March, 2023

TAX Bulletin

Volume - 132
17.03.2023

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

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VISION STATEMENT

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

MISSION STATEMENT

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

Objectives of Taxation Committees:

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

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FROM THE TAX RESEARCH DEPARTMENT

MESSAGE

The Tax Research Department started the month by conducting a workshop on "Inspection, Search, Seizure & Arrest under GST" which started from March 02, 2023 till March 05, 2023. The workshop was highly appreciated by the members and it had overwhelming participations from members and students. The workshop explained us the provisions relating to Inspection, Search, Seizure and Arrest in the CGST Act and CGST Rule, forms relating to Inspection, Search, Seizure and Arrest. E-Way bill rules and provisions, different E Way –Bill forms and when they are used for. The workshop also explains different case study and who can make an arrest in GST, Procedure of Arrest, offences in GST, Bailable and Non-Bailable Offences in GST, Offences by Companies u/s 137.

The closing day ended with addressing of various queries that were put forward by the participants. Some of the important points that were put forward includes when and who can carry out inspection search and seizer under GST Act. Other provision explained are as –

- As regards to the places of Business or premises which can be inspected by the CGST officer, authorized by the proper officer not below the rank of Joint Commissioner shall have the powers to carry out inspection of any of the following places / premises:
  1. any place of business of a taxable person;
  2. any place of business of a person engaged in the business of transporting goods;

any place of business of an owner or an operator of a warehouse or godown or any other place.

- He also discussed about the safeguarding provided in Section 67 in respect of search & seizure. The distinction between seizure and Detention Under what circumstances the detained goods and conveyance seized could be released among others.

Scottish Church College Kolkata, in collaboration with Tax Research Department of The Institute of Cost Accountants of India, organised a Seminar on "**Analysis & Impact of Union Budget 2023**" on March 15, 2023 from 10.30 AM onwards. It was participated by more than 100 students and faculties. **Dr. Shri Shiladitya Chatterjee, IAS (Retired), Advisor to Government of Assam, PMO, ADB** was the chief guest. He explained the intention of the government behind the changes bought in the budget and also explained the 17 Sustainable development goals. Other speakers were **CMA Debasis Ghosh, Vice President -Group Indirect Tax and Shared Services, Peerless General Finance & Investment Company Limited,** who gave a light on the journey of GST in India and discussed the importance of the same in development of our country and **CMA Timir Baran Chatterjee, Cost Accountant,** explained how the economy works and to read and compare various economic parameters like GDP, growth, forex reserve etc. He also informed about the collection from direct and indirect tax to the government. Other members who attended the programme are **Dr. Madhumanjari Mandal, Principal, Scottish Church College, Kolkata; Dr. Swapan Kumar Mukhuty, Secretary, Scottish Church College Council; Dr. Supratim Das, Vice Principal, Scottish Church College and The Chairman, Indirect Taxation Committee.**

On the 3rd March 2023 A Certificate distribution ceremony was conducted in Umeshchandra College for pass out student of the GST college course.

Income Tax course for Colleges commenced at S A College of Arts & Science, Chennai. The course was attended by the 64 students. The course is of 32 hours covering the basics and

important topics like 5 heads of income, the different filing dates and the general compliances to be followed. It also encompasses the practical aspects which includes the filing of ITR -1 form.

The GST Course for college and university students which has been widely appreciated by different colleges, helps the students learn about the basics of GST, and be updated with the recent changes in GST. Exams for GST Course for college and university students was conducted on March 02, 2023 for SA College of Arts and Science, March 06, 2023 for Subbulakshmi Lakshmipathy College of Science, Madurai, March 11, 2023 for Bemina Government College.

Apart from the this the classes of the seven courses are held regularly in the weekend and the quiz "Refreshing Fridays _ Brainstorming & Quiz" has also been conducted on the Fridays.

Suggestions/observations are solicited from our esteemed readers for furtherance of the objective of the Department.

Warm Regards

Tax Research Department
17.03.2023

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

Educational Institution and exemption under Income Tax Act 1961

Team Tax Research Department

The exemption of Educational Institution always remains an interesting area. Some charitable activities gets concessions and exemptions under the Income Tax Act 1961 (the "Act"). Education is a charitable activity as per section 2 clause 15. Accordingly, educational activities are exempted from taxation under sections 11, 12 and 13 of the Act.

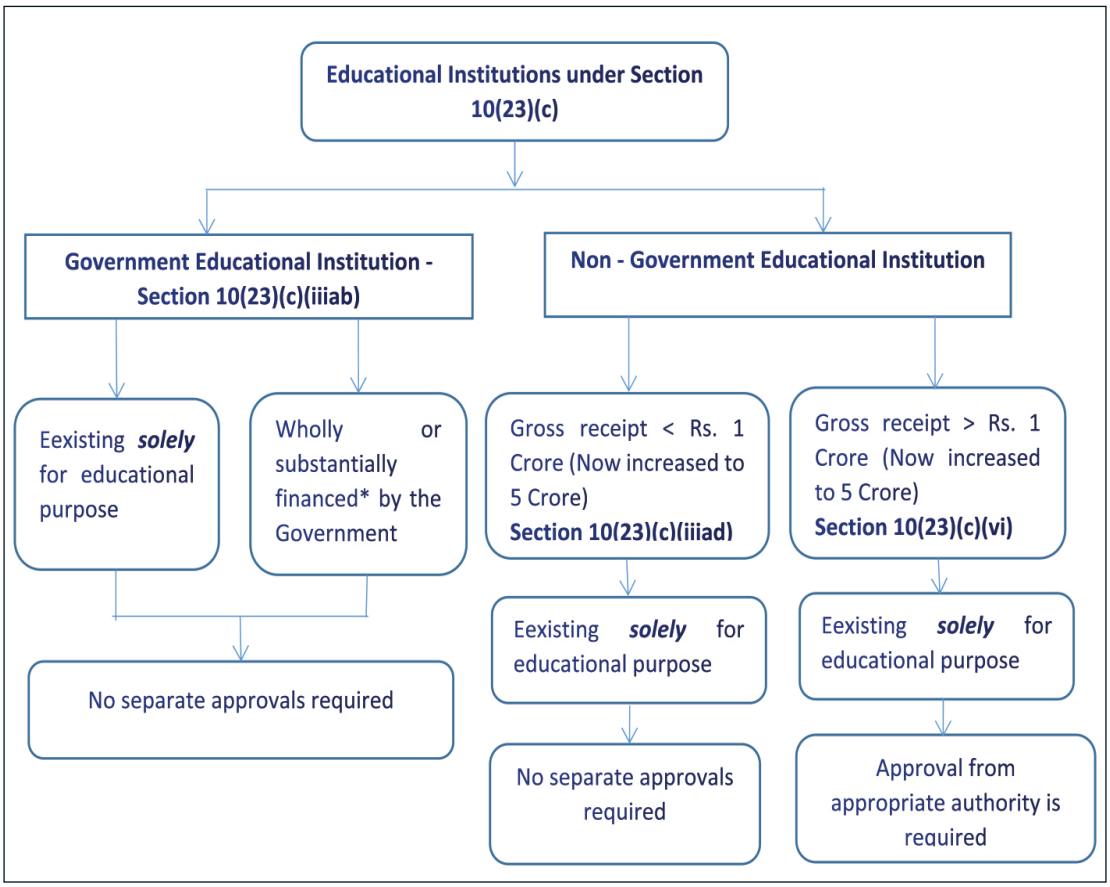
The exemption to the income of any university or other Educational Institution (hereinafter referred as "Institute) established solely for educational purpose, has been explained in the section 10. Section 11 is a general provision applicable to all charitable institutions, Sec 10(23C) is a specific exemption provision applicable to certain Government and Non-Government educational institutions.

