

THE BUZZ

JUNE 2023

ACUPRO CONSULTING

NEWSLETTER CONTRIBUTORS

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GOODS AND SERVICES TAX



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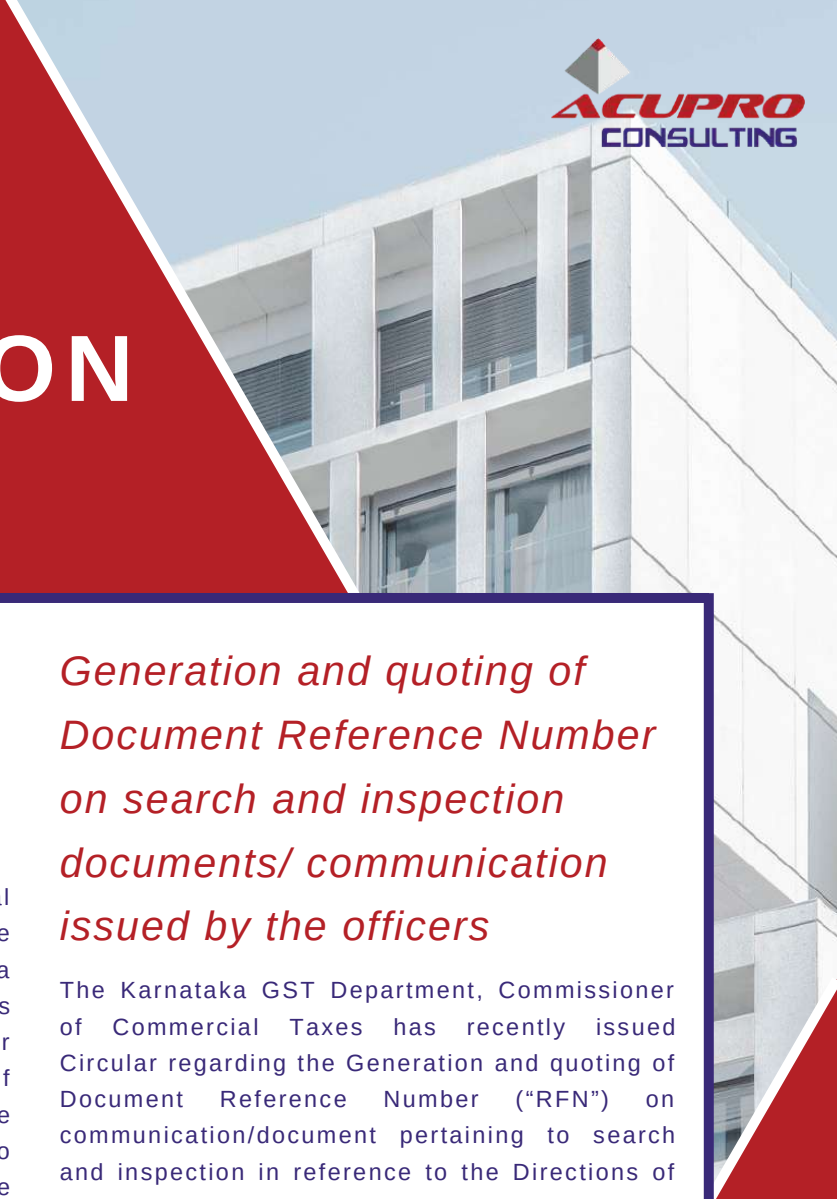
NOTIFICATION



Delhi Govt notifies Special Procedure for Revoking Cancelled GST Registration

The Lieutenant Governor of the National Capital Territory of Delhi, based on the recommendations of the Council, has issued a notification stating that registered individuals whose registrations were cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act on or before December 31, 2022, and who has failed to apply for revocation within the specified time period in section 30 of the Act, shall follow a special procedure to revoke the cancellation of their registration: –

(a) The registered person can apply for revocation of cancellation of such registration up to the 30th day of June, 2023,
(b) The application for revocation shall be filed only after furnishing the returns due up to the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of the such returns,
(c) No further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases.

(Notification No. F. 3 (01)/Fin.(Exp-I)/2023-24/DS-I/543)

Generation and quoting of Document Reference Number on search and inspection documents/ communication issued by the officers

The Karnataka GST Department, Commissioner of Commercial Taxes has recently issued Circular regarding the Generation and quoting of Document Reference Number (“RFN”) on communication/document pertaining to search and inspection in reference to the Directions of the Hon'ble Supreme Court in the case of Pradeep Goyal Vs Union of India, dated July 18, 2022.

