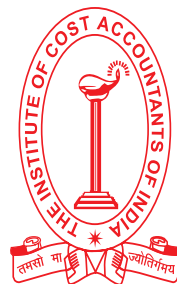


November, 2022

TAX Bulletin

Volume - 124



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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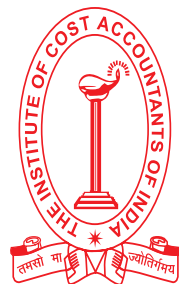
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1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
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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)
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7. Certificate Course on International Trade (CCIT)

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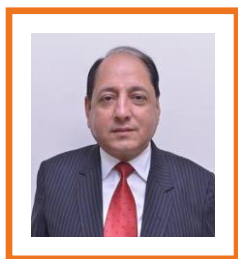
- ▲ B.Com/ BBA pursuing or completed
- ▲ M.Com/ MBA pursuing or completed

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

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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,

Warm Greetings, from the Tax Research Department, the Institute of Cost Accountants of India.

This fortnight has seen a lot of important developments in the taxation front of the country. CBDT has announced the launch of a common ITR for all assesseees apart from ITR-7. The rationale behind this decision is that the common ITR form aims to simplify the tax filing process further and reduce the time it takes **for ease of doing business**.

At present there are 7 ITR forms to be filed in by different kind of aseesees. Like:

ITR 1:

- Income earned from other sources such as lottery, horse race etc.
- Agricultural income less than Rs. 5000
- Salary/pension income
- Payment received for a single house property with certain exclusions.

ITR 2: For Individuals and HUFs

- Income greater than Rs 50 lakh
- Income received through salary/ pension/ house property/ lottery/ horse race/ capital gains/ foreign assets/ foreign income
- If an individual is the director of a company
- Agricultural income of more than Rs 5000
- Individuals who do not earn money from business ventures.

ITR 3: For Individuals and HUFs

- A business or profession
- If you are an individual director in a company
- Income received as a partner in a firm
- Investments in unlisted equity shares
- Income from salary/pension/house property/other sources

ITR 4:

- Individuals, HUFs, Partnership firms having income from business and profession can opt for ITR 4 form. Moreover, those who have chosen for presumptive income scheme under Section 44AD, Section 44ADA and Section 44AE of the Income Tax Act can also file using ITR 4 form. Turnover exceeding Rs 2 crore will have to be filed under ITR 3 form.

ITR 5:

- ITR 5 form is to be filed by Firms, Body of Individuals, Co-operative societies, LLPs (Limited Liability Partnerships), Association of Persons, Local authorities, Artificial Judicial Persons, Estate of Insolvent, Estate of Deceased, Investment Fund, and Business Trust.

ITR 6:

- ITR 6 form can only be filed electronically by companies, excluding companies claiming an exemption under Section 11, which is income from a religious or charitable property.

ITR 7: Companies filing the return under below sections of Income Tax Act

- Section 139(4A): Individuals holding a property for charitable or religious purposes
- Section 139(4B): Political parties
- Section 139(4C): Institutions or associations mentioned under section 10(23A),10(23B), medical institutions, news agencies, educational institutions, agencies involved in scientific research.
- Section 139(4D): Under this section, colleges and universities or any such institution where revenue and losses are not required to be reported as per the rules laid under this section of the Act.

According to the CBDT circular, “The current ITRs are in the form of designated forms wherein the taxpayer is mandatorily required to go through all the schedules, irrespective of the fact whether that particular schedule is applicable or not.” This increases the time taken to file the ITRs and creates difficulties for taxpayers, it said. The common ITR does away with this obligation.

The Government, in Direct and Indirect Tax front, has come up with some new notifications and declaration, like:

On the Direct Tax front:

1. Gross direct tax revenue jumps 31% to Rs 10.54 lakh crore; net collections cross 61% of Budget target
2. I-T department committees on high-pitched assessments to submit report in about 2 months: CBDT
3. India plans changes in capital gains tax in next budget
4. Over 6.85 crore IT returns filed for FY22 so far as confirmed by CBDT.
5. The government has appointed a total of 15 judicial and technical members at the National Company Law Tribunal (NCLT), which is grappling with a shortage of judges. The NCLT adjudicates matters related to the Insolvency and Bankruptcy Code (IBC) and companies law.

On the Indirect Tax front:

1. The Central Board of Indirect Taxes and Customs (CBIC)
 - Circular 181 was issued to clarify that refund related amendments will apply prospectively and
 - Circular 182 is issued to provide the verification procedure for allowing transitional credit claims made by taxpayers during the period 1st October 2022 up to 30th November 2022.
2. Indirect tax appellate tribunal CESTAT has asked Central Board of Indirect Taxes and Customs (CBIC) to frame guidelines to deal with outstanding tax demands against companies facing insolvency proceedings. **While declaring** its ruling in the Ultratech Nathdwara Cement Ltd case, the Ahmedabad bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) observed the same.

The Tax Research Department of your Institute in association with Bhawanipore Education Society College, Kolkata conducted a grand seminar at the premises of the College on the theme “Taxation & Economy of India – Way Forward” on the 12th of this month. The session was addressed by eminent dignitaries like, Dr. Suman Kumar Mukerjee, Director General, The Bhawanipur Education Society College, CMA Chittaranjan Chattopadhyay, Chairman – Indirect Taxation Committee, Prof. Dilip Shah, Dean of Students Affairs, The Bhawanipur Education Society College, CMA Timir Baran Chatterjee, Tax Consultant, Dr. Shiladitya Chatterjee, IAS (Retd.), Advisor, Government of Assam, PMO, ADB, CMA Mrityunjay Acharya, General Manager (Finance), Numaligarh Refinery Ltd. and Dr. Tridib Sengupta,

Coordinator, Department of Business, Administration, The Bhawanipur Education Society College. A large number of students and college faculties of Seven Other Colleges attended the Seminar. The program was attended by a huge number of participants. We put it on record of our profuse thanks and gratitude to the College Authority for their association with us and look forward for further value addition to the College Students in the field of Taxation.

A webinar was hosted by the Tax Research Department on 9th of this Month when CMA Shiba Prasad Padhi was the faculty on the topic "Rising cases of Disputes in GST - Possibilities and Ways forward".

Official Inauguration of GST Course of the Institute for the students of Malappuram District Panchyath was done on 12th November, 2022. A MoU sharing ceremony was organized on that day, wherein Honourable Deputy Opposition Leader of Kerala, P K Kunjalikkutty, MLA and CMA H Padmanabhan, Council Member, attended the occasion along with other eminent dignitaries. The Institute has signed MoU with the Malappuram District Panchyath earlier on 6th September, 2022 GST Course for colleges and universities was also completed at The New College (Autonomous) Chennai.

