

THE BUZZ

APRIL 2023

ACUPRO CONSULTING

NEWSLETTER CONTRIBUTORS

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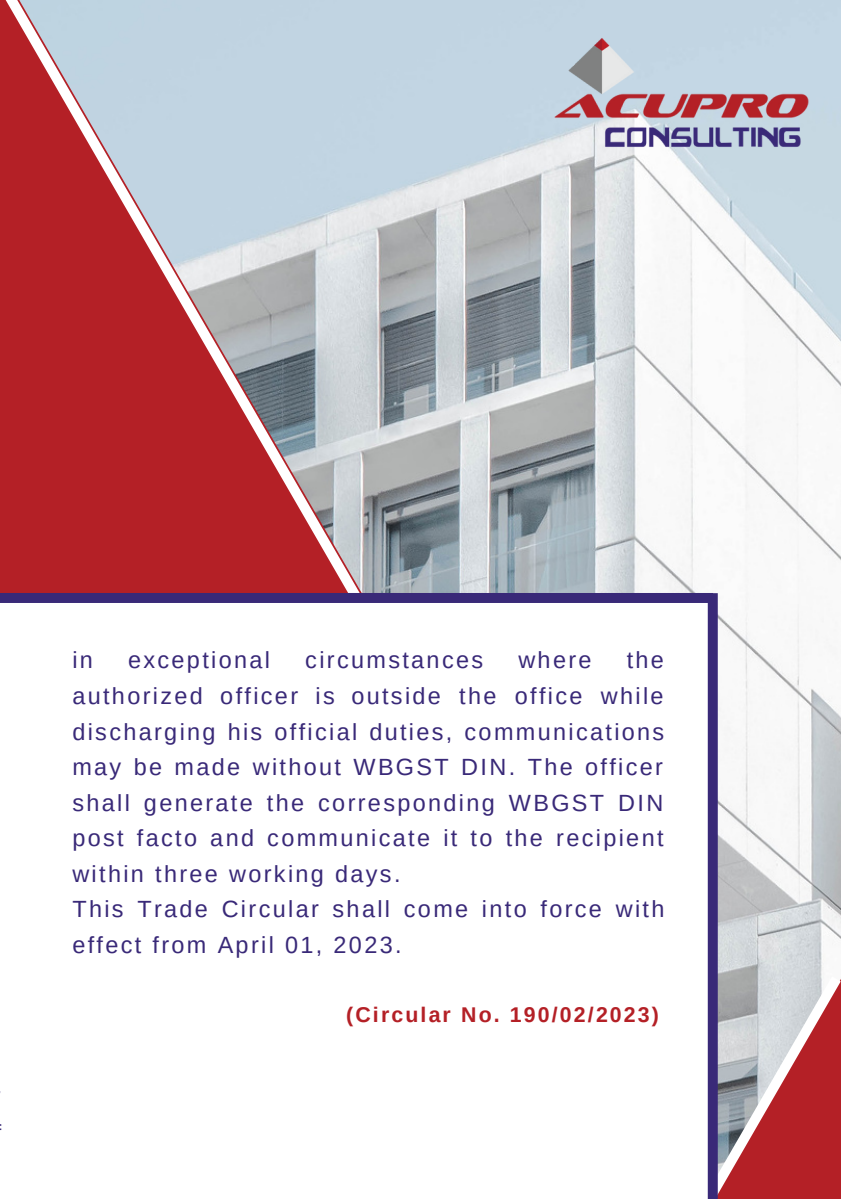
CIRCULAR



West Bengal GST Department implemented Document Identification Number (DIN) System

The Directorate of Commercial Taxes is introducing an electronic system to generate Document Identification Number (DIN), known as 'WBGST DIN,' for transparency and accountability in the administration of GST laws that cannot be created via GSTN portal. This will allow officers to send communications to taxpayers or other relevant individuals. Initially, the WBGST DIN will be used for specific purposes such as summons, arrest memos, search authorizations, inspection notices, and recovery proceedings. The goal is to establish a digital record of such communications, providing the recipients with a digital tool to verify their authenticity. The WBGST DIN may be extended to other communications lateron. The Commissioner, exercising power under section 168 of the WBGST Act, 2017, directs that all communications by officers under the WBGST Act and rules made thereunder should contain an electronically generated WBGST DIN from the online system of the Directorate of Commercial Taxes. However, certain cases are exempted from this requirement. In case of technical difficulties in generating WBGST DIN electronically, or in exceptional circumstances where the authorized officer is outside the office while discharging his official duties, communications may be made without WBGST DIN. The officer shall generate the corresponding WBGST DIN post facto and communicate it to the recipient within three working days.

This Trade Circular shall come into force with effect from April 01, 2023.

(Circular No. 190/02/2023)

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UPDATES

All documents, including invoices, credit notes, and debit notes, for which an IRN is to be generated, are subject to a 7-day restriction.

The GSTN has issued an Updated Advisory on April 13, 2023, regarding the time limit for reporting invoices on the e-invoice IRP portal. The government has decided to impose a time limit on reporting old invoices for taxpayers with AATO greater than or equal to 100 crores.

To ensure timely compliance, taxpayers in this category will not be permitted to report invoices older than 7 days from the date of reporting. It is important to note that this restriction applies to all document types for which IRN is to be generated, including credit and debit notes, which must be reported within 7 days of issue.

Taxpayers with AATO less than 100 crores are not currently subject to this reporting restriction. However, to allow taxpayers sufficient time to implement necessary changes to their systems, this requirement will be effective from May 01, 2023, onwards.

Advisory on Bank Account Validation.

The GSTN has integrated bank account validation functionality into the GST System to ensure accurate bank account details are provided by taxpayers. Taxpayers can access their bank account validation under the Dashboard Tab → My Profile → Bank Account Status. Additionally, taxpayers will receive bank account validation status details on their registered email and mobile number immediately after the validation process is completed for their declared bank account.

