iCMA

November, 2024

TAX Bulletin

Volume - 172

17.11.2024

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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VISION STATEMENT

“The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.”

MISSION STATEMENT

“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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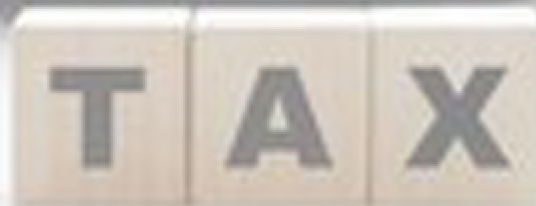

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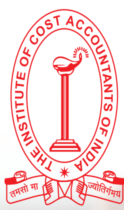

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Certificate Courses Offered by the Tax Research Department

1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
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5. Certificate Course on Filing of Returns (CCFOF)
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Admission Link - ***https://eicmai.in/advscc/DelegatesApplicationForm-new.aspx***

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
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- Members of the Institute of Cost Accountants of India
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- B.Com/ BBA pursuing or completed
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Modalities

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

For enquiry about courses, mail at: ***trd@icmai.in***

**18% GST is applicable on both Course fee and Exam fee*

Behind every successful business decision, there is always a CMA

Chairman's Message

CMA Rajendra Singh Bhati

Chairman Direct Taxation Committee

The end of November has some important direct tax compliances to be followed. I request the readers to kindly take a note of it as they discharge their professional duties. The compliances include:

- Return of income for the assessment year 2024-25 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
- Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2023-24
- Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2023-24 (Form No. 64)
- Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2023-24) to units' holders
- Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA
- Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2023-24. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A
- Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction]
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is November 30, 2024).
- Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager. (if the assessee is required to submit return of income on November 30, 2024).

The Pre-budget memorandum 2025-26 is also being prepared for submission to the Government on 19.11.2024.

Admissions to the Taxation Courses has also commenced. The details can be reached at: https://eicmai.in/OCMAC/TRD/TRD.aspx. The courses are:

(i) Certificate Course on GST (Batch – 17)

(ii) Advanced Certificate Course on GST (Batch – 13)

(iii) Advanced Course on GST Audit and Assessment Procedure (Batch – 10)

(iv) Certificate Course on International Trade (Batch – 7)

(v) Certificate Course on TDS (Batch – 13)

(vi) Certificate Course on Filing of Returns (Batch – 13) and

(vii) Advanced Course on Income Tax Assessment & Appeals (Batch – 10)

Tax Bulletins are published regularly and all other activities are being carried on seamlessly by the department.

CMA Rajendra Singh Bhati

Chairman – Direct Taxation Committee

The Institute of Cost Accountants of India

17.11.2024

Chairman's Message

CMA Dr. Ashish P. Thatte

Chairman Indirect Taxation Committee

Come November, 2024 some important changes have been brought about this month had been:

- Procedural guidelines and various clarifications have been issued to assist the taxpayers in availing benefits under the GST Amnesty Scheme which has become effective from 1 November 2024.
- The Supreme Court has reversed its earlier decision and held that the Directorate of Revenue Intelligence officers are 'proper officers' and can issue show cause notices under the Customs law.
- Clarification has been issued in respect of reporting requirements for Indian companies issuing ESOPs to overseas employees, emphasizing the importance of timely filing and valuation.
- Kerala HC holds Rule 96(10) ultra vires while affirming exporters' right to unconditional IGST refunds also
- Bombay HC remands matter to test the ITC eligibility for LNG pipelines basis the 'functionality test'. The Bombay HC has set aside rulings by the AAR and AAAR, Maharashtra, which denied the ITC on a pipeline used for supplying LNG to the petitioner's re-gasification unit, based on the definition of 'plant and machinery' under Section 17.

On the part of the department, admissions to the Taxation Courses has also commenced. The details can be reached at: https://eicmai.in/OCMAC/TRD/TRD.aspx. The courses are:

(i) Certificate Course on GST (Batch – 17)

(ii) Advanced Certificate Course on GST (Batch – 13)

(iii) Advanced Course on GST Audit and Assessment Procedure (Batch – 10)

(iv) Certificate Course on International Trade (Batch – 7)

(v) Certificate Course on TDS (Batch – 13)

(vi) Certificate Course on Filing of Returns (Batch – 13) and

(vii) Advanced Course on Income Tax Assessment & Appeals (Batch – 10)

The Pre-budget memorandum 2025-26 is also being prepared for submission to the Government on 19.11.2024.

The classes for GST Course for college and university students have commenced at

- Saradha Gangadharan College, Puducherry on 09.11.2024 with 56 students
- Government Ramnarayan Chellaram College of Commerce & Management, Bengaluru on 11.11.2024 with 88 students and
- Umeshchandra College (4th batch), Kolkata on 18.11.2024 with 66 students

The publication of Tax Bulletin and conduct of quiz is done regularly. A webinar has been conducted on the topic, "Waiver Scheme under GST [Sec 128A]" and the faculty for the session had been CMA Vishwanath Bhat.

I wish the best regards to the department and the Resource Persons for their efforts.

Ashish Thatte

CMA (Dr) Ashish P Thatte

Chairman – Indirect Taxation Committee

The Institute of Cost Accountants of India

17.11.2024

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in /trd.dd2@icmai.in

Is Compensation received by an Allotee of a house from Builder as per order of Consumer Forum or RERA is Taxable under Income Tax Act?

CMA Niranjan Swain

Advocate & Tax Consultant

In many cases the Allotee booked a house / flat and receives compensation as per order of Consumer Forum under Consumer Protection Act 1986 / 2019 or Authority under Real Estate (Regulation and Development) Act, 2016 (in short "RERA") in cases the Flat could not be delivered in schedule time and the amount refunded along with compensation calculated as the applicable bank rate. In case of non-delivery of flat in schedule time and cancellation of the flat due to non-completion or deficiency in builders contractual obligation as per builder- buyer agreement, the deposit amount refunded along with the interest and compensation. The Author discussed its taxablilty under Income Tax Act when the matter is highly disputed by the Revenue authorities and number of contradictory decisions are also delivered by different Appellate Forums. The article does not cover a situation where interest in nature of compensation given by builder for delay in delivery and possession of the house which may be reported in a separate article in future. The views expressed by the author is not any advice or legal opinion to be acted by the readers. The readers should read this article subject to declaimer given at the end.

1. Back Ground under Provisions of RERA Act and Consumer Protection Act:

1.1. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment, if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. Also, the proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

1.2. It may be noted that, the power to direct refund of the amount and to compensate a consumer for the deficiency in not delivering the apartment as per the terms of Agreement is within the jurisdiction of the Consumer Courts. Under Section 14 of the Consumer Protection Act 1986 / 2019, if the Commission is satisfied …that any of the allegations contained in the complaint about the services are proved, it shall issue an order

to the opposite party directing him to, return to the complainant the price or as the case may be, the charges paid by the complainant. 'Deficiency' is defined under Section 2(g) to include any shortcoming or inadequacy in performance which has been undertaken by a person in pursuance of a contract or otherwise relating to any service. It is clear from the statutory position that the Commission is empowered to direct refund of the price or the charges paid by the consumer.

2. **Importance of Builder Buyer Agreement for Homebuyers:** In a real estate transaction (buying and selling of flat), the purchaser approached the Builder for purchase of the flat. It followed by Allotment of Flat (issue of Allotment Letter) and subsequently a Buyer-Builder agreement / agreement to sell of Flat is executed. Therefore, a contract is a legal document between a builder and a buyer is known as a builder-buyer agreement. It outlines the circumstances under which a builder will complete a structure or piece of property for a customer. The purchase price, delivery date, terms of payment, specs, and other information pertaining to the construction project are often covered. To ensure that the home building process is completed as per the buyer's expectations, home buyers should sign the Builder Buyer Agreement. The contract describes the precise rights, duties, and demands of both the builder and the buyer. It aids in shielding the purchaser from any controversies or misunderstandings that can develop throughout the development process. Additionally, it lays forth the precise terms and conditions that must be followed by both parties during the entire construction process. This guarantees that the builder will be paid for their price and that the buyer will obtain a quality home that fits their requirements. The Builder Buyer Agreement is a binding contract that needs to be thoroughly reviewed before being signed.

3. **Compensation received and calculated at % of applicable bank interest:** In view of above provisions as cited related to RERA and Consumer Protection Act, it is reported that many of the allotees of the flat have not been provided with the allotted house within the time line provided under buyer and builder agreement. This resulted in disputes and approached to RERA or Consumer Forum as available under Consumer Protection Act. These authorities order for interest on the amount of deposits for the delayed period of deliver of flat or for the refund of the amount deposited along with interest for non-delivery of flat. Besides above compensation also been awarded for the nonperformance of the contractual obligation in time person.

In such a situation, the author examined and discussed the taxability of such compensation and interest awarded by the RERA / Consumer forum which are most disputed by the Income Tax Department in the present situation.

4. **Whether receipt of compensation [calculated @ % of bank rate of interest] as per order of order of Consumer Forum or RERA is taxable under IT Act 1961. If so under which source of income?**

4.1. The Income Tax Act defines "**interest**" under **section 2(28A)** as: '2. In this Act, unless the context otherwise requires, - ……. (28A) "**interest**" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.'

In the context of definition as above under IT Act, following decisions reproduced for understanding of nature of interest in lieu of compensation received which calculated by taking bank rate of interest by the RERA or Consumer Forum.