As per section 10(23)(c)(vi),

"In computing the total income.....any income falling within any of the following clauses shall not be included ----

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiab) or sublclause (iiad) and which may be approved by the prescribed authority"

The classification and basic requirements of the Institutes covered under section 10 (23)(c) can be explained as below :



* When the Government grant to such educational institution, exceeds fifty percent of the total receipts including any voluntary contributions of such educational institution, during the relevant previous year, the institution is said to be substantially financed by the Government as explained by way of Explanation after sub-clause (iiiac) combined with Rule 2BBB.

For claiming exemption under section 10(23)(c), the dominant object should be imparting education.

Controversies arises whether the Chief Commissioner's permission is required to get the exemption under section 10(23C)(vi) for an educational institute with annual receipts of more than 5 crore when education is already considered a charitable activity under section 2 (15).

There are some additional conditions for claiming exemptions under section 10(23)(c)(vi) :

I. Accumulation of Income :

The Institution shall apply at least 85% of the income every year & can accumulate only 15% of the income for the future activities and if there is excess it should be applied for the object within a period of five years. If the accumulation is less than fifteen per cent of the income earned during the year by these educational institutions, there is no limitation on period of accumulation.

ii. Investments

The income so accumulated is required to be invested in securities as specified in Section 11(5) only.

iii. Return of income:

By virtue of section 139(4C), every educational institution referred to in sub-clause (iiiab) or sub-clause (iiiad) or sub-clause (vi) of Section 10(23C), whose total income in respect of which such institution is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form.

iv. Audit

Once the total income without giving effect to sub-clauses of 10(23C) exceeds the maximum amount which is not chargeable to tax in any previous year, the accounts are required to be audited by a qualified Accountant as per Section 288(2) and should furnish such report in Form 10BB along with the return of income for the relevant assessment year.

Legal Decision :

'Solely' in Sec 10(23C)(vi) means exclusively; Profit-oriented institutions can't claim exemption : SC

Facts of the case: New Noble Education Society vs. CCIT [2022]

The subject matter of appeal in the instant case was the rejection of the appellant's claim for registration as an institution/trust set up for the charitable purpose of education under the Income-tax Act, 1961. The Andhra Pradesh High Court held that the appellant was not created 'solely' for the purpose of education. It had other objects which means that it ceased to be an institution existing 'solely' for educational purposes.

The appellant relied upon the ruling of American Hotel and Lodging Association v Central Board of Direct Taxes (2008) 10 SCC 509 and Queen's Education Society (2015) 8 SCC 47. It was submitted that the test for determination was whether the 'principal' or 'main' activity was education or not, rather than whether some profits were incidentally earned.

Supreme Court Held

The Supreme Court of India held that the interpretation adopted by the judgments in American Hotel as well as Queens Education Society as to the meaning of the expression 'solely' are erroneous.

The decisions in American Hotel and Queens Education Society did not explore the true meaning of the expression 'solely' in the context of educational institutions. The word "Solely" in section 10(23C)(vi) means only/exclusively and not primarily.

The requirement of the charitable institution, society or trust, etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of society, trust, etc., must relate to imparting education or be with educational activities.

Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C). At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.

The seventh proviso to Section 10(23C), as well as Section 11(4A), refers to profits that may be 'incidentally' generated or earned by the charitable institution. The same applies only to those institutions which impart education or are engaged in activities connected to education.

The reference to 'business' and 'profits' in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of a business which is 'incidental' to the educational activity. In relation to education, it is the sale of textbooks, providing school bus facilities, hostel facilities, etc.

Thus, a trust, university or other institution imparting education, should necessarily have all its objects aimed at imparting or facilitating education. Having regard to the plain and unambiguous terms of the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation.

Further, Since the Hon'ble Supreme Court departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, their Lordships directed that the law declared in this judgment shall operate prospectively.

Whether exemption of income of an Educational Society, which is not notified under section 10(23C) (vi) of the Income Tax Act, 1961 is allowed under section 11

Facts of the case : Asstt. CIT v Mahasabha Gurukul Vidyapeeth

The assessee is running an educational institution and claimed exemption under Section 11 of the Act in respect of its income. The Assessing Officer did not accept this plea on the ground that the assessee failed to file notification under Section 10(23C) (vi). The CIT(A) upheld the stand of the assessee. It was observed that absence of registration under Section 10(23C) (vi) was no bar to exemption under Section 11. This view has been affirmed by the Tribunal relying upon the judgment of the Hon'ble I.T.A. No. 519 of 2007 (2) Supreme Court in CIT Vs. Bar Council of Maharashtra (1981) 130 ITR as follows :

"Once it is held that all requisite conditions for exemption under Section 11 have been met, even if conditions under Section 10 (23C) (vi) have not been complied with, there will be no bar to seek exemption under Section 11. The judgment relied upon has no application to the present case as therein the question was as to the scope of enquiry under Section 10 (23C) (vi) read with 3rd proviso thereto. The view taken in Bar Council of Maharashtra (supra) is not shown to have been affected. The CIT (A) as well as the Tribunal have categorically held that all conditions of Section 11 were fulfilled and judgment in Bar Council of Maharashtra was applicable. We are, thus, unable to hold that any substantial question of law arises."

Some relevant judgments :

In Mittal Engg. Works v CCE, SC ruled that a decision cannot be relied upon to support a proposition that it did not decide.

In the case of Bengal Immunity Co Ltd v State of Bihar, the court stated that it is a cardinal rule of construction that when there are in a statute two provisions which are in conflict with each other so that both of them cannot stand, they should, if possible, be so interpreted that, effect can be given to both, and that, a construction which renders either of them inoperative and useless should not be adopted, except in the last resort.

At the same time, it also can be said that, Sections 11, 12 and 13 are general provisions dealing with other charitable activities along with education whereas section 10(23C) (vi) is a special provision dealing specifically with the the charitable activity of 'education'. So, the mandatory conditions given in the section 10(23C)(vi) can not be avoided completely.

49th GST Council meeting

In the 49th GST Council meeting, the Council decided to extend the exemption given to educational institutions and Central/state educational boards to any authority, board or bodies set up by the Central/state governments, for conducting entrance examinations. This also includes the National Testing Agency that conducts entrance exams for admission to educational institutions.

From the above it can be seen that educational institutions has been given multiple relieves in relation with complete to partial exemption from the income generalised solely form education under Income Tax Act 1961. Such relaxations have significantly contributed in development of education sector in the country resultantly helping in upliftment of the society at large.

Advance Ruling 2

Applicability of GST on Reverse Charge Mechanism on use of Residential Dwelling as Guest House

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability is discharged by the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of the supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. There are two types of reverse charge scenarios provided in law. First is dependent on the nature of the supply and/or nature of the supplier. The second scenario is where any unregistered person makes taxable supplies to any registered person.

This system is being carried forward from the VAT regime. In case the supplier is registered, but the goods or services come under the reverse charge mechanism, the input tax credit cannot be claimed by the supplier as the tax is not credited by him, but the receiver is paying the taxes. In the case of importers of goods, taxes need to be paid under the reverse charge mechanism to the Government on the import. This is in addition to the import duties.

The details of the charges pertaining to the inward supply of goods or services are mentioned in GSTR 1. The details of inward supply are stated in the form GSTR 2A. A person liable to pay tax under the reverse charge mechanism must be registered under GST, irrespective of the turnover. The goods/ service recipient gets the input tax credit paid under the reverse charge. The condition is that the input tax credit is used only for the furtherance of business, and the reverse charge tax amount has to be paid in cash only.