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NEWS

India's March GST collection rises to second-highest Rs 1.60 lakh crore

The gross GST collection in March included CGST of Rs 29,546 crore, SGST of Rs 37,314 crore and record IGST of Rs 82,907 crore (including Rs 42,503 crore collected on import of goods) and cess of ₹10,355 crore (including ₹960 crore collected on import of goods), the government said in a statement.

Rs 2,250 crore tax evasion concern: DGGI sends show cause notices to HDFC Bank, Go Digit, Policybazaar.

The Directorate General of GST Intelligence has served show cause notices to insurance intermediaries, including HDFC Bank, Go Digit Insurance, and Policybazaar, among others, for issuing fake invoices to claim input tax credit without providing any service. The investigation, initiated in 2022, has revealed an evasion of INR2,250 crore so far, with crackdowns on invoices raised from 2018 to March 2022.

Tax heat on offshore online gaming companies

The Directorate General of GST Intelligence has discovered 38 online gambling and betting portals that are based in Cyprus, Mauritius, and the Cayman Islands, and have not paid GST. The crackdown has found that some entities pose as fantasy gaming platforms and are being used to launder money abroad by high-net-worth individuals, celebrities, and social media influencers. The tax department estimates that ₹12,000 crore tax evasion took place between April 2019 and November 2022.

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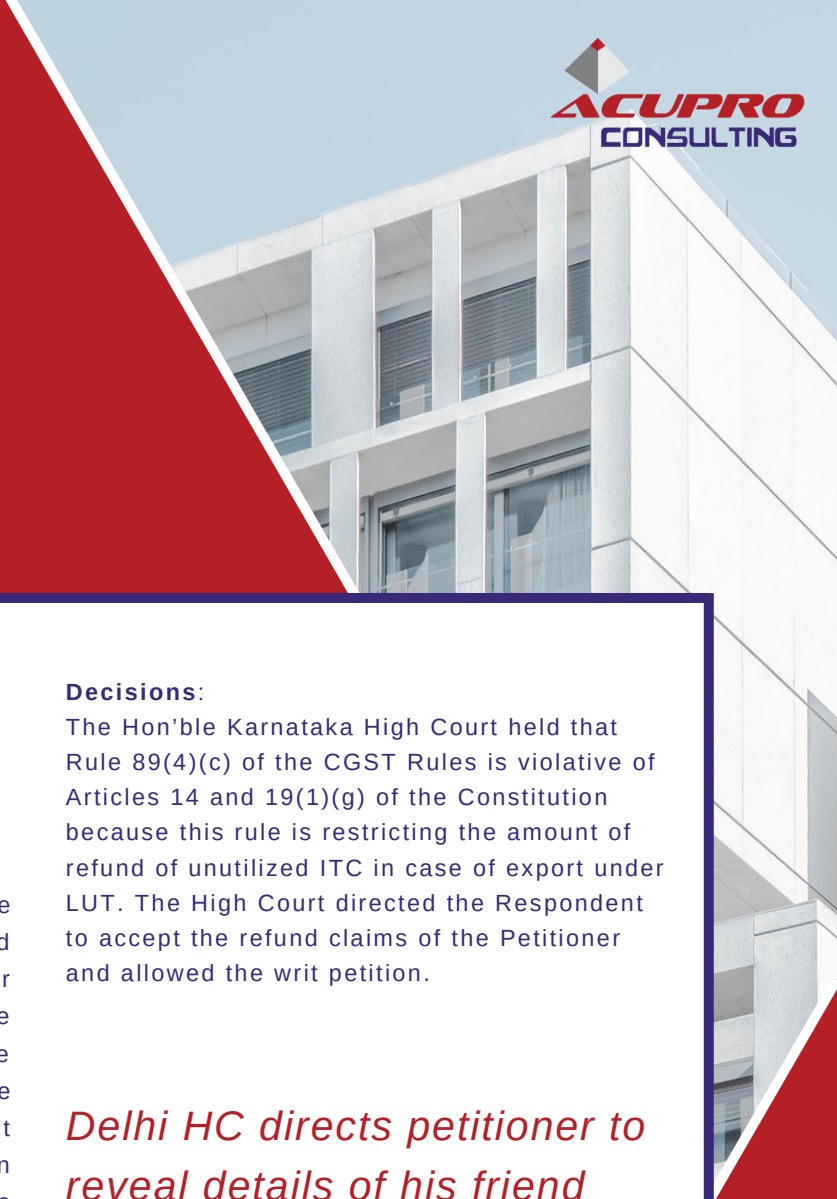
CASE LAWS



Rule 89(4)(c) is 'ultra-vires' and held 'unconstitutional to the provisions of GST law.

Facts:
M/s. Tonbo Imaging India Pvt. Ltd ("the Petitioner") exported various customized products under "zero-rated supply" as per section 16 of the IGST Act, 2017 during the period from May 2018 to March 2019.The Petitioner filed refund applications for the months of 2018-19. The Revenue Department ("the Respondent") issued deficiency memos on the ground of amended Rule 89(4)(c) of the CGST rules vide notification no. 16/2020 of CBIC which restricted the refund of exports made through LUT to a maximum of 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier. Thus, respondent has rejected the refund claim of the petitioner.

Issues:
The Petitioner submitted the reply of deficiency memos that the amended rule would not be applicable for the period for which the refund claim was sought. The Petitioner would be governed by the unamended Rule 89(4)(c) CGST Rules and not by the amended Rule 89(4)(c) of the CGST rules. Being aggrieved by the rejection of claim of refund filed by the Petitioner, the Petitioner filed a writ petition before the Karnataka High Court

Decisions:
The Hon'ble Karnataka High Court held that Rule 89(4)(c) of the CGST Rules is violative of Articles 14 and 19(1)(g) of the Constitution because this rule is restricting the amount of refund of unutilized ITC in case of export under LUT. The High Court directed the Respondent to accept the refund claims of the Petitioner and allowed the writ petition.

