April, 2023

TAX Bulletin

Volume - 133
02.04.2023

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 Central Board of Direct Tax (CBDT) has released the Cost of Inflation Index for the financial year 2023- 2024 vide Notification No. 21/2023. The CII stands at 348 as against 331 for the Financial Year 2022-2023 and this will be effective from 1st April 2024 and shall, accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

The new Foreign Trade Policy 2023 was published by the Government on April 01, 2023. On the 6th of this month, the department submitted a representation to Shri Santosh Kumar Sarangi, Additional Secretary & Director General, Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industry for Inclusion of Cost Accountants on the various certifications under the New Foreign Trade Policy as applicable from 01.04.2023.

Crash Course on Income Tax Overview has been conducted at SA College of Arts and Science, Chennai and the exam for the same has been conducted on 03.04.2023. Again at Sandip University, Nashik the classes for GST Course for college and university students have been completed and exams are scheduled to be held in the next month.

Apart from the above, the classes for all the seven Taxation Courses are being conducted seamlessly and it is garnering huge appreciation from the students. The courses are as follows

1. Certificate Course On GST.
2. Advanced Certificate Course On GST.
3. Certificate Course On TDS (Direct Tax)
4. Certificate Course On Return Filling (Income Tax)
5. Advance Course On GST Audit and Assessment Procedure
6. Advance Course On Income Tax Assessment and Appeal.
7. Certificate Course On International Trade.

Tax Research Department
02.04.2023

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

Capital Gains under Income Tax Act, 1961 with a special note on Sale of Land & Building and Capital gains thereon (Part I)

Team Tax Research Department

Understanding Capital Gains:

Any profit or gain that arises from the sale of a 'capital asset' is known 'income from capital gains'. Such capital gains are taxable in the year in which the transfer of the capital asset takes place. This is called capital gains tax. There are two types of Capital Gains: short-term capital gains (STCG) and long-term capital gains(LTCG).

Methodology to determine the type of Capital Asset:

Capital Asset Class	Short Term	Long Term
If assets held is: • Securities listed in recognized stock exchange in India • Units of UTI • Units of an equity oriented fund • Zero Coupon Bonds (from AY 2006 -07)	Asset held for not more than 12 months	12 Months or More than 12 months
• If assets held is Share of a company not listed on a recognized stock exchange in India • (Amended by Finance Act, 2016 wef AY 2017 -18)	Asset held for not more than 24 months	24 Months or More than 24 months
• If asset held is immovable property, being land or building or both transferred after 31.03.2017 • (Amended by Finance Act, 2017 wef AY 2018 -19)	Asset held for not more than 24 months	24 Months or More than 24 months
• Other Capital Assets	Asset held for not more than 36 months	36 Months or More than 36 months

Understanding Capital Asset:

Land, building, house property, vehicles, patents, trademarks, leasehold rights, machinery, and jewellery are a few examples of capital assets. This includes having rights in or in relation to an Indian company. It also includes the rights of management or control or any other legal right.

Items specifically *included* in the scope of the term 'capital asset'

1. Property of any kind held by the assessee [sub-clause(a)]

2. Any securities held by a FII [sub-clause(b)]

3. Any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth proviso thereof

4. Jewellery (other than held as stock-in-trade) [item (a) of sub-clause(ii)]

5. Archaeological collections (other than held as stock-in-trade) [item (b) of sub-clause (ii)]

6. Drawings (other than held as stock-in-trade) [item (c) of sub-clause (ii)]

7. Paintings (other than held as stock-in-trade) [item (d) of sub-clause (ii)]

8. Sculptures (other than held as stock-in-trade) [item (e) of sub-clause(ii)]

9. Any work of art (other than held as stock-in-trade) [item (f) of sub-clause (ii)

Assets specifically *excluded* from scope of the term 'capital asset'

1. Any stock-in-trade (other than securities held by FIIs) [sub-clause (i)]

2. Consumable stores or raw materials [sub-clause (i)]

3. Personal effects [sub-clause (ii)] other than items excluded by items (a) to (f) of sub-clause (ii)

4. Agricultural land situated in India other than in urban area [sub-clause(iii)]

5. 6.5% Gold Bonds, 1977, issued by the Central Govt. [sub-clause (iv)]

6. 7% Gold Bonds, 1980, issued by the Central Govt. [sub-clause (iv)]

7. National Defence Gold Bonds,1980, issued by the Central Govt. [sub-clause (iv)]

8. Special Bearer Bonds, 1991, issued by the Central Govt. [sub-clause (v)]

9. Gold Deposit Bonds issued under Gold Deposit Scheme, 1999 [sub-clause (vi)]

10. Deposit Certificates issued under the Gold Monetisation Scheme, 2015 [sub-clause (vi)]

For capital gain to arise there needs to be a transfer of capital asset.

Understanding Transfer of asset:

Transfer of Asset - Section 2(47)

- Transfer of movable property is complete upon delivery of possession.

- Transfer of immovable property, normally, is complete only when the conveyance deed is registered.

Transactions regarded as Transfer of Asset

Transfer, in relation to a capital asset, includes the following transactions:

(a) Sale, exchange, or relinquishment of the assets

(b) Extinguishment of any rights

(c) Compulsory acquisition

(d) Conversion into stock-in-trade

(e) Maturity or redemption of a Zero Coupon Bond

(f) Any transaction allowing the possession of any immovable property in part performance of a contract u/s. 53A of the Transfer of Property Act, 1882.

(g) Any transaction which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Transactions NOT regarded as Transfer

For the purpose of sec. 45, the following transactions are not regarded as transfer:

(a) Transfer of asset by a company to its shareholder on its liquidation - sec. 46(1);

(b) Distribution of capital asset on the total or partial partition of an HUF - sec. 47(1);

(c) Transfer of capital asset under a gift or will or an irrevocable trust (not being transfer, under a gift or an irrevocable trust, of a capital asset being shares, debentures or warrants under any Employees' Stock Option Plan (ESOP) or Scheme of the company to its employees) - sec. 47(11):

(d) Transfer of capital asset by a holding company to its wholly owned subsidiary company or vice versa, provided that transferee company should be an Indian company- sec. 47(iv), (v);

(e) Transfer by a non-resident to another non-resident, of a capital asset being bonds or Global Depository Receipts as referred to in sec. 115AC(1) - sec. 47(viia);

(f) Transfer made outside India by a non-resident to another non-resident of a capital asset being rupee denominated bond of Indian company issued outside India, sec. 47(viiaa)

Transfer by a non-resident on a recognized stock exchange in any International Financial Services Center for a consideration paid or payable in foreign currency, of a capital asset being rupee denominated bonds of Indian company or Derivative or Global Depositor)' Receipts as referred to in sec. 115AC(1) or such other securities as may be notified by CG. Sec. 47(viiab)

(g) Transfer by a non-resident to another non-resident, of a capital asset, being a Government Security, as defined in see. 2(b) of the Securities Contracts (Regulation) Act, 1956, carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities. - see. 47(viib)

(h) Transfer by way of redemption of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015 by an Individual. - sec. 47(viic)

(i) Transfer of a Capital Asset, being work of art, archaeological, scientific or art collection, book. manuscript, drawing, painting, photograph or print, to the Govt. or a University or National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Govt. - sec. 47(ix);

(j) Transfer by way of conversion of bonds or debentures, debenture stock, deposit certificate into shares or debentures of that company - sec. 47(x);

(k) Transfer by way of conversion of bonds referred to in sec. U5AC(I)(a) into shares or debentures of any company - sec. 47(xa);

(l) Transfer by way of conversion of preference shares of a company into equity shares of that company. –Sec. A7(xb)

(m) Transfer of land of sick industrial company under a scheme of u/s. 18 of Sick Industrial Companies (Special Provisions) Act, I9S5 (1 of 1986) provided the transfer is during the period between the company has become sick industrial company u/s. 17(1) of that Act and the year during which entire net worth of the company becomes equal to or exceeds the accumulated losses. - sec. 47(xii)

(n) Transfer of capital asset on succession of firm (w.e.f. AY 1999-2000) or AOP/BOI (w.e.f. AY 2002-03, in the course of demutualisation or corporatisation of recognised stock exchange) by a company, provided that:

- All assets and liabilities of the firm/BOI/AOP relating to the business before the succession become the assets and liabilities of the company
- All the partners of the firm become the shareholders of the company in the same proportion in which their capital stood in the books of the firm before the succession
- The partners of the firm do not receive consideration or benefit, in any form other than by way of allotment of shares in the company; and
- The aggregate shareholding of the partners should not be less than 50 per cent of the total voting power of the company and continue to remain the same for a period of 5 years from the

date of succession

- The demutualisation or corporatisation of recognised stock exchange is carried out in accordance with a scheme which is approved by SKBI - sec. 47(xiii)

(o) Transfer of capital asset, being membership right held by a member of a recognised stock exchange in India - sec. 47(xiiia);

(p) Transfer of a capital asset or intangible asset by a private limited company or unlisted public company into a Limited Liability Partnership (LLP) or any transfer or transfer of shares held in the company by the shareholders as a result of conversion of company into LLP, provided:

- All assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP;
- All the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;
- Shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form other than by way of share in profit and capital contribution in the LLP;
- Aggregate profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50 per cent at any time during the period of 5 years from the date of conversion;
- Total sales, turnover or gross receipts in business of the company in any 3 years preceding the previous year in which the conversion Kikes place docs not exceed ` 60 Lakh;
- Total value of the assets appearing in the books of account of the company in any of the 3 years preceding the previous year in which the conversion takes place docs not exceeds ` 5 Crore
- No amount is paid to any partner out of accumulated profit (standing on the date of conversion) for a period of 3 years from the date of conversion - see. 47(xiiib);

(q) Transfer as a result of succession of the proprietary concern by a company, provided:

- All assets and liabilities of the sole proprietary relating to the business before the succession become the assets and liabilities of the company;
- Proprietor docs not receive consideration or benefit, in any form other than by way of allotment of shares in the company;
- Shareholding of the proprietor is not less than 50% of the total voting power of the company and continue to so remain for a period of 5 years from the date of succession - sec. 47(xiv);

(r) Transfer in a scheme of lending of any securities under an agreement or arrangement entered into with the borrower and which is subject to the guidelines issued by SEBI or RBI - sec. 47(xv); and

(s) Transfer in a reverse mortgage scheme notified by the Central Govt., (w.e.f. AY 2008-09) - sec. 47(xvi).

