September, 2022

TAX Bulletin

★ ★ VOLUME - 120 ★ ★

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016
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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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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)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

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						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

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

Eligibility Criteria for Admission

- Members of the Institute of Cost Accountants of India
- Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

https://icmai.in/TaxationPortal/OnlineCourses/index.php

Courses for Colleges & Universities by the Tax Research Department

Eligibility

- B.Com/ BBA pursuing or completed
- M.Com/ MBA pursuing or completed

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

CMA Rakesh Bhalla
Chairman, Direct Taxation Committee

CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

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

A Division Bench of the High Court of Allahabad held that Assessing Officer (AO) has no jurisdiction to issue notice under Section 148 of Income Tax Act, 1961 without recording valid satisfaction. In the batch of writ petitions, the admitted facts are that on the basis of unsigned alleged digital approval under Section 151, Assessing officer issued notices to the assessees under Section 148 of the Income Tax Act, 1961. The point of time when the aforesaid approval under Section 151 of the Income Tax Act, 1961 was signed, is subsequent to the issuance of notices by the Assessing Officer under Section 148 of the Income Tax Act, 1961.

The counsel for the petitioners, Yash Tandon submitted that the notices under Section 148 are wholly without jurisdiction, inasmuch as, it was issued without prior satisfaction of the competent authority under Section 151 of the Act, 1961.

For Indirect Taxation matters, CBIC notifies to decrease the Special Additional Excise Duty on Diesel.
https://www.cbic.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2022/cx-tarr2022/ce30-2022.pdf

On the Tax Research Department's activity part, we would like to inform you that the admission for all the Taxation Courses are running successfully and the next class will be started from end of September 2022.

The department has collected views and suggestions from resource persons on the revised format of GSTR 3B and submitted the same to CBIC on 15.09.2022.

Tax Research Department conducted two webinars on Maintenance of Books of Accounts By Specified and Notified Persons - Section 44AA Read With Rule 6F And Audit Under Section 44AB on 12.09.2022 and on Reconciliation between 26AS and GST Record on 19.09.2022 successfully.

As we informed you earlier The Tax Research Department has started a Quiz Contest for members. Every Friday QUIZ contest conducted from 5p.m onwards through Google Form.

All other activities of the department is being carried on seamlessly. We seek any further suggestions/observations from the esteemed readers and urge one and all to stay safe.

Jai Hind.

Warm Regards

CMA Rakesh Bhalla
20th September 2022

CMA Chittaranjan Chattopadhyay
20th September 2022

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CONTENTS

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

RECENT CHANGES IN FORM GSTR-3B

CMA Dipak N Joshi
Cost Accountant

Introduction:

The presence of FORM GSTR-3B was challenged by the trade several times before the judiciary. A promising enactment in a vague field of taxation will have many teething troubles and FORM GSTR-3B is seen as result of such teething trouble. GST law was introduced with intention to revamp the filing system of returns. FORM GSTR-3B was never the part of GST legislations. Return filing mechanism in the GST law was designed to incorporate uploading of invoices on the GST portal and auto population of such invoices in FORM GSTR-2A in order to avail input tax credit in FORM GSTR-2 from the information filed by the supplier to the recipient. FORM GSTR-3 was nominated as the monthly return to be filed under Section 39 of CGST Act, 2017 and figures in such return were supposed to flow from the details of outward supplies furnished in FORM GSTR-1 and the details of inward supplies in FORM GSTR-2. Due to non preparedness of requisite IT infrastructure and hue & cry created by real time filing of returns, filing of FORM GSTR-2 and FORM GSTR-3 had been deferred for first two months and later on for indefinite period. FORM GSTR-3B was introduced vide Notification No 17/2017 Central Tax dt 27th July 2017. FORM GSTR-3B was introduced as a time gap arrangement to collect the tax amount from the taxpayer. As a result of deferment of dates for filing of FORM GSTR-2 and FORM GSTR-3, the temporary return was accepted by the Government as the permanent tool for collection of tax from the taxpayer. However, the drafting of FORM GSTR-3B is full of deficiencies and form was not introduced keeping in mind the requirements of law and availability of suitable IT infrastructure at taxpayer's end. The proposal to review the FORM GSTR 3B was placed before the GST Council in its 47th GST Council meeting and certain changes in FORM GSTR-3B were suggested by the Council. Concept paper on the proposed changes in FORM GSTR-3B as recommended by the GST council is already placed in the public domain and a step towards proposed changes have been notified by the CBIC vide Notification No 14/2022 (Central Tax) dt. 05th July 2022. The amendments have inclusion of separate table for declaration of liability where supply is made through E-commerce operator and changes in nomenclature of Table 4 i.e., Eligible ITC. CBIC has also issued a circular to clarify the reporting of interstate supplies and amount of In-eligible/blocked input tax credit in FORM GSTR-3B [Circular No. 170/02/2022-GST dt. 06th July, 2022]. W.e.f. 01st September 2022 all such changes are incorporated into

FORM GSTR-3B on GST portal. Key changes which taxpayer needs to understand before filing of FORM GSTR-3B from August 2022 onwards are as under-

1. Table 3.1.1 inserted for reporting supplies notified under Section 9(5) of the CGST Act, 2017:

Section 9(5) of the CGST Act, 2017 specifies a category of services, the tax on which shall be paid by the E-commerce operator, where such services are supplied through E-commerce operator. GST Council in its 45th Meeting recommended to notify "Restaurant Service" under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators was required to be paid by the e-commerce operator vide Notification No. 17/2021 dated 18.11.2021. However, reporting of such transactions in FORM GSTR-3B was not separately identifiable. Hence, a clarification was issued by the CBIC vide Circular No. 167/23/2021- GST dt 17th December, 2021 and GSTN vide press release dt 04th January, 2022 specifying the manner in which said transactions were to be reported in FORM GSTR-3B. Now a separate Table 3.1.1 is inserted to report the details of supplies made under Section 9(5) of CGST Act through E-commerce operator as under-

3.1.1 Details of supplies notified under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and corresponding provisions in Integrated Goods and Services Tax/Union Territory Goods and Services Tax/State Goods and Services Tax Acts

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
i) Taxable supplies on which electronic commerce operator pays tax under sub-section (5) of section]9 ***[to be furnished by the electronic commerce operator]***					
ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required o pay tax under sub-section (5) of section 9 ***[to be furnished by the registered person making supplies through electronic commerce operator.]***					

An E-commerce operator must report details of supplies made by him under Section 9(5) in Table 3.1.1. (i) of FORM GSTR-3B and is not supposed to consider such supplies in Table 3.1. (a). On the other hand, a registered person who is supplying through E-commerce operator must report figures of such supply in Table 3.1.1 (ii). A registered person who is making supply through E-commerce operator does not have to mention such supply and in table 3.1 (a) and consequently, he is not required to pay such amount as liability to pay tax on such transaction is on E-commerce operator. Disclosure of such supply along with supply reported in Table 3.1. as far as related to interstate supply to unregistered person, composition person and UIN holder is required to be reported in Table No 3.2 of FORM GSTR-3B. Though a separate table is notified by CBIC, it is not clear whether figures in Table 3.1.1 will be auto populated from the details of outward supply filed in FORM GSTR-1 or not.