The list of commonly used services under the reverse charge mechanism are:

- Goods Transport Agency
- Recovery Agent
- Director of a company or body corporate
- An individual advocate or firm of advocates.
- An insurance agent

Supply by Unregistered Dealer

In case of an unregistered person is selling goods or providing any services to the registered person, then the liability to pay tax shifts on the registered person i.e. the recipient of goods/services, where such supply is of taxable supplies. No reverse charge mechanism in the case of exempted supplies. (this provision is now applicable to only specific class of persons only)

The registered dealer will pay the tax, and

all the provisions of the act will apply to him as if he is the supplier of the goods or services. The concept behind this is to prevent tax evasion since collecting tax from the unregistered dealer would be almost impossible. It would increase tax compliance and promotes transparency. Input credit will be allowed to the registered dealer for the tax paid by him under the reverse charge mechanism.

Now if a registered person who received service by way of taking residential premises/dwelling on rent for use as its guest house for company employees would be subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM). What are the conditions to be fulfilled for the applicability of the Reverse Charge Mechanism.? What is Residential dwelling is not defined by any act. Whether the nature and how the property is being used will have any effect on the applicability of the RCM.

"Whether Guest House comes under Residential Dwelling and GST is applicable under Reverse Charge Mechanism (RCM)."

The M/s. Indian Metals and Ferro Alloys Applicant Limited (applicant) has its principal place of business at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar and three other additional places of business at Therubali, Dist-Rayagada, Odisha-765018, Kapeleswar, Choudwar, Cuttack, Odisha, Kaliapani, Sukinda, Jaipur. The Applicant has its manufacturing unit at Therubali and Choudwar and captive mines at Sukinda. The Applicant has taken on rent certain premises at New Delhi and Jajpur in Odisha as guest houses. The guest houses are used to provide food and accommodation for the employees of the company who visit New Delhi for official purposes and also for the employees who visit the mining office at Jajpur. While one of the apartments is taken on rent from a registered person, the other is taken from an unregistered person. In both cases, the houses taken on rent for guest house purposes are in the residential area and used by the Applicant Company for the guest house of its employees. The Applicant stated that "Residential Dwelling" is not defined anywhere in GST Act or the earlier Service Tax regime. However, the Central Board of Indirect Taxes and Customs, in its education guide dated 20.06.2012, has explained the phrase "residential dwelling" in clause 4.13.1 by interpreting the term in normal trade parlance as any residential accommodation but does not include hotel, motel, inn, guest house, campsite, lodge, houseboat, or like places meant for a temporary stay. Now the question stands whether the Service Received by a registered person by way of renting residential premises used as a guesthouse of the registered person is subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism.

Answer - Evaluating the situation with reference to the fact of the case, the following point is to be noted.

1. The CBIC, vide notification No. 05/2022-Central Tax (Rate) dated the 13th of July 2022, notified that with effect from 18th July 2022, service by way of renting of a residential dwelling to a registered person shall be attracting GST under RCM (Reverse charge mechanism). GST will be applicable even if the residential property is rented out to a registered person w.e.f. 18th July 2022. Liability to pay GST @ 18% under the reverse charge mechanism will arise on the recipient (tenant) if he is a registered person under GST with no other condition. Further, it is also to be noted that the type or nature/purpose of use of the residential dwelling, i.e. for residence or otherwise by the recipient, has not been a condition in the said RCM notification. Hence, renting a residential dwelling to a registered person would attract RCM irrespective of the nature of use.

Ruling- M/s. Indian Metals and Ferro Alloys Applicant Limited has received the service by way of taking residential premises on rent for use as its guest house; the service received by the Applicant (registered person) is subject to GST under Reverse Charge Mechanism given the Notification No. 05/2022-Central Tax (Rate) dated 13h July 2022.

NOTIFICATIONS & CIRCULARS

Indirect Tax

Notifications
Customs
Notification No. 12/2023-CUSTOMS (N.T)
Dated 2nd March 2023

The Central Government Fixes Exchange rate vide Notification No. 10/2023 dated 16.2.2023

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 08/2023-Customs(N.T.), dated 2nd February, 2023 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 17th February, 2023, 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	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	58.50	56.05
2.	Bahraini Dinar	226.50	213.00
3.	Canadian Dollar	62.90	60.85
4.	Chinese Yuan	12.25	11.90
5.	Danish Kroner	12.10	11.70
6.	EURO	90.25	87.10
7.	Hong Kong Dollar	10.75	10.35
8.	Kuwaiti Dinar	278.75	262.10
9.	New Zealand Dollar	53.50	51.10
10.	Norwegian Kroner	08.25	08.00
11.	Pound Sterling	101.45	98.10
12.	Qatari Riyal	23.45	21.95
13.	Saudi Arabian Riyal	22.75	21.40
14.	Singapore Dollar	63.05	61.05
15.	South African Rand	04.75	04.45
16.	Swedish Kroner	08.10	07.85
17.	Swiss Franc	91.50	88.05
18.	Turkish Lira	04.50	04.25
19.	UAE Dirham	23.25	21.85
20.	US Dollar	83.65	81.90

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	62.95	60.90
2.	Korean Won	06.65	06.25

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009640/ENG/Notifications

Notifications
Central Excise
Notification No. 10/2023- Central Excise
Dated 3rd March 2023

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

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. 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 "Rs. 4,400 per tonne" shall be substituted;

(2) against S.No.2, for the entry in column (4), the entry "NIL" shall be substituted.

2. This notification shall come into force on the 4th day of March 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009662/ENG/Notifications

Notifications
Customs
Notification No. 14/2023-CUSTOMS (N.T)
Dated 15th March, 2023.

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 - I

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	989
2	1511 90 10	RBD Palm Oil	1004
3	1511 90 90	Others – Palm Oil	997
4	1511 10 00	Crude Palmolein	1014
5	1511 90 20	RBD Palmolein	1017
6	1511 90 90	Others – Palmolein	1016
7	1507 10 00	Crude Soya bean Oil	1188
8	7404 00 22	Brass Scrap (all grades)	5217

2. This notification shall come into force with effect from the 16th March 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009665/ENG/Notifications

Notifications
Customs
Notification No. 15/2023-CUSTOMS (N.T)
Dated 16th March 2023

The Central Government Fixes Exchange rate Notification No. 15/2023-Cus (NT) dated 16.03.2023-reg

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 12/2023-Customs(N.T.), dated 2nd March, 2023 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 17th March, 2023, 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	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	56.15	53.70
2.	Bahraini Dinar	226.55	213.10
3.	Canadian Dollar	61.20	59.25
4.	Chinese Yuan	12.15	11.80
5.	Danish Kroner	12.00	11.60
6.	EURO	89.35	86.20
7.	Hong Kong Dollar	10.75	10.35
8.	Kuwaiti Dinar	278.35	261.75
9.	New Zealand Dollar	52.35	50.05
10.	Norwegian Kroner	7.85	7.60
11.	Pound Sterling	101.70	98.30
12.	Qatari Riyal	23.45	21.95
13.	Saudi Arabian Riyal	22.75	21.40
14.	Singapore Dollar	62.30	60.03
15.	South African Rand	04.65	04.35
16.	Swedish Kroner	7.95	07.70
17.	Swiss Franc	90.70	87.30
18.	Turkish Lira	04.50	04.25
19.	UAE Dirham	23.25	21.85
20.	US Dollar	83.70	81.95

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	63.40	61.40
2.	Korean Won	06.50	06.10

For more details, please follow

https://taxinformation.cbic.gov.in/view-pdf/1009666/ENG/Notifications

Press Releases

For Bulletin Dated 17.03.2023

Direct Tax

Direct Tax Collections for F.Y. 2022-23 up to 10.03.2023

11th March, 2023

The provisional figures of Direct Tax collections up to 10th March, 2023 continue to register steady growth. Direct Tax collections up to 10th March, 2023 show that gross collections are at Rs. 16.68 lakh crore which is 22.58% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at Rs. 13.73 lakh crore which is 16.78% higher than the net collections for the corresponding period of last year. This collection is 96.67% of the total Budget Estimates and 83.19% of the Total Revised 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 18.08% while that for PIT (including STT) is 27.57%. After adjustment of refunds, the net growth in CIT collections is 13.62% and that in PIT collections is 20.73% (PIT only)/ 20.06% (PIT including STT).

