

January, 2022

# TAX Bulletin

★ ★ VOLUME - 104 ★ ★



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Statutory Body under an Act of Parliament

[www.icmai.in](http://www.icmai.in)

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## 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.”

## 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.”

## 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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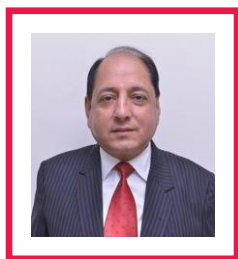
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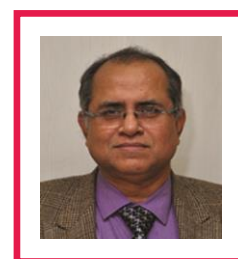
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**CMA Rakesh Bhalla**  
Chairman, Direct Taxation Committee



**CMA Chittaranjan Chattopadhyay**  
Chairman, Indirect Taxation Committee

## FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department...!!!

The department has started the year 2022 with a bang. The various aspects and changes that has been brought about from the year 2022 was addressed in the webint “REBOOTING - GST & BUSINESS PROCESSES” on 11.01.2022

The session was illuminated with the illustrious presence and deliberation of Shri D. P. Nagendra Kumar, Member, CBIC. Other dignitaries like CMA Harihara Prasad K, Joint Director (Cost), CGST Hyderabad Audit 1, CMA B Mallikarjuna Gupta, vCFO, GST & Management Consultant, CMA Nitish Kalra, Practicing Cost Accountant and CMA Vishwanath Bhat, Practicing Cost Accountant graced the occasion.

Shri D. P. Nagendra Kumar in the session conveyed the Government’s sincere appreciation and acknowledgement of the fact that the Institute is playing proactive role in ensuring that the GST Law has a smooth implementation journey. They not only guide the taxpayers in compliance also highlight to the Government the important factors. He stressed on the fact that GST is implemented to bring about the ease of doing business and hence the GST Council is bringing in new changes time and again to smoothen out the glitches. He also elaborated the importance of automation in tax implementation in today’s world and the hence the creation of audit trail for back tracking and increase in business efficiency.

A gist of the take-a-ways from the session, which emphasized on the changes being brought in GST from January 1, 2022 is enumerated as follows:

1. Aadhar Authentication in Certain Cases like:
  - (a) For filing of an application for revocation of cancellation of registration
  - (b) For filing of refund application
  - (c) For filing of refund application for the export of goods or services exported outside India
2. Blocking of filing of GSTR – 1
3. Matching of Input Tax Credit – GSTR 2B (Mandatory)
4. Recovery of Tax in Case of Difference in GSTR – 1 & GSTR – 3B

5. Power to Call for Information: As of Date, the Commissioner can call for information only through notification and only restricted to statistics. Going forward from the Commissioner can call for information from anyone. It can be a banker or a supplier or buyer etc.,
6. Pre Deposit for Appeal – Section 129(3)
7. Detention of Goods & Conveyance in Transit and Confiscation under Section 129 & 130
8. GST on e-commerce operators
9. Tax Rate Changes for Government Contracts
10. Tax Rate Changes in Footwear Sector
11. Tax Rate Changes on Job Work Related to Dyeing & Printing
12. Treatment as Supply by Services provided by Clubs & Associations
13. Relaxation in the filing of Refund Application by UIN Holders

On the Direct Tax front, CBDT has issued a circular on 11th January 2022 extending the timelines for certain direct tax compliances for AY 2021-22.

1. ITR filing due date extension:
  - i) ITR filing for taxpayers covered under tax audit is extended to 15th March 2022
  - ii) ITR filing for transfer pricing cases is extended to 15th March 2022
2. Furnishing audit report:
  - i) Due date to furnish the audit report as per the Income Tax Act is extended to 15th February 2022
  - ii) Due date to furnish the audit report for transfer pricing cases is extended to 15th February 2022

Crash Course for Colleges and Universities is being conducted at Scottish Church College and Umesh Chandra College, Kolkata.

All the other departmental activities like, Taxation Courses, updation of Taxation Portal are being conducted seamlessly on an online platform and is being widely appreciated by the students.

We would like to wish that may our spirits be motivated and be dedicated to the service of the members and stakeholders. Suggestions are sought from our readers for any modifications or improvisations.

Jai Hind.

Warm Regards



(Rakesh Bhalla)

**CMA Rakesh Bhalla**  
18<sup>th</sup> January 2022



**CMA Chittaranjan Chattopadhyay**  
18<sup>th</sup> January 2022

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CMA Rajat Kumar Basu, Addl. Director

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## ACKNOWLEDGEMENTS

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CMA Priyadarsan Sahu	-	Research Associate

### SPECIAL ACKNOWLEDGEMENT

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# CONTENTS

## ARTICLES

### INDIRECT TAX

01	<b>APPLICABILITY OF GST ON FOREST CLEARANCE FOR MINING</b>	
	CMA Satya Narayan Mishra	Page - 9

### DIRECT TAX

02	<b>SECTION 80IBA RENTAL HOUSING PROJECT</b>	
	CMA Harsh Satish Udeshi	Page - 14

## TAX UPDATES, NOTIFICATIONS AND CIRCULARS

Indirect Tax	Page - 18
Direct Tax	Page - 19

## PRESS RELEASE

Direct Tax	Page - 21
------------	-----------

## JUDGEMENTS

Indirect Tax	Page - 24
Direct Tax	Page - 26

## TAX COMPLIANCE CALENDAR AT A GLANCE

Indirect Tax	Page - 28
Direct Tax	Page - 28

Recent Updates in Direct and Indirect Tax	Page - 29
-------------------------------------------	-----------

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.ad1@icmai.in***



# APPLICABILITY OF GST ON FOREST CLEARANCE FOR MINING



**CMA Satya Narayan Mishra**  
Cost Accountant

## A. Mining Plan

1. In India mining operation for major minerals is governed by MMDR Act, 1957. Section 5(2) of MMDR Act, 1957 stipulated that no mining lease shall be granted by the State Government unless it is specified that there is a mining plan duly approved by the Central Govt. or by the State Govt.
2. Further, Rule 13(1) of MCR-2016 - no mining operations shall be undertaken except in accordance with Mining Plan and as per Rule 11(1) of MCDR, 2017 - no holder of a mining lease shall commence or carry out mining operations except in accordance with mining plan approved by IBM.
3. By conjoint reading of above provision it is crystalized that for grant of mining lease, a mining plan has to be pre-approved by Appropriate Govt.
4. The mining operation are to be carried out in forest area, therefore forest land has to be diverted for facilitating developmental activities for non-forestry purposes like construction of plant, roads, mining etc
5. In consonance to the mining plan approval, it is obligatory for the user agency to get the permission for use of forest land for non-forestry purpose and the same has to get approval in accordance with the provision of Forest (Conservation) Act of 1980.
7. As per the Forest (Conservation) Act 1980, whenever forest land is to be diverted for non-forestry purpose usually the conditions relating to transfer, mutation and declaration as Reserve Forest/Protected Forest the equivalent non-forest land for compensatory afforestation and funds for raising compensatory afforestation etc. are imposed. For mining purposes additional conditions like maintaining a safety zone area, fencing etc. and for major and medium irrigation projects, catchment area treatment plans are stipulated.
8. There are various conditions imposed by MoEF for forest clearance and one of the condition is to make a provision for Compensatory Afforestation.
9. Honourable, Supreme Court in its order in the case of T.N. Godavarman Thirumulpad vs. Union of India and Others [Writ Petition (Civil) No. 202 of 1995], dated the 30th October, 2002, observed certain issue w.r.t compensatory afforestation related issues and NPV. In the said judgement the apex court ordered that, apart from compensatory afforestation, the Net Present Value of forest land being diverted for non-forestry purposes should also be recovered from the user agencies. The money so recovered could be utilized for undertaking forest protection, other conservation measures and related activities”