(t) Transfer, being share of a special purpose vehicle, as defined in explanation to sec. 10(23FC), to a business trust in exchange of units allotted by that trust to the transferor. - sec. 47(xvii)

(u) Any transfer by a unit holder of a capital asset, being unit(s), held by the transferor in the consolidating scheme of Mutual fund, made in consideration of the allotment to him of a capital asset, being unit(s) in the consolidated scheme of the Mutual fund -sec. 47(xviii); Provided that the consolidation is of:

- Two or more schemes of equity oriented fund; or
- Two or more schemes of a fund other than equity oriented fund

(v) Any transfer by a unit holder of unit(s), held by transferor in the consolidating plan of mutual fund

scheme, made in consideration of the allotment to him of capital assets, being a unit(s), in the consolidated plan of that scheme of the mutual fund - Sec 47 (xix) Provided that the consolidation is of the plan within a scheme of a mutual fund specified u/s. I0(23D).

Note: The other sub-sections of sec. 47 Containing Provisions for Transfer not regarded as Transfer other than provisions as above are summed up as below: —

Particulars of Transfer not regarded as Transfer (Chapter 21)	Section
Amalgamating Co. to Indian amalgamated co.	47(vi)
Shares of an Indian Co. held by amalgamating foreign co.	47(via)
By a Banking Company to banking institution.	47(viaa)
Shares of Foreign Company transferred by Foreign Amalgamating Co. to Foreign amalgamated co. where its value is substantially derived directly or indirectly from the shares of an Indian Company	47(viab)
By the Demerged Co, to the resulting Indian co.	47(vib)
Shares of an Indian Co. held by demerged foreign co. to resulting foreign co.	47(vic)
By predecessor Co-operative Bank to the successor co-operative bank or to the converted banking company. - Amended by the Finance Act, 2021 w.e.f 1.4.2022 (A. Y. 2022-23)	47(vica)
Shares held in predecessor Co-operative Bank in consideration of allotment in successor co-operative bank *or to the converted banking company.* - *Amended by the Finance Act, 2021 w.e.f. 1.4.2022 (A. Y. 2022-23)*	47(vicb)
Shares of Foreign Company transferred by Foreign Demerged Co. to Foreign resulting co. where the its value is substantially derived directly or indirectly from the shares of an Indian Company	47(vicc)
By Resulting Co. to the shareholder of the demerged co.	47(vid)
Shares held in the Amalgamating Co.	47(vii)
Any transfer, in a relocation, of a capital asset by the original fund to the resulting fund. - Inserted by the Finance Act, 2021 w.e.f. 1.4.2022 (A.Y. 2022-23)	47(viiac)
Any transfer by a shareholder or unit holder or interest holder, in relocation of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund. - Inserted by the Finance Act, 2021 w.e.f. 1.4.2022 (A.Y. 2022-23)	47(viiad)
Any transfer of capital asset by India Infrastructure Finance Company Limited to the National Bank for Financing Infrastructure and Development, set up under an Act of Parliament and notified by the Centra) Government for the purposes of this clause. - Inserted by the Finance Act, 2021 w.e.f. 1.4.2022 (A.Y. 2022-23)	47(viiae)

Any transfer of capital asset, under a plan approved by the Central Government, by a public sector company to another public sector company notified by the Central Government for the purpose of this clause or to the Central Government or to a State Government - Inserted by the Finance Act. 2021 w.e.f. 1.4.2022 (A.Y.2022-23)	47(viiaf)

Transfer of Land & Building:

The taxing provisions relating to capital gain lay down a broad basis as to how to compute the capital gains, both long term and short term, still some issues concerning the computation of such capital gains remain which are discussed hereunder:

Transfer of Building and The Land Appurtenant Thereto as A Single Lot

The land and building are two different identifiable, independent, distinct capital assets and the provisions relating to capital gain permits their transfer independently and compute the capital gain or loss thereon for each asset accordingly. However, in practice an assessee acquires a vacant land initially and later construct a building thereon or acquire both land and building at the same time. There may be situations wherein an assessee can also construct a building on a land owned by the assessee through inheritance or succession, gift or will etc. When the assessee wishes to transfer these assets thereafter for a monetary consideration, such assets have to be transferred as a single lot (both land and building) to the ultimate transferee against which the capital gain implications have to be examined.

(A)NLand and Building whether short term or long term assets

The land and building being the immovable assets could either be a short term capital asset or a long term capital asset depending upon the period of holding of such assets by the assessee. In respect of immovable property being land or building or both, if the assessee holds such assets for more than 24 months on after 1-4-2017, the same are classified as long term capital assets and the gain arising out of the transfer of such assets has to be considered as long term capital gain. Prior to 1-4-2017, in order to claim these assets as long term assets, the assessee should have held these assets for more than 36 months. If the above immovable property is held by an assessee for less than the above stipulated period, then such assets have to be classified as short term capital assets and the corresponding profits or gains arising out of the transfer of such assets will be regarded as short term capital gains. As per section 50 of the Income Tax Act 1961, a building has to be treated as a short term capital asset on its transfer if depreciation is allowed to the assessee in the past.

(B) Mode of computation of capital gains

As per section 48 of the Act, the income chargeable under the head "capital gains" shall be computed by deducting the following amounts from the full value of consideration received or accruing as a result of the transfer of the capital asset.

(i) Expenditure incurred wholly and exclusively in connection with such transfer, (ii) the cost of acquisition of the asset and the cost of any improvement thereto As per the second proviso to section 48, where long term capital gain arises from the transfer of a long term capital asset other than capital gain arising to a nonresident from the transfer of shares in or debentures of, an Indian company referred to in the first proviso, the provisions of clause

(ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement" the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted. In case of a transfer of land and building which are long term assets at the hands of the assessee, the indexed cost of acquisition as computed based on the Cost Inflation Index notified is deductible from the full value of consideration received or accruing as a result of the transfer of capital asset. With regard to the full value of consideration, it is the actual sale consideration received or accruing to the transferor from the transferee at the time of transfer of the asset. If the sale consideration declared in the conveyance deed for the transfer of land and building is less than the value adopted for the purpose of stamp duty by stamp valuation authority of the State Government,

the value so adopted by the above authority for stamp duty purposes is deemed to be full value of consideration with regard to computation of capital gains as per section 50C of the Act

(C) How to compute the capital gains on transfer of building and land together

In practice, a building and the land appurtenant thereto held by an assessee, as long term capital assets, could be transferred together to a transferee through a single conveyance deed against a lumpsum monetary consideration. In this case, the question on the method of computing the long term capital gains arises (i.e.,) whether the long term capital gain could be computed for land and building separately? This question assumes paramount importance since the indexed cost of acquisition and improvement thereto in respect of these assets will vary depending upon the period of holding. The long term capital gains could be computed separately for land and building as held by the Hon'ble ITAT, Calcutta in the case of CIT vs Sri Sekhar Gupta [2001]114 Taxmann 122 wherein it was held that the land is an independent, identifiable asset and continues to remain as an identifiable capital asset even after construction of a building thereon. Identical views were taken by the Hon'ble Rajasthan High Court in the case of CIT vs Vimal Chand Golecha reported in [1993]201 ITR 442 and by the Hon'ble Madras High Court in CIT vs Dr.D.L.Ramachandra Rao[1999]236 ITR 51.The only condition to be complied with in respect of long term capital gain in respect of the building is the assessee should not have claimed any depreciation on the building in the past years prior to the transfer. However, in order to claim the above capital gains separately for land and building, the assessee is required to maintain certain basic details like the original cost of acquisition of land and building, the year acquisition etc. separately duly supported by necessary documentary evidences as they may be required at the time of scrutiny assessment. Based on the holding periods of these assets, the indexed cost of acquisition could be computed. Likewise, in order to claim the indexed cost of improvement necessary documents in support of the improvements done and the expenditure incurred thereon have to be also maintained by the assessee. The next question is how to appropriate the sale consideration for the transfer of land and building if a lump sum monetary consideration is received by the transferor from the transferee when the transfer is effected through a single conveyance deed. As per section 50C as amended by the Finance Act 2009, where the consideration received or accruing as a result of transfer of land and/ or building is less than the value adopted or assessed or assessable by an authority of the State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration received or accruing as a result of such transfer for computing capital gains. In all the registered conveyance deeds, wherein transfer of land and building is involved, an Annexure IA is appended wherein the market values are furnished for the land and the building separately for the purpose of stamp duty valuation. The market value of the immovable property transferred as indicated in the sale deed will be equivalent to the actual sale consideration received by the transferor from the transferee. If this value exceeds the value adopted or assessable by the Registration Authority for stamp duty purposes, the said sale consideration as appropriated to land and building as per Annexure IA attached with the registered sale deed could be adopted for the purpose of computing the capital gains. If the sale consideration is lesser than the value adopted or assessable by the Registration Authority for stamp duty purposes, then such value so adopted by the Registration Authority as appropriated between the land and building could be adopted as deemed sale consideration for the respective assets for the purpose of computing the capital gains. This will be in line with the provisions contained in section 50C of the Income Tax Act 1961.

(D) Computation of short term capital gain in respect of the building transferred along with the land

There are practical cases wherein the assessee would have claimed depreciation on the building in the past years. In that event, when the building and the land appurtenant thereto are transferred together, the gain arising out of the transfer of land will be a long term capital gain provided the assessee satisfies the holding period for more than 24 months after 1-4-2017 and 36 months prior to 1-4-2017. Though the assessee satisfies the same condition in respect of the building, the assessee cannot claim it as a long term capital asset as depreciation has been allowed on the building in the past years. In such a case, the capital gain arising out of the transfer of land will be a long term capital gain and the gain arising out of the transfer of building will be treated as short term capital gain. With regard to depreciable assets covered under section 50 of the Act, the cost of acquisition has to be determined by taking into account the opening balance of the block of

assets on the first day of the previous year plus actual cost of the assets acquired during the year which falls in the same block of assets. With this, any expenditure incurred wholly or exclusively in connection with the above transfer may be added. If the sale consideration appropriated to the building as per the guidelines indicated supra exceeds the above sum, the differential value constitutes short term capital gain and the same has to be offered to tax accordingly in the return of income.