Refunds amounting to Rs.2.95 lakh crore have been issued during 1st April, 2022 to 10th March 2023, which are 59.44% higher than refunds issued during the same period in the preceding year.

e-Verification Scheme of CBDT is another initiative facilitating voluntary compliance

13th March, 2023

The Income Tax Department has taken several progressive steps to encourage voluntary tax compliance and facilitate a transparent and non-intrusive tax administration. One such major initiative is the e-Verification Scheme, 2021(the "Scheme") which was notified on 13th December, 2021.

Using information technology effectively, the Scheme aims to share and verify such financial transaction information with the taxpayer which appears to be either unreported or under-reported in the Income Tax Return (ITR) filed by the taxpayer.

The Department has been collecting information of financial transactions from multiple sources. Earlier, a part of it was shared with the taxpayer in the 26AS Statement. However, with a view to effectively utilize the data collected from various sources, the entire information is now displayed to the taxpayer through the Annual Information Statement (AIS). The AIS provides a facility to the taxpayer to object to any information if the Source has misreported any such information. The Department confirms the said information with the Source and if the Source states that there is no error, the said information is subjected to risk assessment for e-Verification.

The entire process of e-Verification is digital, with notices issued electronically and responses by the taxpayers also submitted electronically. On completion of the enquiry, a verification report is prepared electronically without any physical interface with the taxpayer.

The Scheme is extremely beneficial to taxpayers as it enables the taxpayer to explain the financial transaction with evidence. It also helps in data correction/cleaning and thereby prevents initiation of proceedings on misreported information. Further, since the information pertaining to the financial transactions is shared with the taxpayer, it provides

an opportunity to correct /update income that may not have been appropriately reported in the ITR filed by the taxpayer. In other words, as the eVerification Scheme makes the taxpayer aware of the risks, it nudges him/her towards voluntary compliance by providing an opportunity to the taxpayer to Update the return of income under section 139(8A) of the Income-tax Act,1961.

On a pilot basis, in about 68,000 cases, information of financial transactions pertaining to FY 2019-20 has been taken up for e-Verification. Details of the transactions have been initially shared with the individual taxpayer through e-campaign. So far, e-Verification has been completed by the designated Directorate in approximately 35,000 cases and remaining are under verification.

As the Scheme has provided an opportunity to the taxpayers to accept the mismatch of information vis-à-vis the original ITR filed,it is found that many taxpayers have filed Updated ITRs.

To facilitate a better understanding of the Scheme and the various processes involved therein, the FAQs on e-Verification Scheme, 2021 are available on www.incometaxindia.gov

TB

JUDGEMENT INDIRECT TAX

Delay to be condoned for appeal which was not filed by petitioner within prescribed period due to illness: HC

Facts of the case : Kajal Dutta v. Assistant Commissioner of State Tax - [2023] (Calcutta)

The appellant filed appeal against the adjudication order but the Senior Joint Commissioner who was Appellate Authority has dismissed the appeal on the ground of limitation. It filed writ petition against the order of rejection of appeal but the learned Single Bench declined to interfere with the said order. Therefore, it filed intra-Court appeal challenging the correctness of the order passed in the writ petition.

Decision of the case :

- The Honorable High Court noted that as per Section 107(1) read with Section 107(4) of the CGST Act, 2017, the time limit for preferring the appeal beyond the period of three months is 30 days, which is a grace period. However, the statute does not state that beyond the said date, the appellate authority can't exercise jurisdiction.

- In the instant case, the appeal was not filed within prescribed period on account of illness for which doctor's certificate was also enclosed. Therefore, it was not a case that the appellant had deliberately presented the appeal beyond the condonable period.

- Therefore, the Court noted that while exercising jurisdiction under Article 226 of the Constitution this Court can examine the factual circumstances and grant appropriate relief as the appellate remedy is a very valuable remedy since the appellate authority can re-appreciate the factual position.

- Thus, the Court held that the delay in filing appeal before Appellate Authority was to be condoned and Appellate Authority was directed to consider and decide appeal on merits.

HC directs Appellate Authority to decide appeal against GST cancellation order afresh after giving opportunity of hearing

Facts of the case - BBCL Infrastructure v. State of U.P. - [2023] (Allahabad)

The petitioner was engaged in the business of bangles and artificial ornaments. The department issued show cause notice to petitioner for cancellation of registration on ground that he had not filed return for a period of six months. The said show cause notice remained unattended and the order cancelling registration was passed. It filed appeal against cancellation order which had been rejected by computer-generated format order on ground of delay. It filed writ petition against the impugned order.

Decision of the case :

- The Honorable High Court observed that the appeal was rejected by computer-generated order on ground of delay and reason had not been discussed by Appellate Authority. Moreover, the opportunity of hearing was not provided. The Court noted that the GST law was introduced and implemented to facilitate smooth functioning of trade and commerce and cancellation of registration would only lead to more evasion of taxes. Since, the Appellate Authority is quasi-judicial authority therefore, it must follow principles of natural justice and provide opportunity of being heard before deciding appeals.

- The Court also noted that when a new taxing regime has been enforced, which is only five years old then such drastic step of cancellation of registration should be avoided to the maximum extent. Thus, the Court held that the impugned order was liable to be set aside and the Appellate Authority was directed to

decide the appeal afresh after giving opportunity of hearing.

Violation of natural justice in adjudication order can't be cured by sufficiency of natural justice in appellate proceedings: HC

Facts of the case : Chandni Crafts v.Union of India - [2023] (Rajasthan)

The petitioner claim a refund of accumulated input tax credit on account of the export of goods under LuT in terms of the provision of Section 54(3) of CGST Act, 2017. The adjudicating authority partially sanctioned the refund claim and rejected the balance without providing the opportunity of being heard and issuing the notice under Rule 92(3) of CGST rules, 2017. Aggrieved by the order, the petitioner filed an appeal which was rejected by the commissioner (Appeals) on the grounds that the opportunity of being heard was given to the petitioner.

Aggrieved by the order of both Adjudicating Authority and Appellate Authority appellant filed the writ petition before High court of Rajasthan.

Decision of the case :

- The Honourable High court observe that, as per Rule 92(3), which provides that proper officer if satisfied for the reasons to be recorded in writing that whole or any part of refund is inadmissible, then proper officer shall issue a notice in Form GST RFD-08 to the applicant thereafter applicant to reply within 15 days of issuing notice in Form GST RFD-09. After considering the reply, proper officer issue order in Form GST RFD-06 sanctioning or rejecting the refund whether in full or in part. The Proviso to Rule 92(3) further emphasizes that refund shall not be rejected without giving the applicant an opportunity of being heard.

- Further Honorable High court states,it is well settled that failure of natural justice in the authority of first instance cannot be cured by sufficiency of natural justice in the appellate authority. Moreover, in Madras High Court judgement, it was concluded that hearing is mandatory before rejecting any application of refund and where a refund application is rejected without hearing, then the refund application submitted by Petitioner is required to be considered afresh.

- Thus, HC held that wherein the principles of natural justice have been violated by the adjudicating authority and the appellate authority only on account of the fact that it had provided an opportunity of hearing, did not interfere with the order of the adjudicating authority, both the orders cannot be sustained. Hence writ petition filed by the petitioner is allowed and the matter is remanded back to the Adjudicating Authority to follow the the provisions of Rule 92(3) of the CGST rules.