Delhi HC directs petitioner to reveal details of his friend who fraudulently obtained GST Registration

Facts:
Anil Kumar, ("The Petitioner"), is a street vendor who claims that he holds a valid vending certificate. Recently, the petitioner became aware that a GST registration had been obtained in the petitioner's name without his knowledge. The Petitioner was in the process of obtaining a GST registration for his business when it was discovered that a firm named M/s Sheel Industries had already been registered under the petitioner's identity by unknown persons who had misused his identity. The firm is registered with the GST Department and is currently active.

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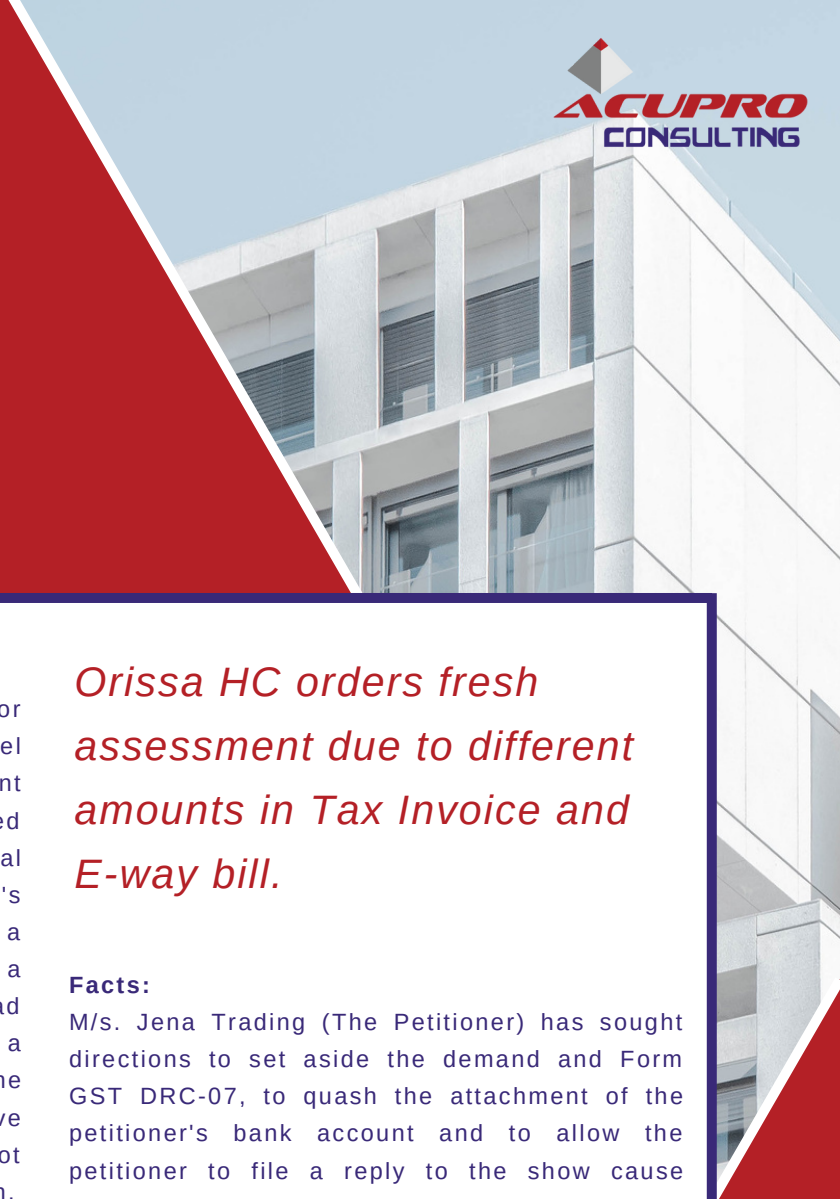

Orissa HC orders fresh assessment due to different amounts in Tax Invoice and E-way bill.

Facts:

M/s. Jena Trading (The Petitioner) has sought directions to set aside the demand and Form GST DRC-07, to quash the attachment of the petitioner's bank account and to allow the petitioner to file a reply to the show cause notice. The petitioner created a tax invoice for a taxable amount of Rs. 1,97,047.86, using a self-generated document since they do not have access to a computer. However, the law requires that a computer-generated invoice be produced. As a result, an e-Way Bill was generated, which erroneously indicated the total taxable amount as Rs. 1,970,470.86, due to a typographical error.

Issue:

The petitioner contended that an error was made in entering the paise as rupees in their tax invoice, resulting in a significant overstatement of the taxable amount. The petitioner, being a small dealer, requested that the mistake to be rectified. In response, The department contended that an assessment order was issued by the assessing authority under Section 74 of the OGST (Orissa GST) Act due to insufficient filing of a return for the period 2019-20, and an online notice was issued in DRC-01

Issues:

The Petitioner contended that a demand for GST may be raised against M/s Sheel Industries on account of the fraudulent activities by the individual who have registered a firm under his name. The unknown individual have been filing returns without the petitioner's knowledge. The petitioner also filed a complaint with the Delhi Police. In a declaration, The petitioner stated that he had given his Aadhar Card and PAN Card, to a friend for the purpose of obtaining a loan. The petitioner suspects that his documents have been misused. However, the petitioner has not disclosed the name of the friend in the petition.