2. Furnishing of information regarding the inter-state supplies:

It is clarified by the CBIC vide Circular No. 170/02/2022-GST dt. 06th July, 2022 that reporting of information regarding inter-state supply made to unregistered person, composition taxable person and UIN holder is made mandatory in Table No 3.2. of FORM GSTR-3B.

3. Changes in Table 4 of FORM GSTR-3B:

Table 4 of FORM GSTR-3B contains the details of Eligible ITC. Table is divided into four parts. Format of Table 4 before and after amendment is as under-

Before Amendments	After Amendments
(A) ITC Available (whether in full or part)	(A) ITC Available (whether in full or part)
(1) Import of goods	(1) Import of goods
(2) Import of services	(2) Import of services
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	(3) Inward supplies liable to reverse charge (other than 1 & 2 above)
(4) Inward supplies from ISD	(4) Inward supplies from ISD
(5) All other ITC	(5) All other ITC
(B) ITC Reversed	(B) ITC Reversed
(1) As per rules 42 & 43 of CGST Rules	(1) As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17
(2) Others	(2) Others
(C) Net ITC Available (A) – (B)	(C) Net ITC Available (A) – (B)
(D) Ineligible ITC	(D) Other Details
(1) As per section 17(5)	(1) "ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period
(2) Others	(2) Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions

Surprisingly, there is no change in the instructions attached to FORM GSTR-3B so far as input tax credit is concerned. However, cognizance of changes made in FORM GSTR-3B vide Notification No 14/2022 (Central Tax) dt. 05th July 2022 can be understood by examining Circular No. 170/02/2022-GST dt. 06th July, 2022. The circular is issued in order to clarify the treatment of input tax credit to be given by a registered person while furnishing details of input tax credit. However, nothing contained in said circular is expected according to the instructions appended to FORM GSTR-3B. Therefore, the validity of circular may be challenged as enforceable right created through rules cannot be taken away by issuing executive instructions. Earlier to the amendment, a registered person was availing credit according to the books of accounts to the extent it is matching with the FORM GSTR-2B. However, post amendment in the FORM GSTR-3B and based on the clarification given by the CBIC, it seems that a registered person is required to consider all the figures of FORM GSTR-2B irrespective whether they are booked in the books or not in ITC available table and is required to reverse such credit in requisite field of Table 4B. Following are the key

changes in reporting of ITC in FORM GSTR-3B-

a. A registered person is required to show the eligible as well as ineligible credit in Table 4A of FORM GSTR-3B as auto populated from FORM GSTR-2B. This will make in-eligible ITC becomes the part of ITC available as per Table 4A. This is going to create huge mess in near future as the desired outcome of the said adjustment is just to identify the in-eligible credit and certainly this will create a lot of difficulty for the taxpayer as he requires to make necessary changes in his accounting system to incorporate the effect of ineligible ITC which he otherwise used to charge to P & L account directly.

b. Reversal of ITC which is permanent in nature and not reclaimable, such as reversal on account of Rule-38(reversal of credit by a banking company or a financial institution), Rule-42 (reversal on input and input services on account of supply of exempted goods or services), Rule-43 (reversal on capital goods on account of supply of exempted goods or services) of the CGST Rules and ineligible ITC under section 17(5) of the CGST Act, will be reported in Table-4(B)(1) of FORM GSTR-3B. Reversal of ITC which is temporary and reversal which is required because of non fulfilment of any condition as specified under the GST Act should be shown in Table 4B(2) of FORM GSTR-3B.

   Earlier reversal of credit on account of Rule 42 & 43 only had to be reported in Table 4(B)(1). A registered person must take proper care while reporting any figure in this row as it amounts to permanent reversal of the ITC. Requirement of reporting in-eligible credit in Table 4D (1) is no more required with amendments in Table 4B (1)

c. ITC which was reversed earlier and shown in Table 4B (2) of FORM GSTR-3B can be reclaimed subsequently on fulfillment of certain conditions and should be shown in Table 4A and in Table 4D (1) of FORM GSTR-3B. This is going to be challenging for a registered person in terms of manner of accounting of said transactions and reconciliation of such details with books as well as GSTR-2B

d. ITC which is not available on account of Section 16 (4) i.e. maximum time limit to avail the credit or on account of different place of supply should be shown in Table 4D (2) of FORM GSTR-3B. The disclosure is just for reporting purpose, and it will not affect the entitlement of the ITC as said ITC is separately shown in FORM GSTR-2B.

Following are the common situations with respect to availment and reversal of ITC and its likely effects in FORM GSTR-3B-

✪ **Imported goods cleared for home consumption but in transit or not received at place of business:** Where goods have reached India and bill of entry for home consumption is filed. But goods have not been received at the place of business. Hence, credit against such bill of entry is not availed by a registered person in books of accounts. But credit against such bill of entry is reflecting in Table IV of Part A of GSTR-2B and auto populated in Table 4A (1) of FORM GSTR-3B. In such scenario, a registered person is supposed to report such credit in Table 4A (1) of FORM GSTR-3B and since, goods are not received, a registered person must reverse such credit in Table 4B (2) of FORM GSTR-3B. Subsequently, on receipt of such goods a registered person is eligible to take credit in Table 4A (1) and he is required to report such figure in Table 4(D)(1).

✪ **Inward services liable to reverse charge auto populated in Table 4A(3) but payment in respect of such supply is not made:** According to the provisions of Section 13, a registered person is required to pay tax under reverse charge mechanism on receipt of notified services at time of making payment or within sixty days from date of issue of invoice or other document in lieu of invoice whichever is earlier. In such cases a

registered person must show such amount in Table 4A (3) and is required to reverse such amount in Table 4B (2). Subsequently, after making payment or sixty days from date of issue of invoice whichever is earlier, he can show such amount in Table 4A (3) and Table 4D (1) of FORM GSTR-3B.

✪ **Goods purchased within India and are in transit:** Where goods are supplied by the supplier but are in transit or not received at place of business, a registered person is required to show such amount in Table 4A (5) and would be required to reverse such amount in Table 4B (2) as it is a temporary reversal. A registered person is eligible to claim such credit on receipt of the goods. He shall report such amount in Table 4A (5) of FORM GSTR-3B and Table 4D (1) after receipt of such goods.

✪ **Credit in respect of which tax is not paid by the supplier**: Where a tax in respect of any supply is not paid by the supplier to Government, a registered recipient shall reverse such credit in Table 4B (2). After the payment of tax by a supplier to Government, recipient is eligible to reclaim such credit in Table 4A (5). A registered person must also report such amount in Table 4D (1).

✪ **Credit in respect of supplies where payment to supplier is not made within 180 days:** Where a payment in respect of any supply is not made to the supplier within a period of 180 days from the date of invoice, recipient of such supply must reverse the credit in respect of such supply in table 4B (2). Subsequent, to payment to such supplier, a registered person is eligible to reclaim the credit in Table 4A (5). Disclosure is Table 4(D)(1) is also needed.

✪ **Treatment of credit where goods received in lots/ installments and last lot is received in next month:** Where goods are received in lots/installment, a registered person is eligible for the credit only after the receipt of last lot/installment. In case where all the lots are not received in same month, a registered person is required to report such amount in Table 4A (5) or 4A (1) as the case may be and would be required to reverse such credit in Table 4B (2). On receipt of such goods, a registered person is eligible for the credit, and he can claim such credit in Table 4A (1) or 4A (5) as the case may be. In addition to that disclosure in Table 4D (1) would be needed.