The Tax Research Department is also very much active in conducting various courses, quiz on Taxation etc regularly as per schedule. We seek any further suggestions/observations from the esteemed readers for furtherance of the objective of the Department.

Stay safe and healthy.

Jai Hind.
Warm Regards



(Rakesh Bhalla)

CMA Rakesh Bhalla
23rd November 2022



CMA Chittaranjan Chattopadhyay
23rd November 2022

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

Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

CLARIFICATION ON PRE-DEPOSIT PAYMENT METHOD – CASES IN CENTRAL EXCISE AND SERVICE TAX — FAQs

Prologue

Five years into the introduction of GST, yet litigation pertaining to the old Central Excise and Service Tax Law have yet to come to a close. This is due to the fact that erstwhile S. 11A of the Central Excise Act, 1944 and S.73 of the Finance Tax Act, 1994 (Service Tax) prescribe the time limit for issuance of Show Cause Notices (maximum of 5 years from the relevant date) only and the time limit for passing orders, though specified in the said act(s) are not legally binding, inasmuch the words “where it is possible to do so” appear in S. 11A(11).

In such a context, where the person has been served with an order under Service Tax, can he use the Form GST DRC-03 (or popularly DRC 03 Challan, under GST Law) for payment of such pre-deposit under erstwhile laws? This has been done by many a person, especially in cases involving CENVAT Credit disallowances under erstwhile laws, where such DRC 03 for pre-deposit has been paid by the Appellants, using e-credit ledger under GST Law.



CMA M Saravana Prabhu
Managing Partner,
GST & Indirect Taxation, MSSM Associates

Why this Clarification?

It has been brought to the notice of the Board that appeals have been rejected by some Commissioner (Appeals) for non-compliance with pre-deposit requirements u/s 35F of the Central Excise Act, 1944 (CEA) and Sec. 83 of the Finance Act, 1994 r/w/s 35F of the CEA, where such payments have been made through Form GST DRC-03 on common GST portal, by holding that it is not a prescribed method of payment of such pre-deposit.

Which case got the dice rolling on this issue?

The issue had also been referred to the Board by the Hon'ble High Court of Mumbai in *Writ Petition No. 6220 of 2022 in the matter of Sodexo India Services Pvt. Ltd Vs. Union of India and Ors.*, with directions to examine and issue suitable instructions in this regard.

What was the observation of the Hon'ble High Court of Mumbai in the case of Sodexo India Services Pvt. Ltd Vs Uol and Ors ?

The observation of the Hon'ble High Court of Mumbai is as follows –

“...Para 6 We find that this is a matter that requires to be resolved by the Central Board of Indirect Taxes and Customs (CBI & C). From the affidavit filed by Mr. Lal, it appears that many appellants/assesseees were paying the pre-deposit under Section 35F of the Central Excise Act, 1944 through service tax challans, whereas few appellants/assesseees were using DRC-03 mode under CGST Act, 2017. This, in our view, could be for various reasons. It appears that this problem has been taken up by the CBI & C with the Principal Chief Commissioner, Mumbai CGST & CE Zone by a letter dated 3rd June 2022. The subject itself states “Non-acceptance of pre-deposit paid through Form GST DRC-03 for appeal under Service Tax law-Request for issuance of instructions to accept such payment as no other option available for making the pre-deposit before filing of appeals-reg.” Paragraph 2 of the said letter also reads as under : 2. Vide said representation, the party has mentioned in their letter that the numerous appeals have been rejected on the ground that the payment made for pre-deposit mandatory under Section 35F of the Central Excise Act, 1944 through CGST cannot be accepted and hence, the appellants have failed to comply with the provisions of the Central Excise Act,

1944 read with Section 83 of the Finance Act, 1994.

...

Para 8 *Therefore, it appears that the confusion seems to be due to no proper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act, 1944 through DRC-03. Some appellants are filing appeals after making pre-deposit payments through DRC-30/GSTR-3B. In our view, this has very wide ramifications & certainly requires the CBIC to step in and issue suitable clarifications/guidelines/ answers to the FAQs. We would expect CBI & C to take immediate action since the issue has been escalated by Mr. Lal over 8 months ago*

Observations of the CBIC on this issue of pre-deposit?

The matter has been examined by the board, which observed as follows - It may be seen that Form GST DRC-03 is prescribed for payment of tax, interest, penalty u/s 73(5) / (8) and 74(5) / (8) and section 129 (1) of the CGST Act, 2017. It is also prescribed for any other payment due in accordance with the provisions of the Act as specified in rule 142 (2) and 142 (3) of the CGST Rules, 2017.

Further, in the GST regime, in connection with the appeal mechanism under section 107 of the CGST Act, 2017 - **Rule**

108(1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with option of payment of admitted amount and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also Form GST DRC-03 is not a prescribed mode for payment of pre-deposit. (emphasis supplied)

Is pre-deposit for appeal under erstwhile law, an arrear under GST Law?

Attention is invited to Miscellaneous transitional Sec. 142(6) (b) / (7)(a)/ (8)(a), which, inter alia, provides that any credit, tax, interest, line or penalty recoverable from the person before, on or after 1st July 2017 under the existing law (Central Excise Act and Chapter-V of Finance Act, 1994), shall be recovered as an arrear of tax under CGST Act.

It is settled that pre-deposit as a requirement for exercising the right to appeal neither is in the nature of duty nor can be treated as arrears under the existing law and hence cannot be said to be covered under transitional provisions of the CGST Act.

Can pre-deposit for appeal under erstwhile law be made using DRC - 03?

In view of the above, it has been clarified that payments through DRC-03 under the CGST regime is not a valid mode of payment for making pre-deposits under section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994, read with section 35F of the CEA.

Then how to make such pre-deposit for appeal under erstwhile law?

There exists a dedicated CBIC-GST Integrated portal, <https://cbic-gst.gov.in>, which should only be utilized for making pre-deposits under the Central Excise Act, 1944 and the Finance Act, 1994.