(a) Hon'ble High Court of Bombay in case of **Sainath Rajkumar Sarode v. State of Maharashtra [2021] 131 taxmann.com 332 (Bombay) held that -** Interest by way of compensation falls outside purview of section 194A and section 2(28A) of income tax act. Assessee entered into an agreement

with a builder for purchase of two residential flats and Flats booked were not delivered in committed period. Thus, Real Estate Regulatory Authority directed builder to refund advance amount paid by assessee with compensatory interest. Builder deducted TDS on amount of compensatory interest paid to assessee. **It was noted that amount payable to assessee was in nature of a judgment debt or akin to a judgment debt, payment of which could not establish a debtor-creditor relationship between parties; nor was payment made by builder to assessee one in discharge of any pre-existing obligation, so as to attract section 2(28A)**. TDS was not to be deducted on interest [Para 26]

(b) The Calcutta High Court in the case of **Pr. CIT v. West Bengal Housing Infrastructure Development Corpn. [2018] 96 taxmann.com 610/257 Taxman 570/[2019] 413 ITR 82 (Cal.)** held in paragraph 16, that "from the definition of interest as occurring in section 2(28A) of the IT Act, it appears that the term "interest" has been made entirely relatable to money borrowed or debt incurred and various gradations of rights and obligations arising from either of the two"

It further held in paragraph 18 that - "We accordingly are of the view that the payment made by the assessee to the allottee was in terms of the agreement entered between them where the liability of the assessee would arise only if it failed to make the plots available within the stipulated time. Hence, the payment made under the relevant clause was purely contractual and as rightly held by the Tribunal, in the nature of compensation or damages for the loss caused to the allottee in the interregnum for being unable to utilise or possess the flat. The favour of compensation becomes evident from the words used in the particular clause. The expression 'interest' used in clause 7 (reproduced above) may be seen merely as a quantification of the liability of the assessee in terms of the percentage of interest payable by the State Bank of India. Since there is neither any borrowing of money nor incurring of debt on the part of the assessee, in the present factual scenario, interest as defined under section 2 (28A) of the Act can have no application to such payments. Consequently, there was no obligation on the part of the assessee to deduct tax at source and consequently no disallowance could have been made under section 40 (a)(ia) of the Act. In view of the above, we confirm the decision of the Tribunal dated 2nd December 2015. I.T.A. No. 84 of 2018 is accordingly dismissed."

A Special Leave Petition against the order of the Hon'ble Calcutta High Court was dismissed by the Hon'ble Supreme Court **[Ref: Pr. CIT v. West Bengal Housing Infrastructure Development Corpn. Ltd. [2019] 105 taxmann.com 64/263 Taxman 237 (SC)]**

(c) In the case of **Beacon Projects (P.) Ltd. v. CIT [2015] 62 taxmann.com 177 / 234 Taxman 706 / 377 ITR 237 (Ker.)**, the Kerala High Court held at paragraphs 11 and 12 that: - "From the principles laid down in the decisions referred to above, it is obvious that section 2(28A) is not attracted to every payment made and that the provision can be attracted only in cases where there is debtor-creditor relationship and that payments are made in discharge of a pre-existing obligation.

In so far as these cases are concerned, facts stated by us itself would show that the purchaser had paid certain amounts to the appellant. At a later point of time, the purchaser opted out of the agreement and the appellant entered into fresh agreements with new buyers for prices that are higher than what was agreed with the purchasers. Out of the receipts from the new buyers, the appellant refunded to the purchasers the amount paid by them and a portion of the excess amount received. The amount thus refunded to the purchasers represents the consideration the purchasers paid towards the undivided shares in the property agreed to be purchased and

also the cost of construction of the apartment, which work was entrusted to the appellant, being the builder. Such a relationship does not spell out a debtor-creditor relationship nor is the payment made by the appellant to the purchaser one in discharge of any pre-existing obligation to be termed as interest as defined in section 2(28A)".

(d) In the **case of CIT v. HP Housing Board [2012] 18 taxmann.com 129 / 205 Taxman 1 / 340 ITR 388 (HP)**, wherein the assessee Board was liable to pay interest to allottees for the delay in construction, the High Court of Himachal Pradesh held as follows –

"8. In the case in hand it stands proved that in case the houses were ready within the stipulated period the Board would not be liable to pay interest. When construction of a house is delayed there can be escalation in the cost of construction. The allottee looses the right to use the house and is deprived of the rental income from such house. He is also deprived of the right of living in his own house. In these circumstances the amount which is paid by the Board is not payment of interest but in our view is payment of damages to compensate the allottee for the delay in the construction of his house/flat and the harassment caused to him. It may be true that this compensation has been calculated in terms of interest but this is because the parties by mutual agreement agreed to find out a suitable and convenient system of calculating the damages which would be uniform across the Board for all the allottees.

(e) In case of **Apex Court in Bikram Singh v. Land Acquisition Collector [1997] 224 ITR 551/[1996] 89 Taxman 119**. In the case before the Apex Court the question was whether the interest paid to the persons whose land had been compulsory acquired under sections 28 and 31 of the Land Acquisition Act was a revenue receipt or a capital receipt. The Apex Court held that - "though it was termed as interest on delayed payment, it was actually a revenue receipt and therefore the provisions of Section 194A of the Income-tax Act would have no application. It would be pertinent to mention that the National Consumer Dispute Redressal Commission in Revision Petition No. 2244 of 1999 titled as G.D.A. v. Dr. N.K. Gupta under similar situation held that when the State Commission directed payment of interest to the allottees for delayed completion of flats the same did not fall within the purview of Section 194A of the Income-tax Act. In the present case the allottees had not given the money to the Board by way of deposit nor had the Board borrowed the amount from the allottees. The amount was paid under a self-financing scheme for construction of the fat and the interest was paid on account of damages suffered by the claimant for delay in completion of the flats."

(f) The aforesaid judgment further relies upon a judgment of the **Ghaziabad Development Authority v. Dr. NK Gupta 2002 SC Online NCDRC 39**, wherein a bench of 4 members of the Commission held as follows: - "It would, therefore, appear to us that the provisions of the Land Acquisition Act where interest is payable under sections 28 and 34 and tax is deducted at source under section 194-A of the Income tax Act would not apply in the present case where GDA has been asked to pay interest on the amount refunded to the Complainant because of its failure to construct the promised fat and to provide necessary facilities. The amounts which were paid to the GDA by the Complainant were not paid by way of any deposit or GDA had not borrowed that money. And, as a matter of fact, interest as de□ined in sub-section (28) of section 2 of the Income-tax Act is not that interest as was directed to be paid to the Complainant by the GDA. Interest to the Complainant (here Dr.Gupta) has not been awarded on the basis of any deposit made by the Complainant or GDA being the borrower ofany money of the Complainant. Here interest payment is by way of damages. Merely describing the damages as by way of

interest do not make them as interest under the Income-tax Act.

………The word interest used in the order of the State Commission is not what interest is as defined in Section 2(28-A). There in the order of the State Commission interest means compensation or damages for delay in construction of the house or handing over possession of the same causing consequential loss to the Complainant by way of escalation in the price of the property and also on account of distress, disappointment faced by him. Interest in the order has been used merely as a convenient method to calculate the amount of compensation in order to standardise it. Otherwise, each case of the allottee will have to be dealt with differently. Nomenclature does not decide the issue.

In our view, therefore, considering the definition of 'interest' as contained in section 2(28-A) of the Income-tax Act, provisions of Section 194-A were not applicable and the GDA was clearly wrong in deducting the TDS from the interest payable to the Complainant. Accordingly, the order of the State Commission is upheld and this Revision Petition is dismissed."

(g) In case of **Rajnish Bhardwaj v. CHD Developers Ltd. 2019 SCC Online NCDRC 739**, the NCDRC held - "30. Before parting, we may make it clear that the interest @ 12% p.a. on the refund of the amount which has been awarded as compensation and not factually as interest on refund and, therefore, there is no question of deducting any tax on source."

4.2. From above judiciary decisions, it may be concluded that the amount covered under decisions is in nature of a judgment debt or akin to a judgment debt or compensation / damage, payment of which could not establish a debtor-creditor relationship between parties; nor was payment made by builder to assessee one in discharge of any pre-existing obligation, so as to attract section 2(28A). So, the amount received by the allotee as interest on delay possession or non possession of flat is not covered under source of income as interest on deposits. **The judiciary decision discussed above are dealt with the subject whether TDS is deductible treating the amount received as interest or it is a compensation / damage which is not liable to tax**. TDS provisions contained in the Chapter XVII-B of Income Tax Act. Any amount paid by the payer is liable to deduct the tax if the same are covered under provisions as laid down in chapter XVII-B of the act. It may be taxable under any head of income or as source of income in the hands of the recipient.

5. Whether the amount of interest received by the Allotee of Flat as per order of RERA or Consumer Forum is a capital receipt and liable to capital gain under section 45?

5.1. As state above in a real estate transaction, the Allotee entered into an agreement with the Builder for allotment of Flat which followed by an "Allotment letter specifying the Flat allotted. The following are the issues arise:

(i) Whether allotment of identified flat, issue of allotment letter and execution of buyer's agreement creates a right on flat and a capital asset?

(ii) whether relinquishment of such right on the flat and refund of the amount deposited along with interest is a transfer and subject to capital gain.

5.2. As per section 2(14), "**Capital Assets**" means property of any kind held by an assessee whether or not connected with his business or profession. Further as per Explanation to section 2(14) "**Property**" includes and shall be deemed to have always **include any rights in or in relation** to an Indian company, including rights of management or control or any other rights whatsoever. Section 2(47) of the Income-tax Act provides 'transfer'; in relation to a capital asset, includes - (i) the sale, exchange or relinquishment of the asset, sub-clause (ii) the extinguishment of any right thereon. As per

the above definition it can be inferred that booking right is Capital Assets and any gain arising from relinquishment or cancellation of booking right is capital gain or capital loss as the case may be.

5.3. We have examined that as per the definition of capital asset under section 2(14), any kind of property held by an assessee would come within the definition of '**capital asset**'. Any right which could be called property would be included in the definition of 'capital asset'. It does not define the words 'any kind' but provides for the types of properties which are to be excluded from the definition of capital asset, **incidentally, interest in an under-construction flat is not one of the exclusions**. In our view the word **'property'**, is a term of widest import and signifying every possible interest which a person can clearly hold or enjoy, it has been held so by **Hon'ble Apex Court in Ahmed GM. Ariff v. CWT [1970] 76 ITR 471 (SC)**.

