

THE BUZZ

AUGUST 2023

ACUPRO CONSULTING

NEWSLETTER CONTRIBUTORS

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GOODS AND SERVICES TAX



GOODS
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TAX

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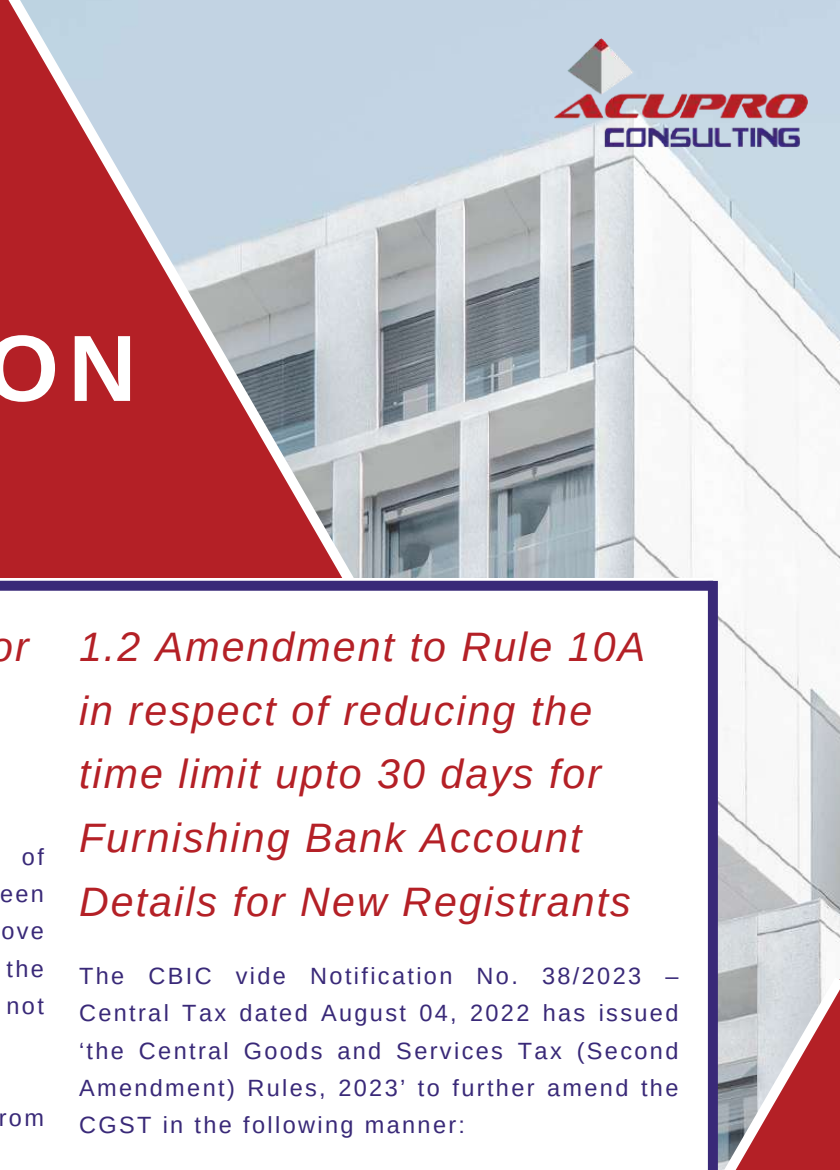

NOTIFICATION

1.1 Extension of Time Limit for Revocation of GST Registration Cancellation

The time limit for applying for revocation of cancellation of GST registration has been increased from 30 to 90 days. Further, the above time limit may be extended by the Commissioner/officer for a further period of not exceeding 180 days.

As per rule 23, in sub-rule (1), with effect from the 1st day of October, 2023:–
(a) For the part beginning with the words “within a period of thirty days” and ending with the words and figures “section 30”, the words “within a period of ninety days from the date of the service of the order of cancellation of registration” shall be substituted;
(b) In the first proviso, for the words “Provided that”, the following shall be substituted, namely: –

“Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding one hundred and eighty days.

Notification No. 38/2023

1.2 Amendment to Rule 10A in respect of reducing the time limit upto 30 days for Furnishing Bank Account Details for New Registrants

The CBIC vide Notification No. 38/2023 – Central Tax dated August 04, 2022 has issued ‘the Central Goods and Services Tax (Second Amendment) Rules, 2023’ to further amend the CGST in the following manner:

In rule 10A, for the portion beginning with the words and figure “as soon as may be, but not later than 45 days” and ending with the words “in order to comply with any other provision” the following shall be substituted, namely:-

“within a period of 30 days from
-The date of grant of registration or
-Before furnishing the details of outward supplies under section 37 in FORM GSTR-1 or
-Using invoice furnishing facility

Whichever is earlier, furnish information with respect to details of bank account on the common portal”.

Notification No. 38/2023

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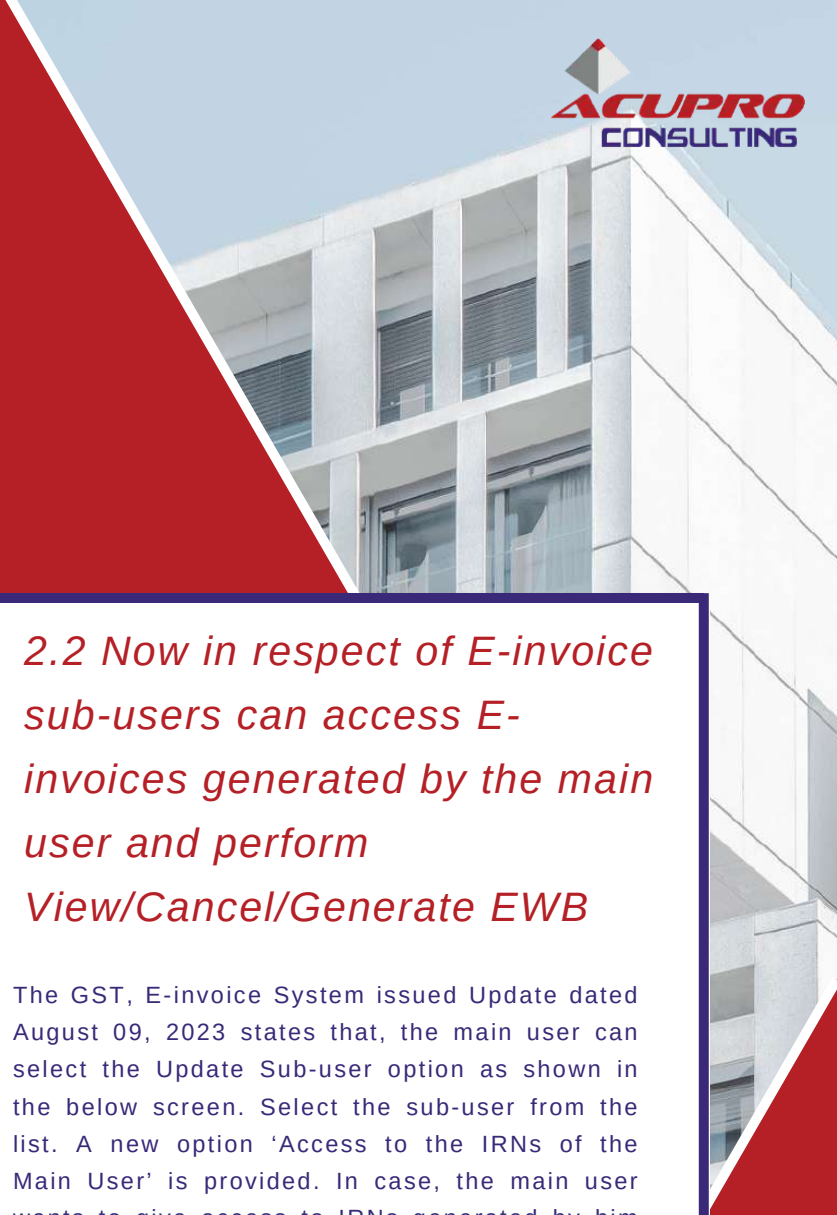
UPDATES