Permitting assessee to rectify error in GSTR-1 return will not cause any loss to department; HC allows rectification

Facts of the case : Y. B. Constructions (P.) Ltd. v. Union of India - [2023] (Orissa)

The petitioner filed writ petition before the High Court seeking a direction for Department to permit rectification of GST returns filed for the periods 2017-18 and 2018-19. It was contended that it had wrongly filed outward supply return of GSTR-1 by showing supplies under B2C instead of B2B due to which recipient could not avail input tax credit. The Department contended that time-limit for rectification had already been passed.

Decision of the case :

The Honorable High Court observed that there would be no loss caused to department if petitioner shall be permitted to rectify error as there was no escapement of tax. However, the petitioner would be prejudiced if relief would not be granted. The Court also noted that in similar case, the Madras High Court had accepted such plea and directions were given to file corrected form. Therefore, it was held that the petitioner would be permitted to resubmit corrected GSTR-1 return and the authorities were directed to receive forms manually and enable uploading in GST portal.

Dept. can't recover balance amount from petitioner when amount more than pre-deposit paid already: HC

Facts of the case : Vihaan Networks Ltd. v. State of Bihar - [2023] (Patna)

The petitioner was a company registered under GST and it received a show cause notice (SCN) from

the department to furnish returns, records, books of accounts and other evidence in support of the claim for the carry forward of credit under TRAN-1. It responded to the notice and thereafter an order imposing demand was issued.

It was submitted that the order was passed without hearing and demand after some reduction was upheld in appellate order. It filed writ petition contending that the department insisted on recovery of entire amount.

Decision of the case :

The Honorable High Court noted that the petitioner had already deposited amount more than 20% required as pre-deposit for filing appeal before Tribunal. The Government had acknowledged difficulties in availing remedy of appeal before Appellate Tribunal due to non-constitution of Tribunal and time-limit for filing appeals has been extended. Therefore, the statutory right of petitioner still survives and is not barred by limitation. Thus, it was held that it would be unjust to recover balance amount from petitioner when amount more than pre-deposit had been paid already.

HC directed petitioner to disclose identity of friend to dept. who fraudulently obtained GSTIN using his documents

Facts of the case : Anil Kumar v. GST Commissioner, CGST and Central Excise - [2023] (Delhi)

The petitioner was a street vendor and he was desirous of obtaining a GST registration in respect of his business carried out from the stall. However, in the process of applying GST registration, he became aware that GST registration had been obtained using his name without his knowledge and unknown person has been filing return.

In this context, a complaint was filed with police and it was stated as pending. It filed writ petition for the suspension of fake GST registration which had fraudulently been taken in his name, with immediate effect.

Decision of the case :

The Honorable High Court observed that the petitioner had handed over his Aadhar and PAN card to one of his friends to obtain loan but such averments can't be accepted at face value and required to be properly examined. Therefore, the Court directed to treat this petition as representation by State GST authorities and grievance would be examined. The Court also directed the petitioner to disclose identity of his friend to police and State GST authorities.

HC set aside order as petitioner didn't get opportunity to file reply of intimation under Form GST DRC-01A

Facts of the case - Ravi Enterprises v. Commissioner of State Tax - [2023] (Uttarakhand)

The petitioner filed writ petition before the High Court and contended that the opportunity to file reply was denied in respect of intimation under Section 73 given in Form GST DRC-01A. It was submitted that the intimation in Form GST DRC-01A was uploaded simultaneously with the show cause notice issued under Section 73(1) of CGST Act, 2017.

Decision of the case :

The Honorable High Court noted that as per scheme of rules 142(1A) and 142(2A), it is apparent that before issuing notice under Section 73, person chargeable with tax is entitled to an intimation in Form GST DRC-01A in order to respond to intimation by filing its reply in part-B of said form . However, in the instant case, the notice under Section 73(1) and the intimation in Form GST DRC-01A was uploaded together. Thus, the petitioner was denied a valuable right of filing its submission in response to aforementioned intimation. Therefore, it was held that the impugned order was to be quashed and matter was remitted back to Competent Authority.

Condition of making part pre-deposit of disputed amount can't be imposed for grant of anticipatory bail: SC

Facts of the case : Rajesh Kumar Dudani v. State of Uttarakhand - [2023] (SC)

The appellant was accused of offence of availing ITC on fake and forged invoices. It had filed application for anticipatory bail but the High Court had rejected

anticipatory bail application of appellant on ground of seriousness of offence.

It filed appeal against the order of the High Court and the department pleaded that appellant shall be directed to deposit pre-deposit of 50% of allegedly evaded amount for considering bail.

Decision of the case :

- The Honorable Supreme court observed that in case of Subhash Chouhan v. Union of India [2023] (SC), this Court had not approved pre-depositing any amount as a condition for grant of bail. The Court also noted that in that case, the learned Additional Solicitor General appearing for the Union of India had fairly stated that such a condition can't be imposed while granting bail.

- Since, the facts of the present case were identical to the facts of the aforesaid case, there would be no reason to deviate from the view taken earlier. Thus, it was held that appellant would be eligible for anticipatory bail without imposing any condition of pre-deposit.

HC set aside both SCN & order which failed to set out reason for imposing tax liability and penalty

Facts of the case : Ram Prakash Chauhan v. Commissioner of Delhi - [2023] (Delhi)

The petitioner operates a steel/iron bar trading company. He purchased goods from Mahendra Steels and sold them to S.K Integrated Consultants. The aforementioned goods were being transported straight from M/s Mahendra Steels to M/s S.K. Integrated Consultants. As a result, a Bill-to-Ship-to model is created. The GSTN of petitioner is plainly stated in the E-way bill, but because the transaction is Bill-to-ship-to, the address mentioned in the E-way bill was that of the recipient of goods. The truck transporting the goods was detained because the documents discovered were defective. However, according to the respondent's counter-affidavit, the products were detained because they were not accompanied by an E-Way Bill.

The reasons stated in the show cause notice and the detention order for detaining the goods as prima facie documents are both defective, and an order of demand for tax and penalty was issued on the same day. Because the petitioner required the goods immediately, he paid the tax and penalty and demanded the goods to be released. Following that, the petitioner filed an appeal with the Appellate Authority, which dismissed the appeal on the grounds that the Proper Officer had categorically pointed out the discrepancy in the form of mis-Match between the E-Way Bill and goods in Movement in the order, which formed the basis for penalising the Appellant.

Decision of the case :

The SCN and detention order lacked an explanation of the reason for detaining the goods, raising the tax and penalty liability, and simply stated that the documents submitted are found to be defective, with no specific flaw mentioned. The Honourable High Court set aside both the Show Cause Notice and the demand order imposing tax and penalty, and remanded the case to the relevant GST officials to be decided afresh.

Appeal filed offline due to glitches in GST portal can't be rejected on ground of technicality: HC

Facts of the case : Yash Kothari Public Charitable Trust v. State of U.P. - [2023] (Allahabad)

The petitioner was a registered public charitable trust. The department passed a summary order under Rule 142(5) of GST Rules, 2017. It filed appeal online against the original order which was not accepted and the web-portal displayed error. It submitted letter before the authority making a complaint that the portal was not accepting the appeal against the order passed by the department and requested to accept offline appeal. However, the Additional Commissioner required the petitioner to submit the acknowledgement of appeal filed online and it filed writ petition before the High Court.

Decision of the case :

- The Honorable High Court noted that the CGST Act, 2017 has granted right to every person who is aggrieved by an order to approach the appellate forum. But in the instant case, the act of Appellate Authority in not entertaining appeal offline is an act of stopping taxpayer from getting his right to appeal against adjudication order. The Court further noted that in absence of a notification published in official

gazette providing for other modes to file an appeal, it would be presumed that other mode of filing appeal would be offline. Thus, the Court held that the tax authorities can't stop any taxpayer from claiming his statutory right on ground of technicality and directed the Appellate Authority to consider appeal filed offline.