Decision:

The Hon'ble Delhi High Court directed the Petitioner to disclose the identity of the friend to whom he claims to have given his identity documents to both the police authorities and the state GST authorities. The petitioner is expected to fully cooperate with the concerned authorities and provide them with any necessary information. The court instructed the Commissioner GST/State GST Authorities to investigate the petitioner's complaint according to the law and treat the petition as a formal representation.

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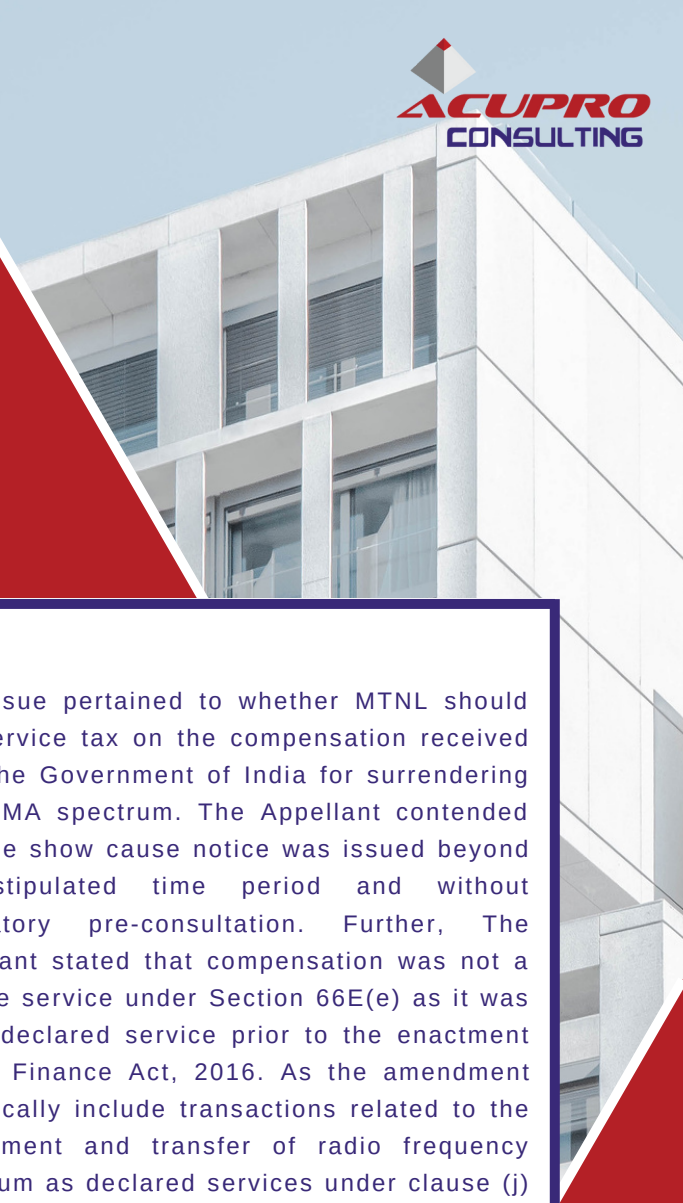
CASE LAWS



but no response was received from the petitioner. However, the department stated that the assessment order could be reconsidered in accordance with the law if the petitioner approaches the assessing authority.

Decision:
The Hon'ble Orissa High Court held that there was a discrepancy between the amounts mentioned in the tax invoice and the e-Way Bill, due to an error. The court directed that if this issue is brought to the attention of the assessing authority, they should consider the matter and issue a fresh assessment order in compliance with the law.

High Court dismisses Service Tax demand of Rs. 56.61 crores against MTNL

Facts:MTNL (The Appellant) a Government of India enterprise is in the business of providing telecom services to subscribers in Delhi and Mumbai. The Appellant has challenged a show cause notice issued by the Director General of GST Intelligence seeking recovery of service tax worth Rs. 56.61 crore, inclusive of cess, and imposing penalties under Sections 76 to 78. The SCN was related to the surrender of CDMA spectrum, which was licensed to the applicant until October 2017 but was surrendered in April 2014 and for which financial support was given on a pro rata basis for the unexpired period of three years and 173 days at the auction rate.

Issue:
The issue pertained to whether MTNL should pay service tax on the compensation received from the Government of India for surrendering its CDMA spectrum. The Appellant contended that the show cause notice was issued beyond the stipulated time period and without mandatory pre-consultation. Further, The Appellant stated that compensation was not a taxable service under Section 66E(e) as it was not a declared service prior to the enactment of the Finance Act, 2016. As the amendment specifically include transactions related to the assignment and transfer of radio frequency spectrum as declared services under clause (j) in Section 66E only took effect from May 14, 2016. Thus, the compensation was received before this date and should not be subject to service tax.

Decision:
The Hon'ble Delhi High Court has ruled in favor of MTNL and quashed the demand of service tax amounting to Rs. 56.61 crores. The court stated that the applicant had received compensation for the surrender of spectrum before the introduction of Clause (j) in Section 66E of the Act. Therefore, it would not be chargeable to service tax.

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INCOME TAX

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NOTIFICATIONS

CBDT extends PAN-Aadhaar linking deadline to June 30, 2023.

A person who has failed to intimate Aadhaar number in accordance with Section 139AA of the Income-tax Act, 1961 r.w.r. 114AAA before July 1, 2023 shall face the following consequences-

- Existing PAN become inoperative,
- No refund shall be made against such PANs,
- Interest shall not be payable on such refund for the period during which PAN remains inoperative and
- TDS and TCS shall be deducted /collected at higher rate, as provided in the Act.

CBDT also apprises that PAN can be made operative again in 30 days, upon intimation of Aadhaar to the prescribed authority after payment of fee of Rs.1,000.

The following persons are exempted from PAN-Aadhaar linking:

- Person residing in specified states as per the Act
- a non-resident,
- an individual who is not a citizen of India
- Individuals of the age of 80 or more at any time during the previous year.