2.1 CGST and IGST Amendment Bills, 2023 as introduced in the Lok Sabha

The Hon'ble Finance Minister Nirmala Sitharaman dated August 11, 2023, introduced bills to amend the Central and Integrated GST laws. Regarding levy 28% tax on the full face value of bets in online gaming, casinos and horse race clubs. The CGST (Amendment) Bill, 2023, and the IGST (Amendment) Bill, 2023, were introduced by Sitharaman in the Lok Sabha.

2.2 Now in respect of E-invoice sub-users can access E-invoices generated by the main user and perform View/Cancel/Generate EWB

The GST, E-invoice System issued Update dated August 09, 2023 states that, the main user can select the Update Sub-user option as shown in the below screen. Select the sub-user from the list. A new option ‘Access to the IRNs of the Main User’ is provided. In case, the main user wants to give access to IRNs generated by him to the sub-user then he can select ‘Yes’ to this option. Note that along with this, one or all options such as Cancel, View report and E-way bill generation need to be provided

GOODS
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NEWS



GSTN Guide on Steps to Implement GST E-invoicing in India

'E-invoicing' refers to the process of reporting specific GST documents to a Government-notified portal known as the Invoice Registration Portal (IRP) and obtaining an invoice reference number. It is important to note that E-invoicing does not involve generating invoices via a Government portal. In this system, taxpayers still create their GST invoices using their own Accounting/Billing/ERP Systems. The generated invoices are then submitted to any of the six authorized 'Invoice Registration Portals (IRPs)' in a standard format, referred to as 'Schema' or Form GST INV-1. The process of generating Invoice Reference Numbers (IRNs) on these portals is free of charge.

Monthly average gross GST collection for FY 2021-22 & FY 2022-23 have shown 30% and 22% YoY growth respectively

Monthly average gross GST collection for FY 2021-22 & FY 2022-23 have shown 30% and 22% YoY growth respectively.

The Minister further stated that GST is paid on self-assessment basis and tax administration at Central and State level is empowered to take action against cases where GST is not paid and short paid. Detection of such cases and recovery of taxes not paid or short paid is a continuous process.

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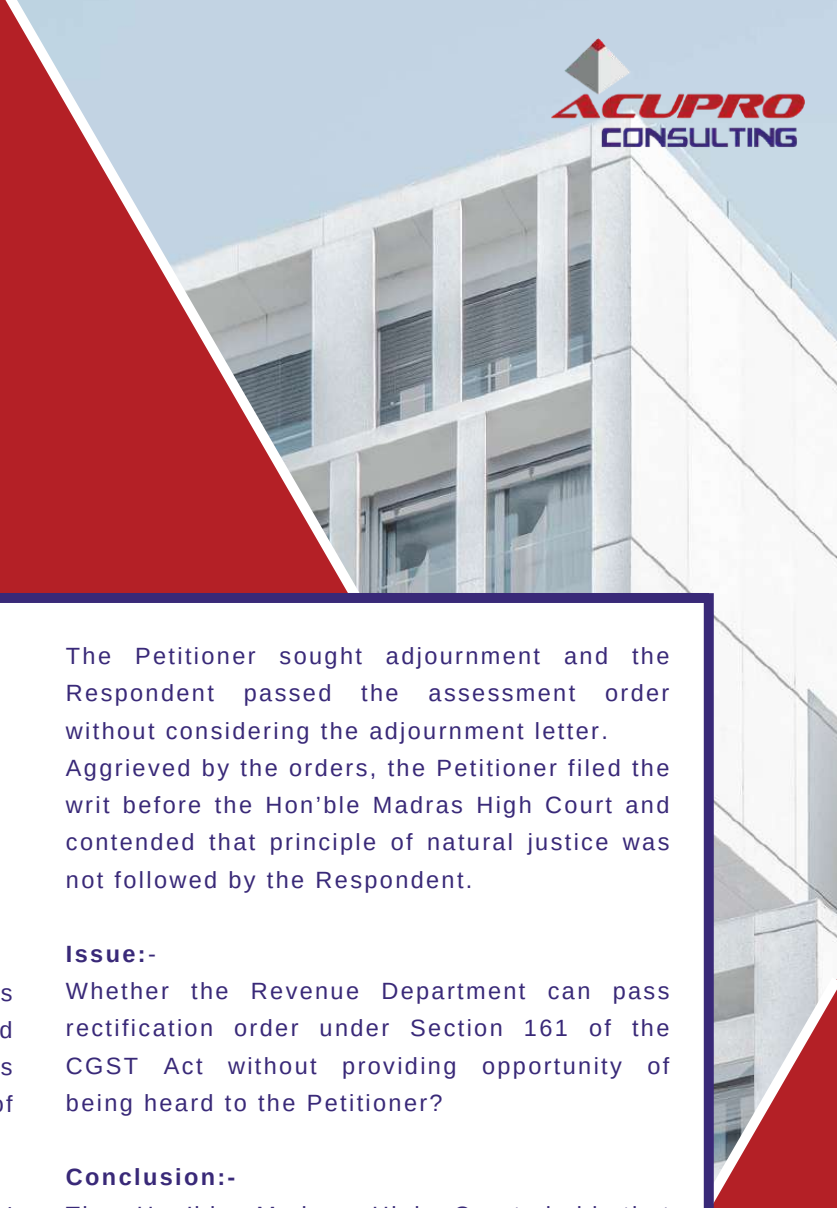
CASE LAWS



4.1 Under Section 161 of the CGST Act Revenue Department cannot pass ex-parte rectification order

Facts:-

M/s. Vadivel Pyro Works ("the Petitioner") is the manufacturer cum trader of fireworks and was regularly filing GST returns, discharges appropriate taxes, avails the ITC in terms of Section 16 of CGST Act, 2017.

Revenue Department ("Respondent") conducted statutory audit which was duly replied by the Petitioner through counter affidavit. The copy of audit report was given to the Petitioner and directed to submit objections if any. The Petitioner submitted the objections without any supporting records.

On the basis of the audit report, the Respondent issued a Show Cause Notice in Form GST DRC 01 followed by Notice in ASMT-10 and Form DRC 01A, demanding GST on certain inward supplies from the Petitioner.

Thereafter, the Adjudicating Authority vide the order to confirmed the demand of tax along with interest and penalty which was more than INR 1 Crore.

Aggrieved by the Impugned Order the Petitioner filed rectification application under section 161 of the CGST Act for rectification of the assessment order.