JUDGEMENT
DIRECT TAX

Compensation paid to subsidiaries to recoup business losses occurred due to assessee allowable u/s 37: HC

Facts of the case : Principal Commissioner of Income-tax v. Industrial Development Corporation of Odisha Ltd. - [2023]

Assessee, a corporation, was owner of two mines which was used by assessee's subsidiaries for captive consumption. During the relevant assessment year in question the assessee debited a certain sum to its P/L a/c towards difference in the price of ores purchased by the said subsidiary companies from the assessee and others.

During the course of assessment, the Respondent-Assessee was asked to explain the above payment of compensation to the two subsidiary companies. The explanation offered was that two mines operated by the Assessee were taken for captive use and this was to assure cheap raw material supply to ensure the long-term viability of the subsidiary companies. However, on finding that the ores available in the said mines were not suitable for use in production of high carbon Ferro Chrome, the ores were sold in the open market and the ores of desired grade and specification were purchased from outside parties, which resulted in substantial financial loss to the subsidiaries. It was this loss which was sought to be compensated by the Assessee.

The Assessing Officer (AO) did not accept the above explanation and disallowed the claim of expenditure in the ground that it was not incurred "wholly and exclusively for the purpose of the business" of the assessee. In arriving at this conclusion, the AO relied on the decision of the SC in Travancore Titanium Products Ltd. v. Commissioner of Income Tax, Kerala, where it was held as under:

"For expenditure to be regarded as being for the purpose of the assessee's business within the meaning of s.10 (2) (xv), the nature of the expenditure of outgoing must be adjudged in the

light of accepted commercial practice and trading principles. The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the tax payer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business i.e. between the expenditure and the character of the assessee as a trader, and not as owner of assets, even if they are assets of the business."

On appeal, CIT(A) deleted the additions made by the AO which was subsequently affirmed by the Tribunal. Aggrieved by the order, the AO preferred an instant appeal to the Orissa High Court.

Decision of the case :

- The High Court held that financing or aiding or assisting any promotional activities of the industrial undertaking is part of the business of the assessee. In the instant case, compensation paid by the Assessee to the subsidiaries was to recoup the business losses of the subsidiaries, which was irrecoverable as far as the assessee was concerned.

- Considering that the expenditure was in the nature of money advanced to the subsidiaries, it cannot be said that there is no intimate connection between the Assessee and the two subsidiaries as far as the business activities are concerned.

- Therefore, the court concluded that the expenditure incurred by the assessee was not only incidental to the business of the Assessee but also necessitated or justified by commercial expediency.

ITAT can't remand matter to AO if case was remanded to it by HC with specific direction: HC

Facts of the case : Pooja Agarwal v. Commissioner of Income-tax - [2023] (Rajasthan)

Assessee, an individual, incurred capital gains with respect to the sale of a particular land allegedly situated outside the municipal limits of Jaipur. Considering such land as agricultural land, the assessee filed its return of income, claiming such capital gains to be exempt. However, the Assessing Officer (AO) contended that the land was within the municipal limits and denied considering it agricultural land.

The matter reached the High Court. In disposal, the High Court gave directions to the Tribunal to consider and accordingly verify the distance of land in question from the city's outskirts. However, in pursuance of the order, the Tribunal remanded the matter to AO for proper verification.

Consequently, a writ petition was filed to the High Court questioning whether the Tribunal was justified in remanding the matter to the AO when the directions of the High Court were strict to the ITAT itself to do the needful.

Decision of the case :

- The judgment and order of the High Court is very clear and explicit. It clearly directs the ITAT to re-verify and to get the land in question measured from the outskirts of the Jaipur taking into consideration the notification dated 06.01.1994 issued by the Income Tax Department and the judgment of the Court in Income Tax Appeal No.75/2014 and if necessary, to take help of the Revenue Authority for the purpose of verifying the aforesaid distance.

- Paragraph 4 of the aforesaid judgment and order of the High Court is reproduced herein below:-

  "4. In that view of the matter, with a view to verify whether the distance of the land in question is more than 8 kilometer on the outskirts of Jaipur city is required to be re-verified by the Tribunal taking into consideration, the notification dt. 6th January, 1994 issued by the Income Tax Department and judgment of this Court in Tax Appeal No.75/2014. The Tribunal will consider both the notification and judgment and if required make a request to Revenue Authority not below Deputy Collector to verify the distance from the outskirts of Jaipur to the land in question."

- The High Court in issuing the above directions specifically remitted the matter to the Tribunal only for the purposes of verifying the distance.

- In view of the above, the submission is that the verification of the distance was to be done by the Tribunal itself and it could not have relegated the

matter to the assessing authority.

- The Tribunal has remanded the matter to the assessing authority for the simple reason that the verification of the distance required proper and supporting evidence, which was not provided to it. If that be so, the Tribunal could have requested the revenue authority as directed by the High Court to make the measurement and to submit the report and acting upon such report could have recorded its finding rather than remanding the matter to the assessing officer.

- It may be pertinent to note that the ITAT is the last fact finding authority and its power in recording finding of fact is akin to that of Assessing Officer/CIT (Appeals). Therefore, the Tribunal itself could have recorded the finding with regard to the distance of the land from the outskirts of the Jaipur City itself rather than, remanding the matter the Assessing Authority or in the alternative may have requested the Assessing Authority or the Revenue Authority to make the measurements and to submit a report for the purposes of recording finding thereof.

- It is also to be noted that when there is a direction issued by the High Court, the Tribunal is expected to follow the same in pith and substance. The direction of the High Court in remanding the matter to the Tribunal was to verify the distance of the land from the outskirts of the City and for that purpose, if necessary to take the help of the Revenue Authority. The ITAT without taking help of the Revenue Authority simply remanded the matter to the Assessing Authority for the purposes of recording finding with regard to the distance of the land in question from the outskirts of the city of Jaipur. This is completely in derogation of the spirit of the order of the High Court.

- In view of the aforesaid facts and circumstances and the reasons recorded above, we are of the opinion that the ITAT manifestly erred in remanding the matter to the Assessing Authority instead of recording the finding with regard to the distance of the land itself, which is contrary to the directions of the Hon'ble High Court.

- Accordingly, the substantial questions of law are answered in favour of the Assessee and against the Revenue.

Assessee can't challenge reassessment orders by filing writ unless same were contested on merits in appeal: HC

Facts of the case - Gopal Tukaram Bitode v. Income-tax officer - [2023] (Bombay)

With regard to the Assessment Year 2015-16 a notice under Section 148 of the Act of 1961 dated 29.03.2021 was issued to the petitioner by the Income Tax Officer in which it was stated that he had reasons to believe that the income chargeable to tax for the Assessment Year 2015-16 had escaped assessment within the meaning of Section 147 of the Act of 1961. It was therefore proposed to assess/re- assess the income/ loss for the said Assessment Year. The petitioner was thus called upon to deliver a return in the prescribed form for the said assessment year. Accordingly the petitioner submitted his return on 22.01.2022. On 27.01.2022 a notice was issued to the petitioner under Section 143(2) read with Section 147 of the Act of 1961. As per annexures to the said notice the reasons for re-opening the case under Section 147 of the Act of 1961 were indicated.

The details mentioned were that search and seizure action was carried out in the case of M/s. Renuka Mata Multi- State Urban Co-operative Credit Society Limited. During the search it was noticed that huge money was deposited in the bank accounts maintained in the Society and during the course of assessment, the Society could not explain the source for the same. It was thus stated that there was a reason to believe that the aforesaid total deposit during the Financial Year 2014-15 that was chargeable to tax had escaped assessment for the Assessment Year 2015-16 within the meaning of Section 147 of the Act of 1961. It was stated that since period of more than four years from the end of Assessment Year 2015- 16 had not elapsed, necessary sanction was obtained from the Additional Commissioner of Income Tax as per Section 151 of the Act of 1961 for issuing notice under Section 148 of the Act of 1961.