✪ **Treatment of credit where documentary evidence is not available:** Where documentary evidence is not available with a registered person and he is meeting the other conditions to claim the credit, he shall report such credit in Table 4A (1) or 4A (5) as the case may be and reverse such credit in Table 4B (2). He may reclaim such credit on availability of tax paying document as stated in Rule 36 of CGST Rules.

Conclusion:

FORM GSTR-3B was introduced with an intention to minimize the cumbersome activity of filing of FORM GSTR-2 with reconciliation with GSTR-2A and to further simplify the return process keeping in mind the compliance burden on the taxpayer. However, the way Government is asking mandatory information to be furnished by a registered person in FORM GSTR-3B, it will defeat the basic intent of GST law to make it taxpayer friendly. It is well understood that non-compliance such reporting may attract the penalty under Section 125 of the CGST Act, 2017. This will certainly rise the dispute between the tax authorities and taxpayer on account of reporting figures in FORM GSTR-3B vis-a-vis FORM GSTR-2B and will defeat the very purpose of ease of doing business. There is still need a clarity on certain issues like credit of previous year taken in current year, repercussions in case minor mistakes in reporting of input tax credit in FORM GSTR-3B, rectifications of errors committed in FORM GSTR-3B etc. It will be really challenging for the taxpayer to follow the reporting requirements of new FORM GSTR-3B.

Note: Views expressed are personal. Readers are recommended to take professional advice before applying text of the above article. TB

ASSESSMENT UNDER GST

CMA Kedarnath Potnuru
Cost Accountant

Assessment means the determination of tax liability under the GST Act.

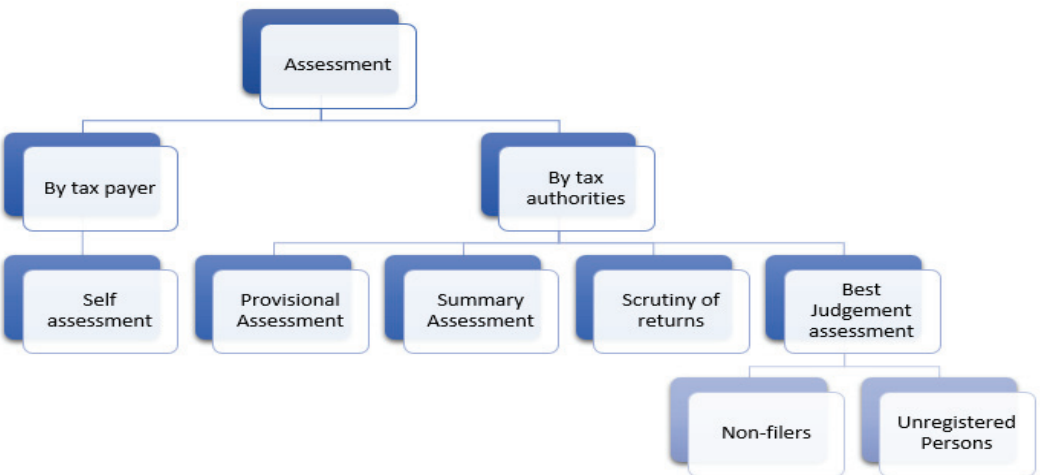
Types of Assessment under GST

- S.59 - Self-assessment
- S.60 - Provisional assessment
- S.61 - Scrutiny of tax returns filed by registered taxable persons
- S.62 - Assessment of registered person who has failed to file their GST returns
- S.63 - Assessment of unregistered persons
- S.64 - Summary assessment in Special Cases

Note:

- **Only self-assessment is done by the taxpayer himself. All the other assessments are by tax authorities.**
- Persons with GST registration must file GST returns and pay GST every month based on self-assessment of GST liability.
- However, the Government at all times has the right to re-assess or perform an assessment by itself and determine if there is a short payment of GST.

Types of Assessment (In diagrammatic form):



Section 59 – Self Assessment

- The taxable person is required to pay tax based on self-assessment
- Every registered taxable person shall assess the taxes payable and furnish a return for each tax period.
- Hence, all GST return filings are based on self-assessment by the taxpayer.
- This means GST promotes self-assessment like the Excise, VAT and Service Tax.

Examples:

- Filing of GSTR-1
- Filing of GSTR-3B
- Filing of CMP-08
- Filing of GSTR-4
- Filing of GSTR-9

Section 60 - Provisional Assessment

Theory:

An Assessee can request the officer for provisional assessment if he cannot **determine value or rate**.

Unable to determine **value** due to difficulty in –

- Calculating the transaction value as per S.15
- Understanding whether certain receipts should be included or not

Unable to determine the **rate of tax** due to difficulty in –

- Classifying the Goods (HSN)/Services (SAC)
- Identifying whether any notification is applicable or not

Section 61 - Scrutiny of Returns

- The proper officer can scrutinize the GST return and related particulars furnished by the registered person to verify the correctness of the return. This is called a scrutiny assessment.
- It is a non-compulsory pre-adjudication process
- The officer will ask for explanations on discrepancies noticed to the taxpayer vide Form GST ASMT-10

Circumstances under which Form GST ASMT-10 is issued:

1. Short payment of Tax, i.e., Diff between GSTR-1 Vs. GSTR-3B
2. Excess ITC claimed in GSTR-3B Vs. Auto Populated in GSTR-2A / 2B
3. RCM not paid compared with Auto Populated in GSTR-2A / 2B
4. Additional Turnover declared in GSTR-9 but Tax not paid through DRC-03

Relevant Forms:

FORM GST ASMT – 10: Notice for intimating discrepancies in the return after scrutiny by the proper officer

FORM GST ASMT – 11: Reply to the notice issued under section 61 intimating discrepancies in the return by the taxpayer

FORM GST ASMT – 12: Order of acceptance of reply against the notice issued under section 61 by the proper officer.

S.62 Assessment of "Non-Filerers" of Returns:

The assessment u/s 62 will be conducted based on the following.

- Based on the past returns
- Information available with the Department
- Based on the BJA

S.63 Assessment of un-registered persons:

- Where a taxable person **fails** to obtain registration even though liable to do so

(Or)

- Whose registration has been canceled under S.29(2) but who was liable to pay tax

- The proper officer **may proceed to assess the tax liability** of such taxable person to the **Best of his judgment** for the relevant Tax period

(And)

- Issue an assessment order within 5 years from the date specified u/s 44, i.e., Annual Return on or before the 31st Dec following such end of FY.

S.64 Summary Assessment in certain Special Cases

- A GST Officer can on any evidence showing a **tax liability** of a person **coming to his notice**
- Then, he can proceed to assess the tax liability of such person to **protect the interest of revenue** and issue an assessment order,
- If he has sufficient grounds to believe that **any delay** in doing so may adversely affect the **interest of revenue**.
- Toto issue order u/s 64; the proper officer is required to obtain prior approval from Additional Commissioner or Joint Commissioner
- Such an assessment is called summary assessment. The summary assessment order shall be issued in Form GST ASMT-16.
- The taxable person **may file an application** in form ASMT-17 within 30 days from receipt of the order (or) the **Commissioner may on his motion** withdraw such order if he considers that such order is erroneous and follow the procedure laid down in section 73 to 74.