The GST portal generates various documents, such as notices/ orders, etc. which are communicated to the taxpayer. Most of the documents have a system-generated Document Identification Number/ Reference Number. These documents are already traceable in the portal, mostly on the taxpayer's dashboard.

Under this now, the tax officer can generate a Reference Number for the physically generated document to be sent to taxpayers or other concerned persons. This facility also enables taxpayer or concerned person to validate the authenticity of that document by verifying the Reference Number generated in the GST Common Portal.

(Circular No. GST-02/2023-24)

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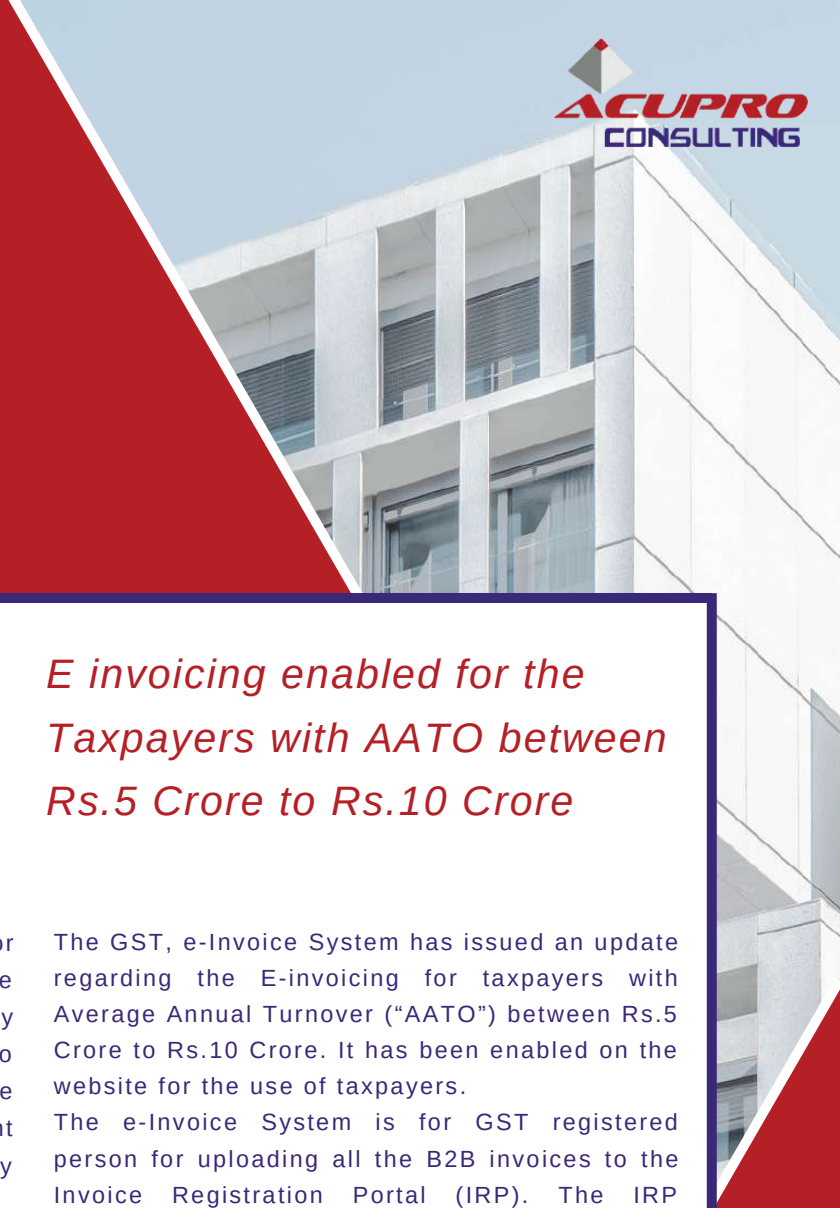

UPDATES

Mandatory Applicability of 2 Factor Authentication for all taxpayers with AATO above 100cr, from July 15, 2023

From July 15,2023, 2- Factor Authentication for e-Way Bill and e-Invoice System will become applicable mandatorily to enhance the security of e-Way Bill/e-Invoice System. In addition to username and password, OTP will also be authenticated for login. There are 3 different ways of receiving the OTP. You may enter any of the OTP and login to system.