The Petitioner sought adjournment and the Respondent passed the assessment order without considering the adjournment letter.
Aggrieved by the orders, the Petitioner filed the writ before the Hon'ble Madras High Court and contended that principle of natural justice was not followed by the Respondent.

Issue:-

Whether the Revenue Department can pass rectification order under Section 161 of the CGST Act without providing opportunity of being heard to the Petitioner?

Conclusion:-

The Hon'ble Madras High Court held that before passing the order under section 161 of the CGST Act, the Respondent should have followed the proviso and granted personal hearing to the Petitioner. Therefore, while passing the rectification order there was a violation of principle of natural justice.

•Directed the Petitioner to pay INR 1 Lakh for each year, in the interest of justice.
•
Set aside the Impugned order and remanded the matter to the Respondent for re-assessment due to discrepancies mentioned in ASMT-10 and in DRC-01

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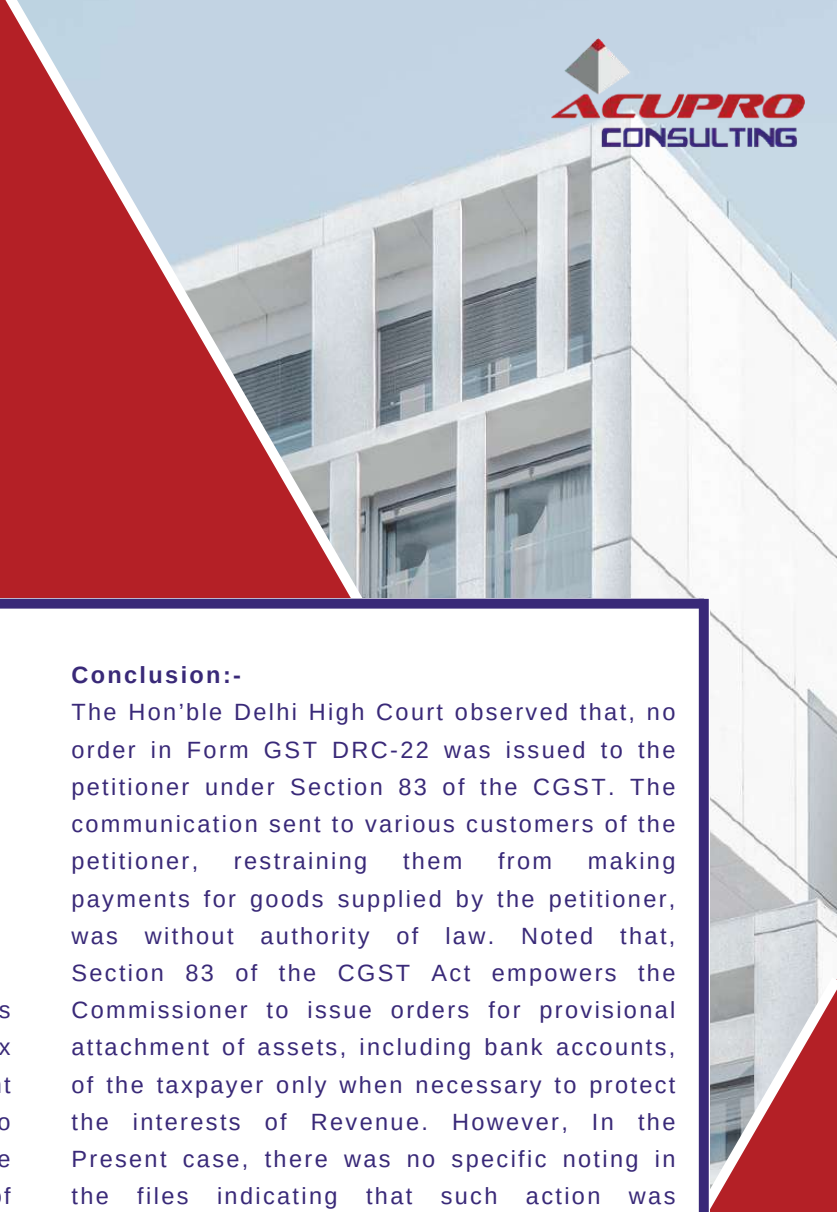
CASE LAWS



4.2 DGGI communication to Bank to freeze bank account of assessee not a valid provisional attachment order

Facts:-

M/s. Redamancy World ("the Petitioner") was alleged to have wrongly availed Input Tax Credit ("ITC") and the Revenue Department was investigating the chain of suppliers. To safeguard and in interest of the Revenue the DGGI ordered to freeze the bank account of the Petitioner. The Bank of the Petitioner intimated the Petitioner regarding freezing of their bank account.

The Petitioner filed the writ before the Hon'ble Delhi High Court contending that Section 83 of the Central Goods & Service Tax Act, 2017 ("the CGST Act") empowers the Commissioner to provisionally attach assets, including bank accounts, of the taxpayer to protect Revenue's interests, but no such attachment order was issued by the Commissioner. It was further pointed out that Revenue Department has sent letters to various customers of the Petitioner directing them not to make payments for the goods supplied by the Petitioner.

Issue:-

Whether communication to freeze bank account would be considered as a valid attachment order under Section 83 of the CGST Act?

Conclusion:-

The Hon'ble Delhi High Court observed that, no order in Form GST DRC-22 was issued to the petitioner under Section 83 of the CGST. The communication sent to various customers of the petitioner, restraining them from making payments for goods supplied by the petitioner, was without authority of law. Noted that, Section 83 of the CGST Act empowers the Commissioner to issue orders for provisional attachment of assets, including bank accounts, of the taxpayer only when necessary to protect the interests of Revenue. However, In the Present case, there was no specific noting in the files indicating that such action was necessary.

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CASE LAWS



4.3 Responsibility of purchaser to verify GST registration of seller on GST Portal

Facts:-

M/s. Arhaan Ferrous and Non-Ferrous Solutions Pvt. Ltd. ("the Petitioner") is a trader in iron scrap. The Petitioner purchased the iron scrap from M/s. K.S. Enterprises ("the Supplier") located in Vijaywada and further sold the same to M/s Radha Smelters Private Limited ("the Buyer") located in Sankarampet The Petitioner engaged a transporter for transporting the scrap from Vijayawada to Sankarampet accompanied with valid documents i.e. invoice, E-way bill.

The Revenue Department ("the Respondent") detained the goods in transit on the allegation that the supplier has no place of business at Vijayawada and initiated the proceedings against the Supplier under Section 130 of CGST ACT,2017.The Supplier contended that the Respondent has deliberately ignored the documents produced at the time of check which shows that the Petitioner was the owner of the goods.The Respondent has issued notice against the Supplier instead of the Petitioner, who has no interest in the matter after selling the consignment for valuable consideration to the Petitioner. Further contended that, under the GST law there is no requirement that the Petitioner has to verify whether the Supplier has any registered place of business at Vijayawada

Issue:-

Whether the Revenue Department can confiscate the goods of the assessee basing on the proceedings initiated against the supplier of the assessee?

Conclusion:-

The Hon'ble Andhra Pradesh High Court opined that the proceedings for detention of goods can be initiated while the goods are in transit in contravention of provisions of the CGST Act. In the instant case, However, the Respondent cannot confiscate the goods of the Petitioner merely on the ground that the Petitioner happen to purchase goods from the said Supplier.