(Source: Circular No. 03/2023 dated March 28, 2023)

Exemption of E-filing of Form 10F for NRs without PAN is now extended to September 30, 2023

Non-Resident taxpayers who are not having PAN and not required to have PAN as per the law, now exempted from mandatory e-filing of Form 10F till September 30, 2023.

(Source: Notification dated March 28, 2023)

CBDT notifies 348 as provisional Cost Inflation Index for FY 2023-24

S.No.	Financial Year	Cost Inflation Index
1	2023-24	348

The Notification comes into force from Apr 1, 2024, thus, applies to AY 2024-25 onwards

(Source: Notification dated April 10, 2023)

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NOTIFICATIONS

CBDT notifies 'Central Board of Secondary Education' for exemption under Section 10(46) of the Act in respect of specified income arising to that Board

Specified income includes-

- Examination Fees;
- Affiliation Fees;
- Sale of Text Books & Publications;
- Registration fees, Sports fees, Training fees and Other Academic receipts;
- Receipts from CBSE Projects/Programmes;
- Interest on income tax refunds;
- Interest earned on any of the above

The above exemption subject to the following conditions that -

- Board shall not engage in any commercial activity;
- activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- Board shall file return of income in accordance with Section 139(4C)(g)

The above notification shall be deemed to have been applied for the FY 2020-2021 (from Jun 1, 2020 to Mar 31, 2021) to FY 2024-2025.

(Source: Notification 20/2023 dated April 10, 2023)

CBDT notifies 21 jurisdictions under Rule 114F(6) for 'passive non-financial entity' definition

CBDT had notified 87 jurisdictions and now notifies a new list of total 108 jurisdictions. Israel, Turkey, Hong Kong, Oman and Qatar are amongst the new notified jurisdictions

(Source: Notification 17/2023 dated April 17, 2023)

CBDT notifies National Institute of Design, Ahmedabad for 'scientific research' under Section 35(1)(ii) of the Act.

The CBDT hereby approves 'National Institute of Design, Ahmedabad' as 'University, College or Other Institution' for 'Scientific Research' under Section 35(1)(ii) read with Rules 5C and 5E of the Income-tax Rules.

The above notification shall applicable from April 21, 2023 and accordingly shall be applicable for AYs 2024-2025 to 2028-2029.

(Source: Notification 23/2023 dated April 21, 2023)

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CBDT notifies 'Greater Noida Industrial Development Authority' for exemption under Section 10(46) of the Act in respect of specified income arising to that Board

Specified income includes-

- Moneys received from the disposal of land, building, and other properties, movable and immovable;
- Moneys received by the way of rent & fees or any other charges from the disposal of land, building, and other properties, movable and immovable;
- The amount of interest/penalties received on the deferred payment received from the allottees of various movable or immovable properties;
- Water, sewerage and other municipal charges from the allottees of various immovable properties; and
- Interest on any of the above

The above exemption subject to the following conditions that -

- Board shall not engage in any commercial activity;
- activities and the nature of the specified income shall remain unchanged throughout the financial years;
- Board shall file return of income in accordance with Section 139(4C)(g)

The above notification shall be deemed apply from FY 2020-2021 to 2022-2023.

(Source: Notification 18/2023 dated April 10, 2023)

CBDT notifies 'Maharashtra Electricity Regulatory Commission, Mumbai' for exemption under Section 10(46) of the Act in respect of specified income arising to that Board

Specified income includes-

- Profit on sale of fixed assets;
- Charges collected for the personal use of office vehicle by employees;
- Interest on Income tax Refund; and
- Interest earned on Government Securities;

The notification shall be deemed to have been inserted with effect from June 23, 2020.

(Source: Notification 22/2023 dated April 17, 2023)

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LITIGATIONS

SC holds '2015 amendment' to Sec.153C 'retrospective', adopts purposive interpretation

- SC allowed over 100 appeals preferred by the Revenue by quashing Gujarat HC judgment where it was held that 2015 amendment to Section 153C was not applicable to search operations conducted prior to Jun 1, 2015;
- SC observed that Section 153C is a machinery provision and should serve the purpose of legislation; Delved into the purpose of Section 153 read with Section 132 along with Memorandum to Finance Bill, 2015 and observed that the amendment was meant to overturn the restrictive interpretation given by Delhi HC in PepsiCo by substitution of the words 'belongs to' by 'pertains to' with regard to books of account or documents;
- SC held that the amendment by substitution of the words has the effect of wiping out the unamended provision as if it never existed;
- SC held that it is duty of the Court to give purposeful or functional interpretation to a statute and primary task of the Court is to construe the intention of the legislature, actual or imputed;
- Rejected Assessee's submission that retrospective application of Section 153C amendment affects the substantive rights of the Assessee;
- SC, thus, held that the 2015 amendment to Section 153C is applicable to search operations conducted before June 1, 2015.

SC affirms principles governing CIT's revisionary powers; Quashes Bombay HC ruling as erroneous

- SC allowed Revenue's appeal, quashed Bombay HC order that set aside CIT's revisionary order passed under Section 263;
- Observed that Bombay HC committed grave and serious error in setting aside the revisionary order;
- SC expounded that the scheme of the Act is to levy and collect tax in accordance with provisions of the Act and this task is entrusted to the Revenue;
- Referred to coordinate bench ruling in Malabar Industrial and affirmed that where two views are possible and AO has adopted one plausible view such an order is not revisable under Section 263.

- Stated that if due to an erroneous order of the AO, the Revenue is losing tax that is lawfully payable by a person, it will certainly be prejudicial to its interests;
- SC found the AO's approach in the instant case to be erroneous and prejudicial to the interest of the Revenue;
- Thus, quashed Bombay HC order wherein it was held that ITAT had given cogent and satisfactory reasons for interfering with CIT's order, therefore, no substantial question arose for its consideration.