E invoicing enabled for the Taxpayers with AATO between Rs.5 Crore to Rs.10 Crore

The GST, e-Invoice System has issued an update regarding the E-invoicing for taxpayers with Average Annual Turnover (“AATO”) between Rs.5 Crore to Rs.10 Crore. It has been enabled on the website for the use of taxpayers.

The e-Invoice System is for GST registered person for uploading all the B2B invoices to the Invoice Registration Portal (IRP). The IRP generates and returns a unique Invoice Reference Number (IRN), digitally signed e-invoice and QR code to the user.

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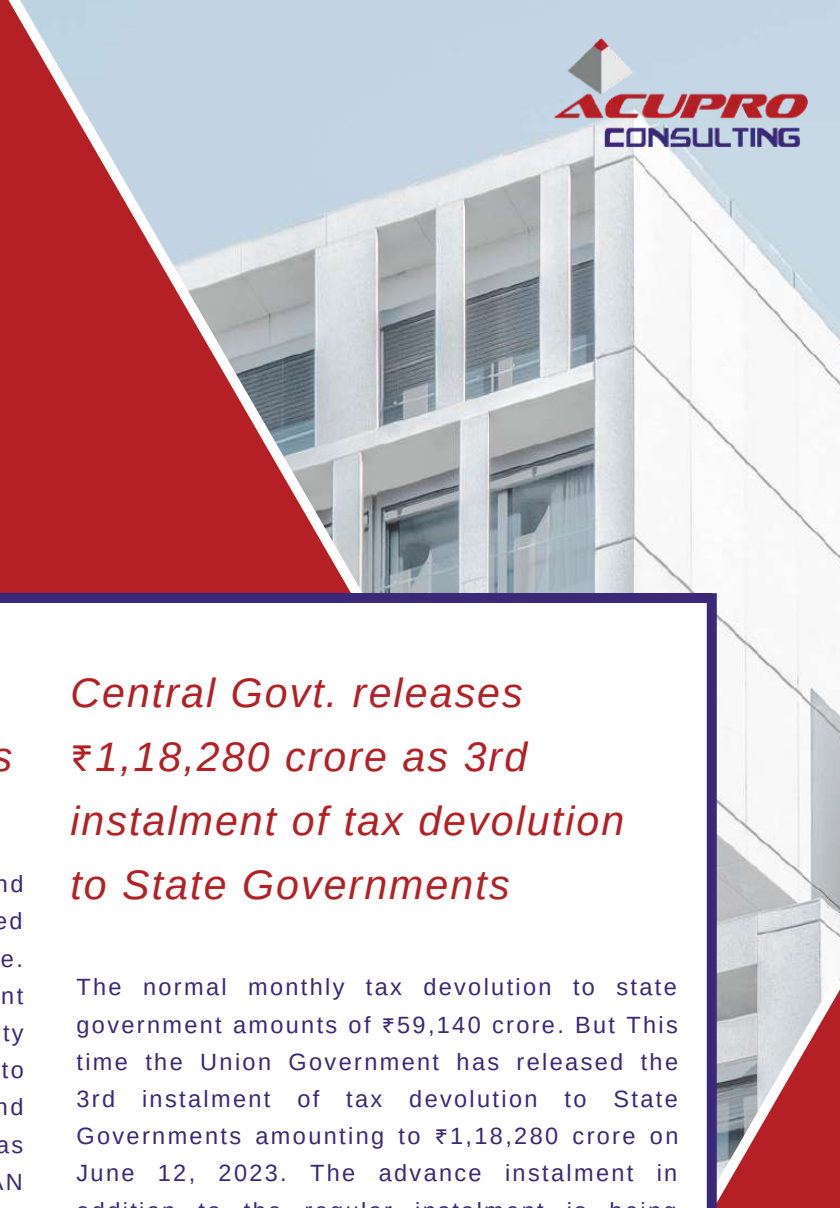

NEWS

GST evasion worth ₹30,000 Crore found across 16 States busted

A recent extensive operation by the Goods and Services Tax (GST) authorities has revealed tax evasion amounting to ₹30,000 crore. Various beneficiaries of various government schemes such as PM Kisan and social security programmes, had their identities misused to establish 4,000 fictitious companies and 16,000 fraudulent GST registrations. This has been done using approximately 18,000 PAN and Aadhaar cards.