Conclusion:

Assessment is a part of GST compliance. It is to be well noted that while conducting the assessment, every taxpayer and the proper officer needs to follow the provisions in the act as well as the rules prescribed by the statute. So both of them should adhere to the procedure laid down in the act. The mechanism to issue the notice or order by the proper officer and reply given by the taxpayer is online, a user-friendly and simple process and the same can be accessed in the GST portal as follows.

Login to the GST portal →select Services → User Services →View Notices or Orders (or) View additional Notices / Orders → click on the notice.

TAX NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GST: Notifications and Circulars

Circulars

GST

Circular No. 180/12/2022-GST

Date – 9th September 2022

Guidelines for filing/revisingTRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. -reg.

Attention is invited by CBIC to the directions issued by Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd. , SLP(C) No. 32709-32710/2018. The operative portion of the order can be read at: *https://taxinformation.cbic.gov.in/view-pdf/1003122/ENG/Circulars*

Customs: Notifications and Circulars

Notification

Customs (Tariff)

Notification No. 47/2022-Customs

Date – 7th September 2022

Further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 56/2000-Customs, dated the 5th May, 2000

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, 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, Ministry of Finance (Department of Revenue) No. 56/2000-Customs,dated the 5th May, 2000, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R. 399 (E), dated the 5th May, 2000, namely:-

In the said notification, after the second proviso, the following proviso shall be inserted, namely: - "Provided also that the importers and the exporters, who are receiving the supply from the importers for the intended purpose, shall follow the procedure, as applicable, in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, as amended from time to time, with effect from the 1stOctober, 2022:"

Notification No. 48/2022-Customs

Date – 7th September 2022

Further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 57/2000-Customs, dated the 8th May, 2000

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, 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, Ministry of Finance (Department of Revenue) No. 57/2000-Customs, dated the 8th May, 2000, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R. 413 (E), dated the 8th May, 2000, namely: -

In the said notification

(i) after the fourth proviso, the following proviso shall be inserted, namely: -

"Provided also that the importers and the exporters, who are receiving the supply from the importers for the intended purpose, shall follow the procedure, as applicable, in the Customs (Import of Goods at

Concessional Rate of Duty) Rules, 2017, as amended from time to time, with effect from the 1st October, 2022:";

(2) in the fifth proviso, for the words, figures, brackets, letters, and symbols, "Policy Circular No.77(RE-2008)/2004-09 dated the 31st March, 2009" the words, figures, brackets, letters, and symbols, "Policy Circular No. 39 (RE-2010)/2009-14, dated the 19th August, 2011, para 4.41 of the Foreign Trade Policy (2015-20) and para 4.94 of the Hand Book of Procedures (2015-20), as applicable and" shall be substituted.

Notification No. 49/2022-Customs

Date – 8th September 2022

The Central Government, hereby directed that the Second Schedule to the Customs Tariff Act shall be amended in the following manner

Whereas, the Central Government is satisfied that export duty should be levied on certain articles and that circumstances exist which render it necessary to take immediate action.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 8 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), the Central Government, hereby directs that the Second Schedule to the Customs Tariff Act shall be amended in the following manner, namely: -

In the Second Schedule to the Customs Tariff Act, -

after Sl. No. 6 and the entries relating thereto, the following Sl. Nos. and entries relating thereto shall be inserted, namely: -

(1)	(2)	(3)	(4)
"6A.	1006 10	Rice in the husk (paddy or rough)	20%
6B.	1006 20	Husked (brown) rice	20%";

after Sl. No. 7 and the entries relating thereto, the following Sl. No. and entries relating thereto shall be inserted, namely: -

(1)	(2)	(3)	(4)
"7A.	1006 30 90	Semi-milled or wholly-milled rice, whether or not polished or glazed (other than Parboiled rice and Basmati rice)	20%

This notification shall come into force on the 09th of September, 2022.

Notification

Customs (Non - Tariff)

Notification No. 74/2022-Cus (NT)-Customs

Date – 9th September 2022

Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

In exercise of the powers conferred by section 156 of the Customs Act, 1962 (52 of 1962), and in supersession of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement:

(1) These rules may be called the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

(2) They shall come into force on the date of their

publication in the Official Gazette.

2. Application:

(1) These rules shall apply where

a. a notification provides for the observance of these rules

b. an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.

The detailed Rules may be read at: *https://taxinformation.cbic.gov.in/view-pdf/1009498/ENG/Notifications*

Circulars

Customs

Circular No. 17/2022-Customs

Date – 9th September 2022

Custom Procedure for export of cargo in closed containers from ICDs to Bangladesh using inland waterways

References have been received from line Ministries as well as trade to allow export of goods in closed containers from an Inland Container Depot to Bangladesh using inland waterways. It has been suggested that goods cleared at an ICD for export may be transported to the gateway port of Kolkata or Haldia by road or rail, and further from the gateway port to Bangladesh utilising the inland waterways route as agreed under the Protocol on Inland Water Transit and Trade between India and Bangladesh.

The detailed Rules may be read at: *https://taxinformation.cbic.gov.in/view-pdf/1003123/ENG/Circulars*

Circular No. 18/2022-Customs

Date – 10th September 2022

Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 notified vide Notification 74/2022 dated 9th September, 2022

Reference is drawn to the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 notified vide Notification No.74/2022-Customs (N.T.) dated 09.09.2022 superseding the existing Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. These rules have come into effect from 10th September 2022.

CBIC had earlier introduced significant changes simplifying and automating the procedures in the (Import of Goods at Concessional Rate of Duty) Rules) IGCR, in short, vide Notification 09/2021-Customs (N.T.) dated 01.02.2021 followed by Circular 10/2021 dated 17.05.2021 and Notification 07/2022-Customs (N.T.) dated 01.02.2022 followed by Circular 04/2022 dated 27.02.2022. The online functionality has also been made available on the ICEGATE Portal.

The detailed Rules may be read at: *https://taxinformation.cbic.gov.in/view-pdf/1003124/ENG/Circulars*

TAX NOTIFICATIONS AND CIRCULARS

DIRECT TAX

Income Tax: Notifications and Circulars

Notification

Income Tax

Notification No. 107/2022

Date – 5th September 2022

1. In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Central Registry of Securitisation Asset Reconstruction and Security Interest of India' (PAN AAECC5770G), a body set up under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (No.54 of 2002) in respect of the following specified income arising to that body, namely:-

   (a) fee income from Security Interest transaction;

   (b) fee income from transactions on Central KYC (CKYC) Records Registry;

   (c) RTI application fee; and

   (d) interest income earned on fixed deposits and on (a) to (c) above.

2. This notification shall be effective subject to the conditions that Central Registry of Securitisation Asset Reconstruction and Security Interest of India, -

   (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. 3.

3. This notification shall be deemed to have been applied for the financial years 2018-2019, 2019- 2020, 2020-2021 and 2021-2022 and shall be applicable with respect to the financial year 2022-2023.

Explanatory Memorandum: It is certified that no person is being affected adversely by giving retrospective effect to this notification.