Noted that, the claim made by the Petitioner of purchase of goods is highly doubtful as the physical existence of the said supplier is questioned. Thus, the Respondent can initiate proceedings under Section 129 of the CGST Act against the Petitioner and conduct enquiry by giving opportunity to the Petitioner to establish their case.

Held that, the Respondent will release the detained goods in favour of the Petitioner on deposit of 25% of the value of goods and execute a bond for the balance and shall also release the vehicles in favour of the transporter

Further held that, the Petitioner's responsibility will be limited to the extent of establishing that he bonafidely purchased goods from the Supplier for valuable consideration after verifying the GST registration of the said supplier on the GST portal.

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INCOME TAX

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CBDT notifies 'Annexure II' to Form 34E, applicable to 'notified residents' seeking Advance Ruling

•CBDT issued corrigendum to Notification No. 37/2023 dt. Jun 12, 2023 which notified new forms under the Advance Rulings regime;

•The present Notification inserts Annexure II to Form No. 34E which was prescribed for seeking an Advance Ruling by class of residents notified by Central Government;

•Annexure II requires the applicants to provide a "Statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required"

(Source: Notification 53/2023 dated July 27, 2023)

CBDT notifies Form 3AF pursuant to Sec.35D amendment by FA 2023

•CBDT notified Rule 6ABBB and Form 3AF for furnishing particulars regarding preliminary expenses incurred under Section 35D; Form 3AF contains a statement to be furnished under proviso to Section 35D(2)(a) by the assessee for each previous year which shall be furnished electronically one month prior to the due date for furnishing the return of income as specified under Section 139(1);

•

•The Form shall be furnished to the PDGIT (Systems) or DGIT (Systems), as the case may be, or any person authorised by them and they shall also specify the procedures for furnishing the Form apart from formulating and evolving appropriate security, archival and retrieval policies in relation to the Form so furnished; Also notifies suitable amendments to the Annexure to Form 3AE i.e., Audit Report under section 35D(4)/35E(6).

•

The Rule 6ABBB shall come into force on Apr 1, 2024

(Source: Notification 54/2023 dated Aug 01, 2023)

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CBDT clarifies on TCS on LRS & overseas tour package with Guidelines

CBDT notified income tax exemption under Section 10(46) to 'Joint Electricity Regulatory Commission (for the State of Goa and Union Territories except Delhi), Gurugram', a commission constituted by the Government of India; The exemption is in respect of the following incomes:
(a)petition fees,
(b)license fees,
(c)other income in respect of reimbursement of Ombudsman expenses / and profit on sale/ disposal of assets, and
(d)interest earned on (a) to (c) above;

The exemption shall be subjected to the conditions that the Commission:
(a)shall not engage in any commercial activity;
(b)activities and the nature of the specified income shall remain unchanged throughout the financial years; and
(c)shall file return of income in accordance with Section 139(4C)(g);

The Notification shall be deemed to apply from AYs 2022-23 and and 2023-24; CBDT clarifies that no person is being adversely affected by giving retrospective effect to this Notification.

(Source: Notification 55/2023 dated Aug 01, 2023)

CBDT amends notification exempting ITR-filing for NRs pursuant to 'Investment Fund' definition amendment

•CBDT releases Standard Operating Procedure (SOP) for recomputation of total income of a co-operative society engaged in the business of manufacture of sugar in terms of Section 155(19) pursuant to Section 36(1)(xvii);

•The Circular was issued to provide certainty on litigation arising due to payment of Final Cane Price by the co-operative sugar factories over and above the Statutory Minimum Price (SMP) for purchase of sugarcane;

•Accordingly, to encourage co-operative movement in sugar sector, a new clause (xvii) was inserted to amend Section 36(1) to provide that the amount paid for purchase of sugarcane by the co-operative societies at a price equal to or less than the fixed shall be allowed as deduction for sugar co-operatives, with effect from AY 2016-17 onwards;

•However, pending demands and litigation still persisted in respect of AYs prior to 2016-17; Therefore, to arrive at a logical conclusion and to extend the benefit to all the applicable years, Section 155(19) was inserted w.e.f. Apr. 1, 2023 which provides that where any deduction in respect of any

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•expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly in any previous year commencing on or before Apr 1, 2014, the Jurisdictional Assessing Officer shall, on the basis of an application made by such assessee, recompute the total income;
•The period of four years specified in Section 154(7) shall be reckoned from the end of previous year commencing on Apr. 1, 2022 and the Jurisdictional Assessing Officer is allowed 6 months time for passing the rectification order from the end of the month in which application is made and deadline for rectification is Mar 31, 2027

(Source: Circular 14/2023 dated July 27, 2023)

Govt. exempts IFSC Unit's shipping lease rental receipts from TDS

•CBDT notified that the Central Government has exempted TDS under Section 194-I on payment in the nature of lease rent or supplemental lease rent made by a person to an IFSC Unit for lease of a ship; The exemption is subject to the condition that the IFSC Unit i.e. lessor shall:

(i)furnish a statement-cum-declaration in Form No.1 to the lessee with details of previous years relevant to the ten consecutive AYs for which the lessor opts for claiming deduction under sub-sections (1A) and (2) of Section 80LA, and

(ii)such statement-cum-declaration shall be furnished and verified in the manner specified in Form No.1, for each previous year relevant to the ten consecutive AYs for which the lessor opts for claiming the deduction;

The lessee shall:
• Not deduct tax on payment made or credited to lessor after the date of receipt of copy of statement-cum-declaration in Form No. 1 from the lessor, and

•Also furnish the particulars of all the payments made to lessor on which tax has not been deducted in view of this Notification in the TDS statement;

•The Notification also provides that the relaxation shall be available to the lessor only during the said previous years relevant to the ten consecutive AYs as declared by the lessor in Form No. 1 for which deduction under Section 80LA is being opted and that the lessee shall be liable to deduct tax on payment of lease rent for any other year;
•CBDT also notifies Form No. 1 and casts responsibility of laying down procedures, formats and standards for ensuring secure capture and transmission of data, uploading of documents, evolving and implementing appropriate security, archival and retrieval policies on PDGIT (Systems) or DGIT (Systems);
•The Notification comes into effect from Sep 1, 2023

(Source: Notification 57/2023 dated Aug 01, 2023)

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CBDT notifies 'State Pollution Control Board Odisha' for Sec.10(46) exemption

•CBDT notified income tax exemption under Section 10(46) to 'State Pollution Control Board Odisha', a Board constituted by the State Government of Odisha; The exemption is in respect of the following incomes:

(a) Regulatory charges under different Environmental Acts & Rules thereunder,

(b) Penalties & Levies collected under governing statutes,

(c) Grant-in-aid received from Central & State Governments,

(d) Grant in Aid received on behalf of Central & State Governments in the capacity of nodal agency,

(e) Share of contributions received for carrying out environmental studies & research, (f) Miscellaneous income, like sale of scrap, profit on sale of assets, RTI application fees, forfeiture of Bank Guarantee, tender fees, examination fees, analysis charges and empanelment of consultant fees etc., and Interest earned on (a) to (f) above;