5.4. Thus, to understand what kind of property can be considered a capital asset, it would be appropriate to refer to the definition of transfer in section 2(47) of the Act. Section 2(47)(v) and (vi), and Explanation 2 make it adequately clear that possession, enjoyment of immovable property, **as well as an interest in any asset are all transferable "capital assets"**. Explanation clarifies that "**the transfer includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement or otherwise**. Thus, rights or interests in a property are kinds of property that are transferable capital assets. **Hence, booking rights or rights to purchase the apartment or rights to obtain title to the apartment are also capital assets that can be transferable**.

5.5. We have examined that CBDT in its **circular No.471 dated 15th October, 1986** had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority ("D.D.A." for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that such allotment is final unless it is cancelled or the allottee withdraw from the scheme and such allotment would be cancelled only under exceptional circumstances. **It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.**

5.6. This aspect was further clarified by the **CBDT in its later circular No.672 dated 16th December, 1993**. In such circular representations were made to the board that in cases of allotment of flats or houses by co-operative societies or other institutions whose schemes of allotment and consideration are similar to those of D.D.A., similar view should be taken as was done in the board circular dated 15th October, 1986. In the circular dated 16th December, 1993, the board clarified as under:

"2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No.471, dated 15-10-1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act."

5.7. It can thus be seen that the entire issue was clarified by the CBDT in its above mentioned two circulars dated 15th October, 1986 and 16th December, 1993. **In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property.**

5.8. Hon'ble Supreme Court in the case of **Vania Silk Mills (P.) Ltd v. CIT [1991] 59 Taxman 3 (SC) held that**

"A reading of the two sections [2(47) and 45 of the Act] makes it abundantly clear that the profits or gains which are amenable to section 45 must

arise from the transfer of the capital asset which is effected in the previous year. **The transfer may be brought about by any of the modes of transfer which include sale, exchange, relinquishment of the asset or the extinguishment of the rights therein or the compulsory acquisition of the asset under any law. It may be of the asset itself or of any rights in it. It may further be the result of a voluntary act or a compulsory operation**. Whatever the mode by which it is brought about, the existence of the asset during the process of transfer is a pre-condition. Unless the asset exists in fact, there cannot be a transfer of it."

5.9. Further following judiciary decisions and reproduced below.

(a) **Hon'ble ITAT 'D' Bench Chenai in case of Deputy Commissioner of Income Tax, Non-Corporate Circle-2(1) Chennai Vs Mr. Keezhayur Sowrirajan Sreenivasan, [I.T.A.No.2369/ Chny/ 2019 & C.O.No.98 / Chny/2019 & order dated 15.06.2022]** is held as follows.

Para 12. In this view of the matter and considering facts and circumstances of the case and also by following ratios laid down by various Hon'ble High Courts, we are of the considered view that what was received by the assessee by virtue of MOU is consideration received for transfer of rights in property and thus, same is assessable under the head 'income from capital gains'. The learned CIT(A), after considering relevant facts has rightly held that the Assessing Officer has erred in assessing compensation under the head 'income from other sources'. Hence, we are inclined to uphold findings of the learned CIT(A) and dismiss appeal filed by the Revenue.

While deciding above they have referred to the decisions of **Hon'ble High Court of Madras in the case of K.R. Srinath Vs ACIT [2004] 268 ITR 436 (Mad) and Hon'ble Bombay High Court in the case of TATA Tele Services Ltd. (1980) 122 ITR 594 (Bom).**

(b) Hon'ble Bombay High Court in the case of **TATA Tele Services Ltd. (1980) 122 ITR 594 (Bom)**. held that word 'property' used in section 2(14) was a word of widest amplitude and the definition of this was re-emphasized by the use of words 'of any kind' and thus, any right which could be called property would be included in the definition of 'capital asset'. The contract for sale of land was capable of specific performance and was also assignable and therefore, a right to obtain conveyance of immovable property was clearly a property as contemplated by section 2(14) of the Act.

(c) Hon'ble **High Court of Madras in the case of K.R Srinath Vs. ACIT (2004) 268 ITR 436**, after considering relevant facts held that when the assessee had right to insist on specific performance and such right has been given up readily and received a sum in question, same would come within definition of capital asset and consequently, consideration is assessable under the head '**capital gains**'.

(d) The **ITAT., Mumbai Benches in the case of ACIT Vs. Ashwin S.Balekar in ITA No.6822/ Mum/2016** has also dealt with similar issue of allotment of land to the assessee by builder and subsequent cancellation of allotment and after considering relevant facts, held that compensation received by the assesseein lieu of surrender of right is assessable under the head 'capital gains'.

(e) The **Hon'ble Kerala High Court in the case of CIT Vs. Grace Collis (2001) 248 ITR 323** has held that extinguishment of any rights therein, include extinguishment of rights in capital asset independent of or otherwise, then on account of transfer. The sum and substance of ratios laid down by various courts are that extinguishment of rights therein also includes within definition of capital asset and consequently, comes under transfer as defined u/s. 2(47) of the Income Tax Act, 1961

(f) In case of **Smt. Abha Bansal v. Principal Commissioner of Income-tax, (Central), Gurgaon [2021] 132 taxmann.com 231 (Delhi - Trib.)** it is held that the Assessee-individual entered into a Builder-Buyer Agreement (BBA)

for purchasing a villa. Possession of same was not handed over to assessee within stipulated time. Thus, BBA was cancelled. Assessee received certain amount as compensation for cancellation of BBA on account of non-delivery of villa. Assessee showed same as capital receipt and offered it to tax as capital gain under section 45. Assessing Officer passed an assessment order accepting same. Commissioner invoked revision jurisdiction under section 263 on ground that such compensation received by assessee was revenue in nature. **It was noted that assessee had made investment for specific purpose to acquire villa i.e., capital asset and had acquired legal right as per BBA and, therefore, amount received as compensation for giving up such right would amount to capital receipt under section 2(47). It was further noted that compensation did not arise in course of any trading activity but arose on cancellation of BBA and was not related to any stock-in-trade. Thus, it could not be held as revenue in nature compensation received by assessee on cancellation of BBA was capital receipt and taxable as capital gain**

(g) Hon'ble ITAT Delhi in case of **Shiv Kumar Jatia v. Income Tax Officer, Ward-10(2), New Delhi [2021] 127 taxmann.com 179 (Delhi - Trib.)** where it is held that held that rights or interests in a property are transferable capital assets **and hence, booking rights or rights to purchase apartment or rights to obtain title to apartment are also capital assets that can be transferable and therefore, a right in an uncompleted building or a flat is clearly a property as contemplated by section 2(14)**. The period of holding is to be reckoned from date of first agreement while calculating capital gain on sale of such property. Right arose when assessee entered into an agreement with builder.

(h) **In case of Vinod Kumar Jain v. Commissioner of Income-tax, Ludhiana, [2010] 195 Taxman 174 / [2012] 344 ITR 501 (Punjab & Haryana) it is held that an allottee gets title to property on issuance of an allotment letter and payment of instalments is only a consequential action upon which delivery of possession flows**. Therefore, right of assessee prior to possession of the said flat was a right in property and even prior to said date assessee was holding said flat. Therefore, capital gain arising on sale of said flat was a long-term capital gain and, consequently, assessee was entitled to set off same under section 54.

(i) A contract for sale of flat was capable of specific performance and was also and therefore, a right in an uncompleted building or a flat was clearly a property as contemplated by section 2(14). **P&H High Court in case of Vinod Kumar Jain v. CIT [2010] 195 Taxman 174/[2012] 344 ITR 501** has ruled that the right to acquire property through "agreement for sale" under section 54 of Transfer of Property Act is an actionable claim which is capable of being transferred. Thus, it is a capital asset under section 2(14) as per the provisions of the Income-tax Act, 1961. The period of holding is to be reckoned from the date of first agreement while calculating capital gain on sale of such property.

6. Conclusion:

In view of above provisions under IT Act, discussions and relevant judiciary decision, it may be concluded that, an interest in any assets which is transferable as "capital assets". The transfer includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement or otherwise. Thus, rights or interests in a property are kinds of property that are transferable capital assets. Hence, booking rights or rights to purchase apartment or rights to obtain title to apartment are also capital assets that can be transferable and therefore, a right in an uncompleted building or a flat is clearly a property as contemplated by section 2(14).The transfer may be brought about by any of the modes of transfer which include sale, exchange, relinquishment of the asset or the extinguishment of the rights therein or the compulsory acquisition of the asset under any law. It may be of the asset itself

or of any rights in it. It may further be the result of a voluntary act or a compulsory operation. The Allotee had made investment for specific purpose to acquire the flat i.e., capital asset and had acquired legal right as per buyers' agreement and, therefore, amount received as interest for giving up such right would amount to capital receipt under section 2(47). It may be may be noted that interest did not arise in course of any trading activity but arose on seeking refund due to failure to give possession of the flat and order of the RERA Consumer Forum. The interest is not received in the normal course of investment. Thus, it could not be treated as revenue in nature. The amount of interest received by the querist which is not interest u/s 2(28) of income tax may be taken as capital receipt and taxable as capital gain which would be long term and liable to income tax at the rate provided.

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Joint Development Agreements and Taxes: What Landowners Need to Know

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Introduction

Joint Development Agreements (JDAs) have become a popular strategy for landowners seeking to monetize their property without outright selling it. By partnering with developers, landowners can share in the profits generated from the development project while retaining ownership of the underlying land. However, understanding the tax implications of JDAs is crucial to ensure that landowners maximize their financial benefits and minimize their tax liabilities.

This article will delve into the key tax considerations associated with JDAs from both income tax and GST perspectives. We will explore the basics of JDAs and its tax implications. By the end of this article, landowners will have a clear understanding of the tax landscape surrounding JDAs and be equipped to make informed decisions about their property development ventures.

Understanding JDAs

Fig1: Joint Development Agreement (JDA)

A JDA is a legal contract between a landowner and a developer, outlining the terms of a collaborative development project. In a JDA, the landowner provides the land, while the developer contributes expertise, capital, and resources to plan, construct, and market the project. The profits from the development are typically shared between the landowner and the developer based on a predetermined agreement.