Notification No. 108/2022

Date – 5th September 2022

1 In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Haryana Electricity Regulatory Commission' (PAN AAAGH0072G), a Commission constituted under the Haryana Electricity Reform Act, 1997 (Haryana Act No.10 of 1998), in respect of the following specified income arising to that Commission, namely:

   (a) Fees received under the Electricity Act, 2003 (36 of 2003) and

   (b) Interest earned on government grants and loans and fees received under the Electricity Act, 2003 (36 of 2003).

2. This notification shall be effective subject to the

conditions that Haryana Electricity Regulatory Commission: -

(a) shall not engage in any commercial activity;

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

(c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be applicable with respect to the financial years 2022-2023, 2023-2024, 2024-2025, 2025-2026 and 2026-2027.

Circulars

Income Tax

Circular No. 18/2022

Date – 13th September 2022

Additional Guidelines for Removal of difficulties under sub-section (2) of section 194R of Income Tax Act, 1961

1. Finance Act 2022 inserted a new section 194R in the Income - Tax Act, 1961 with effect from 1 st July 2022.

2. The new section mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ 10% of the value or aggregate of value of such benefit or perquisite, before providing such benefit or perquisite. The benefit or perquisite mayor may not be convertible into money but should arise either from carrying out of business, or from exercising a profession, by such resident.

3. This deduction is not required to be made, if the value or aggregate of value of the benefit or perquisite provided or likely to be provided to the resident during the financial year does not exceed twenty thousand rupees.

The detailed Rules may be read at: *https://incometaxindia.gov.in/communications/circular/circular-no-18-2022.pdf*

PRESS RELEASE

Dated: 9th September, 2022

Direct Tax Collections for F.Y. 2022-23 up to 08.09.2022

The provisional figures of Direct Tax collections up to 8th September, 2022 continue to register steady growth.

Direct Tax collections up to 8th September, 2022 show that gross collections are at ₹ 6.48 lakh crore, which is 35.46% higher than the gross collections for the corresponding period of last year.

Direct Tax collection, net of refunds, stands at ₹ 5.29 lakh crore which is 30.17 % higher than the net collections for the corresponding period of last year. This collection is 37.24% of the total Budget Estimates of Direct Taxes for F.Y. 2022-23.

Refunds amounting to ₹1.19 lakh crore have been issued during 1st April, 2022 to 8th September, 2022, which are 65.29% higher than refunds issued during the same period in the preceding year.

So far as the growth rate for Corporate Income Tax (CIT) and Personal Income Tax (PIT) in terms of gross revenue collections is concerned, the growth rate for CIT is 25.95% while that for PIT (including STT) is 44.37%. After adjustment of refunds, the net growth in CIT collections is 32.73% and that in PIT collections (including STT) is 28.32%. TB

Dated: 9th September, 2022

Income Tax Department conducts searches on prominent business groups in Maharashtra

The Income Tax Department carried out a search & seizure action on 25.08.2022 on two groups engaged in the business of sand mining, sugar manufacturing, road construction, healthcare, running of medical college etc. The search action covered more than 20 premises spread over Solapur, Osmanabad, Nashik & Kolhapur districts of Maharashtra.

During the course of the search operation, a large number of incriminating evidences, in the form of hard copy documents and digital data have been found and seized. These evidences reveal various modus-operandi of tax evasion adopted by the group including booking of bogus expenses, undisclosed cash sales, unexplained loans/ credit entries, etc.

In case of the group engaged in sand mining and sugar manufacturing, documentary evidences of unaccounted cash sales of sugar exceeding ₹ 15 crores have been found & seized. The search action has revealed that the group has introduced its unaccounted income in the form of bogus unsecured loans in its books of accounts. Several lenders to the group, as well as promoters of the group have admitted that unaccounted cash generated by the group exceeding Rs. 10 crores were routed in its books of account in this manner.

Evidences of capital gains of about ₹ 43 crores on sale of assets by a non-filer corporate entity have also been seized.

In the other group engaged in the business of healthcare and running of medical college, as also road construction, evidences of undisclosed cash receipts representing capitation fee and refund of salary and stipend paid to the doctors'/PG students have been found. Moreover, evidences regarding booking of bogus expenses and contractual payments etc. have been found & seized. Preliminary estimates of such undisclosed income of the group is to the tune of ₹35 crores.

So far, the search action has led to detection of unaccounted income of more than ₹100 crores. Further, undisclosed assets of more than₹5 crores have also been seized.

Further investigations are in progress.

TB

INDIRECT TAX JUDGEMENT

Flavoured milk's a drink, will be taxed, says AAAR ruling

Fact of the Case

- Vadilal, the ice cream major, had approached the apex appellate authority for clarity of GST application on Flavoured Milk

Decision of the Case

- The company had approached the AAAR after an Authority for Advance Ruling (AAR) had said that GST should be applicable on flavoured milk.
- Gujarat AAAR affirmed the AAR ruling on classification and said that flavoured milk is not milk but a beverage containing milk.
- The AAAR ruled that the flavoured milk is not the natural form of milk but was obtained after the application of specific processes on the milk.
- Milk is outside the gamut of goods and services tax but flavoured milk attracts 12% tax.
- Flavoured milk is not milk; it is in fact a drink that has milk as an ingredient, the Appellate Authority of Advance Ruling (AAAR) has said.

Transport services to civic bodies not exempt from GST in each & every case

Fact of the Case

- The work order submitted by the company said the services will be used for transporting the municipality's health department team during the probable third wave of Covid-19 or for "other emergency and important matter related services".
- The authority wanted to know from the municipality the nature of works covered under "other emergency and important matter related services".

Decision of the Case

- Companies supplying transport to local authorities have to prove that the activities for which the vehicles are used are exempt services such as public health, if they want to avoid paying goods and services tax (GST), ruled the Gujarat-based authority for advance ruling (AAR).
- Otherwise, GST of 5, 12 and 18 per cent will be imposed depending on usage, say experts on the basis of the ruling.
- The company also wanted to know if input tax credit could be availed and the documentary proof it must present to prove that transport would be used for health services. It produced a work order from the municipal corporation to this effect.
- Pure services, including public health related ones, supplied to the government and local authorities are exempt from GST. Here, pure services mean supplies, which are not bundled with goods.
- AAR holds that while the transport services supplied to the municipality are not bundled with goods, it is not clear whether these would be used solely for public health work.

Interest is leviable despite the availability of credit in cash/credit ledgers if no payment was made in GST

Fact of the Case

- M/s India Yamaha Motor Private Limited filed a monthly return in Form GSTR 3B for the month of July 2017 but noticed that there was an inadvertent

error whereby the data pertaining to its plant at Faridabad was included instead of data pertaining to the Chennai plant.

- This swap resulted in a short disclosure of liability for the period July to October 2017 leading to the levy of interest. Thereafter, the Petitioner had filed a grievance petition before the Revenue department seeking modification of the return for the month of July 2017 that had not been immediately disposed of/addressed by the Respondent.

- Thus, the Petitioner had admittedly not filed monthly returns from the month August to October 2017, on the premise that the proper ascertainment of tax liability for the aforesaid months would be dependent upon the adjudication of its grievance petition.

- Meanwhile, the order has been passed by the Respondent whereby the Petitioner was directed to pay interest of ₹5 crores for belated remittance of GST.