(E) Computing long term capital gains in case of revaluation of land and building

Section 43(1) of the Act defines the term "Actual Cost" as follows. "In section 28 to 41 and in this section unless the context otherwise requires "actual cost" means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. Section 32 of the Act allows depreciation on various block of assets at prescribed rates as per Rule 5(1) read with Appendix I of the Income Tax Rules. A combined reading of the above two sections will reveal that the assets for the purpose of allowing depreciation under the Act have to be recognized only with the historical cost of the assets and the relevant block of assets including additions and deletions thereon have to be maintained by the assessee as prescribed under the above Rules. For the purpose of computing capital gains, the relevant provisions also recognize only the cost of acquisition of the assets. The cost of acquisition of an asset is the cost against which the relevant asset was acquired by the assessee which will include expenses of capital nature for completing or acquiring the title to the assets. The Accounting Standard 10 on "Accounting for Fixed Assets" permits the revaluation of fixed assets and any increase in the net book value arising on account of revaluation of fixed assets should be credited directly to owner's interests under the head "Revaluation Reserve." If the land and building are revalued and their revalued cost is reflected in the respective block of assets in the books of account, the assessee is required to adopt only the historical or original cost of acquisition for the purpose of computing the long term capital gain. For the above purpose, the assessee is required to maintain the details containing various block of assets with their historical or the original cost including land and building, additions/ deletions made thereon, and depreciation claimed on depreciable assets etc. for income tax purposes. This is applicable even for computing the short term capital gain in respect of a building wherein the assessee had claimed depreciation in the past years. E) Cost of Acquisition in certain cases in respect of cases wherein the assessee acquires a land or building or construct a building on a land already owned by him through a deed of conveyance, the cost of acquisition could be normally determined based on the value for which the property was acquired by the assessee. But there are other situations wherein the assessee gets the title or ownership of the property by succession or inheritance, will or gift etc. wherein there will be no actual cost of acquisition. For the purpose of computing the capital gains when such properties are transferred for a monetary consideration, the income tax law lays down the circumstances under which an assessee gets the title or ownership of the property without a sale deed and the method under which the cost of acquisition could be determined. Section 49(1) of the Act says that the cost of acquisition in respect of an asset acquired by an assessee through the following modes shall be deemed to be the cost for which the previous owner had acquired the property as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee as the case may be. (i) on any distribution of assets on the total or partial partition of a Hindu undivided family (ii) under a gift or will (iii) (a) by succession, inheritance or devolution or (b) on any distribution of assets on the dissolution of a firm, body of individuals or other association of persons where such dissolution had taken place at any time before the 1st day of April 1987 or (c) on any distribution of assets on the liquidation of a company or (d) under a transfer to a revocable or an irrevocable trust or (e) under any such transfer as is referred to in clause(iv),[or clause (v),[or clause (vi)[or Clause (via),[or clause (viaa), [or clause (vica) or [clause (vi cb) or clause (xiiib) of section of the Act. (iv) such assessee being a Hindu undivided family, by the mode referred to in section 64(2) at any time after the 31st day of December 1969 As per the Explanation to the above section,the "previous owner" of the property in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to clause(i) or clause(ii) or clause (iii) or clause (iv) of this sub section. In view of the above provisions, the cost of acquisition of the land and building which were acquired by an assessee in any one of the modes explained above has to be computed based on the cost on which the previous owner has acquired the said property as increased by the development expenditure incurred or borne by the previous owner or the assessee. However, it should be noted that if the asset became the property of the assessee before 1st April 2001 by gift, will

etc. or by any mode specified in section 49(1), the cost of acquisition to the previous owner or the fair market value as on 1st April 2001 whichever is higher has to be taken as the cost of acquisition. If it becomes the property of the assessee through the above modes specified after 1st April 2001, then the cost of acquisition to the previous owner has to be taken as cost of acquisition for the purpose of computing the capital gains. By virtue of section 55(3), where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner. In this regard another question may arise on how to compute the holding period in order to determine whether the relevant asset is a long term or short term asset for cases dealt with in section 49(1) and to claim the indexation benefit. In order to find out whether a particular asset is a short term or a long term asset in the above cases, the period of holding of the previous owner shall be taken into consideration. With regard to indexation benefit, the Hon'ble Bombay High Court in the case of CIT vs Manjula J.Shah [2002]204 Taxman 691 and the Hon'ble Delhi High Court in the case of Arun Shunhgloo Trust vs CIT [2012]205 Taxman 456 have held that indexed cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset and not with regard to the year in which the assessee became the owner of the asset. When an assessee becomes the owner of an asset through various modes specified in section 49(1) and later converts into a new asset, then the period of holding will commence only from the date of conversion. In CIT vs Debmalya Sur [1994]207 ITR 996/77 Taxman 313 (Cal), it was held that section 49(1) applies only in relation to a cost of asset which was received by the assessee as a gift. The converted new asset has no nexus with the gift and therefore section 49(1) has no application for the purpose of determination of cost of the converted asset.

EXEMPTIONS UNDER CAPITAL GAINS:

Attach the PDF copy after Transpose

Exemption of Capital Gains u/s. 54, 54B. 54D. 54EC. 54EE. 54F. 54G. 54GA. 54GB and 54H

Sec.	Sale of	Purchase of	Exemption available to	Time Period of	Amount of CG Exempt	CGAS	Special Points
54 LTCG	Residential House Properly	Residential House Property India Or Two Residential house property (if capital gain arising from sale do not exceed 2 crore and can be availed once in life time) (Finance Act 2019)	Individual / HUF	1 year before, 2 years after for purchase and 3 years for const.	To the extent of Capital Gain invested	Yes	
S4B LTCG/ STCG	Agriculture land	Agriculture land	Individual / HUF	2 years after the transfer	To the extent of Capital Gain invested	Yes	Land sold should be used for Agriculture purpose 2 years before the date of transfer.
54D LTCG/ STCG	Land and Building forming part of Industrial Undertaking	Land and Building forming part of Industrial Undertaking	All Assessees	Purchase/ Const within 3 years after the compulsory acquisition	To the extent of Capital Gain invested	Yes	Industrial undertaking should be used for business purpose at least 2 years preceding the dale of compulsory acquisition

Sec.	Sale of	Purchase of	Exemption available to	Time Period of	Amount of CG Exempt	CGAS	Special Points
54EC LTCG	Upto A.Y. 2018-19 Any Capital Assets	Upto A.Y. 2017-18 Bonds of RECL, NHAI redeemable after 3 years	All Asscssces	Investment should be done within 6 months from the date of such transfer. Maximum	To the extent of Capital Gain invested	No	Only one of the two benefits is available i.e. 80C or 54EC
	From A.Y. 2019-20 Land or Building or both	From A.Y. 2018-19 Bonds of RECL, NHAI or any other notified bond redeemable after 3 years From A.Y. 2019-20 Bonds of RECL, NHAI or any other notified bond redeemable after 5 years		investment is ₹ 50 Lac in the FY in which the asset is transferred or in subsequent FY.			
54EE LTCG *(w.e.f. A.Y. 2017-18)*	Any Capital Assets	Units of certain specified funds (funds for Start-up India) issued before 1.4.2019	All Assessees	Investment should be done within 6 months from the date of such transfer. Maximum investment is ₹ 50 Lac in the FY in which the asset is transferred or in subsequent FY.	To the extent of Capital Gain invested	No	---
54F LTCG	Any Capital Assets other than Res. Property	One Residential Property in India	Individual / HUF	1 year before, 2 years after for purchase and 3 years for const.	Capital Gain X Amount Invested / Net Sale Consideration	Yes	Applicable if assessee does not own more than one res. property on the date of transfer
54G LTCG/ STCG	Machine, plant, build-ing or land shifting from urban lo any other area.	Specified Assets i.e. Machine, plant, land & building	All Assesses	l year before or 3 years after the transfer	To the extent of Capital Gain invested	Yes	Furniture and Fixture not covered.
54GA LTCG/ STCG	Machine, plant, building or land shifting from urban area to SEZ	Specified Assets i.e. Machine, plant, land & building	All Assessees	1 year before or 3 years after the transfer	To the extent of Capital Gain invested	Yes	Furniture and Fixture not covered.

Sec.	Sale of	Purchase of	Exemption available to	Time Period of	Amount of CG Exempt	CGAS	Special Points
54GB LTCG	Residential House Property	Subscription of Equity share in eligible start-ups on or before 31st March, 2022	Individual / HUF	Subscription before die due date of furnishing return of income and the company within one year from subscription utilize amount for purchase of new asset	To the extent of capital gains invested	Yes	
54H	There may be a time lag between the previous year in which the asset is compulsorily acquired and the previous year in which the compensation is actually received. As per Section 54H, the period for acquiring the new asset by (lie assessee referred to in sections 54, 54B, S4D, 54EC and 54F shall be reckoned front die dale of receipt of such compensation and not from the date on which the asset was originally transferred.						