Finance Minister asks tax officers to strengthen GST registration process further by using technology

Recently, Tax officers have identified 11,140 fake GST registration and initiated action against fraudsters. The Finance Minister of India instructed that the GST registration process should be further strengthened using technology to curb entry of such fake entities in GST ecosystem.

Central Govt. releases ₹1,18,280 crore as 3rd instalment of tax devolution to State Governments

The normal monthly tax devolution to state government amounts of ₹59,140 crore. But This time the Union Government has released the 3rd instalment of tax devolution to State Governments amounting to ₹1,18,280 crore on June 12, 2023. The advance instalment in addition to the regular instalment is being released to States to enable them to speed up capital spending, finance their development/ welfare related expenditure.

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CASE LAWS



Holding company rendering services under an agreement, does not make the service provider an intermediary

Facts:

M/s. McDonald's India Pvt. Ltd. ("the Petitioner"), a subsidiary of McDonald's Corporation, USA, entered into agreements with its foreign counterpart, including a Master License Agreement (MLA) and Service Agreement. Under the MLA, the Petitioner had non-exclusive rights to certain intellectual property and entered into franchisee agreements in India. The Petitioner filed a refund claim for tax paid on inputs, considering the services rendered under the Service Agreement as 'zero-rated supplies'. However, the Adjudicating Authority issued a Show Cause Notice proposing to reject the refund claim. The Petitioner's filed a response but refund claim was rejected.

Issues:

The Petitioner, who was dissatisfied with the decision, filed an appeal with the Appellate Authority, but their refund claim was once again rejected. Being aggrieved, the Petitioner has filed the petition in High Court to determine whether the Petitioner can be classified as an intermediary under IGST Act regarding the services provided under the Service Agreement.

Decisions:

The Hon'ble Delhi High Court, has overturned the order that denied the refund of tax paid on inputs.

The Court found that the petitioner was providing services to its holding company, rather than acting as a mediator between the holding company and franchisees in India. It was held that the Appellate Authority could not raise additional grounds to reject the refund claim on its own in an appeal filed by the assessee.

Fabrication of firm details led to the denial of anticipatory bail

Facts:

Sheetal Mittal and Padam ("the Petitioner"), engaged in trade and business in Delhi, sought bail in a case where they were accused of non-payment of dues. They argued that the matter was of a civil nature and not related to cheating. However, the State of Rajasthan opposed the bail application, stating that the accused had submitted fabricated documents during the investigation, including a forged bill. The investigation revealed that the accused had duped the complainants and caused them a loss of approximately three crores by illegally selling the goods. The High Court of Rajasthan refused to grant anticipatory bail, stating that the ongoing investigation and the custodial investigation could reveal additional facts.

Issues:

Being Aggrieved by the decision of High court, the Petitioner filed a Special Leave to Petition before the Hon'ble Supreme court of India, on whether the fabrication of documents can be a valid reason for denying anticipatory bail.

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CASE LAWS



Decision:

The Hon'ble Supreme Court held that the anticipatory bail cannot be granted when a taxpayer fabricates firm details, such as the firm name and GST number, which were found to be non-existent. Further, based on High Court's observation, no case for anticipatory bail was established. As a result, the Supreme Court dismissed the Special Leave Petition.

Revenue Department cannot attach cash-credit account as it is not classified as a debt

Facts:

M/s. SR Constructions (“the Petitioner”), a construction company, engaged in a hotel construction project with M/s Hotel Polo Pvt. Ltd. Company received goods and services for the project and paid the corresponding GST. However, the Revenue Department issued a Show Cause Notice claiming that the company had wrongly availed Input Tax Credit (ITC) in violation to the provisions of the CGST Act. The Petitioner responded to the Show Cause Notice (SCN), but the adjudicating authority upheld the demand. Aggrieved by this the Petitioner appealed to the Appellate authority. However, the Appellate authority had also confirmed the demand.

Issues:

Being Aggrieved by the Order the Petitioner filed an appeal before the Hon’ble Tripura High Court. Whether the Petitioner is entitled to avail ITC on the goods and services utilized for providing construction services to hotel building?

Decision:

The Hon'ble Tripura High Court held that the Petitioner, was providing work contract services to the hotel owner and fulfilled all the conditions of the works contract. Further observed that the Petitioner was not using the goods and services for their own purposes but using for the construction services provided to the building owner. Therefore, the court concluded that the Petitioner was entitled to claim Input Tax Credit (ITC) on the goods and services utilized for taxable work contract services. Consequently, the court set aside the Order.