## B. Forest Clearance:

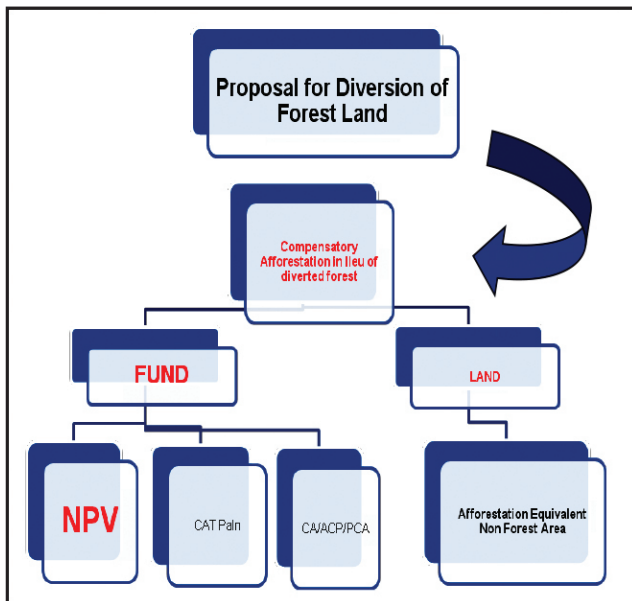
6. Forest (Conservation) Act of 1980 stipulates that any diversion of forest land for development projects or other reasons must be approved by the Government of India. Such approvals are known as ‘forest clearances’ and are conditionally issued by the MoEF.
10. The forests are generally used for the lifestyle, wellbeing of the forest dwellers, villagers and other people/ species wholly or partly dependent on forests. These are also used for nature reserve, national park, wildlife sanctuary, biosphere reserve, as a habitat of any endangered/ threatened species

### **Compensatory afforestation in lieu of diversion of forest land:**



of flora and fauna and for agriculture purposes for the rehabilitation of the persons displaced from their residences by reason of any river valley or hydroelectric projects etc.

11. Natural forest is the god gifted things on which everyone is the beneficiary and has the right. If forest land is used for non-forest purpose, then the rights of the stakeholders are to be taken care by way of compensating the loss of tangible as well as intangible benefits flowing from the forest lands.
12. Compensatory Afforestation involves identification of non-forest land or degraded forest land, work schedule, cost structure of plantation, provision of funds, mechanism to ensure the utilisation of funds and monitoring mechanism etc. Hence, it is one of the most important conditions stipulated by the Central Government while approving proposals for de-reservation or diversion of forest land for non-forest use. As per prevailing environmental law, the proposal for Compensatory afforestation in lieu of diversion of forest land can be made in two ways i.e. (i) afforestation of identified non forest land and (ii) provision of funds. The components of conditions for diversion of forest land for non-forest purpose are depicted in the flow chart.



**D.Collection of Net Present Value (NPV):**

13. When a user agency applied for forest land diversion for non-forestry use, then Govt. imposed condition on the said user agency to contribute fund for

the compensating the loss of tangible as well as intangible benefits flowing from the forest lands.

14. Honourable, Supreme Court in its order in the case of T.N. Godavarman Thirumulpad vs. Union of India and Others [Writ Petition (Civil) No. 202 of 1995], dated the 30th October,2002, observed certain issue w.r.t compensatory afforestation related issues and NPV.
15. In consonance to the order of the Supreme Court, a new act is enacted namely “The Compensatory Afforestation Fund Act, 2016”. The preamble of said act state that:

*An Act to provide for the establishment of funds under the public accounts of India and the public accounts of each State and crediting thereto the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value and all other amounts recovered from such agencies under the Forest (Conservation) Act, 1980; constitution of an authority at national level and at each of the State and Union territory Administration for administration of the funds and to utilise the monies so collected for undertaking artificial regeneration (plantations), assisted natural regeneration, protection of forests, forest related infrastructure development, Green India Programme, wildlife protection and other related activities and for matters connected therewith or incidental thereto.....*

16. From the preamble of the Compensatory Afforestation Fund Act, 2016, it is understood that, a CAMPA fund will be created wherein the user agency will contribute fund to carry out the activities as specified in the proposal given for Forest clearance.
17. As per Section 2 (j) of Compensatory Afforestation Fund Act, 2016 **“net present value” means the quantification of the environmental services provided for the forest area diverted for non-forestry uses**, as may be determined by an expert committee appointed by the Central Government from time to time in this regard.

18. Further, Section 2(e) of Compensatory Afforestation Fund Act **“environmental services”** includes:

- a. provision of goods such as wood, non-timber forest products, fuel,



- b. fodder, water and provision of services such as grazing, tourism, wildlife protection and life support;
  - c. regulating services such as flood moderation, carbon sequestration and health of soil, air and water regimes;
  - d. supporting such other services necessary for the production of ecosystem services, biodiversity, nutrient cycling and primary production including pollination and seed dispersal;
19. From the above mentioned information it is understood that, there are several views are arising under:
- a. Being NPV paid for forest land is used for non-forest purpose and accordingly it can be said that NPV is paid for use of land i.e. renting or leasing charge paid for the using the immovable property. or
  - b. Being, NPV is to compensate, in money terms, for the loss of tangible as well as intangible benefits flowing from the forest lands and accordingly it can be said that it is a monetary contribution towards the state by the user agency. Or
  - c. Being, NPV is collected for providing environmental services and accordingly it can be said that Govt. will provide environmental services by way of plantation, preservation of forest, ecology etc.
  - d. Being, NPV is charged for the tolerating the loss suffered by public at large and being the state is the representative of Public and also beneficiary of the public by tolerating the act of the user agency.

### **E. GST Prospective**

20. Based on above mentioned scenario if we frame our view with regards to levy of GST on payment NPV, then the following provision to be kept in mind.
21. Section 9(1) of CGST Act state that, there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

22. The above charging provision state that GST will be levied on supply transaction and as per Section 7(1) (a) of CGST Act, the expression “supply” includes— all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
23. From the above to levy GST, there must be presence of consideration and as per Section 2(31) of CGST Act “consideration” in relation to the supply of goods or services or both includes—
- a. any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
  - b. the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
24. From the literal meaning of the consideration, the payment of NPV is not qualifies as consideration and only to be treated as transaction in money and accordingly the payment is qualifying as transaction of money and GST will be not levied on it. However, if we treat that the NPV is a consideration and based on the scenario noted above the following issues are to be considered.

### **NPV is paid for use of forest land for non-forestry purpose:**

25. If we consider NPV as consideration toward use of forest land which means that Govt. providing the right to use the forest land in terms of lease and accordingly as per serial No.16 of NN.11/2017 CT(R) services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land is exempted from GST. Therefore, under this clause only Govt. or Govt. entity can get exemption.

### **NPV is paid for providing environmental services.**

26. If we state that Govt. is collecting NPV for providing

environmental service, then a question arises who will be receiving the environmental services i.e. the user agency or the public.

27. Being the nature of payment is toward compensation for the environmental issues by which can be said that Govt. collecting NPV to protect the Forest, environment, ecology and also providing the services to public at large and not to the user agency. Hence RCM liability will not arise on the user agency.
28. If we make a contradictory view that the user agency has the obligation to protect the environment and for which the user agency making payment of NPV and agreed that Govt. will maintain the forest at it is initial condition and accordingly it will be a services towards the user agency by Govt. Then as per SI No.3 of NN/12 CT(R) pure service to Government **Entity** by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempted from GST.
29. Under article 243G & article 243W of the Constitution Maintenance of community assets, Urban forestry, protection of the environment and promotion of ecological aspects is listed and as per exemption notification the supply of services for the said activities is exempted from GST.