Epilogue: One may refer to Board's Circular No. 1070/3/2019-CX, dated 24th June, 2019, in this regard, which prescribes a detailed step-by-step approach for payment of pre-deposit. To summarise this circular, the following step by steps can be adopted – (Step 1) Creation of Login in <https://cbic-gst.gov.in>- you may also take the help of your jurisdictional officer (passing the order) in this regard. (Step 2) Generation of Mandate form in the said portal using the login ID created by filling in the appropriate details and selecting the relevant tax head etc. (Step 3) Payment of the said mandate using NEFT / RTGS or approaching an authorised bank. However, this process through summarised in 3 easy steps; in reality it is easier said than done. The Tax payers



preferring appeals before the appellate fora under erstwhile law would do good to keep in mind the relevant limitations and plan to make this pre-deposit in advance and avoid last minute and at the worst, foregoing their statutory Appellate remedies! As the saying goes – ***“There may be many a slip between the cup and the lip.”***

Disclaimer The article is informative in nature and does not or does not purport to be complete or comprehensive in its scope of analysis. Any user of this article is required to verify the correctness of the positions taken herein before acting upon

the same. The above note is based on the facts, assumptions, information and law as on the date of the article and becomes invalid in case of any change in the same. Any change or modification of the facts / assumptions /law is required to be brought to my notice immediately. This article is valid for the periods as discussed therein and not valid in case of any change in law.

Source: INSTRUCTION NO. CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC, DATED 28-10-2022



IMPORTANT ASPECTS ON ISSUANCE OF TAX INVOICE FOR SUPPLY OF SERVICES

Brief of Tax Invoices in the field of Indirect Taxation:

In the Pre-GST era, the Tax Invoices involved for Intra and Inter-State Trade and Commerce were VAT Invoice, CST Invoice, Excise Invoice and Service Tax Invoice. But as per THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 (**No.12 of 2017**), the Tax Invoices involved for the supply of Goods and Services both for Intra and Inter State are the GST Invoices, and such GST Invoice becomes applicable from 1st July 2017.

Under the GST regime, “**Tax Invoice**” means the tax invoice which is raised as per Section 31 of the CGST Act, 2017. This Section mandates the issuance of a Tax Invoice or Bill of Supply against every supply of goods or services or both *(if a GST Registered person is making supplies, then a Tax Invoice is required to be issued against such supply of goods or services or both and if such registered person is dealing only in exempted supplies or registered as a “Composition Dealer,” then such registered person needs to raise Bill of Supply in lieu of Tax Invoice.)* The Tax Invoice should contain the description of the goods, services with quantity and value and such other particulars prescribed under Rule 46 of CGST Rules, 2017.

Importance of Tax Invoice under GST:

The issue of a Tax Invoice under GST not only acts as evidence against the supply of goods or services or both but also acts as an essential document for the recipient to avail the Input Tax Credit (ITC). As per Section 16(2)(a) of CGST Act, 2017, the registered recipient is eligible to claim ITC if *“he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.”*

Note-

- (a) For supply of Goods:** As per Rule 48 of CGST Rules, 2017, the invoice shall be prepared in triplicate, namely- (a) the original copy being marked as ORIGINAL FOR RECIPIENT; (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER, and (c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.



CMA Dipankar Biswas
Cost Accountant



(b) For supply of Services: As per Rule 48 of CGST Rules, 2017, the invoice shall be prepared in duplicate, namely- (a) the original copy being marked as ORIGINAL FOR RECIPIENT, and (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

(c) In case of the e-invoice, it is not required to be issued in triplicate or duplicate copy of the invoice.

Time limit for issuance of Tax Invoice (For supply of Services):

Section 31(2) of the CGST Act 2017 states that in case of the supply of services (*for the non-continuous supply of services*), a registered person shall issue the Tax Invoice before or after the provision of service *but within a prescribed period*. The Tax Invoice should contain the description of the goods, services with quantity and value and such other particulars prescribed under Rule 46 of CGST Rules, 2017.

As per Rule 47 of CGST Rules, 2017, Tax Invoice referred to in Rule 46 of CGST Rules, 2017 shall be issued *within a period of 30 days* from the date of the supply of service:

Provided that where the supplier of services is an insurer or a banking company, or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be **45 days** from the date of the supply of service.

Section 31(5) of CGST Act 2017 states that in case of the supply of service (*for the continuous supply of services*), a Tax Invoice should be raised as per the following Clause of Section 31(5) of CGST Act, 2017 and the Tax Invoice should contain the description of the goods, services with quantity and value and such other particulars prescribed under Rule 46 of CGST Rules, 2017:

where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Consequences arise due to non-issuance of Tax Invoice for the supply of services beyond the time limit:

(A) Consequence arises before the Service Provider: If the supplier has not issued the Tax Invoice timely against the supply of services, a Showcase Notice Under Section 73 or 74 can be issued against the Service Provider. As per Section 122(1), (i) of CGST Act, 2017, supplying goods/ services without issuing of Tax Invoice is an offence, and the Supplier of Goods or Services shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded.

(B) Consequence arises before the Recipient: On non-receipt of Tax Invoice from the service provider, the Service Receiver can not claim the ITC against procurement of such services. *As per Section 16(2)(a) of CGST Act, 2017, the registered recipient is eligible to claim ITC if “he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.”*

Note- Practically, it is followed that the Service Receiver (where such Service Receiver is supplying the exempted goods or services or both such as Generation and Supply of Electricity and can not claim the ITC on procurement of supply of goods or services) has not received the Tax Invoice timely and the Service Providers have raised the Tax Invoice beyond a long span of time. As the Service Receiver can not avail the ITC, there is a lack of good Corporate Governance from their end against such issues. Here, the Service Receiver has to adopt Good Corporate Governance with True Letter and Spirit, and there should be regular monitoring so that the Service Providers are bound to submit the Tax Invoice timely as a part of compliance with the CGST Act, 2017. Good Corporate Governance within the Taxation Cell of the Service Receiver can minimize such kind of issues.

If the Tax Invoice is not issued by the supplier timely, the recipient will not get the GST Credit on Input and hence, such credit can not be adjusted with the GST Outward Liability and hence, it will directly effect on the Working Capital.

CASE STUDY

Advance Ruling: In the case of M/s. Vishnu Chemicals Limited (AAR No.21/AP/GST/ 2021 dated 20th July

2021), no ITC is eligible on the monthly rental tax invoices raised after the expiry of the limitation period.

Brief of the facts: M/s Vishnu Chemicals Limited (the Applicant) is a manufacturer of basic chromium sulphate, Sodium Sulphate and Chromic Acid. The Applicant needed additional space for storing the raw materials and finished goods. Hence, a Lease Agreement was made between M/s Vishnu Chemicals Limited (**GSTIN- 37AACCV1903A3ZU**) and M/s Usha Tubes and Pipes Pvt. Ltd (M/s UTPL) (**GSTIN: 37AAACU7175R1ZG**).

The applicant acknowledged that monthly rental bills were received from M/s UTPL regularly till March 2018. But for the months from **“April 2018 to March 2019”**, M/s UTPL issued a single tax invoice bearing No UTPLog19117KVC dated 01/04/2020 mentioning in the description as Rental charges for the months from April 2018 to March 2019 by showing rent month-wise for 12 months. The invoice mentioned CGST as ₹26,64,090/- and SGST of ₹26,64,090/- on the total taxable value of ₹ 2,96,01,000.

