

- Understanding this hardship, the GOI introduced new provisions in the Act- Section 155(20) r.w. Rule 134, allowing taxpayers to file a rectification application (Online Form-71) in the above cases, where income offered to tax in earlier years but tax credit available in subsequent years. There is a time limit of two years from the end of financial year when TDS was deducted, within which the Online Form 71 is to be filed.
- Practical Issues being faced:
  - — The process although is online filing however the actual verification is done by the assessing officer, which is a tedious and time-consuming process.
  - — The assessing officer asks for documentation like affidavit from the deductor companies that they duly complied with the TDS provisions and no double benefit is allowed. This is cumbersome requirements and creates difficulties in getting the refund.

  Solution- Instead of manual verification process an online functionality should be developed by CPC wherein assessee can claim the TDS credit available in subsequent years by inserting details like TAN Number of Deductee, TDS Challan, Certificate Number etc.

Issue-7 — Defective Return Notices to taxpayers filing Gross Basis return or under presumptive taxation

- Non-resident taxpayers, for example oil and gas service providers offer their income on a presumptive basis @ 10% of Gross receipts u/s 44BB. The taxpayers in this case rely upon the Supreme Court judgement in the case of ONGC Limited (2015)[2], wherein it was held that income from rendering of services in connection with prospecting or extraction of oil, is taxable on a presumptive basis under Section 44BB only and net basis of taxation under Section 44DA or gross basis under Section 115A is not applicable.
- While, filing their return of income, non-residents are required to mention whether they have a permanent establishment in India. The non-residents generally answer to this question as "Yes," on a conservative basis to avoid any penalty exposure.
- At the time of processing the return of income, CPC issues notice under section 139(9) of the Act proposing to treat the return of income as invalid as the Balance Sheet & Profit and loss account details are not filled up. Thus, ignoring the stated provisions of law which clearly mention that requirement to maintain book of accounts u/s 44AA and get them audited u/s 44AB is not

2. Decision of the Supreme Court dated 1 July 2015, in the case of *Oil & Natural Gas Corporation Limited vs. CIT & ANR (Civil Appeal No. 731 of 2007)*

applicable if income is offered to tax at the rate not less that the presumptive tax rate (i.e. 10%).

- Even if assessee re uploads the same tax return, it is rejected again for the same reason. In many cases, refund also gets time barred as the time limit of filing of valid return is lapsed since defective return is not considered as valid return of income.

  Solution: It is recommended that the CPC takes remedial action in cases mentioned in the Justification section and should not treat the returns as defective as there is no requirement for presumptive taxpayers to maintain books of account u/s 44AA and get the same audited under section 44AB.

Part-2 — Traces Portal and Issues

TRACES (TDS Reconciliation Analysis and Correction Enabling System) is an online platform developed by the Income Tax Department of India. It simplifies Tax Deducted at Source (TDS) administration for various stakeholders, including Non-Residents.

Using TRACES portal Tax Credit Statement (Form 26AS) Non-Residents can track the TDS deducted on their Income in India and also verify their TDS certificates. In addition, they can also file an application for lower withholding tax u/s 197 or u/s 195.

In this section of the article, we will see some of the issues being faced by non-residents while dealing with TRACES portal.

Issue-1 — Section 197/Section 195(2) Lower withholding application filing timelines

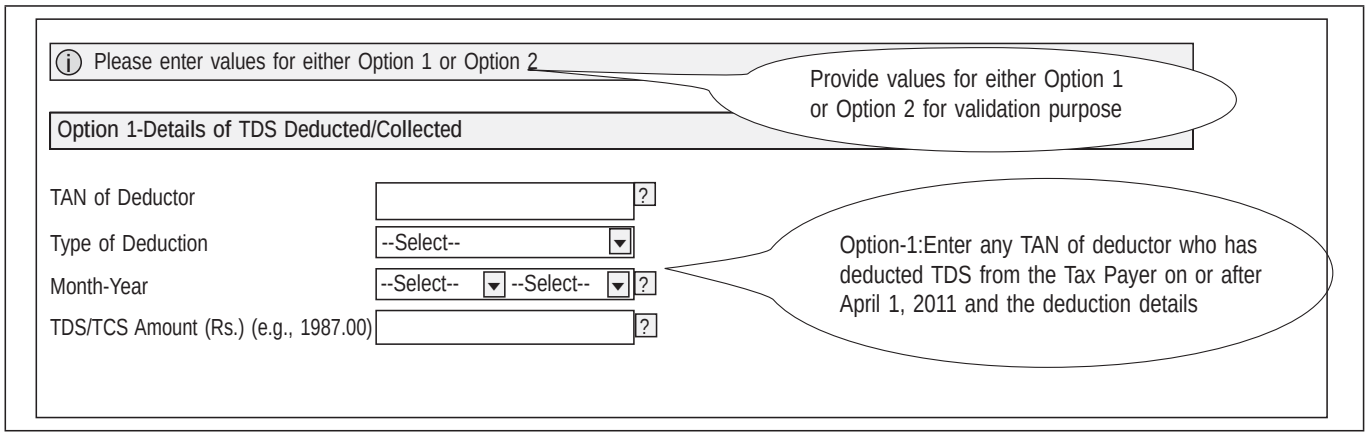
- Currently, the window for filing applications for lower/nil TDS opens in the month of March of the preceding FY. For example, the application for lower/ nil TDS for FY 2024-25 will open in March 2024.
- As a result, tax officers do not get sufficient time to review and process the applications which leads to delay in issuance of lower/nil withholding certificates. Accordingly, the applicants do not get the certificates with effect from 1 April of the FY and for the part of the year higher taxes are being withheld thus resulting in working capital blockages and claim of refund which is a tedious and time-consuming process in itself.
- Further, no time limit has been prescribed for processing of application under S. 195(2) and 197 of IT Act. As a result, the time taken for processing and approving the applications differ on case-to-case basis and depends on the tax officer.

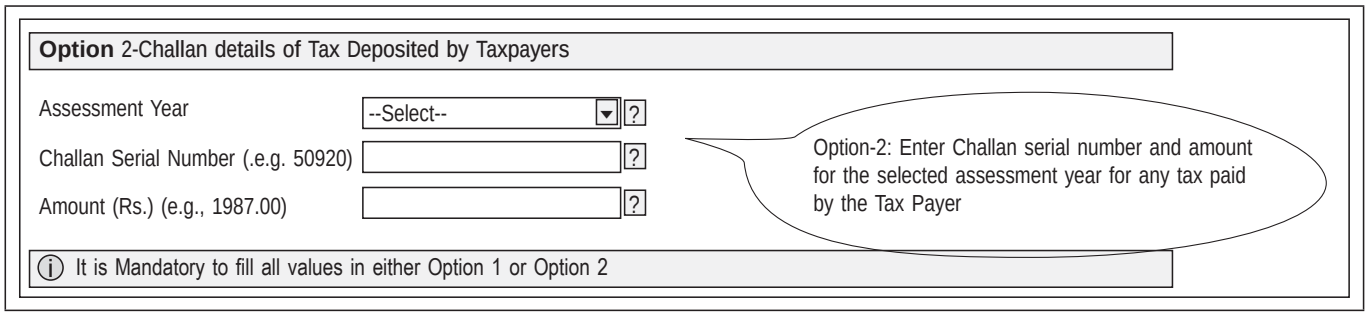
Solution

- The window for filing applications for lower/nil TDS should be opened earlier than March of the preceding financial year. This will provide sufficient time to tax officers to process the applications before start of the financial year.
- Where similar applications have been approved in earlier years and there are tax losses/refunds in subsequent years, introduce a 15-day timeline for processing of such applications. In other cases, 30-day timeline could be prescribed. This is in line with Central Action Plan for 2023-24.

***Issue-2 — Complexities while creating online account on TRACES Portal for Non-Residents* (www.nriservices.tdscpc.gov.in)**

- If a Non-Resident has to create login for making application for lower deduction certificate, then the login can be created only after validation and the validation can be done through:
  - — Details of TDS/TCS Deposited – This is generally not available with the Deductee because earlier he was not required to deposit TDS
  - — Challan Details of Tax Deposited by Taxpayer - This is also generally not available with the Deductee.
  - — A snippet of the Traces Portal is enclosed below:





Solution- A simple PAN and Email based verification should be put in place instead of forcing the taxpayers to mention details that are not applicable on all the taxpayers.

Part-3 — Annual Information Statement (AIS) and challenges in reported information

- The AIS is a comprehensive view of financial information for a taxpayer, made available by the Income Tax Department. The tax department collects information on financial transactions from multiple sources. This information primarily includes tax withheld/ collected at source by various deductors/ collectors, their corresponding income from the e-TDS/withholding tax returns, advance and self-assessment taxes paid, and tax refunds received. This information is regularly shared with taxpayers in Form 26AS, also known as

the annual tax credit statement, which can be downloaded from the taxpayer's account on the income tax portal.

- However, with a view to effectively utilize the data collected from various sources and use data to drive voluntary compliance, with effect from 1 June 2020, an enlarged volume of financial information is displayed to the taxpayer through AIS. AIS is an expanded version of Form 26AS and provides like a 360-degree overview of information about the taxpayer relating to:
  - Specified financial transactions such as cash deposit/withdrawal from bank accounts.
  - Sale/purchase of immovable property
  - Banking transactions like opening of time deposits and credit card payments.
  - Capital market transactions like sale/purchase of shares, debentures, purchase/redemption of mutual funds, buy back of shares.
  - Other High Value transactions like purchase foreign currency cash payment for goods and services etc.
- The AIS provides a facility for the taxpayer to object to any information if the RFI has misreported any such information. If the taxpayer feels the information is incorrect or relates to another person/year, duplicate, etc., a facility has been provided to submit feedback online/offline. Once the taxpayer submits the feedback, the reported value and modified value after feedback are shown separately in the AIS.
- Recently on 13th May-2024, CBDT came up with a press release[3] wherein a new functionality has been rolled out a new functionality in AIS to display the status of information confirmation process. This will display, whether the feedback of the taxpayer has been acted upon by the Source, by either, partially or fully accepting or rejecting the same.
- AIS has significantly assisted in collation and pre-populating the sources of income for taxpayers, streamlining the process for filing tax returns, and eliminating the necessity of gathering and analysing documents before filing tax returns.
- Nonetheless, there have been multiple instances where discrepancies between income and details reported in the AIS and the summary presented in the TIS have been observed.

In this section of the article, we have outlined below several areas where additional information can be incorporated, or the flow of information can be enhanced to transform the AIS into a definitive reference document, ultimately enhancing the accuracy and completeness of tax return reporting:

3. https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2020466

Issues in AIS Reporting

Issue-1 — Value of Rental Income

- Many of the Non-Resident Indians have investment in residential properties in large urban office hubs like Gurgaon, Pune, Noida and Bengaluru. The residential properties are given on lease to the corporate employees, who in turn claim House Rental Allowance Exemption for the rentals paid to the landlord.
- At the time of giving their yearly tax declarations, employees are required by the employers to share the PAN of the landlord. The employer is also required to mention the PAN of the landlord in their Quarterly TDS Returns- Form 24Q.
- Now, the rental income is being reported in AIS of the landlord, based on TDS return Form 24Q filed by employer.
- It is often seen that rental amount reflected is the exemption amount claimed by the tenant as an employee, which may differ from the actual rent paid.
- Also, in case of joint tenants, it is seen that when each of tenant claim full HRA amount for the total rent instead of pro rata rent, then the amount reflecting in AIS of Landlord is significantly higher than the actual rental income often twice or thrice the actual rental.

Issue-2 — Reporting of transactions related to capital gains

- Currently, the AIS functionality does not include complete information regarding the purchase date of shares or securities. While the ITD is undertaking various steps to incorporate the acquisition cost of shares/securities, this information appears as NIL in certain instances. This imposes an additional burden on individuals who must gather this data despite most other details being readily available in the AIS.

  Therefore, enhancing the Statement of Financial Transactions ("SFT") system to encompass complete information on the acquisition cost is essential.
- The values recorded in the AIS for sale consideration and acquisition cost are determined based on the best available prices as of the sale/purchase date, which may not always align with the actual values. To ensure precise reporting, these details can be directly populated from the SFT or obtained from CDSL, NSDL, etc., to the possible extent.
- The debit date/date of sale reported in AIS is 2-3 days after the date reported in the capital gains statements provided by brokers (depository participant). The date reported in AIS is the settlement date whereas the date reported by brokers is actual date of sale. Sometimes the settlement date can be after the FY while the sale has been done before Financial Year, which can result in income mismatch as well incorrect categorisation of capital gains as short term or long term.
- In case of sale/purchase of property by Joint Holders, AIS should display total value of such sale/purchase as well as sale/purchase value related to each taxpayer for ease of reference and reporting in the tax return.

Other Miscellaneous Issues

- AIS includes the details for taxes paid during the year according to the date of payment. However, taxes paid information does not reflect in the AIS of the AY to which it pertains as was the case in Form 26AS.

  To ensure that the appropriate information is available to the taxpayer while filing the tax return, it is imperative to ensure that the tax paid information is appropriately reflected in the AIS of the AY to which it pertains.

- AIS functionality continues to be updated even after taxpayer has filed tax returns for a particular year. Further, any mismatch detected during processing of ITR invites intimation u/s 143(1).

  Solution for issues related to AIS reporting.

- Income Tax Department should ensure accuracy of reporting made basis the trend of feedback received from taxpayers with respect to data reported by a particular Reporting Financial Institution and by taking necessary action to prevent misreporting or inaccurate reporting's. This will help to reduce the time spent by taxpayer in reconciling data and build taxpayer's trust in the system.

- In case the taxpayer objects, the information submitted by third parties should not be used by Income-tax department until the same is verified adequately and after allowing the taxpayer an opportunity of being heard.

Concluding remarks

In conclusion, India's digital tax administration offers undeniable efficiencies, but for non-resident taxpayers, navigating these systems can be a hurdle. Issues like denial of refund of TDS due to 26AS mismatch, erroneous demands impacting refunds adjustment, complex Traces registration, and discrepancies in AIS reports highlight the need for further streamlining of interface for Non-Residents. Addressing these challenges will not only enhance the ease of doing business in India but also foster a more positive experience for non-resident taxpayers. By prioritizing user-friendly interfaces, improved communication channels, and Non-Resident specific support systems, India's tax administration can truly unlock the full potential of its digital transformation.

■●■

"We want that education by which character is formed, strength of mind is increased, the intellect is expanded, and by which one can stand on one's own feet."

— *Swami Vivekananda*

Tax and Technology: Examining the role and relevance of digital signatures and DIN (document identification number)

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Overview

Over the last decade, there has been a consistent effort on part of the Government to digitalise tax proceedings in the interest of greater efficiency, transparency, and accountability. While the Government's efforts in this regard are commendable, certain legal issues in relation to this transition to a digital form of tax administration are bound to emerge. All stakeholders continue to grapple with the concept of 'digital signature' and 'document identification number (DIN)', particularly in the context of determining what constitutes a valid service of notice and the consequences for the absence of a digital signature and DIN on communications received from the Income Tax department.

This article seeks to engage with some of these issues by exploring the intersection of the Income Tax laws and rules and the Information Technology Act, 2000.

1 Introduction

In the 21st century, technological advancements have revolutionized the way in which people interact not just with each other, but also with the government. The push towards digitalization has been greatly boosted by the ability to sign and submit documents digitally to the government. Digitalization not only increases transparency in how the government functions, but also increases efficiency in document management and storage.

The Information Technology Act, 2000 (**"IT Act, 2000"**) has played a key role in legitimizing digital transactions by giving them the same recognition as physical transactions. Actions such as maintaining/storing physical documents, physically signing documents, and communicating via physical means are given equal legitimacy when performed digitally/ electronically by virtue of the IT Act, 2000.

The revolutionary role played by technology can be noticed in Indian tax administration as well. In particular, technological advancements have enabled the digitalization of tax filings and assessment proceedings to a great extent. The introduction of the Centralised Processing of Returns Scheme, 2011 (**"CPR Scheme"**) and the E-Assessment Scheme, 2019 (**"E-Assessment Scheme"**) seek to make the processing of income tax returns (**"ITR"**) assessment, and appeal proceedings in a largely digital manner. Aside from increasing efficiency of assessment proceedings, the schemes also greatly increase transparency and accountability.

Like any other technology, however, the CPR Scheme and E-Assessment Scheme are still in their infancy. Practitioners often encounter legal issues that emerge from the interplay between these schemes and the underlying technology. In particular, Indian Courts continue to grapple with the IT Act, 2000 to understand the significance of digital signatures and 'document identification number' (**"DIN"**) in the tax administration system.

This article discusses certain key legal issues in relation to digital signatures and DIN, particularly in the context of the CPR Scheme and the E-Assessment Scheme. Before getting into the issues, however, it would be worthwhile to set out certain fundamental principles of interpretation that provide guidance on how to interpret these provisions.

2 Principles of Interpretation

The Income Tax Act, 1961 (**"IT Act"**) is complex legislation, containing various types of provisions such as charging, machinery, deeming, penalty and prosecution, etc. The provisions are meant to operate harmoniously in order to further the objects and purposes of the IT Act. The relevant principles of statutory interpretation which are applicable vary depending on the nature of the concerned provisions.

It is a settled principle of law that machinery provisions under the IT Act should be interpreted in a manner that makes the IT Act workable[1]. Unlike charging provisions, machinery provisions per se do not impact the tax liability of an Assessee and should therefore not be interpreted in a strict manner as such. To the extent that the CPR Scheme and E-Assessment Scheme provide for the manner in which income tax proceedings (such as processing of returns, assessment proceedings, etc.) are conducted, they should be considered as 'machinery provisions'. Consequently, departures may be made from the strict letter of the law if such a strict interpretation presents a hurdle in the effective implementation of the IT Act. This principle is also codified in Section 292B of the IT Act, which prescribes that no proceedings initiated in furtherance of the IT Act would be invalid or deemed to be invalid merely by reason of any mistake, defect, or omission, provided that such proceedings are in substance and effect in conformity with the 'intent and purpose' of the IT Act.

Certain machinery provisions under the IT Act also provide for substantive rights. For example, the limitation period prescribed under the IT Act provides the Assessee a substantive right despite the fact that they are often contained in machinery provisions. Limitation periods play a crucial role in providing finality and certainty to assessment proceedings. Consequently, such limitation periods are to be interpreted strictly[2].

While interpreting the provisions of the IT Act, due regard must also be given to the principles of fairness and natural justice. It is a settled principle of law that principles of

1. *India United Mills Ltd. vs. Commissioner of Excess Profits, Bombay, AIR 1955 SC 79; Gursahai Saigal vs. CIT, [1963] 48 ITR 1 (SC); J.K. Synthetics vs. CTO, [1994] 1994 taxmann.com 370 (SC); CIT vs. PVS Memorial Hospital Ltd., [2015] 60 taxmann.com 69 (Kerala).*
2. *K.M. Sharma vs. ITO, [2002] 122 Taxman 426 (SC); CIT vs. ACER India, [2022] 137 taxmann.com 374 (Karnataka).*

natural justice form an essential component of every statute (fiscal or otherwise), and that performance of any statutory functions under law must be in compliance with such principles[3]. Principles of natural justice are equally applicable while interpreting the IT Act as well.

In light of the above principles, certain issues in relation to the CPR Scheme and the E-Assessment Scheme are discussed below.

3 Digital Signature

3.1 Digital Signature: An Overview

Signatures affixed by an individual on a document serve as evidence of the identity of the signer as well as an attestation of the signer regarding the contents of such document. 'Digital signatures' perform a similar authenticating role in relation to 'electronic records'. The IT Act, 2000 defines an electronic record in a wide manner to include *'data, record or data generated, image or sound stored, received or sent in an electronic form"*[5]. This would include all forms of digital communication, including digital documents. Such electronic records are authenticated by means of a digital signature.

The authentication of an electronic record is *"effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record"* (section 3(2) of the IT Act, 2000). While discussing the mechanism of generating such a digital signature is beyond the scope of this article, it would suffice to note that digital signatures are prepared using complex algorithms, which generate a unique 'hash value' for each document. The slightest modification of the document's content would lead to the generation of an entirely different hash value/ digital signature. Therefore, if the hash value/ digital signature of an electronic record at the time of transmission is the same as that when the transmission is complete, it can be safely concluded that the document's contents are intact and have not been tampered with in the process. Consequently, digital signatures have the same authenticity as documents signed physically by an individual.

Section 282A of the IT Act deals with the 'authentication of notices and other documents'. Section 282A(1) provides that where a notice or document is required to be issued by a tax authority, the notice or document should be *'signed and issued in paper form, or communicated in electronic form by that authority in accordance with such procedure as may be prescribed'.* Section 282A(2) deems that a notice is authenticated if *"the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon"*[6]. Notably, Instruction 1 of 2018 states that *all departmental orders/ communications/notices being issued to the assessee through the 'e-Proceeding' facility are to be signed digitally by the Assessing Officer'*. Such instructions are binding on tax authorities in view of Section 119 of the IT Act.

3. *Swadeshi Cotton Mills vs. Union of India [1981] 1 SCC 664.*
4. *Raj Kumar vs. DCIT, [2006] 157 Taxman 168 (SC); Sahara India vs. CIT, [2008] 169 Taxman 328 (SC).*
5. Section 2(t) of IT Act, 2000.
6. The requirement of signing notices is further provided in CBDT Notification number 2 of 2016.

Digital signatures play a key role in search and seizure procedures as well[7]. When seizing electronic records, tax authorities are required to comply with guidelines prescribed in the 'Digital Evidence Investigation Manual' (**"DEIM"**) prepared by the CBDT, which requires the generation and recording of the hash value of such records at the time of preparing the *panchnama*[8]. This ensures that any subsequent modification of the contents of the electronic record would be noticeable. Compliance with the DEIM is mandatory, and failure to adhere to the DEIM could lead to such evidence being inadmissible[9].

3.2 Digital Signature under CPR Scheme and E-Assessment Scheme

The concept and definition of a digital signature under the IT Act, 2000 is imported into the CPR Scheme and the E-Assessment Scheme as well. When an ITR is filed electronically with a valid 'digital signature', the CPR Scheme generates an electronic acknowledgement for the same as evidence of filing the return[10]. The date mentioned in the automatically generated acknowledgement would be considered as the date of filing the ITR. In case an ITR is filed electronically without a digital signature, an acknowledgement in terms of Form ITR-V would be generated by the system[11]. This form is akin to a verification, and the taxpayer is then required to physically sign the form and dispatch the form via speed post to the Centre. The date mentioned in Form ITR-V would be the date of filing the ITR[12].

While the CPR Scheme deals with the processing of ITRs (Section 143(1)), the E-Assessment Scheme deals with the assessment procedure [143(3)]. Upon a receipt of notice from the 'national e-assessment center' (**"NEAC"**) under Section 143(2), the taxpayer is required to file a response to the notice by submitting any other document as may be required during assessment proceedings. Such documents are considered as 'electronic records' in line with the IT Act, 2000, and are required to be authenticated by the originator by affixing a digital signature[13]. Therefore, any communication by the NEAC to the Assessee is required to bear a digital signature in line with the E-Assessment Scheme.

3.3 Digital Signature vis-à-vis limitation period

Before any adverse/coercive action is taken against an assessee, the IT Act prescribes the requirement of issuance of a notice. For example, a valid notice is required to be issued to an Assessee before reassessment proceedings can be initiated. Serving notice to an assessee prior to any adverse/coercive being taken is not just a statutory requirement but is also a fundamental component of natural justice. Service of notice is essential

7. Section 132 of the IT Act.
8. Chapter 6.8 of the DEIM.
9. The DEIM is akin to an instruction provided under Section 119 of the IT Act to subordinate authorities and is therefore binding. *Saravana Selvarathnam Retails (P.) Ltd. vs. CIT(A) [2024] 160 taxmann.com 287 (Madras).*
10. Clause 4(1) of the CPR Scheme.
11. Clause 4(4) of the CPR Scheme.
12. Clause 4(5) of the CPR Scheme.
13. Clause 9 and 10 of the E-Assessment Scheme.

in order to enable an assessee to understand the reasons for any proposed action, thereby giving the assessee a fair opportunity to present its case. In such a scenario, determining the time of issuance of notice is crucial, as it has a bearing on whether the notice is issued within the stipulated limitation period.