### NPV is charged for the tolerating the loss suffered as liquidated damages.

30. If we consider that the user agency is contributing toward the environmental loss as liquidated damages by way of tolerating the act of others, then it as per GST it will be a services by Govt. to the user agency and accordingly as per NN/12 CT(R) services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract is exempted from GST.
31. It may be noted that in a matter of levy of service tax, the CESTAT Allahabad, held that the **liquidated damages** were received to make good the losses or injuries from unintended events and does **not** emanate from any obligation on part of any of the parties. Hence, the same cannot be considered as the payments for any **service and accordingly**

**we hold the said view then no GST will be payable by the user agency.**

### *Other view*

32. Hon'ble Apex ITA No.122 & 1521/Kol/2009 A.Ys. 05-06 & 06-07 ACIT Cir-5 Kol v. M/s. Ghanashyam Misra & Sons (P) Ltd. Page 5 Court observed that the money so received towards NPV should be used for natural assisted re-generation, forest management, protection, infrastructure development, wildlife protection and management, supply of wood and other forest produce saving devices and other allied activities. In the context, Hon'ble Apex Court observed that NPV will not fall under Article 110 or 199 or 195 of the Constitution. It was observed that such payments were levied for rendering service which the state considers beneficial in public interest. It is a fee which falls in entries 47 of List-III of 7th Schedule of the Constitution. The fund set up is a part of economic and social planning which comes within Entry 23 of List III and the charge which is levied for that purpose would come under Entry 47 of List III. In that context, it was held levy of NPV is a fee that means every mining agency using and converting forest land to non-forest purpose has to pay a fee for continuing carrying on of the business.
33. On the basis of said reference, we may hold that the user agency is not paying the NPV for getting the mining lease but paying a fees for getting the statutory clearance for getting the mining right and accordingly the demand by DGGI that the NPV is a consideration toward mining lease is not correct.
34. Further, Payment of tax under RCM is on the supply of "services". In this context can it be said that certain activities (referred as sovereign functions) carried out by the Central Government, State Government, Union territory or local authority in the capacity of a "sovereign" cannot be regarded as "services" and hence cannot be brought to tax? This is because such functions are the inherent duty casted on the Government by the Constitution and hence even if any tax/fee is charged for the same, can it still be termed as a "service" supplied by the Government? Before we examine the issue it is worthwhile to understand the term "sovereign functions".
35. Hon. Supreme Court in the case of State of UP v. Jai Bir Singh (Appeal (Civil) 897 of 2002) expressed doubts on the earlier decision and observed that "The concept of sovereignty in a constitutional democracy is different from the traditional concept



of sovereignty which is confined to 'law and order', 'defense', 'law making' and 'justice dispensation'. In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the Directive Principles of the State Policy in Part -IV of the Constitution of India. From that point of view, wherever the government undertakes public welfare activities in discharge of its constitutional obligations, as provided in part-IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of 'industry'."

36. CBEC vide Circular No. 89/7/2006 – S.T dated December 18, 2006 had clarified that fee collected by sovereign/public authorities while performing statutory functions/duties under the provision of law would not be exigible to Service tax. Said circular reiterated an established principle that payment/ fee levied and collected by Government authorities under the mandate of a statute are in the nature of compulsory levy and cannot be treated as provision of any service (by such Government authority) to any person/ entity for a consideration.
37. As noted in earlier para NPV qualifies as a fees which falls in entries 47 of List-III of 7th Schedule of the Constitution. The fund set up is a part of economic and social planning and accordingly based on the legal prudence of earlier law we may say that NPV is a fee which is collected for discharging the sovereign function i.e. to protect the environment is not a provision of services by Govt. to industry.
38. As per Section 3(a) of Land Acquisition Act, 1894, the expression 'land' includes benefits that arise out of land and things attached to earth or permanently fastened to anything attached to the earth. As per Section 3(4) of Bombay Land Revenue Code, 1879 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory. In the case of Safiya Bee vs Mohd. Vajahath Hussain – (2011) 2 SCC 94, the Apex court held that 'land' includes rights in or over land, benefits to arise out of land. The Apex court in the case of Pradeep Oil Corporation Vs Municipal Corporation of Delhi – (2011) 5 SCC 270 observed that land includes benefits to arise out of land. It is thus a benefit out of land included within the word 'land'.
39. From the above one can infer that the word 'land' not just includes full title in land but also rights which gives benefits associated with it. Hence, the expression 'sale of land' connotes 'transfer (irrevocably and permanently) of title in land including rights in the form of benefits arising from it'. Since, one can convey that NPV is paid for getting benefit associated with the land and also can be concluded that NPV is paid for getting the land.
40. As per Clause 5 of Schedule III of CGST Act, sale of land is out of the preview of GST and by considering the above one can said that consideration in form of NPV is paid for getting the land or benefit associated with land will be out of the preview of GST. ●



# SECTION 80IBA RENTAL HOUSING PROJECT



**CMA Harsh Satish Udeshi**  
**Cost Accountant**

In order to encouraging the developers in affordable housing sector government initiative several incentives for developers like subsidies, tax benefits and most importantly institutional funding was provided.

The real estate sector plays a very important role influencing the need and demand for housing and infrastructure in the country.

The growth of this sector is well complemented and improving the growth in the corporate environment. In new India as a developing country, Government has come up the innovative ideas of creating and maintaining growth of real estate projects.

This section has provided benefits to the owner and the Government in the forms of subsidies and helps the user to claim tax benefits.

The main intent for introducing this section was to incentives affordable housing sector as a part of larger objective of the government of 'Housing for All'.

House project which are approved between 1-1-16 to 31-12-2021 by the competent authority and if the below conditions are satisfied then 100% deduction of the profits and gains derived from the business of developing housing projects under section 80IBA of Income Tax 1961.

To help migrant labourer and to promote affordable rental it is proposed to allow deduction under section 80 IBA of the Act also to such rental housing project which is notified by the Central Government in the official Gazette and fulfills such conditions as specified in the said notifications.



In section 80 IBA of the Income Tax Act, with effect from the 1<sup>st</sup> day April 2022.

The project is completed within period of five years from the date of approval by the competent authority:

Provided that,

- with approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority; and
- the project shall be deemed to have completed when a certificate of completion of project as a whole is obtained in writing from the competent authority;

**From 01-09-2019 to 31-03-2022**

- project should be completed within 5 years from date of approval.



- Carpet area of shops and other commercial established less than 3% of aggregate carpet areas.
- Project is on plot of land not less than
  - a) 1000 sqm (if project located within the metropolitan cities and (limited to Delhi, Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai ( whole of Mumbai metropolitan Region)
  - b) 2000sqm (if project in other places).
- The project is the only housing project on the plot of land.
- The carpet area of the residential unit comprised in the housing project does not exceed
  - a) 60 sqm (if project located within the Metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai, whole of Mumbai Metropolitan Region).
  - b) 90 sqm ( if project in other places).
- Where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.
- The project utilizes not less than;
  - a) 90% of the floor area ratio permissible in respect of the plot of land under the Rules to be made by the Central Government / State Government / Local Authority, where such project is located within the metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region ( limited to Delhi, Noida , Greater Noida , Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai ( whole of Mumbai metropolitan Region),or
  - b) 80% of such floor area ratio where project is located in any other place.
- The assessee maintain separate books of accounts in respects of the Housing Project.
- The Stamp Duty value (value adopted for the purpose of payment of stamp duty) of a residential unit in the housing project does not exceeds Rs 45 Lakhs.