The exemption shall be subjected to the conditions that the Board:

(a)shall not engage in any commercial activity;

(b)activities and the nature of the specified income shall remain unchanged throughout the financial years; and

(c)shall file return of income in accordance with Section 139(4C)(g);

The Notification shall be deemed to apply from AYs 2021-2022 to 2023-2024; CBDT clarifies that no person is being adversely affected by giving retrospective effect to this Notification

(Source: Notification 60/2023 dated Aug 10, 2023)

CBDT notifies Chandigarh Building & Other Construction Workers Welfare Board for Sec.10(46) exemption

•CBDT notified income tax exemption under Section 10(46) to 'Chandigarh Building and Other Construction Workers Welfare Board, Chandigarh', a Board constituted by the Administrator, Union territory, Chandigarh; The exemption is in respect of the following incomes:

(a)Proceeds of the Cess collected under the Building & Other Construction Workers Welfare Cess Act, 1996, and rules made thereunder

(b)Contribution and registration fees paid by the Beneficiaries under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and rules made thereunder, and

(c)Interest earned on (a) & (b) above;

The exemption shall be subjected to the conditions that the Board:

(a)shall not engage in any commercial activity;

(b)activities and the nature of the specified income shall remain unchanged throughout the financial years; and

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(c)shall file return of income in accordance with Section 139(4C)(g);

The Notification shall be deemed to apply from AYs 2021-2022 to 2023-2024; CBDT clarifies that no person is being adversely affected by giving retrospective effect to this Notification.•

(Source: Notification 59/2023 dated Aug 10, 2023)

CBDT issues Guidelines on 'life insurance policy' tax exemption pursuant to FA 2023 amendments

•The sum received under a life insurance policy, other than unit linked insurance policy (ULIP), issued on or after Apr 1, 2023 shall not be exempt under Section 10(10D) if the amount of premium payable for any of the previous years during the term of such policy exceeds Rs. 5 Lac;

•Also provided that if premium is payable for more than one life insurance policy, other than a ULIP , issued on or after Apr 1, 2023 then the exemption shall be available only with respect to such policies where the aggregate premium does not exceed Rs. 5 Lac for any of the previous years during the term of any of those policies;

•These exceptions do not apply to any sum received on the death of a person; CBDT explains the implications of the amendments under various situations with examples and clarifies the prescribed premium threshold shall be exclusive of GST component

(Source: Circular 15/2023 dated Aug 16, 2023)

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CBDT introduces Rule 11UACA for computing Sec.56(2)(xiii) income

CBDT introduces Rule 11UACA for computing the income taxable under the newly inserted Section 56(2)(xiii);

As per the Rule, where the sum is received for the first time under the life insurance policy during the previous year (first previous year),

The income chargeable to tax in the first previous year shall be the difference of 'A' and 'B';

Here, 'A' is the sum or aggregate of sum received under the life insurance policy during the first previous year, and 'B' is the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the first previous year that has not been claimed as deduction under any other provision of the Act;

Further, where the sum is received under the life insurance policy during the previous year subsequent to the first previous year (subsequent previous year), the income chargeable to tax in the subsequent previous year shall be computed the difference between 'C' and 'D'; Here, 'C' is the sum or aggregate of sum received under the life insurance policy during the subsequent previous year and 'D' is the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the subsequent previous year;

Amount 'D' cannot be:
(i) the premium claimed as deduction under any other provision of the Act, nor (ii) the sum included in amount 'B' or amount 'D' of this rule in any of the previous year or years.

(Source: Circular 61/2023 dated Aug 16, 2023)

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Telegraphic Tansfer Buying rate' applicable for TDS on foreign currency income

•The 'telegraphic transfer buying rate' is prescribed as foreign exchange rate for TDS on any income payable in foreign currency to:

(i) to an assessee outside India
(ii) to a Unit located in IFSC, and
(iii) by a Unit located in IFSC to an assessee in India;

•The telegraphic transfer buying rate relevant for calculating INR equivalent of foreign currency income shall be the rate prevailing on the date on which the tax is required to be deducted at source under the applicable provisions by the payer;

•'Telegraphic transfer buying rate' is defined as exchange rate adopted by SBI for buying foreign currency, having regard to the guidelines specified from time to time by RBI for buying such currency, where such currency is made available to that bank through a telegraphic transfer.

(Source: Circular 64/2023 dated Aug 17, 2023)

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CBDT rejigs valuation of 'Rent Free Accommodation' perquisite

a)It deals with valuation of rent free accommodation, with effect from Sep 1, 2023.

b) As per the amended rule, where unfurnished accommodation is provided to employees other than the Central or State Government employees and such accommodation is owned by the employer then the valuation shall be: (i) 10% of salary (reduced from 15%) in cities having population exceeding 40 Lacs as per 2011 census (earlier, 25 Lacs as per 2001 census), (ii) 7.5% of salary (reduced from 10%) in cities having population exceeding 15 Lacs but not exceeding 40 Lacs as per 2011 census (earlier, 10 lakhs but not exceeding 25 lakhs as per 2001 census), and (iii) 5% of salary (reduced from 7.5%)

c) In other areas, in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.

d) Where the accommodation is taken on lease or rent by the employer then it shall be valued at the actual amount of lease rental paid or payable by the employer or 10% of salary (reduced from 15%), whichever is lower, as reduced by the rent, if any, actually paid by the employee.

e) The valuation rule do not apply to temporary accommodation of an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site if the plinth area is upto 1000 sq.ft. (increased from 800 sq.ft.) where located beyond 8 kms from the local limits of any municipality or a cantonment board; The rule also do not apply to accommodation located in a remote area.

(Source: Circular 65/2023 dated Aug 18, 2023)

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CBDT notifies 'Punjab Building and other Welfare construction Board'for sec.10(46) exemption

Income tax exemption under Section 10(46) to 'Punjab Building and Other Construction Welfare Board', a body constituted by the State Government of Punjab; The exemption is in respect of the following incomes:
(a) Labour Cess collection,
(b) Contribution collection, and
(c) Interest earned on (a) and (b) above;

The exemption shall be subjected to the conditions that the Board: (a) shall not engage in any commercial activity; (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and (c) shall file return of income in accordance with Section 139(4C)(g);

The Notification shall be deemed to apply to AYs 2022-2023 and 2023-2024; CBDT clarifies that no person is being adversely affected by giving retrospective effect to this Notification.

(Source: Circular 67/2023 dated Aug 23, 2023)

CBDT notifies 12 District Mineral Foundation Trusts for sec .10(46) exemption

income tax exemption under Section 10(46) to 'District Mineral Foundation Trust' (DMF) 2015 as a 'class of authority'. The exemption is in respect of the following incomes:
(a) Contribution by lease holder to DMF as per the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015,
(b) Interest received from lease holders for late payment
(c) Any Penalty charged to lease holder
(d) Income from Interest on fund available under DMF
(e) Interest received on Saving Bank Accounts, and
(f) Interest received on Excess Fund invested in Term Deposit; The exemption shall be subjected to the conditions that the Trust: (a) shall not engage in any commercial activity; (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and (c) shall file return of income in accordance with Section 139(4C)
(g); The Notification shall be deemed to apply from AY 2023-2024 to 2027-2028; CBDT clarifies that no person is being adversely affected by giving retrospective effect to this Notification.