Benefits of JDAs

JDAs offer several advantages for landowners, including:

- **Profit Maximization:** Landowners can share in the profits generated from the development, potentially realizing significant financial gains that would not be possible through other means.
- **Risk Mitigation:** By partnering with a developer, landowners can avoid the risks and responsibilities associated with development, such as construction costs, marketing expenses, and project management.
- **Enhanced Property Value:** A successful development project can significantly increase the value of the landowner's property, providing long-term benefits.
- **Access to Expertise:** Developers bring valuable expertise in planning, design, construction, and marketing, ensuring that the project is executed efficiently and effectively.
- **Community Development:** JDAs can contribute to community development by creating new jobs, improving infrastructure, and enhancing the overall quality of life.

Limitations of JDAs

While JDAs offer significant benefits, they also have certain limitations that landowners should be aware of:

- **Loss of Control:** Landowners may experience a loss of control over their property during the development process, as the developer typically takes responsibility for managing and overseeing the project.

- **Profit Sharing:** The landowner's share of the profits may be limited by the terms of the JDA, and they may not realize the full potential value of their land.

- **Potential Disputes:** Disagreements or conflicts between the landowner and the developer can arise, leading to delays, increased costs, and potentially legal disputes.

- **Market Risks:** The success of a development project depends on market conditions, and fluctuations in the real estate market can impact the profitability of the venture.

- **Tax Implications:** Understanding the tax implications of JDAs is crucial, as improper structuring can lead to increased tax liabilities.

Fig 2: Benefits & Limitations of JDA

Income Tax on JDAs: Capital Gains for Landowners

When a landowner contributes land to a JDA, the transaction is generally treated as a transfer under the Income Tax Act. The computation of capital gains depends on various factors including:

1. **Full Value of Consideration:** It refers to the total value that the landowner receives from the developer in exchange for their land. This can include payments from the developer to the landowner and landowner's share in the developed property computed on the basis of stamp duty value (guidance value or circle rate) as on the date of completion i.e. the date on which certificate of completion is issued by the competent authority.

2. **Cost of Acquisition:** The cost of acquisition includes the purchase price of the land, expenses incurred for improvement of the land, and any capital expenditure incurred before the transfer.

3. **Long-Term Capital Gains (LTCG):** If the land was held for more than 24 months before the transfer, the capital gain is considered long-term. LTCG is generally taxed at a concessional rate.

4. **Short-Term Capital Gains (STCG):** If the land was held for 24 months or less before the transfer, the capital gain is considered short-term. STCG is taxed at the applicable income tax slab rates.

5. **Indexation Benefits:** This involves adjusting the cost of acquisition of the land for inflation when the period of holding is more than 24 months.

Pre-July 23, 2024

- Indexation: Landowners could avail indexation benefits to reduce the taxable capital gains.

- Tax Rate for LTCG: LTCG from the transfer of land is taxed at a concessional rate of 20% with indexation benefits.

Post-July 23, 2024

- Removal of Indexation: The Finance Act, 2024 removed the indexation benefits for LTCG from the transfer of land. This means, for properties purchased on or after July 23, 2024, the cost of acquisition will no longer be adjusted for inflation.
- Tax Rate for LTCG: LTCG from the transfer of land is now taxed at a flat rate of 12.5%.

  However, landowners who have bought property before July 23, 2024 can choose between:

  - Paying a 12.5% LTCG tax without indexation benefits or
  - Paying a 20% LTCG tax with indexation benefits.

LTCG	Purchase before July 23, 2024		Purchase on/ after July 23, 2024
	Option 1	Option 2	
Indexation benefit	Yes	No	No
Rate of Tax	20%	12.5%	12.5%

Table 1: LTCG pre & post July 23, 2024

6. **Year of Taxation:** For individual/HUF landowners where the JDA is registered with the registering authority and where the landowner does not sell her/his share before the issue of completion certificate, the capital gain is taxable in the year in which the completion certificate is issued by the competent authority.

7. **TDS u/s 194IC:** The developer making payment to the resident landowners (in the form of advance or non-refundable deposit) under JDA is required to deduct tax at source (TDS) @10%. The landowners, at the time of filing their Income Tax Return, can either claim refund of TDS or adjust against other liabilities (if any).

8. **LTCG Exemption Under Section 54F:** Section 54F of Income Tax Act provides exemption for landowners who reinvest the proceeds from the sale of their land in a residential property. Individual landowners owning not more than one residential property can take the benefit of this exemption, subject to satisfying specified conditions. In such situations, for the purpose of computation of exemption, the investment in the new residential property would be the share of the landowner in the developed property.

Computation of Capital Gains

Imagine, you acquire a piece of land for ₹1 crore in 2015. In 2024, you enter into a JDA and receive ₹25 lac from the developer as advance and 60% share in the developed property worth ₹3 crore. Further, in 2024 itself, you sell your share to other property buyers for a total sale consideration of ₹5 crore. Let's compute capital gain as well as exemption:

Transfer of 40% share to the developer:

Full value of consideration	(₹25 lac + ₹3 crore)	₹	3,25,00,000
(-) Indexed cost of acquisition (Land)	(₹1 crore × 40% × 363/254*)	₹	57,16,535
Long-term capital gain		₹	2,67,83,465
(-) LTCG exemption u/s 54F	(₹3 crore/₹3.25 cr × ₹2.67 cr)	₹	2,47,23,198
Taxable income		₹	20,60,267
Income tax @20%		₹	4,12,053

Table 2: Income Tax computation (40% share)

**CII for FY 2024-25: 363 & for FY 2015-16: 254*

Sale of 60% share to prospective buyers:

For computation of capital gains on sale of landowner's share of developed property to other potential buyers, price at which the developed property is sold to the potential buyers would be the sale consideration from which the proportionate cost of land adjusted for inflation (being the indexed cost of acquisition) & full value of consideration (as computed above) for transfer of 40% land to the developer (being the cost of improvement) would be reduced to arrive at the capital gain.

Sale consideration (total)		₹	5,00,00,000
(-) Indexed cost of acquisition (Land)	(₹1 crore × 60% × 363/254)	₹	85,74,803
(-) Cost of improvement (Developed property)		₹	3,25,00,000
Capital gain		₹	89,25,197

Table 3: Income Tax computation (60% share)

Here, while the proportionate capital gain on sale of undivided share of land is treated as long-term capital gain and taxed at applicable tax rate of 20% (as the holding period is more than 24 months), the proportionate capital gain on sale of constructed apartments (being landowner's share) would be treated as short-term capital gain (because the period of holding is within 24 months) and hence taxed at the applicable income tax slab rates.

GST on JDAs for Landowners

In addition to income tax considerations, landowners involved in JDAs must also be mindful of the Goods and Services Tax (GST) implications. GST is a multi-stage tax levied on the supply of goods and services within India, and understanding its impact on JDAs is crucial for ensuring compliance and minimizing tax liabilities.

This section will delve into the key GST aspects of JDAs, including the nature of supply, consideration, transfer of development rights as well as sale of landowner's share in the developed property. By understanding these factors, landowners can make informed decisions and navigate the GST landscape effectively.

These provisions are applicable only to residential and commercial apartments covered under RERA [Real Estate (Regulation and Development) Act, 2016] and are not applicable to construction of independent houses, or works contracts not covered under RERA.

1. **Nature of Supply:** The JDA typically involves a barter transaction, where the landowner provides land development rights, that is transfer of development rights in exchange of construction services provided by the developer.

2. **Consideration:** It refers to the value or benefit that the landowner receives from the developer in exchange for the land. This can include advance payments, non-refundable security deposits from the developer to the landowner and landowner's share in the developed property.

3. **Real Estate Project (REP):** It refers to any development or redevelopment of land, including construction of buildings, conversion of existing buildings, development of townships and development of plots, for the purpose of sale.

4. **Residential Real Estate Project (RREP):** It refers to the REP in which the carpet area of the commercial apartments is up to 15% of the total carpet area of all the apartments in the REP.

5. **Affordable Residential Apartment:** It refers to the residential apartment in a project having a carpet area of up to 60 sqm in metropolitan cities (Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata & Mumbai) or 90 sqm in cities or towns other than metropolitan cities, where the gross amount charged is up to ₹45 lakhs.

6. **Applicable Rate of GST:** Effective rate of GST is @1% on affordable residential apartments, 5%

on other than affordable residential apartments and 12% on commercial apartments.

7. **Transfer of Development Rights (TDR):** In an RREP or REP, effective from April 1, 2019, GST on transfer of development rights from the landowner to the developer, is fully exempt, in the hands of the landowner, to the extent of all residential apartments SOLD prior to completion of construction, as, in such situations, property buyers are ultimately liable to pay GST on under-construction apartments at rates as applicable.

To the extent of UNSOLD residential apartments as on the date of issue of completion certificate or first occupation, whichever is earlier, the developer is liable to pay proportionate GST on the value of such development rights on the basis of proportionate carpet area remaining unsold (calculated in the manner as specified), under Reverse Charge Mechanism (RCM).

Further, in other cases such as TDR in respect of commercial projects, development of land without construction etc, the developer is liable to pay GST @18%, on the entire value of TDR, under RCM. Time of supply for the developer to discharge GST is on the date of completion or first occupation, whichever is earlier.

In a nutshell, landowners are not liable to pay GST on TDR.