- Being aggrieved by the Impugned Order, this petition has been filed.

- The Petitioner contended that they had sufficient input tax credit ("ITC") balance in both the electronic cash ledger as well as the electronic credit register during the period. Thus, there had been no loss caused to the revenue and hence no justification to levy interest since the interest is only compensatory in nature.

- Whether the interest leviable despite the availability of credit balance in cash/credit ledgers, if no payment of GST was made for the impugned period?

Decision of the Case

- The Hon'ble Madras High Court in WP.No.19044 of 2019 and WMP.No.18404 of 2019, held as under:

- The Court discarded the Petitioner's argument that it had sufficient balance lying in the electronic cash ledger as well as the in the electronic credit register and that there had been no loss to the Respondent, apprising that credit cannot, prior to availment be taken to construe the payment.

- The Court envisaged that there were many numbers of situations where ITC may be found to have been availed erroneously or on a mistaken interpretation of the law, thus, it would be risky, to state as a general proposition that the mere availability of balance in electronic credit should be assumed to be utilization that would protect the Petitioner from interest levy.

- Further, the Court disapproves the Petitioner's reliance on the decision of Hon'ble Apex Court in UOI vs Bharti Airtel Limited & Ors [Civil Appeal No. 6520 of 2021 dated October 28, 2021], which case pertained to the timelines for filing of GSTR-3B and revision thereof and not the issue of the instant case.

- The Court declined to insulate the Petitioner from levy of interest as per Section 50 of the CGST Act for belated remittance of GST for the period from July 2017 to October 2017, held that unless the Petitioner actually files a return and debits the respective registers, the Respondent cannot be expected to assume that available credits will be set-off against tax liability.

- Therefore, the demand of interest as per the impugned order stands confirmed.

Amusement Park rides cannot be classified as Motor Vehicle, will attract GST @ 18%

Fact of the Case

- M/s KNK Karts has manufactured amusement park ride karts and supply them for joy riding both for children and adults. The Product was neither roadworthy nor meant for transportation or carrying of passengers.

- The Automotive Research Association of India, an authority established to certify that the Product is not permitted on public roads and are not fit for certification and hence cannot be registered with the Regional Transport Authority as Motor vehicle.

- The Applicant were of the impression that the Product are classified under HSN 9503 of the Customs Tariff Act whereas the Central Excise Department insisted them to classify the Product under HSN 8703 of the Customs Tariff Act and pay GST at the rate of 28% in terms of Notification No.1/2017-Central Tax -Rate dated June 28, 2017.

1. Whether the Product supplied by the Applicant meant solely for the purpose of joy riding and are designed and shaped to suit to run or drive only on extremely smooth surfaced tracks, are classifiable under HSN 9508 of the First Schedule to the Customs Tariff Act?

2. Whether the Product supplied by the Applicant which are not roadworthy and cannot be registered as Motor Vehicles with the RTO are classifiable as 'Motor Vehicles meant for carrying of passengers under HSN 8703 of the First Schedule to the Customs Tariff Act?

3. Whether the Product supplied by the Applicant attracts GST at the rate of 18% under Notification No.1/2017-Central Tax Rate dated June 28, 2017 as amended by Notification No.18/ 2021-Central Tax Rate dated December 28, 2021?

4. Whether the Product supplied by the Applicant are covered under HSN 8703 or HSN 9503 of the Customs Tariff Act?

Decision of the Case

The AAR, Karnataka in Advance Ruling No. KAR ADRG 20/2022 dated August 12, 2022 has held as under:

- The expression 'motor car' or 'motor vehicle' used in the HSN are defined under Section 2 (26) and (28) of the Motor Vehicle Act. The Product supplied by the Applicant neither qualify as motor car nor motor vehicle as they are not road worthy and are also not designed for transport of persons and are meant only for amusement or entertainment for use on a fixed or restricted course. Hence, they are not classifiable under HSN 8703.

- The First schedule to the Customs Tariff Act has been amended with effect from January 01, 2022 and the amended HSN 9508 covers "travelling circuses and travelling menageries; amusement park rides and water park amusements" and further the meaning of amusement park rides is given in the notes of the HSN.

- The Product supplied by the Applicant are designed and shaped to run only on extremely smooth specially designed surfaced tracks and are primarily used across the globe as an amusement ride. Therefore, the same may be considered as amusement park rides as per the meaning assigned to amusement park rides.

- The Product supplied by the Applicant attracts GST at the rate of 18% as per Notification No.1/ 2017-Central Tax (Rate) dated June 28, 2017 as amended by Notification No.18/ 2021-Central Tax (Rate) dated December 28, 2021.

No GST on Services of Sweeping, Segregation and Transport of Garbage: Karnataka AAR

Fact of the Case

- The applicant is engaged in providing manpower services. The applicant is proposing to submit a bid in response to the tender floated by the Department of Horticulture, Government of Karnataka, for certain services. The services include cleaning and sweeping of lawns and garden path areas; segregation and transport of garbage; and supply of manpower for garden maintenance.

- The applicant states that horticulture is the art and science of growing plants and includes landscaping, soil management, designing, construction, and maintenance of gardens. The purpose of the work undertaken by the Horticulture Department is to ensure that the gardens are aesthetically beautiful, provide excellent ambience, and provide an authentic environment for visitors and the public.

- The applicant states that the Department of Horticulture would fall within the definition of "government" for the purposes of GST and, as such, pure services received by it would be exempt from GST.

- The applicant contended that there was no supply of or transfer of property in goods involved whatsoever in both cases. That being the case, the supply is composed purely of services and therefore would be a "pure service." In both cases, there is no supply of or transfer of property in goods whatsoever. That being the case, the supply is composed purely of services and therefore would be a "pure service."

- The applicant submits that the activity of maintenance of parks and gardens, in respect of which the services are provided to the Department of Horticulture, is therefore within the ambit of "function entrusted to a municipality under article 243W of the Constitution".

Decision of the Case

- The Karnataka Authority of Advance Ruling (AAR) has ruled that GST is not payable on the services of cleaning and sweeping of lawns and garden path areas and segregating and transporting garbage.

- The two-member bench of M.P. Ravi Prasad and T. Kiran Reddy has observed that no GST is payable on the supply of manpower for garden maintenance on an outsourced basis to the Department of Horticulture which is liable for GST at NIL.