(a) Under section 54, capital gains shall be exempt from tax in following situations:

Conditions to be satisfied	Quantum of exemption
Sec. 54: For Individual and HUF	
1. The income of the residential house property is chargeable under 'Income from House Property'. 2. It must be a long-term capital asset being residential property. 3. Purchase of another residential house anywhere but after 31.3.2015 it should be in India, within one year before or 2 years after, or construction should be within 3 years after the date of transfer. 4. The new residential house should not be transferred within a period of 3 years from the date of transfer. Inserted by Finance Act, 2019 Amendment in Sec. 54- The following proviso has been inserted w.e.f. 1.4.2020. "Provided that where the amount of the capital gain does not exceed ` 2 crores, the assessee, may at his option, purchase or construct two residential houses in India, and where such an option has been exercised — (a) the provisions of this sub-section shall have effect as if for the words "one residential house in India" the words "two residential houses in India" had been substituted; (b) New Asset shall be construed as the two residential houses in India. (c) Provided further that where during any assessment year, the assessee has exercised the option referred above, he shall not be subsequently entitled to exercise the option for the same or any other assessment year."	Lower of the following: • Cost of new asset • Capital gains

Sec. 54B: For Individual and HUF	
1. Transfer should be of agricultural land. 2. The agricultural land can be short term capital asset or long term capital asset. 3. It must have been used by the assessee or his parents or HUK for at least 2 years immediately preceding the date of transfer, for agricultural purposes. 4. Another agricultural land should be purchased within 2 years from the date of transfer. 5. The new agriculture land should not be transferred within a period of 3 years from the date of acquisition.	Lower of the following: • Cost of new asset • Capital gains
Sec. 54D: For an Industrial Undertaking	
1. There must be compulsory acquisition of land and building forming part of an industrial undertaking. 2. The land or building can be long term capital asset or short term capital asset. 3. The asset must have been used in the 2 years immediately preceding the date of transfer by the assessee for the purpose of the industrial undertaking. 4. Within a period of 3 years from the date of compulsory acquisition, the assessee should have purchased/constructed any other land/ building. 5. Newly acquired land or building should be used for the purpose of another industrial undertaking. 6. The new land/building should not be transferred within a period of 3 years from the date of its acquisition.	Lower of the following: • Cost of new asset • Capital gains
Sec. 54EC: For ANY assessee	
1. The asset transferred (on or after 1.4.2000) should be a long-term capital asset 2. w.e.f. AY 2019-20 exemption only on LTCG arising on transfer of Land or Building or both. 3. Within a period of 6 months from the date of transfer, the capital gains must be invested in the lung-term specified asset*. 4. Such specified asset should not be transferred or converted into money within 3 years from dale of its acquisition (If such Specified Asset is acquired between 01.04.2007 to 01.04.2018). 5. Such specified asset should not be transferred or converted into money within 5 years from date of its acquisition (if such Specified Asset is acquired after 01.04.2018).	Lower of the following shall be exempt: • Aggregate of all such investments in the year of transfer or subsequent financial year • ₹ 50 Lakh • Capital gain
Sec. 54EE: For ANY assessee	
1. The asset transferred (on or after 1.4.2016) should be a long-term capital assets. 2. Within a period of 6 months from the date of transfer, the capital gains must be invested in the long-term specified asset**. 3. Such specified asset should not be transferred or converted into money within 3 years of date of its acquisition.	Lower of the following shall be exempt: • Aggregate of all such investments in the year of transfer or subsequent financial year • ₹50 Lakh • Capital Gain **Note:** Till dale no such asset has been notified by Government.

Sec. S4F: For Individual and HUF	
1. The asset transferred should be a long-term capital asset (not being residential house) 2. Purchase of a residential house anywhere till 31.3.2015, after that the house property should be in India (hereinafter referred to as 'new house') within one year before or 2 years after the date of transfer, or the construction should be within 3 years after the date of transfer. 3. The assessee should not own more than one residential house on the date of transfer. 4. The assessee should not purchase, within a period of 2 years or construct within a period of 3 years after the date of transfer of original asset, any other residential house other than the new asset.	➢ If Cost of New Asset > Net Consideration - Capital gains ➢ If Cost of New Asset < Net Consideration - $= \frac{\text{LTCG} \times \text{Cost of new asset}}{\text{Net Consideration}}$
Sec. 54G: For an Industrial Undertaking in Urban Area	
1. Machinery, plant, building or land or any right in laud or building used for the purpose of an industrial undertaking situated in an urban area should have been transferred. 2. Machinery, plant, building or land or any right in land or building can be short term capital asset or long term capital asset. 3. Transfer should be due to shifting from urban area to any area other than an urban area. 4. Within a period of 1 year before or 3 years after the date of transfer; • purchased new machinery or plant; • acquired building or land or constructed building; • shifted the assets and transferred the establishment to the new area; • incurred such other expenses as may be specified by Central Govt.; in relation to business in new industrial undertaking.	Lower of the following: • Cost/expenses incurred • Capital gains
Sec. 54GA; For an Industrial Undertaking in Urban Area to any Special Economic Zone (SEZ)	
1. Machinery, plant, building or land or any right in land or building used for the purpose of an industrial undertaking situated in an urban area should have been transferred. 2. Machinery, plant, building or land or any right in land or building can be short term capital asset or long term capital asset. 3. Transfer should be due to shifting to any Special Economic Zone (SEZ) 4. Within a period of 1 year before or 3 years after the date of transfer, purchased machinery, plant or acquired building or land or constructed building and completed shifting to the new area.	Lower of the following: • Cost/expenses incurred • Capital gains
Sec. **54GB: For individual and HUF**	
1. Transfer of residential property (being a house or plot of land) 2. It must be long term capital asset. 3. Net consideration should be utilised in subscribing to equity shares of an eligible company*** before the date of filing of ROI. 4. Eligible company invests the amount received in new assets within 1 year from the date of subscription to the shares. 5. It is available for transfer of residential property from 1.4.2013 to 31.3.2017. 6. Such transfer date is 1.4.2013 to 31.3.2022 for Investment in Eligible Start-tip - Extended by Finance Act, 2021 w.e.f. 1.4.2021.	➢ If Cost of new asset > Net consideration: Capital gains ➢ If cost of new asset < Net consideration: $= \frac{\text{LTCG} \times \text{Cost of new asset}}{\text{Net Consideration}}$

* Long-term specified asset means -
  - Any bond redeemable after 3 years issued on or after 1.4.2007 but before 1.4.2018 by:
    - NHAI, REC or Any other notified bonds
  - Any bond redeemable after 5 years issued on or after 1.4.2018 by:
    - NHAI, REC or Any other notified bonds

** Long-term specified asset means unit(s) issued of the Specified Funds issued before 1.4.2019.

*** Eligible company means the company which fulfills (he following conditions:

- Company is incorporated during the period from 1 April of the f Y in which asset is transferred to the due date of filing of return of income;
- It is engaged in business of manufacture of an article or thing;
- It is engaged in the business which involves innovation, development, development or commercialization of new products, processes or services driven by technology or intellectual property.
- The assessee has more than 25 percent of share capital or voting power.
- It is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act. 2006.
- It is a company which is engaged in the business which involves innovation, development, development or commercialization of new products, processes or services driven by technology or intellectual property. And which fulfills the following conditions—
  - It is incorporated between 1.4.2016 and 31.3.2019
  - The total turnover of its business does not exceed ` 25 Crore in any of the previous years beginning on or alter the 1.4.2016 till 31. 3.2021
  - It holds a certificate of eligible business from the Inter Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

New asset means new plant or machinery but does not include:

- Any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
- Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
- Any office appliances including computers or computer software;
  - ➢ However, in the case of an eligible start-up, being a technology driven start-up so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the Official Gazette, the new assets shall include computers and computer Software.
- Any Vehicle; and
- Any Machinery or Plant, the whole of the actual cost is allowed as deduction (by depreciation or otherwise) in computing the income.

Amendment made by Finance Act, 2023

(Limiting the roll over benefit claimed under section 54 [w.e.f. AY 2024-25])

It has been observed that claims of huge deductions by assessees are being made under section 54 or section 54F by purchasing very expensive residential houses which is defeating the very purpose of theses sections.

In order to prevent this, The Finance Act, 2023 has imposed a limit on the maximum deduction that can be claimed by the assessee under section 54 to Rs. 10 crores. Hence, the following third proviso has been inserted below section 54(1).

Provided also that where the cost of the new asset exceeds Rs. 10 crores, the amount exceeding Rs. 10 crore shall not be taken into account for the purpose of this sub-section,

Part II will continue in next Edition

PRESS RELEASE

Both DIRECT and INDIRECT TAX departments employ data analytics, big data and Artificial Intelligence/Machine Learning in tax administration to make it more effective, free of official discretion, business and taxpayers friendly

27th March, 2023

The Government is using data analytics, big data and Artificial Intelligence/Machine Learning in tax administration to make it more effective, free of official discretion, business and taxpayers friendly. This was stated by the Union Minister of State for Finance Shri Pankaj Chaudhary in a written reply to a question in Lok Sabha today.

Data analytics is being used to identify fiscal risks, suspicious trends and patterns and risky entities in Customs and GST by leveraging big data, the Minister added.

INDIRECT TAXES

The Project ADVAIT (Advanced Analytics in Indirect Taxes) has been rolled out in 2021, as a flagship analytics project for Indirect Taxes, by Central Board for Indirect Taxes and Customs (CBIC). The project uses capabilities of big data and Artificial Intelligence as well. ADVAIT has been envisaged with a threefold objective of enhancing Indirect Tax revenue, increasing taxpayer base, and supporting data-driven tax policy, the Minister stated.

Further, the Minister stated, ADVAIT provides business outputs in three formats:

- Reports,
- Interactive Dashboards, and
- Analytical Models

The Minister stated that the functionality of each output is specifically designed to aid and assist officers in their day-to-day operations that range from reporting and ensuring tax compliance to detecting tax evasion. The portal has advanced analytical capabilities including data matching, network analysis, pattern recognition, predictive analytics, text mining, forecasting and policy studies. ADVAIT has been designed and developed in a knowledge-driven data ecosystem using some of the most advanced data warehousing business intelligence solutions, keeping in view the 3 I's:

- Information,
- Insights, and
- Intelligence

DIRECT TAXES

The Minister stated that the Central Board for Direct Taxes (CBDT) is using techniques as data analytics, big data and Artificial Intelligence/Machine Learning for:

- high likelihood of income addition, for further scrutiny.
- Identifying taxpayers to send reminders for advance tax payments.
- Prompting specific taxpayers about apparent mismatches in ITRs and transactions made, so that taxpayers may revise their returns.
- Using big data techniques for storage and effective search of information by income tax officers.
- Using data analytics over networks of taxpayers visualize the taxpayers relationships and to flag potential high-risk transactions.
- Using data analytics techniques for segmentation of taxpayers to focus campaign on high- risk cases from tax evasion perspective.

Direct Tax

Roll out of 'AIS for Taxpayer' Mobile App

22nd March, 2023

The Income Tax Department has launched a Mobile app, namely, 'AIS for Taxpayer' to facilitate taxpayers to view their information as available in the Annual Information Statement (AIS) / Taxpayer Information Summary (TIS). 'AIS for Taxpayer' is a mobile application provided free of cost by the Income Tax Department, and is available on Google Play & App Store. The app is aimed to provide a comprehensive view of the AIS/TIS to the taxpayer which displays the information collected from various sources pertaining to the taxpayer.

Taxpayers can use the mobile app to view their information related to TDS/TCS, interest, dividends, share transactions, tax payments, Income Tax refunds, Other Information (GST Data, Foreign Remittances, etc.) as available in AIS/TIS. The taxpayer also has the option and the facility to provide feedback on the information displayed in the app.