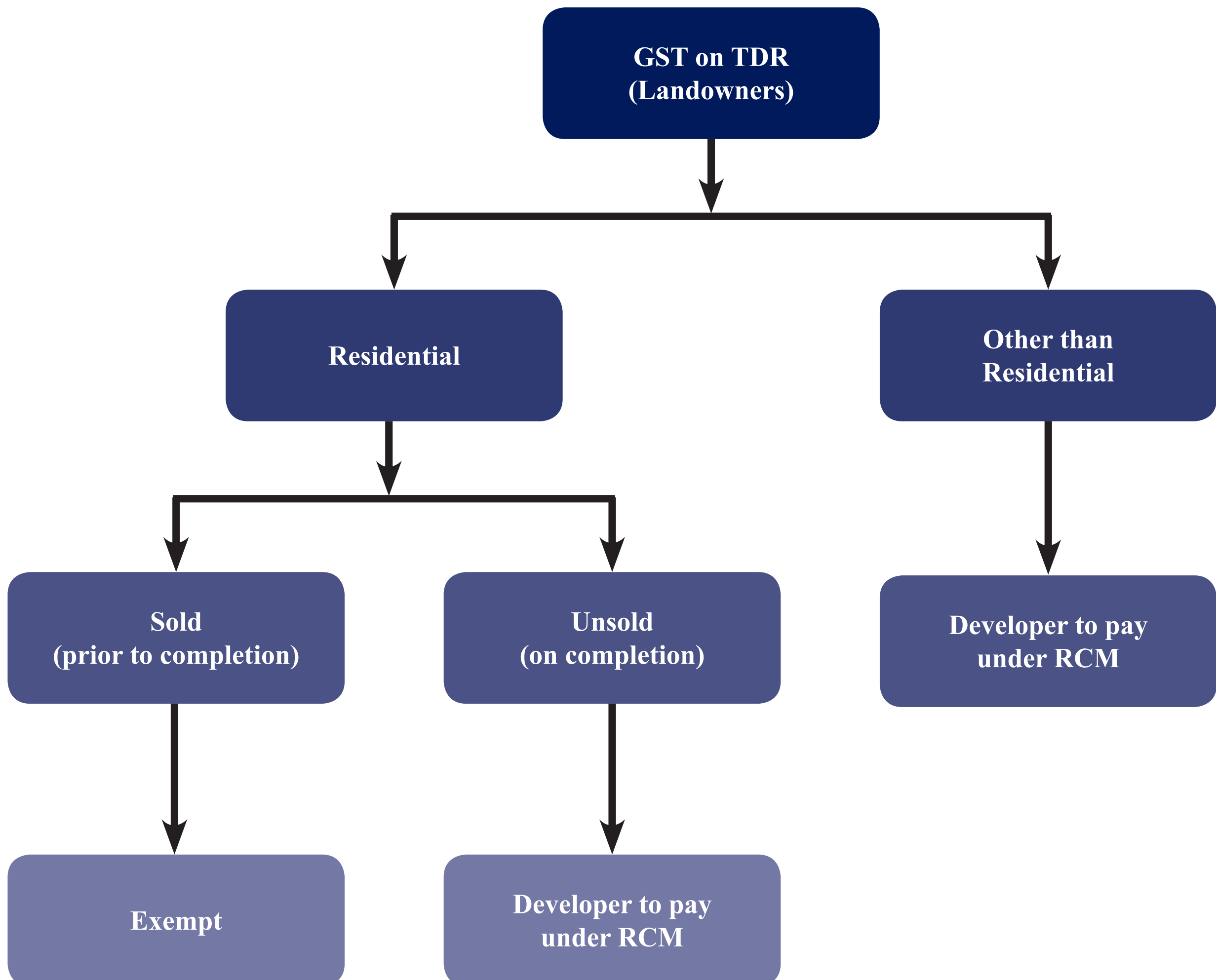

Fig 3: GST on TDR (for Landowners)

8. **Construction Services:** It refers to the construction services provided by the developer to the landowner in respect of landowner's share in the developed area.

   The developer (being the supplier of services) is liable to pay GST on such construction services, on the value, in the project, first charged from independent buyers at rates as applicable. Time of supply to discharge GST is on the date of completion or first occupation, whichever is earlier. The landowner, being the recipient of service, is liable to pay such GST to the developer.

9. **Advance or Non-refundable Deposit:** It refers to the advance or non-refundable deposit received by the landowner from the developer. At the time of making such payments, the developer (being the supplier of services) is required to collect GST from the landowner and pay it to the Govt.

10. **Sale of Landowner's Share:** It refers to the landowner's share in the developed area (constructed apartments).

    If the apartment is sold before the date of completion or first occupation, whichever is earlier, the landowner is liable to pay GST at rates as applicable, at the time of such sale to prospective buyers. In such a situation, the landowner can avail input tax credit (being GST charged by the developer on construction services). However, as the liability of the developer to discharge GST is at time of the completion or first occupation, whichever is earlier, there is a mismatch of time. Further, as there is no provision for refund, the landowner practically cannot make use of the input tax credit. But the landowner can avail input tax credit (being GST on advance receipts or non-refundable deposits) if there is no such time mismatch.

Where the entire consideration has been received by the landowner, from property buyers, after the issue of completion certificate or after first occupation, whichever is earlier, no GST is applicable, as such transactions are treated neither as supply of services nor as supply of goods, in terms of para 5 of schedule III to the CGST Act. Hence, sale of, ready-to-move or completed apartments, does not attract GST. So, here again, landowners are not liable to pay GST.

Conclusion

Thus, JDAs can be a powerful tool for landowners to unlock the potential of their land. However, understanding the tax implications is crucial to maximize the benefits. By carefully considering factors like ownership structures, revenue sharing, and applicable tax laws, landowners can navigate the complexities of JDAs and optimize their tax liabilities.

Source:

- https://incometaxindia.gov.in
- https://taxinformation.cbic.gov.in/

Press Release

Indirect Tax

CBIC introduces relaxations for Customs Cargo Service Providers (CCSPs) by reducing number of days for insurance of storage goods and withdrawal of licence renewal process for AEO-compliant CCSPs

Relaxations will reduce cost and compliance burden, improve efficiency of EXIM operations, and facilitate global trade

Posted On: 08 NOV 2024 6:10PM by PIB Delhi

In line with the PM Gati Shakti National Master Plan's goals of improving logistics infrastructure, efficiency, and promoting sustainable development, the Central Board of Indirect Taxes and Customs (CBIC) has introduced key relaxations for Customs Cargo Service Providers (CCSPs).

Key relaxations provided under Notification No.75/2024-Customs (N.T.) dated November 7, 2024 and Circular No. 22/2024-Customs dated November 8, 2024 are:

1. Number of days for insurance of storage goods eased: Customs Cargo Service Providers (CCSPs) were required to insure goods stored in Customs areas for a period of 10 days in terms of Handling of Cargo in Customs Areas Regulations, 2009. It has been decided to reduce it to 5 days as a trade facilitation measure. This will enhance the cash flow for the entities by reducing the cost.

2. Licence Renewal Process withdrawn: In a move to acknowledge well-established and compliant business entities, Customs Cargo Service Providers (CCSPs) that meet international operational standards (AEO) will no longer be required to undergo the renewal process of their licenses for handling goods under the Handling of Cargo in Customs Areas Regulations, 2009. Their licenses have been made synchronous to their AEO authorisation. This will result in Ease of Doing Business for logistics operators working as CCSPs.

These measures aim to reduce operational costs and compliance burdens for CCSPs, that play a

crucial role in handling of imported and exported goods. The changes are part of the Government's ongoing efforts to reduce the cost and compliance burden, improve the efficiency of EXIM operations, and facilitate global trade.

The CBIC's efforts are expected to reduce logistics costs, improve operational efficiency, and enhance India's position as a competitive player in global trade.

Direct Tax

CBDT launches Compliance-Cum-Awareness Campaign for AY 2024-25 to assist taxpayers in accurately completing Schedule Foreign Assets and reporting income from foreign sources in ITR

Posted On: 16 NOV 2024 12:39PM by PIB Delhi

The Central Board of Direct Taxes (CBDT) has launched a Compliance-Cum-Awareness Campaign for Assessment Year (AY) 2024-25 to assist taxpayers in accurately completing Schedule Foreign Assets (Schedule FA) and reporting income from foreign sources (Schedule FSI) in their Income Tax Returns (ITR). Compliance with Schedule FA and FSI is mandatory under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, which requires the full disclosure of foreign assets and income.

As part of this campaign, informational messages will be sent via SMS and email to resident taxpayers who have already submitted their ITR for AY 2024-25. These messages are intended for individuals identified through information received under bilateral and multilateral agreements, suggesting that they may hold foreign accounts or assets, or have received income from foreign jurisdictions. The purpose is to remind and guide those who may not have fully completed Schedule Foreign Assets in their submitted ITR for AY 2024-25, especially in cases involving high-value foreign assets.

This initiative aligns with the vision of Viksit Bharat and highlights the Income Tax Department's commitment to using technology to simplify taxpayer compliance and reduce human interaction. By leveraging data obtained through the Automatic Exchange of Information (AEOI), the department is working to create a more efficient, taxpayer-friendly system.

The CBDT expects all eligible taxpayers to take advantage of this opportunity to fulfil their tax responsibilities and contribute to the nation's economic development. This effort not only is in line with the government's vision for a developed India but also fosters a culture of transparency, accountability, and voluntary compliance.

For a detailed, step-by-step guide on completing Schedule Foreign Assets, taxpayers are encouraged to visit the official Income Tax Department website www.incometax.gov.inwhere resources and support are readily available to assist them.

Notifications

Indirect Tax

Customs (Tariff)

Notification No. 47/2024-Customs

New Delhi, the 13th November, 2024.

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 785(E), dated the 30th June, 2017, namely,-

In the said notification, in the ANNEXURE, in Condition No. 48, in Condition (d), after the words, 'Central Government for this purpose', the words "or directly either to armed forces of the Union under the Ministry of Defence or Government Departments" shall be inserted.

2. This notification shall come into force from the 14th day of November, 2024.

[F. No. 190354/172/2024-TRU]

Customs (Non - Tariff)

Notification No. 75/2024-Customs (N.T.)

New Delhi, hated the 7th November. 2024.

S.O........... (E) ……. In exercise of the powers conferred by sub-section (2) of section 141, read with section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations further to amend the Handling of Cargo in Customs Areas Regulations, 2009, namely:-

1. Short title and commencement.- (I) These regulations may be called the Handling of Cargo in Customs Areas (Amendment) Regulations, 2024.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Handlings of Cargo in Customs Areas Regulations, 2009 (hereinafter referred to as the said regulations) —

   (a) in regulation 5, in sub-regulation (3), for the word "ten", the word "five" sha11 be substituted.