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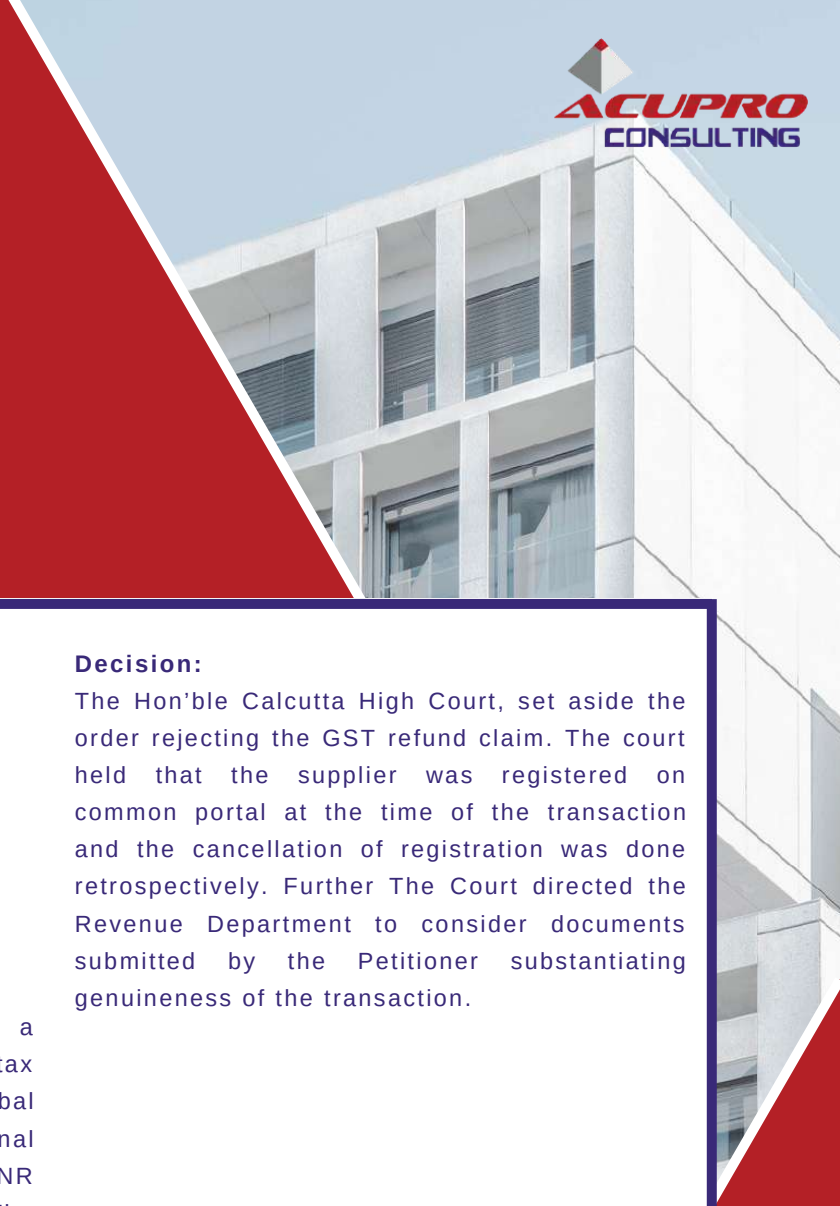
CASE LAWS



Recipient's ITC not to be denied in case supplier becomes non-existent or his registration cancelled retrospectively

Facts:

M/s. Gargo Traders ("the Petitioner"), a registered taxable person, claimed input tax credit (ITC) based on supplies from M/s. Global Bitumen and a debit note from M/s. International Transport Corporation, amounting to INR 13,04,586/- in the financial year 2018-19. The Revenue Department discovered that the supplier was non-existent, and their GST registration was cancelled retrospectively, covering the transaction date with the Petitioner. Consequently, the Revenue Department issued an Order denying ITC benefits, imposing penalties and interest under the CGST Act.

Issues:

Being Aggrieved by the order, The Petitioner filed a writ before the High Court, submitting a supplementary affidavit with supporting documents to refute the allegations. The Revenue Department contended that the transaction with the supplier was invalid due to their retrospective registration cancellation, making the refund inadmissible. The question is whether the Petitioner can avail input tax credit (ITC) when the supplier's registration is cancelled retrospectively.