Questions raised before the Authority: The applicant seeks advance ruling on the following:

- (1) Whether the tax invoice dated 01/04/2020 issued by the supplier of service for the rental service supplied for the period 01/ 04/2018 to 31/ 03/2019 is hit by the limitation for claiming ITC under sub-section (4) of Section 16 of the CGST/SGST Act,2017.
- (2) If the applicant avails ITC on such invoice after 01/04/2020 and before filing GST returns for September 2021/Annual Return for 2020-2021, whether it violates the condition mentioned under sub-section (4).

Remarks and decisions raised by the Authority of Advance Ruling:

As per Rule 47 of CGST Rules, 2017, Tax Invoice referred to in Rule 46 of CGST Rules, 2017 shall be issued **within a**

period of 30 days from the date of the supply of service, and here, the said invoice has not been raised as per the said Rule.

In view of the above, in the instant case, the invoice which was raised on 01/04/2020 does not Pertain to the financial year of 2020-2021 but pertains to the financial year of 2018-2019 in Which the services were received. Moreover, as per section 16(4), the applicant was mandated to claim input tax credit before the due date of furnishing of the return Under section 39 for the month of September 2019 following the end of the financial year 2018-2019, to which such invoice pertains or furnishing of the relevant annual return for the year 2018-2019, whichever is earlier. Hence, the tax invoice dated 01/04/2020 issued by the supplier of service for the rental service supplied for the period 01/ 04/2018 to 31/ 03/2019 is hit by the limitation for claiming ITC under sub-section (4) of Section 16 of the CGST/SGST Act,2017.

Section 16(4) of CGST Act 2017 states that “A registered person shall not be entitled to take the input tax credit in respect of any invoice or debit note for the supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

Please refer to Notification No 92/2020-Central Tax dated 22nd December, 2020 for Section 120 of the Finance Act,2020(Amendment of Section 16(4) of CGST Act,2017)

Section 120 omitted the words “invoice relating to such” from the section 16(4) of the Central Goods and Services Tax Act.

Conclusion: Based on the discussion, it can be concluded that the aforesaid Sections read with other relevant Sections of CGST Act,2017 and Rules read with other relevant Rules of CGST Rules, 2017 should be followed as a part of Good Corporate Governance.

NOTIFICATIONS & CIRCULARS

Indirect Tax

Notifications

Customs

Notification No. 92/2022-CUSTOMS (N.T)

Dated 3rd November, 2022

The Central Government Fixes Exchange rate vide Notification No. 92/2022

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 90/2022-Customs(N.T.), dated 20th October, 2022 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 4th November, 2022, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

Schedule I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	54.00	51.65
2.	Bahraini Dinar	226.95	213.40
3.	Canadian Dollar	61.60	59.60
4.	Chinese Yuan	11.50	11.20
5.	Danish Kroner	11.15	10.75
6.	EURO	83.05	80.05
7.	Hong Kong Dollar	10.75	10.40
8.	Kuwaiti Dinar	276.50	259.75



Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		1	2
		(a)	(b)
9.	New Zealand Dollar	49.70	47.40
10.	Norwegian Kroner	08.05	07.80
11.	Pound Sterling	96.30	93.00
12.	Qatari Riyal	23.50	22.10
13.	Saudi Arabian Riyal	22.75	21.40
14.	Singapore Dollar	59.50	57.60
15.	South African Rand	04.70	04.40
16.	Swedish Kroner	07.60	07.35
17.	Swiss Franc	84.30	81.30
18.	Turkish Lira	04.60	04.30
19.	UAE Dirham	23.30	21.90
20.	US Dollar	83.80	82.10

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
		1	2
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	57.20	55.45
2.	Korean Won	6.00	5.65

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009543/ENG/Notifications>



Notification
Customs
Notification No. 56/2022-Customs
Dated 1 November 2022

The Central Government Seeks to amend notification No. 50/2017-Customs, dated the 30th June, 2017 to amend sl. no. 404 of the said notification

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

In the said notification in the Table, against S. No. 404, in column (2), for the entries, the entries “27, 29, 31, 38, 39, 73, 82, 84, 85, 87, 89 or 90” shall be substituted.

For more please visit,

<https://taxinformation.cbic.gov.in/view-pdf/1009540/ENG/Notifications>

Notification
Central Excise
Notification No. 37/2022-Central Excise
Dated 1st November 2022

Seeks to further amend No. 04/2022-Central Excise, dated the 30th June, 2022, to increase the Special Additional Excise Duty on Diesel.

G.S.R. (E). -In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 04/2022-Central Excise, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 492 (E), dated the 30th June, 2022, namely:

In the said notification, in the Table, -

- 1) against S. No. 2, for the entry in column (4), the entry “₹. 11.50 per litre” shall be substituted;
2. This notification shall come into force on the 2nd day of November, 2022.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009542/ENG/Notifications>



Notification
Central Excise
Notification No. 36/2022-Central Excise
Dated 1st November 2022

The Central Government seeks to amend No. 18/2022-Central Excise, dated the 19th July, 2022 to reduce the Special Additional Excise Duty on production of Petroleum Crude and increase Special Additional Excise Duty export of Aviation Turbine Fuel

In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584(E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

- 1) against S. No. 1, for the entry in column (4), the entry “₹ 9,500 per tonne” shall be substituted
- 2) against S. No. 2, for the entry in column (4), the entry “₹ 5 per litre” shall be substituted

2. This notification shall come into force on the 2nd day of November, 2022.

For more, details please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009541/ENG/Notifications>

Circulars
Central Excise
Circular No. 1085/06/2022-CX
Dated 1st November 2022

The Central Government provides circular for Mechanism for implementation of additional basic excise duty @ ₹ 2 per litre levied on sale of unblended motor spirit (commonly known as petrol)

As a part of Budget 2022-2023, an additional Basic Excise Duty @ ₹ 2 per liter was levied on unblended motor spirit (commonly known as petrol) intended for retail sale and the said duty rate was to be applicable w.e.f 1st October 2022. The date of effect was deferred to 1st November 2022 vide Notification No. 31/2022-Central Excise dated 30 September, 2022. The levy of additional Basic Excise Duty on unblended motor spirit was introduced to promote blending in the country.

For more, please visit

taxinformation.cbic.gov.in/view-pdf/1003129/ENG/Circulars

Notification
Customs (N. T.)
Notification No. 96/2022-CUSTOMS (N.T.)
Dated 15th November 2022

The Central Government fixes of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg.