   (b) in regulation 10, in sub-regulation (2), for the second proviso, the following proviso shall be substituted, namely:-

"Provided further that in case of Customs Cargo Service Provider authorised under Authorised Economic Operator Progamme, the approval of appointment under sub-regulation (I) shall deemed to be extended and remain valid till such time the Authorised Economic Operator authorisation is valid and not suspended or revoked in terms of Regulation 12".

[No. 520/32/2022-Cus-VI]

Notification No. 76/2024-Customs (N.T.)

New Delhi, the 11th November, 2024

G.S.R. (E).—In exercise of the powers conferred by clause (aa) of sub-section (1) of section 7 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/97- Customs (NT) dated the 2nd April, 1997, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 193 (E), dated the 2nd April, 1997, namely:—

In the said notification, in the Table, against serial number 9, relating to the State of Maharashtra, in column (3) the item (iv), and the corresponding entry thereto in column (4) shall be omitted.

[F. No. CBIC-52/46/2024]

Notification No. 77/2024-CUSTOMS (N.T.)

New Delhi, 12th November, 2024

S.O. … (E).– In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

"TABLE-1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1046 (i.e., no change)
2	1511 90 10	RBD Palm Oil	1058 (i.e., no change)
3	1511 90 90	Others – Palm Oil	1052 (i.e., no change)
4	1511 10 00	Crude Palmolein	1063 (i.e., no change)
5	1511 90 20	RBD Palmolein	1066 (i.e., no change)
6	1511 90 90	Others – Palmolein	1065 (i.e., no change)
7	1507 10 00	Crude Soya bean Oil	1057 (i.e., no change)
8	7404 00 22	Brass Scrap (all grades)	5463 (i.e., no change)

TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	845 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	1109 per kilogram (i.e., no change)
3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi- manufactured forms of silver falling under sub-heading 7106 92;	1109 per kilogram (i.e., no change)

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
		(ii) Medallions and silver coins having silver content not below 99.9% or semi- manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	
4.	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	845 per 10 grams

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $ Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6552 (i.e., no change)"

2. This notification shall come into force with effect from the 13th day of November, 2024.

[F. No. 467/01/2024-Cus.V]

Notification No. 78/2024-Customs (N.T.)

New Delhi, the 12th November, 2024

G.S.R. .. (E).- In exercise of the powers conferred by clause (aa) of sub- section (1) read with sub-section (2) of section 7 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/97-Customs (N.T.) dated the 2nd April, 1997, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 193 (E), dated the 2nd April, 1997, namely:-

In the said notification in the Table, against serial number 6B relating to the State of Orissa, in column (3) and (4), after item (iii) in column (3) and the entries relating thereto in column (4), the following item and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)
		"(iv) Jajpur	Unloading of imported goods and the loading of export goods or any class of such goods.".

[F.No. 394/118/2020-Cus(As)]

Customs (Anti-Dumping Duty)

Notification No. 23/2024-Customs (ADD)

New Delhi, the 4th November, 2024

G.S.R. ---(E).- Whereas in the matter of "Welded Stainless-Steel Pipes and Tubes" (hereinafter referred to as the subject goods) falling under tariff items 7304 11 10, 7304 11 90, 7304 41 00, 7304 51 10, 7304 90 00, 7305 11 29, 7305 90 99, 7306 11 00, 7306 21 00, 7306 29 19, 7306 30 90, 7306 40 00, 7306 50 00, 7306 61 00, 7306 69 00, 7306 90 11, 7306 90 19 or 7306 90 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from Thailand and Vietnam (hereinafter referred to as the subject countries) and imported into India, the designated authority in its final findings vide notification F. No. 6/28/2023-DGTR, dated the 6th August, 2024, published in the Gazette of India, Extraordinary, Part I, Section 1 has inter-alia come to the conclusion that —

(i) the subject goods have been exported to India from the subject countries at dumped prices;

(ii) the domestic industry has suffered injury on account of subject imports from subject countries;

(iii) the injury has been caused by the dumped imports of subject goods from the subject countries,

and has recommended imposition of an anti-dumping duty on the imports of subject goods, originating in, or exported from the subject countries and imported into India, in order to remove injury to the domestic industry. Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff items of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), and imported into India, an anti-dumping duty at the rate equal to the amount, and in the currency, and as per unit of measurement as specified in column (7) of the said Table, namely:-

The entire notification can be read at: https://taxinformation.cbic.gov.in/view-pdf/1010212/ENG/Notifications

Notification No. 24/2024-Customs (ADD)

New Delhi, the 11th November, 2024

G.S.R. ...(E).-Whereas, in the matter of "Epichlorohydrin" (hereinafter referred to as the subject goods), falling under tariff item 2910 30 00 of the First Schedule tothe Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR, Korea RP and Thailand (hereinafter referred to as the subject countries) and imported into India, the designated authority in its final findings vide notification F. No. 6/15/2023-DGTR, dated the 14th August, 2024, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 14th August, 2024, has, inter alia, come to the conclusion that-

(i) the subject goods havebeen exported to India at a price below normal value, thus resulting in dumping;

(ii) the dumping of the subject goods has materially retarded the establishment of domestic industry in India;

(iii) the landed price of imports is below the level of selling price of the domestic industry and is undercutting the prices of the domestic industry;

and has recommended imposition of anti-dumping duty on imports of the subject goods, originating in, or exported from the subject countriesand imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Actread with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under the tariffitemof the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (7), in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8) of the said Table, namely :-

The entire notification can be read at: https://taxinformation.cbic.gov.in/view-pdf/1010214/ENG/Notifications.

Direct Tax

Notification No.5 /2024

Bengaluru, the 30th October 2024

Subject: Specifying Forms prescribed in Appendix-II of the Income Tax Rules 1962, to be furnished electronically under sub-rule (1) and sub-rule (2) of Rule 131 of the Income-tax Rules, 1962

In exercise of the powers conferred under sub-rule (1) and sub-rule (2) of Rule 131 of the Income-tax Rules, 1962 ('the Rules'), the Director General of Income Tax (Systems), Bengaluru with the approval of the Board, hereby specifies that the following Forms shall be furnished electronically and shall be verified in the mariner prescribed under sub-rule (l) of Rule 131:

Form	Description
Form 3CEDA	Application for rollback of an Advance Pricing Agreement
Form 3C-O	Application form for approval under sub-section(1) of section 35CCC of the Income-tax Act, 1961

2. This Notification shall come into effect from 31st October 2024.

CIRCULARS

INDIRECT TAX

Customs

Circular No. 22 /2024-Customs

File No. 520/32/2022-Cus-VI

Dated: 08-11-2024

Subject: Clarification on Insurance Amount and Bond Value for CCSPs and validity of Bond for AEO-LO-reg.

Kind attention is invited to Board's Circular No. 42/2016-Customs dated 31.08.2016 which provided that average time taken for clearance of goods should be a relevant factor in deciding amount of insurance and accordingly prescribed 10 days as an average dwell time to be considered while calculating the insurance amount as provided under Regulation 5(1)(iii) of the Handling of Cargo in Customs Areas Regulations, 2009 (hereinafter referred to as HCCAR).

1.2 Further, attention is also invited to the Board's Circular No. 32/2013-Customs dated 16.08.2013 which additionally clarifies that the custodian bond executed by CCSPs under Regulation 5(3) shall remain valid till the validity of approval granted to Customs Cargo Service Providers (CCSPs) under Regulation 10.

2. It has been represented to the Board that the guidelines prescribed vide the above referred circulars may be reviewed for reduction of cost incurred on insurance amount by Customs Cargo Service Providers (CCSPs) under Regulation 5(1)(iii) of HCCAR, 2009 by also bringing the attention of the Board regarding the reduction in average dwell time of imported goods and transit time for export goods.

3. The matter has been examined. In view of the present NTRS data and as a measure of Ease of Doing Business, it has been decided to partially modify the earlier Circular No. 42/2016-Customs dated 31.08.2016 with regard to Regulation 5(1)(iii) of HCCAR, to lay down that the amount of insurance to be provided by CCSPs should be equal to the average value of goods likely to be stored in the Customs area for a period of 5 days (based on projected capacity) and for an amount as Commissioner of Customs may specify having regard to the goods that are already insured by the importers or exporters. Corresponding changes have also been carried out in Regulation 5(3) of HCCAR, 2009 vide Notification No. 75/2024-Customs (N.T.) dated 07.11.2024 to reduce the value of custodian bond being furnished in respect of imported/export goods to the extent of 5 days storage from the current 10 days as stipulated in Notification No. 115/2016-Customs (N.T.) dated 26.08.2016.

4. The Notification No. 75/2024-Customs (N.T.) dated 07.11.2024 also amends Regulation 10 of HCCAR, 2009 providing that the approval for appointment of AEO-LO CCSPs as custodian has been made valid, till such time their AEO authorisation is valid and not suspended or revoked in terms of Regulation 12 of HCCAR, 2009. Accordingly, in terms of clarification provided in Circular No.32/2013-Customs dated 16.08.2013, the custodian bond executed by CCSPs i.e. ICDs/CFSs etc who are AEO-LO shall have the validity same as the validity of approval granted under Regulation 10 of HCCAR, 2009.

5. Suitable Public Notice may be issued by the jurisdictional Pr. Commissioners or Commissioners.

6. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Circular No. 23/2024-Customs

F.No. 521/01/2023-STO(TU)

Dated: 14.11.2024

Subject: Classification of Clear Float Glass – reg.

The Board is in receipt of several references regarding the classification of the goods referred as Clear Float Glass having a tin layer on one side.

2. The issue raised was whether the presence of a tin layer on one side of the float glass be treated as the absorbent, reflective layer. The objection stated that the Float Glass having just a tin layer on one side can't be treated as a float glass having any absorbent layer and therefore is classifiable under CTH 70052990 instead of CTH 70051090 because the tin layer is existent by default on all glass manufactured through float glass process.