To access this mobile app, the taxpayer needs to register on the app by providing PAN number, authenticate with the OTP sent on mobile number & e-mail registered on the e-filing portal. Subsequent to the authentication, the taxpayer can simply set a 4-digit PIN to access the mobile app.

This is another initiative of the Income Tax Department in the area of providing enhanced taxpayer services facilitating ease of compliance.

Last date for linking of PAN-Aadhaar extended

28th March, 2023

In order to provide some more time to the taxpayers, the date for linking PAN and Aadhaar has been extended to 30th June, 2023, whereby persons can intimate their Aadhaar to the prescribed authority for Aadhaar-PAN linking without facing repercussions. Notification to this effect is being issued separately.

Under the provisions of the Income-tax Act, 1961(the 'Act') every person who has been allotted a PAN as on 1st July, 2017 and is eligible to obtain Aadhaar Number, is required to intimate his Aadhaar to the prescribed authority on or before 31st March, 2023, on payment of a prescribed fee. Failure to do so shall attract certain repercussions under the Act w.e.f. 1st April, 2023. The date for intimating Aadhaar to the prescribed authority for the purpose of linking PAN and Aadhaar has now been extended to 30th June, 2023.

From 1st July, 2023, the PAN of taxpayers who have failed to intimate their Aadhaar, as required, shall become inoperative and the consequences during the period that PAN remains inoperative will be as follows:

(i) no refund shall be made against such PANs;

(ii) interest shall not be payable on such refund for the period during which PAN remains inoperative; and

(iii) TDS and TCS shall be deducted /collected at higher rate, as provided in the Act.

The PAN can be made operative again in 30 days, upon intimation of Aadhaar to the prescribed authority after payment of fee of Rs.1,000.

Those persons who have been exempted from PAN-Aadhaar linking will not be liable to the consequences mentioned above. This category includes those residing in specified States, a non-resident as per the Act, an individual who is not a citizen of India or individuals of the age of eighty years or more at any time during the previous year.

It is stated that more than 51 crore PANs have already been linked with Aadhaar till date. PAN can be linked with Aadhaar by accessing the following link: https://eportal.incometax.gov.in/iec/foservices/#/pre-login/bl-link-aadhaar .

CBDT Signs 95 Advance Pricing Agreements in FY 2022-23

31st March, 2023

The Central Board of Direct Taxes (CBDT) has entered into a record 95 Advance Pricing Agreements (APAs) in FY 2022-23 with Indian taxpayers. This includes 63 Unilateral APAs (UAPAs) and 32 Bilateral APAs (BAPAs). With this, the total number of APAs since inception of the APA programme has gone up to 516, comprising 420 UAPAs and 96 BAPAs.

The year has been a record-breaking year in several ways. This year, CBDT recorded the highest ever APA signings in any financial year since the launch of the APA programme, signing a total of 95 APAs. This year, CBDT also signed the maximum number of BAPAs in any financial year till date. The BAPAs were signed as a consequence of entering into Mutual Agreements with India's treaty partners namely Finland, the UK, the US, Denmark, Singapore, and Japan. A record of the largest number of single day signings in the history of the programme was also created with a total of 21 APAs signed on 24th March, 2023.

The APA Scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the arm's length price of international transactions in advance for a maximum of five future years. Further, the taxpayer has the option to roll back the APA for four preceding years, as a result of which, tax certainty is provided for nine years. The signing of bilateral APAs additionally provides the taxpayers with protection from any anticipated or actual double taxation.

The APA programme has contributed significantly to the Government of India's mission of promoting ease of doing business, especially for Multi National Enterprises (MNEs) which have a large number of cross-border transactions within their group entities. CBDT appreciates the taxpayers for their cooperative attitude and for being equal partners in this programme.

Indirect Tax

15% increase in GST Collection Year-on-Year (Y-o-Y)

27th March, 2023

There has been an increase of 15% in GST Collection in the month of December (FY 2022-23) as compared to the month of December (FY 2021-22). This was stated by the Union Minister of State for Finance Shri Pankaj Chaudhary in a written reply to a question in Lok Sabha today.

Also, the Minister stated, the monthly GST revenue is more than 1.4 lakh crore for 11 consecutive months in the FY 2022-23. The details of GST collection for FY 2022-23 are as under:

(in Rs. crore)

Month	2021-22	2022-23 (till Feb, 2023)
April	1,39,708	1,67,540
May	97,821	1,40,885
June	92,800	1,44,616
July	1,16,393	1,48,995
August	1,12,020	1,43,612
September	1,17,010	1,47,686
October	1,30,127	1,51,718
November	1,31,526	1,45,868
December	1,29,780	1,49,507
January	1,40,986	1,57,554
February	1,33,026	1,49,577

Customs duty full exemption for all imported drugs & Food for Special Medical Purposes for personal use for treatment of all Rare Diseases

30th March, 2023

The Central Government has given full exemption from basic customs duty on all drugs and Food for Special Medical Purposes imported for personal use for treatment of all Rare Diseases listed under the National Policy for Rare Diseases 2021 through a general exemption notification.

In order to avail this exemption, the individual importer has to produce a certificate from Central or State Director Health Services or District Medical Officer/Civil Surgeon of the district. Drugs/Medicines generally attract basic customs duty of 10%, while some categories of lifesaving drugs/vaccines attract concessional rate of 5% or Nil.

While exemptions have already been provided to specified drugs for treatment of Spinal Muscular Atrophy or Duchenne Muscular Dystrophy, the Government has been receiving many representations seeking customs duty relief for drugs and medicines used in treatment of other Rare Diseases. Drugs or Special Foods required for the treatment of these diseases are expensive and need to be imported. It is estimated that for a child weighing 10 kg, the annual cost of treatment for some rare diseases, may vary from ₹10 lakh to more than ₹1 crore per year with treatment being lifelong and drug dose and cost, increasing with age and weight.

This exemption will result in substantial cost savings and provide much needed relief to the patients.

The Government has also fully exempted Pembrolizumab (Keytruda) used in treatment of various cancers from basic customs duty.

Details may be read at:
https://static.pib.gov.in/WriteReadData/specificdocs/documents/2023/mar/doc2023330177401.pdf

NOTIFICATIONS & CIRCULARS

Indirect Tax

Notifications
Customs
Notification No. 21/2023-CUSTOMS
Dated 1st April 2023.

The Central Government notifies Regarding implementation of Advance Authorisation Scheme under Foreign Trade Policy, 2023

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, leviable thereon under sub-sections(1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions, namely:-

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(ii) that the said authorisation bears,-(a) the name and address of the importer and the supporting manufacturer in cases where the said authorisation has been issued to a merchant exporter; and (b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfilment of export obligation; or (c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;

(iii) that the materials imported correspond to the description and other specifications where applicable mentioned in the authorisation and are in terms of para 4.12 of the Foreign Trade Policy and the value and quantity thereof are within the limits specified in the said authorisation;

(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;

(v) that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2017or of CENVAT Credit under CENVAT Credit Rules, 2017has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:

Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2017;

(vi) that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2017or of CENVAT credit under CENVAT Credit Rules, 2017 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);

(vii) that in respect of imports made after the discharge of exports obligation in full, if facility of input tax credit under relevant Goods and Service Tax law on inputs used for manufacturer and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials, furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used;

Provided that if the importer pays integrated tax and the goods and services tax compensation cess leviable on the imported materials under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act on the imported materials but for the exemption contained herein, then such imported materials may be cleared without furnishing a bond specified in this condition;

(viii) that in respect of imports made after the discharge of export obligation in full, and if facility of input tax credit under relevant Goods and Service Tax law has not been availed on inputs used in the manufacture and supply of goods exported and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs, or the Assistant Commissioner of Customs, as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (vii);

(ix) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations as mentioned in the Table 2 annexed to the Notification No.26/2023-Customs dated1stApril, 2023ora Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005): Provided that the Commissioner of Customs may, by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other seaport, airport, inland container depot or through a land customs station within his jurisdiction;

(x) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation :Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05(c) (ii) of the Foreign Trade Policy; Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and service tax compensation cess leviable thereon under sub-section(7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1,2 and 3 of the Table contained in notification No. 48/2017-Central Tax, dated the 18thOctober, 2017 published, vide number G.S.R 1305(E), dated the 18thOctober, 2017;

(xi) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;

(xii) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold: Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant goods and services tax provisions permitting transfer of materials for job work; (xiii) that in relation to the said authorisation issued to a merchant exporter, any bond required to be executed by the importer in terms of this notification shall be executed jointly by the merchant exporter and the supporting manufacturer binding themselves jointly and severally to comply with the conditions specified in this notification.

2. Where the materials are found defective or unfit for use, the said materials may be re-exported back to the foreign supplier within six months from the date of clearance of the said material or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow: Provided that at the time of re-export the materials are identified to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, as the materials which were imported. Explanation,-For the purposes of this notification, -

(I) "dutiable goods" means excisable goods which are not exempt from central excise duty and which are not chargeable to 'nil' rate of central excise duty;

(II) "Foreign Trade Policy" means the Foreign Trade Policy, 2023, published by the Government of India inthe Ministry of Commerce and Industry, vide notification No. 01/2023, dated the 31st March,2023;

(III) "Regional Authority" means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorized by him to grant an authorisation under the said Act;

(IV) "Manufacture" has the same meaning as assigned to it in paragraph 11.31of the Foreign Trade Policy; (V) "Materials" means,-(a) raw materials, components, intermediates, consumables, catalysts and parts which are required for manufacture of resultant product; (b) mandatory spares within a value limit of ten per cent of the value of the authorisation which are required to be exported along with the resultant product; (c) fuel required for manufacture of resultant product; (d) packaging materials required for packing of resultant product;

(VI) "Specified Chartered Accountant" means a statutory auditor or a Chartered Accountant who certifies the importer's financial records under the Companies Act, 2013 (18 of 2013) or the Income Tax Act, 1961 (43 of 1961) or the Central/State Goods and Services Tax Act.

(VII) "Supply of taxable goods" means a supply of goods which is leviable to tax under relevant Goods and Services Tax law

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009694/ENG/Notifications

Notifications
Customs
Notification No. 22/2023-CUSTOMS
Dated 1st April 2023.