**For the purpose of this sections,-**

Carpet area shall have the same meaning as assigned to it clause (k) of section 2 of the Real Estate ( Regulations and Development) Act, 2016( 16 of 2016).

- (a) “the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment”.

*Explanation— For the purpose of this clause, the expression “exclusive balcony or verandah area” means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;*

- (b) competent authority means the authority empowered to approve the building plan by or under any law for the time being in force;
- (c) Floor area ratio means the quotient obtained by dividing the total covered area of plinth area on all the floors by the area of plot of land.
- (d) “Rental Housing Projects” means a project which is notified b y the Central Government in the official gazette under this clause on or before the 31<sup>st</sup> day of march 2022 and fulfills such conditions as may be specified in the said notifications



**Key Points**

- 1) Where the project approval is obtained more than once, date of first approval shall be considered for this purpose.



- 2) This section not applies to any assessee who execute the housing projects as a work contract awarded by any person( including the Central Government or State Government).
- 3) Where the housing projects is not completed within 5 years then deduction claimed under this section shall be deemed to be the Profit And Business Profession Income of the assessee in the previous year in which the 5 years completed
- 4) Deduction to the extend claimed under this section shall not be allowed under any other provisions of the Act.

### **Incentives under Goods and Service Tax**

A concessional rate of 1% is applicable for construction services provided by suppliers with respect to the affordable residential apartment under goods and services tax laws. The normal rate of tax applicable for supply of construction services pertaining to residential apartments is 5%. However, if such residential unit falls under the definition of affordable residential apartment, the same is reduced by 4%, making the effective rate of tax at 1%..

Hence, if assessee is contemplating the project with commercial space which is not more than 15% of the total carpet area of all the apartments in REP, then such project would be called as RREP and tax rate of 1% is applicable vide Entry 3(i). Further, the rate of tax applicable to such commercial space in a RREP is 5% as notified vide Entry 3(ib). Except for this difference, there is no other difference between RREP and REP. All other conditions equally apply to RREP and REP.

If a residential apartment having carpet area not exceeding 90 square meters in cities or towns other than metropolitan cities and for which the gross amount charged is not more than Rs 45 lakhs.

Hence, in order to fall under the definition of affordable residential apartment under the CT Act and to be eligible for concessional rate of 1% for residential apartments and 5% for commercial apartment in RREP, assessee has to satisfy twin conditions. One, the carpet area of residential apartment should not exceed 90 square meter and two, gross amount charged should not be more than Rs 45 lakhs. On satisfaction of both the conditions, the said residential apartment would fall under the definition of 'affordable residential apartment' and accordingly eligible for concessional rate. Further the assessee should also satisfy additional condition that no credit of input tax can

be claimed, 80% of the value of input and input services shall be procured from registered supplier (else, tax has to be paid by assessee on shortfall at 18% excluding cement purchased from unregistered supplier).

### **THE CERTIFICATE OF COMPLETION IS COMPULSORY AND SHOULD BE OBTAINED BY THE COMPETENT AUTHORITY. AS THE RELATED CASES MENTIONED BELOW**

#### ***Sigma Constructions (2013) HYDERABAD ITAT***

Clarifications have been sought by various Chief CITs on the issue whether the deduction under s. 80IB(10) would be available on a year-to-year basis where an assessee is showing profit on partial completion or if it would be available only in the year of completion of the project under s. 80- IB(10).

The above issue has been considered by the Board and it is clarified as under :

- (a) The deduction can be claimed on a year-to-year basis where the assessee is showing profit from partial completion of the project in every year.
- (b) In case it is late and it is found that the condition of completing the project within the specified time-limit of 4 years as stated in s. 80-IB(10) has not been satisfied, the deduction granted to the assessee in the earlier years should be withdrawn.

#### **• If the Return is filed belated whether deduction under section 80IBA can be claimed.**

Sec 80 AC provides that deduction under section 80 IBA is not available if return of income is submitted by the assessee after the due date of submission of return of Income specified under section 139(1).

This burden is not cast upon assesses claiming deductions under several other similar provisions.

#### **• Whether deduction under section 80-IBA will be eligible for dwelling or duplex units or row houses?**

Section 80-IBA clearly mentioned the definition of residential house property, which state that the residential house property means an independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building.

Dwelling or duplex units or row houses are satisfying the conditions stated above and hence they are



eligible for deduction under section 80-IBA.

● ***One person is making housing project for another person, will deduction be allowed?***

Section 80IBA is housing project for general public not for personal purpose. It will be considered as works contract, and works-contract awarded by any person (including the Central Government or the State Government) will not be allowed as deduction.

● ***What if project is not completed within 5 Years?***

The total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be

the income of the assessee chargeable under the head “Profits and gains of business or profession” of the previous year in which the period for completion so expires.

***Conclusion***

With the above provisions and related situations it is considered that development of Rental housing project is under the process of expansion, growth for the new India and provided employment basis to many skill employee and labourer. It's a process to make strong pillars for real estate companies from sinking to its top. ●

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX

### CUSTOMS NOTIFICATIONS

#### Customs Non Tariff Notifications

##### Notification No.01/2022 - Customs (N.T.)

Exchange rate Notification No.01/2022-Cus (NT)  
dated 03.01.2022-reg  
Dated- 3.01.2022

CBIC has made amendments in Notification No.98/2021-CUSTOMS(N.T.), dated 16th December, 2021 and those amendments have been effective from 4<sup>th</sup> January, 2022.

#### SCHEDULE-I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
18.	Turkish Lira	5.75	5.30

##### Notification No.02/2022 - Customs (N.T.)

Exchange rate Notification No.02/2022-Cus (NT)  
dated 06.01.2022-reg  
Dated- 6.01.2022

CBIC has determined the rate of exchange of conversion of the foreign currencies into Indian currency or vice versa relating to imported and export goods, and those have been effective from 7th January, 2022.

#### SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
1	Australian Dollar	54.75	52.45
2	Bahraini Dinar	204.05	191.55
3	Canadian Dollar	59.35	57.25

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
4	Chinese Yuan	11.90	11.50
5	Danish Kroner	11.55	11.15
6	EURO	85.85	82.80

For more details, please follow -

<https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2022/cs-nt2022/csnt02-2022.pdf>

#### Customs Anti-Dumping Duty Notifications

##### Notification No. 1/2022-Customs (ADD)

Seeks to rescind notification No. 30/2016 dated 11.07.2016 which seeks to impose Anti-Dumping Duty on Imports of 1,1,1,2-Tetrafluoroethane or R-134a from China PR  
Dated- 6.01.2022

CBIC has revoked the anti-dumping duty imposed on “1,1,1,2- Tetrafluoroethane or R-134a”, originating in or exported from China PR, and imported into India and has rescinded the notification No. 30/2016-Customs (ADD), dated the 11th July, 2016, except as respect things done or omitted to be done before such rescission.

##### Notification No. 2/2022-Customs (ADD)

Seeks to rescind Notification No. 49/2017-Customs (ADD), dated the 17th October, 2017, to remove levy of ADD on Colour coated / pre-painted flat products of alloy or non-alloy steel originating in or exported from China PR and European Union.  
Dated- 13.01.2022

CBIC has rescinded the Notification No. 49/2017-Customs (ADD), dated the 17th October, 2017, except as respect things done or omitted to be done before such rescission.