3. For the ease of reference, following from the First Schedule to Customs Tariff Act, 1975 is reproduced below:

   a. Heading 7005 of First Schedule to the Customs Tariff Act, 1975 covers 'Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked' and has several entries, of which relevant ones are reproduced below:

7005 10 --- non-wired glass, having an absorbent, reflecting or non-reflecting layer:

7005 10 10 --- Tinted

7005 10 90 --- Other

Other non-wired glass:

7005 21 -- Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground:

………………………………

7005 29 -- Other:

7005 29 10 --- Tinted

7005 29 90 --- Other

7005 30 - Wired glass:

……………

(b) Further, as per Chapter Note 2.(c) to Chapter 70, *For the purposes of headings 7003, 7004 and 7005, the expression "absorbent, reflecting or non-reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass."*

4. The issue has been examined in consultation with CSIR-Central Glass & Ceramic Research Institute, Kolkata. On examination, it is understood that due to the manufacturing process (Pilkington process), the final product clear float glass, has always a tin layer on one side by default due to floating of glass on the molten tin to achieve a flat, smooth surface. Getting 'tin layer' on the one side of the glass by default does not mean that it satisfies the condition under Note 2(C) of Chapter 70, that "the expression absorbent, reflecting or non- reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for e.g. metal oxide)".

5. In view of the above, it is clarified that the clear float glass which is not wired, not coloured, not reflective and not tinted and has only a tin layer on one side and there is no other metal oxide layer on it, will be said to be having no absorbent layer; therefore, will be correctly classified under tariff item 7005 29 90.

6. Difficulty, if any, in the implementation of this Circular may please be brought to the notice of Board.

Direct Tax

Circular No. 15/2024

F.No. 400/08/2024-IT(B)

New Delhi, 4th November, 2024

Subject: Order under section 119(1) of the Income-tax Act, 1961 fixing monetary limits of the income-tax authorities in respect of reduction or waiver of interest paid or payable under section 220(2) of the Income-tax Act- reg.

Section 220(2) of the Income-tax Act ('the Act') deals with the consequences of non-payment of income tax

by a taxpayer. As per Section 220(2) of the Act, if a taxpayer fails to pay the amount specified in any notice of demand under section 156 of the Act, she shall be liable to pay simple interest at the rate of 1% per month or part of the month for the period of delay in making the payment. Further, section 220(2A) of the Act empowers the Principal Chief Commissioner (Pr.CCIT) or Chief Commissioner (CCIT) or Principal Commissioner (Pr. CIT) or Commissioner (CIT) for reduction or waiver of the amount paid or payable under section 220(2) of the Act in the circumstances specified therein.

2. In accordance with the powers vested with the income-tax authorities specified in section 220(2A) of the Act in respect of reduction or waiver of the interest paid or payable under section 220(2) of the Act, the Central Board of Direct Taxes, for the proper administration of the Act, hereby specifies the following monetary limits as under:

S. No	Income-tax Authority	Monetary Limits for reduction or waiver of interest
1.	Pr.CIT/ CIT	Upto ₹. 50 lacs
2.	CCIT/ DGIT	Above ₹. 50 lacs to ₹. 1.5 crore
3.	Pr.CCIT	Above ₹. 1.5 crore

3. The powers of reduction or waiver of the interest paid or payable under section 220(2) of the Act in respect of any income-tax authority shall continue to be subject to satisfaction of all the following conditions specified under section 220(2A) of the Act-

“(i) payment of such amount has caused or would cause genuine hardship to the assessee ;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee ; and

(iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

4. The above shall come into effect from the date of issue of this Circular. Hindi version shall follow.

Circular No 14 /2024

F.No.173/92/2024-ITA-1

New Delhi, the 30th October, 2024

Sub: - Condonation of delay under clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961 for returns of income claiming deduction u/s 80P of the Act for Assessment Year 2023-24-Reg.

Applications have been received in the Central Board of Direct Taxes (hereafter referred to as ‘the Board’) from co-operative societies claiming deduction u/s 80P of the Act for assessment year 2023-24, regarding condonation of delay in furnishing return of income and to treat such returns as ’returns furnished on or before the due date under sub- section (1) of section 139 of the Act’ stating that delay in furnishing return of income was caused due to delay in getting the accounts audited under the respective State Laws.

2. In order to mitigate the genuine hardship to the assessees, the 8oard, in exercise of its powers conferred under section 119 of the Act, hereby extends the applicability of Circular No.13/2023 dated 26.07.2023 to the AY 2023-24, subject to the conditions stipulated therein.

JUDGEMENT

INDIRECT TAX

Appellate Authority can't dismiss an appeal on maintainability grounds if alternative remedy has been directed by the court: HC

Facts of the case - New Okhla Industrial Development Authority v. Union of India - [2024] (Allahabad)

The petitioner filed a writ petition against the order of the Appellate Authority which dismissed the appeal on the ground of maintainability. It was contended that the appeal was filed as per the direction of the High Court in earlier writ petition to avail alternative remedy under Section 107 of CGST Act, 2017.

Decision of the case :

The Honorable High Court noted that the appeal was filed by the petitioner but it was dismissed by the Appellate Authority on the ground of maintainability. Once, the Division Bench of the Court has directed the petitioner to avail of alternative remedy as provided under Section 107 of the Act, then the Appellate Authority cannot dismiss the appeal on ground of maintainability. Therefore, the Court held that the impugned order was liable to be set aside and matter was remanded to Appellate Authority for fresh consideration.

Order was set aside due to the AO's violation of natural justice for not awaiting the assessee's reply to the SCN: HC

Facts of the case - Elsy Joy v. Deputy Commissioner of State Tax - [2024] (Kerala)

The petitioner was issued show cause notice and time was given to file reply. However, the order was passed before the expiry of time for filing reply. It filed appeal against the order but the same was rejected as time barred. Thereafter, it filed writ petition and contended that the order was passed in violation of principles of natural justice.

Decision of the case :

The Honorable High Court noted that the order was passed before expiry of time given for reply and thus, it amounted to violation of principles of natural justice. The Court further noted that the fact that petitioner filed appeal against the order shall not be a ground to refuse relief when original order violated natural justice. Therefore, the Court held that the assessment order and appellate order were liable to be set aside and matter was remanded back to pass fresh orders after giving proper opportunity of hearing.

Summary of SCN in Form GST DRC-01 can not substitute statutory requirement of SCN under CGST Act: HC

Facts of the case - Construction Catalysers (P.) Ltd. v. State of Assam - [2024] (Gauhati)

The petitioner was issued a Summary of the Show Cause in GST DRC-01 along with an attachment of the determination of tax. It submitted a reply and requested for personal hearing but the reply was not considered and an order was passed. It filed writ petition and challenged the order by contending that proper show cause notice was not issued and opportunity of hearing was denied.

Decision of the case :

- The Honorable High Court noted that in the instant case, the summary of Show Cause Notice in Form GST DRC-01 cannot substitute statutory requirement of show cause notice under Section 73(1) of GST Act. The statement of tax determination attached to DRC-01 would not be equivalent to show cause notice. Moreover, the

authentication by proper officer is mandatory for show cause notices and orders.

- Therefore, the Court held that the impugned order was liable to be quashed and the department would be at liberty to initiate de-novo proceedings. The Court also directed that period from issuance of summary show cause notices till service of judgment copy would be excluded for limitation under Section 73(10).

Assessee is not obligated to check portal post registration cancellation; SCN must be served through alternative means: HC

Facts of the case - Ahs Steels v. Commissioner of State Taxes - [2024] (Allahabad)

The petitioner was aggrieved by the order passed under Section 73 of the Act since the GST registration was cancelled and no business was carried out by the petitioner. It was submitted that the show cause notice was uploaded on the GST portal and the impugned order was passed.

Decision of the case :

- The Honorable High Court noted that once the registration has been cancelled, the petitioner is not obligated to check GST portal. The mode of service of any show cause notice has to be by way of alternative means to the petitioner.
- However, in the present case, the notice was uploaded on GST portal without serving notice through alternative means. Therefore, it was held that there has been violation of the principle of natural justice and the impugned order was liable to be set aside. The Court also held that the department shall be at liberty to issue a proper notice to the petitioner and act in accordance with law.

HC overturned GST registration cancellation order for non-payment of dues being not a valid reason under CGST Act

Facts of the case - Subhana Fashion v. Commissioner Delhi Goods and Service Tax - [2024] (Delhi)

The petitioner received a show cause notice (SCN) from the department proposing to cancel GST registration on the ground that it failed to pay any amount of tax, interest or penalty to the account of the Central/State Government beyond a period of three months from the date on which such payment became due. Thereafter, the GST registration was cancelled retrospectively from 01.07.2017 through order dated 02.06.2022 for alleged non-payment of dues. The petitioner filed writ petition against the order of cancellation of registration.

Decision of the case :

The Honorable High Court noted that the ground for cancellation of registration i.e. non-payment of dues for three months is not a prescribed ground for cancellation under Section 29 of CGST Act or Rule 21 of CGST Rules. Moreover, the impugned order was passed in violation of principles of natural justice as the SCN did not specify date and time for personal hearing. Therefore, it was held that the cancellation order was liable to be set aside and the department was directed to restore registration forthwith.

DIRECT TAX

FA 2022 amendment allowing discontinuation of Sec. 80DD deposits couldn't be applied retrospectively: SC

Fact of the case - Ravi Agrawal vs. Union of India - [2024] (SC)[20-08-2024]

Section 80DD deals with the payment of an annuity of a lump sum amount for the benefit of a dependant, a person with a disability, in the event of death of the individual or the member of a Hindu Undivided Family (HUF) in whose name the subscription to the scheme stipulated in the said provision has been made. The Parliament amended section 80DD by virtue of the Finance Act 2022, with effect from 1-4-2023. Consequently, on attaining the age of 60 years or more by an individual

subscriber or a member of a HUF, the payment or deposit to the scheme envisaged under section 80DD could be discontinued, and the monetary benefit that would have accumulated could be made use of.

The assessee submitted that the amendment ought to be made retrospective as the same was with effect from 1-4-2023 to the existing policies as it would benefit a large number of subscribers who were interested in making use of the benefit of such policies for the benefit of the disabled persons on turning 60 years of age. An option could be reserved for the subscribers to benefit from the amendment regarding policies made much prior to 2014, as in the said year, such policies had been discontinued.