Bombay HC calls for CBDT's view on low tax-effect Circular vis-a-vis TDS cases

- Bombay HC directed Revenue to obtain a specific clarification from the CBDT as to whether Circular No. 17 of 2019, dt. Aug 08, 2019 and other circulars issued prescribing monetary limits for withdrawal of appeals would apply to TDS cases or not;
- Further asked CBDT's clarification as to whether the opinion expressed by the Chief Commissioner Income-tax (International Taxation) [CCIT(I-T)] that the monetary limits prescribed under said circulars would not apply to TDS cases, was correct;
- HC had disposed of Serum Institute's appeals by order dt. Aug 26, 2022 with liberty to the Revenue to have the appeal revived in case the withdrawal was not specifically found to be covered under Circular No.17 of 2019;
- Noted that the Revenue sought the revival of the appeal on the ground that the circular does not apply to the present set of appeals in view of the opinion expressed by CCIT(I-T);
- Takes note of the opinion of CCIT(I-T) stating that the monetary limits prescribed under Circular No. 3 of 2018, dt. July 11, 2018 followed by the successive circulars, would not apply to TDS cases;
- Considers Assessee's contention that the appeals in question are squarely covered under Circular No. 17 of 2019;
- Allows Revenue's request for a minimum period of eight weeks for obtaining said clarification from CBDT;
- The matter is listed for hearing on Jun 21, 2023

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Delhi HC to examine validity of Black Money proceedings, rejection of disclosure.

- Delhi HC to examine validity of Black Money proceedings, rejection of disclosure Delhi HC issued notice to the Revenue in a writ petition against notice under Section 10(1) of the Black Money Act, 2015 and consequent order rejecting Assessee's objections;
- Pursuant to investigation carried out by International Consortium of Investigative Journalists (ICIJ) and introduction of the Black Money Act, 2015,
- Assessee-Individual made declaration under Section 59 with regard to his undisclosed assets which were embedded in a company going by the name Blackrose Holdings Inc., on Sep 30, 2015;
- However, the same was rejected by the Revenue holding the Assessee to be ineligible for seeking declaration in view of Section 71(d)(iii) as the Revenue already had the information with regard to the undisclosed assets qua which declaration was sought to be made 'on or before Jun 30, 2015' through agreement under Section 90/90A and also from FT&TR Division's communication;
- Subsequently, impugned notice under Section 10(1) was issued for AY 2022-23 on Apr 4, 2022;
- HC opined that "while there can be little doubt that the petitioner made a declaration under Section 59 of the 2015 Act once he became aware of the fact that the authorities had, if not knowledge, then some clue about the fact that he was holding undisclosed assets, there are some issues which still require consideration.";
- Framed two issues which require consideration: (a) Date on which the Revenue acquired knowledge with regard to Assessee's undisclosed foreign assets and implication of CBDT Guidelines dt. Jan 23, 2018 w.r.t. issuance of Section 10(1) notice within 30 days and (b) Whether provisions of Black Money Act would apply in respect of assets acquired prior to its introduction;
- Listed the matter on Apr 27, 2023 along with the cases of Harvansh Chawla and Surendra Kumar Jain and directs that no coercive measures shall be taken against the Assessee in the meantime.

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SC upholds taxability of Sikkim-based companies, basis 'de facto' control with auditor in Delhi

- SC dismissed Assessee's appeal against Delhi HC judgment holding that Sikkim-based companies incorporated under the Registration of Companies (Sikkim) Act, 1961, were 'wholly situated' in India and, thus, were residents in India given the finding that the control and management of the companies was with their auditor based in Delhi;
- Opined that where head, directing power of company affairs and control and management of the company must be shown, it is not merely theoretical control and management, “it is not de jure, but de facto control and power.”;
- Explained that the domicile or registration of the company is not relevant, the determinant test is where the whole control of company lies; Applying the aforesaid principles to the facts of the case and noting the findings recorded by AO as confirmed by CIT(A),
- Opined that it was rightly concluded that the control and management of the Assessees was with CA in Delhi (Mr. Rattan Gupta);
- Thus, upholds HC's observation that notice u/s 148 served on Mr. Rattan Gupta deeming him as the principal officer of the Assessees were valid notices and AO at Delhi was having jurisdiction to issue the said notice;
- Rejected Assessee’s contention that in absence of original assessment proceedings, no reassessment proceedings could be initiated, relies on coordinate bench ruling in Sun Engineering and held that the argument has no substance; As regards levy of interest u/s 234A and Assessee’s argument that in absence of any specific order passed for levy of interest no interest could be levied,
- SC states that issue is decided against Assessee by the Constitution Bench ruling in Anjum M H Ghaswala and coordinate bench ruling in Karanvir Singh Gossal;
- Thus, held that levy of interest u/s 234A for default in furnishing return of income is mandatory and automatic; Upholds Delhi HC judgment on all issues including control and management with Delhi-based auditor, jurisdiction of AO in Delhi and also applicability of Income Tax Act as Assessees failed to prove that commission was earned in Sikkim and that income tax was liable to be paid in Sikkim exclusively under the Sikkim Manual, 1948; Accordingly, SC decides the issue in favour of the Revenue.

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SC holds Sec.271C penalty inapplicable on belated remittance of TDS; Adopts literal interpretation.

- SC allowed Assessees' appeals against Kerala HC judgment, held that belated remittance of tax deducted at source shall not attract penalty under Section 271C;
- SC observed that penal provisions are to be interpreted literally and nothing could be added or taken out from the provisions imposing penalty;
- SC noted that the cases in appeal are the cases of belated remittance and not the cases of non-deduction, thus, Section 271C(1)(a) shall not be applicable as the provision talks of 'fails to deduct' whole or any part of the tax, not failure to remit the deducted tax;
- SC further observed that wherever Parliament sought to provide for consequences of non-remittance of deducted tax, the Parliament has specifically provided for it i.e., Section 276B and 201(1A);
- SC, thus, decided the question of applicability of Section 271C on non-remittance or belated remittance of deducted tax in favour of the Assesses.