**DIRECT TAX**

**Notification No. 1/2022 [F. No. 300196/28/2019-ITA-I] / SO 73(E)**

Notification regarding Regional Air Connectivity Fund Trust  
Dated- 6.01.2022

CBDT has notified the clause, 'Regional Air Connectivity Fund Trust (PAN AADTR1130P), a trust constituted by the Central Government, in respect of the following specified income arising to that trust, namely: -

- (a) Grant from Government;
- (b) Receipt of levy from Airlines;
- (c) Forfeiture of bank guarantee due to non-fulfillment of obligation by Airlines; and
- (d) Interest income earned on (a) to (c) above

This notification shall be effective subject to the conditions that Regional Air Connectivity Fund Trust, -

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been applied for the period from 01.06.2020 to 31.03.2021 for the financial year 2020-2021 and shall apply with respect to the financial years 2021-2022, 2022-2023, 2023-2024 and 2024-2025

**CORRIGENDUM**

**Notification No. 2/2022 [F. No. 370142/66/2021-TPL] / SO 90(E)**

Dated- 7.01.2022

In the notification of CBDT, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 5429(E), dated the 28th December, 2021, at page 18, in paragraph 10, the clause (i) shall be read as the following, namely, —

“the Commissioner of Income-tax (Appeals), in case of order passed under clause (x) of subparagraph (1) of paragraph 5 or under sub-paragraph (5) of paragraph 6 or under sub-paragraph (8) of paragraph 7, by affixing digital signature;”

**Notification No. 3/2022 [F. No. 300196/11/2021-ITA-I] / SO 145(E)**

Dated- 11.01.2022

CBDT has notified the clause, 'International Financial Services Centres Authority', Gandhinagar, Gujarat (PAN AAAGI0596L), an authority constituted under sub-sections (1) and (3) of section 4 of the International Financial Services Centres Authority, Act, 2019 (50 of 2019), in respect of the following specified income arising to that Authority, namely: -

- (a) Grant-in-aid received from Central Government;
- (b) Fees and charges received by International Financial Services Centres Authority Act, 2019;
- (c) Any other sums received by International Financial Services Centres Authority as decided by the Central Government; and
- (d) Interest income accrued (a) to (c) above.

This notification shall be effective subject to the conditions that International Financial Services Centres Authority, Gandhinagar, Gujarat, -

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been applied for the financial year 2020-2021 and shall apply with respect to the financial years 2021-2022, 2022-2023, 2023-2024 and 2024-2025

## CIRCULARS

### Extension of timelines for filing of Income-tax returns and various reports of audit for the Assessment Year

2021-22– reg  
11th January 2022

On consideration of difficulties reported by the taxpayers and other stakeholders due to COVID and in electronic filing of various reports of audit under the provisions of the Income-tax Act, 1961 (the Act), the Central Board of Direct Taxes (CBDT) has decided to further extend the due dates for filing of Income Tax Returns and various reports of audit for the Assessment Year 2021-22. The further details are as under:

- 1. The due date of furnishing of Report of Audit** under any provision of the Act for the Previous Year 2020-21, which was 30th September, 2021, in the case of assessee referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, as extended to 31st October, 2021 and 15th January, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th February, 2022;**
- 2. The due date of furnishing of Report of Audit** under any provision of the Act for the Previous Year 2020-21, which was 31st October, 2021, in the case of assessee referred in clause (aa) of Explanation 2 to sub-section (1) of section 139 of the Act, is extended to **15th February, 2022;**
- 3. The due date of furnishing of Report from an Accountant** by persons entering into international transaction or specified domestic transaction under

**section 92E** of the Act for the Previous Year 2020-21, which was 31st October 2021, as extended to 30th November, 2021 and 31st January, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th February, 2022;**

- 4. The due date of furnishing of Return of Income** for the **Assessment Year 2021-22**, which was 31st October, 2021 under sub-section (1) of section 139 of the Act, as extended to 30th November, 2021 and 15th February, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th March, 2022;**
- 5. The due date of furnishing of Return of Income** for the **Assessment Year 2021-22**, which was 30th November, 2021 under sub-section (1) of section 139 of the Act, as extended to 31st December, 2021 and 28th February, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th March, 2022.**

**Clarification 1:** It is clarified that this extension shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds one lakh rupees.

**Clarification 2:** For the purpose of Clarification 1, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under Circular No.9/2021, Circular No.17/2021 and this Circular) provided in that Act, shall be deemed to be the advance tax. ●



# PRESS RELEASE

## Direct tax

### **Searches conducted by Income Tax Department largely in Uttar Pradesh and Maharashtra**

5<sup>th</sup> January 2022

The Income Tax Department carried out search and seizure operation on 31.12.2021 on two groups engaged in the business of perfume manufacturing and real estate. Over 40 premises in the states of Uttar Pradesh, Maharashtra, Delhi, Tamil Nadu and Gujarat have been covered during the search action.

In case of the first group primarily based in Mumbai & UP, the search action revealed that the group is involved in tax evasion by under-reporting sale of perfumes, stock manipulation, fudging books of account to shift profits from taxable unit to tax exempt unit, inflation of expenditure, etc. Evidences found in the sales office and main office have revealed that the group makes 35% to 40% of its retail sales in cash by 'kucha' bills and these cash receipts are not recorded in the regular books of account, running into crores of rupees. Evidences of booking purchases from bogus parties to the extent of about Rs. 5 crore have also been unearthed.

The analysis of incriminating evidence indicates that unaccounted income so generated is invested in various real estate projects in Mumbai, acquisition of properties both in India and The United Arab Emirates (UAE). It has also been detected that the group has evaded tax of Rs. 10 crore on conversion of the stock-intrade to capital as corresponding income has not been declared. The group has also not declared income amounting to Rs. 45 crore on the benefits paid to retiring partners.

Evidences have also been found and seized substantiating that the promoters of the group have incorporated some offshore entities. However, such offshore entities have not been reported in their respective Income Tax Returns. The evidences recovered during the search reveal that the offshore entities are run and managed by the Indian promoters. Two of such offshore entities have also been found to own one villa each in the UAE.

It has also been unearthed that one of the offshore

entities of the group from the UAE has purportedly introduced illicit share capital of over Rs. 16 crore in an Indian entity of the group, at exorbitant premium. This recipient group entity has also obtained further sum of Rs. 19 crore in the form of illicit share capital from certain Kolkata based shell entities. One of the shareholder directors of these shell entities admitted on oath that he was a dummy director and invested in share capital of the group company at the instance of the promoters of the group.

During the course of search action on another UP based group, incriminating evidences substantiating unrecorded cash transactions of about Rs. 10 crore have been found and seized. It is also gathered that the group is not maintaining any stock register for its inventory.

So far, unaccounted cash exceeding Rs. 9.40 crore and unexplained jewellery of more than Rs. 2 crore have been seized. Several bank lockers have been placed under restraint and are yet to be operated.

Further investigations are in progress.

### **Income Tax Department conducts searches in Andhra Pradesh and Telangana**

10<sup>th</sup> January 2022

The Income Tax Department carried out search and seizure operation on 05.01.2022 on three real estate developers, engaged in the business of land development as well as construction activities in the town of Kurnool and other mofussil areas of Andhra Pradesh and Telangana. More than two dozen premises have been covered in the search operation spread over Kurnool, Ananthapur, Kadapa, Nandyal, Bellary, etc.

During the course of the search operations, several incriminating documents, such as handwritten books, agreements, etc. have been found and seized. Digital data has also been seized from a specialized software application as well as from other electronic gadgets. It has been found in the case of one of the assessee groups that it has been using a software which has been systematically modified to eliminate the unaccounted cash element of



the consideration received and to record in the regular books of account the sale consideration that matches with registered sale price.