Section 282 of the IT Act is the general provision dealing with service of notice, and prescribes the following 4 methods:

i. by post/courier service;

ii. in the manner as provided under the Civil Procedure Code, 1908;

iii. in the form of an 'electronic record' as prescribed under Chapter IV of the IT Act, 2000; and

iv. by any other means as may be prescribed by the CBDT.

The term "electronic record" is defined in section 2(f) of the IT Act, 2000 as "data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche". Section 13 of the IT Act, 2000 provides that the dispatch of an electronic record occurs when it enters a computer resource outside the control of the 'originator' (i.e., the sender). A *'computer resource' is defined widely under Section 2(k) of the IT Act, 2000 as any "computer, computer system, computer network, data, computer data base or software"*. The time of receipt of an electronic record for a recipient (who does not have a designated computer resources for receiving it) is when such electronic record enters the computer resource of the addressee. In the context of serving a notice (which is an electronic record), dispatch of a notice would take place when the same enters a computer resource outside the control of the tax authorities and receipt of notice as per the IT Act, 2000 would take place when such notice enters the computer resource of the Assessee.

These principles were examined by the Delhi High Court in the case of ***Suman Jeet Agarwal vs. Income Tax Officer***[14]. The Court had to determine whether the date of generation of a notice on the Income Tax Business Application (**"ITBA"**) software (which was on 31 March 2021) can be considered as the date of issuing a notice for the purpose of Section 149 of the IT Act or the date of digital signature (which was 1 April 2021). Determining the date of digital signature has a bearing on which provisions would govern the reassessment. Revenue authorities invoked section 13 of the IT Act, 2000 and submitted that the moment the reassessment notice enters the ITBA software, it has entered a computer resource outside the control of the originator (which they claimed was the assessing officer in this case). Therefore, the time of issuance of notice should be considered as the time when the notice is uploaded on the ITBA software. Revenue sought to distinguish the 'dispatch' of notice from the 'issuance' of notice. They also invoked the principle of purposive interpretation for machinery provisions in support of their contentions as well[15].

14. [2022] 143 taxmann.com 11 (Delhi)

15. Reliance was placed on the ruling in *CIT vs. Calcutta Knitwears [2014] 43 taxmann.com 446.*

Ruling in favour of the Assessee, the High Court held that the originator for the purpose of the IT Act, 2000 was not the Assessing Officer, but the department itself. Therefore, the notice was issued only when it reached a computer resource outside the ITBA. In reaching this conclusion, the High Court relied on several similar cases in this regard[16]. As the digital signature on the notice was dated 1 April 2021, this was deemed to be the date on which such notice was issued. Consequently, the notice was held to be time barred.

It is pertinent to note that the CPR Scheme provides for an additional mode of serving a notice by means of placing a copy of the notice in the electronic account of the assessee on the income tax website. The E-Assessment Scheme provides for this mode of service as well, but additionally requires issuance of a 'real-time alert' to the assessee. This includes intimating the assessee of the notice by means of a text message/email as well. While the provision of an email/message is mandatory for communication under the E-Assessment Scheme, it is arguable that a similar condition should be read into the CPR Scheme as well.

In a recent case of ***Munjal BCU Centre of Innovation and Entrepreneurship vs. CIT***[17], revenue authorities issued a notice to the assessee for initiating certain proceedings under Section 12A of the IT Act. However, such notice only reflected in the e-portal of the assessee, and no separate email was sent. Invoking principles of natural justice and stressing on a 'pragmatic interpretation', the Punjab and Haryana High Court held that:

"An individual or a Company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed."

In light of the view expressed by the Punjab and Haryana High Court, it is important for a practitioner to scrutinize the date mentioned in the digital signature to examine whether it is issued beyond the prescribed limitation period. The date and time mentioned in the digital signature would be relevant to challenge a notice if tax authorities demand a response from the assessee within an unreasonably short span of time. For example, a notice issued late at night on a Friday, seeking information by a Monday morning may be challenged for providing an unreasonably short span of time for compliance.

3.4 Absence of digital signature: mere irregularity?

The term "digital signature" is defined in Section 2(p) of the IT Act, 2000 as "authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3." Section 3 of the IT Act, 2000 provides that a subscriber may authenticate an electronic record by affixing

16. *Parveen Amin Bhathara vs. ITO, Writ Appeal No. 1795 of 2021; Kanubhai M. Patel (HUF) v. Hiren Bhatt, [2011] 12taxmann.com 198/202 Taxman 99 (Mag.)/334 ITR 25.*
17. [2024] 160 taxmann.com 629 (Punjab & Haryana)

his digital signature by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

It is a settled principle of law that an order/ notice that is not signed is not merely a curable defect under Section 292B, as such error goes to the root of the very existence of such order/notice[18].

As stated above, Section 282A(1) mandates that notices issued by the concerned tax authorities must be signed. This requirement under Section 282A is further supported by Instruction 1 of 2018 as well as the E-Assessment Scheme. However, the interplay between such requirement to sign a notice on the one hand and the deeming fiction contained in Section 282A(2) (where a notice is deemed to be authenticated under Section 282A if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon) is unclear in the light of differing views taken by various High Courts.

In the case of ***Prakash Krishnavtar Bhardwaj vs. ITO***[19], the Bombay High Court quashed a reassessment notice for not having a physical or digital signature, and that this was a defect that could not be cured under Section 292B. Relying on such ruling, the Karnataka High Court quashed a similar notice as well[20]. The Bombay High Court ruling and Karnataka High Court rulings do not discuss Section 282(A)(2) while reaching their conclusion.

The Chhattisgarh High Court in the case of ***Bharat Krishi Kendra vs. Union of India***[21] upheld the validity of an approval granted under Section 151 of the IT Act (dealing with sanction for issue of reassessment notice) despite the approval lacking a physical or digital signature on the ground that such approval contained a DIN, document number, and also contained details such as the name and designation of the concerned authority relying on Section 282A(2).

That said, the Mumbai bench of the Income Tax Appellate Tribunal (**"ITAT"**) in the case of ***Reuters Asia Pacific Ltd. vs. DCIT*** quashed an unsigned assessment order. Revenue authorities sought to support the validity of the assessment order by invoking Section 282A(2) and submitting that the order was communicated from the designated e-mail id of the assessing officer in accordance with rule 127A of the Income Tax Rules, 1962 (**"IT Rules"**). However, the ITAT clarified the distinction between 'signing' an assessment order and 'authenticating' the same. Section 282(A)(1) deals with signing a document, which is essentially the process of an assessing officer committing to the document. Section 282(A)(2), however, deals with 'authentication' of a document, which related to the genuineness of origin of the document. Consequently, Section 282(A)(2) does not do away with the requirement provided in Section 282(A)(1).

18. *CIT vs. Aparna Agency, [2004] 139 TAXMAN 132 (CAL.); Umashankar Mishra vs. CIT, [1982] 11 Taxman 75 (MP); B.K. Gooyee vs. CIT, [1966] 62 ITR 109 (CAL.).*
19. [2023] 150 taxmann.com 60 (Bombay). See also ITAT Mumbai judgment in *Reuters Asia Pacific Ltd vs. DCIT, [2023] 157 taxmann.com 705 (Mumbai – Trib).*
20. *Panjos Builders (P.) Ltd. vs. ITO, [2024] 161 taxmann.com 573 (Karnataka).*

Given the conflicting rulings, it remains to be seen whether the Supreme Court would be called upon to provide clarity. That said, assessees may continue to invoke the favourable rulings mentioned above to challenge communications by tax authorities, especially given the fact that instruction number 1 of 2018 (which requires digital signature on tax department communications) is binding on tax authorities by virtue of Section 119 of the IT Act.

4 Document Identification Number

4.1 Background

In the interests of transparency and ensuring an 'audit trail' of all communication, in 2019 the Central Board of Direct Taxes ("CBDT") clarified that every communication by income tax authorities (which includes communication under the CPR Scheme and the E-Assessment Scheme) to the assessee or any other person must necessarily have a computer-document identification number or DIN[22]. While a DIN is computer generated code, it is different from a digital signature as it is not in the nature of an asymmetric crypto system. A digital signature can be generated by any device based on an algorithmic code, whereas a DIN can only be generated by the concerned government system.

Notably, Section 282B of the IT Act was introduced *vide* Finance Act (No. 2) of 2009 and required every income-tax authority to allot a DIN in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee. Clause 2 of the same provided that in the absence of a DIN, the concerned notice, order, letter or any correspondence issued by any income-tax authority shall be treated as invalid and shall be deemed never to have been issued. However, Section 282B was deleted vide Finance Act, 2011 in light of practical difficulties due to non-availability of requisite infrastructure on an all India basis.

4.2 Absence of DIN: a mere irregularity?

While the DIN Circular was issued in 2019, there are several instances after 2019 wherein notices were issued to taxpayers without a DIN. Such notices were challenged before various High Courts for non-compliance with the DIN circular.

In the case of ***CIT vs. Brandix Mauritius Holdings[23], ("Brandix")*** the Delhi High Court considered whether a final assessment order passed without a DIN was invalid. Relying on the DIN Circular, the Court held that the circular issued by the CBDT was clear on the issue and the purpose of DIN was to ensure transparency and fairness. Noting that the DIN Circular was binding on tax authorities by virtue of Section 119 of the IT Act, the Court quashed the impugned assessment order which did not have a DIN. On similar lines, the Delhi High Court in the case of ***Kamlesh Kumar Jha vs. PCIT[24]***, held that the absence of a DIN would invalidate the tax authorities'

21. [2022] 136 taxmann.com 245 (Chhattisgarh).
22. Circular number 19 of 2019 (hereinafter referred to as the "DIN Circular"). Refer clause 2 of the circular.
23. [2023] 149 taxmann.com 238 (Delhi)
24. [2023] 156 taxmann.com 622 (Delhi)

order of transferring the assessee's case from Delhi to Mumbai. A similar view has been adopted by several other High Courts[25] and Tribunals[26] as well.

Subsequently the ruling in Brandix was stayed by the Supreme Court vide an order dated 3 January 2024[27]. As the stay is on Brandix and not on other similar rulings, these arguments are still being taken by taxpayers before various fora and finality on this issue will be reached once the Supreme Court decides this issue. Post the stay by the Supreme Court, a contrary position has been taken by ITAT Cochin in the case of ***Mytheenkunju Muhammed Kunju Kandathil Jewellers vs. DCIT***[28]. While the Assessee in this case sought the quashing of the impugned assessment order for lacking a DIN by placing reliance on the ruling in Brandix, the ITAT Cochin noted that the intimation letter accompanying the assessment order contained a DIN. Furthermore, the demand notice was physically signed by the assessing officer as well. Consequently, the Cochin Bench of ITAT invoked the deeming fiction contained in Section 282(A)(2) of the IT Act (discussed in the above section on digital signature) and upheld the validity of the assessment order.

5 Conclusion

In this article, we have deliberated upon recent issues arising out of the use of digital signatures and DIN by income tax authorities and full clarity on implications of these core issues will be available only once the Supreme Court passes a ruling in this regard. While one awaits clarity on these issues, tax practitioners and taxpayers alike should keep an eye out on these technical/jurisdictional arguments and raise them timely at the appropriate fora.

25. *Ashok Commercial Enterprises vs. ACIT, [2023] 154 taxmann.com 144 (Bombay).*

26. *Deepak Kumar vs. DCIT, [2024] 159 taxmann.com 358 (Delhi-Trib.); Finesse International design vs. DCIT, [2023] 157 taxmann.com 271 (Delhi-Trib.); Pratap Singh Yadav vs. DCIT, [2024] 158 taxmann.com 158 (Delhi-Trib.); SPS Structures Ltd. vs. DCIT, [2023] 157 taxmann.com 674 (Chandigarh-Trib.).*

27. *CIT vs. Brandix Mauritius Holdings Ltd, [2024] 158 taxmann.com 247 (SC).*

28. [2024] 160 taxmann.com 630 (Cochin-Trib.).

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SS-IX-86

Judicial developments on the issues faced by the taxpayers considering the action undertaken contrary to the law by the CPC

CA Rajat Soni

Overview

The Government of India on the recommendation of Business Process Re-engineering Committee (BPR Committee) approved (in February 2009) resulted into establishment of Centralised Processing Centre (CPC) for bulk processing of Income Tax returns (ITR). The Finance Act, 2008 amended the Income-tax Act, 1961 by inserting section 143(1A) empowering the Central Board of Direct Taxes to make a scheme for centralized processing of income tax returns with a view to expeditiously determine the tax payable or refund due to the Assessee.

Over a period of time, following the objective of eliminating human interface, the processes have been revamped creating significant dependency on the CPC, making it a Super AO as discussed in the foregoing article.

Thus, the powers granted to CPC has resulted into plethora of issues viz, erroneous adjustments while processing the return of income, delayed processing of refunds, adjustment of refund against erroneous/non-collectible demands, lack of coordination between the AO and the CPC, etc.

This article provides the gist of the judicial precedents passed by various Courts and the divergent views, if any, adopted by such Courts in relation to the powers of the CPC.

For ease in reference for the readers, the article carries a summarized heading before each of the decision to easily understand the crux of the order and the issue involved.

1. Disallowance of contribution to Provident Fund or any other fund is impermissible under section 143(1) relying on disclosure in Tax Audit Report

P. R. Packaging Service vs. ACIT [2023] 148 taxmann.com 153 –(Mumbai Tribunal) dated 7 December 2022 (AY 2019-20)

Facts

The Assessee had filed its Income Tax Return alongwith its Tax Audit Report ('TAR') for AY 2019-20. In the TAR, the Tax Auditor had reported details of contribution made towards employees' contribution to provident fund (PF) alongwith its due date of making the payment as per PF Act. The Assessee had remitted the employees contribution to PF beyond the due

date prescribed under the PF Act but had duly remitted the same before the due date of filing the ITR under section 139(1) of the Act.

The return of income filed by the Assessee was processed by CPC and intimation under section 143(1) of the Act was issued making disallowance based on the disclosure made in the Tax Audit Report. Against such disallowance made by the CPC in intimation under section 143(1), the Assessee preferred an appeal before the Hon'ble Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC) (Hon'ble CIT(A)). The Hon'ble CIT(A) upheld the disallowance so made in the intimation issued under section 143(1) of the Act. The Assessee preferred an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT noted that the Tax Auditor had merely mentioned the facts in the TAR i.e. due date for remittance of PF as per the PF Act and the actual date of payment made by the Assessee. Nowhere it was mentioned by the Tax Auditor that the remittances made beyond the due date of PF Act is to be disallowed.

The Hon'ble ITAT has further noted that the CPC basis the disclosure made in the TAR and by applying the provisions of section 143(1)(a)(iv) of the Act has made the aforesaid disallowance while processing the ITR under section 143(1) of the Act.

The Hon'ble ITAT held that the clause (iv) of section 143(1)(a) of the Act comes into picture only when the Tax Auditor had suggested for a disallowance of expense or increase in income and the same had not been considered while filing the ITR. In the instant case, the Tax Auditor had merely mentioned the facts about the date and not stated to disallow Employees Contribution to PF where it is remitted beyond the due date under the respective Act.

Hence, the Hon'ble ITAT concluded that the said action of the CPC is against the provisions of the Act as the aforesaid adjustment does not fall within the purview of prima facie adjustments under section 143(1)(a) of the Act. The Hon'ble ITAT further relied on the co-ordinate bench ruling in ***Kalpesh Synthetics (P.) Ltd. vs. Dy. CIT [2022] 137 taxman.com 475/195 ITD 142 (Mum.-Trib.)*** to strengthen its view.

The Hon'ble ITAT has acknowledged the fact that the issue on the merits of case is decided against the Assessee by the recent decision of the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. vs. CIT [2022] 143 taxmann.com 178/[2023] 290 Taxman 19/[2022] 448 ITR 518*. However, the Hon'ble ITAT distinguished the same by noting – "This decision was rendered in the context where assessment was framed under section 143(3) of the Act and not under section 143(1)(a)."

Thus, the Hon'ble ITAT held that the Employees Contribution to PF cannot be disallowed while processing the return under section 143(1) of the Act. The appeal of the Assessee was allowed.

Note: The Hon'ble Pune ITAT in the case of ***Cemetile Industries vs. ITO [2022] 145 taxmann.com 209 (Pune-Trib.)*** by placing reliance on the Hon'ble Supreme Court decision of Checkmate Services (P.) Ltd. held that the disclosure made in Tax Audit Report with respect to delayed remittances of employees contribution to PF gets covered within the purview of 'disallowance of expenditure... "indicated" in the audit report' as mentioned under section 143(1)(a)(iv) of the Act and thus, has upheld

the disallowance made in this regard. The Hon'ble Pune Tribunal had also considered applicability of clause (ii) of section 143(1)(a) but concluded that the same is not applicable in the present context. Similar view has been adopted by the Jodhpur Tribunal in the case of ***Tarun Construction Co. vs. ITO [[2023] 157 taxmann.com 727 (Jodhpur-Trib.)]***. Similar findings has also been upheld by various courts/tribunals in the following cases:

- ***Rohan Korgaonkar (2024) (298 Taxman 159) (Bom HC)*** (Bombay High Court after considering PR Packaging has taken the aforesaid view)
- ***Salasar Balaji Ship Breakers (P.) Ltd. (ITA No. 1947/Mum/2021) dated 12 April 2023***
- ***Deutsche India Pvt. Ltd (ITA No. 2824/Mum/2022) dated 22 February 2023***
- ***Pravin Malshi Shah (ITA NO. 33 & 34/Mum/2023) dated 13 March 2023***
- ***Datwayler Pharma Packaging India Pvt. Ltd. (ITA No. 98/Pun/2022) dated 21 November 2022***
- ***Chemtile Industries and various Assessee's (ITA No. 693/Pun/2022) dated 23 November 2022***
- ***Aroma Aromatics and Flavours (ITA No. 1646/Del/2021) dated 30 November 2022***
- ***Automac Diesels (ITA No. 338/Bang/2022) dated 19 December 2022***

2. Income Tax Return duly filed but treated as defective under section 139(9) of the Act is appealable under section 246A of the Act

Deere & Company vs. DCIT (International Transaction) [[2022] 138 taxmann.com 46 (Pune Tribunal) dated 5 November 2021 (AY 2016-17)

Facts

The Assessee (foreign company) filed its ITR for AY 2016-17 declaring the total income consisting of royalty and FTS income. The return was processed by DCIT (CPC), Bangalore with a defect on account of difference between the amount of income disclosed in ITR and gross receipts appearing in Form 26AS. The Assessee submitted its response against the notice issued under explanation (a) to section 139(9) of the Act reconciling the reasons for difference and that the amount of income reported in ITR is correct and there is no defect.

The DCIT (CPC) did not consider the submission filed by the Assessee and declared the ITR as invalid by passing an order under section 139(9) of the Act. The Assessee then filed an appeal before the Hon'ble CIT(A) and the same was dismissed on the ground that order under section 139(9) of the Act was not an appealable order as per section 246A of the Act. Aggrieved by the same, the Assessee preferred an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT took cognizance of the Assessee's response filed against the notice issued under section 139(9) of the Act wherein the said difference of receipts between the ITR filed and that of the Form 26AS was attributed to 3 reasons, viz. (a) conversion rates to be used as per the provisions of the Act and Rules; (b) certain amounts on which tax was deducted by Indian entity but the amounts were not chargeable to tax in hands of foreign company as it was in the nature of reimbursement and (c) reversal of some invoices. The Hon'ble ITAT further observed that the above three stated reasons are bound

to bring difference in the income reported by the Assessee in its ITR and the amount of gross receipts appearing in Form 26AS, but such difference is not taxable as the same is not in the nature of income.

The Hon'ble ITAT further made an observation about the defect as mentioned in explanation (a) of section 139(9) of the Act that it refers to non-filing of the respective columns of the ITR Form and not non-tallying of figures due to a valid reasons. Thus, aforesaid mismatch on account of valid reasons cannot be said to be covered within purview of explanation (a) to section 139(9) of the Act.

The Hon'ble ITAT further stated that the AO despite knowing that the return filed by the Assessee has been treated invalid, should have issued a notice under section 142(1)(i) of the Act subsequent to which correct total income be determined after making an assessment under section 143(3) of the Act, which did not happen in the facts of the present case and the CPC Bangalore left the Assessee without any apparent legal recourse by not issuing any notice under section 142(1)(i) of the Act after having declared the original return of income invalid, pushing the proceedings to a dead end.

Thus, to prevent the Assessee from injustice, the Hon'ble ITAT specifically citing the provisions of section 246A(1)(a) of the Act has held that any order passed under the Act against the Assessee, impliedly including an order under section 139(9) of the Act in the circumstances as in this case, having the effect of creating liability under the Act which he denies or jeopardizing refund, gets covered within the ambit of clause (a) of section 246A(1) i.e. making such order an appealable order, despite the fact that the word 'order' is not preceded or succeeded by the word 'assessment'.

Further, the other clause is (i) in section 246A of the Act which provides that an order passed under section 237 can be appealed against. Section 237 of the Act is the provision which deals with refund. Per se, 139(9) is a distinct provision and evidently the order is not passed under section 237. However, considering the effect of invoking the provisions of section 139(9) which resulted into denial of refund, the Hon'ble Tribunal held that the order passed the present case is akin to passing of an order under section 237 and hence, appeal can be maintained also under the provisions of section 246A(i). The principle laid down by the decision can be summarised as:-

'No technicality can be allowed to operate as a speed breaker in the course of dispensation of justice'.

Thus, the impugned order was set aside, and the said matter was remitted to Hon'ble CIT(A) to be disposed of on merits as per law and after allowing a reasonable opportunity of hearing to the Assessee.

Note:

It is also pertinent to note that the above decision has unfortunately not been followed by the Hon'ble Pune Tribunal in case of ***Amrut Rajendra Kumar Bora (225 TTJ 453).*** It is on the premise that the provision of section 246A is self exhaustive and does not include order under section 139(9). The Hon'ble Tribunal quoted the decision of the Hon'ble SC in the case of ***Dilip Kumar and Ors (9 SCC 1)*** to follow the principle of strict interpretation, even though the said decision was in the context of exemption notification which is in different from the case of remedial measure which is the present context. The Hon'ble Tribunal even went on to regard that the earlier order passed by the Hon'ble Co-ordinate Bench in case of Deere & Co is per inquirium.

Hence, the blessing in terms of earlier order has been taken away by the later decision of the Tribunal. We are yet to see how the controversy will unfold in future. However, for now, in cases like these where refund is likely to get stucked, parallely, the Assessee can explore filing an application with the JAO to issue notice under section 142(1) or file an application under section 119 for condonation.

Further, application under Section 264 of the Act can also be filed with PCIT to direct the CPC to consider the defective return as valid return.

3. Adjustment made to the income reported in the Income Tax Return without providing due opportunity as per 1st proviso to section 143(1)(a) of the Act is invalid

Camellia Educare Trust vs. ITO (Exemption) [2023] (152 taxmann.com 304) (Kolkata Tribunal) dated 30 May 2023 (AY 2020-21)

Facts

The Assessee trust is registered under section 12AA of the Act. It filed its ITR in Form ITR 7 under section 139(4A) reporting total income at ` Nil. It also filed Form 10B on 30 March 2021. The Assessee had reported total receipts of ` 5.67 crores against which it had claimed as application of income under section 11 of the Act.

Being a belated return, CPC while processing the return, made an adjustment by not allowing the claim of the Assessee under section 11 towards application of income. The CPC computed the total income of the Assessee which was nothing but total receipts of the Assessee for the year under consideration. The said adjustment in the intimation issued u/s 143(1) was made by CPC without communicating the proposed adjustment as per the 1st proviso to section 143(1)(a) of the Act.

The Assessee then filed an appeal before the Hon'ble CIT(A) against such action of the CPC. The appeal filed by the assessee was decided in its favour and a relief was granted by observing that the delay in filing the ITR and Form 10B was due to the outbreak of Covid-19 coupled with a fire which broke at the premises of the Assessee wherein most of the original office records, files, documents and computer hard disk were burnt. The Hon'ble CIT(A) further observed that the Hon'ble Supreme Court taking *suo moto* cognizance of the prevailing situation due to pandemic, had excluded, for the purpose of limitation, the period from 15 March 2020 to 28 February 2022, in view of which there is no delay in filing the ITR and Form 10B. Aggrieved by the decision of Hon'ble CIT(A), Revenue filed an appeal before the Tribunal and the Assessee by way of Cross Objection raised a ground that the Intimation is invalid since issued without following the mandate as required by the first proviso to the said section.