The Central Government notifies Regarding implementation of Advance Authorisation Scheme for deemed export under Foreign Trade Policy, 2023, 2023

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials required for the manufacture of the final goods when imported into India, from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as Customs Tariff Act) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon

under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, except specified in para 2 to this notification, subject to the following conditions, namely:-

(i) that the importer has been granted Advance Authorisation for deemed export by the Regional Authority in terms of paragraph 4.05(c)(iii) of the Foreign Trade Policy permitting import of the said materials (hereinafter referred to as the said authorisation); (ii) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit; (iii) that the said authorisation contains endorsements specifying, inter alia ,-(a) the description, quantity and value of materials allowed to be imported under the said authorisation; and (b) the description and quantity of final goods to be manufactured out of, or with, the imported materials: Provided that in respect of inputs referred in paragraphs 4.12(i) and 4.12(ii) of the Foreign Trade Policy, the material permitted to be imported in the said authorisation shall be of the specific name or description or quantity, respectively, as the material used in the manufacture of the final goods supplied. The said authorisation holder shall declare these particulars on the documents like ARE-3 and Central Excise Certified Invoice

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009695/ENG/Notifications

Notifications
Customs
Notification No. 23/2023-CUSTOMS
Dated 1st April 2023.

The Central Government notifies Regarding implementation of Advance Authorisation Scheme for annual requirement under Foreign Trade Policy, 2023, 2023

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India, against a valid Advance Authorisation for Annual Requirement (hereinafter referred to as the said Authorisation) with actual user condition issued by the Regional Authority in terms of Paragraph 4.07of the Foreign Trade Policy from the whole of the duty of customs leviable there on which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as Customs Tariff Act) and [from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section3, integrated tax leviable thereon under sub-section (7) of section 3, the goods and services tax compensation cess leviable thereon under sub-section (9) of section3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions, namely:-

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit of the quantity and value of imports;

(ii) that the said authorisation is issued with respect to Standard Input Output Norms (SION) fixed and bears,-

(a) the name and address of the importer and the supporting manufacturer in cases where the said authorisation has been issued to a merchant exporter; and

(b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfilment of export obligation; or

(c) the description, Cost Insurance Freight value and other specifications of the imported materials and the description, quantity and Free on Board value of exports of the resultant product covered under an export product group specified in the Hand Book of Procedures, in such cases where import takes place before fulfilment of export obligation: Provided that in respect of inputs referred in paragraphs 4.12(i) and 4.12(ii)of the Foreign Trade Policy, the material permitted to be imported in the said authorisation shall be of the specific name or description or quantity, respectively, as the material used in the export of the resultant product. The exporter shall declare these particulars in the shipping bill or bill of export: Provided further that in respect of the inputs specified in paragraph 4.44(b)of the

Hand Book of Procedures of the Foreign Trade Policy, the technical characteristics, quality and specifications shall be declared at the time of import and the material permitted in the said authorisation shall be of the same technical characteristics, quality and specifications as the materials used (or to be used) in the export of the resultant product: Provided also that the exporter shall give declaration with regard to the technical characteristics, quality and specifications of materials used in the export of resultant product, in the shipping bill/ bill of export;

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009696/ENG/Notifications

Notifications
Customs
Notification No. 24/2023-CUSTOMS
Dated 1st April 2023.

The Central Government notifies regarding implementation of Advance Authorisation Scheme for export of prohibited goods under Foreign Trade Policy, 2023.

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against an Advance Authorisation issued in terms of paragraph 4.03read with paragraph 4.18 (i) of the Foreign Trade Policy meant for export of a prohibited item in terms of paragraph 4.05 of the Handbook of Procedures (hereinafter referred to as the said authorization) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 to 1975) (hereinafter referred to as Customs Tariff Act) and from the whole of the additional duty, leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, the goods and services tax compensation cess leviable thereon under sub-section (9)of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions, namely :-

(i) that the said authorisation, issued by the Regional Authority, is produced before the proper officer of customs at the time of clearance for debit;

(ii) that the said authorisation bears the name and address of the importer, the description and other specifications of the imported material and the description, quantity and value of exports of the resultant product;

(iii) that the imported material corresponds to the description and other specifications, where applicable, mentioned in the said authorisation and the value and quantity thereof are within the limits specified in the said authorisation;

(iv) that the export is made subject to pre-import condition under notified Standard Input Output Norms (SION) or under prior fixation of norms in terms of Para 4.06 of Handbook of Procedures;

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009697/ENG/Notifications

Notifications
Customs
Notification No. 25/2023-CUSTOMS
Dated 1st April 2023

The Central Government notifies Regarding implementation of Duty Free Import Authorisation Scheme under Foreign Trade Policy, 2023

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Duty Free Import Authorisation issued by the Regional Authority in terms of paragraphs 4.24and 4.26of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), subject to the following conditions, namely :-

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(ii) that Standard Input Output Norms (SION) number, description, quantity and Free on Board value of the resultant product exported and the shipping bill number(s) and date(s) are endorsed on the said authorisation: Provided that the said SION does not prescribe the actual user condition; (iii) that the description and other specifications wherever applicable, value and quantity of materials imported are mentioned in the said authorisation and the value and quantity thereof are within the limits specified in the said authorisation: Provided that in respect of inputs referred in paragraphs 4.12(i) and 4.12(ii)of the Foreign Trade Policy, the material permitted to be imported in the said authorisation shall be of the specific name or description or quantity, respectively, as the material used in the export of the resultant product. The exporter shall declare these particulars of materials used in the shipping bill/ bill of export: Provided further that in respect of resultant products requiring inputs specified in paragraph 4.29 of the Foreign Trade Policy, the materials permitted in the said authorisation shall be of the same quality, technical characteristics and specifications as the materials used in the said resultant product. The exporter shall declare these particulars of materials used in the shipping bill or bill of export;

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009698/ENG/Notifications

Notifications
Customs
Notification No. 26/2023-CUSTOMS
Dated 1st April 2023.

The Central Government notifies Regarding implementation of EPCG Scheme under Foreign Trade Policy, 2023

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), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from, -

(i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act); and

(ii) the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, when specifically claimed by the importer;

(iii) the whole of integrated tax and the goods and services tax compensation cess leviable thereon under sub-sections (7) and (9) of section 3 of the Customs Tariff Act.

2. The exemption under this notification shall be subject to the following conditions, namely: -

(1) that the goods imported are covered by a valid authorisation issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty.

(2) that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within validity of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance:

Provided that the catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009699/ENG/Notifications

Notifications
Central Excise
Notification No. 14/2023- Central Excise
Dated 20th March 2023

The Central Government 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, Section3, Sub-section(i), vide number G.S.R.492 (E), dated the 30th June, 2022, namely

In the said notification, in the Table, -

(i) against S. No. 2, for the entry in column (4), the entry "Rs. 1 per litre" shall be substituted;

2. This notification shall come into force on the 21st day of March 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009668/ENG/Notifications.

Notifications
Central Excise
Notification No. 13/2023- Central Excise
Dated 20th March 2023

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.

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, Section3, Sub-section(i), vide number G.S.R.584 (E), dated the 19th July, 2022, namely

In the said notification, in the Table, -

(i) against S. No. 1, for the entry in column (4), the entry "Rs. 3,500 per tonne" shall be substituted;

2. This notification shall come into force on the 21st day of March 2023.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009667/ENG/Notifications

Circular
GST
Circular No. 191/03/2023-GST
Dated 27th March 2023

The Central government gives clarification regarding GST rate and classification of 'Rab' based on the recommendation of the GST Council in its 49thmeeting held on 18thFebruary, 2023 –reg

Based on the recommendation of the GST council in its 49thmeeting, held on 18thFebruary, 2023, with effect from the 1stMarch, 2023, 5% GST rate has been notified on Rab, when sold in pre-packaged and labelled, and Nil GST, when sold in other than pre-packaged and labelled.

2. Further, as per the recommendation of the GST Council in the above-said meeting, in view of the prevailing divergent interpretations and genuine doubts regarding the applicability of GST rate on Rab, the issue for past period is hereby regularized on "as is" basis.

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

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1003155/ENG/Circulars

Notifications
Customs
Notification No. 18/2023- Customs
Dated 29th March 2023

The Central Government Seeks to amend notification 8/2020-Customs, dated 02.02.2020 to continue/provide health cess exemption on import of goods for use in the manufacture of X-ray machines

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)read with section 141 of Finance Act, 2020 (12 of 2020), 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), 8/2020-Customs, dated 2nd February, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 68(E), dated 2nd February, 2020 namely :-

In the said notification, in the Table

(i) against Sl. No. 3, in column (2), the figures "564A,564B,564C" shall be omitted;

(ii) after Sl.No. 3and the entries relating thereto, the following Sl.No. and entries shall be inserted, namely:

"4	The following goods for use in the manufacture of X-ray machines (heading 9022 14 20 or 9022 14 90), namely: - (a) Static User Interface (9018 90 99); (b) X-Ray Diagnostic Table (9022 90 40); (c) Vertical Bucky (9022 90 90); (d) X-Ray Tube Suspension (9022 90 90); (e) High Frequency X-Ray Generator (>25KHz, <500 mA) (9022 14 10); (f) X-Ray Grid (9022 90 90); (g) Multi Leaf Collimator/ Iris (9022 29 00 or 9022 90 90) (h) Medical Grade Monitor (8528 59 00); (i) Flat Panel Detector, including Scintillators (9022 90 90); (j) X-ray Tube (9022 30 00): Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022."

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009671/ENG/Notifications

Notifications
Customs
Notification No. 19/2023- Customs (N. T.)
Dated 30th March 2023

The Central Government Seeks to make amendment of Notification 19 of 2022 Customs NT dated 30.03.2022

S.O. (E). —In exercise of the powers conferred by sub-section (4) of section 51A of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs, on being satisfied that it is necessary and expedient to do so, hereby makes the following further amendments to the notification No.19/2022-Customs (N.T.) dated the 30th March 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. 1512 (E), dated the 30th March, 2022, namely, -

a. In the said notification, in para 1(III), after the words, `used for making`, the word `electronic` shall be inserted;

b. In the said notification, in para 2, for the words, `1st April, 2023`, the words `1st May, 2023` shall be substituted.