These groups have been found to be accepting cash over and above the registered value of the properties. Such unaccounted cash is used for payments of on-money towards the purchase of lands and incurring other expenditure.

So far, the search action has led to the seizure of unaccounted cash of Rs.1.64 crore.

The search has resulted in the detection of unaccounted cash transactions to the tune of Rs.800 crore.

Further investigations are in progress.

## Income Tax Department conducts searches in Kerala

10<sup>th</sup> January 2022

The Income Tax Department carried out search and seizure operation on 05.01.2022 on two groups, engaged in the business of quarry operation. More than 35 premises spread across districts of Kottayam, Ernakulam, Thrissur, Palakkad and Kannur have been covered in the search operation.

During the course of the search operation, various incriminating documents and digital evidences have been found and seized, including a parallel set of books of account recording the entries of actual sales and receipt of cash. These evidences have clearly revealed the modus operandi being followed by the quarry operators as they are indulging in large scale suppression of sales made in cash including the fact that these transactions are not recorded in the regular books of account of the group.

The correlation of these evidences also indicates that unaccounted cash so generated is systematically invested in acquisition of immovable properties, used for the business of cash loans, and unrecorded capital investments in other businesses. The search team has also gathered evidences of on-money payment for purchase of properties and substantial cash deposits in undisclosed bank accounts. The assessee of the group have been found to have sold immovable properties without duly accounting for the capital gains arising from such transactions.

The search action has resulted in seizure of unaccounted

cash of more than Rs 2.30 crore.

So far, the search has led to the detection of estimated unaccounted income to the tune of Rs. 200 crore.

Further investigations are in progress.

## CBDT extends due dates for filing of Income Tax Returns and various reports of audit for the Assessment Year 2021-22 under the Income-tax Act, 1961

11<sup>th</sup> January 2022

On consideration of difficulties reported by the taxpayers and other stakeholders due to COVID and in electronic filing of various reports of audit under the provisions of the Income-tax Act, 1961 (the Act), the Central Board of Direct Taxes (CBDT) has decided to further extend the due dates for filing of Income Tax Returns and various reports of audit for the Assessment Year 2021-22. The further details are as under:

- 1. The due date of furnishing of Report of Audit** under any provision of the Act for the Previous Year 2020-21, which was 30th September, 2021, in the case of assessee referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, as extended to 31st October, 2021 and 15th January, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th February, 2022;**
- 2. The due date of furnishing of Report of Audit** under any provision of the Act for the Previous Year 2020-21, which was 31st October, 2021, in the case of assessee referred in clause (aa) of Explanation 2 to sub-section (1) of section 139 of the Act, is extended to **15th February, 2022;**
- 3. The due date of furnishing of Report from an Accountant** by persons entering into international transaction or specified domestic transaction under **section 92E** of the Act for the Previous Year 2020-21, which was 31st October 2021, as extended to 30th November, 2021 and 31st January, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th February, 2022;**
- 4. The due date of furnishing of Return of Income** for the **Assessment Year 2021-22**, which was 31st





October, 2021 under sub-section (1) of section 139 of the Act, as extended to 30th November, 2021 and 15th February, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th March, 2022**;

5. The **due date of furnishing of Return of Income** for the **Assessment Year 2021-22**, which was 30th November, 2021 under sub-section (1) of section 139 of the Act, as extended to 31st December, 2021 and 28th February, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is further extended to **15th March, 2022**.

It is also clarified that the extension of the dates as referred to in clauses (12) and (13) of Circular No.9/2021

dated 20.05.2021, clauses (4) and (5) of Circular No.17/2021 dated 09.09.2021 and in clauses (4) and (5) above shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of subsection (1) of that section exceeds rupees one lakh. Further, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under Circular No.9/2021 dated 20.05.202, Circular No. 17/2021 dated 09.09.2021 and as above) provided in that Act, shall be deemed to be the advance tax.

CBDT Circular No.01/2022 in F.No.225/49/2021/ITA-II dated 11.01.2022 issued. The said Circular is available on [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in). ●

## INDIRECT TAX JUDGEMENT



### **1.5% GST to be charged from Customers for Sale of Flats in Project, except where entire consideration has been received after Issuance of Completion Certificate.**

#### **FACT OF THE CASE**

1. The applicant, Kayal Infra is constructing a property at Ghosh Hat, Madhaitala, P.S. & P.O. Katwa under Katwa Municipality, District-PurbaBardhaman, West Bengal.
2. The applicant has sought the advance ruling on the issue Whether the property currently under construction is a Residential Real Estate Project (RREP) and Whether the said property under construction is an affordable residential apartment as defined under the aforesaid notification, and Whether the GST rate to be charged from customers for sale of flats in the said property should be 1.5% (0.75% CGST and 0.75% SGST), as further reduced by 1/3 rd to factor in the value of land or it should be 7.5% (3.75% CGST and 3.75% SGST), as further reduced by 1/3 rd to factor in the value of land.

#### **DECISION OF THE CASE**

1. The coram of Brajesh Kumar Singh and Jyoti Banik ruled that the project referred to in the instant application which is currently under construction by the applicant is a Residential Real Estate Project (RREP) as defined under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and amended vide Notification No. 03/2019-Central tax (rate) dated 29.03.2019.
2. The apartments in the said project qualify as affordable residential apartment as defined vide Notification No. 03/2019-Central tax (rate) dated 29.03.2019.
3. The West Bengal Authority of Advance Ruling (AAR) has ruled that 1.5% GST to be charged from customers for sale of flats in Project, except where entire consideration has been received after issuance of completion certificate.

### **GST Exemption on Composite Supply of less than 25% of Service of Milling of Food Grains into Flour to Food & Supplies to West Bengal Govt. for distribution under Public Distribution System.**

#### **FACT OF THE CASE**

1. The applicant, M/s. Shiv Flour Mill has been engaged

in the business of selling flour (atta) and providing service of job work in the nature of crushing food grains supplied and owned by Food & Supplies Department, Government of West Bengal.

2. The applicant has sought the advance ruling on the issue Whether the instant composite supply of service by way of milling of food grains into flour to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and What shall be rate of GST on such milling, if it does not fall under entry No. 3A.

#### **DECISION OF THE CASE**

1. The coram of Brajesh Kumar Singh and Jyoti Banik ruled that value of supply shall be the consideration in money and shall also include all the components towards non-cash consideration, as discussed.
2. This composite supply of services by way of milling of food grains into flour (atta) to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry serial no. 3A of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 only when the value of goods involved in such composite supply does not exceed 25% of the value of supply.
3. "If the value of goods involved in such composite supply exceeds 25% of the value of supply, the supply shall attract tax @ 5% (CGST @ 2.5% + WBGST @ 2.5%)

### **1% GST payable on a Composition taxpayer engaged in manufacture of Sweet, Namkins, doing only the counter sales**

#### **FACT OF THE CASE**

1. The applicant, Chikkaveeranna Sweet Stall stated that he is running a sweet stall and is engaged in manufacturing the sweets and doing counter sales on a retail basis. He also states that he is registered as "Composition Taxpayer" under GST and selling the goods over the counter and not having any facility of restaurant or hotel.
2. The applicant stated that at present they are paying





1% composition tax on total turnover, as he is a manufacturer of sweets and not providing any goods for human consumption at the place of shop.

#### DECISION OF THE CASE

1. The coram of Dr. M.P.Ravi Prasad and T.Kiran Reddy ruled that Rate of GST applicable for a Composition tax payer who are engaged in the manufacture of sweet and namkeens and who is doing only the counter sales, is one percent (0.5% COST and 0.5% SGST) subjected to the condition mentioned in the Notification No. 8/2017-Central Tax dated: 27.06.2017 and further amended notifications.
2. The Karnataka Authority of Advance Ruling (AAR) held that 1% GST payable on a Composition taxpayer engaged in manufacture of Sweet, Namkins, doing only the counter sales.