DIRECT TAX JUDGEMENT

Litigation expenditure incurred to protect business is covered under revenue expenditure

Fact of the Case

- The appellant/assessee is a Partnership Firm, engaged in the business of manufacturing and export of wooden handicrafts, durries, rugs, textile items, etc.
- The assessee filed its return of income declaring total income for the year under consideration. The return of income was processed by the CPC under section 143(1) of the Income Tax Act, 1961.
- The case of the assessee was selected for Scrutiny and notice under section 143(2) was issued for compliance on October 07, 2019.
- In response the assessee furnished its reply. Subsequently, in compliance to notice under section 142(1) along with questionnaire, the assessee furnished the details and replied vide its letters and it was examined and verified by the AO.
- In the course of assessment proceedings, the AO on examining the details of professional expenses claimed at ₹ 3,20,45,910 observed that it includes legal expenditure of ₹ 2.37 crores paid to advocates for defending the case in Supreme Court in relation to the assessee's property where its export house is situated.
- The AO considered it to be a capital expenditure being incurred for acquiring, improving, extending, possession, or removing defects in the title of fixed assets.
- The assessee has been in possession of the property and has been utilising it from the beginning. The litigation expenses incurred for continued possession of the immovable property where the assee's office and factory are located is expenditure in relation to immovable property and hence, a capital expenditure which would provide benefit for several years.
- The AO disallowed the litigation expenses of ₹2,37,00,000 as a capital expenditure and added them back to the assessee's returned total income.
- The assessee preferred an appeal before the CIT (A). The CIT (A) observed that the expenditure has substantially increased as compared to the last year.
- The details of expenses have not been furnished during the appellate proceedings. The outcome of the litigation and its present status is not known. Hence, the nature of expenditure cannot be considered as recurring and revenue-generating in nature.
- The CIT (A) upheld the order of the AO, treating the expenditure as capital expenditure.
- The assessee contended that the assessee is not the owner of the asset but possesses the asset from where it is conducting its business. Thus, the litigation expenditure incurred is to protect its business, and therefore, the expenditure so incurred should be allowed as revenue expenditure.

Decision of the Case

- The Jaipur Bench of the Income Tax Appellate Tribunal (ITAT) has held that when litigation expenditure is incurred to protect the business, the same is revenue expenditure.
- They observed that since the assessee has no interest in the ownership of the asset but he is in possession of the asset for conducting its business, the litigation expenditure incurred is only to protect

his business and, therefore, it is revenue expenditure. The litigation expenditure incurred by the assessee is revenue expenditure and not capital expenditure.

- The ITAT directed the AO to allow interest to the assessee upto the actual date of refund, i.e., upto June 11, 2020.

Income Tax deduction available on distribution of Gifts for Sales promotion even if assessee refuses to share list of recipients

Fact of the Case

- The assessee/respondent is in the business of installing computers and providing after-sale services, including the sale of computers and peripherals, and collecting from government departments on behalf of suppliers of computers. The assessee filed the return of income electronically, declaring the total income.

- The assessee has debited a sum of ₹1,29,93,438 towards sales promotion expenses, and claimed the same in the profit and loss account.

- The AO found that it has given costly gifts to certain parties. The AO disallowed the amount claimed as part of the total claim made by the assessee. The reason assigned by the AO was that the assessee failed to provide a list of persons to whom such valuable gifts have been made for business promotion.

- Aggrieved by the order of the AO, the assessee appealed before the CIT (A).

- The CIT (A), while partly confirming the disallowance made by the AO, has held that the AO was not justified in making the addition and it was against the principle of natural justice. The truth lies somewhere down the line wherein a sense of proportion and principle of natural justice would be met.

- In the facts and circumstances of the case, it is decided that a lump sum addition of ₹ 9,50,000 would serve the ends of justice. Accordingly, addition to the extent of ₹ 9,50,000 was confirmed and the balance amounting to ₹1,07,90,918 was directed to be deleted. The appellant got relief of ₹ 1,07,90,918/-.

- Aggrieved by the order of the CIT(A), the department appealed before the ITAT on the grounds that assessee was not entitled to deduction on the grounds that the assessee failed to provide a list of persons to whom valuable gifts have been made for business promotion.

- Counsel for the assessee contended that the assessee was in the business of trading in computer spares and peripherals.

- It was also providing maintenance services. There were many suppliers in the area of business in which the assessee was engaged. In order to remain in the market and also to maintain the assessee's hold in the market, it was essential to incur expenditure on sales promotion.

- Counsel for the assessee further contended that it has achieved a turnover of ₹102.32 crores and against which it has incurred an expenditure of ₹ 1,29,93,438/-, which is just 1.14% of the total turnover.

- The expenditure cannot be said to be excessive or unreasonable. The only reason assigned by the AO is that it failed to provide a list of recipients of the gifts.

- The ITAT noted that CIT (A) found as a matter of fact that similar expenditure was incurred by the assessee in the assessment years 2010–11 and 2011–12, and those expenditures were allowed to it.

- The ITAT has also observed that the CIT (A) has partially confirmed the disallowance of ₹ 9.50 lakhs, but there is no justification for such a disallowance either.

- The tribunal has observed that the assessee was a well organised business house, who has achieved a turnover of more than ₹102 crores and its affairs must have been managed in a professional manner, where complete details might have been maintained.

- The assessee has given no details as to whom such gift items were given. It was the case of the assessee that in order to maintain secrecy in its line of business, it was not incumbent upon him to disclose personal details of recipients.

- It has shown bills and vouchers for the purchases. All the details have been maintained scientifically. An estimation of disallowance could only be made if there are some lapses in the details maintained by the assessee.

- The reasoning given by the AO is altogether different from that which did not meet the approval of the CIT (A).

Decision of the Case

- The Tribunal has held that the CIT (A) ought to have made an adhoc disallowance. The CIT (A) was not justified in partially confirming the disallowance.

- The Ahmedabad Bench of the Income Tax Appellate Tribunal (ITAT) has held that the assessee was eligible for an income tax deduction on the distribution of gifts for sales promotion even if the assessee refused to share the list of recipients.

- The ITAT deleted the disallowance as there was no justification for disallowing the sales promotion expenditure.

Capital Gain exemption can't be denied to Wife for Mere presence of Husband's Name in Purchase Document

Fact of the Case

- The appellant/assessee is an individual, and she filed her return of income for the year under consideration, declaring a total income of ₹ 9,06,860.

- The assessee had earned long-term capital gain on the sale of land and claimed exemption under section 54F of the Income Tax Act from it to the extent of ₹1,56,33,870. The assessee offered a net long-term capital gain of ₹ 51,355.

- The AO examined the long-term capital gain declared by the assessee. It was noticed that the assessee, along with 3 other persons, had sold a property for a consideration of ₹ 5.35 crores.

- The assessee's share of the consideration was ₹ 1,60,50,000/-. The assessee claimed that she had purchased a residential house property in a project named "M/s. Prestige Ozone" for a sum of ₹1,72,29,993/-. Accordingly, she claimed a deduction under section 54F of the Income Tax Act to the extent of ₹ 1,56,33,870.

- The AO examined the details of the purchase of the property at Prestige Ozone. The AO noticed that the initial agreement was entered into by the assessee's husband, Y.C. Rami Reddy, with M/s Prestige Properties for the construction of a building at a cost of ₹ 46,35,610.

- Subsequently, a sale deed was registered for the purchase of plot No.8, having an extent of ₹6,108 sq.ft. for a consideration of ₹39,67,933, on which the construction has happened.

- The sale deed was executed in favour of Y.C. Rami Reddy and the assessee. The assessee claimed that she had reimbursed all the payments made by her husband to him and she had also incurred further expenses for interior design, etc.

- Accordingly, the assessee claimed that the entire cost of purchase was met by her, and the property was purchased by her from her husband.

- The AO examined the claim of the assessee for a deduction under section 54F of the Income Tax Act. The AO took the view that the assessee was not eligible for a deduction under section 54F of the Income Tax Act on the grounds that she had already held a 50% share in the Prestige Ozone building and, hence, there was no necessity for her to pay the full consideration of ₹ 1.72 crores to her husband.