Held

The Assessee placed reliance on the CBDT Instruction No. F. No. 173/193/2019-ITA-I dated 23 April 2019 wherein it is mentioned that for the purpose of claiming benefit of exemption under section 11 for trust registered under section 12AA reference is to be made to section 139 of the Act in respect of filing of the ITR. The Clarification given in the CBDT instruction gets verified by referring to the amendment brought in section 12(1)(ba) of the Act which now incorporates the time allowed in sub-section (1) or sub-section (4) of section 139 for the purpose of compliance of sub-section (4A) of the said section in respect of furnishing of return of income.

The Assessee pressed two main aspects - as to whether the disallowance made was a permissible adjustment contained in section 143(1)(a) of the Act and whether this adjustment, if permissible, has been made in compliance to 1st proviso to section 143(1)(a) of the Act.

The Hon'ble ITAT considering the facts of the case, held that the revenue fails on both the aspects as follows:

— The impugned intimation issued under section 143(1)(a) of the Act is not in compliance with the 1st proviso to section 143(1)(a) and thus, the impugned intimation is invalid under the Act.

- Income assessed was not understood in its commercial sense as it was assessed at the value of total receipts even though the CPC had unequivocally accepted both- 'revenue expenditure' and 'capital expenditure' while processing the return.

Considering the above discussion and documentary evidence placed on record, the grounds of cross-objection raised by the Assessee were allowed and the grounds raised by the Revenue in its appeal were dismissed.

Note:

Similar view has been adopted by the Hon'ble Mumbai Tribunal in the case of ***Ernst & Young Merchant Banking Services LLP vs. ADIT, CPC [ITA No. 2333/Mum/2022 (A.Y. 2020-21)],*** wherein it was held that no alteration in the returned figures can be done by CPC, Bangalore without giving proper opportunity of being heard to the assessee/ proper notice for adjustment by virtue of the provisions of 1st and 2nd proviso to section 143(1)(a) of the Act. Similar view has also been upheld by various tribunals in the following cases:

- ***Arham Pumps [140 taxmann.com 204 (Ahmedabad ITAT)] (refer page nos. 168 to 172)***
- ***Kalyan Educational Society [ITA No. 106/Kol/2023 dated 23 May 2023 (Kolkata ITAT)]***

4. Adjustments made in the intimation issued under section 143(1) of the Act can also be adjudicated if appeal is filed before the Hon'ble CIT(A). Filing rectification application against the same is mere alternate remedy available with the Assessee

M/s. Dixit Rice Mill vs. DCIT (CPC) [I.T.A No.373/Agra/2018] (Bengaluru Tribunal) dated 10 January 2020 (AY 2016-17)

Facts

The Assessee's ITR for AY 2016-17 was processed by CPC and certain additions / disallowances were made in the Intimation order passed under section 143(1) of the Act.

Aggrieved by the above order, the Assessee preferred an appeal before Ld. CIT(A). The Ld CIT(A) dismissed the appeal directing the Assessee to first file a rectification application online before the CPC and follow up with Jurisdictional AO for necessary correction when the file of the Assessee gets transferred to Jurisdictional AO.

Against the order of the Ld. CIT(A), the Assessee preferred an appeal before the Hon'ble ITAT.

Held

The Ld. DR contended that the Assessee was required to approach the CPC for rectification as a first step, and in case, no relief is granted by CPC, then the Assessee could have filed an appeal with CIT(A) in accordance of law.

The Hon'ble ITAT took cognizance of the provisions of section 246A of the Act and made an observation that it is abundantly clear from the provisions that an appeal can be filed before CIT(A) against an order passed by the CPC under section 143(1) of the Act if the Assessee denies his liability pursuance to order passed under section 143(1) of the Act.

Thus, the Hon'ble ITAT held that the Ld. CIT(A) was incorrect in mentioning in his order that no appeal can be filed against the intimation issued by the CPC under section 143(1) of the Act unless the Assessee approaches the CPC for rectification, when it was nowhere required by law to do so. The said matter was thus remanded back to CIT(A) for fresh adjudication based on the merits of the case. Thus, the appeal filed by the Assessee was allowed.

5. Issuance of intimation under section 245 of the Act prior to adjustment of refund is mandatory and not procedural

G. E. Power India Ltd. vs. ACIT [2023] (458 ITR 450) (Bombay High Court) dated 25 September 2023 (AY 2016-17, AY 2017-18 and AY 2019-20)

Facts:

The Assessee had a refund due from the tax department for AYs 2016-17, 2017-18 and 2019-20 amounting to appx. ` 27,41,74,119. However, the refund due was adjusted against the tax demand of AY 2014-15 without any intimation to the Assessee. Against the said adjustment of refund framed without prior intimation, the Assessee filed a writ petition before the Hon'ble Bombay HC for issuance of the said refund along with interest under section 244A(1) and 244A(1A) of the Act.

Held

The Hon'ble Bombay HC took the note of the response received from the CPC, wherein they have admitted that no such intimation was provided to the Assessee. The Ld. Counsel of Revenue argued that it is only a procedural lapse and that the intimation could not be served due to technical reasons and the same could be condoned.

The Hon'ble Bombay HC took cognizance of above facts and relying on its own ruling in the case of ***Bharat Petroleum Corpn. Ltd. vs. Asstt. DIT [2022] 284 Taxman 647 (Bom.),*** held that the requirement of prior intimation under section 245 of the Act is a mandatory requirement and failure to comply with this mandatory requirement would make the entire adjustment as wholly illegal.

The Hon'ble Bombay HC disposed the petition by directing the Revenue to grant the refund to the Assessee within four weeks with accumulated interest, if any, in accordance with law.

6. Interest on income tax refund is to be paid till the date of credit of refund to the bank account of the Assessee

Wabtec Locomotive Private Limited vs. ACIT & Ors. [W.P.(C) 4405/2022] (Delhi High Court) dated 11 May 2022 (AY 2020-21)

Facts

The Assessee was entitled for refund so determined u/s 143(1) of the Act. The said refund was received by the Assessee in April, 2022. However, interest on such refund was received only upto 31 March 2021 (date of intimation order). Against the same, the Assessee filed a writ petition for grant of interest till the date of credit to the bank account of the Assessee.

Held

In response to the above, the Respondent submitted that as per the response received from the CPC, Bangalore, the functionality to grant interest under section 244A till the date of granting refund, in cases where refund was on hold for compliance under section 241A is under development and thus, the CPC is not able to grant interest till the date of issuance of refund. The CPC further mentioned that the AO can grant said interest by passing manual order and on uploading the order on ITBA portal refund due will be issued by the CPC.

The Hon'ble High Court disposed of the writ petition by directing the AO to grant interest under section 244A of the Act for the aforesaid period by passing a manual order and upon uploading the order on ITBA portal, refund due shall be issued by the CPC within six weeks.

Similar view has been adopted by various courts/Tribunals in the following cases:

- ***CIT vs. Pfizer Ltd (1991) (191 ITR 626) (Bombay HC)***
- ***Citi Bank vs. CIT in ITA No. 6 of 2001 dated 17.7.2003 Bombay HC***
- ***Ingenico International India Pvt. Ltd. [W.P. (C) 5570/2022] dated 4 April 2022 (Del HC)***
- ***SICOM Ltd. (ITA No. 2034 & 2035/ Mum/2023) dated 16 October 2023***
- ***Small Industries Development bank of India (ITA No. 1813/Mum/2023) dated 22 August 2023***
- ***Novartis India Ltd (ITA No. 1249/ Mum/2010) dated 18 March 2011 (Mumbai ITAT)***
- ***Raymond Ltd vs. DCIT (ITA Nos. 8641 & 8642/Mum/2011) dated 15 June 2022 (Mumbai ITAT)***
- ***Grasim Industries Ltd vs. DCIT (ITA Nos.2053 & 2054/Mum/2020) dated 14 January 2022 (Mumbai ITAT)***
- ***Tata Communications Payment Solutions Ltd. (ITA No. 107/Mum/2022) dated 23 May 2022***
- ***H.U.F. of His Late Highness Sir J.M.Scindia vs. ACIT (ITA No.5536/ Mum/2019) dated 11 August 2022 (Mumbai ITAT)***
- ***Sabre Asia Pacific Pte Ltd vs. ACIT (ITA No. 154/Mum/2021)***
- ***Koninklijke Philips N.V. (ITA No. 437 to 441/Kol/2021) dated 2 September 2022***

7. Writ petitions in High Court due to delayed receipt of refunds

On account of substantial delays in receiving the refunds determined by the CPC while processing the return of income or by the AO in relation with rectification/order giving effect and pending with CPC for further release, the Assessee as a last resort exercised its jurisdiction of filing a writ petition in the jurisdictional High Court. Majority Courts across the country have taken the cognizance of the substantial delay that takes place in getting the refund processed and gave directions for expeditious processing. Some of the precedents are listed below:

- ***Tech Mahindra vs. DCIT [2023] (153 taxmann.com 342) (Bombay High Court)***
- ***Vodafone Idea Ltd vs. CIT [2019] (110 taxmann.com 185) (Bombay High Court)***

- ***Vodafone Idea Ltd. vs. DCIT (TDS) [2019] (106 taxmann.com 22) (Bombay High Court)***
- ***Nirma Ltd vs. DCIT [2023] (150 taxmann.com 387) (Gujarat High Court)***
- ***Tata Communications Ltd. vs. DCIT [2019] (108 taxmann.com 200) (Bombay High Court)***
- ***M.J. Engineering Consultants (P.) Ltd vs. ITO [2022] (145 taxmann.com 307) (Delhi High Court)***
- ***Vinoda B. Jain vs. JCIT [2022] (WP No. 2386 of 2022) (Bombay High Court)***
- ***Intertek India Private Limited vs. ACIT [W.P.(C) 6361/2021 & CM APPL. 21994/2021] (Delhi High Court)***

The Hon'ble High Courts after taking cognizance of the hardships faced by the Assessee in getting the due refund have upheld the following key principles:

- System/Technical difficulties cannot be a reason for delay in processing of refund;
- If the refund is payable, whether the computer systems accepts or not, is of no consequence;
- Delayed refund is to be granted with additional interest under section 244A;
- Refund once determined and approved should be credited to the bank account in expeditious manner (generally the time allowed by the Courts is around upto 4 weeks).
- The taxpayers cannot be made to run from pillar to post for securing their legitimate tax refunds and that too after they have been determined by the Revenue itself.
- The High Court has also directed the Chairman, CBDT to put in place proper standard operating system so that the orders passed by the AO are given effect to within a time frame and no inconvenience is caused to the Assessee as well as to the Court.

8. Section 245(2) – Provisions for withholding refunds - Unintended consequences to vicious cycle

The Finance Act, 2023 has introduced new provisions of sub-section (2) to section 245 of the Act which has far reaching impact in the cycle of encashing the legitimate refunds due to the Assessee. The provision states that if any refund that has been determined and is due, the same can be withheld by the Department, if any assessment/ reassessment proceedings are pending and the Assessing Officer is of the view that release of such refund could adversely affect the interests of the revenue. Such action can be adopted only with previous approval of the Principal Commissioner or the Commissioner.

Earlier such action was permissible under section 241A of the Act only in connection with the refund arising based on the return of income determined under section 143(1) of the Act for any specific AY, if such year is selected for scrutiny assessment. However, with insertion of section 245(2), such powers prima facie seems to have been extended to any refunds due to the Assessee i.e., even for earlier years, if assessment/ reassessment proceedings for any other year is pending. Thus, leading to a vicious cycle of never ending assessment proceedings and hence, leading towards no receipt of refunds ever to any Assessee.

The amendment was per se intended to be procedural in integrating the two separate administrative provisions [241A and 245]

providing for withholding/ adjustment of refund. However, instead of replicating the language of provisions under section 241A, the wording of section 245(2) appears to have extended the scope of withholding refund to any refund due to the Assessee.

This does not seem to be the intent of the amendment and it would be unjust for the revenue to withhold refunds where the assessment or re-assessment proceedings are pending for any other year. Further, the taxpayer per se is not accorded any opportunity of being heard before withholding of the refund under section 245(2), and thereby, the only effective remedy available for taxpayers is to file petition before the Writ Court. However, recently, the Assessees have started receiving intimation from the CPC under section 245(2) of the Act but for the refunds determined under section 143(1) of the Act and not for the refunds determined by the Assessing Officer in a assessment order under section 143(3) of the act or rectification order under section 154 of the Act or order giving effect order to CIT(A)/ITAT order.

Multiple Corporate taxpayers are selected for scrutiny assessment on a year-on-year basis. At any given point in time, following types of proceedings could be ongoing for different years:

(a) Assessment proceedings; or

(b) Reassessment proceedings; or

(c) Set-aside proceedings; or

(d) Proceedings pursuant to order under section 263.

Hence, this provision has a wide-reaching impact and certainly requires to be administered in an objective manner.

The CBDT, thus, considering the ramification of the issue involved had released Instruction No. 02/2023 regarding the revision of timelines and monetary limits as well as revision of workflow for recording the reasons before withholding of refunds under section 245(2) of the Act. The key observations of the instruction are summarized below:

1. The provisions of section 245(2) of the Act shall become applicable for the refunds valuing Rs 10,00,000 or more.

2. The Faceless AO upon receipt of communication from CPC shall communicate the Jurisdictional AO on likelihood of any demand to be raised.

3. The Jurisdictional AO shall record in writing the reasons for withholding/ release of refund after due application of mind and after analysing the factual matrix of the case (i.e. financial condition, past demands, pendency of appeals etc) and seek approval of the Jr. Pr. CIT.

4. The above process should be finished in 20 days by Faceless AO and 30 days by Jr. AO.

However, the issues in relation to grant of opportunity of hearing to the Assessee as well as the intimation to the Assessee/taxpayer in relation to withholding of refund under said section is still not answered in the instruction issued by CBDT. Thus, leading the Assessee with no clue as to where the refund is stuck despite being released by the AO.

9. Issues in relation to section 200A intimation issued by CPC-TRACES

While, in the above Para, we have discussed above the issues revolving around CPC-ITR,

however, from a completeness perspective, we have summarized below certain crucial issues/ difficulties being faced by the taxpayers in relation to the intimation issued under section 200A of the Act by CPC-TRACES pursuant to filing of the e-TDS returns:

A. Deletion of "C-Flag" remark in the e-TDS return if TDS is withheld at the rate of 20% on account of non-availability of deductee PAN. However, the deductor cannot make any changes in respect of such "C-Flagged" entries in the eTDS return until and unless the same is removed by CPC – TRACES and the same is a time-consuming exercise on account of multiple level of approvals and manual process.

B. Refund of excess TDS paid is in itself a tedious task, since the TRACES takes into its consideration not only the TAN demands but also the demands outstanding on PAN. The Assessee files the e-TDS return regularly and upon processing of the same, it generally results into smaller or meagre demand. Even if the demand is as meagre few ` 100, the TRACES shall not proceed with the release of refund. Thus, the Assessee ends up approaching writ court for release of TDS refund - ***Vodafone Idea Ltd. v.s DCIT (TDS) [2019] (106 taxmann.com 22) (Bombay High Court).***

C. The computation of Interest under section 201(1A) of the Act is as follows:

   (i) Delayed/Short deduction of TDS – 1% per month or part of month from the due date of deduction till the actual date of deduction.

   (ii) Delayed payment of TDS – 1.5% per month from the date of deduction till the date of payment.

However, CPC-TRACES while processing the e-TDS return filed by the Assessee, computes the interest under section 201(1A) of the Act on the basis of calendar months and not by the ordinary term i.e. 30 days of period as per section 3(35) of General Clauses Act. Thus, such computation of interest by TRACES leads to erroneous additional demand of interest. Reference can be drawn from the decision of ***CIT vs. Arvind Mills Ltd – Tax Appeal No. 2486 of 2009 (High Court of Gujarat).***

10. Doctrine of Merger

One more issue which arises is that the additions made in intimation under Section 143(1) of the Act still subsists once the assessment order is passed under Section 143(3) of the Act. In this regards, it can be stated that as per doctrine of merger, the intimation made under Section 143(1) of the Act gets merged with the assessment order under Section 143(3) of the Act and thus, the addition made in the intimation under Section 143(1) of the Act did not subsists. In fact, the Assessing Officer must consider the additions made under Section 143(1) of the Act while passing assessment order under Section 143(3) of the Act. If the same is not done, then the additions made under Section 143(1) of the Act will not survive. Even, the appeal filed against intimation under Section 143(1) of the Act become infructuous once the assessment order under Section 143(3) of the Act is passed. The said view has been upheld by various Tribunals in the following cases:

- ***SRBC & Co. LLP (236/Kol/2022) dated 24 November 2022***
- ***National Stock Exchange of India Limited (ITA No. 732/Mum/2023) dated 22 September 2023***

The other view is that mere completion of assessment under Section 143(3) of the Act

doesn't automatically merge the intimation under Section 143(1) of the Act with the assessment order. Also intimation under Section 143(1) of the Act is not an order, thus, it follows that it cannot merge with an order under Section 143(3) of the Act.

Also, a separate appeal should be filed against intimation under Section 143(1) of the Act and the same may be disposed off separately irrespective of appeal filed against order under Section 143(3) of the Act.

Said view has been upheld by various courts/ tribunals in the following cases:

- ***B.I.C. Ltd. (1996) (59 ITD 210) (Allahabad Trib.)***
- ***Areca Trust (ITA No. 433/Bang/2023) dated 26 July 2023***

11. Concluding Remark

The initiative of putting system in place to ease the efforts of processing the returns alongwith speedy release of refunds is appreciated by the taxpayers.

However, as a consequence, the new processes have resulted into new genre of litigation, especially substantial delay in release of refunds, that too of Corporate Assessee's which are known to contribute to the economic activity and the taxes for the Country's development. Such or other similar situation around system dependency becomes aggravated since the CPC is not approachable and there are no answers available with the JAO. The grievances remains unresolved for months together with no concrete and clear response for months together. It is because of this the Taxpayers are pushed to resort to writ jurisdiction, seeking direction from the Court to give effect to the resolution in a time bound manner.

It is recommended that the CBDT should undertake thorough assessment of the current process and constraints faced by the Assessee by seeking response say from Business Association, ICAI and the Department and take steps towards resolving the issues. Additionally, for system related constraints, the CBDT should set up locational SPOC officer who can act as a bridge between JAO/ Taxpayer and the System Officers/processes, who has complete access and clarity on the pendency and its reasons - this might help to address the concerns in expeditious manner.

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"If you project hatred and jealousy, they will rebound on you with compound interest. No power can avert them; when once you have put them in motion, you will have to bear them. Remembering this will prevent you from doing wicked things."

— Swami Vivekananda

SS-IX-98

DIRECT TAXES
High Court



Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 *PCIT vs. Keti Construction Limited [2024] 162 taxmann.com 278 (Madhya Pradesh)*

Expenditure incurred in relation to income not includible in total income - Section 14A read with Rule 8D – Amendment to section 14A by inserting explanation (amended vide Finance Act, 2022) is applicable prospectively from AY 2022-23 and not applicable in AY 2013-14.

Facts

The Assessee before the Hon'ble Madhya Pradesh High Court is a private limited company carrying on the business of construction of road and building. The Assessee filed its return of income for AY 2013-14 declaring total income at ` 1,41,30,104. The AO while finalizing the assessment order made disallowance invoking the provisions of section 14A read with Rule 8D of the Income Tax Rules, 1962 apart from some other additions/disallowances. The assessee being aggrieved by the assessment order preferred an appeal before the first appellate authority. Ld. CIT(A) after considering the explanation of the assessee deleted the disallowance made under section 14A by holding that the disallowance of 0.5% of the average investment by applying Rule 8D of the Income Tax Rules is just a bare assumption and guesswork on the part of AO without having any material evidence. Department being aggrieved by the order of the Ld. CIT(A) filed an appeal before Income Tax Appellate Tribunal. Appellate Tribunal concurred with the findings of the Ld. CIT(A) and dismissed the appeal of the department. Department further being aggrieved by the order of Appellate Tribunal, filed an appeal before the Hon'ble Madhya Pradesh High Court under the provisions of section 260A of the Act.

Ruling of the High Court

Hon'ble High Court was pleased to dismiss the appeal of the revenue by observing that the amendment brought in section 14A of the Act inserted by Finance Act, 2022 vide explanation is clarificatory in nature has prospective effect. The said amendment clarified and brought the exempt income, even when not earned during the year, under the ambit of section 14A effective from 01.04.2022. Thus, the amendment will apply in relation to AY 2022-23 and subsequent assessment years. [AY 2013-14]

2 *Al Jamia Mohammediyah Education Society vs. CIT (Exemptions) [2024] 162 taxmann.com 114 (Bombay)*

Central Board of Direct Taxes – Section 119 of the Income-tax Act, 1961 - delay in filing Form 10B due to oversight without any malafide intention – delay has to be condoned.

Facts

The Assessee, a charitable trust, filed its return of income but failed to file form 10B which was required to be filed along with the return. Form No. 10B was filed subsequently with a delay of 1257 days. The Assessee filed an application for condonation of delay under section 119(2)(b) stating that the delay is on account of oversight by their Chartered Accountant/Auditor. However, the application for condonation of delay in filing Form No. 10B was rejected. The assessee being Aggrieved by this order filed a writ petition before the Bombay High Court.

Ruling of the High Court

Hon'ble High Court was pleased to allow the writ petition filed by the assessee by observing that the Assessee has been filing its return and Form 10B within the due date for the previous and subsequent assessment years. There is no malafide intention of the Assesee in the delayed filing of Form 10B. Hon'ble court has further observed that the revenue authorities might be justified in denying the exemption by rejecting such a condonation application however Assessee being a public charitable trust of almost over thirty years satisfies the condition for availing such exemption and such exemption should not be denied merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. Hon'ble Court therefore, held that the delay was not intentional or deliberate and Assessee cannot be prejudiced on account of an ignorance or error committed by the professional engaged by it.

3 *Hindustan Export and Import Corporation (P.) Ltd. vs. DCIT [2024] 162 taxmann.com 275 (Bombay)*

Deductions - Royalty etc. from certain foreign enterprises - Section 80-O of the Income Tax Act 1961 – Right to verify claims - revenue has the right to verify the veracity of claim of deduction under section 80-O of the Act.

Facts

The assessee entered into an agreement with one company named as M/s. Arianespace France on 2nd February 1987. The main business of the Arianespace France was to launch satellites and place them in the orbit above the earth. Arianespace was desirous of reducing its cost by placing bulk orders on its sub-contractors on the basis of information collected from their international network of consultants. By way of above-said agreement, Arianespace appointed the assessee as one of its consultants to provide information regarding current regulations and market conditions in India. The assessee was required to send the said information after proper assessment, analysis and deliberation during private quarterly meetings ensuring confidentiality of information throughout the process. The assessee was paid consideration as per the agreed terms for sharing the necessary information. While filing the returns the assessee claimed deduction under section 80-O of the Act from said consideration. On

appeal the first appellate authority upheld by the view of the AO. The assessee being aggrieved by the order of the Ld. CIT(A) preferred an appeal before the Appellate Tribunal. The Appellate Tribunal also upheld the view of the lower authorities. The ass being further aggrieved by the order of the ITAT, filed an appeal before the Hon'ble High Court of Bombay.

Ruling of the High Court

Hon'ble High Court dismissed the appeal of the assessee by upholding the concurrent finding rendered by the lower authority observing that in the present case the assessee displays an obvious attempt in creating an illusion of acting in aid of the agreement, on the basis of the approval granted by the CCIT, while at the same time refusing to produce any evidence in respect of which relief is being sought. Merely brandishing newspaper cuttings does not amount to proof of sharing commercial expertise with its French counterpart as mandated by Section 80-O of the Act.

4 *CG Power and Industrial Solutions Ltd. vs. ACIT [2024] 162 taxmann.com 315 (Bombay)*

Central Board of Direct Taxes – Instructions to subordinate authorities (Condonation of delay) - Section 119 of the Income Tax Act 1961 - application for condonation of delay in filing revised return based on re-casted accounts pursuant to NCLT order - allowable.

Facts

1. The assessee-company during 2018 was contemplating raising funds by way of loan from a consortium of international lenders. One of the conditions stipulated by them was that the petitioner's statutory audit ought to be carried out by an internationally known and recognized chartered accountant firm.

2. However, the statutory auditors of the assessee company expressed their inability to do the audit and therefore the assessee in view of the resignation appointed two chartered accountant firms to jointly conduct the statutory audit.