For more information, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009673/ENG/Notifications

Notifications
Customs
Notification No. 18/2023- Customs (N. T.)
Dated 30th March 2023

The Central Government Seeks to make amendment of Notification 19 of 2022 Customs NT dated 30.03.2022

S.O.....(E).-In exercise of the powers conferred by sub-section (4) of section 51A of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs on being satisfied that it is necessary and expedient so to do, hereby exempts the deposits,-

I. with respect to goods imported or exported in customs stations where customs automated system is not in place;

II. with respect to goods imported or exported in International Courier Terminals;

III. with respect to accompanied baggage;

IV. other than those used for making electronic payment of, -

a. any duty of customs, including cesses and surcharges levied as duties of customs;

b. integrated tax;

c. Goods and Service Tax Compensation Cess;

d. interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975 (51 of 1975),

from all of the provisions of section 51A of the said Act.

2. This notification shall come into effect from the 1stApril, 2023 and shall be effective till the 30th April, 2023

For more details, please follow,
https://taxinformation.cbic.gov.in/view-pdf/1009672/ENG/Notifications

Notifications
Central Tax
Notification No. 02/2023-Central Tax
Dated 31st March 2023.

The Central Government provides amnesty to GSTR-4 non-filers

G.S.R.....(E).—In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 73/2017–Central Tax, dated the 29th December, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R. 1600(E), dated the 29th December, 2017, namely:—In the said notification, after the sixth proviso, the following proviso shall be inserted, namely: —"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023."

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009685/ENG/Notifications

Notifications
Central Tax
Notification No. 03/2023-Central Tax
Dated 31st March 2023.

The Central Government provides extension of time limit for application for revocation of cancellation of registration.

G.S.R.....(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (here in after referred to as the said Act), the Central Government, on the recommendations of the Council, here by notifies that the registered person, whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act on or before the 31st day of December, 2022, and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely:–

(a) the registered person may apply for revocation of cancellation of such registration up to the 30th day of June, 2023;

(b) the application for revocation shall be filed only after furnishing the returns due up to the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount pay able towards interest, penalty and late fee in respect of the such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases. Explanation: For the purposes of this notification, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act

includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009684/ENG/Notifications

Notifications
Central Tax
Notification No. 04/2023-Central Tax
Dated 31st March 2023.

The Central Government makes amendment in CGST Rules.

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 (Amendment) Rules, 2023.

(2) They shall be deemed to have come into force from the 26th day of December, 2022.

2. In the Central Goods and Services Tax Rules, 2017 in rule 8,-

(i) for sub-rule (4A), the following sub-rule shall be substituted, namely:-"(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier. Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.";

(ii) in sub-rule (4B), for and words, "provisions of", the words "proviso to", shall be substituted

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009686/ENG/Notifications

Notifications
Central Tax
Notification No. 05/2023-Central Tax
Dated 31st March 2023.

The Central Government Seeks to amend Notification No. 27/2022 dated 26.12.2022.

G.S.R....(E).—In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India, the Ministry of Finance (Department of Revenue) No. 27/2022-Central Tax, dated the 26th December, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R. 903(E), dated the 26thDecember, 2022, namely:

In the said notification, for the words, "provisions of", the words "proviso to" shall be substituted.

2.They shall be deemed to have come into force from the 26th day of December, 2022

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009687/ENG/Notifications.

Notifications
Central Tax
Notification No. 06/2023-Central Tax

Dated 31st March 2023.

The Central Government provides Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62.

S.O.....(E). In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (here in after referred to as the said Act), the Central Government, on the recommendations of the Council, here by notifies that the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28 th day of February, 2023 under sub section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,

(i) the registered persons shall furnish the said return on or before the 30th day of June 2023;

(ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act, irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided.

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009688/ENG/Notifications

Notifications
Central Tax
Notification No. 07/2023-Central Tax
Dated 31st March 2023.

The Central Government rationalise late fee for GSTR-9 and Amnesty to GSTR-9 non-filers

S.O.....(E).–In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017(12 of 2017) (here in after referred to as the said Act), the Central Government, on the recommendations of the Council, here by waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount as specified in Column (3) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (2) of the Table below, who fails to furnish the return by the due date, namely:—

Table

Serial No.	Class of registered person	Amount
(1)	(2)	(3)
1.	Registered persons having an aggregate turnover of upto five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 percent. Of turnover in the State or Union territory
2.	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. Of turnover in the State or Union territory

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

For more details, please visit
https://taxinformation.cbic.gov.in/view-pdf/1009689/ENG/Notifications

Notifications
Central Tax
Notification No. 08/2023-Central Tax
Dated 31st March 2023.

The Central Government rationalise late fee for GSTR-9 and Amnesty to GSTR-9 non-filers

S.O.....(E).—In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the Act, which is in excess of

five hundred rupees for the registered persons who fail to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023

For more details, please follow,
https://taxinformation.cbic.gov.in/view-pdf/1009690/ENG/Notifications

Notifications
Central Tax
Notification No. 09/2023-Central Tax
Dated 31st March 2023.

The Central Government makes
Extension of limitation under Section 168A of CGST Act

S.O.....(E).–In exercise of the powers conferred by section 168 A of the Central Goods and Services Tax Act, 2017 (12 of 2017)(here in after referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017),and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No.35/2020 Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235 (E), dated the 3rd April, 2020 and No.14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (i), vide number G.S.R.310 (E),dated the 1st May, 2021 and No.13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (i), vide number G.S.R. 516 (E), dated the 5th July, 2022, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:–

(i) for the financial year 2017-18, up to the 31st day of December, 2023;

(ii) for the financial year 2018-19, up to the 31st day of March, 2024;

(iii) for the financial year 2019-20, upto the 30th day of June, 2024.

For more details, please follow
https://taxinformation.cbic.gov.in/view-pdf/1009691/ENG/Notifications

JUDGEMENT INDIRECT TAX

Dept. can't seek NOC from any authority for moving application for revocation of cancellation of registration: HC

Facts of the case : Spinns International v. Principal Commissioner of Goods and Service Tax - [2023] (Delhi)

The department issued a show cause notice (SCN) proposing to cancel the petitioner's registration. In the SCN, it was stated that "Non-compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed". The petitioner didn't reply as SCN didn't mention any allegation and the registration was cancelled.

It filed revocation application for restoring cancelled registration but the department asked for a proper NOC (No Objection Certificate) from Anti-Evasion Head-Quarter to proceed with revocation application. It filed writ petition before the High Court.

Decision of the case :

- The Honorable High Court noted that the SCN was issued proposing cancellation of registration on ground of non-compliance of provisions but failed to specify any allegation which would be capable of being responded to. The impugned SCN was bereft of any reasons and issued in a mechanical manner without application of mind. Thus, the impugned SCN can't be considered as a SCN at all.

- Moreover, the Court also noted that there is no statutory provision requiring taxpayer to seek NOC from any authority for moving application for revocation of cancellation of registration. Thus, it was held that the impugned SCN and order cancelling registration were liable to be set aside and petition was allowed.

Bail to be granted to accused as amount alleged as tax evaded has been deposited & investigation is completed: HC

Facts of the case - Vikas Bajoria v. Union of India - [2023] 148 taxmann.com 282 (Rajasthan)

The petitioner was arrested for alleged tax evasion to the tune of Rs.43.93 crores. It filed application for bail and submitted that he was falsely implicated. It was also contended that the alleged offence is compoundable whose maximum sentence awardable is five years and the entire amount alleged as tax evaded has already been deposited.

Decision of the case :

- The Honorable High Court noted that the petitioner was under custody since 08.11.2022 and investigation against him was complete. The department also submitted that the entire amount of alleged tax evasion to the tune of Rs.43.93 crores has already been deposited and charge sheet would be filed shortly. Therefore, the Court held that the application was allowed and bail to be granted on furnishing a personal bond in the sum of Rs. 1,00,000/- together with two sureties in the sum of Rs.50,000/- each to the satisfaction of the trial court.

Writ petition against show cause notice seeking reversal of input tax credit is pre-mature: HC

Facts of the case : S. Kaja Mohideen v. Commissioner of GST & Central Excise - [2023] (Madras)

The petitioner received a show cause notice seeking reversal of input tax credit on ground that the same was availed wrongly. It submitted reply to the notice and filed writ petition against the notice by contending that it had not committed any irregularity.

Decision of the case :

- The Honorable High court noted that a show cause notice can be challenged only if the same is issued without Authority under Law or has been issued without jurisdiction or has predetermined the issue.

In the instant case, none of the above mentioned requirements had been satisfied.

- This petition would be considered as premature since the petitioner had approached High Court before final order was passed. Therefore, the Court dismissed the petition and directed the petitioner to appear before Authority and the Authority was also directed to grant one more opportunity of personal hearing.

Cancellation of registration is not sustainable if show cause notice and order are vague and without reasons: HC

Facts of the case : Gigamade Machineries (P.) Ltd. v. State of Gujarat - [2023] (Gujarat)

The department issued a show cause notice (SCN) for cancellation of registration to the petitioner and stated that "Taxpayer found non-functioning / not existing at the principal place of business". In reply to the said show-cause notice, the petitioner specifically stated that the notice didn't give any reasons for initiating process of cancellation of GST registration of the petitioner.

However, the registration was cancelled and the order of cancellation did not record any reasons for cancellation of GST registration. It filed writ petition against the order.

Decision of the case :

- The Honorable High Court noted that the Authority should have at least referred to contents of notice and response by petitioner. In the instant case, the reasons for initiating process of cancellation were not mentioned in SCN. Moreover, the SCN was vague, bereft of any material particulars and impugned order was also vague and not a speaking order.

- Therefore, the principles of natural justice were violated as registration had been cancelled without adducing proper reason. Thus, it was held that the impugned SCN and order were to be set aside and the Authority was at liberty to issue fresh notice for cancellation of registration.

Registration can't be cancelled solely on ground that reply to SCN was not given without assigning any reason: HC

Facts of the case : Jai Bahadur Singh v. State of U.P. - [2023] (Allahabad)

The petitioner was engaged in the business of civil work contract and was registered under GST Act. A show cause notice was issued proposing cancellation of registration which was not replied by the petitioner. It could not submit the reply within the stipulated time and an order came to be passed whereby registration of the petitioner was cancelled.