#### 18% GST payable on Supply of Vouchers: AAAR

##### FACT OF THE CASE

1. The Appellant, Premier Sales Promotion Pvt Ltd. is a Private Limited Company involved in the business of providing marketing services in the area of sourcing and supply of E-Vouchers.
2. The Appellant undertakes to procure several types of vouchers such as 'gift vouchers', 'cashback vouchers' and 'open vouchers' which are redeemable at e specified merchants. The Appellant enters into agreement with the merchants for the purchase of the vouchers which are in turn sold to their clients.
3. The AAR has sought the advance ruling on the issue whether the vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions undertaken by the Appellant. If the answer to the above is in the affirmative, what would be the rate of tax at which this would be taxable.
4. The Karnataka Authority of Advance Ruling (AAR) ruled that the 18% GST payable on the supply of Vouchers.
5. The Appellant has contended that the vouchers are akin to lottery tickets and the Supreme Court in the case of Sunrise Associates has held that lottery tickets are actionable claims.

##### DECISION OF THE CASE

1. The coram of Ranjana Jha and Shikha C. held that the

vouchers traded by the Appellant are goods and not actionable claims, we hold that the supply of vouchers by the Appellant is a supply of goods in terms of Section 7 of the CGST Act.

2. Since the Appellant is not the issuer of the voucher, the provisions of time of supply under Section 12(4) will not apply and the time of supply will be governed by the provisions of Section 12(5) of the CGST Act.
3. The Karnataka Appellate Authority of Advance Ruling (AAAR) while upholding the AAR's ruling held that 18% GST payable on Supply of Vouchers.

#### ***GST payable on Services of Boarding and Lodging Facility for Officials of Municipal Corporation for conducting General Election***

##### FACT OF THE CASE

1. The applicant, M/s. Golconda Hospitality Services and Resorts Limited, are in the business of providing accommodation and services and in the course of the business they have supplied the services of boarding and lodging facilities for the officials of Greater Hyderabad Municipal Corporation for conducting 2018 General Election for Telangana State Legislative Assembly.
2. According to the applicant these services are exempt from GST under SI.No.3 of Notification No.12/2017, dt: 28.06.2017, which however needs to be clarified.
3. The applicant has sought advance ruling on the issue of whether the services provided by the applicant to GHMC are exempt under SI.No.3 of Notification No.12/2017.

##### DECISION OF THE CASE

1. The coram of S.V.Kashi Vishweswara Rao and B.Raghu Kiran held that the applicant provided accommodation services to GHMC in relation to conduction General Elections to the Legislative Assembly of Telangana State.
2. Thus there is no direct relation between the services provided by the applicant and the functions discharged by the GHMC under Article 243W read with schedule 12 to the Constitution of India. Therefore these services do not qualify for exemption under Notification No. 12/2017. ●

# DIRECT TAX JUDGEMENT



## **License Fee paid for Long Term Right to use Telecommunication Spectrum is Capital Expenditure**

### **FACT OF THE CASE**

1. While considering the return filed by the assessee-Company, the Assessing Officer was of the view that by paying license fee the assessee got the right to use telecommunication spectrum and the license so acquired should be treated as intangible assets hence, the assessee was entitled to claim the depreciation on the same. However, the assessee claimed it as revenue expenditure.
2. On appeal, the Commissioner of Income Tax (Appeals) held that the annual payment made to an authority (Government) for the business operations of the assessee (businessman) is revenue in nature and allowable under section 37(1) of the Act.

### **DECISION OF THE CASE**

1. Confirming the order of the first appellate authority, the Tribunal bench comprising ITAT President G S Pannu and Judicial Member Kul Bharat held that “the Ld.CIT (A) has given a finding on fact that the Revenue share fee was for the operation and usage of the right given under the license and had not result into creation of capital asset or advantage.
2. The Income Tax Appellate Tribunal (ITAT), Delhi bench has held that the license fee paid for the long term right to use telecommunication spectrum amount to capital expenditure under the Income Tax Act, 1961.

## **Transactions in Client Ledger Account are Transactions entered in Ordinary Course of Business**

### **FACT OF THE CASE**

1. The assessee company, Futurz Next Services is a member of recognized stock exchanges i.e., National Commodity and Derivatives Exchange Ltd.(NCDEX) and Multi Commodity Exchange of India Ltd. (MCX) and providing trading services in commodity markets through NCDEX and MCX.
2. A search and seizure operation u/s 132 of the Income Tax Act, 1961 was initiated in the case of assessee company as part of search proceedings on Jaypee Group

3. The assessee while supporting the order of the CIT(A) submitted that the CIT(A) deleted the same on the ground that the transactions in the client ledger account are transactions entered in the ordinary course of business and are relating to sale/purchase of shares, currency/derivatives only.
4. He submitted that the amount which has been credited and debited in the account of the assessee is in association with the said party is on account of business transaction and transacted by the assessee being a client and shareholder of the company.
5. The coram of Judicial Member Kuldeep and Accountant Member, R.K. Panda held that the AO made addition u/s 2(22)(e) on the ground that the advances in the nature of ‘loan and advance’ has been received by the assessee from M/s Jaypee Capital Services Ltd. and the assessee company has more than 10% shareholding in Jaypee Capital Services Ltd.

### **DECISION OF THE CASE**

1. The CIT(A) deleted the addition made by the AO holding that the transactions in the client ledger account are transactions entered in the ordinary course of business and are relating to sale/purchase of shares/ currency/derivatives only.

## **ITAT upholds Addition as Assessee has failed to offer any explanation with regard to Nature and Source of Credit in his Bank Account**

### **FACT OF THE CASE**

1. In the present case Arun Duggal is the assessee
2. The entire deposits in the bank account of the assessee, Arun Duggal did not belong to him and therefore, there is no real income accrued or received to the assessee.
3. It was unable to accept such a contention for the reason that, firstly, there are actual deposits in the bank account of the assessee for which no explanation about the nature and the source was explained which has led to addition u/s 68. Secondly, Section 68 is a deeming provision wherein the statute provides that if the assessee is unable to explain the nature and source of the credits, then it is deemed to be income of the assessee as undisclosed sources and



is taxed accordingly.

- No presumption under any other section does not override or exclude Section 68, that is, it does not obviate the necessity to establish by independent evidence the genuineness of the cash credits under Section 68, nor does it do away with the burden which is on the assessee to establish the requisites of cash credits.

#### DECISION OF THE CASE

- The coram of Judicial Member, Amit Shukla and Accountant Member, Dr. B. R. R. Kumar held that, firstly, the action of the revenue authorities on the issue of notice u/s 148, approval under section 151 was in accordance with the law and secondly, addition u/s 68 has rightly been made as assessee has failed to offer any explanation with regard to nature and source of credit in his bank account and the primary burden cast upon the assessee for proving the credits has not been discharged either before AO or CIT(A).