3. The assessee also intimated the registrar of companies ('ROC') about the resignation of the statutory auditor along with the reasons for the resignation. Since the auditors resigned before completion of the term, an enquiry under section 206(1) the Companies Act, 2013 ('COA') was conducted by the ROC wherein a detailed inspection under section 206(5) of the COA was directed into the books of accounts of the assessee company.

4. The inspection report, which was issued by the Regional Director, Ministry of Corporate Affairs ('MCA') contained references to certain unauthorized and undisclosed transactions. In the report, recommendations were also made to invoke the provisions of Section 130 of the COA for recasting of books of account and consequently, the financial statements.

5. Subsequently, basis the recommendations given, the MCA, Government of India filed an application before the National Company Law Tribunal ('NCLT') under section 130 of the COA for restatement of the assessee company's books of accounts.

6. Accordingly, the financial statements of the assessee company were re-opened and recast by the chartered accountant firm appointed by the MCA. Thereafter an application was filed by the MCA to take on record the recast/restated financial statements of the assessee firm.

7. The NCLT while taking the recast financial statements on record observed that neither respondents nor any of the Indian subsidiaries of Assessee had raised or communicated any objection to the said restated standalone and consolidated financial statements.

8. Based on NCLT's order, the assessee company filed application with the Central Board of Direct Taxes ('CBDT') for condonation of delay under section 119(2)(b) of the Act in filing the revised returns for AYs 2015-16 to 2020-21.

9. CBDT however, rejected the application. Assessee aggrieved by this action filed a writ petition before the Hon'ble Bombay High Court. Hon'ble High Court vide order dated 01.11.2023 in WP No. 4014 of 2023 quashed the CBDT order and remanded the matter to CBDT for denovo hearing.

10. During the remanded proceedings before CBDT, the assessee company filed supplementary documents and made written submissions.

11. However, yet again the CBDT rejected the assessee company's contention citing various reasons which include (a) there are proceedings in respect of the assessee before SFIO, ED, CBI and NCLAT. (b) the recast books of accounts need to be examined for verifying their veracity. (c) a holistic view needs to be taken due to complexity of unauthorized transactions, etc.

12. Being aggrieved by the above action of the CBDT, the assessee again approached the Hon'ble Bombay High Court under Article 226 of Constitution of India.

Ruling of the High Court

Hon'ble High Court was pleased to allow the writ petition filed by the assessee and quashed the CBDT's rejection of assessee company's application for condonation of delay in filing income tax returns based on NCLT's order of recasting accounts by observing that when order under section 130(2) of Companies Act, 2013 had been passed by NCLT to recast accounts on an application filed by MCA, accounts had been re-casted and accepted by NCLT and also filed with RoC under Ministry of Corporate affairs, assessee's application for condonation of delay in filing revised return of income based on re-casted accounts was to be allowed. The court also emphasized the need for the Income-tax Department to construe the term 'genuine hardship' in a liberal manner.

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"Arise, awake, stop not till the goal is reached."

— *Swami Vivekananda*

ML-460

DIRECT TAXES
Tribunal



CA Nikhil Mutha CA Viraj Mehta CA Kinjal Bhuta

1 *Golden Charitable Trust vs. CIT(E) (ITA No. 933/PN/2023 dated 12 April 2024)*

Section 12A - Non-grant of registration upheld for various reasons - Object not charitable in nature, lease transaction was entered violating conditions under allied laws and the trust earned business income

Facts

The Assessee was a charitable trust formed on 13.02.2009. The Trust is registered with Assistant Charity Commissioner, Sangli on 24.03.2014. The CIT(E) denied registration under section 12A of the Act on following counts:-

(a) One of the objects of the Trust was to construct houses which cannot be considered to be a charitable object;

(b) The Assessee had also given constructed building of 20,000 Sq.ft to Muslim Educational Trust on a very nominal lease for 50 years on 03.07.2019. The said lease is not registered as per the Registration Act;

(c) The Assessee has not shown any receipt of rent in the profit and loss account, which demonstrates that the books of accounts are not properly maintained. The Assessee filed an appeal against the order rejecting registration passed by the CIT(E) under section 12AB of the Act.

Held

The Hon'ble Tribunal upheld the order of CIT(E) basis the following reasoning:

(a) To construct houses or housing colony, even if it is for low-income groups, is a business activity. Though it is claimed that no such activity has been carried out by the Assessee, it is admittedly one of the objects in the Trust Deed. Reliance was placed on the decision of the Hon'ble SC in the case of ***Yogiraj Charity Trust vs. CIT (103 ITR 777),*** wherein it has been held that if one of the objects is not charitable in nature, the Trustees shall have discretion to spend the funds and hence, such trust shall not be eligible for exemption.

(b) The Assessee has entered into a lease agreement for two storey building admeasuring 1919.84 Sq mtr for 50 years for an annual lease of INR 10 Lakhs for first five years. The said lease agreement was not registered. Hence, the same did not comply with the provisions of section 17 of The

Registration Act, 1908, where lease of any immovable property for more than a year requires mandatory registration.

(c) The Assessee has also not paid any stamp duty on the aforesaid long-term lease agreement, which results into violation of Maharashtra Stamp Act, 1958. As per section 36 of the Maharashtra Public Trust Act, 1950 it is mandatory to seek prior permission from Charity Commissioner before entering into any lease of immovable property for a period of more than 3 years. However, the Assessee has admittedly not taken any prior permission of Charity Commissioner. Moreover, the provisions of section 36(1A) of the Maharashtra Public Trust Act bars the Charity Commissioner to give permission for lease exceeding 30 years. Thus, by entering into a lease agreement for 50 years, the Assessee has violated the provisions of Maharashtra Public Trust Act.

(d) As per the provisions of section 12AA(1)(a)(ii) of the Act, it is mandatory for the Assessee to comply with requirements of any other law for the time being in force as are material for the purpose of achieving the objects. Thus, the Hon'ble Tribunal held that the Assessee has violated the provisions of Registration Act, Stamp Duty Law and Maharashtra Public Trust Act and hence, following the principles laid down by the Hon'ble SC in the case of ***Dilip Kumar & Company (95 Taxmann.com 327 dated 30.07.2018),*** not entitled for registration under section 12A of the Act. The Hon'ble Tribunal also relied on the principles laid down by the Hon'ble SC in the case of ***Bihari Lal Jaiswal and Others vs. CIT (217 ITR 746)***.

(e) The Hon'ble Tribunal, on reading of the Objects specified in the Trust Deed, further observed that the Trust falls in the last limb of General Public Utility (GPU). Thereafter, the Hon'ble Tribunal relied on the decision of the Hon'ble SC in the case of ***ACIT(E) vs. Ahemdabad Urban Development Authority (Civil Appeal No. 21762 of 2017)*** to hold that GPU are proscribed from carrying on any activities in the nature of Trade, Commerce, Business. The Assessee has earned lease income and the same is also not incidental to the objects of the assessee. Hence, the Hon'ble Tribunal held that following the Hon'ble SC decision, the Assessee is not entitled for registration under section 12A of the Act.

2 *DCIT vs. J. K. Techno Soft Ltd (ITA No. 6160/Delhi/2016 dated 30 April 2024) (AY 2009-10)*

Section 43(5) – Forward exchange contract – Loss on cancellation held to be non-speculative in nature

Facts

The Assessee filed its return of income declaring loss of INR 59,76,849/- and book profit of INR 1,72,65,860/-. The Assessee entered into forward exchange contract. There was no foreign remittance due to be received on the date of maturity of foreign contracts. Hence, the Assessee, in order to safeguard its interest, resorted to cancellation of forward contracts on the respective dates of maturity and in compliance with the directions by

Foreign Exchange Dealer's Association of India (FEDAI). The Assessee paid the difference between the forward contract rate at the rate at which the cancellation was effected to/from ICICI Bank. Such rate differential coupled with the cancellation charges levied by the bank resulted in net loss of ` 4,18,22,913/- on the cancellation of forward contracts. The Assessing Officer passed an assessment order, interalia, making an addition of losses of INR 4,18,22,913/- on account of cancellation of forward exchange contract as speculative in nature under section 43(5) of the Act. The Assessing Officer held that foreign exchange derivative contract does not fall within the exclusion of section 43(5) of the Act. The Assessee argued before the CIT(A) that the provisions of section 43(5) only applies to transaction in 'commodity' and the same is not applicable to forward contract in relation to foreign exchange. It also stated that the derivate contracts were genuine hedging contracts and were not entered into with the intention of speculation or deal in the same. The Assessee mentioned that the RBI does not allow a resident person to enter into such derivative contracts, unless the same is to hedge the foreign currency fluctuations, arising in the normal course of business. If contracts are not for such purpose, the same are liable to be cancelled by RBI/banks, authorized dealers. In some of the cases premature cancellation of contract has been done with a view to cut further losses that would have arisen, if the contract were to run their full course. The CIT(A) deleted the said addition and the Department filed an appeal before the Hon'ble Tribunal.

Held

The Hon'ble Tribunal observed that the assessee is not a dealer of Foreign Exchange and contract in foreign exchange were to safeguard the business interest of the assessee and conducted in regular course of business. Accordingly, relying on the decision of co-ordinate bench in the case of ***Munjal Showa Ltd vs. DCIT (94 TTJ 227)*** and the decision of the Hon'ble Karnataka High Court in the case of ***CIT vs. Soorajmull Nagarmull (129 ITR 169***) held that loss on account of cancellation of forward contracts cannot be termed as speculative in nature as no motive or action in this regard is in existence. Thus, the Hon'ble Tribunal held that in the absence of any contrary facts or the ratio brought to the notice of the Bench, there is no error or infirmity in the order of the CIT(A).

3 *Hiteshbhai Mansukhbhai Bagdai vs. ACIT [ITA No.224/Rjt/2022 dt. 08.05.2024] (AY: 2015-16)*

Sec. 54F – Documents for agreement for sale not registered with stamp duty authorities – conditions of section not fulfilled – title to the property itself disputed – exemption to be denied.

Facts

The assessee during the year under consideration, sold a long term capital asset being land on 08.05.2014. The assessee made investment in purchase of two adjoining residential flats vide an agreement to sale dated 09.04.2015. The assessee claimed exemption u/s 54F of the Act, being proportionate exemption in respect of investment made for purchase of new residential property against the sale of Long- Term Capital asset being land, and accordingly offered Long Term Capital Gain. The case was selected for regular scrutiny, the AO enquired on how the conditions of applicability of section are fulfilled by the

assessee. The agreement for sale was signed by the assessee himself as director of the company. However, the document was not registered with stamp duty authority. The AO also observed that even after 3.5 years of the sale of the earlier property, documents of the reinvested property was not registered. Based on the non- fulfilment of these conditions, exemption u/s. 54F was disallowed to the assessee. The CIT(A) also dismissed the appeal of the assessee.

Held

Before Hon'ble ITAT, it was submitted by the AR that the registered conveyance deed could not be executed and the reason for the same is that there was litigation going on the title of the land over which the project was constructed. The details of the litigation in the title of the land was submitted before the ITAT. The AR further submitted that the litigation about the legal title of the property is yet pending; therefore, under these circumstances, the registered sale deed could not be executed for the genuine reasons which are beyond the control of the assessee and without any fault attributable to him. The full sale consideration was paid by the assessee, and the amount was not refunded back to the assessee. Further the said flat was not yet sold to any other person till date and the assessee has possession of the same. It was held by the Hon'ble ITAT that though the possession is in the hands of the assessee, the very basis of the title is challenged between the parties from whom the assessee has not completed the sale deed which was non-executed at the threshold. Thus, the observation made by the Hon'ble Apex Court in case of ***Suraj Lamp & Industries Pvt. Ltd. (SLP (C) No.13917 of 2009)*** will not be helpful in assessee's case. The observation made by the CIT(A) as well as the Assessing Officer is right in the context that the assessee failed to get the documents registered for purchase of residential house being flat, and hence the condition laid down in Section 54F of the Act remained unfulfilled. The exemption u/s. 54F of the Act will be granted only if all the conditions given under the said provisions are followed/fulfilled by the assessee who claims the exemptions; but in the present case, the same has not been fulfilled. The appeal of the assessee was therefore dismissed.

4 *DCIT vs. Mr. Rajendra Varma [ITA No. 3592/Mum/2023 dt. 06.05.2024] (AY: 2018-19)*

Sec. 68 –Addition was made for Unsecured Loan as Unexplained cash credit – All the evidences submitted to provide the identity, creditworthiness and genuineness before CIT(A) – No adverse remarks in remand report - No additions could be made as all details furnished to justify the loans taken

Facts

Assessee during the year under consideration, has taken unsecured loans of ` 9,75,97,928/-. Ld. AO made the addition of ` 9,75,97,928/- as unexplained cash credit u/s 68 on account that assessee failed to prove the nature and source of the unsecured loan parties. Being aggrieved appeal was filed before CIT(A). Ld. CIT(A) considered the additional evidences furnished by the assessee as well as the remand report and its rebuttal the factual matrix of the taken unsecured loans during the year.

Ld. CIT(A) also for each of the parties analysed the details and documents furnished by the assessee. CIT(A) took note of documents like ledger confirmation, ITR

acknowledgement, computation of income, bank statements of the lenders placed on record to hold that assessee has discharged his prima facie onus. CIT(A) further took note of the fact about income returned by the lenders and their net-worth in relation to the loans taken by the assessee from those parties. CIT(A) thereby deleted the addition made. Bring aggrieved with the said order, revenue has filed appeal before Hon. ITAT.

Held

ITAT held that we have observed and noted the factual noting's made by the ld. CIT(A) vis-à-vis explanation and documentation furnished by the assessee before him, remand report submitted by the AO and the rebuttal made by the assessee there upon. All these analysis and details are extracted. Assessee furnished the required documents and details before the ld. CIT(A) as additional evidence by complying with rule 46A of the Rules. Remand report called from the ld. AO on these additional evidence does not suggest anything adverse on the same nor does it point out any defect or deficiency in the documents furnished by the assessee of the lenders. These evidences furnished have neither been controverted by the Ld. AO during the remand proceedings nor anything substantive brought on record before us to justify the addition made by him. Accordingly, given that all the details were submitted to prove identity, creditworthiness and genuineness of the lenders, the appeal of department was dismissed and additions were held to be deleted.

5 *Arvind Kolekar vs. ITO [ITA No. 4137/Mum/2023 dt. 23.04.2024] (AY: 2017-18)*

Sec. 148/Sec. 149(1)(b) – Reopening - More than 3 years - Income alleged to escape was ` 18,05,500/- - Amount alleged to escape is below the limit of ` 50,00,000/- - Reopening Invalid

Facts

Case was reopened on account that ` 18,05,500/- addition was being proposed being difference between sale consideration & stamp duty value u/s 56(2)(vii)(b). Ld. AO made the addition as proposed for reopening the case. CIT(A) dismissed on account that appeal filed was delayed by 89 days and there is no sufficient cause for delay in filing the appeal. Being aggrieved, appeal was filed before ITAT, challenging the validity of reopening u/s 148.

Held

Hon. ITAT held notice u/s. 148 has been issued on 27/07/2022 for the A.Y.2017-18 which is beyond the period of three years from the end of the relevant assessment year. Condition precedent for issue of notice u/s.148, is that income chargeable to tax escaped assessment must amount to or is likely to amount to ` 50 lacs or more for that year. Admittedly, the alleged escapement of income was only ` 18,05,500/- which is much less than ` 50,00,000/-. Such fact was brought on record and specific objection was raised before the ld. AO, that he could not have proceeded u/s.148 and to complete the assessment. Thus, ld. AO lacked the very jurisdiction u/s 148 where income chargeable to tax escaping the assessment is much less than

` 50,00,000/-. Hon. ITAT quashed the reopening on the ground that reopening does not satisfy the limit prescribed u/s. 149(1)(b). Accordingly, the entire reassessment order was quashed.

6 *Farhan Majid Dar vs. ITO [ITA No. 304/305/Asr/2023 & 99/101/Asr/2024, dated 06.05.2024] [AY 2012-13, 2015-16 & 2016-17]*

Section 250 – CIT(A) order passed ex-parte-notices issued on former CA's email address even after appellant had given new email address in Form 35- sufficient opportunity to be given following the principles of natural justice – order of CIT(A) set aside.

Facts of the case

The assessee had submitted the new and update email address in Form 35 which was filed for the appeal filed before the first appellate authority. The same email id was also updated in the profile details in income tax portal. However, in the Income Tax return form which was filed for the relevant assessment year, email address of old Chartered Accountant was furnished. The CIT(A) had issued notices on the email address of the former CA that was given in the Income Tax Return (ITR). It was an undisputed fact on record that the CIT(A) has neither issued notice on the email address given in the profile information nor the alternate email address given in Form 35 of the appeal memo. As a result, the assessee did not file any responses see any notices and the CIT(A) order was passed ex-parte.

Held

Before Hon'ble ITAT, it was submitted by the authorised representative of the assessee that, the ex-parte order passed by the ld. CIT(A) without appreciating the merits of the case by issuing a notice on the email address of the former CA is bad in law. It was also argued that as per clause 11 of the CBDT Notification No.139 dated 28.12.2021, the ld. CIT(A) is required to communicate the notice through the email ID available in Form 35 of the appeal memo. The Hon'ble ITAT held that, the issue of notice by the ld. CIT(A) on the email address other than the email address given in Form 35 of the appeal, tantamount to issue of notice on wrong and invalid address and as such no service of notice. Further, rejection of appeals without valid service of notice either by postal address or electric communication and without discussing merits of the case was gross violation of principles of natural justice. The Hon'ble ITAT referred to the ratio in case of ***Munjal BCU Centre of Innovation and Entrepreneurship vs. CIT(E) (P&H HC) (160 taxmann.com 629)***, that a pragmatic view has to be adapted always in these circumstances and individual or company is not accepted to keep the e-portal to the department open in all the times to have the knowledge of what the department supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the Income tax provisions and same are required to be necessarily followed. It was held that since it was apparent that the assessee was not given sufficient opportunity with regards to compliance of notices, the case needs to be remanded back to the CIT(A) to examine the replies and then pass afresh order.

7 *Nawany Corp (I) Pvt. Ltd. vs. DCIT [ITA No. 4042 & 4043/Mum/2023 dt. 02.05.2024] (AY 2012-13 & 2013-14)*

Section 250 – Delay in filing appeal before ITAT by 2291 days – Appeal was not filed on the basis of professional advise – Not filing appeal on time on basis of professional advise a bonafide reason to condone the delay

Facts

During the assessment proceedings, Ld. AO made certain additions in both the assessment years under consideration and as per the advice given by the aforesaid Chartered Accountant, appeals were filed before the Ld.CIT(A) for both the years, who dismissed appeals of both the years. After the orders so passed by Ld.CIT(A), the above said Chartered Accountant opined that the chances of getting favourable orders from ITAT is very bleak. Hence, the assessee did not file appeals before ITAT within the statutory time limit based on the above said opinion given by the CA. Further, the assessee had declared loss and the additions made by Assessing Officer has only resulted in reduction of loss. Hence, there was no necessity to pay any tax. Subsequently, the assessee approached another Chartered Accountant with regard to other pending matters and the said Chartered Accountant advised the assessee to file appeals against the orders passed by Ld. CIT(A) for both the assessment years under consideration and thereby the appeal filing got delayed by 2291 days.

Held

Hon. ITAT held that for AY 14-15, coordinate bench has held that the assessee has furnished copy of letter obtained from the Chartered Accountant, who had given his opinion about the prospects of appeal. In that letter, the CA has admitted that he had advised the assessee not to file the appeal before ITAT for the reason that the chances of getting favourable order is rare. Accordingly, the Tribunal has appreciated the fact that the assessee acted bona-fide on the legal advice tendered by a professional and accordingly expressed the view that no negligence or any deliberate or intentional act on the part of the assessee can be imputed. The facts in the two years under consideration are identical with the facts that prevailed in AY 2014-15. The Chartered Accountant, M/s Shah Desai & Associates, Mumbai has given similar certificates for both the years under consideration, wherein they have affirmed the opinion given by them that the chances of getting favourable order from ITAT was rare. Since the assessee has acted bona-fide on the legal advice given by a professional, as held by the co-ordinate bench, no negligence or any deliberate or intentional act can be imputed upon the assessee. Thereby it was concluded that there was reasonable cause for the assessee in these two assessment years in not filing the appeals within the statutory time limit before the Tribunal and accordingly, delay in filing appeals for both the assessment years by 2291 days was condoned.

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INTERNATIONAL TAXATION
Case Law Update

Dr. CA Sunil Moti Lala
Advocate

A. HIGH COURT

1 *Johnson Matthey Public Ltd. Co. vs. CIT [2024] 162 taxmann.com 865 (Delhi)*

Where assessee, a UK resident provided guarantee to various banks to extend credit facilities to its Indian subsidiaries, it was held that the guarantee fee charged by it would not fall within expression of 'interest' in article 12 of India-UK DTAA and the same would be assessable as 'other income' under Article 23 of the said DTAA

Facts

i. The assessee, a tax resident of United Kingdom, was engaged in manufacture of specialty chemicals. During the relevant year, assessee had extended guarantees to various overseas branches of foreign banks on a global basis in relation to credit facilities extended by those financial institutions to its Indian subsidiaries.

ii. In its return of income, the assessee had characterized amount of guarantee fee as interest and, thus, taxable under Article 12.

iii. The AO held that said sum would be liable to be taxed as other income under Article 23(3) of the India-UK DTAA.

iv. Before the Hon'ble Tribunal, the assessee (a) assailed the correctness of the view as taken by the AO as well as the DRP and reiterated its stand with respect to guarantee fee being liable to be taxed as interest under Article 12 of the DTAA (b) without prejudice to its other submissions argued that the income was not taxable at all, since its source was outside India. (c) alternatively, argued that the receipt of guarantee charges would also fall within the ambit of 'business income' governed by Article 7 of the DTAA and that in the absence of the assessee having a Permanent Establishment in India, the said business income would not be chargeable under the DTAA.

v. The Hon'ble Tribunal upheld the stand of the AO that guarantee fee could not be treated as interest under Article 12 of the DTAA. It further held that the said income had arisen in India but the same could not be treated as business income under Article 7 of the DTAA since it was nobody's case that the assessee did

business of providing corporate/bank guarantee recharge to earn income on regular basis.

Decision

(a) Whether guarantee fee could be treated as Interest under Article 12 of the DTAA

i. The Hon'ble HC noted that the expression 'interest' is defined by Article 12(5) to mean income from "debt-claims of every kind" irrespective of whether they be secured by a mortgage or carry a right to participate in the debtor's profit and that the guarantee charges were not received by the appellant in respect of any debt owed to it by its Indian subsidiary. Also it could not possibly be acknowledged to be income derived from claims that the appellant may have had against its Indian subsidiaries as the guarantee charges were received in connection with the credit facilities which were extended by the overseas branches of foreign banks to its Indian subsidiaries. Since the assessee had guaranteed the repayment of the loans so extended to its subsidiaries, it received charges as per the stipulations contained in the Intra Group Agreement. Thus, the Tribunal had correctly found that the assessee was neither a party to the loan agreements that may have been executed nor was there any privity of contract that could be said to exist. It was the aforesaid undisputed facts which weighed upon the Tribunal to hold that the payments received by the assessee would not fall under Article 12 of the DTAA.

ii. The guarantee charges that the Assessee received was a remuneration for the assurance that it had offered to lending entities who may have extended credit facilities to its Indian subsidiaries. The debt that it owed was to those financial institutions. It would be those institutions which could have a claim against the assessee. The Intra Group Agreement also did not envisage any claims that the assessee could have laid against its own subsidiaries in the eventuality that they were to default. The Indian subsidiaries owed no debt to the assessee so as to recognise the guarantee charges as income derived from a debt or a claim which constitutes the determinative factor for the purposes of examining the applicability of Article 12 of the DTAA. The guarantee charges were levied for the service of providing parent company guarantees and counter indemnification of the liabilities of the Indian subsidiaries. On an overall conspectus of the aforesaid, the guarantee charges could not be viewed as 'interest' under Article 12 of the DTAA.

iii. Guarantee charges being interest would also not sustain even when tested on the anvil of Section 2(28A) of the Act which reads as under:

" "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized".

iv. As manifest from the above, the expression interest is defined to mean amounts payable in respect of any

monies borrowed or debts incurred. The income that the assesse received from its Indian subsidiaries was solely in consideration of any liability that could possibly befall the assessee in case its Indian subsidiaries were to default in their repayment obligations to the banks (and not to the assessee). It thus became apparent that the guarantee fee would neither fall within the ambit of Article 12 of the DTAA nor Section 2(28A) of the Act.