Decision:

The Hon'ble Calcutta High Court, set aside the order rejecting the GST refund claim. The court held that the supplier was registered on common portal at the time of the transaction and the cancellation of registration was done retrospectively. Further The Court directed the Revenue Department to consider documents submitted by the Petitioner substantiating genuineness of the transaction.

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INCOME TAX

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NOTIFICATIONS

CBDT notifies Canada-based '2743298 Ontario Limited' for Sec.10(23FE) exemption

The specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 subject to the fulfilment of the following conditions, namely:

i) The Assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income.

ii) The Assessee shall furnish along with such return a certificate in Form No. 10BBC in respect of compliance.

iii) The Assessee shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB.

iv) The Assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act.

v) The Assessee shall continue to be regulated under the laws of the Government of the Province of Ontario, or the federal laws of the Government of Canada, or both;

vi) The Assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;

vii) The earnings and assets of the Assessee should be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (vi) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person; barring any payment made to creditors or depositors for loan or borrowing.

viii) The Assessee shall not have any loans or borrowings, , directly or indirectly, for the purposes of making investment in India;

ix) The Assessee shall not participate in the day to day operations of investee but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee.

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NOTIFICATIONS

This notification shall render the Assessee in eligible for the tax exemption.

(Source: Notification No. 25/2023 dated May 10, 2023

CBDT notifies amendment in Rule for Sec.80G provisional approval

In case of an application made under clause (iv) of the First proviso to sub-section (5) of section 80G of the Act, the provisional approval shall be effective from the assessment year relevant to the previous year in which such application is made.

(Source: Notification 34/2023 dated May 30, 2023)

CBDT revises monetary limits for condoning delay in claiming refunds or loss carry forward

Applications for condonation of delay in filing returns of Income claiming refund and claiming carry forward of loss and set off thereof under section 119(2)(b) of the Income -tax Act,1961

i)The Principal Commissioner of Income Tax shall be vested with the powers of acceptance/rejections of such applications/claims if the amount of such claims is not more than Rs. 50 Lakhs for any one Assessment year.

ii)The Chief Commissioner of Income Tax shall be vested with the powers of acceptance/rejections of such applications/claims if the amount of such claims exceeds Rs. 50 Lakhs but is not more than Rs. 2 crores for any one Assessment year

iii)The Principal Chief Commissioner of Income Tax shall be vested with the powers of acceptance/rejections of such applications/claims if the amount of such claims exceeds Rs. 0.02 crores but is not more than Rs. 0.03 crores for any one Assessment year.

iv)The applications/claims for amounts exceeding Rs. 3 crores shall be considered by the board.

The above revised monetary limits shall be applicable to the applications/claims filed on and after 01 June 2023.

(Source: Circular 07/2023 dated May 31, 2023)

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NOTIFICATIONS

CBDT incorporates 'majority rule' to address split in advance rulings

•The Board for Advance Rulings shall, after considering the response as referred to in clause (iii), and after providing an opportunity of being heard (through video conferencing or video telephony) under subsection (5) of section 245R of the Act on the request of the applicant, subject to the provisions of clause (v), if applicable, pronounce the advance ruling on the question specified in the application and send a copy thereof to the applicant and the authority to whom the reference has been made;

•if the Members of a Board for Advance Rulings differ in opinion on any point or points, the Board for Advance Rulings shall refer such point or points to the Principal Chief Commissioner of Income-tax (International Taxation), who shall nominate one Member from any other Board for Advance Rulings and such point or points shall be decided according to the opinion of the majority of the Members.

(Source: Notification 38/2023 dated June 12, 2023)

CBDT amends IT Rules for new tax regimes, introduces Form 10-IEA

•CBDT restricted depreciation to 40% of the blocks of assets for the persons opting to get taxed under section 115BAC or 115BAE .