(Source: Circular 66/2023 dated Aug 23, 2023)

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CBDT issues Guidelines for re-opening post SC judgment in Abhisar Buildwell

In an important development, CBDT has, issued guidelines for AOs (pursuant to SC judgment in Abhisar Buildwell), explaining as to how to implement the judgment in the context of Apex Court providing powers to AO to reopen completed/unabated assessments u/s 147/148 of Income Tax Act, subject to fulfilment of conditions, in cases where no incriminating material is found during search;

Accordingly, CBDT elucidates scenarios and actions to be taken by AO and considering lapse of time and to provide certainty to taxpayers, requires the Officers to apply the judgment in the following cases only:

a) Lead & tagged cases in the said judgment

b) All cases pending at appellate levels or before AO or before any tax authority

c) Cases where contrary decisions have been given by appellate authorities post Abhisar judgment; CBDT further requires AOs to bucket the cases into i) Pending/Abated assessments and ii) Completed/Unabated assessments; Board further prescribes time limits for field formations to take requisite actions, as also comes out with a specimen Miscellaneous Application (MA) for filing before ITAT.

(Source: CBDT Instruction No.1 of 2023)

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LITIGATIONS

SC directed listing of Sonia Gandhi's & AAP's cases on 'faceless assessment' in August first-week

•SC directed listing of batch of SLPs challenging Delhi HC ruling against Mrs. Sonia Gandhi, Aam Aadmi Party and others in the first week of Aug'23; Delhi HC, in the impugned judgment, held "no assessee has any fundamental or vested legal right" to be assessed by a Faceless Assessing Officer" while upholding the transfer of cases to Central Circle;

•HC observed that neither the e-Assessment nor the Faceless Assessment Scheme modified the power to transfer cases from one AO under a PCIT to another AO under another PCIT holding non-concurrent charges;

•Also rejected Assessees' submission that after Faceless Assessment Scheme and Notifications thereunder, transfer is a two-step process i.e. from Faceless AO to jurisdictional AO and then from jurisdictional AO to the transferee AO.

Justice Shakdher enquired about MasterCard's PE disputes world over

•Delhi HC heard MasterCard PE's case for the sixth day; Revenue's Special Counsel Mr. Himanshu Sinha made further submissions on the factual aspects of MasterCard Interface Processors (MIPs) by dissecting the functions performed by it;

•Relied on SC ruling in Formula One to buttress that MIPs pass the three tests for constituting a PE i.e. permanence, fixed place and disposal; Also relies on the Swiss Server case to contend that automatic equipment can also create a PE; Highlights that MIPs undertake preliminary validation which includes validation of card whether its MasterCard, name of card holder, expiry date, banks' codes, etc.; Thus, submitted that the role of MIP is directly aligned to the main function of the MasterCard networking business i.e. to transmit data, to do fraud check and validation;

•Contended that the servers in Singapore work in tandem with MIPs in India and this is in complete contradistinction to what has been portrayed by MasterCard Singapore;

•Further, drew reference to annual report of MasterCard to argue that revenues from the MIPs are separately disclosed in the form of transaction processing or switching which involves the three step of authorization,

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clearing, settlement and the revenues generated from servers which is in the nature of value added services is a separate revenue stream; Based on information from MasterCard's website, argues that key attributes of MasterCard business are attributable to MIPs which are the proprietary equipment developed by MasterCard by investing money over the years and merely, for tax purposes, to say that they are marginal and negligible is erroneous;

•Justice Rajiv Shakdher enquired about the status of taxation of MasterCard with respect to MIPs in other countries; Advocate Tushar Jarwal clarified that Australian Tax Office (ATO) held that MIP is not PE against which Mr. Sinha submitted that Australia-Singapore DTAA has a treaty provision which is different as compared to India-Singapore DTAA.

Question of IISc employees' residential accommodation valuation reignites before SC

•SC issued notice in Special Leave Petition challenging dismissal of review petition against Karnataka HC ruling in the case of Indian Institute of Science (Assessee);

•Karnataka HC had held that that even if Assessee is considered as a State instrumentality within Article 12 of the Constitution, its employees cannot be treated at par with the Central/State Government employees for valuing perquisites under Section 17(2);

• HC had observed that for purposes of Rule 3 (Valuation of Perquisites), the requirement is that the accommodation should be provided by the Central Government or State Government to the employees either holding office or post in connection with affairs of Union or of State or serving with a body or undertaking under the control of such Government from deputation; SC dismissed the SLP against the HC ruling by observing that merely because Assessee adopted the Central Government Rules and/or the pay-scales etc., it could not be said that Assessee is Central Government; On merits, SC permitted the Assessee to file a review petition without expressing anything in favour of either of the parties as Assessee mentioned that some of the crucial aspects were not considered by the HC;

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•Thereafter, the Assessee preferred a review petition which got dismissed with an observation that the judgment “neither suffers from jurisdictional infirmity nor any error apparent on the face of the record, warranting interference of this court in exercise of review jurisdiction”, thus, the Assessee preferred the present SLP

Preparatory services test 'relative not absolute', submits Adv. Himanshu Sinha in MasterCard PE case

•Delhi HC heard MasterCard PE case for the seventh day; Revenue’s Counsel comprehensively addressed the submissions made by the Senior Advocate Harish Salve for MasterCard Singapore;

•Mr. Sinha countered the contention of MasterCard Singapore thats MIPs are preparatory and auxiliary activities demonstrating how significant it is for MasterCard's business;

•Regarding, argument of MasterCard Singapore that MIPs merely alert the issuer bank about the risk of credit limit being over utilized

•Mr. Sinha highlighted that it was not properly disclosed that the risk is of MasterCard Singapore’s business itself and not exclusively of issuer bank as it settled the commitments between banks and gives guarantee to all the counter banks that their amounts will be settled at the end

•Secondly, discussed the authorization function performed by MIPs wherein it works as a stand-in facility and the facility becomes operational when issuer bank servers are not available and as such the MIPs approve the transaction;

•Contended that to diminish the importance of MIP by saying that the amount is small is grossly erroneous as the amount is not determinative of the importance of MIP for MasterCard;

•Further argued that the yardstick of preparatory and auxiliary is a relative standard and not an absolute one, by relying on Prof. Klaus Vogel’s commentary; Submits that in one business one activity is preparatory and auxiliary and in another it’s not; Stressed that MasterCard is a network, it’s an intermediary so MIPs performing the intermediary function is the core function and not preparatory or auxiliary;

Also highlighted that each and every component of fees charged in India are directly linked to MIPs, hence it satisfied the OECD test of realization of profit and thus, definitely not preparatory or auxiliary.