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

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

“Table -1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	960
2	1511 90 10	RBD Palm Oil	988
3	1511 90 90	Others – Palm Oil	974
4	1511 10 00	Crude Palmolein	1005
5	1511 90 20	RBD Palmolein	1008
6	1511 90 90	Others – Palmolein	1007
7	1507 10 00	Crude Soya bean Oil	1345
8	7404 00 22	Brass Scrap (all grades)	4545

2. This notification shall come into force with effect from the 16th day of November, 2022.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009547/ENG/Notifications>



Notification
Central Tax
Notification No. 22/2022 – Central Tax
Dated 15th November 2022

The Central Government seeks to make amendments (Third Amendment, 2022) to the CGST Rules, 2017.

G.S.R... (E). –In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. -

(1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2022

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in FORM GSTR-9, under the heading Instructions, in paragraph 7, -

(A) for the figures, letters and words “between April, 2022 to September, 2022”, the figures, letters and words “of April, 2022 to October, 2022 filed upto 30th November, 2022” shall be substituted;

(B) in the Table, in second column, -

(I) against serial numbers 10 & 11, for the figures and words “April, 2022 to September, 2022”, the figures, letters and words “April, 2022 to October, 2022 filed upto 30th November, 2022” shall be substituted;

(II) against serial number 12, for the figures and words “April 2022 to September 2022”, the figures, letters and words “April, 2022 to October, 2022 upto 30th November, 2022” shall be substituted;

(III) against serial number 13, for the figures and words “April 2022 to September 2022”, the figures, letters and words “April, 2022 to October, 2022 upto 30th November, 2022” shall be substituted.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009548/ENG/Notifications>



NOTIFICATIONS & CIRCULARS

Direct Tax

Circular

Direct Tax

Circular No. 22/2022

Dated 1st November 2022

Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No.10A- Reg.

On consideration of difficulties reported by the taxpayers and other stakeholders in the electronic filing of Form No. 1 OA, the Central Board of Direct Taxes (the Board) in exercise of its powers under Section 119 of the Income-tax Act, 1961 (the Act) extended the due date for filing Form No. 10A required to be filed on or before 30.06.2021, to 31.08.2021 by Circular No.12/2021 dated 25.06.2021, and further to 31.03.2022 by Circular No. 16/2021 dated 29.08.2021.

2. Representations have been received by the Board stating that Form No.1 OA in some of such cases could not be filed by 31.03.2022. It has been requested that the delay in filing of Form No. 10A in such cases may be condoned.
3. On consideration of the matter, with a view to avoid genuine hardship to such cases, the Board, in exercise of the powers conferred under section 119(2)(b) of the Act, hereby condones the delay upto **25.11.2022** in filing Form No. 10A under sub-clause (i) of clause (ac) of sub-section (l) of section 12A / clause (i) of first proviso to clause (23C) of section 101 clause (i) of first proviso to sub-section 5 of section 80G I fifth proviso to sub-section 1 of section 35 of the Act, which was required to be made electronically on or before 31.03.2022.

For more details, please follow

<https://incometaxindia.gov.in/communications/circular/circular-no-22-2022.pdf>

Circular

Direct Tax

F No 370133/16/2022-TPL

Dated 1st November 2022

Draft common Income-tax Return-request for inputs from stakeholders and the general public- reg

Presently, taxpayers are required to furnish their Income-tax returns in ITR-1 to ITR-7 depending upon the type of person and nature of income. The current ITRs are in the form of designated forms wherein the taxpayer is mandatorily required to go through all the schedules, irrespective of the fact whether that particular schedule is applicable or not. This increases the time taken to file the ITRs and in turn may create avoidable difficulties for taxpayers.



2. The proposed draft ITR takes a relook at the return filing system in tandem with international best practices. It proposes to introduce a common ITR by merging all the existing returns of income except ITR-7. However, the current ITR-1 and ITR-4 will continue. This will give an option to such taxpayers to file the return either in the existing form (ITR-1 or ITR-4) or the proposed common ITR, at their convenience.
3. The draft ITR aims to bring ease of filing returns and reduce the time for filing the ITR by individuals and non-business-type taxpayers considerably. The taxpayers will not be required to see the schedules that do not apply to them. It intends the smart design of schedules in a user-friendly manner with a better arrangement, logical flow, and increased scope of pre-filing. It will also facilitate the proper reconciliation of third-party data available with the Income-tax Department vis a vis the data to be reported in the ITR to reduce the compliance burden on the tax payers.

For more details, please follow

<https://incometaxindia.gov.in/communications/circular/common-itr.pdf>

Notifications

Direct Tax

Notification No.121/2022

Dated 14th November 2022.

The Central Board of Direct Taxes makes further amendments in the notification No.61/2022 dated the 10th June, 2022.

S.O. 5255(E).—In exercise of the powers conferred by sub-sections (1), (2) and (5) of section 120 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendments in the notification of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes No.61/2022 dated the 10th June, 2022, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 2693(E) dated the 10th June, 2022, namely:—

In the said notification, in the SCHEDULE,

- (I) Sl. No. 2259 - Sl. No. 2286 and the entries relating thereto shall respectively be omitted;
- (II) Sl. No. 2592 - Sl. No. 2612 and the entries relating thereto shall respectively be omitted.

2. This notification shall come into force from the date of publication in the Official Gazette

For more details, please follow

<https://incometaxindia.gov.in/communications/notification/notification-121-2022.pdf>



Notification
Direct Tax
Notification No.123/2022
Dated 14th November 2022.

The Central Board of Direct Taxes makes further amendments in the notification No.60/2022 dated the 10th June, 2022.

S.O. 5257(E). —In exercise of powers conferred by section 118 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendments in the notification of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes No.60/2022 dated the 10th June, 2022, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 2692(E) dated the 10th June, 2022, namely: —

In the said notification, in the SCHEDULE, in serial number 7, in column number (3), —

(I) in item (ii), in column number (4), the entries at item (iv) and the entries relating thereto in column number (5), shall be omitted;

(II) in item (v), in column number (4), the entries at item (iv) and the entries relating thereto in column number (5), shall be omitted.

2. This notification shall come into force from the date of publication in the Official Gazette.

For more details, please follow

<https://incometaxindia.gov.in/communications/notification/notification-123-2022.pdf>

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Press Release

Press Release

Direct tax

Dated 1st November 2022

CBDT condones delay in filing Form No.10A for which the extended due date was 31.03.2022

As per the provisions of the Income-tax Act, 1961, Form 10A was required to be filed electronically by 30.06.2021, which was extended to 31.08.2021 and further extended to 31.03.2022 by Circular No. 16/2021.