- The assessee challenged the order of the AO before the CIT (A). The CIT (A) held that the expenditure incurred on interiors, renovation, furnishing, etc. after the registration of the plot, i.e., after February 24, 2007, cannot be taken as part of the cost of acquisition. On October 27, 2007, the assessee purchased only 50% of the rights from her husband, and she already held 50%.The release deed given by the husband of the assessee was registered on January 25, 2010, which is 3 years from the date of the sale of the original property.

- Accordingly, the CIT (A) took the view that, irrespective of the amount of payment made to her husband, the assessee can be said to have acquired only 50% of the property on January 25, 2010, which falls within 3 years from the date of sale of the original property.

- As a result, he concluded that the deduction under section 54F of the Income Tax Act should be limited to 50% of the cost of acquiring an asset.

- The issue raised was whether the CIT (A) was justified in ignoring expenditure of ₹81,71,910/- incurred on the new house property for computing deduction under section 54F of the Income Tax Act.

- The ITAT observed that the assessee's husband had advanced money initially. Subsequently, the assessee has reimbursed the money to her husband, and finally, it was the assessee who actually gave funds for the acquisition of the property.

- CIT (A) has taken the view that the funds given by the assessee should not be taken into account and, in our view, the said view of the CIT (A) is not, in our view, correct in law, the tribunal said.

Decision of the Case

- The ITAT ruled that the deduction under section 54F of the Income Tax Act only induces an assessee to make an investment in residential house property. If the assessee has given money for the acquisition of the property, either directly to the builder or as reimbursement to her husband, then the assessee should be given the benefit of a deduction under section 54F of the Act for the cost of acquisition.

- The Banglore Bench of the Income Tax Appellate Tribunal (ITAT) has ruled that the capital gain exemption cannot be denied to the wife for the mere presence of the husband's name in the purchase document.

Income tax act does not prohibit HRA exemption on rent paid to wife

Fact of the Case

- The Assessing Officer (AO), while making assessment, clubbed the rental income earned by Assessee's wife in the hands of the Assessee on the ground that she had no independent source of income to purchase the house property.

- The Commissioner of Income Tax (Appeals) confirmed the additions made to the Assessee's income on the ground that there was no substantial taxable income shown by the wife in the previous assessment years.

- Also, the CIT (A) disallowed the exemption on House Rent Allowance (HRA) on the rent paid by the Assessee to its spouse. The Assessee filed an appeal against the impugned order before the ITAT.

- The Assessee contended that under the Income Tax Act, exemption on HRA cannot be denied on rent paid by an assessee to its spouse. Also, he submitted that the loan advance by him to his wife for purchase of

property has been repaid to him.

Decision of the Case

- The ITAT held that there is no bar on the Assessee to extend loan to his spouse from known sources of income or on the spouse to repay the same from liquidation of her own assets.

- The ITAT allowing the Assessee's appeal, ruled that there is no bar under the Income Tax Act on the Assessee husband to pay rent to his wife and the disallowance of exemption on HRA by the CIT(A) cannot be upheld.

- The Delhi Bench of ITAT has ruled that HRA exemption under Income Tax Act, 1961 cannot be denied on the ground that the Assessee pays rent to its spouse.

No TDS required to be Deducted on enhanced compensation awarded by court under Land Acquisition Act

Fact of the Case

- The Assistant Commissioner of Income Tax (ACIT) conducted TDS survey/inspection, during which it was found that the Land Acquisition Office had failed to deducted tax at source under Section 194A of the Income Tax Act on the interest paid to farmers/ land owners on enhanced compensation for a given assessment year.

- The Assessing Officer (AO) accordingly raised a demand for the relevant assessment year. The Assessee Land Acquisition Office filed an appeal before the Commissioner of Income Tax (Appeals) (CIT (A)) against the order of the AO.

- The Assessee submitted before the CIT(A) that the interest was paid on enhanced compensation under Section 28 of the Land Acquisition Act, and as per the judgment of the Supreme Court in the case of CIT, Faridabad versus Ghanshyam (2009), the interest paid by the Assessee was a part of the compensation itself.

- The Assessee averred that interest on enhanced compensation under Section 28 of the Land Acquisition Act is an accretion to the value and therefore, regarded as part of the compensation itself.

- The Assessee contended before the CIT(A) that provisions of Section 194LA of the Income Tax Act were applicable to the Assessee Land Acquisition Office, where under tax could not be deducted in respect of the compensation or enhanced compensation payable on compulsory acquisition of agriculture land. The CIT(A) however, dismissed the Assessee's appeal.

- The Land Acquisition Office filed an appeal before the ITAT against the order of the CIT(A).

- Before the ITAT, the Assessee Land Acquisition Office raised an additional ground and submitted that interest on enhanced compensation under Section 28 of the Land Acquisition Act with respect to a capital asset, being an integral part of the consideration itself, is exempt from capital gains tax under Section 10(37) of the Income Tax Act.

- The Assessee contended that the interest received by the land owners on compulsory acquisition of its land under Section 28 of the Land Acquisition Act, is in the nature of compensation and not interest, therefore the same is not taxable under the head 'income from other sources' under Section 56 of the Income Tax Act, and thus the Assessee had no obligation to deduct TDS on the enhanced compensation.

- The ITAT observed that an agricultural land situated in any area specified under Section 2(14)(iii)(a) or Section 2(14)(iii)(b) of the Income Tax Act falls outside the ambit of agricultural land and thus constitutes a 'capital asset' under Section 2(14) of the Income Tax Act.

- The ITAT held that compulsory acquisition of a 'capital

asset' under any law is a 'transfer', therefore, any profit or gain arising from the transfer of such a capital asset attracts capital gains tax under Section 45 of the Income Tax Act.

- However, the ITAT added, capital gains arising from transfer of an agricultural land, situated in any area referred to in Section 2(14)(iii)(a) or Section 2(14)(iii)(b) of the Income Tax Act, by way of compulsory acquisition under any law is exempt from tax under Section 10(37) of the Income Tax Act.

Decision of the Case

- The ITAT ruled that under Section 10(37) of the Income Tax Act any income by way of capital gains which is engrained in the receipt of compensation or enhanced compensation is exempt from tax in the hands of the recipient land owners.

- The ITAT held that the interest received by the land owners on enhanced compensation awarded to them by the Court under Section 28 of the Land Acquisition Act is not in the nature of 'income from other sources' under Section 56 of the Income Tax Act, therefore, the Land Acquisition Office was not under any legal obligation to deduct TDS on the enhanced compensation under Section 194A of the Income Tax Act.

- The ITAT thus allowed the appeal of the Assessee.

INDIRECT TAX CALENDER

Returns	Due Date	Returns	Due Date
GSTR-3B (Aug, 2022)	Sep 20th, 2022	GSTR-5A (Aug, 2022)	Sep 20th, 2022
GSTR-1 (Aug, 2022)	Sep 11th, 2022	RFD-10	18 Months after the end of quarter for which refund is to be claimed
GSTR-5 (Aug, 2022)	Sep 20th, 2022		

DIRECT TAX CALENDER

30 September 2022	✪ Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of August, 2022 ✪ Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of August, 2022
	✪ Due date for filing of audit report under section 44AB for the assessment year 2022-23 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2022) ✪ Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of August, 2022

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

Notes

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.

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