In response to the show cause notice issued under Section 142(1) of the Act of 1961, the petitioner submitted his reply on 28.02.2022. He stated that on account of his illiteracy and lack of knowledge, he had not maintained any books of accounts and had also not filed his return of income for the said assessment year. The return was not filed for want of old record.

On 21.03.2022 a show cause notice was issued to the petitioner as to why variation as proposed should not be made. It stated that the source of cash deposited being Rs.8,41,93,228/- had remained unexplained and therefore treating it as unexplained money under Section 69A of the Act of 1961 it was proposed to be added to the total income of the petitioner. It was also proposed to initiate penalty proceedings under Section 271(1)(c) of the Act of 1961. In response to the said show cause notice the petitioner on 24.03.2022 stated that he had accepted total deposits for the Assessment Year 2014-15 in the bank accounts held with the Society. It was further stated that there was no supporting evidence in support of the statements made in the show cause notice.

an assessment order under Section 147 read with Section 144B of the Act of 1961 came to be passed. In the said order it was stated that the source of cash deposited which was Rs.8,41,93,228/- had remained unexplained. The reply of the petitioner was found to be not acceptable. Consequentially a notice for penalty under Section 271 (1)© was issued.

Aggrieved by the order, contending that the jurisdiction falls within section 153C, the assessee preferred a writ petition to the Bombay High Court.

In these writ petitions filed under Article 226 of the Constitution of India challenge has been raised to the orders of assessment passed under Section 147 read with Section 144B of the Income Tax Act, 1961. A preliminary objection has been raised by the respondents to the maintainability of the writ petitions on the ground that the petitioners have a statutory remedy by way of an appeal under Section 246 (1) of the Act of 1961 and for that reason the writ petitions do not deserve to be entertained.

The Tribunal held that the assessee chose not to contest the jurisdiction of reopening the assessment under section 153C. By responding and contesting the notice, the assessee allowed the assessment orders to be passed.

If the assessee had challenged the notice issued when it was issued, it would have made a difference. However, the assessee allowed the authorities to proceed under section 147 by responding to the notice. After the assessment orders have been passed, it is only now that the argument is being made that the reopening was not within jurisdiction.

There can be no dispute with the proposition that if the impugned exercise is without jurisdiction, extra-ordinary jurisdiction under article 226 of the Constitution of India could be invoked. However when an efficacious statutory remedy of appeal was available, jurisdiction under article 226 could not be invoked.

No need to examine foreign laws while allowing Sec. 10(23C) claim if assessee receiving funds from outside India: HC

Facts of the case : Laura Entwistle v. Union of India - [2023] (Bombay)

Petitioner was a trustee of the American School of Bombay Education Trust (ASB) which was set up after the embassy of the United States of America along with specific permissions granted by the Ministry of External Affairs. During the relevant assessment year, the ASB was supported by the South Asia International and Educational Services Foundation (SAIESF), a non-profit organisation based in United States of America.

SAIESF incurred various expenses in support of ASB, i.e., school material and freight, salaries of teachers and administrators, education grants, etc. The surplus arising from time to time was repatriated in India, and the petitioner invested the same in accordance with Section 11(5).

Petitioner's application under section 10(23C) was denied by the Commissioner of Income-tax (CIT) on the grounds that the petitioner was unable to produce any evidence retaining to the correctness of its accounts of SAISEF and the books of accounts of SAISEF had not been audited by the Revenue.

Aggrieved by the order, the petitioner filed writ petition before the Bombay High Court.

Revenue submitted before the High Court that exemption under Section 10(23C)(vi) applies to institutions where it is possible to examine the accounts properly to ensure that the income is properly applied for educational purposes and the funds are invested in the prescribed manner.

In the given case, it was impossible to conduct verification since it involved examining the law and practice of another country. Consequently, it was not possible to check what amounts were received outside India and how they were spent. Thus, CIT had rightly denied the exemption to the petitioner.

Decision of the case :

- The High Court held that the Income-tax Act concerned the income coming to India and being Repatriated out of India. Income earned and expenditure incurred outside India by any person or entity do not concern the Income-tax Department in as much as the Income-tax Act is not attracted.

- In the instant case, SAIESF was repatriating money into India and not repatriating from India. Thus, incomes earned and expenditure incurred outside India by such Foundation is not a matter of concern for the Income Tax Department in India.

- The CIT can be concerned only with the application of income in the hands of ASB/the petitioners once received in India. This is because in the present case, ASB/the Petitioners were not transferring/repatriating any money outside India to any person or entity.

- CIT have no concern about the receipts and expenses made by an entity outside the country merely because it transfers its surplus or even a portion thereof to an entity in India. Therefore, the exemption under section 10(23C)(vi) cannot be denied once it is confirmed that the petitioner exists to provide education and not for profit.

Circular 6/2016 giving choice to treat shares as stock-in-trade or capital asset has retro effect: HC

Facts of the case : CIT v. Century Plyboards (I) Ltd. - [2023] (Calcutta)

Assessee-company was engaged in the business of manufacture and sale of plywood and related products. During the relevant assessment year, it filed its return of income declaring long-term and short-term capital gains from the sale of shares and units of mutual funds.

During the assessment proceedings, the Assessing Officer (AO) noticed the number of transactions for selling and purchasing such securities. He treated such profit as business profits rather than capital gains. AO rejected the assessee's reference to CBDT's circular no. 6/2016, as the dispute was related to AYs prior to the date of issue of such circular.

On appeal, CIT(A) affirmed the treatment done by the AO, which the Tribunal subsequently deleted. Aggrieved by the order, an appeal was preferred to the Calcutta High Court.

Decision of the case :

- The High Court held that the long-term shares were held as investments in the books of account, which the AO accepted in earlier assessment years.

- The Court held that Circular no. 6/2016 dated 29.02.2016, issued by the CBDT, relating to the taxability of surplus on the sale of shares and securities as capital gains or business income. The circular clarified that the assessee could have an investment and trading portfolio and thus may have income under the head capital gains and business income.

- The Circular clarifies that in respect of listed shares and securities held for a period of more than 12 months if the assessee desires to treat the income arising as capital gains, the same shall not be put to dispute by the Assessing Officer. Also, it was stated that once the assessee takes such a stand in a particular assessment year, it shall remain applicable in subsequent assessment years.

- Therefore, the AO cannot take a different view in the subsequent years without any fresh materials warranting such a departure.

- Further, the need for issuing such circular arose on account of disputes on the applications of the principles laid down by the courts mentioning different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. Thus, the benefit of the circular should be extended to the assessee, especially when it is a beneficial circular in favour of the assessee

- Therefore, circular no. 6/2016 will be applicable with retrospective effect even though it was issued in later year.

SC nullifies order for special audit under Sec. 142(2A) as order approving audit wasn't communicated to assessee

Facts of the case : Rajiv Gandhi Proudyogiki Vishwavidyalaya v. Union of India - [2023] (SC)

Petitioner-University set up by the state of Madhya Pradesh, was served a show-cause notice under section 142(2A) for initiating a special audit. In response, objections raised by the petitioner were submitted to the revenue. Considering such reasons and explanations, an order confirming the special audit was passed but never served to the petitioner.

A writ petition to the Madhya Pradesh High Court was filed but all in vain. Aggrieved by the order, a petition was filed to the Supreme Court of India.

Decision of the case :

- The Apex Court held that the order under section 142(2A) was neither communicated to the petitioner nor uploaded on the portal. The written order was only placed in the order sheet file of the revenue.