In view of the representations received by Central Board of Direct Taxes (CBDT) and with a view to avoid genuine hardship to taxpayers, the CBDT condones the delay in filing of Form 10A up to 25th November, 2022 in respect of certain provisions of section 12A / section 10(23C) / section 80G / section 35 of the Income-tax Act, 1961.

CBDT Circular No.22/2022 dated 01.11.2022 issued. The said Circular is available on www.incometaxindia.gov.in.



Press Release

Direct tax

Dated 1st November 2022

CBDT releases draft Common Income Tax Return Form for public consultation

At present, taxpayers are required to furnish their Income-tax Returns in ITR-1 to ITR-7 depending upon the type of person and nature of income. The current ITRs are in the form of designated forms wherein the taxpayer is mandatorily required to go through all the schedules, irrespective of the fact whether that particular schedule is applicable or not, which increases the time taken to file the ITRs.

The proposed draft ITR takes a relook at the return filing system in tandem with international best practices. It proposes to introduce a common ITR by merging all the existing returns of income except ITR-7. However, the current ITR-1 and ITR-4 will continue. This will give an option to such taxpayers to file the return either in the existing form (ITR-1 or ITR-4), or the proposed common ITR, at their convenience. The scheme of the proposed common ITR is as follows:

- (a) Basic information (comprising parts A to E), Schedule for computation of total income (Schedule TI), Schedule for computation of tax (schedule TTI), Details of bank accounts, and a schedule for the tax payments (schedule TXP) is applicable for all taxpayers.
- (b) The ITR is customized for taxpayers with applicable schedules based on certain questions answered by the taxpayers (wizard questions).
- (c) The questions have been designed in such a manner and order that if the answer to any question is 'no', the other questions linked to this question will not be shown to the taxpayer.

- (d) Instructions have been added to assist the filing of the return containing the directions regarding the applicable schedules.
- (e) The proposed ITR has been designed in such a manner that each row contains one distinct value only. This will simplify the return filing process.
- (f) The utility for the ITR will be rolled out in such a manner that only applicable fields of the schedule will be visible and wherever necessary, the set of fields will appear more than once.

As evident from the above, the taxpayer will be required to answer questions which apply to it and fill the schedules linked to those questions where the answer has been given as 'yes'. This will increase ease of compliance. Once the common ITR Form is notified, after taking into account the inputs received from stakeholders, the online utility will be released by the Income-tax Department

The draft common ITR, based on the above scheme, has been uploaded on www.incometaxindia.gov.in for inputs from stakeholders and general public <https://incometaxindia.gov.in/news/common-itr.pdf>. A sample ITR illustrating step by step approach for filing the ITR and two customised sample ITRs for firm and company have also been provided for illustration. The inputs on the draft ITR form may be sent electronically at the email address dirtpl4@nic.in with a copy to dirtpl1@nic.in, latest by 15th December, 2022

ITB

Press Release

Direct tax

Dated 11th November 2022

Direct Tax Collections for F.Y. 2022-23 up to 10.11.2022

The provisional figures of Direct Tax collections up to 10th November, 2022 continue to register steady growth. Direct Tax collections up to 10th November, 2022 show that gross collections are at ₹ 10.54 lakh crore which is 30.69% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at ₹ 8.71 lakh crore which is 25.71 % higher than the net collections for the corresponding period of last year. This collection is 61.31% of the total Budget Estimates of Direct Taxes for F.Y. 2022-23.

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 22.03% while that for PIT (including STT) is 40.64%. After adjustment of refunds, the net growth in CIT collections is 24.51% and that in PIT collections is 28.06% (PIT only)/ 27% (PIT including STT).

Refunds amounting to ₹ 1.83 lakh crore have been issued during 1st April, 2022 to 10th November, 2022, which are 61.07% higher than refunds issued during the same period in the preceding year.

ITB

JUDGEMENT INDIRECT TAX

Refund rightly rejected as zero rated supply not shown in GSTR-3B return & no documentary evidence produced: HC

Facts of the case - CTC (India) (P.) Ltd. v. Commissioner (Appeals), CGST & Central Excise - [2022] (Jharkhand)

The petitioner was 100 percent export oriented unit, exporting its products to countries like USA, China, Germany and other countries. The petitioner filed an application for refund of accumulated ITC. The department rejected the refund claim on the ground that value of zero rated supply was shown as 'zero' in GSTR-3B return. The petitioner filed appeal and it was rejected. Thereafter, it filed writ petition against the order of rejection of refund claim.

Decision of the case -

The Honorable High Court observed that the value of zero rated supply was inadvertently mentioned to be 'zero' in GSTR-3B return although zero rated supplies was correctly shown in GSTR-1 return. However, no documentary evidence was produced by petitioner to substantiate his claim of refund either before Adjudicating Authority or before Appellate Authority though personal hearing was afforded to petitioner. Therefore, the Court held that the writ application was liable to be dismissed and didn't interfere with the impugned orders.

Appeal against cancellation of registration to be considered excluding bar of limitation: HC

Facts of the case - Poonamchand Saran v. Union of India - [2022] (Rajasthan)

The registration of the petitioner was cancelled on ground that appeal was not filed against cancellation order. The petitioner filed writ petition and raised the grievance of not being able to file an appeal on account of unavoidable reasons. It was also contended that it had been left remediless for hyper-technical reasons of the appeal against cancellation GST registration not being filed in time.

Decision of the case :

The Honorable High Court noted that the petitioner would not be able to continue with its business in absence of GST registration and thus, it would be deprived of livelihood which would amount to violation of right to life and liberty as enshrined in Article 21 of the Constitution of India. Therefore, it was held that the impugned order cancelling registration was to be set aside. The petitioner was also directed to file appeal against cancellation of registration within 10 days before competent officer and upon such appeal being filed, the same shall be considered and decided on all aspects in accordance with law excluding the bar of limitation.

Bank guarantee required to de-freeze bank account provisionally attached can't include interest and penalty payable: HC

Facts of the case - Mitansh Impex v. State of Gujarat - [2022] (Gujarat)

The assessee was engaged in the trading of ferrous and non-ferrous metal since last two years. It was alleged to have availed ineligible input tax credit based on fake invoices issued by supplier whose registration was cancelled. The current account of assessee was attached to recover demanded amount. The assessee agreed to give bank guarantee to extent ITC was wrongly availed but Department urged that bank guarantee should be furnished in respect of total amount including interest and penalty.

The issue before the High Court was whether bank guarantee that was to be furnished should include interest and penalty along with tax amount. The assessee submitted that it had made payment of GST for the purchase transactions.

Decision of the case :

The Honorable High Court held that the bank guarantee amount should not include interest and penalty, when adjudication process is yet to be completed. Therefore, the assessee was required to submit bank guarantee only to extent of payable tax

amount and the Court directed department to de-freeze current account pursuant to submission of bank guarantee.