(b) Whether guarantee fees accrued or arose in India

v. By relying upon the judgements of the Hon'ble HC in ***Seth Pushalal Mansinghka (P) Ltd. vs. CIT [1967 SCC Online SC 222]*** and ***E.D Sassoon and Company Ltd. vs. CIT [26 ITR 27,51]***, the Hon'ble HC held that as evident from a reading of the principles enunciated in the said two decisions the expression 'arise' or 'accrue' means a periodical monetary return being received with some regularity. In the context of the Act, it held that income accruing would not be dependent upon actual receipt but would be governed by the principle of a 'right to receive'. Thus, the moment a right to receive came into existence, income would be deemed to have arisen or accrued.

vi. It further held that, when tested on the aforesaid precepts, it was clear that the income in the form of guarantee charges had in fact accrued and arisen in India. The guarantee charges clearly answered to the description of income accruing and which was explained by the Supreme Court to constitute "a periodical monetary return Coming in' with some sort of regularity, or expected regularity, from definite sources". From the Intra Group Agreement, it was evident and apparent that the foundational source of those payments was the assessee's agreement to provide the service of parent company guarantees and counter indemnification facilities. These were services offered to the Indian subsidiaries to avail for their "own commercial benefit". The charge was envisaged to be levied on a quarterly basis and the annual rate at the time of execution of the Intra Group Agreement was prescribed to be 1.125%. The annual rate was to levied on the "Recipient's" [the Indian subsidiaries] "outstanding balance of parent company guarantees and counter-indemnification obligations as at each Quarter Day".

vii. It was thus evident that the guarantee charges became leviable every quarter at a rate already agreed upon by parties and on the outstanding balance. Thus, not only was the payment ordained to come from a specified source, it was also envisaged to become payable with sufficient regularity. The payment was to be invoiced every Quarter Day and liable to be paid as per the instructions of the assessee. The Intra Group Agreement also provisioned for consequences which would ensue in case the Indian subsidiary were to default in payment of those charges by stipulating that in such an event, it would be open to the assessee to suspend the provision of services. Thus, in case the Indian subsidiary were to fail to honor any invoice raised in respect of guarantee charges, it would have been open for the assessee to discontinue the service of extending guarantees.

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viii. Further, the obligation to pay was incurred in India, was in respect of services utilized in India and was agreed to arise with regularity as per the stipulations forming part of the Intra Group Agreement. The guarantee charges were solely on account of the assessee having guaranteed repayment of debts owed to third parties by the Indian subsidiaries. The source and fountainhead of the receipt was thus indelibly connected and confined to the Intra Group Agreement and the obligations of the assessee in connection therewith. Taxability of income is concerned solely with income accruing or arising. It is clearly not concerned with the ultimate destination of that income or the use to which it may be put. That the guarantee charges may be utilized by the assessee to meet its liabilities to overseas financial institutions would be wholly irrelevant for the purposes of examining whether income had arisen or accrued in India. In this regard, reliance was placed on the judgement of the Hon'ble Supreme Court in ***Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT (1997) 6 SCC 117***.

ix. Further, it disagreed with the view taken by the Hon'ble Tribunal in the case of ***Capgemini S.A vs. ADIT (ITA No. 7198/Mum/2012)*** relied upon by the assessee after taking note of the contrarian view taken by the Hon'ble Tribunal in ***Lease Plan India Pvt. Ltd. vs. Deputy Commissioner of Income Tax 2020 SCC Online ITAT 4377*** while dealing with an identical question.

(c) Whether guarantee charges would constitute business income under Article 7 of the DTAA

x. The issue whether guarantee charges would constitute business income under Article 7 of the DTAA (and thus not taxable in the absence of a PE) was kept open to be addressed in an appropriate case. (as the Tribunal had not adjudicated on the issue of existence/absence of PE and also the said issue/question had not been raised in the appeal memo filed before the Hon'ble HC, though the same was orally raised and argued.)

xi. The Revenue's appeals were thus dismissed.

2 *CIT (International Taxation) vs. Bank of Tokyo-Mitsubishi UFJ Ltd. [2024] 162 taxmann.com 872 (Delhi)*

Where assessee, a Permanent Establishment of an overseas bank, had received interest from deposits kept with its overseas branches and head office abroad, it was held that the same would not be taxable in India as branch offices were not separate personalities or juridical entities and that one person could not earn profit from itself. Explanation to Section 9(1)(v) which introduces a statutory fiction by ordaining that a PE of a banking enterprise in India would be deemed to be a person separate and independent of the non-resident person of which it is a PE would have no application (to the impugned AY), since it came into effect only from 01 April 2016 by virtue of Finance Act, 2015.

3 *PCIT vs. EDS Electronics Data System India (P) Ltd. [2024] 162 taxmann.com 761 (Delhi)*

i. It was held that a company who had failed employee cost filter and also went into amalgamation during the year could not be considered as a comparable.

ii. Where assessee was rendering services including voice and communication, data entry and financial management, it was held that a company who had outsourced services to be rendered by it had followed a different business model and thus could not be accepted as a comparable

4 *PCIT vs. Phoenix Comtrade (P) Ltd. (2024) 162 taxmann.com 99 (Bom)*

Where the assessee exported rice to its AE and followed TNMM to ascertain ALP and the TPO simply rejected the said method by applying CUP based on prices mentioned in the Bloomberg database without appreciating the assessee's contentions that Bloomberg database was not reliable and that in any case assesse's export price was more than Indian custom's quoted rate, the addition deleted by the Tribunal was held to be justified

Facts

i. The assessee had exported rice to its AE and followed TNMM to ascertain ALP.

ii. The TPO collected the details of export prices of rice from Bloomberg database and compared the same with the price realized by assessee in respect of each of exports. Wherever the difference was +/- 5 per cent, the TPO considered the same as at ALP and, accordingly, the TPO proposed an addition to be made to the international transaction.

iii. The DRP accepted the (without prejudice) contention of assessee that the rates prevailing on the date of entering into the agreement should be compared and not the rates that prevailed on the date of invoice. Accordingly, the rectification resulted in an adjustment.

iv. On appeal, the Hon'ble Tribunal observed that the TNMM adopted by assessee would be more appropriate and that the one to one comparison adopted by the TPO was not appropriate. Accordingly, the Hon'ble Tribunal, directed the AO to delete the addition made on account of TP adjustment.

v. Aggrieved, the Revenue filed appeal before the Hon'ble High Court.

Decision

i. The Hon'ble HC noted that the Tribunal had accepted that there were mistakes in the order of TPO, inasmuch as the TPO without realizing the factual aspects had simply rejected the method adopted by Assessee.

ii. It noted that the Tribunal had also recorded that assessee's contentions that Bloomberg database was not reliable and also that assessee's export price was more than the Indian Custom's quoted rate and accordingly, exports were at ALP even under CUP method-had not been controverted by the Departmental Representative.

iii. In the circumstances, the Hon'ble HC dismissed the Revenue's appeals by holding that no substantial questions of law arose.

Note

The TPO had also made another addition which was deleted by the Tribunal by appreciating the facts and the Revenue's appeal was dismissed by the Hon'ble HC since no substantial question of law arose.

B. TRIBUNAL

5 *Little Fairy Ltd. vs. CIT, International Tax [2024] 162 taxmann.com 766 (Delhi-Trib.)*

The Tribunal held that where assessee, a Cyprus based company, had complete right to receive interest income on compulsorily convertible debentures (CCDs) and there was no compulsion or contractual obligation to simultaneously pass on same to another entity, assessee was to be held as beneficial owner of interest income on CCDs from Indian entity and, thus, same would be taxable @10 per cent as per Article 11 of India-Cyprus DTAA.

6 *CLSA vs. ACIT [2024] 162 taxmann.com 863 (Mumbai-Trib.)*

i. Where assessee had entered into an agreement with its AE for reimbursement of indirect expenses and used TNMM to benchmark said transaction and the TPO rejected same on the ground that assessee had failed to substantiate its claim by any documentary evidences, the consequent addition made by the TPO was held to be unjustified since the TPO had not applied any of the prescribed methods to determine ALP of the said transactions.

ii. Where assessee, a stock broker, charged higher brokerage from its non-AEs as compared to AEs and TPO adopted CUP method as MAM to benchmark the said transaction, as against TNMM adopted by the assessee, it was held that since assessee was required to provide broader range of services to its non-AE FII clients as compared to the services provided to its AE FII clients and TPO had not given a specific finding as to what was similarity in services rendered to AEs and non AEs provided by assessee, TNMM was to be accepted as MAM for benchmarking said transaction.

iii. Where assessee paid brand fee to its AE for use of its brand name and adopted TNMM to bench mark the same whereas the TPO applied CUP and disallowed the same on the ground that no other group entities of CLSA had paid any royalty for use of its brand, it was held that since different group entities had different arrangements with CLSA, there was no necessity of payment of royalty in those cases and thus, TNMM was to be accepted as MAM for benchmarking the said transaction.

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INDIRECT TAXES

GST – Recent Judgments and Advance Rulings


CA Naresh Sheth CA Jinesh Shah

A. WRIT PETITON

1 *Lokenath Construction Private Limited vs. Joint Commissioner of State Tax and Ors – Calcutta High Court*

Facts and issue involved

GST Authorities issued a Show Cause Notice (SCN) to the petitioner demanding reversal of Input Tax Credit (ITC) availed on the ground that the same had not been paid by the supplier. The petitioner challenged the above SCN on the ground that the notice has been issued without causing any verification from the supplier's end.

Petitioner relied on the decision of the same court in case of ***Suncraft Energy Private Limited vs Assistant Commissioner of State Tax***. GST Authorities claimed that the petitioner had failed to produce any evidence from which it could be ascertained that the suppliers had paid tax to the Government. Hence, the availment of ITC by the petitioner is in contravention of Section 16(2)(c) of the CGST Act, 2017.

Thus, petitioner had preferred the instant writ petition.

Discussion and Observation by High Court

Adjudicating Authority had admitted that the appellant had produced two certificates issued by Chartered Accountants declaring that the suppliers had discharged the liability in corresponding GSTR-3B for the relevant periods. However, the Adjudicating Authority proceeded to reject those certificates issued by the Chartered Accountants by observing that they do not match with the facts stated in the returns as available in GST common portal.

Adjudicating authority was open to call upon the assessee for any clarification required. However, the adjudicating authority, without providing such opportunity, unilaterally proceeded with the matter.

Further, GST Authorities had admitted in the SCN that the petitioner had paid the tax element to its supplier, but the payment of tax has not been reciprocated to the exchequer. The ruling passed by this Court in the case of Suncraft Energy Private Limited squarely applies in the instant case.

Ruling of High Court

GST Authorities need to first enquire with the supplier and penalizing the petitioner without any investigation done on the supplier would be arbitrary, illegal and without jurisdiction.

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B. RULINGS BY ADVANCE RULING AUTHORITY

1 *Abans Alternative Fund Manager LLP – GUJARAT AAR [(2024) 161 taxmann.com 681]*

Facts and Issues involved

Applicant is engaged in providing the services of holding securities and other assets of trusts, funds and similar financial entities which falls under the SAC code 997172. Applicant has availed legal services from an advocate towards execution of lease agreement for premises in Gift City, Gandhinagar.

Applicant has sought an advance ruling as to whether a SEZ unit is required to pay tax under RCM on legal services received from an advocate in accordance with Notification No. 10/2017-IGST(R) dated 28.06.2017? If yes, then whether CGST and SGST is payable or IGST?

Applicant's submissions

Section 7(5) of IGST Act read with Section 16 of IGST Act 2017 provides that supply of services to SEZ unit is considered as an inter-state supply and if same is provided for carrying out the authorized operations it will be treated as a zero-rated supply. The default list of services approved by the Department of Commerce for authorized operations specifically includes Legal Consultancy services.

CBIC Circular No. 48/22/2018-GST dated 14.06.2018, clarifies treating of supplies to SEZ units as inter-state supplies. Further, it is the policy of the Government to allow tax free procurement of goods and services in an SEZ.

Section 51 of the SEZ Act 2005 provides that the provisions of SEZ Act would have overriding effect on provisions of any other legislation including taxation laws. Rule 5(5)(a) of the SEZ Rules, 2006, provides exemption to SEZ from payment of SGST.

In terms of Rule 30(1) of SEZ Rules 2006, DTA supplier supplying services to a SEZ Unit shall clear the services, as per provisions of Section 16 of IGST Act either under bond or under any other refund procedure permitted under GST laws;

There cannot be any RCM liability under the Notification No. 13/2017-CT(R) on an SEZ unit since the service received by them would be considered as a zero-rated supply.

Applicant also relied on Letter F. No. 334/335/2017-TRU dated 18.12.2017, regarding RCM liability on procurement of service by International Financial Services Centre, SEZ which clarified that "a Unit in SEZ or SEZ developer can procure such services, where they are required to pay GST under reverse charge without payment of it provided the actual recipient i.e. SEZ unit or SEZ developer furnishes a Letter of Undertaking." The same position is also confirmed under GST by Notification No. 37/2017-CT.

Further, Notification No. 18/2017- IGST (Rate) dated 05.07.2017 exempts services imported by an SEZ unit for authorized operations from the whole of IGST leviable u/s 5 of IGST Act. This exemption is applicable not only for services procured from overseas service providers but from services procured within India as well.

Discussions by and observations of AAR

FAQs on GST, 3rd edition dated 15.12.2018, on the question of payment of IGST under RCM, when received by an SEZ unit has clarified as under:

"Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?

Ans. *All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case."*

As per Notification No. 37/2017-Central Tax, a unit in DTA can supply services to a unit in SEZ without payment of IGST subject to furnishing of LUT to the jurisdictional Commissioner by SEZ unit.

On a similar issue, wherein clarification was sought, as to whether the SEZ unit is liable to pay GST in respect of legal services, sponsorship services etc. received by an SEZ unit in IFSC, Gandhinagar, from a unit in DTA, which are chargeable to GST under RCM, Tax Research Unit, CBIC, New Delhi, clarified as under:

"3. Since the intention of the Legislature is not to tax supplies to a unit in SEZ or a SEZ Developer which have been zero rated under clause (b) of section 16(1) of the IGST Act, by virtue of deeming provision under section 5(3) of the IGST Act, 2017, levy for procurement of input services specified under notification No. 13/2017-CT(R) falls upon the unit in SEZ or the SEZ developer. It is, therefore clarified that a unit in SEZ or the SEZ developer can procure such services, where they are required to pay GS7' under reverse charge, without payment of integrated tax provided the actual recipient, i.e. unit in SEZ or SEZ developer, furnishes a Letter of Undertaking in place of a bond as specified in condition no. (i) in para 1 of Notification No. 37/2017-Central Tax The actual recipient of service is the deemed supplier/registered person for the purpose of fulfilling other conditions in para 1 of the notification ibid including the manner of furnishing of Letter of Undertaking."

Ruling of AAR

Applicant, being a SEZ unit, is not required to pay GST under RCM on specified services in accordance with notification No. 10/2017JT(Rate) dated 28.6.2017 subject to furnishing a LUT or bond as specified in Notification No. 37/2017-CT.

2 *Sundaram Clayton Limited – Tamil Nadu AAR [Ruling No. 108/ AAR/2023 dated 05.09.2023]*

Facts and Issues involved

Applicant is engaged in the manufacture and supply of die-casting parts for use in automobiles. Applicants employed more than 250 workers including contract workers, regular workers, and trainees as well.

The Factories Act, 1948 mandates that in any specified factory wherein more than 250 workers are employed, a canteen shall be provided and maintained by the occupier for the use of workers.

In compliance with said requirement, canteen was set up by the applicant wherein food supplies were bought by them, and they have hired a cook, who is their employee, to prepare the food. Applicant recovers a subsidized value from employees for providing the said canteen facility whereas the balance amount is borne by applicant.

Applicant has sought an advance ruling as to whether recovery of subsidized value from employees for providing canteen facility would amount to supply under CGST Act, 2017 and would attract GST?

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Discussions and observations of AAR

For applicability of GST, following key points should be present:

- Supply of goods or services.
- Such supply is made or agree to me made for consideration.
- Such Supply should be in course or furtherance of business.

The supply of food by the applicant to their employees is a composite supply of food to be treated as supply of service as per clause 6 of schedule II of the CGST Act. Applicant supplies food to their employee at concessional rate and same is consideration for such supply made by the applicant. Establishing a canteen facility in the unit is an activity incidental to running of their business.

Circular No. 172/04/2022-GST dated 06.07.2022 of CBIC states that perquisites provided by employer to employee in terms of contractual agreement entered into between the employer and the employee are in lieu of services provided by employee to the employer in relation to his employment will not be subject to GST when the same are provided in terms of contract between the employer and the employee.

However, it is pertinent to see the definition of perquisite along with above referred circular. As per Section 17(2) of the Income Tax Act, 1961 Perquisite is defined as *"any casual emolument or benefit attached to an office or position in addition to salary or wages"*. Thus, perquisite is a non-cash benefit attached to an office or position which is in addition to salary or wages. Hence, perquisite is free of cost benefit provided to employee by employer".

Hence, on combined reading of circular and definition of perquisite provided in Income Tax Act, it is clear that tax is not applicable on perquisite provided by employer to employee which is part of contractual agreement, and which is free of cost.

Decision of AAR

Recovery of subsidized price towards canteen facility by applicant will be subject to tax. However, GST will be applicable only to the extent of consideration being collected by the applicant from the employee.

3 *Shri Digamber Jain Sidhkut Chaityalaya Temple Trust – Rajasthan AAR [Ruling No. RAJ/AAR/2023-24/22]*

Facts and issue involved

Applicant is a religious trust, duly registered u/s 12AA of the Income Tax Act, constituted for the purpose of worship and puja. Applicant collects entry fee from the pilgrims/visitors/devotees who come for darshan of Temple Hall. The amount so collected is used for upkeep/maintenance of Temple Hall and fulfill other objects of the Trust.

In light of above, applicant sought an advance ruling as to whether the entry fee collected by the applicant is taxable under GST?

Applicant's Submissions

As per Entry No. 1 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, 'services by an entity registered under Section 12AA of Income Tax Act, 1961 by way of charitable activities' are exempt from the whole of GST.

The definition of the term 'charitable activities' as given in the notification includes 'advancement of religion, spirituality or yoga'. The trust is created by the applicant for the purpose of advancement of Jain religion. The temple was built and constructed in accordance with the Jain scripture and open for the public to visit the temple.

Visitors from all segments of society, irrespective of caste and creed are permitted to visit the temple hall on a nominal fee payment. Hence, the entry fee collected from the visitors is exempt under GST Act, 2017 because the activities of the trust are being carried out for the purpose of advancement of religion and it is having registration u/s 12AA of the Income Tax Act, 1961.

Discussions and observations of AAR

On perusal of Section 7 of the CGST Act, 2017, service provided i.e. darshan/visit of Temple Hall by the applicant is in the course of furtherance of business. Hence, it is covered under the scope of supply which makes it a taxable service.

However, since the applicant is engaged in service of darshan to Temple Hall and providing insight into principles of Jainism, it squarely falls under the exemption entry No. 1 of Notification No. 12/2017-C.T. (R) dated 28.06.2017.

Therefore, it was ruled that entry fee collected from devotees/visitors by the applicant is covered under charitable activities relating to advancement of religion, thus, it is not taxable under GST Act, 2017.

Ruling of AAR

Entry fee collected by applicant from visitors of the temple is not taxable under GST.

4 *Mangaldas Mehta & Company Ltd – Gujrat AAR [Order No. AAR/ SGST & CGST/2023/AR/13 dated 03.02.2024]*

Facts and Issues involved

Applicant runs a boutique hotel as well as a restaurant. The property is situated in the old city and has been declared as heritage property. Applicant runs a restaurant on the same premises where the hotel rooms are situated. Applicants also have a banquet on the same premises. The declared tariff across all the seasons & months does not exceed ` 7,499.

Applicant has a demarcated area for the heritage hotel room, kitchen, courtyard & restaurant. As the declared tariff of the applicant falls below ` 7,500/- the applicant charges 5% GST on the restaurant services.

Applicant has to incur huge expenditure for upkeep and maintenance of heritage property. They capitalize the expenses along with GST and for revenue expenditure incurred they intend to claim ITC. There are usual running expenses which have also suffered GST.

Applicant sought an advance ruling as to whether –

- Whether the applicant is entitled to claim ITC for the expenses incurred for the general expenses of the Company which are meant for the purpose of business?
- Whether the applicant is entitled to enjoy the benefit of the ITC based on the square foot and area of usage of the premises?

- Whether the provisions of Rule 42 and 43 of the CGST applicable to the claim other input tax credit of the applicant?

Applicant's submissions

Applicant submitted as under:

- They discharge GST under restaurant service at 5% and do not avail any ITC on restaurant business;
- They intend to claim various credit now;
- The prohibition to claim ITC is thrusted by virtue of the notification and that the embargo on the claim of ITC is not in place by virtue of Section 17 but the prohibition stems from the Central Tax rate notification;
- When 5% GST is charged on restaurant services, section 17 has no significance;
- None of the limbs of section 17 apply in the present case;
- It can be sagely concluded that the restaurant service where 5% GST is paid is never an exempt supply;
- Further, these expenses have no direct correlation with the restaurant business. Hence, ITC of expenditure which are general in nature is admissible since the same are exclusively for the purpose of business activity and taxable supply.

Discussions by and observations of AAR

A conjoint reading of the facts of the case along with the wording in the notification No. 11/2017-Central tax (Rate) under which the applicant discharges GST, depicts that the applicant by virtue of providing restaurant service at a premises other than at a specified premises is eligible for availing the benefit of the notification subject to the condition that input tax charged on goods and services used in supplying the service has not been taken. So, the applicant is not eligible to claim ITC incurred in respect of restaurant service.

Applicant has sought a ruling as to whether they are entitled to claim ITC of the expenses incurred lor the general expenses of the Company. Here we find that explanation (iv) of notification no. 11/2017-Central tax (Rate) would come to play meaning thereby that credit of input tax charged on goods or services used exclusively in supplying restaurant service is not eligible.

Further, credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for ITC, is reversed as if supply of such service is an exempt supply attracting provisions of section 17(2) of the CGST Act, 2017 and the rules made thereunder. The applicant has not mentioned as to what other supplies are being made by them. However, if applicant is engaged in providing certain other supplies eligible for ITC, information of which we are not privy to, in such a situation explanation (iv)(b) of the basic notification No. 11/2017-CT (Rate) would apply and credit would be eligible subject to the same.

The second question on which ruling is sought by the applicant whether they are entitled to enjoy the benefit of the ITC based on the square foot of usage. If the applicant is engaged in providing certain other supplies eligible for ITC, information of which we are not privy to, in such a situation explanation (iv)(b) of basic notification No. 11/2017-CT (Rate) would apply and credit would be eligible subject to the same. The credit, however, shall be restricted in terms of section 17(2) of the CGST Act, 2017. The manner

of determination of ITC of inputs or input services and reversal thereof would clearly be governed by Rule 42 of the CGST Rules, 2017.

Moving on to the last question of the applicant, whether the provisions of I{ule 42143 of the CGST Rules, read with SGST Rules are not applicable to claim of ITC of the applicant as the declared tariff of the hotel rooms never exceeds ` 7,499/- at any time during the year, the same is already answered. The provisions of Rules 42 and 43 are clearly appliable in given case.

Authorities relied on decision of Honorable SC in case of ***Dilip Kumar & Company [2018 (361) ELT 577 (SC)***] wherein it was held that exemption notification should be interpreted strictly.

Ruling of AAR

Applicant is eligible to claim ITC of expenses incurred for general expenses of company in accordance with Rule 42 and 43 of CGST Rules.

Applicant is not entitled to enjoy benefit of ITC based on square foot of usage of premises.

Rule 42 and Rule 43 are clearly applicable in given case.

5 *Sun Knowledge (P.) Ltd. – West Bengal AAR [[2024] 159 taxmann. com 724 dated 31.01.2024]*

Facts and Issues involved

Applicant is a 100% Export Oriented Unit registered with Software Technology Park of India, Kolkata. It provides ITes services to its clients located in USA.

Applicant, as a sub lessee, has entered into a 'Sub Lease Deed' with M/s Bengal Intelligent Parks Private Limited ('BIPPL') whereby the sub lessor grants the applicant to use a specified area on the 11th floor in the building to conduct business activities from the said premises.