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ITAT Special Bench to decide assessment time-limit pursuant to rectification in DRP directions

ITAT President constitutes a Special Bench in the case of Uber India Research and Development Pvt. Ltd. to decide the question of time-limit prescribed to AO for completing assessment under Section 144C(13) where DRP directions are supplemented by rectification;

The Revenue had relied on Mumbai ITAT ruling in Michael Page and requested Hyderabad ITAT for remanding the matter back to the AO and alternatively contended that a Special Bench may be constituted as there are conflicting decisions on question of date of reckoning the limitation period where DRP directions are rectified i.e., whether the limitation period should be reckoned from the date of original directions or from the date of corrigendum

Delhi HC to examine validity of BMA proceedings under twin jurisdictional challenge

Delhi HC entertained challenge against notice issued under Section 10(1) of the Black Money Act (BMA), allows continuation of proceedings but restrains passing of final order until further directions; Assessee assails the notice on the basis that:

(i) the aspects on which the impugned notice is founded, were examined by the AO in the proceeding carried out under Section 153A of the Income-tax Act, and

(ii) the impugned notice was issued under BMA by an officer who is not empowered to do so under Section 6(3) of the BMA;

The Revenue submitted that the notice alludes to two bank accounts maintained by the Assessee with HSBC Ltd., Singapore and the aspects concerning monies found credited in the said accounts were not examined in the proceeding carried out under the Income-tax Act;

HC noted that the issue of exercise of powers under Section 6(3) of BMA is also being examined in the case of Bhupinder Singh;

HC issued notice and grants time for completion of pleadings; Lists the matter for hearing on Nov 6, 2023

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Delhi HC stays penalty order as outcome of immunity application unknown

•Delhi HC granted stay on demand notice and penalty order based on the difference in valuation of shares sold by the Assessee

•The Assessee declared the value of shares sold on Mar 31, 2021 based on financial statements for FY 2019-20 whereas the Revenue based the valuation on financial statements for FY 2020-21 which became available in Sep'21;

• Assessee submitted that it is a case of 'under-reporting' and not 'misreporting' under the provisions of Section 270A and also submitted that the application for immunity under Section 270AA was made in Jan'23 which was to be decided within a month by the Revenue;

•HC observed that the order rejecting the application for immunity against the penalty warrants a hearing under Section 270AA(4); Revenue's counsel expresses lack of instruction on the status of the application and commits to return with instructions by the next date of hearing;

•Delhi HC issued notice and listed the matter for hearing on Jan 30, 2024

SC lists Review Petitions against judgment on Sec.153A where incriminating material found

SC listed Review Petitions preferred by the Assessee against the judgment in Kesarwani Zarda Bhandar delivered in the batch of matters led by Abhisar Buildwell;

SC, while upholding the Allahabad HC ruling, had held that if incriminating material is found during the search then for completed/unabated assessments, the Revenue has the power to assess or reassess not only with regard to the undisclosed income but also with regard to material available at the time of original assessment;

The Review Petitions were listed for circulation on Aug 8, 2023

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SC lists Review Petitions against judgment on Sec.153A where incriminating material found

SC listed Review Petitions preferred by the Assessee against the judgment in Kesarwani Zarda Bhandar delivered in the batch of matters led by Abhisar Buildwell;

SC, while upholding the Allahabad HC ruling, had held that if incriminating material is found during the search then for completed/unabated assessments, the Revenue has the power to assess or reassess not only with regard to the undisclosed income but also with regard to material available at the time of original assessment;

The Review Petitions are listed for circulation on Aug 8, 2023

Calcutta HC stays Sec.148 writ dismissal order with consequential 'ED reference' direction

•Calcutta HC Division Bench grants stay on the Single Judge's order that dismissed the writ petition against the reassessment proceedings involving loan transactions with a direction to jurisdictional PCCIT for referring the case to the Enforcement Directorate (ED);

•Assessee-Individual was subjected to reassessment post-search for AY 2019-20 on the basis that he had transactions with a broker Anil Kumar Kasera, thus, Revenue alleged that Rs.10.36 Cr. represented in the form of entry in the books of account which escaped assessment;

The Single Judge dismissed the writ petition with an observation that the modus operandi adopted in the impugned loan transaction is that "the loan recipient acknowledges the receipt of cash loan through a paper popularly known as ‘Rukka’ and the unaccounted cash transactions are authenticated through a currency note number mutually agreed before receiving/giving the cash and the place of collection/delivery of cash is decided through SMS/Whatsapp massages exchanged prior to the transaction and the currency note number and the amount are mentioned in those massages and the cash is collected or delivered by the broker’s representative on the production of the pre-decided currency note

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•number and the broker contacts the borrower on the due date of repayment of the loan and the loans are squared off or carried forward for a further specified period as per the mutual decisions of the parties involved and thereafter Rukka is destroyed on repayment of loan.";

•The Single Judge also remarked that there is a huge financial scam and this case along with other cases involving Anil Kumar Kasera need to be referred to the ED and directed the PCCIT for the same before listing the matter for compliance on Jun 13, 2023; On the specified date, the Single Judge found that the compliance report was filed by ITO (Judicial) instead of PCCIT and expressed a hope that ED will expeditiously investigate the scam;

Calcutta HC stays Sec.148 writ dismissal order with consequential 'ED reference' direction

The Division Bench admitted Assessee's appeal, found that a prima facie case has been made and observed that the questions of law which has to be considered is "whether the alleged borrowing by the assessee can be brought to tax in the hands of the assessee.";

Noted Assessee's submission that under Sections 69, 69A, 269SS and Section 271B, the alleged borrowing cannot be taxed as income in the hands of the Assessee;

Granted time for completion of pleadings and directed the jurisdictional PCCIT to communicate the stay order to the ED and also stated that ED shall not proceed until further orders in this appeal

SC rejects 'mutuality principle' on Clubs' interest income from deposits with corporate members

SC dismissed the batch of appeals preferred by various clubs challenging the HC judgments in Secunderabad Club and Madras Gymkhana Club, among others, holding the clubs liable to tax on interest earned from deposits made with their corporate members;

SC categorically held that the coordinate bench ruling in Bangalore Club holds the field and does not require reconsideration despite the fact that the coordinate bench did not consider the prior judgment in Cawnpore Club;

SC observes that the Cawnpore Club decision is not a precedent under Article 141 of the Constitution as it did not declare any law on the principle of mutuality; SC relies on a catena of domestic and foreign judgments to uphold the HC rulings and holds the clubs liable to tax on such interest income like any other income from other sources

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SC to examine Sec.263 scope in 'limited scrutiny' case involving Rs.57 Cr. share-premium

•SC issued notice on Assessee's Special Leave Petition against the Kerala HC judgment upholding Cochin ITAT ruling on invocation of revisionary powers under Section 263 in a 'limited scrutiny' case for examining the applicability of Section 56(2)(viib)/68 on share premium in the issue of Optionally Convertible Cumulative Preference Shares (OPCCPS);

•CIT had issued Section 263 notice for AY 2014-15 on the ground that the matter of issue price of OPCCPS of face value of Rs.3 Cr. along with a premium of Rs.57 Cr. issued to one of the directors of the Assessee which was not examined from the lens of Section 56(2)(viib)/ 68 by the AO;

• ITAT held that even in case of limited scrutiny, the AO was duty bound to make a prima facie inquiry as to whether there are any other items which requires examination and in the event, the potential escapement of income exceeded Rs.10 Lac (threshold for comprehensive scrutiny under CBDT Instruction No. 7/2014 dt. Sep 9, 2014), AO ought to seek the permission of the Pr. CIT/ DIT to convert a 'limited scrutiny' to a 'complete scrutiny'; In appeal against ITAT order upholding the revisionary order, HC juxtaposed the Circulars/Instructions (providing guidelines on limited scrutiny) in the light of