Genpact India not to be considered as intermediary being not in direct contact with customers of Genpact International: HC

Facts of the case - Genpact India (P.) Ltd. v. Union of India - [2022] (Punjab & Haryana)

The petitioner was a Business Process Outsourcing (BPO) Service Provider located in India. It entered into Master Services Sub-Contracting Agreement (MSA) with Genpact International Incorporated (GI) located outside India. It filed an application claiming refund of un-utilized ITC on account of zero rated supplies of services without payment of GST under Letter of Undertaking. The refund was rejected on the ground that services provided by petitioner were in nature of “Intermediary Services” and thereafter, it filed writ petition contending that it was rendering services “on its own account”.

Decision of the case :

The Honorable High Court observed that the petitioner was providing services which had been sub contracted to it by GI and nothing had been brought on record to show that petitioner had a direct contact with customers of GI and there was nothing on record to show that petitioner was liasioning or acting as an “intermediary” between GI and its customers. Moreover, MSA entered between the petitioner and GI was clearly for purpose of sub-contracting services to petitioner by GI and did not in any manner indicate that petitioner would be acting as an “intermediary” so as to fall within scope and ambit of the definition of “intermediary” under Section 2 (13) of the IGST Act.

Therefore, it was held that the order cancelling GST refund was liable to be quashed.

Order based on discrepancies different from those mentioned in scrutiny notice is not sustainable: HC

Facts of the case - Vadivel Pyrotech (P.) Ltd. v. Assistant Commissioner (ST), Circle-II - [2022] (Madras)

The petitioner was engaged in the business of manufacture and supply of pyrotechnic products (fireworks). The department undertaken scrutiny of the GST returns and issued scrutiny notice under Section 61 in Form ASMT-10 pointing out certain discrepancies between GSTR-3B and GSTR-1. It submitted reply and after 6 months, an order was passed demanding tax, interest & penalty on basis of defects which were different from the defects/discrepancy which were earlier pointed out in the Form ASMT-10. It filed writ petition to quash summary of show cause notice and consequential orders as same had not been issued in accordance with scrutiny notice.

Decision of the case :

The Honorable High Court observed that as per GST provisions, the proper officer may scrutinize returns and in case any discrepancies are noticed, the same shall be informed in ASMT-10 seeking explanation from the taxable person. In case the explanation is not satisfactory or no explanation is offered then the proper officer shall proceed to pass order in GST DRC-07. However, in the present case, ASMT-10 was issued for certain discrepancies but DRC-01 and consequential order had been issued/ passed for different discrepancies. Therefore, the impugned order was set aside and matter was remanded to assessing officer for re-assessment.

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JUDGEMENT DIRECT TAX

Sec. 194H TDS applicable on additional sum charged by agents over & above net fare of air tickets: SC

Facts of the case - Singapore Airlines Ltd. v. CIT - [2022] 144 taxmann.com 221 (SC)

Assessee-company engaged in the business of air transport services. The business mechanism of the assessee involves booking tickets through travel agents. The base fare for air tickets was set by International Air Transport Association (IATA). However, the airlines may sell their tickets for a net fare lower than the Base Fare, but not higher.

Travel agents act on behalf of airlines to market and sell tickets and they are entitled to a commission on the basic fare of the ticket fixed by the IATA.

Further, airlines have no control over the actual fare at which the agents sell tickets. The agents are at liberty to set a price lower than the Base Fare fixed by IATA but still higher than the Net Fare demanded by the airline itself.

The additional amount charged by travel agents over and above the Net Fare quoted by airlines was retained by the agents as their own income.

The issue before the Supreme Court was:

“Whether the amount retained by the agents, over and above the Net Fare of air tickets were to be treated as commission for deduction of tax at source under section 194H?”

Decision of the case :

- ★ The Supreme Court of India held that there is a distinction between a contract of agency and a contract of sale. A contract of sale is executed where the title of the goods is transferred by the seller to the buyer.
- ★ As per the agreement between the airline and the agent, the agent would sell the ticket as per the directions of the airline and in case of any loss incurred by the agent, he

would be indemnified by the airline.

- ★ There was no contract of sale between the assessee and the travel agent. The airline retains title over the travel tickets and is responsible for the actual services provided to the final consumer.
- ★ Further, as per the agreement, “all monies” collected by the agents on the sale of air tickets will be held by them in a fiduciary capacity. Accordingly, there was a contract of agency and not a contract of sale.
- ★ Further, the arrangement between the purchaser of the ticket and the agent is merely a part of the agency agreement and not a separate agreement. The extra benefit gained by the agent on the sale of tickets is due to the agency agreement entered with the airline.
- ★ Thus, these amounts were incidental to the transaction by which the air tickets were sold on behalf of airlines and was for the benefit of agents. Such incidental benefit must come under the ambit of the principal-agent relationship.
- ★ The commission under section 194H includes any payment received directly or indirectly by the agent on the behalf of the principal. It does not distinguish the payment based on the source of such receipt.
- ★ Therefore, the amount retained by the agents on sale of air tickets was a supplementary commission, liable for deduction of tax at source, under section 194H.

Sufficiency or veracity of ‘reason to suspect’ in case of a search isn’t a matter to review: HC

Facts of the case - Chandran Somasundaram v. PDIT - [2022] (Madras)

The instant writ petition was filed challenging the search conducted under section 132 and consequential proceedings thereafter. The assessee contended that he and his family



members weren't permitted to sleep and were made to sit throughout the day and night for 5 days.

One of the daughters of the directors suffered seizures on account of lack of sleep. Further, the sister of one director had suffered a spike in her sugar levels on account of the stress of the proceedings. However, she was granted permission to leave only after the elapse of one hour and upon the intervention of the doctors. This constitutes inhuman treatment contrary to all cannons of human rights.

Further, the proceedings constitute a roving enquiry and there was no 'information' in the possession of the Income-tax Department that would justify the invocation of powers under section 132.

Decision of the case :

- ★ The Madras High Court held that the files relating to the recording of 'information' and 'reasons to believe' were called for and it was found that the AO had recorded cogent reasons for the initiation of the search itself.
- ★ The records reveal that the AO has had information in his possession to lead to the belief that action under Section 132 was warranted. Reasons to believe had been recorded as have the reasons to suspect, based upon which the premises of connected entities/persons have been searched.
- ★ The procedure to be followed in noting the information received as well as the recording of reasons is in line with the requirements of the Income-tax Act. The sufficiency or the veracity of the same is not a matter for review by the High Court.
- ★ As far as inhuman treatment was concerned, AO stated that all necessary measures were taken to address the medical issues that were projected by the assessee and their family members. However, the assessee may also choose to approach the human rights authority seeking redressal of its grievances.