•Further introduces Rule 21AGA and Form 10-IEA (applicable AY 2024-25 onwards) to opt for or withdraw from the new tax regime for the persons having income from business or profession;

•The rule also provides that the persons not having income from business or profession can opt for new regime through the return of income furnished under Section 139(1); DGIT (Systems) is required to specify the digital procedure for furnishing Form 10-IEA

(Source: Circular 43/2023 dated June 21, 2023

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LITIGATIONS

Delhi HC stays reassessment proceedings against dissolved company - CHANDRA PRAKASH SRIVASTAVA

Delhi HC granted stay on reassessment proceedings initiated against a company dissolved by the NCLT under Section 59 of the Insolvency and Bankruptcy Code .It Observed that the Revenue was already informed about the dissolution of the company by the liquidator as well as the Petitioner (Ex-Director of Dissolved Company);

Before HC, the Petitioner challenged the notice under Section 148 and the order passed under Section 148A(d) (both dt. Jul 28, 2022) on the ground that the impugned notice and order is addressed to the company which stood dissolved by the NCLT;

HC took note of NCLT order dt. Jan 28, 2021 under Section 59 of IBC and the intimation sent by the liquidator to the ACIT on Feb 25, 2021;

Noted that the Petitioner filed two responses (on Jul 28, 2021 and Jun 6, 2022) with the Revenue in respect of the reassessment notice and while the first response failed to mention the fact of company's dissolution, the second response mentioned the same;

HC found that the issue requires further examination, thus, lists the matter for hearing on Nov 7, 2023

Delhi HC stays remand for additional evidence on 'proof of service' of Sec.2(35) notice - Trendsetters Propmart Pvt. Ltd.

Delhi HC admitted Criminal Revision Petition challenging Sessions Court's order remanding the matter for leading additional evidence by the Revenue for service of notice for designating director as 'principal officer' while the Sessions Court acquitted both company and its director from conviction under Section 276B read with Section 278B; For AY 2010-11,

Revenue observed that the Assessee had failed to deposit the taxes deducted at source, thus, launched prosecution against the company and its director by issuing notice under Section 279;

The Trial Court found the company and its director guilty, imposed Rs.1 Lac fine on the company and subjected the director to six months rigorous imprisonment and fine of Rs.25,000;

The Sessions Court considered Assessee's contention that notice under Section 2(35) designating the director of the company as the principal officer was not served upon the company and allowed the company's appeal in view of absence of proof of service of notice under Section 2(35);

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LITIGATIONS

The Sessions Court, however, noted that the company had admitted the service of notice under Section 279 wherein the fact of designating the director as principal officer was mentioned and the same was not rebutted by the Assessee;

Accordingly, Sessions Court hold that additional evidence is required to be led by the Revenue to prove the service of notice upon the company;
HC considered Assessee's submission that Sessions Court's conclusion was an erroneous appreciation of the law and of the mandatory requirement of service of notice under Section 2(35); Thus, HC issues notice to the Revenue and stays the remand proceedings before the Trial Court till the date of next hearing i.e. Sep 18, 2023

Karnataka High Court grants interim stay on reassessment proceedings, Instakart argues 'no tangible material'

Karnataka HC granted interim stay on reassessment proceedings against Instakart Services Pvt. Ltd. for AY 2019-20, initiated for verification of certain expenditure where similar expenditure was subjected to disallowance in earlier years;

Assessee submitted that order under 148A(d) specifically notes that the Revenue had taken note of disallowance of similar expenditure for AYs 2016-17 to 2018-19 and 2021-22; Also submitted that the expenditure/disallowance cannot be construed as 'information' for the purpose of reopening proceedings under Section 148;

The Assessee contended that there has to be tangible material for reopening assessment and reassessment proceedings cannot be a substitute for the regular assessment proceedings as in the present case no regular assessment was undertaken;

Further, the Assessee submitted that no approval under Section 148A(a) was obtained before initiating the enquiry;

HC issues notice to the Revenue and grants liberty to seek for modification of the interim order upon filing of the statement of objections.

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LITIGATIONS

Delhi High Court entertains appeal seeking to factually distinguish SC's Apex Labs ruling Jun 13, 2023 - BOSTON SCIENTIFIC INDIA PRIVATE LIMITED

Delhi HC entertained an appeal by Boston Scientific against Delhi ITAT order disallowing the sums paid to various Specialists/ Doctors pursuant to consulting and proctorship agreements under Section 37(1);

ITAT followed SC ruling in Apex Labs and observed, “The deduction of TDS doesn’t give any credence or legalize the payments which are in contravention with the law laid down by the Hon’ble Apex Court.”;

Before HC, the Assessee submitted that Apex Labs ruling is factually distinguishable as the expenditure incurred was genuine and meant for conducting live demonstration and render consultancy and advisory services;

Assessee also submitted that Apex Labs ruling dealt only with Clauses 6.8.1 (a) to (d) of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 whereas the present case falls under Clause 6.8.1(g) of the said Rules;

J•HC noted ITAT's conclusion that the consulting and proctorship agreement was a camouflage, for extending freebies whereas Assessee submits that this aspect was never put to the Assessee, thus, no material evidence could be placed on record;

Assessee, therefore, also preferred an application for taking additional evidence on record along with the appeal;

HC issued notice on the application along with the appeal, granted time for completion of pleadings and listed the matter for hearing on Sep 14, 2023.