SC holds DEPB & duty drawback sums 'ancillary profit', ineligible for Sec.80-IB deduction

- SC dismissed Assessee's appeal against the judgment of Rajasthan HC, held that sums received from DEPB and duty drawback schemes are not eligible for deduction under Section 80-IB;
- SC followed prior rulings in Liberty India and Sterling Foods while holding that the decision in Meghalaya Steel cannot be said to be a contrary judgment;
- SC observed that the profits from DEPB and duty drawback schemes (covered by Section 28) are ancillary in nature as compared to the profits from industrial undertaking, therefore, not eligible for Section 80-IB deduction;
- SC, while deciding the issue in favour of the Revenue, categorically observed that any contrary decision by any High Court is not a good law.

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Bombay HC calls for CBDT's view on low tax-effect Circular vis-a-vis TDS cases

- Bombay HC directed Revenue to obtain a specific clarification from the CBDT as to whether Circular No. 17 of 2019, dt. Aug 08, 2019 and other circulars issued prescribing monetary limits for withdrawal of appeals would apply to TDS cases or not;
- Further asked CBDT's clarification as to whether the opinion expressed by the Chief Commissioner Income-tax (International Taxation) [CCIT(I-T)] that the monetary limits prescribed under said circulars would not apply to TDS cases, was correct;
- HC had disposed of Serum Institute's appeals by order dt. Aug 26, 2022 with liberty to the Revenue to have the appeal revived in case the withdrawal was not specifically found to be covered under Circular No.17 of 2019;
- Noted that the Revenue sought the revival of the appeal on the ground that the circular does not apply to the present set of appeals in view of the opinion expressed by CCIT(I-T);
- Takes note of the opinion of CCIT(I-T) stating that the monetary limits prescribed under Circular No. 3 of 2018, dt. July 11, 2018 followed by the successive circulars, would not apply to TDS cases;
- Considers Assessee's contention that the appeals in question are squarely covered under Circular No. 17 of 2019;
- Allows Revenue's request for a minimum period of eight weeks for obtaining said clarification from CBDT;
- The matter is listed for hearing on Jun 21, 2023.

SC stays Allahabad HC judgment on post-Ashish Agarwal reassessment controversy.

- SC issued notice on Revenue's Special Leave Petition against Allahabad HC judgment on reassessment controversy and grants stay on the judgment;
- The issue was whether for notices issued under Section 148/148A for AYs 2013-14 and 2014-15, the benefit of time extension under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) is available or not ; Delhi HC had taken a view that until Jun 30, 2021,
- The notices can be issued in light of TOLA whereas the Allahabad High Court had taken a contrary view holding the notices issued to have been barred by limitation;

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- HC had laid down principles based on which the limitation period under the amended Section 149(1)(b) was to be construed by Revenue in the impugned notices;
- HC differed from Delhi HC's view in Touchstone where reassessment proceedings for AY 2013-14 were upheld in the similar context;
- HC had also made it abundantly clear that the first proviso to Section 149(1) cannot be rendered otiose by allowing the Revenue to take defence of the extension notifications issued under TOLA;
- HC had also observed that CBDT attempted to overreach the SC ruling through Instruction No. 1/2022 dt. May 11, 2022, thus, categorically held Clause 6.1 (third bullet) and Clause 6.2 (i) and (ii) of the Instruction to be lacking binding force for being in teeth of the SC ruling in Ashish Agarwal.

Karnataka HC to construe Sec.149(1)(b), Rs.50 Lac threshold in capital gains case.

- Karnataka HC entertained writ petition challenging reassessment proceedings with respect to capital gains case where sale consideration exceeds Rs.50 Lacs but capital gains is below Rs. 50 Lacs;
- HC granted interim stay on the reassessment proceedings until the next date of hearing; The notice pertains to AY 2016-17 issued in Mar'23;
- Assessee challenged the reassessment proceedings before HC on the basis that his case is covered by Section 149(1)(a), therefore, no proceedings could be initiated beyond Mar 31, 2020;
- Assessee emphasised that for application of extended limitation period of 10 years under Section 149(1)(b), the income escaping assessment should be Rs.50 Lacs or more whereas the Assessee's long term capital gain computed after reducing the indexed cost of acquisition from sale consideration of Rs.55.77 Lacs amounts only to Rs.33.85 Lacs;
- Assessee, thus, submitted that the proceedings are not within the four corners of the amended reassessment framework and violated the rights enshrined under Articles 14, 19, 21 and 265 of the Constitution;
- Assessee also submitted that the sanction given u/s 151 is without application of mind as the Assessee's case fell u/s 149(1)(a) and not u/s 149(1)(b);
- HC, after granting interim stay, puts the matter for hearing in the week commencing May 22, 2023

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SC issues notice on SLP against Gujarat HC judgment allowing Vodafone Sec.80-IA deduction.

- SC issued notice on Revenue's Special Leave Petition against Gujarat HC judgment allowing Vodafone Essar Gujarat Ltd. (Assessee) deduction under Section 80-IA for AY 2006-07;
- Gujarat HC held that the losses that had lapsed due to change in shareholding in AY 2001-02 should not disentitle the Assessee from claiming the deduction while interpreting the interplay of two non-obstante provisions i.e., Section 80-IA(5) and Section 79;
- Gujarat HC had also held that Section 80-IA(5) need not be considered in isolation to give effect to Section 72 (dealing with carry forward and set off of losses) as it would lead to a notional carry forward of losses that had already elapsed due to the operation of Section 79;
- SC, while issuing notice also condoned the delay in filing of SLP.