He contended that if the amendments were given a retrospective effect, many subscribers, as well as disabled persons, would benefit, and hence, the concerns of the assessee being purely in the public interest might be considered, and relief might be granted.

Considering the Public Interest involved, the assessee filed a writ petition under Article 32 of the Constitution of India as a Public Interest Litigation before the Supreme Court of India.

Decision of the case :

- The Apex Court held that it was difficult to accept the plea made by the assessee to the effect that the amendment made to section 80DD be applied retrospectively to policies that were taken prior to 2014 so that the benefit of the amendment is given to those subscribers also. The whole object of Jeevan Adhar's Policy was to benefit disabled persons by making provisions for the subscriber after his demise.
- The concern and apprehension of a caregiver or subscriber of a policy for a disabled family member or other person for whose benefit the policy is taken after the demise of the caregiver is of utmost significance. It is only with that object that the caregiver or a subscriber would take such a policy so that he would not leave a disabled person in the lurch on his demise.
- If that is the object of the policy, then the subscriber or the caregiver of the subscriber should not be given the liberty to discontinue the policy during his lifetime upon attaining 60 years of age. That would only go against the object with which the policy has been taken and against the beneficiary's interest, namely, a disabled person.
- The plea for retrospective operation of the amendment was not in the interest of the disabled persons, nor can this Court give a retrospective operation to the amendment. This was particularly concerning because an insurance contract is, in a sense, a commercial contract, having specific terms and conditions, and the sub-stratum of the contract cannot be removed by giving a retrospective operation to the amendment. The benefit under section 80DD would have been availed by the subscribers when they subscribed to the policy.
- Accordingly, the writ petition was disposed of.

Delay in filing ITR condoned for 84-year-old NRI due to technical issues preventing e-verification

Facts of the case - Santoshkumari Darshanlal Chopra vs. Commissioner of Income-tax (IT and TP) - [2024] (Gujarat)

The assessee, an individual taxpayer, filed her tax return for the assessment year 2022-23, declaring an income of ₹. 8,80,940 and claiming a Section 54 deduction of ₹. 75,11,280 after selling a residential property. She reinvested ₹. 80,00,000 in a new property, qualifying her for the deduction and a refund of ₹. 28,73,800.

Due to technical issues, the assessee couldn't e-verify her return within 30 days. Being an 84-year-old non-resident living in New Zealand, she later sent a signed ITR-V to CPC Bengaluru but discovered her return was invalidated due to the missed e-verification. On June 26, 2023, the assessee applied under Section 119(2)(b) to condone the delay, requesting that her return be treated as valid. However, the application filed by the assessee seeking condonation of delay for e-verification of the return of income had been rejected.

Decision of the case :

- On writ, the Gujarat High Court held that the

assessee explained the reason for the belated filing of the return in the application under section 119(2)(b). The status of the assessee as a non-resident Individual is not in dispute. Further, there is no denying that the assessee was unavailable in India from 17.06.2020 to 09.08.2022 since the necessary documents were part of the record. The due date for filing the return of income had expired on account of the assessee's non-availability.

- Therefore, she filed a belated income return under section 139(4). It was a case of genuine hardship faced by the assessee, and there being sufficient cause for condonation of delay. The order passed by the AO deserved to be quashed and set aside.

Compensation awarded for land acquired under provisions of Karnataka Highways Act not exempt from tax under RFCTLARR Act

Facts of the case - Commissioner of Income-tax (TDS) vs. Tushira Industries - [2024] (Karnataka)

The assessee, a company, was involved in the acquisition of land under the provisions of the Karnataka Highways Act, 1964. The Assessing Officer (AO) contended that the compensation received by the assessee would be subject to tax as per the normal provisions of the Income-tax Act.

The matter reached the Karnataka High Court.

Decision of the case :

- The Karnataka High Court held that the exemption from income tax under Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, applies only to the awards or agreements made under the provisions of the said Act. The exemption is not applicable to compensation awarded for land acquired under the provisions of the Karnataka Highways Act, 1964.

- The court held that the text of Section 96 is as clear as Gangetic Waters. It applies only to the awards or agreements made under the provisions of the said Act, which becomes apparent by the term 'made under this Act' consciously employed by the Parliament. To contend that even the awards passed under any other legislation would fit into the precincts of this provision is to render the said term otiose.

- If the Parliament intended to exempt compensation from income tax, even when the acquisition is made, or awards are passed under "any law whichsoever", it would have structured section 96 with a different text. After all, what income should be taxed and what should be exempted is a policy matter of Parliamentary wisdom.

- The court also held that the argument that all persons who give up their lands in the statutory acquisition process, whichever be the enactment, would constitute one homogenous class and, therefore, section 96 of the 2013 Act should be read down as to include the awards made under other statutes as well, is too far-fetched an argument and therefore cannot be acceded to. Persons losing property in the acquisition under the 2013 Act constitute a class apart from those who do it under other statutes, at least for the purpose of claiming exemption from taxation.

AO can consider info relatable to evidence found during search for making block assessment: HC

Facts of the case - Mange Ram Mittal vs. Commissioner of Income-tax - [2024] (Punjab & Haryana)

A search was conducted at the assessee's residential premises, and certain incriminating materials were found with respect to the liquor business. After making elaborate enquiries, the Assessing Officer (AO) concluded that the assessee owned a liquor business and accordingly passed an assessment order determining the undisclosed of the assessee based on the seized document.

On appeal, the Tribunal held that ample evidence, including partnership deeds of various liquor firms, was found in the course of the search itself regarding the assessee's undisclosed income from the liquor

business he carried on. Thus, it could not be said that the assessment of undisclosed income in that regard was outside the purview of section 158BC.

Aggrieved by the order, an appeal was filed to the Punjab & Haryana High Court.

Decision of the case :

- The High Court held that the Parliament had enacted a separate Chapter-XIV-B of the Act laying down the special procedure for assessing search cases, a self-contained code. The amount to be taxed under the said chapter should have a direct nexus with the material discovered during such search operations alone. The assessment should be restricted only to the evidence found during the search. The words are relatable to such evidence, added with retrospective effect to Section 158BB from 01-07-1995, and re-enforced with the legal position that was not relatable to the evidence found as a result of search ought not to be included in the computation of undisclosed income. The Tribunal has, therefore, examined the meaning and scope of phraseology "such other materials or information as are available with the Assessing Officer and relatable to such evidence".
- The words that have been added are rightly interpreted by the Tribunal to include two types of material that the AO may consider. First, the material found during the search and relatable to such evidence and the second part is such other materials or information as are available with the AO. Thus, apart from the evidence that may be collected and noticed during the search, if the AO has any other information and such other material with him that is relatable to such evidence, the same can also be looked into for the purpose.
- Therefore, an assessment under section 158BC is required to be made both on the basis of the result of the search as well as post-search enquiry and other proceedings which are in the nature of consequences of the evidence found as a result of the search.

Rental income of co-owners to be assessed as AOP income if no defined share is allotted to them: HC

Facts of the case - Y. S. & Co-owners vs. Income-tax Officer - [2024] (Punjab & Haryana)

The assessee and other co-owners purchased a property in their names, having specified shares jointly in the property. After that, godowns and plinths were constructed and rented out to the Government Agencies.

The Assessing Officer (AO) noted that the rental receipts from these agencies were issued jointly, and the rent was also deposited in one bank account. Thus, the income tax authority initiated proceedings to assess the rent received by co-owners as income of AOP (Association of Persons).

On appeal, the CIT(A) also passed an order holding that income received from Government Agencies had to be assessed in the hands of the co-owners in terms of section 26 as the constructed godowns fall within the definition of ''building". Further, the Tribunal held that the income received by the assessee was to be assessed as income of the AOP, and the matter reached before the High Court of Punjab & Haryana.

Decision of the case :

- The High Court held that the government companies paid the rent jointly in the hands of co-owners, treating them as a single landlord. The amount was also deposited in a single account. Loans were also raised for the construction of the godowns in the name of Co-owners.
- The order passed by the CIT(A) treated the income received individually on the specified shares as the income received individually on the specified shares, which was solely based on the sale deed regarding the purchase of land. There was no defined share of the rental income, and AOP jointly received the income. There was no division in the law, and all were co-landlords of each rented-out property.
- Merely if the members of an AOP have been assessed individually, the revenue would not be barred to assess such income in the hands of AOP if the income relates to AOP. Accordingly, it was factually not disputed that the action was to be taken against the assessee as an AOP, and the High Court upheld the decision of the Tribunal.

Tax Calendar

Indirect Tax

Due Date	Returns
Nov 20th, 2024	GSTR-3B-Other than QRMP scheme
	GSTR-5A-OIDAR Services

Direct Tax

Due Date	Returns
Nov 30th, 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of October, 2024
	Return of income for the assessment year 2024-25 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
	Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2023-24
	Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2023-24 (Form No. 64)
	Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2023-24) to units holders
	Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA
	Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2023-24. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A
	Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction]
	Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is November 30, 2024).
	Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager. (if the assessee is required to submit return of income on November 30, 2024).

E-PUBLICATIONS

Of

TAX RESEARCH DEPARTMENT

- **Guide Book for GST Professionals**
- **Handbook for Certification for difference between GSTR-2A & GSTR - 3B**
- **Impact of GST on Real Estate**
- **Insight into Customs-Procedure & Practice**
- **Input Tax Credit and In depth Discussion**
- **Taxation on Co-operative Sector**
- **Guidance notes on Preparation and Filing of Form GSTR 9 and 9C**
- **Guidance Note on Anti Profiteering**
- **Handbook on GST on Service Sector**
- **Handbook on Works Contract under GST**
- **Handbook on Impact of GST on MSME Sector**
- **Assessment under the Income Tax Law**
- **Impact on GST on Education Sector**
- **International Taxation and Transfer Pricing**
- **Handbook on E-Way Bill**
- **Handbook on Filing of Returns**
- **Handbook on Special Economic Zone and Export Oriented Units**

For E-Publications, Please Visit Taxation Portal

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NOTES:

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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

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