Applicant has also entered into an agreement with TCG Urban Infrastructure Holding Pvt Ltd ('TCGUIH') to avail facilities and services installed in the building which includes central air conditioning system, DG set, electrical equipment, sprinkler system, etc.

Applicant has no control or transfer of title over the said fit outs and assets. The applicant enjoys only the right to use facilities and services.

TCGUIH issues tax invoices to the applicant for such supply of services charging tax at rate of 28% which according to the petitioner is higher tax rate.

Applicant has sought an advance ruling on the rate at which GST should be charged under SAC Code 997314 by TCGUIH.

Applicant's submissions

Applicant submitted that the instant supply, though involving different types of goods being provided on hire, cannot be considered as composite supply. This is because composite supply means a supply comprising of two or more goods/services which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. It means that the items are sold as a combination and cannot be supplied separately. Clearly, in the instant case, it is not a composite supply.

Further, even if the instant supply is considered to be a mixed supply, then also there is purely supply of services and no supply of goods. In the instant case, no

transfer of title of goods takes place, so there is no question of supply of goods. The supply involves transfer of rights in goods without the transfer of title and therefore it is purely a supply of services.

As per different provisions of the GST Act, hiring of such goods is merely supply of services falling under the class of head "leasing or rental services concerning office machinery and equipment (except computers) with or without operator which attracts GST @ 18%.

Discussion by and observations of AAR

Applicant has entered into an agreement with TCGUIH to receive multiple supplies in respect of hiring of certain goods e.g., electrical equipment, air conditioning system, sprinkler system comprising fire detectors, DG set with accessories. To qualify such supplies to be a composite supply, there must be only one principal supply. The term 'principal supply' has been defined in clause (90) of section 2 of the GST Act as the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary'. However, from the agreement made between the applicant and TCGUIH, we do not find any such predominant element as well as any other supplies which are ancillary to that predominant element. Even the intention of the applicant and the supplier both do not appear to be so.

In the instant case, two or more individual supplies, independent of each other, are supplied in conjunction with each other out of which no particular supply does not bear the predominant element. In other way, the supply is a combination of two or more individual supplies without any principal supply against a single price. We are of the view that all the conditions specified in clause (74) of section 2 of the GST Act get satisfied in respect of the instant supply and we, therefore, hold the supply to be a mixed supply.

Hiring of air conditioning machine and fire extinguisher would attract GST at 28% and at 18% respectively being the same rate applicable for supply of such items and when such are supplied in conjunction with each other for a single price, the supply being a mixed supply would attract tax at rate of 28%. However, in the instant case, we are of the view that air conditioning system and the fire extinguishing systems which have been installed in the building have lost its character of a movable property and thereby cannot be regarded as goods.

Ruling of AAR

Supply on account of hiring of electrical equipment, sprinkler system comprising fire detectors for true ceiling, air conditioning system up to the floor Air Handling Unit with existing ducting's and diffusers, DG set emergency power supply as received by the applicant would attract tax at rate of 18%. However, the applicant is eligible to take credit of input tax which has been charged by his supplier subject to fulfilment of all the conditions under section 16 of the GST Act.

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INDIRECT TAXES
Service Tax – Case Law Update


CA Rajiv Luthia CA Keval Shah

1 *Vishal Tansukh Bhai Gohel vs. CST, Rajkot 2024-5- TMI- 672-CESTAT-Ahmedabad*

Backgrounds and facts of the case

- The appellant firm, registered under 'Clearing and Forwarding Agent Service,' faced a service tax issue where the department claimed excess charges on ocean freight from customers.
- The department categorized it as Business Auxiliary Service, considering the retained freight amount as commission and issued SCN.
- The CCE(Appeals) upheld the demand & therefore the appellant has filed present appeal.

Arguments by Appellant Assessee

- The appellant argued that historically, there was a belief in the trade that no service tax applied to ocean freight, supported by a Board Circular.
- They highlighted that post the negative list, all services not specified were taxable, including ocean freight. However, emphasized that for export cargo, where the place of service provision is outside India, therefore ocean freight for the export cargo becomes non-taxable. They referenced the illustration regarding freight forwarder from an educational guide of June 2012 to support their position.
- Also relied on various decisions such as ***Gudwin Logistics vs. CCE, Vadodara – 2010 (18) STR 348 (Tri. Ahmd.), Euro RSCG Advertising Limited vs. CST, Bangalore – 2007 (7) STR 277 (Tri. Bang.), Kerala Publicity Bureau vs. CCE – 2008 (9) STR 101 (Tri. Bang.)*** etc.

Arguments by Revenue

- That freight income as being expenses incurred towards freight expenses were less than freight charged by the appellant from their customers. There was some positive difference in expenses which has been incurred by the appellant. This income is nothing but excess amount charged by the appellant from their customers towards ocean freight.

- This differential amount of freight retained by them is nothing but commission received towards provision of service.

Decision of the Hon'ble Tribunal

- The CBEC Circular explains that freight forwarders acting as agents of airlines/carriers/ocean liners, with no responsibility for actual transportation, are considered intermediaries under POPS rules. In such cases, the freight forwarder's service is taxable, while the transportation service itself is not.
- However, if the freight forwarder acts as a principal providing transportation services for goods destined outside India, bearing all risks and liabilities, they are not classified as intermediaries and are responsible for the transportation service.
- The appellant's agreement with carriers for transportation of cargo is on a principal-to-principal basis, not as an agent, exempting them from being classified as an intermediary under Rule 2(f) of POP Rules.
- The Revenue argued that the main transportation service is provided by Airlines/Shipping Agencies, but the appellant contended that Rule 10 covers those arranging transport, supported by the exclusion clause in Rule 10 of POP Rules.
- This tribunal agrees with the appellant that the place of provision for outbound shipment, outside India, exempts the appellant from Service Tax on freight margin.

2 *Central Industry Security Force vs. CST (2024)-18-Centax-179-CESTAT-Ahmedabad*

Backgrounds and facts of the case

- The appellant, an Armed Force of the Union of India, discharges sovereign and statutory functions of providing security to industrial undertakings and is registered under Security Agency Service, paying service tax on deployment costs, which included recurring and non-recurring expenditures.
- M/s. Reliance Industries Limited hired the appellant for security, covering expenses like salary, allowances, and equipment etc
- The department is of the view that the appellant has not discharged their service tax liability correctly as value of certain facilities extended by M/s. Reliance Industries Limited such as charges for accommodation, medical expenses, vehicle running and maintenance, telephone, dog squad etc. has not been included in the taxable value for providing security service to M/s. Reliance Industries Limited
- The matter has been adjudicated by learned Principal Commissioner vide his order dated 21-1-2016 whereunder all the charges as invoked in the show cause notice have been confirmed.

Decision of the Hon'ble Tribunal

- Tribunal in the case of ***M/s. Bharat Coking Coal Limited vs. CCE & ST, Dhanbad reported under 2021-TIOL-***

551-CESTAT-KOL has decided the same issue pertaining to the appellant and held that costs reimbursed by the appellant to CISF for medical & telephone facilities, imprest expenses and notional value for rent free accommodation, free supply of rented vehicles, etc. are not to be added to the assessable value for payment of service tax on reverse charge basis

- The Allahabad Bench of the Tribunal in the case of ***Central Industrial Security Force vs. Commissioner of CESTAT, Allahabad, Appeal No. ST/70293/2016-CU[DB]*** decided on 9th January, 2019, has already settled the issue in favour of the appellant to hold that expenses incurred towards medical Services, vehicles, expenditure on Dog Squad, stationery expenses, telephone charges, expenditure incurred by the service recipient for accommodation provided to CISF etc are not includible

- The Tribunal also noted that in the Tribunal decision in the case of Impact Communications (supra) which has been heavily relied by the Ld. A/R for the Revenue, the demand was confirmed for the reason that the reimbursement was not claimed on actual basis and that there was no pre-arrangement with the client for authorising such reimbursement of expenses which is not the case herein inasmuch as there is a specific MOU agreed with the CISF as also appearing in the appeal paper book. There is no dispute in the entire case proceedings that expenses have been reimbursed on actual basis.

- Following the above decision, the Tribunal held that the impugned order-in-original is without any merit and therefore, they set-aside the same. The Appeal filed by the Appellant was allowed.

3 *Gravita India Ltd vs. CCE, Jaipur (2024)-17-Centax-135-CESTAT-Delhi*

Backgrounds and facts of the case

- The appellant is engaged in the manufacture of Refined lead Ingots, Lead Alloy Ingot, Lead Alloy Antimony Aluminium Alloy Ingots

- During the course of the audit of the records of the appellant and on verification of CENVAT records of Input services maintained by the appellant, it was observed that they have wrongly availed Input Service Tax credit on the services which were not falling under the definition of input service

- Following amounts of CENVAT Credit are alleged as wrongly availed:—

  (i) CENVAT credit of ` 6,86,000/- on services not covered by definition of input services, being not in relation to manufacturing of final product;

  (ii) CENVAT credit of ` 5,15,579/- on 30-6-2017 on Challan in respect of liability under RCM for the month of June-17 which was paid in July-17 in contravention of Rule 4(7) of CCR, 2004,

  (iii) Excess availed CENVAT credit of service tax of ` 2,41,451/- attributable to the GIL, Phagi in respect of turnover, in

contravention of Rule 7 of CCR. 2004;

(iv) CENVAT credit of Education Cess and Secondary & Higher Education Cess (SHE' in short) totalling to ` 1,31,219/- in violation of Notification No. 12/2015-CE (NT) dated 29-10-2015;

(v) Wrongly availed CENVAT credit of ` 82,720/- on M.S. Bar, Channel, HR Coil etc. in violation of Rule 2(a) & 2(k)of CCR, 2004;

(vi) Not paid service tax amounting to ` 6.64.172/- on Ocean Freight in accordance with Notification No. 16/2017-ST dated 13-4-2017 read with Circular No. 206/4/2017-ST dated 13-4-2017

(vii) Not paid service tax amounting to ` 1,07,393/- on the Government Fees under RCM in accordance with Notification No. 22/2016-ST dated 13.04 2016.

Decision of the Hon'ble Tribunal

- As regards Issue No.1, The appellant received services from M/s. Satnam Construction Co. for dismantling, cleaning, painting, and packing a PET plant for export to Jamaica, with subsequent installation at the Jamaican unit. The appellant had used the said input service provided by M/s. Satnam Construction Co. for further providing the output service of commissioning and installation to the Jamaican unit and is thus entitled for availing such credit. However, the department rebutted this on the ground that to qualify for use in the production of final product as envisaged in the main part of the definition, the services should be so integrally related to the ultimate manufacture of goods, so that without that service manufacture may be commercially inexpedient.
- The Tribunal took a view that the activity done in India by said M/s. Satnam is definitely a service used by the provider of output service for providing output service of dismantling the said PET plant clearing, painting and repacking it. Hence, it is well covered in the definition of input services.
- As regards Issue No. 2, the appellant wrongly availed CENVAT credit of ` 5,15,579 on 30-6-2017 for RCM liability in June-17, paid in on 3rd July, 2017, violating Rule 4(7) of CCR, 2004. The appellant claimed they had no choice but to avail the credit in their ST-3 return for June-17 due to GST changes, depositing the service tax for June-17 before the due date. However, the Departmental Representative argued that the credit was availed before the tax payment under RCM i.e. in the month of June,2017, leading to a violation of CCR,2004.
- The Tribunal held that with the introduction of GST w.e.f. 1-7-2017 filing of ST-3 return for the period post June-17 was discontinued. Hence, the appellant had no option but to avail CENVAT credit in its STR-3 return filed for the June-17 quarter. The department must appreciate the legislative intent supported by the verdicts of the courts across the country including the Apex Court which have allowed

the eligible credit of erstwhile regime to be carried forward to GST regime by way of transition provisions by directing the department to adopt liberal approach towards technical lapses if any committed by an assessee and giving them the substantial benefit to which they are otherwise entitled to.

- For Issue No. 3, The appellant allegedly availed excess CENVAT credit of ` 2,41,451 on services attributed to both the appellant and another manufacturing unit in Gndhidham, Gujarat, violating Rule 7 of CCR, 2004. The appellant argued that since both units are part of the same company and pay excise duty, shifting the credit between units would not impact the company overall.
- However, the Tribunal agreed with the department's contention that in view of amendment in Rule 7 ibid substituted word 'shall' instead of word 'may' and credit of service tax attributable as input service to a particular unit shall be distributed only to that unit. The Tribunal held that the Phagi unit is rightly held to have been allocated with excess credit for the period post amendments.
- As regards Issue No. 4, the appellant argued that when the Notification No. 12/2015-CE(NT) dated 30-4-2015 and Notification No. 22/2015-CE(NT) dated 29-10-2015 provides for utilization of Education Cess & SHE Cess on inputs, input services and capital goods received after 1-3-2015 for payment of duty of excise and service tax. Not allowing the utilization of balance lying as on 1-3-2015 under excise law for payment of duty of excise and lying as on 1-6-2015 under the service tax for payment of service tax would be unjustified and harsh. Further, there is no notification/circular which provide that the said credit lying as on 1-3-2015 would lapse. Hence demand is wrongly confirmed with reference to this issue.
- The Hon'ble Bench relied on the decision of Madras High Court in the case of ***Sutherland Global Services Pvt. Ltd. vs. Asst. Comm. [2019 (30) ELT 628 (Mad.)***] wherein it is held that accumulated credit of Education Cess, SHE and KKC- Credit continues to be available till such time it is expressly stated to have lapsed. No notification/ circular/instruction expressly provided that credit accumulated would lapse Authorities cannot now take stand that such credit unavailable for use. It is held that available credit on date of transition was available to an assessee for set off.
- For Issue No. 5, The appellant argued that the CENVAT credit of ` 82,720 on specific items used for supporting capital goods was justified as they were rather used for repair maintenance of equipment. The department denied credit as the definition of inputs' which are eligible for availing CENVAT credit shall not include cement, angles, channels, CTD or TMT bar and other items used for construction of shed, building or structure for support of capital goods.
- The Tribunal took a view that in light of the decision of ***Ambuja Cements [2010 (256) ELT 690 (Chhattisgarh)], Alfred Herbert (India) Ltd. [2010 (257) ELT 29 (Kar.)]*** and ***Hindustan Zinc***

Ltd. [2008 (228) E.LT. 517 (Raj.)] repair and maintenance activity essential for smooth manufacturing operations without which manufacturing activity not commercially feasible. CENVAT credit for inputs used for repair and maintenance is admissible. CENVAT credit that had been taken were used in the manufacture of capital goods or repair and maintenance of capital goods. The basic idea is that CENVAT credit is admissible so long as the inputs are used in or in relation to the manufacture of final product and whether directly or indirectly.

- Issue No. 6, the appellant argued that as regards ocean freight, they being neither service provider nor service recipient cannot be made liable to pay service tax on a transaction which had originated and concluded outside the taxable territory. The department contended that Vide notification Nos. 15/2017-ST and 16/2017- ST both dated 13th April, 2017, the importer of goods as defined in the Customs Act. 1962 has been made liable for paying service tax in cases of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer with respect to goods destined for, India.
- The Tribunal agreed with the view of appellant, as also Hon'ble Supreme Court has held that the levy of IGST on the amount of Ocean Freight as unconstitutional in the case of ***UOI vs. Mohit Mineral Pvt. Ltd. & Ors.***
- In Issue No. 7, the appellant stated that no service has been provided by the DGFT and Transport department. The payment of fees to these departments is for the purpose of procuring Advance License from DGFT for duty free import of raw material for manufacture of final product which is then exported and for obtaining permit respectively. Hence no service has been provided by either of the department. Granting of Advance License by the DGFT for the purpose of procurement of duty-free import is not a service.
- The Tribunal agreed with the appellant's above contention and set aside the demand of service tax under RCM on above payments.
- Hence, the appeal of the Appellant was allowed except for except issue No. 3 of disproportionate distribution of credit to Phagi unit.

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"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

ML-487

CORPORATE LAWS
Case Law Update

CS Makarand Joshi

IBC — Case 1

In the matter of *Iskon Infra Engineering Pvt Ltd (Appellant) vs. Central Bank of India Respondent* at the National Company Law Appellant Tribunal (NCLAT) dated 1st April, 2024

Facts of the Case

- The application was filed with the National Company Law Tribunal (NCLT) by the Liquidator u/s 59 of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) r/w Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 seeking dissolution of M/s Iskon Infra Engineering Private Limited (Appellant/ CD).
- The NCLT directed the CD to issue a notice to the Registrar of Companies (RoC) and also to Punjab National Bank and Oriental Bank of Commerce (now merged with PNB) since the CD had given Corporate Guarantee to them.
- Pursuant to the notice issued - the RoC, PNB and Central Bank of India (Respondent) participated in the proceedings.
- The RoC filed its report against the CD towards Corporate Guarantee of more than ` 1257 Crores approximately beginning from year 2010 onwards and as on the date of report - as per MCA-21 record, no satisfaction of charge has been filed till date by the CD.
- The Respondent had also filed objections wherein it was stated that M/s Abhinav Steels and Power Limited, was granted a term loan and working capital facilities by a consortium of banks namely Oriental Bank of Commerce, Punjab National Bank and Central Bank of India in which CD was one of the Corporate Guarantors.
- The CD claimed that the Corporate Guarantee they provided was a contingent liability, as mentioned in the Financial Statements of the CD. It is pertinent to note that the Respondent had not filed any claim with the CD for the amount covered by the guarantee.
- NCLT dismissed the application on the ground that Guarantor's liability is co-extensive with that of the principal debtor.
- Aggrieved by the order of the NCLT – the appeal was filed at NCLAT.

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Arguments by the Appellant

- It was contended that the guarantee had not been invoked by any of the financial creditors, nor had any claim been filed before the liquidator; hence, the NCLT committed an error in rejecting the liquidation application.
- Also, the reliance was placed on the judgment passed in the case of ***"Pooja Ramesh Singh vs. State Bank of India & Anr" which supported*** *that liability against the Corporate Guarantor shall arise only when guarantee is invoked*.

Held

- It was noted that the guarantee had not been invoked; however, this does not absolve the Corporate Guarantor from the debt. The Corporate Debtor had provided a corporate guarantee and undertaken to pay the debt, as mentioned in paragraph 10 of the executed Deed.
- The liability of the Corporate Guarantor is coextensive with that of the Lenders, and the Lenders are at liberty to require the Guarantor to fulfill its obligations. The NCLT, after considering the facts presented by the RoC and the Respondent, rightly concluded that the present case is not suitable for liquidating the Company through voluntary liquidation.
- The Appellant's submission that there is no debt since the guarantee has not been invoked cannot be accepted. The guarantee continues to bind the Corporate Guarantor to discharge its liability, and the fact that the guarantee has not been invoked to date cannot be grounds for the Appellant to be liquidated u/s 59 of the IBC.

Companies Act — Case 2

In The Matter of *Hiran Valiyakkil Lal And Others vs. Hardoll Enterprises LLP, And Others.* NCLT Kochi Bench, Order Dated 4th April 2024.

Facts of the case

- Hardoll Enterprises LLP (hereinafter called as LLP) was incorporated on 06.09.2016 with a total capital contribution of ` 50 lakh.
- The applicants and respondents in this case are the partners of the LLP.
- One of the partners of the LLP has filed a winding-up petition against the LLP under sections 63 and 64 of the Limited Liability Partnership Act 2008 (hereinafter called LLP Act).
- Others partners of the said LLP had challenged the maintainability of the said winding up petition on the ground that, the individual partner filing the winding up petition has been filed solitarily without backing the resolution having the approval of 3/4th of total partners and also has not filed statements of affairs of the LLP which is a requirement of rule 26(4) of LLP winding up rules 2012.

Applicant's contentions

- Applicant contented that ,petition is not maintainable as it does not meet requirements as stated under Rule 26(4) of LLP Winding up rules, 2012 i.e.:
  - — the resolution having approval of 3/4th of total partners (i.e. 5 out of 7 partners)
  - — Statement of affairs accompanying petition

- The main petition is filed by one of its partners solitarily without backing of the said resolution.
- Petition needs to be filed in Form 28 which mandate above documents

Respondent's contentions

- The counsel for the respondent relied on rule 26(1) and (2) to state that the petition can be filed by LLP or any of its partner
- Rule 26(4) of LLP Rules is meant only for the consideration of the statement of affairs of LLP for the purpose of admission of the petition to winding up and not as a pre-requisite for filing the petition.
- Rule 28 states that the Tribunal shall on prima facie consideration of facts can direct by order to the LLP to file the statement of affairs along with objections if any.
- In case the LLP passes 3/4th resolution and makes a statement of affairs as averred by the applicant, LLP shall go for voluntary winding up and not pursue the matter under Rule 26(1).

Held

- It is a settled position that maintainability questions need to be considered in view of the legal impediments to entertain the petition.
- In respect of the formalities imposed by Rule 26, it is clear from the sub-rule (1) (a) that a petition for winding up can be presented by any partner.
- As to the petition being hit by conditions imposed in Rule 26(4) i.e. for the production of a statement of affairs and resolution, it is necessary to see Rule 28 which pertains to a case where any person other than LLP filing a winding up petition, in which case, this tribunal can if circumstances appear so, order LLP to file its objections along with a statement of affairs.
- In Rule 101, petition for winding up, it mentioned clearly in the proviso to sub-rule (1) that the petition in case is made by LLP shall accompany with the statement of affairs.
- In this case, the petition presented by a partner without LLP's support is as per law but need not accompany it with a statement of affairs and 3/4th resolution because it is not a case of voluntary winding up but only a winding up sought in view of the disputes alleging oppression and mismanagement.
- Hence considering the due process envisaged under the LLP Act, 2008, the court found that this petition w.r.t winding up is clearly maintainable in law.
- Therefore, we are inclined to direct the LLP, to file a Statement of affairs as on date, in the prescribed form and manner specified in Part VI (LLP Winding up rules) along with written objections to it if any, within a prescribed period in order.

Companies Act — Case 3

In the matter of *Narendra Singhania and another (Applicant), vs. Minosha India Ltd (Respondent)*, NCLAT New Delhi bench order dated 23rd April 2024.

Facts of the case

- Minosha India Ltd (hereinafter called as a respondent company) went into the Corporate Insolvency Resolution Process

(CIRP) pursuant to the admission of the Insolvency Petition by the Ld. NCLT, Mumbai Bench.

- While the company was in CIRP, the current promoters submitted a resolution plan, which got approved by the learned NCLT.
- Admittedly one of the conditions of the Resolution Plan was the delisting of the equity shares and re-organization of share capital which was implemented and accordingly, the equity shares of the Respondent company were delisted.
- Pursuant to the implementation of the resolution plan, the shareholding of the first applicant herein was reduced from 10,000 shares to 4,000 shares and that of the second applicant was reduced from 20,000 shares to 8,000 shares.
- The shareholders of the company approved the reduction of equity share capital held by the public shareholders of the company in its Annual General Meeting held on 29th September, 2022 and it was approved by the learned NCLT Mumbai vide it order dated 03.11.2022.
- The explanatory statement sent along with the notice for said general meeting stated that, since there is no trading platform available to the shareholders and the equity shares of the Company have lost its marketability. In view of this, many pubic shareholders have expressed their desire to tender/transfer their equity shares they hold in the Company as they are unable to dispose of the same. It was for this reason the Respondent company provided the public shareholders an exit opportunity so as to provide liquidity.
- The applicant alleged they were compelled to sell shares in the company by way of reduction of share capital and instead they wish to continue being shareholders as the company is growing. However, vide the special resolution passed in the AGM held on 29.11.2022 their shareholding was reduced to Nil.
- As a result, the applicants filed an intervention application before NCLT Mumbai which was rejected by it. Hence the applicant is before the NCLAT, New Delhi bench.

Applicant's contentions

- The minority shareholders holding 5.86% shareholding were given no option and were forced to leave the Company by a group of approximately 94.62% shareholders belonging to the promoter's group.
- The proposed reduction is discriminatory, unfair and mala fide and is aimed towards extinguishment of the class of public shareholders.
- It was necessary to hold a separate meeting of non-promoter public shareholders giving them a fair opportunity to assent or dissent to the reduction of the share capital.
- Objections were raised on the agenda of capital reduction by applicant shareholders through emails dated 27/09/2022, 28/09/2022 and 30/09/2022 and the request was made to the company to provide an option to those shareholders who wish to remain invested in the company but of no avail and thus were forced to quit.

- The learned counsel for the appellant referred cases[1] to press his point that the Ld. The tribunal should have considered separate voting by the class of shareholders who were to be ousted.