•Section 263 and held that the Circulars/Instructions are not applicable vis-à-vis the power under Section 263; Also held that the CIT has supervisory jurisdiction not only on a proceeding dropped or conducted by the AO but also on the legality of a proceeding resulting in an assessment; Thus, held that CIT certainly had the jurisdiction to find out the omission in the assessment order passed by the AO pursuant to limited scrutiny notice

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Delhi HC stays Mauritius-based Fund's reassessment proceedings stemming from wrong factual assumptions

•Delhi HC stayed reassessment proceedings against Mauritius based Banyan Real Estate Fund (Assessee) on the grounds of wrong assumption of facts and prima facie incorrect allegations left uncorrected by the Revenue despite Assessee's submission;

•Revenue initiated the reassessment proceedings against the Assessee for AY 2016-17 alleging income escaping assessment on two counts
(i) Foreign remittance of Rs.45.69 Cr. And
(ii) Share acquisition of Rs.10.18 Cr.;

Assessee objects to the reassessment proceedings for serious errors committed by the Revenue in appreciating the facts as Rs.45.69 Cr was received cumulatively for sale of shares and no remittance was made and secondly, submitted that the share acquisition is nothing but the value of shares of Rs.10.18 Cr received on amalgamation scheme approved by the co-ordinate bench which ought not be considered as transfer under Section 47(vii);

HC observed that the reassessment stems from the erroneous assumption of jurisdiction on the ground that Assessee did not file the return which was actually filed along with disclosure of exempt long-term capital gains claimed on sale of shares;

•HC took note of Assessee's contention that the Revenue for the first time brought the issue of claim under India-Mauritius DTAA in Section 148A(d) order and alleged that Assessee failed to furnish: (i) the audited balance sheets of Indian entities, whose shares were sold in the AY in issue and (ii) details concerning Directors, shareholding patterns of the Indian entities, Minutes of Board Meeting and valuation report as per Section 50 read with rule 11UA; HC observed that this issue was not raised in the notice issued under Section 148A(b); Also notes that the benefit of India-Mauritius DTAA was denied to the Assessee for an earlier year which is currently sub judice;

•Thus, issued notice, granted time for completion of pleadings. Adjourned for Feb 12, 2024

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SC grants interim stay on prosecution of DMK MP for delayed ITR-filing

•SC granted interim stay on prosecution initiated against Mr. D.M. Kathir Anand (Assessee, DMK MP representing Vellore Lok Sabha constitutency) based on the submission that intention to evade tax is absent since the return was filed along with tax and interest well before passing of the assessment order;

•Assessee also submitted that the return furnished by him was also accepted by the Revenue and contended that despite this factual matrix, the Revenue accorded sanction for prosecution with an observation that there is a statutory presumption against him under Section 278E;

•The Assessee challenged the Madras HC judgment upholding the initiation of criminal prosecution under Section 276CC due to failure of the Assessee to file return of income and pay self-assessment tax within the time stipulated under Section 139(1);

•HC observed that the term 'wilfully fails to furnish in due time' as contained in Section 276CC takes within its fold the due time that has been fixed under Section 139(1) and not extended time provided under Section 139(4), therefore, mere filing of return during the extended time will not come to the aid of the Assessee to escape from criminal prosecution;

•HC also rejected Assessee's contention of initiation of criminal proceedings in absence of 'wilfulness' is invalid and observed that Section 278E clearly brings a statutory presumption with regard to the existence of a culpable mental state;

•Remarked that the issue as to whether there was wilfulness in not filing the returns timely and not paying tax on time is only a matter of fact which can be ascertained through appreciation of evidences during trial and cannot be decided while exercising jurisdiction under Section 482 of Cr.P.C.; After recording Assessee's submission.

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Delhi HC stays order cancelling Sec.12A registration of Centre for Policy Research

Delhi HC granted interim stay on order cancelling Section 12A registration of Centre for Policy Research (Assessee) with retrospective effect; Assessee assailed the order passed by the Revenue under Section 12A read with Section 12AA and Section 12AB(4) on the following grounds:

(i) Assessee not confronted with survey report

(ii) cancellation under Section 12AB(4)(ii) can only be for previous year in which violation was noticed, and for subsequent previous years,

(iii) persons whose statements were relied upon were not allowed to be cross-examined by the Assessee and

(iv) no personal hearing as mandated under Section 12AB(4) was provided; HC notes that Revenue admits to non-furnishing of survey report and denial of request for cross-examination; HC considers Assessee's argument that registration could not have been cancelled for years earlier than the period commencing from May 28, 2021 i.e. the date on which registration was granted;

HC further opined that balance of convenience is in favour of the Assessee as cancelling registration would disable Assessee from receiving contributions which is necessary for its survival; HC remarks that denial of interim relief would be detrimental to Assessee in terms of inability to accept donation leading to derailment of its programmes; Accordingly, grants interim stay and further examination of the matter by the Court; Thus, issued notice and posted the matter for hearing on Nov 30, 2023; Meanwhile directs the Assessee to maintain proper account of the contributions received by it, furnish details of the mode and manner in which the contributions received are spent in an affidavit accompanied by a certificate of the statutory auditor.



COMPANIES ACT, 2013

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COMPANIES ACT, 2013

Companies (Incorporation) Second Amendment Rules, 2023

The Ministry of Corporate Affairs (MCA) has amended the Companies (Incorporation) Second Amendment Rules, 2023. Pursuant to the amendment Form RD-1 has been substituted.

These amendments come into force on the date of their publication in the Official Gazette and is attached here for reference

https://www.mca.gov.in/bin/dms/getdocument?mds=jYQ0wTBvMQwmTluXHncG0A%253D%253D&type=open

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LLP ACT, 2008

Introduction of Amnesty scheme for LLP's

The Ministry of Corporate Affairs (MCA) has introduced an amnesty scheme thereby providing an opportunity, to those LLPs who could not file their Form-3, Form-4 and Form-11 within due date, to file said forms and update their filings and details in master data without additional fees.

The aforementioned forms shall be available for filing from 01.09.2023 onwards till 30.11.2023 (both dates inclusive).

The official notification is attached herewith:
https://www.mca.gov.in/bin/dms/getdocument?mds=Zt6foWsl%252BABAbU7Pid9NGg%253D%253D&type=open

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SEBI ACT , 1992

SEBI reduces time limit for AIF's and VC's to invest overseas to 4 months

Securities Exchange Board of India ("SEBI") 2023, through circular dated August 04, 2023, has reduced the validity period of approval given to Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs) for making overseas investment has been reduced to four months from six months.

The official Notification is attached here for reference:

https://www.sebi.gov.in/legal/circulars/aug-2023/validity-period-of-approval-granted-by-sebi-to-alternative-investment-funds-aifs-and-venture-capital-funds-vcfs-for-overseas-invest



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
CBDT	Central Board of Direct Taxes
ITAT	Income Tax Appellate Tribunal
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
DTAA	Double Taxation Avoidance Agreement
FEMA	Foreign Exchange Management Act
CARO	Companies Auditor's Report Order
NBFCs	Non-Banking Finance Companies
HFCs	Housing Finance Companies



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WHY ACUPRO?

FEATURES

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Assurance, Accounting & GAAP Advisory

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Thank You!

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