#### **Capital Gains arising on Sale of Rural Agricultural Land outside the purview of Income Tax**

#### FACT OF THE CASE

- The assessee, Ms. Janki Hitendrakumar Patel in the instant case, had purchased agricultural land parcels situated at Sarkhej in F.Y. 2006-07 relevant to F.Y. 2007-08. The agricultural land parcels at Sarkhej were sold in F.Y. 2008-09 relevant to A.Y. 2009-10. A capital gain of Rs.2,70,88,834/- arose to the assessee on sale of the agricultural land. The assessee, in turn, purchased agricultural land at Sachana, Viramgam (new asset) and claimed deduction being the cost of purchase of agricultural land out of capital gains.
- It was noticed by the AO that the agricultural land at Sachana (new asset) has been sold within 14 months. The share of consideration (95%) attributable to assessee stands at Rs. 1,73,19,120/-. In these facts, the AO had disputed the eligibility of claim of deduction under section 54B of the Act since it was sold without holding it for three years from the date of purchase in violation of the conditions of Section 54B of the Act.
- The AO thus brought to tax the whole of sale consideration in question being the year of sale of new assets.
- The CIT(A) on the basis of documentary evidences, agreed with the plea of the assessee that new

asset i.e. land parcel at Sachana (new asset) being a rural agricultural land is not a capital asset as per provision of Section 2(14)(iii) r.w.s. 45B of the Act and consequently, no chargeability arises in the hands of the assessee on sale of such new asset being rural agricultural land.

#### DECISION OF THE CASE

- The coram of Judicial Member, Madhumita Roy and Accountant Member, Pradip Kumar Khedia concluded that the agricultural land parcels being situated in the rural area is outside the purview of expression 'capital asset' defined in Section 2(14) of the Act.
- Consequently, the rural agricultural land in question not being a capital asset is not susceptible to tax under section 45 r.w.s. 48 of the Act. The capital gains arising on sale of rural agricultural land (new asset) is thus outside the purview of taxation at the threshold. We thus see no error in the conclusion drawn by the CIT(A) in favour of the assessee.

#### **UAE Company is an Independent Entity: Indian Company can't be Taxed for Its' Profit, rules ITAT**

#### FACT OF THE CASE

- The Income Tax Appellate Tribunal (ITAT), Delhi bench has ruled that a UAE Company is an independent entity and the profit earned by such a Company cannot be added in the hands of an Indian Company for the purpose of the Income Tax Act, 1961, unless there is proof that the Company is a paper entity used as a tool for tax evasion.
- The income tax department alleged that the UAE entity was a sham arrangement to divert profits of the Indian entity and thereby evade tax.

#### DECISION OF THE CASE

- If the non-resident entity has shown profit, then same cannot be added in the hands of the assessee company as income in India. Firstly, there is no evidence to prove that this was some kind of sham arrangement of profits along with markup and secondly, catena of documents and evidences were filed that the said entity is working there and for which mark-up of 10% of management fees is given, therefore, it cannot be held that all those documents are bogus or sham without any material information on record. ●



## GST CALENDAR-JANUARY 2022

GSTR-3B (Dec, 2021) - Annual Turnover of upto INR 5cr in Previous FY Monthly Filing	Jan 20th, 2022	GSTR-3B (Oct-Dec, 2021) for Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttarakhand.	Jan 22nd 2022
		GSTR-3B (Oct-Dec, 2021) for Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim, Telangana, Tripura, Uttar Pradesh, West Bengal	Jan 24th 2022
CMP-08 (Oct-Dec, 2021) Jan 18th, 2022			
GSTR-5 (Dec, 2021)	Jan 20th, 2022	GSTR-5A (Dec, 2021)	Jan 20th, 2022

## DIRECT TAX CALENDAR-JANUARY 2022

30 January 2022	Quarterly TCS certificate in respect of quarter ending December 31, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of December, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of December, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of December, 2021
31 January 2022	Quarterly statement of TDS for the quarter ending December 31, 2021
	Quarterly return of non-deduction at source by a banking company from interest on time deposit in respect of the quarter ending December 31, 2021
	Intimation under section 286(1) in Form No. 3CEAC, by a resident constituent entity of an international group whose parent is non-resident

## RECENT UPDATES IN DIRECT AND INDIRECT TAX

### DIRECT TAX

CBDT has extended various due dates for filing of Income Tax Returns and various reports of audit for the Assessment Year 2021-22 under the Income-tax Act-<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1050/CBDT-extends-due-dates-filing-ITR-various-reports-of-audit-11-1-22.pdf>

India and UK Launch Free Trade Agreement Negotiations-<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1789631>

### INDIRECT TAX

CBIC has implemented Rule-59(6), as amended, on GST Portal- <https://www.gst.gov.in/newsandupdates/read/515>

Reporting of supplies notified under section 9(5) / 5(5) by E-commerce Operator in GSTR-3B-  
<https://www.gst.gov.in/newsandupdates/read/516>

Module wise new functionalities deployed on the GST Portal for taxpayers- <https://www.gst.gov.in/newsandupdates/read/517>

CBIC has issued advisory on Revamped Search HSN Code Functionality- <https://www.gst.gov.in/newsandupdates/read/518>

CBIC has brought functionality - Interest Calculator in GSTR-3B-<https://www.gst.gov.in/newsandupdates/read/519>

Cabinet approves Agreement between India and Spain on Cooperation and Mutual Assistance in Customs Matters-<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1788014>

Evasion of Customs duty of Rs. 653 crore by M/s Xiaomi Technology India Private Limited-<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1787686>

# COURSES OFFERED BY TAX RESEARCH DEPARTMENT

## Eligibility criterion for admission in TRD Courses

- The members of the Institute of Cost Accountants of India
- Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students who are either CMA qualified or CMA pursuing

## EXISTING COURSES

### CERTIFICATE COURSE ON TDS

**Course Fee** - Rs. 10,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees** - Rs. 1,000 + 18% GST

**Duration** – 30 Hours

**Mode of Class** – Online

### CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

**Course Fee** - Rs. 10,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees** - Rs. 1,000 + 18% GST

**Duration** – 30 Hours

**Mode of Class** – Online

### CERTIFICATE COURSE ON GST

**Course Fee** - Rs. 10,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees** - Rs. 1,000 + 18% GST

**Duration** – 72 Hours

**Mode of Class** – Online

*\* Special Discount for Corporate*

### ADVANCED CERTIFICATE COURSE ON GST

**Course Fee** - Rs. 14,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees** - Rs. 1,000 + 18% GST

**Duration** – 40 Hours

**Mode of Class** – Online

### ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

**Course Fee** - Rs. 12,000 + 18% GST [Including Exam Fee]

**Duration** – 30 Hours

**Mode of Class** – Online

### ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEAL

**Course Fee** - Rs. 12,000 + 18% GST [Including Exam Fee]

**Duration** – 30 Hours

**Mode of Class** – Online

### CERTIFICATE COURSE ON INTERNATIONAL TRADE

**Course Fee** - Rs. 10,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final Pursuing Students*

**Exam Fee** - Rs. 1,000 + 18% GST

**Duration** - 50 Hours

**Mode of Class** – Online

Admissions open for the courses - <https://eicmai.in/advsc/DelegatesApplicationForm-new.aspx>

### CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

**Batch Size** – 50 (Minimum)

**Eligibility criterion** - B.COM/B.B.A pursuing or completed  
M.COM/M.B.A pursuing or completed

**Course Fee** - Rs. 1,000 + 18% GST

**Exam Fees** - Rs. 200 + 18% GST

**Course Duration** - 32 Hours

### CRASH COURSE ON INCOME TAX FOR COLLEGE AND UNIVERSITY

**Batch Size** – 50 (Minimum)

**Eligibility criterion** - B.COM/B.B.A pursuing or completed  
M.COM/M.B.A pursuing or completed

**Course Fee** - Rs. 1,500 + 18% GST

**Exam Fees** - Rs. 500 + 18% GST

**Course Duration** - 32 Hours

For enquiry about courses, mail at – [trd@icmai.in](mailto:trd@icmai.in)





## E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -  
<https://icmai.in/TaxationPortal/>





# NOTES

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## TAXATION COMMITTEES - PLAN OF ACTION

### Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
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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