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COMPANIES ACT, 2013



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COMPANIES ACT, 2013

Companies (Accounts) Second Amendment Rules, 2023

The Ministry of Corporate Affairs (MCA) has amended the Companies (Accounts) Second Amendment Rules, 2023. Pursuant to the amendment Form CSR-2 for the financial year 2022-2023, must be filed separately on or before March 31, 2024 after filing the specified forms AOC-4 or AOC-4-NBFC (Ind AS) or AOC-4 XBRL.

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=CbgxW1sJmKtaGuYxShWEfA%253D%253D&type=open

Relaxation in paying additional fees in case of delay filing of DPT-3 for FY ended on 31st March, 2023

The Ministry of Corporate Affairs (MCA) has extended the last date of filing e-Form DPT-3 till 31st July, 2023 for the FY 2023.

The official circular is attached here for reference:

https://www.mca.gov.in/bin/dms/getdocument?mds=2wjQ2Yt5XCZLAoGRr2jfOQ%253D%253D&type=open

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LLP ACT, 2008

Limited Liability Partnership (Amendment) Rules, 2023

The Ministry of Corporate Affairs (MCA) has amended the Limited Liability Partnership (Amendment) Rules, 2023. Pursuant to the amendment, LLP Form 3 which is filed for "Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein" 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=iiQZzbSNrcRVS%252F9wRBqOew%253D%253D&type=open

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SEBI ACT, 1992

Standardised approach tovaluation of investmentportfolio of Alternative Investment Funds (AIFs)

Securities Exchange Board of India (“SEBI”) 2023, has amended SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”).

Pursuant to the above amendment, SEBI has standardized the approach to valuation of portfolio investment.

In addition to above, the amendment also provides:

i) Responsibilities of manager of Alternative Investment Fund (“AIF”) with regard to valuation;

ii)Eligibility criteria for independent valuer; and

iii)Reporting of valuation of portfolio investment to performance benchmarking agencies.

The official Notification is attached here for reference:

https://www.sebi.gov.in/legal/circulars/jun-2023/standardised-approach-to-valuation-of-investment-portfolio-of-alternative-investment-funds-aifs-_72924.html

Modalities for launchingLiquidation Scheme and for distributing the investments of Alternative Investment Funds (AIFs) in-specie

In a much needed relief to the AIFs, SEBI has launched the modalities of liquidation scheme.

SEBI has amended AIF Regulations by inserting new definitions and laying down the process to be followed by AIFs in respect of investments of their schemes.

AIFs would be required to obtain approval of 75% investors by value of their investment in original scheme.

Manger of AIF would be required to submit a compliance report on SEBI intermediary portal.

The official Notification is attached here for reference:

https://www.sebi.gov.in/legal/circulars/jun-2023/modalities-for-launching-liquidation-scheme-and-for-distributing-the-investments-of-alternative-investment-funds-aifs-in-specie_72922.html

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SEBI ACT, 1992

Issuance of units of AIFs in dematerialised form

SEBI has amended AIF Regulations and has made it mandatory for AIFs to dematerialize their units. SEBI has specified following:

Particulars	Schemes of AIFs with corpus ≥ Rs 500 Crore	Schemes of AIFs with corpus < Rs 500 Crore
Dematerialisation of all the units issued	Latest by October 31, 2023	Latest by April 30, 2024
Issuance of units only in dematerialised form	November 01, 2023 onwards	May 01, 2024 onwards

Manger of AIF would be required to submit a compliance report on SEBI intermediary portal.

The official Notification is attached here for reference:

https://www.sebi.gov.in/legal/circulars/jun-2023/issuance-of-units-of-aifs-in-dematerialised-form_72921.html



APENDIX

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
CARO	Companies Auditor's Report Order
NBFCs	Non-Banking Finance Companies
HFCs	Housing Finance Companies

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FEATURES

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3 Dynamic partners

Team of Big 4 Alumnus

Team of 100+ Professionals

Served 500+ MNCs

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Right Blend Of Professionals

Industry wise Expertise

SERVICES

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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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