ITAT Special Bench decides DDT v. DTAA 'tax-rate controversy' in Revenue's favour.

- Mumbai ITAT Special Bench held that non-resident shareholders cannot take benefit of lower tax rate prescribed in DTAAs for taxation of dividend where Dividend Distribution Tax (DDT) is applicable;
- Thus, held that DDT rate shall prevail on dividend paid by Indian companies to non-resident shareholders;
- Earlier, ITAT Delhi in Giesecke & Devrient had held that the beneficial DTAA rate for taxation of dividend shall prevail over Dividend Distribution Tax rate;
- This principle was followed by Kolkata ITAT in Indian Oil Petronas;
- ITAT Mumbai, in Total Oil, differed from the decision of ITAT Delhi and referred the matter for Special Bench's consideration after considering SC rulings in Godrej & Boyce and Tata Tea and South African High Court in Volkswagen of South Africa (Pty) Ltd.;
- The Special Bench now resolves the controversy in Revenue's favour.

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Karnataka HC stays Myntra's reassessment proceedings over alleged foreign payments.

- Karnataka HC granted interim stay on reassessment proceedings initiated against Myntra Designs Pvt. Ltd. (Assessee) for AY 2019-20; The proceedings have been initiated based on an allegation that the genuineness of two payments made by the Assessee to a foreign company could not be verified;
- The Assessee contended that it had neither made any such payment nor had it claimed any expenditure based on the alleged payment, thus, there can be no question of 'income escaping assessment';
- Assessee, therefore, submitted that the entire exercise by the Revenue is without jurisdiction;
- Assessee further submitted that the reassessment proceedings cannot be initiated by merely relying on the Insight portal, without considering its submission;
- Assessee produced the ledger extract to demonstrate that there was no purchase or payment/remittances as alleged by the Revenue;
- Assessee argued that it cannot be asked to establish the negative and the Revenue should provide the information and material to establish that the alleged payments were, in fact, made by the Assessee;
- Karnataka HC, after hearing the Assessee, issued notice on the writ petition and granted stay on the proceedings until the next date of hearing.

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COMPANIES ACT, 2013 AND SEBI ACT, 1992



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COMPANIES ACT, 2013

Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 – Shift of Authority to process Striking Up of Companies

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The Ministry of Corporate Affairs (MCA) has, vide its notification dated 17thApril, 2023 ("Notification"), amended the Companies (Removal of Names of Companies form the register of Companies) Amendment Rules, 2023. Pursuant to the amendment the responsibility of striking off companies has been transferred from Registrar of Companies to Registrar, Centre for Processing Accelerated Corporate Exit known as Registrar, Centre for PACE in Form STK-2 along with fees of Rs. 10,000.

In order to bring all the e-Forms related to striking up off companies in line with the said notification, e-Form STK-2, e-Form STK-6 and e-Form STK-7 has also been substituted.

The official Notification of MCA will be effective from 1stMAy, 2023.

The official notification is attached here for reference:

https://www.mca.gov.in/bin/dms/getdocument?mds=ab6Q0qvTuxNB7D4lj6zO7Q%253D%253D&type=open

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SEBI ACT, 1992

Guidelines with respect to excusing or excluding an investor from an investment of AIF

Securities Exchange Board of India (“SEBI”) vide its circular dated 10thApril, 2023, has amended SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”). Pursuant to the circular a proposal to review the information disclosed in Private Placement Memorandum (PPM) under the term ‘Excuse and Exclusion’ for excusing or excluding an investor from an investment of the AIF, was deliberated in Alternative Investment Policy Advisory Committee (‘AIPAC’).

The official notification is attached here for reference:

https://www.sebi.gov.in/legal/circulars/apr-2023/guidelines-with-respect-to-excusing-or-excluding-an-investor-from-an-investment-of-aif_69995.html

Direct plan for schemes of Alternative Investment Funds (AIFs) and trail model for distribution commission in AIFs

Securities Exchange Board of India (“SEBI”) vide its circular dated 10thApril, 2023, has amended SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”). Pursuant to the circular to provide flexibilityto investors forinvesting in AIFs, bring transparency in expenses and curb mis-selling, direct plan for schemes of AIF’s and trail model for distribution commission in AIF’s was specified

The official notification is attached here for reference:

https://www.sebi.gov.in/legal/circulars/apr-2023/direct-plan-for-schemes-of-alternative-investment-funds-aifs-and-trail-model-for-distribution-commission-in-aifs_69996.html

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APENDIX

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ACRONYMS

Used	Meaning
GST	Goods and Services Tax
CGST	Central Goods & Services
CBIC	Central Board of Indirect Taxes & Customs
GTA	Goods Transport Agency
IAS	International Accounting Standards
CBDT	Central Board of Direct Taxes
AY	Assessment Year
AAR	Authority of Advance Rulings
HC	High Court
SC	Supreme Court
PCIT	Principal Commissioner of Income Tax
CCIT	Chief Commissioner of Income Tax
FCRA	Foreign Contribution Regulations Act
CARO	Companies Auditor's Report Order
GOM	Group of Ministers
ITAT	Income Tax Appellate Tribunal
DTAA	Double Taxation Avoidance Agreement
FEMA	Foreign Exchange Management Act
SEBI	Securities and Exchange Board of India
NBFCs	Non-Banking Finance Companies
HFCs	Housing Finance Companies

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WHY ACUPRO?

FEATURES

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Subject Matter Experts

Right Blend Of Professionals

Industry wise Expertise

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Indirect Taxation

Transaction Advisory

International Taxation

Assurance, Accounting & GAAP Advisory

Regulatory & Secretarial Consulting

Risk Advisory & Financial Transformation

Thank You!

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