Respondent's contentions

No contentions were made in this behalf by the respondent company.

Held

- Admittedly, only the appellants have challenged the reduction in share capital and both these appellants collectively hold only 0.025% of the total number of shares, which is a miniscule and negligible holding as compared to other public shareholders.
- We have also examined the percentage of shareholding viz 94.62% shares held by the promoter's group and 5.38% shares held by the non-promoter group viz. public shareholders.
- The voting was done on 29.09.2022 and as per the voting 99.954% of the total valid votes voted in favor of the reduction of equity share capital and whereas only 0.0461% voted against such resolution.
- No doubt the Courts in such cited cases have examined the voting by two separate classes of shareholders viz. promoters and non-promoters viz the special class affected by the resolution but such judgements were given only on the facts, peculiar to such cases. These judgements did not lay the law as to if the special resolution ought to have been passed by such special class/ shareholders affected.
- Rather in ***Sandvik Asia Ltd (Supra)*** it was noted once it is established that non-promoters shareholders are being paid fair value of their shares and at no point of time it was suggested the amount paid nowhere was less and where an overwhelming majority voted in favour of resolution, the Court will not be justified in withholding its sanction.
- In the present case admittedly only 0.0461% voted against the resolution and whereas 99.954% had voted in favour of the resolution, hence there was no reason as to why the Ld. NCLT should have upset such a resolution.
- In ***Piyush Dilipbhai Shah vs. Syngenta India Ltd, Company Appeal (AT) No.208/2020 decided on 05.03.2021,*** the court held even though the public shareholders/non-promoter shareholders had objected to the reduction of share capital in the EGM but the majority shareholders i.e. promoter group passed the resolution in favour of the reduction of share capital, hence the Court did not upset the resolution in favour of reduction of share capital.
- Issue related to the valuation of shares was never raised before us. The only argument is non-promoters should be treated as a separate class and they only be allowed to vote on special resolution for reduction. We disagree. No separate class is permitted under Section 66 of

1. *Jayshree Damani vs. Atlas Copco (India) Ltd Company Appeal (AT) No.365 of 2019- NCLAT New Delhi;* and *Sandvik Asia Ltd vs. Bharat Kumar Padamasi Manu/MH/0237/2009.*

the Companies Act, 2013 or in any other provision of the Companies Act, 2013.

- The argument of the appellants needs to be rejected.
- The appeal thus has no merit and is accordingly dismissed.

SEBI — Case 4

Securities and Exchange Board of India's Final Order in the Matter of Leel Electricals Limited

Facts of the Order

1. Securities and Exchange Board of India ('SEBI') had received a complaint from a shareholder of LEEL Electricals ltd. ('LEEL'/'the company'/'Noticee No 1') dtd November 13, 2018.
2. The shareholder alleged that promoters and the senior management of the company had diverted funds including the funds received from the sale of a consumer durable business ('CD business') which was acquired by Havells India ltd ('Havells') for consideration of ` 1550 crore.
3. Thereafter SEBI had also received a letter dated February 15,2019 from the Office of the Commissioner for Central Goods and Service tax which inter alia stated that LEEL had availed GST input tax credit of ` 40.53 crore against the reported purchase of material amounting to ` 2225.19 crore without receiving any goods and without any underlying financial transaction.
4. The letter also mentioned that the Whole Time Director ('WTD') and Chief Financial Officer ('CFO') of LEEL had admitted in a statement filed before the High Court of Rajasthan that the company had entered such transactions to show an increase in the volume of turnover.
5. Given the above, SEBI then initiated an investigation into the affairs of the company and appointed Deloitte Touche Tohmatsu India LLP ('Deloitte'), vide letter dated April 12, 2019, to conduct a forensic audit of the books of the company for the financial years 2017-18 and 2018-19.
6. On completion of the audit, Deloitte submitted a Forensic Audit Report ('FAR') to SEBI on February 25, 2020.
7. Subsequently, SEBI, after recording the statements of the relevant people and obtaining information from the entities covered under the FAR, completed its investigation in the matter.
8. In the meanwhile, NCLT, Allahabad Bench, vide Order dated December 09, 2019, admitted Corporate Insolvency Resolution Proceedings ('CIRP') against the company and appointed a Resolution Professional (RP).
9. The SEBI investigation noted various violations of the provisions of the securities laws.
10. Investigation revealed diversion of funds to related parties, misrepresentation of financial statements and misrepresentation of the profits from the sale of the consumer durable('CD') business.
11. A Show Cause Notice('SCN') dated July 05, 2022, was issued to the company, its WTDs, independent directors and certain KMPs.
12. SCN alleged that company had diverted funds to related parties in three ways: (a) by advancing funds to related parties and subsequently transferring balances

due from them to the CWIP Ledger; (b) by transferring the receivable balance from related parties to unrelated vendor accounts; and (c) by making fictitious prepaid expenses which were later written off.

13. It was also alleged in the SCN that the company misused/diverted funds to the tune of ` 472.11 Crore.

14. SCN was issued to the company along with Mr. Bharat Raj Punj who was promoter director of the company ('Noticee No 2'), Mr. Achin Kumar Roy who was member of audit committee and WTD ('Noticee No 3'), Mr. Nipun Singhal who was WTD during the period ('Noticee No 4'), Mrs. Mukta Behari Sharma who was WTD and CFO ('Noticee No 5'), Mr. Sushil Kabra who was group CFO ('Noticee No 6'), Mr.Surjit Krishnan Sharma who was independent director ('ID') during the period ('Noticee No 7'), Mrs. Geeta Tekchand who was ID during the period('Noticee No 8') and Mrs. Anita Kakkar Sharma who was the compliance officer during the period ('Noticee No 9') ('Noticee No. 2 to 9 Collectively referred to as Noticees').

15. It was *prima facie* alleged that the financial statements of LEEL for the FY 2013-14 to FY 2018-19 (investigation period) were fraudulently manipulated and the figures contained therein were significantly misstated. This led to the publication of manipulated financial results of the Company from FY 2013-14 to FY 2018-19. The SCN further alleged that such publication of information in the financial statements which are not true and misleading or in a distorted manner was in contravention of the provisions of the SEBI Act, PFUTP Regulations and LODR Regulations.

Charges Levied

Sr. No.	***Noticee***	***Charges Levied***
1	Noticee No 1	Charges levied on the company are nowhere mentioned in the order, neither the company is penalized in this order.
2	Noticee No 2	Regulations 4(1)(a), (b), (c), (e), (g), (h), (i), (j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6)(7), 4(2)(f)(iii)(7), 23(4) read with 23(1), and 33(2)(a) of SEBI (LODR) Regulations, 2015 for FY 2015-16 to FY 2018-19 and Clause 41(1)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA, 1956 FY 2013-14 and FY 2014-15. Regulations of 3(b), 3(c), 3(d), 4(1) of the PFUTP Regulations and Section 12A(a), (b) and (c) of the SEBI Act.
3	Noticee No 3	Regulations 4(1)(a), (b), (c), (e), (g), (h), (i), (j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii)(7), 23(4) read with 23(1), and 33 (2) (a) of SEBI (LODR) Regulations, 2015 for FY 2015-16 to FY 2018-19 and Clause 41 (1)(a) of erstwhile Listing Agreement read with Section 21 of SCRA, 1956 FY 2013-14 and FY 2014-15. Regulations of 3(b), 3(c), 3(d), 4(1) of the PFUTP Regulations and Section 12A(a), (b) and (c) of the SEBI Act.

Sr. No.	*Noticee*	*Charges Levied*
4	Noticee No 4	Regulations 4(1)(a), (b), (c), (e), (g), (h), (i), (j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii)(7), 23(4) read with 23(1), and 33(2)(a) of SEBI (LODR) Regulations, 2015 for FY 2015-16 to FY 2018-19 and Clause 41 (1)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA, 1956 FY 2013-14 and FY 2014-15. Regulations of 3(b), 3(c), 3(d), 4(1) of the PFUTP Regulations and Section 12A(a),(b) and (c) of the SEBI Act.
5	Noticee No 5	Regulations 4(1) (a), (b), (c), (e), (g), (h), (i), (j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2),(6)(7), 4(2)(f)(iii)(7), 23(4) read with 23(1), and 33 (2) (a) of SEBI (LODR) Regulations, 2015 for FY 2015-16 to FY 2018-19, provisions of Regulation 18(3) read with Para A of Part C of Schedule II of SEBI (LODR) Regulations, 2015, and Clause 41 (1)(a) of erstwhile Listing Agreement read with Section 21 of SCRA, 1956 FY 2013-14 and FY 2014-15. Regulations of 3(b), 3(c), 3(d), 4(1) of the PFUTP Regulations and Section 12A(a),(b) and (c) of the SEBI Act.
6	Noticee No 6	Regulations 4(1)(a), (b), (c), (e), (g), (h), (i), (j), 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii)(7), 23(4) read with 23(1), and 33(2)(a) of SEBI (LODR) Regulations, 2015 for FY 2015-16 to FY 2018-19 and Clause 41 (1)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA, 1956 FY 2013-14 and FY 2014-15.
7	Noticee No 7	Provisions of Regulation 18(3) read with Para A of Part C of Schedule II of SEBI (LODR) Regulations, 2015,
8	Noticee No 8	Provisions of Regulation 18(3) read with Para A of Part C of Schedule II of SEBI (LODR) Regulations, 2015,
9	Noticee No 9	Provisions of Regulations 6(2)(a), (b), (c) of the SEBI (LODR) Regulations, 2015. Regulations of 3(b), 3(c), 3(d), 4(1) of the PFUTP Regulations and Section 12A(a), (b) and (c) of the SEBI Act.

Contentions by The Noticees

A. Allegation relating to diversion of funds to related parties, misrepresentation of financial statements, misrepresentation in the calculation of profit on sale of CD business along with related party transaction and disclosure violation and failure of corporate governance

1. Noticee No 2 clarified that he was not involved in LEEL's day-to-day affairs or financial functions, primarily managing overseas acquisitions while residing in the USA. He highlighted that the company's core management team, led by his late father Brij Raj Punj, handled daily operations and financial matters. After being pressured to take on the role of Managing Director following his father's death, he maintained minimal involvement in financial transactions, which were managed by the core team. He also emphasized the challenges in defending himself due to limited access to documents amidst the company's liquidation and pointed out discrepancies and alleged forgery in company records. Finally, he asserted

that responsibility for the questioned transactions lay with Brij Raj Punj and Anita Kakar Sharma.

2. Noticee No 3 clarified that he never acted as the CEO of LEEL, a misconception arising from incorrect disclosures in the 2007 annual report, and emphasized his role was limited to Vice President until becoming a WTD in 2007, with no financial responsibilities or expertise. His signing of the CEO/ CFO statements for FY17 and FY18 was done under pressure to comply with regulations while key personnel were absent, and his involvement in company affairs was minimal, limited to managing the OEM Division and attending board meetings. He also denied any knowledge or involvement in specific financial transactions and compensation issues highlighted in the SCN, asserting that his compensation was merit-based and approved by the Board.

3. Noticee No 4 clarified that he was only a WTD at LEEL for 38 days during the investigation period and had no responsibility for the company's financial and accounting functions, nor was he a compliance officer. He resigned on May 08, 2017, as part of the sale of the CD business to Havells and had no reason to doubt the accuracy of financial representations made to the Board. Additionally, consultancy charges paid to Mindage Solutions were authorized by Brij Raj Punj, and the Noticee was not involved in the decision to write off these charges from the sale proceeds.

4. Noticee No 5 argued that LEEL was professionally managed, with specific responsibilities allocated within the management hierarchy, which was headed by the CMD, Late Brij Raj Punj. He clarified that he was never tasked with acting as the Group CFO, and his designated role was limited to overseeing CSR projects, construction activities, and specific business divisions, with financial matters being managed by Anita Sharma and Sushil Kabra. He emphasized that he lacked authority over financial transactions and decision-making, as corroborated by organizational structures and communications showing others held these responsibilities. Additionally, he noted that even during significant events and meetings, he was excluded from financial discussions and decision-making processes.

5. Noticee No 6 argued that his role as CFO at LEEL was largely symbolic, intended to facilitate bank negotiations during a liquidity crisis, and that he was deliberately excluded from key financial activities and decision-making by a small group of promoters and their trusted associates. He highlighted that despite his title, he lacked formal Board confirmation and was side-lined from the company's financial oversight, as evidenced by internal communications and the fact that financial control was centralized under individuals close to the company's promoters. He emphasized that his whistle-blowing was pivotal in exposing the company's misconduct, which led to subsequent investigations.

6. Noticee No 7 being, a 78-year-old former Air Vice Marshal, contended that he was invited by the late Brij Raj Punj in 2005 to join LEEL's board as an independent director, with the understanding that his role would be limited to policy advice and strategic guidance without requiring specialized financial knowledge. He trusted that financial and compliance matters were being managed by Brij

Raj Punj and Anita Sharma. It was only in 2018 that he became aware of the alleged violations, which led him to resign in September 2018, formalized on July 30, 2019. Throughout his near-decade tenure, his sole compensation was a sitting fee totalling ` 6,40,000.

7. Noticee No 8 contended that she being a physical therapist by profession, joined LEEL's board around 2010 at the insistence of the late Brij Raj Punj, despite having no financial or corporate experience. She believed that financial and compliance matters were securely managed by Punj and Anita Sharma, and that her role would be limited to attending routine audit committee and board meetings. In 2018, she was shocked to learn about alleged management violations, prompting her to attempt resignation in September 2018, which was only formalized on January 24, 2019. Over nearly a decade, her sole compensation for serving on the board was a sitting fee totalling ` 5,85,000.

8. Noticee No 9 contended that her role in audit committee meetings was secretarial and she lacked authority to set agendas or investigate transactions, which were responsibilities of the CFO. She contended that statutory obligations related to financial statements and related party transactions were managed by the audit committee with auditors' help, and any lapses should not be attributed to her. She denied allegations of preparing fake audit committee meeting minutes and stated that decisions about meeting content and conduct were made by higher authorities, not her. She also refuted claims of receiving a ` 4 Crore incentive, providing evidence that she received only ` 1.93 Crore, as approved by the Board. Finally, she challenged the credibility of Noticee No 5, whose statements were used against her, highlighting inconsistencies and lack of documentary support for his claims.

Counter arguments by SEBI

A. Allegation with diversion of funds to related parties, misrepresentation of financial statements, misrepresentation in the calculation of profit on sale of CD business along with related party transaction and disclosure violation and failure of corporate governance

1. SEBI stated that Noticee No 2, Bharat Raj Punj, son of Late Brij Raj Punj, served as a WTD of LEEL from 2012 to 2019, and later as Deputy Managing Director and Managing Director. Despite his claim that he was not involved in the day-to-day affairs of the company, evidence shows he signed off on financial statements in FY 2018 when significant misstatements occurred. The financial misstatements happened under his leadership as managing director. Statements from other board members corroborate that he attended meetings via video conferencing, indicating his active involvement. Thus, his defense of minimal engagement and focusing solely on overseas business is not credible.

2. SEBI stated that with respect to Noticee No 3, who was an executive director of LEEL since 2007, attended board meetings where significant financial misstatements were approved. Despite his claim that he was incorrectly listed as CEO for the past decade and was forced to sign CEO/CFO certifications due to the absence of Bharat Punj and Brij Raj Punj, he still signed these certifications for FY 2017 and FY 2018. He was also a member of the

Audit Committee during a period when numerous related party transactions (RPTs) were conducted. These factors indicate his complicity in fund diversion and financial misrepresentation. Consequently, there is sufficient evidence to hold him accountable for these actions.

3. SEBI stated that with respect to Noticee No 4 who served as a WTD at LEEL from 2013 to 2018, primarily overseeing the CD business which was later sold to Havells. Despite his defense of not being involved in day-to-day management and relying on auditors' expertise, the suspicion arises due to the significant payments made to a company linked to him, suggesting his potential involvement in fund diversion and fraudulent activities. Consequently, the lack of evidence and the circumstantial factors point to his complicity in the financial irregularities at LEEL.

4. SEBI observed that with respect to Noticee No 5, who had a longstanding association with the Lloyd group and served as CFO of LEEL from 2006-07 onwards. Despite being designated as the CFO and signing financial documents, he claimed his role was largely ceremonial and focused on CSR activities. However, his defense of lacking financial background and reliance on professional advice is deemed unsubstantiated and undermines regulatory measures. Noticee 5's attempt to evade responsibility for certifying financial statements over nearly a decade, during which fund diversion occurred, is untenable. Consequently, he cannot escape liability for the financial irregularities that transpired under his watch as CFO.

5. SEBI observed that with respect to Noticee No 6, he had the shortest tenure at LEEL, employed from October 2016 to September 2018. His termination followed an email highlighting contraventions to the Board, leading to his removal as Group CFO. His appointment was not formalized through Board approval, nor was he disclosed as a Key Managerial Personnel (KMP) or Group CFO in annual reports. Considering these factors and his short tenure, the benefit of the doubt was granted to Noticee No 6.

6. SEBI observed that Noticees No 5, 7 and 8 had contravened the provisions of regulation 18(3) read with Para A of Part C of Schedule II of SEBI (LODR) regulations, 2015, for the failure to adequately discharge their obligations as members of the audit committee of LEEL.

7. SEBI observed that with respect to Noticee No 9 Anita Sharma, who was appointed as Company Secretary of LEEL in April 2006, served as KMP and Vice President Finance. She was alleged to have received ` 4 Crore from the sale proceeds of the CD business and to have been complicit in fund diversions to related parties. Sharma's role included signing and filing quarterly compliance certificates, affirming compliance with audit committee compliances, despite the fact that audit committee meetings were not being conducted for a decade. Various evidence, including emails and bank records, indicated she benefitted from the misappropriated funds. Her involvement in fraudulent transactions and misrepresentation of financials led to significant shareholder losses, and she failed in her duties, contributing to the company's downfall.

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8. SEBI finally concluded mentioning that the order reveals that since 2010, LEEL engaged in diverting funds to related parties and covering up these transactions through misstatements in financial statements. SEBI stated that audit committee members, could have prevented such misconduct. Despite several claims from audit committee members and key management personnel that they were misled or had limited roles, SEBI has held them accountable for failing to fulfill their fiduciary duties and allowing financial malfeasance. Provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations and the SEBI Act have been invoked against Noticees 2 to 6 and 9 for their involvement in fraudulent activities and misstatements. Additionally, Noticees 5, 7, and 8 were also alleged to have committed violations.

Penalty

1. Noticees 2 to 5 and Noticee 9 were restrained from accessing the securities market and further prohibited from buying, selling, or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of five (5) years from the date of this order.
2. Noticees 2 to 5 and Noticees 7 to 9 were further restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a director or a key managerial person, directly or indirectly, for a period of three (3) years from the date of this order.
3. Monetary Penalties imposed were as follows:

Noticee No.	***Noticee Name***	***Provisions under which penalty imposed***	***Penalty amount***
2	Bharat Raj Punj	Section 15HA and 15 HB of SEBI Act 1992	` 5 crore
3	Achin Kumar Roy	Section 15HA and 15 HB of SEBI Act 1992	` 2 crore
4	Mr. Nipun Singhal	Section 15HA and 15 HB of SEBI Act 1992	` 2 crore
5	Mukat Behari Sharma	Section 15HA and 15 HB of SEBI Act 1992	` 2 crore
7	Surjit Kishan Sharma	Section 15HA and 15 HB of SEBI Act 1992	` 10 lakhs
8	Geeta Tekchand	Section 15HA and 15 HB of SEBI Act 1992	` 10 lakhs
9	Anita Kakar Sharma	Section 15HA and 15 HB of SEBI Act 1992	` 3 crore

Link:

https://www.sebi.gov.in/enforcement/orders/apr-2024/final-order-in-the-matter-of-leel-electricals-ltd-_82934.html

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OTHER LAWS

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 Notification

1. Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024 - Notification No. FEMA 5(R)/(4)/2024-RB

In the Principal Regulations, in Regulation 7, after sub-regulation 5, the following new sub-regulation shall be inserted, namely:-

"6) An authorised dealer in India may allow a person resident outside India to open, hold and maintain an interest-bearing account in Indian Rupees and / or foreign currency for the purpose of posting and collecting margin in India, for a permitted derivative contract entered into by such person in terms of Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020, dated October 23, 2020, as amended from time to time, subject to directions issued by the Reserve Bank in this regard."

FEMA Notification No. FEMA 5(R)/(4)/2024-RB dated May 06, 2024

(Comments: The above amendment is brought to regulation 7 of FEMA 5(R) dealing with deposits made or held by authorized dealers. This regulation currently permits deposit by an AD with its branch, head office or correspondent outside India, and deposit made by a branch or correspondent outside India of an AD in India. It also permits shipping or airline company incorporated outside India, may open, hold and maintain a FCA with an AD for meeting the local expenses in India of such airline or shipping company. Further, an AD in India, has been allowed to permit unincorporated joint ventures (UJV) of foreign companies/ entities, with Indian entities, executing a contract in India, to open and maintain non-interest bearing FCA and a SNRR account for the purpose of undertaking transactions in the ordinary course of its business. The debits and credits in these accounts are permitted incidental to the business requirement of the UJV. Also, an AD in India, with the prior approval of RBI, may open an account expressed in foreign currency in the name of a person resident outside India for the purpose of adjustment of value of goods imported into India against the value of goods exported from India in terms of an arrangement voluntarily entered into by such person with a person resident in India. An AD in India is may allow a FPI and a FVCI, both registered with SEBI under the relevant SEBI regulations to open and maintain a non-interest bearing foreign currency account for the purpose of making investment in NDI Rules, 2019.

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With the current amendment, AD is now also permitted to allow a person resident outside India to open, hold and maintain an interest-bearing account in Indian Rupees and / or foreign currency for the purpose of posting and collecting margin in India, for a permitted derivative contract

The introduction of a dedicated account for margin requirements would enhance efficiency in managing margin obligations and associated funds for non-residents participating in permitted derivative contracts. Further, it may also be attractive to non-residents since they can earn interest on the funds they maintain in the account for margin purposes instead of keeping them idle. However, it likely that RBI will issue additional detailed operational guidelines.

Currently, the RBI permits interest-rate derivatives such as interest-rate swaps, forward-rate agreements, and interest-rate futures, as well as foreign-currency derivatives including foreign-currency forwards, currency swaps, and currency options. Similarly, in the equity domain, permissible derivative contracts encompass forward contracts, futures contracts, options contracts, and swap contracts.)

B. Update through A.P. (DIR Series) Circulars

1. Margin for Derivative Contracts

The A. P. (DIR Series) Circular No.10 dated February 15, 2021 on Margin for Derivative Contracts were issued by RBI to allow posting and collection of margin for permitted derivative contracts between a person resident in India and a person resident outside India.

The instructions have been reviewed by RBI based on market feedback and Reserve Bank of India (Margin for Derivative Contracts) Directions, 2024 have now been issued by Financial Markets Regulation Department.

Reserve Bank of India (Margin for Derivative Contracts) Directions, 2024

- "Permitted derivative contract" has the same meaning as assigned to it in the Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020 (Notification no. FEMA.399/RB-2020 dated October 23, 2020), as amended from time to time → *Accordingly, permitted derivate contract includes:*

  a) *Foreign Exchange Derivative Contract undertaken in terms of the FEM (Foreign Exchange Derivative Contracts) Regulations, 2000 and Master Direction – Risk Management and Inter-bank Dealings, as amended from time to time,*

  b) *Interest Rate Derivative Contract undertaken in terms of the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019 (Notification no.FMRD.DIRD.20/2019 dated June 26, 2019), as amended from time to time,*

  c) *Credit Derivative Contract undertaken in terms of the Master Direction – Reserve Bank of India (Credit Derivatives) Directions, 2022 (Notification no. FMRD. DIRD.11/14.03.004/2021-22 dated February 10, 2022), as amended from time to time, and*

  d) *Any other derivative contract as may be specified by the Reserve Bank;*

- "Certificate of Deposit" shall have the meaning assigned in paragraph 2(a)(iii) of the Master Direction – Reserve Bank of India (Certificate of Deposit) Directions, 2021 dated June 04, 2021, as amended from time to time → *Accordingly, CD is a negotiable, unsecured money market instrument issued by a bank as a Usance Promissory Note against funds deposited at the bank for a maturity period upto one year;*

- "Commercial Paper" shall have the meaning assigned in paragraph 2(a)(iv) of the Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024 dated January 03, 2024, as amended from time to time → Accordingly, CP means an unsecured money market instrument issued in the form of a promissory note.