No deemed dividend if director deposited Co's money in his own name to protect interest of Company: ITAT

Facts of the case - ACIT v. Anilkumar Phoolchand Sanghvi - [2022] (Pune - Trib.)

The assessee was an individual and derived income from salary,

business & profession, capital gains, and income from other sources. He was also a Director in M/s. Maharashtra Erectors Pvt. Ltd. ("MEPL").

During the assessment proceedings, the Assessing Officer (AO) noted that the assessee had withdrawn the company's funds and kept the same in his personal account as a fixed deposit. Thus, AO treated said sum as deemed dividend and made additions under section 2(22)(e).

The assessee challenged the assessment order before CIT(A). The CIT(A) deleted additions made by AO. Aggrieved-AO filed the instant appeal before the Tribunal.

Decision of the case -

- ★ The Pune Tribunal held that there was various litigation proceeding pending against the company including an Arbitration application pending before the Bombay High Court. To protect the interest of the company, the assessee invoking fiduciary responsibility transferred ₹3.30 Crores from MEPL to his personal account and made a fixed deposit.
- ★ Assessee never availed any facility against the said term deposit and it was also never kept as a security against any kind of loan, mortgage, etc. nor any lien in respect of its tenure. On maturity, assessee transferred the total realized amount to the account of MEPL.
- ★ Therefore, the conduct of the assessee in refunding the entire amount with interest to MEPL on its maturity with realized total value supports assessee's arguments that the amount was withdrawn and kept in fixed deposit only to protect the interest of MEPL.
- ★ Accordingly, AO terming the fixed deposit amount as loan out of accrued profits of MEPL attracting the provisions under section 2(22)(e) was not justified.

Investment made in construction of new house before sale of original asset is also eligible for Sec. 54F relief: HC

Facts of the case - Bindu Premanandh v. CIT - [2022] (Kerala)

The assessee was an individual who purchased land (the original asset) in the year 2007. She also purchased another piece of land in the year 2007 and made payment to the builder for the construction of residential house property.

During the relevant year, she transferred the original asset and earned long-term capital gains. The construction of land that was handed over to the builder got completed within 3 years from the sale of the original asset.

The assessee filed return of income and claimed exemption under section 54F on the capital gain that arose out of the sale of the original asset. However, the Assessing Officer (AO) denied the exemption stating that the payments for the purchase of land and construction of the residential house were made before the sale of the original asset.

On appeal, the CIT(A) allowed relief to the assessee. However, the Tribunal reversed the order of the CIT(A). The matter reached the High Court.

Decision of the case :

- ★ The High Court held that section 54F provides for the purchase of residential house property either 1 year before or 2 years after the sale of the original asset. However, for construction, section 54F says it should be completed within 3 years of the sale of the original asset.
- ★ The Tribunal denied exemption to the assessee by stating that section 54F provides that construction of the residential house should be done after the date of transfer. The Tribunal gave importance only to the time of the payments made by the assessee for the construction of the new residential house.
- ★ The test ought to be when the new residential house was completed. Thus, if the construction of the new house is completed within 3 years from the date of sale of the original asset, the assessee was eligible for section 54F.
- ★ CIT(A) noted all the sequential events while disposing of the appeal but arrived at a quick finding to allow relief under section 54F. Therefore, the Tribunal's order was set aside and the matter was remitted to CIT(A) for fresh consideration.

No denial of exemption just because sum received as gift isn't transferred from bank account of relative: ITAT

Facts of the case - P. Srinivasan v. ITO - [2022] (Chennai - Trib.)

Assessee was a proprietor of rice mills. During the relevant assessment year, a scrutiny assessment under section 143(3)

was conducted and it was found that assessee received a gift of Rs. 50 lacs from his paternal uncle. However, such gift was received from the bank account of the son and daughter-in-law of the uncle.

Considering the fact that the gift is not received from the bank account of the uncle, the Assessing Officer (AO) denied the exemption available under section 56(2)(vii). AO stated that the son and daughter-in-law of the parental uncle are not covered under the term "relatives". Thus, the sum received from them is to be treated as income of assessee.

On appeal, the CIT(A) upheld the order of AO. Aggrieved- assessee filed the instant appeal before the Tribunal.

Decision of the case :

- ★ The Tribunal held that the term 'relative' as defined under section 56(2)(vii) includes the brother or sister of either of the parents. Thus, the assessee's uncle falls within the term 'relative'.
- ★ In the instant case, the only reason to deny the exemption to the assessee was that the gift amount was transferred from the bank accounts of the son and daughter-in-law of the uncle.
- ★ The son and daughter-in-law are not alien to the uncle but very close relatives of the uncle and it could be understood that the gift was first provided by them to the uncle and then transferred by the uncle to the assessee. Thus, it can be considered a 'Constructive Gift' from the uncle.
- ★ The uncle had also confirmed the grant of gift to the assessee and the transfer happened on the instructions of the uncle. Thus, the gift so received by assessee was eligible for exemption under section 56(2)(vii).



TAX CALENDAR

Indirect tax

Returns	Due Date
GSTR-3B (Oct, 2022)	Nov 20th, 2022
GSTR-5A (Oct, 2022)	Nov 20th, 2022
RFD-10	18 months after the end of quarter for which return is to be claimed

TAX CALENDAR

Direct tax

Returns	Due Date
30 November 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of October, 2022
30 November 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of October, 2022
30 November 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of October, 2022
30 November 2022	Return of income for the assessment year 2022-23 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)



Returns	Due Date
30 November 2022	Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2021-22
30 November 2022	Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2021-22 (Form No. 64
30 November 2022	Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2021-22) to units holders
30 November 2022	Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA. Due date to exercise option of safe harbour rules for specified domestic transaction by furnishing Form 3CEFB
30 November 2022	Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2021-22. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A
30 November 2022	Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on November 30, 2022).
30 November 2022	Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on November 30, 2022).
30 November 2022	Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction].
30 November 2022	Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is November 30, 2022).
30 November 2022	Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager. (if the assessee is required to submit return of income on November 30, 2022).
30 November 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the month of October, 2022 Note: Applicable in case of specified person as mentioned under section 194S
30 November 2022	Quarterly statement of TDS deposited for the quarter ending September, 2022 The due date for furnishing of TDS statement for the quarter ending September, 2022 has been extended from October 31, 2022 to November 30, 2022 vide Circular no. 21/2022, dated 27-10-2022



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/>

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

Disclaimer:

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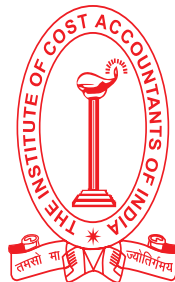
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