- The order needs to be communicated so that the petitioner gets to know the reasons for such an audit. This non-communication violates the fundamental option of the petitioner to challenge the order with higher authorities since the petitioner does not have possession of the order.

- Therefore, the department was directed to issue a fresh notice or earlier issued notice which needs to be communicated to the petitioner and accordingly passed the ruling in the assessee's favor.

No deduction for decrease in value of investments in unlisted Co. as they can't be classified as Stock-in-Trade: HC

Facts of the case : M/s Ashok Leyland Finance Limited vs. DCIT - [2023] (Madras)

Assessee was a non-banking financial company registered with RBI. It filed its return of income under the normal provisions of the Income-tax Act. During the relevant year, the assessee made certain investments in the shares of unlisted companies. Assessee treated it as "stock-in-trade" and claimed deduction towards the diminution of the value of investments in its Profit and Loss Account.

During the assessment proceedings, the Assessing Officer (AO) contended that the assessee invested in the shares of an unlisted company. These shares do not have any market value as they are not traded in the stock market. Thus, he issued a notice under section 143(2) and completed the assessment by enhancing the total income.

The matter reached the Madras High Court.

Decision of the case :

- The High Court held that the share purchased by the assessee in the unlisted companies are not easily transferable and can be encashed only when contingencies arise. Thus, the investment in these securities cannot be considered as 'circulating-capital' or 'stock-in-trade'. They are merely investments.

- Deduction with respect to the diminution in value of the shares can only be claimed at the time of sale of the shares. Assessee can claim for the loss suffered while selling the shares but is not entitled to deduction with respect to the diminution in the value of such shares.

- Therefore, the purported loss arising from the diminution of shares is not allowed.

CBDT's guidelines for compounding offenses can't restrict AO's powers to consider an application on its own merits: HC

Facts of the case : Footcandles Film (P.) Ltd. v. Income Tax Officer - [2023] (Bombay)

Assessee-company deducted tax from the salaries of its employees under section 192 but failed to deposit the same to the credit of the Central Government within the prescribed time limit. However, later the company deposited the entire amount of TDS along with interest without any notice of default or demand.

Subsequent to the payment, the assessee received a show cause notice for the institution of prosecution proceedings. In response, the assessee submitted its reply stating that the delay was due to accumulated

losses, cash crunch, and delay in receiving tax refunds. Also, it had deposited all the tax liability along with interest even before receiving any notice from the department.

Unsatisfied with the reply, Assessing Officer (AO) initiated the prosecution under which penalty and imprisonment were ordered for the company's principal officer and penalty on the company.

Aggrieved by the order, the assessee applied compounding of offence to the Chief Commissioner of Income Tax (CCIT) which was rejected placing reliance on the CBDT's circular, dated 14-6-2019, on the ground that the application was time-barred and the assessee was convicted under law other than Direct Taxes Law.

Guidelines for compounding of offences state that application for compounding of offences cannot be filed after 12 months or the petitioner is convicted under any offence other than Direct Taxes Law. Further, it sets out certain conditions where the time period can be extended

Aggrieved-assessee filed a writ petition to the Bombay High Court.

Decision of the case :

- The High Court held that the directions, orders or instructions issued by the CBDT cannot limit the powers of the authority. It will not curtail the power vested in the Principal Commissioner or Chief Commissioner of Income Tax under Section 279(2) to consider the application for compounding on its own merits and decide the same.

- The conditions referred to under the circular are important but they cannot be treated as the only determining factor for the disposal of an application. While exercising the jurisdiction, objective facts with respect to the application shall be considered by the authority.

- Further, the reason stated by the authority for rejecting the application based upon a factual assumption that the assessee was convicted by the court for an offence other than the Direct Tax Laws was unsustainable and erroneous. The condition specified in the circular is only a guideline to the authority, not a rule of limitation while considering the application for compounding. It does not take away the jurisdiction of the authority to consider the application for compounding on its own merits and decide the same.

Assessee can't claim denial of hearing opportunity if she elected not to furnish info. as required by AO: HC

Facts of the case : Saroj Chandna v. ITO - [2023] (Delhi)

The assessee was served with a reopening notice furnishing information and material relied upon by the Assessing Officer (AO). The assessee submitted response that the information and material provided in the notice did not pertain to her.

AO issued a second reopening notice with new information and asked for an explanation of a specific transaction, ultimately concluding it was an unreported amount and making an addition to the reassessment order.

The assessee filed a writ petition and argued that she was not given a fair hearing before the reassessment order was made and therefore it should be set aside.

Decision of the case :

- The Delhi High Court held that to give effect to the objective of the scheme of section 148A, AO must provide specific material and information to the assessee at the stage of section 148A(b) so that the assessee can provide a meaningful response at the stage of inquiry under section 148A proceedings.

- The argument that the assessee did not have the opportunity to respond to the allegations in the notice is not valid. Assessee chose not to provide any explanation or evidence for the transaction with Subhshree Financial Management Pvt. Ltd (SFML) as required by AO.

- Since the assessee voluntarily chose not to furnish this information, she cannot claim that she was denied an opportunity to be heard. Thus, there was no error in the impugned order issued by the AO.

A mere incorrect claim made by assessee u/s 80G can't be reason to invoke provisions of sec. 69A: ITAT

Facts of the case : Batuk Vithalabhai Donga v. Income-tax Officer - [2023] (Rajkot - Trib.)

Assessee, an individual, claimed deduction under section 80G of the Income-tax Act while furnishing the return of income. During the assessment proceedings, assessee was unable to furnish any proof or detail with respect to such deduction. Accordingly, the Assessing Officer (AO) by invoking section 69A, made additions to the income of assessee and computed tax liability at a higher rate under section 115BBE.

Aggrieved by the order, assessee preferred an appeal to the CIT(A). The CIT(A) affirmed the additions made by AO and the matter then reached the Rajkot Tribunal.

Decision of the case :

- The Tribunal held that Section 69A is attracted only when assessee is found to be the owner of any money, bullion, jewellery or other valuable article which is not recorded in the books of account and the assessee offers no explanation about the nature and source of acquisition of such money, bullion, jewellery or other valuable articles.

- In the present case, AO had no specific finding that assessee was in possession of any unexplained money, bullion, jewellery or other valuable article in his possession, provisions of section 69A cannot be invoked. Therefore, the AO had mistaken in both facts and law by invoking the provisions of section 69A in respect of incorrect claim of deduction under section 80G of the Act.

- Thus, AO cannot compute tax liability under section 115BBE of the Act with respect to disallowance for incorrect claim under section 80G of the Act.

TB

Tax Calendar
Indirect tax

Returns	Due Date
GSTR-5A (Feb, 2023)	Mar 20th, 2023
GSTR-3B (Feb 2023)	Mar 20th, 2023
PMT-06 (Feb 2023)	Mar 25th, 2023
GSTR-11	Mar 28th, 2023
Last Date to Opt-in for Composition Scheme for FY 2023-24 by Regular Taxpayers [CMP-02].	Mar 31st 2023
RFD-10	18 Months after the end of quarter for which refund is to be claimed

Tax Calendar
Direct tax

Due Dates	Returns
17 March 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of January, 2023
17 March 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of January, 2023
17 March 2023	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of January, 2023
30 March 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February, 2023
30 March 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of February, 2023
30 March 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of February, 2023
31 March 2023	Country-By-Country Report in Form No. 3CEAD for the previous year 2021-22 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group
31 March 2023	Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2021 to March 31, 2022) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.
31 March 2023	Uploading of statement [Form 67], of foreign income offered to tax and tax deducted or paid on such income in previous year 2021-22, to claim foreign tax credit [if return of income has been furnished within the time specified under section 139(1) or section 139(4)
31 March 2023	Deadline for linking PAN with Aadhaar to avoid PAN becoming inoperative

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.

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