- Under the Directions, Authorised Dealers are permitted to:

  i. Post and collect margin, in India and outside India, for a permitted derivative contract entered into with a person resident outside India and receive and pay interest on such margin; and

  ii. Post and collect margin, in India and outside India, for derivative transactions of their overseas branches and IFSC Banking Units and receive and pay interest on such margin.

- The Directions further clarifies that Margin posted and collected **in India** can be in the form of:

  (i) Indian currency;

  (ii) Freely convertible foreign currency;

  (iii) Debt securities issued by Indian Central Government and State Governments;

  (iv) Rupee bonds issued by persons resident in India which are:

    (a) Listed on a recognized stock exchange in India; and

    (b) Assigned a credit rating of AAA issued by a rating agency registered with the Securities and Exchange Board of India. If different ratings are accorded by two or more credit rating agencies, then the lowest rating shall be reckoned.

  (v) Certificate of Deposits; and

  (vi) Commercial Papers which are assigned a minimum credit rating of A1 issued by a rating agency registered with the Securities and Exchange Board of India. If different ratings are accorded by two or more credit rating agencies, then the lowest rating shall be reckoned.

- The Directions also clarify that Margin posted and collected **outside India** can be in the form of:

  (i) Freely convertible foreign currency; and

  (ii) Debt securities issued by foreign sovereigns with a credit rating of AA- and above issued by S&P Global Ratings / Fitch Ratings or Aa3 and above issued by Moody's Investors Service. If different ratings are accorded by two or more credit rating agencies, then the lowest rating shall be reckoned.

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- Separate directions are provided to AD Banks choosing to comply with the margin requirements of a foreign jurisdiction for Non-Centrally Cleared Derivative (NCCD) transactions.

A.P. (DIR Series) Circular No. 5 dated May 8, 2024 & A. P. (DIR Series) Circular No. 6 dated May 08, 2024

(Comments: These directions are formulated under FEMA, 1999 with and aim to streamline the processes surrounding derivative transactions involving authorized dealers in India.)

2. Issuance of partly paid units to persons resident outside India by investment vehicles under Foreign Exchange Management (Non-debt Instruments) Rules, 2019

RBI has decided to regularise the issuances of partly paid units by Alternative Investment Funds to persons resident outside India prior to the amendment to NDI Rules, 2019 (Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2024 vide S.O. 1361(E), dated March 14, 2024). This can be done by undertaking compounding under Foreign Exchange Management Act, 1999.

However, before approaching RBI for compounding, AD banks should ensure that the necessary administrative action, including the reporting of such issuances by Alternative Investment Funds to the Reserve Bank, through Foreign Investment Reporting and Management System (FIRMS) Portal and issuing of conditional acknowledgements for such reporting, is completed.

A.P. (DIR Series) Circular No. 7 dated May 21, 2024

(Comments: In CTC's Journal Issue for April 2024 we had covered the amendment made to the NDI Rules, 2019 dated March 14, 2024 vide the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2024. The amendment was undertaken in line with SEBI's amendment to the AIF regulations permitting issuance of partly paid units.

Vide this current circular, RBI has decided to 'regularise' the contravention in case partly paid units were issued prior to the amendment and asked the contravener AIF to approach for compounding. However, it should be remembered that the SEBI AIF Regulations nor the NDI Rules, 2019 explicitly bar AIFs to issue partly paid units since inception of the regulations. Even Form InVi did not bar AIFs to issue partly paid-up units to its foreign investors. Keeping the same in mind, due to the amendment of the NDI Rules, 2019 on March 14, 2024, it has been interpreted that issuance of partly paid units before the said date was in contravention eventhough there was no explicit bar of the same.

RBI vide the circular has mentioned that the contravention can be 'regularised' by reporting of the issuance of partly paid units on FIRMS portal. Does this insinuate that said amendment is as such considered a retrospective amendment since mere reporting regularization is mentioned rather than any kind of substantive regularization. Other forms of regularization which could be permitted by RBI in relation to the contravention include: One possibility could be to approach RBI for post facto approval of issuance of partly paid units, another possibility could be to fully call-up the AIF units to fully paid instead of partly paid. It could also be possible to refund / cancel the partly paid units. Clarity by RBI is welcomed in this regard.)

3. Foreign Exchange Management (Overseas Investment) Directions , 2022 - Investments in Overseas Funds

RBI has amended Paragraph 1(ix)(e) of FEM (OI) Directions, 2022 to replace it with:

> "The investment (including sponsor contribution) in units **or any other instrument (by whatever name called) issued by** an investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, shall be treated as OPI. Accordingly, in jurisdictions other than IFSCs, listed Indian companies and resident individuals may make such investment. Whereas in IFSCs, an unlisted Indian entity also may make such OPI in units **or any other instrument (by whatever name called) issued by** an investment fund or vehicle, in terms of schedule V of the OI Rules subject to limits, as applicable.
>
> ***Explanation*: 'investment fund overseas, duly regulated' for the purpose of this para shall also include funds whose activities are regulated by financial sector regulator of host country or jurisdiction through a fund manager."**

Prior to amendment, Paragraph 1(ix)(e) of FEM (OI) Directions, 2022 read as under:

> "The investment (including sponsor contribution) in units of any investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, shall be considered as OPI. Accordingly, in jurisdictions other than IFSC, listed Indian companies and resident individuals may make such investment. Whereas in IFSC an unlisted Indian entity may also make such OPI in units of an investment fund or vehicle, in terms of schedule V of the OI Rules subject to limits, as applicable."

Further, Paragraph 24(1) of FEM (OI) Directions, 2022 is replaced with the following:

> "A person resident in India, being an Indian entity or a resident individual, may make investment (including sponsor contribution) in units **or any other instrument (by whatever name called) issued by** an investment fund or vehicle set up in an IFSC, as OPI. Accordingly, in addition to listed Indian companies and resident individuals, unlisted Indian entities also may make such investment in IFSC."

Prior to amendment, Paragraph 24(1) of FEM (OI) Directions, 2022 read as under:

> "A person resident in India, being an Indian entity or a resident individual, may make investment (including sponsor contribution) in the units of an investment fund or vehicle set up in an IFSC as OPI. Accordingly, in addition to listed Indian companies and resident individuals, unlisted Indian entities may also make such investment in IFSC."

A.P. (DIR Series) Circular No. 9 dated June 7, 2024

(Comments: The above circular brings out an amendment to the FEM (OI) Directions, 2022 which provides further clarity on permitted investment in overseas investment funds. Prior to the amendment only the term 'unit' was considered a permitted investment instrument which led to questions regarding allowability of investment is certain vehicles around the world wherein although the funds were regulated investment funds or vehicles, the instrument issued were not termed as units. Examples of such

vehicles included Singapore's Variable Capital Company, Luxembourg's SICAVs or SICAFs or even Limited Partnerships (LPs) and many other examples. With the amendment brought about through this current circular, the phrase "any other instrument (by whatever name called)" broadens the permitted OPIs by resident individuals' and listed Indian entities. Accordingly, OPI is permitted when all the 3 conditions are satisfied i.e. i) in units or any other instrument (by whatever name called); ii) in an investment fund overseas; iii) duly regulated by the regulator for the financial sector in the host jurisdiction.

What is considered 'regulated in the host jurisdiction' has also undergone a change vide this circular by way addition of explanation to Paragraph 1(ix)(e) of FEM (OI) Directions, 2022 whereby foreign investment fund or vehicle regulated through a fund manager has also been now permitted.)

C. Update through Press Release

1. Launch of PRAVAAH, RBI Retail Direct Mobile Application and FinTech Repository

Shri Shaktikanta Das, Governor, RBI launched three major initiatives of the RBI, namely the PRAVAAH portal, the Retail Direct Mobile App and a FinTech Repository.

These three initiatives were earlier announced as part of RBI's bi-monthly Statement on Development and Regulatory Policies in April 2023, April 2024 and December 2023 respectively.

I) 'PRAVAAH' (Platform for Regulatory Application, VAlidation and AutHorisation) portal

The PRAVAAH portal will make it convenient for any individual or entity to apply online for various regulatory approvals in a seamless manner. This portal will also enhance the efficiency of various processes related to granting of regulatory approvals and clearances by the Reserve Bank.

PRAVAAH is a secure and centralised web-based portal for any individual or entity to seek authorisation, license or regulatory approval on any reference made by it to the Reserve Bank.

At present, 60 application forms covering different regulatory and supervisory departments of RBI have been made available on the portal. This also includes a general purpose form for applicants to submit their requests which are not included in any other application form. More application forms would be made available as may be required. The portal can be accessed at: https://pravaah.rbi.org.in.

(Comments: The portal now includes more than 60 types of applications to be undertaken on the new portal relating to various regulatory requirements of RBI. Particularly in relation to FEMA, some of the applications on the portal include:

1. Approval for Opening of Special Rupee Vostro Account
2. Regulatory Approvals pertaining to LO or BO or PO in India
3. Approval for Acquisition or Sale of Immovable Property
4. Regulatory Approvals under FEMA - five R and FEMA ten R
5. Approval for Bank Guarantees beyond limit available to AD Banks

6. ECB proposals under Approval route
7. Confirmation for appearing for personal hearing w.r.t. compounding proceedings along with preferred date, time or attending personnel information Compounding application
8. Additional information or addendum to already filed compounding application

It is very interesting to note the entire compounding process which was in physical until now has now been shifted to this new portal. This would surely smoothen the entire process. Also, it will now enable applications for acquisition or sale of immovable property, which was earlier possible only in physical and at Delhi. However, we need to see how the website fares in its early stages of transition. As per the Rbi, some of the key features available in the portal include online submission, Track and Monitor the status of the application/reference, option to respond to any clarification/query sought by the RBI in connection with the application/ reference; and enable an applicant to receive a decision from the Reserve Bank in a time bound manner.)

II) Mobile Application for RBI Retail Direct portal

The Retail Direct Mobile App will provide retail investors a seamless and convenient access to the retail direct platform and provide ease of transacting in government securities (G-Secs).

The retail direct portal was launched in November 2021 to facilitate retail investors to open their Retail Direct Gilt accounts with RBI (https://rbiretaildirect.org.in) under the Retail Direct Scheme. The scheme allows retail investors to buy G-Secs in the primary auctions as well as buy and sell G-Secs in the secondary market.

With the launch of the retail direct mobile app, retail investors can now transact in G-Secs using the mobile app on their smartphones. The mobile app can be downloaded from the Play Store for Android users and App Store for iOS users. The mobile app can also be downloaded using the following QR code.

(Comments: G-secs are investment instruments issued by governments to raise funds. They offer a low-risk investment option with fixed interest rates. Treasury bills are short-term securities with maturities of less than 12 months, while bonds are issued for longer durations. By launch of this app by RBI, the app increases the accessibility of G-sec investments for retail investors. The aims to streamline the investment process and enable more individuals to participate in the G-sec market.

The app's launch is anticipated to attract more investors, particularly those seeking low-risk investment options. It is expected that the app will enhance transparency and efficiency in the G-sec market, creating a more equitable environment. It may also reduce transaction costs for retail investors, making G-sec investments more appealing.

As per the guidelines of the Retail Direct Scheme, a retail investor is eligible to open an account with the RBI by meeting the following criteria:

- Has a savings bank account
- Possesses a PAN
- A valid document for KYC (know your customer) such as Aadhaar, passport, voter identity card.
- Valid Email ID
- Valid mobile number

An RBI Retail Direct Gilt account can be established in a single or joint holding mode. Non-resident retail investors are also permitted to invest in government securities.

The app allows an investor to:

Place bids: Choose a security to bid on from the 'auction watch' and enter the bid amount in the 'bid entry' window.

Fund your bids: Fund your bids either at the time of bidding or before the closure of the bidding/subscription window using services like UPI and Net Banking.

Receive allotments: Based on auction results, individual investors will receive allotments either in full or partial based on the bidding process.

III) FinTech Repository

The FinTech Repository aims to capture essential information about FinTech entities, their activities, technology uses, etc. FinTechs, both regulated and unregulated, are encouraged to contribute to the Repository accessible at the URL: https://fintechrepository.rbihub.in

Simultaneously, a related repository for only RBI regulated entities (banks and NBFCs) on their adoption of emerging technologies (like AI, ML, Cloud Computing, DLT, Quantum, etc.), called EmTech Repository is also being launched and can be accessed at the URL: https://emtechrepository.rbihub.in

The FinTech and EmTech Repositories are secure web-based applications and are managed by the Reserve Bank Innovation Hub (RBIH), a wholly owned subsidiary of RBI. The repository would enable availability of aggregate sectoral level data, trends, analytics, etc., that would be useful for both policymakers and participating industry members. Reserve Bank of India encourages the FinTechs and Regulated Entities to actively contribute to the Repositories.

The Fintech Repository will contain information on Indian FinTech Sector for a better understanding of the sector from a regulatory perspective and facilitate in designing appropriate policy approaches.

(Comments: The repository aims to enhance RBI's understanding of the Indian fintech sector by providing comprehensive data on fintech firms, both regulated and unregulated. The repository will support policymakers and industry participants by offering insights on fintech. The repository will foster innovation by staying updated with the latest technology and innovation in the industry. However, it will also increase regulatory oversight in the rapidly evolving fintech space. It will also help design appropriate policies with the ever changing technology.)

Press Release: 2024-2025/393 dated May 28, 2024

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Best of The Rest

Rahul Hakani
Advocate

Niyati Mankad
Advocate

S. SHIVRAJ REDDY(DIED) THR HIS LRS. AND ANOTHER VS. S. RAGHURAJ REDDY AND OTHERS – ORDER DATED 16/05/2024 PASSED IN SLP (Civil) No(s). 4237 of 2015 & SLP (Civil) No(s). 23143-23144 of 2016 [SUPREME COURT]

It is a settled law that even if the plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation.

Facts

A partnership firm named "M/s Shivraj Reddy & Brothers" was constituted on August 15, 1978, to undertake construction work for government and municipal contracts. Respondent No. 1 filed O.S. No. 67 of 1997 seeking dissolution of the firm and rendition of accounts. The trial court ruled in favor of the plaintiff, declaring the firm dissolved and directing the defendants to tender accounts from 1979 to 1998. The defendants appealed, and the learned Single Judge of the High Court allowed the appeal on the ground that the suit was barred by limitation as the firm automatically dissolved upon the death of a partner, M. Balraj Reddy, in 1984. Respondent No. 1 then filed LPA No. 47 of 2002, which was allowed by the Division Bench, setting aside the Single Judge's judgment on the basis that the limitation issue was not raised in the trial court. The present appeal is against the said Division Bench's judgment.

Issue Involved

Whether the suit filed by Respondent No. 1 in 1996 for the dissolution of the partnership firm and rendition of accounts was barred by limitation due to the death of a partner in 1984.

Held

The Supreme Court noted that the Ld. Single Judge was correct in considering the limitation issue even though it was not raised in the trial court. The court reiterated the settled law that courts must dismiss suits that are time-barred, regardless of whether the limitation defense is raised. Reliance was placed on the judgment in the case of ***V.M. Salgaocar and Bros. vs. Board of Trustees of Port of Mormugao and Another [(2005) 4 SCC 613]***. The Court held that the partnership had automatically dissolved upon the death of M. Balraj Reddy in 1984, as per Section 42(c) of the Partnership Act, 1932. The suit filed in 1996 was thus, barred by the three-year limitation period for filing a suit for rendition of accounts from the date of dissolution. Accordingly, the judgment of the Division Bench was reversed, and the appeal was allowed. The trial court's decree was set aside, and the suit was dismissed as being time-barred.

SMT. SHIVANI CHAURASIA AND ANOTHER VS. STATE OF U.P. AND ANOTHER – ORDER

DT 17/05/2024 PASSED IN WRIT – C No. 13775 OF 2023 [ALLAHABAD HIGH COURT]

The Indian Stamp Act, 1899 – Section 47-A - Unlike constitutional courts, quasi-judicial authorities do not possess inherent powers derived from the Constitution; rather, their jurisdiction and powers are conferred by statutes or delegated legislation - quasi-judicial authorities lack inherent powers and can only exercise those powers which have been expressly conferred upon them by the statutes from which they derive their jurisdiction - The absence of inherent powers means that quasi-judicial authorities cannot arbitrarily review or recall their orders unless such power is specifically conferred upon them by their governing statue.

Facts

The Petitioners purchased agricultural land on July 23, 2020, and paid the registration fee on the same day. A confidential report dated September 14, 2020, pointed out a deficiency in stamp duty and registration fee. A stamp case was registered, and the petitioners agreed to deposit the amount to avoid penalties. The Collector (Stamp) adjudicated the market value and held a deficiency in stamp duty and registration fee, also imposing a penalty of ` 25,000/- vide Order dated December 9, 2020. The Petitioners paid the entire amount on December 18, 2020. A complaint by one, Shiv Prasad led to a second notice by the Collector (Stamp) for a recall of the order dt. December 9, 2020. The Petitioners objected to this second notice, claiming the original order was final. The Collector (Stamp) issued a fresh order on February 3, 2023, which is now under challenge.

Issue Involved

Whether the Collector (Stamp) has the authority to recall or review his own order passed under Section 47 of the Indian Stamp Act, 1899?

Held

The court concluded that the Collector (Stamp), as a quasi-judicial authority, does not possess inherent or statutory power to recall or review an order passed under Section 47-A of the Indian Stamp Act. The court relied upon various precedents affirming that quasi-judicial authorities cannot review their orders without express statutory provision. Accordingly, the impugned order dated February 3, 2023, was quashed and set aside. The court directed the Principal Secretary, Stamp and Registration, Government of Uttar Pradesh, to continue the inquiry against the Sub Registrar and conclude it within six months.

ASSISTANT COMMISSIONER OF STATE TAXES & EXCISE CIRCLE-2, VS. CA AMIR GUPTA, LIQUIDATOR OF PROVOGUE (INDIA) LTD. – ORDER DT 15/05/2024 PASSED IN IA/2734/2022 IN CP/IB/1667/2018 [NCLT, MUMBAI BENCH]

Section 53 of the Insolvency and Bankruptcy Code 2016 – secured creditor – Article 269 of the Constitution of India – (i) Since Section 26 of the HPVAT Act is pari materia to section 48 of GVAT Act, the Rainbow Papers (supra) is the binding judgment in the present case – (ii) From a conjoint reading of Section 9 of the CST Act and Section 26 of the HPVAT Act and relying on the judgment of IFCI Ltd. (supra), we hold that the State Sales Tax Department is a 'Secured Creditor' for the dues under the Central Sales Tax Act, 1956 also.

Facts

M/s Provogue (India) Limited entered Corporate Insolvency Resolution Process on 25.07.2018 u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), initiated by Andhra Bank Ltd. Upon the resolution process's failure, the company entered liquidation on 14.10.2019. The then Assistant Commissioner of State Taxes & Excise, Baddi,

Himachal Pradesh (ACSTE) submitted a claim of ` 19,13,24,020/- on behalf of the State Tax Department under the Himachal Pradesh Value Added Tax (HPVAT) Act and Central Sales Tax (CST) Act. The Liquidator admitted only ` 2,45,96,391/- under the HPVAT Act as secured debt and classified the remaining amount under CST as unsecured. The Corporate Debtor's property was sold to M/s Eva Grow Medicaps Pvt. Ltd. in an e-auction. The buyer requested a No Objection Certificate (NOC) for the property transfer, which the Tax Department refused to issue, leading to a Tribunal order on 05.05.2022 directing the Tax Department to issue the NOC. Thereafter, ACSTE filed applications to recall the order and for their claim to be considered as a secured debt. In the meantime, the Supreme Court's decision in ***State Tax Officer (1) vs. Rainbow Papers Ltd.*** came into being which held that the State is a secured creditor under Gujarat VAT legislation. The Liquidator admitted before the NCLT that the dues of the ACSTE are secured financial creditor. In spite of such admission and adjudication done by the NCLT, the Liquidator reassessed and maintained that only HPVAT Act dues were secured, not CST Act dues, leading to the present application by the ACSTE.

Issue Involved

Whether the Assistant Commissioner of State Taxes & Excise, as the Applicant, can be considered a 'secured creditor' for demands under the Central Sales Tax Act, 1956 (CST Act).

Held

The NCLT examined the provisions of the CST Act and the HPVAT Act, noting that while HPVAT includes a non-obstante clause creating a first charge on property, the CST Act does not explicitly contain such a provision. However, the Tribunal concluded that Section 9(2) of the CST Act allows for the application of state sales tax law (including HPVAT's first charge provision) to CST dues. The NCLT considered the Supreme Court's ruling in ***State Tax Officer (1) vs. Rainbow Papers Ltd. [2022 SCC Online SC 1162] (Rainbow Papers)***, which treated state tax claims as secured under the Gujarat VAT Act. The NCLT also considered the ruling in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Pvt. Ltd. & Ors (2023 INSC 625) (PVVNL judgment)*** and also the review judgment in the case of ***Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr [Review Petition (Civil) N. 1620/2023 in Civil Appeal No. 1661/2020].*** The court observed that the languages in the GVAT Act and the HPVAT Act are pari materia and therefore, the judgement of Rainbow Papers (supra) is applicable in the present case since the Hon'ble Supreme Court, in Rainbow Papers (supra) had dealt with the VAT Acts which has a direct nexus in the present case whereas the ***Paschimanchal (supra)*** case is in the context of interplay between the IBC and Electricity Act, 2003. The Tribunal also reviewed earlier judgments like ***Imperial Chit Funds (P.) Ltd. vs. Income-Tax Officer [(1996) 219 ITR 498]*** and ***IFCI Ltd vs. Commercial Taxes Officer & Anr. [2011 SCC OnLine Del 2563],*** which indicated similar treatment for tax claims under the CST Act based on state VAT provisions. The Tribunal came to conclusion that the dues under the CST Act should be treated similarly to those under the HPVAT Act, thus classifying the Applicant (ACSTE) as a secured creditor for the entire claim amount, including the CST Act dues. The decision of the Liquidator to classify the Applicant as an unsecured creditor for CST dues was set aside, and the Applicant was reclassified as a secured creditor for all dues claimed.

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ML-510

THE CHAMBER NEWS

CA Neha Gada
Hon. Jt. Secretary

CA Vitang Shah
Hon. Jt. Secretary

Important events and happenings that took place online/ physical between **May 1, 2024 to May 31, 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 May 18, 2024 are as under:

Type of Membership	No. of Members
Life Member	5
Ordinary Member	21
Student Member	6
Associate	0
Total	**32**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
INDIRECT TAXES			
1.	7.5.2024	Issues for supplies to and by "SEZ"/"FTWZ"/"Gift City	CA Amit Bothra
INTERNATIONAL TAXATION			
1.	9.5.2024	Practical issues under Import and Export Regulations with special reference to FEMA	Mr Ajit Shah

Sr. No.	*Date*	*Topics*	*Speakers*
2.	15.5.2024	Foreign Database Searches - An Overview and Challenges	Mr. Kunal Sawardekar
3	International Taxation Course for Beginners		
a	27.5.2024	Overview of International Taxation (Section 4, 5, 9 & Section 195 of the Income Tax Act)	CA Hitesh Gajaria
b	29.5.2024	Residential Status under Income Tax Act (Section 6) with Case Studies	CA Arpit Jain
c	31.5.2024	Introduction to the Double Tax Avoidance Agreement	CA Naman Shrimal
4	30.5.2024	Returning Indians and Emigrating Indians – FEMA Aspects	CA Bhavya Gandhi
STUDY CIRCLE & STUDY GROUP			
1.	10.5.2024	Recent Judgements under Income Tax Act, 1961	Adv Prakash Sinha, New Delhi
2.	17.5.2024	Analysis of section 68 to 69C & 115-BBE	Adv. T. Banusekar, Chennai
I.T. CONNECT			
1.	16.5.2024	Boost Your Excel Skills: Power Query and AI Tools Simplified	CA Prakash Thakkar & CA Jacky Lund
2.	28.5.2024	Seminar on "Cloud Accounting and Practice Management Software by Zoho"	CA Jigar Shah & CA Anwesh Shetty

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ML-512

I.T. Connect Committee

Glimpses of the event on Cloud Accounting and Practice Management Software by Zoho held physically on May 28, 2024 at IMC.

International Taxation Committee jointly with Student Committee

Glimpses of the ongoing event on the International Taxation Course for Beginners (virtually) held on May 27, 29, 31 June 3, 5, 2024

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