Against the said order, the petitioner filed an appeal which was dismissed by the appellate authority on the ground of delay. It filed writ petition against the order of cancellation of registration and contended that the Order-in-Original was passed on ground that reply to SCN was not given.

Decision of the case :

- The Honorable High Court noted that the non-submission of reply to SCN can't be a ground for cancellation of registration. In the instant case, registration was cancelled without assigning any reasons solely on ground that reply to SCN was not given. The order cancelling registration or any other order passed bereft of any reason and without application of mind does not stand test of scrutiny under Article 14 of Constitution of India. Therefore, it was held that the order-in-original and order-in-appeal was to be set aside and the authority was directed to consider the issue afresh.

Opportunity of personal hearing is mandatory before passing adverse order creating huge liability: HC

Facts of the case : Mohan Agencies v. State of U.P. - [2023] (Allahabad)

The petitioner received a notice seeking his reply within 30 days. It submitted reply and an adverse order was passed. In the impugned order demand in excess to Rs. 10 crores was raised against the petitioner. It filed writ petition to challenge the adjudication order on the ground that the opportunity of hearing was not granted.

The Revenue contended that the petitioner was denied

opportunity of hearing because it had tick marked the option 'No' against the option for personal hearing.

Decision of the case :

- The Honorable High Court noted that this Court has already laid down by way of principle of law that assessee is not required to request for opportunity of personal hearing and it is mandatory for the authority to afford such opportunity before passing an adverse order. The Court also noted that marking of "NA" would be of no legal consequence and minimal opportunity of hearing shall be necessary as this opportunity would ensure observation of natural justice.

- In the instant case, the order created huge liability and such opportunity would have ensured that authority shall pass appropriate order and allow better appreciation at appellate stage. Therefore, the Court held that the impugned order was to be set aside and matter was remitted to Adjudicating Authority to issue fresh notice.

Authorities rightly passed order of seizure of goods as assessee used expired E-way bill and evaded tax: HC

Facts of case : Ayann Traders v. State of U.P - [2023] (Allahabad)

The petitioner had sold 300 bags of Pan Masala to a dealer at Meghalaya. During inspection, it was found that expired e-way bill was carried by the truck owner. The goods were detained and seized on the ground of tax evasion by using expired e-way bill.

It filed appeal and submitted that the goods were handed over to transporter for transporting same to Meghalaya through truck and E-waybill was generated on same day. However, due to some reasons truck was made available to petitioner after few days for transportation. The Appellate Authority dismissed the appeal by taking note that the E-way Bill should have been cancelled once the goods were not dispatched on the same day. It filed writ petition against the order.

Decision of the case :

- The Honorable High Court observed that if movement had not been commenced on same day when e-way bill was generated, then the said e-way bill should be cancelled electronically as per Rule 138(9) of CGST Rules, 2017. The toll receipts clearly showed that petitioner had waited 10 long days and did not cancel said E-way bill and had evaded tax by using same documents for multiple trips. Therefore, it was held that the concerned authorities had rightly passed an order of seizure of goods and the petition was dismissed.

Authority is not required to appreciate reasons for movement of vehicle without valid e-way bill: HC

Facts of the case : Abinash Kumar Singh v. State of West Bengal - [2023] 148 taxmann.com 393 (Calcutta)

The petitioner was transporting goods against an e-way bill and the department imposed penalty for transporting goods with expired e-way bill. It filed writ petition against levy of penalty and contended that vehicle was kept waiting deliberately at check post and gate pass was not issued permitted on time. The e-way bill got expired, by the time, vehicle was ultimately issued gate pass.

Decision of the case :

The Honorable High Court noted that the detention of goods without valid documents is permissible in law. There is no scope to dilute the provision of law for granting relief to an errant transporter. If goods can't be transported within time then there is provision for extending validity period after uploading the details in the portal.

The Court also noted that it is the duty of the owner/transporter/consignor/consignee to keep track of the consignment and do the needful for transporting the goods in accordance with law. However, the Authority is not required to appreciate reasons for movement of vehicle without valid e-way bill. Therefore, the Court held that no relief can be granted to the petitioner in the instant case and the writ petition was dismissed.

Assessment order passed without hearing opportunity to be quashed for violation of principles of natural justice: HC

Facts of the case : Sendhil Kumar v. State Tax Officer - [2023] (Madras)

The petitioner filed writ petition to challenge the assessment order issued by the Adjudicating Authority on the ground that no personal hearing was afforded to the petitioner in the impugned assessment proceedings. It was contended that as per Section 75 (4) of the CGST Act, 2017, personal hearing ought to have been afforded to the petitioner since an adverse decision had been taken by the Authority.

Decision of the case :

- The Honorable High Court noted that Section 75 (4) of CGST Act, 2017 specifically requires grant of hearing opportunity where adverse decision contemplated against assessee. In the instant case, the impugned order imposed tax liability as well as penalty on the petitioner. However, no personal hearing was afforded to petitioner in impugned assessment proceedings.

- Therefore, it was held that the impugned assessment order was to be quashed on ground of violation of principles of natural justice and matter remanded for fresh consideration on merits and in accordance with law.

Summary Notice under DRC-01 is not a substitute for proper SCN required to be issued under Section 74: HC

Facts of the case : Sidhi Vinayak Enterprises v. State of Jharkhand - [2023] (Jharkhand)

The department conducted search in the premises of the petitioner for irregular availment of ITC. Pursuant to search conducted by department, two summary of show cause notice in Form DRC-01 were issued. The petitioner submitted reply but the reply was rejected and summary of order was issued imposing tax and penalty.

It filed writ petition against the notice & order and contended that both show cause notice as well as summary have to be issued. The department submitted that the petitioner participated in the proceedings by furnishing a reply in Form GST DRC-06 and therefore, there was no denial of principles of natural justice.

Decision of the case :

- The Honorable High Court noted that even though petitioner submitted reply, the department can't take benefit of said action as summary of show cause notice can't be considered as show cause notice as mandated under section 74(1). In the instant case, the proceeding suffered from material irregularity and hence not sustainable being contrary to section 74(1) and subsequent proceedings/ impugned orders cannot sanctify same. Therefore, it was held that the summary of show cause notices issued in Form GST DRC-01 as well as impugned orders were liable to be quashed. TB

JUDGEMENT
DIRECT TAX

Assessee's jurisdiction remains where he moved business unless requirement of sec. 124(3) is complied with: HC

Facts of the case : Biswajaya Dagara v. ACIT - [2023] 148 taxmann.com 18 (Orissa)

Assessee-petitioner carried out business activities from Bhubaneswar, Odisha and filed returns for several assessment years from Bhubaneswar. From AY 2011-12 onwards, he was filing return from Kolkata. Later, he received notices from ACIT, Balasore Circle, Balasore. In response, the assessee objected regarding the jurisdiction to Balasore and prayed to transfer the case to Kolkata.

Even after such objection, the jurisdiction remained in Balasore as the Competent Authority believed the assessee was a company's director assessed in the Balasore Circle.

Aggrieved by the order, a writ petition was filed to the Orissa High Court.

Decision of the case :

- The Court held that merely because the assessee was a director of a company assessed in the Balasore Circle would not automatically transfer the jurisdiction of the Petitioner from Kolkata to Balasore. The transfer of jurisdiction could not occur without complying with the mandatory requirement of section 124(3) of the IT Act.

- Section 124 speaks of a vested right of an assessee to have his assessment made at the principal place of his business and in the case of any objection relating thereto, to have the same determined at the hands of a high authority like the Commissioner.

- The Department did not provide a convincing explanation for transferring the jurisdiction to the Balasore Circle, especially when the petitioner had already relocated to Kolkata and submitted tax returns from there.

Therefore, the petitioner will remain within the jurisdiction of the relevant Income-tax Circle at Kolkata where he had been filing his returns. This order would not preclude the Department from proceeding in accordance with the law if it proposed to transfer the jurisdiction of the petitioner to any other circle.

HC rejected condonation of delay requested on ground that NR wasn't aware about due dates for filing returns in India

Facts of the case : Puneet Rastogi v. PCIT - [2023] (Delhi)

Assessee-individual, a non-resident, failed to file its return of income for the relevant assessment year. Even though the return of income for the earlier assessment year was filed a few years back, it contended that he was unaware of the due date or the process for filing the return of income. Subsequently, the assessee filed an application to condone the delay in filing the return of income and grant claim for refund, but the request was denied.

Aggrieved-assessee filed a writ petition to the Delhi High Court against such rejection.

Decision of the case :

- The Delhi High Court held that ignorance of the law is not an excuse. Also, the assessee filed its return of income for the earlier assessment year within the time limit, implying that the assessee was aware of the process of filing the return of income. Therefore, it is seen that there is no genuine hardship or reasonable cause for the late filing of the return.

- Thus, there had been no violation of the principles of natural justice, and ultimately the plea was dismissed.

No TP additions if shift from floating to fixed interest rate was to protect business from adverse floating rates

Facts of the case : BG Exploraton & Production India Ltd. v. DCIT, DDIT/ADIT (International Taxation) - [2023] (Delhi - Trib.)

Assessee-company, engaged in the business of prospecting for, or extraction of or production of mineral oils. Assessee took an unsecured foreign currency loan from its Associate Enterprise (AE) at an interest rate of London Inter-Bank Offer Rate ("LIBOR") plus 2 percent per annum payable annually. After a few years, concerning the significant variations in the global interest rates, AE and the assessee agreed to migrate from a floating interest rate to a fixed interest rate. The agreed rates were in line with those quoted by independent enterprises (bank quotation).

However, the Transfer Pricing Officer (TPO) rejected the interest rates adopted by the assessee, carried out fresh search and arrived at a set of comparable rate of interests. The TPO then made additions to the income in accordance with the differential amount of interest.

The matter reached the Delhi Tribunal.

Decision of the case :

- The Tribunal held that the assessee gave a detailed rationale behind its decision to shift from a floating rate of interest regime to a fixed rate of interest, i.e., it reduces the risk of changes in the interest rates.

- It is a well-settled proposition of law that TPO is not supposed to question the business decision of the assessee. The assessee gave ample reasons for its business decision, even stating that most of the reported loans in that period had a fixed rate of interest clause. Therefore, the decision to shift from the floating rate was based on commercial considerations and to protect the business operations. Only a businessman can decide such a proposition, and it is beyond the TPO's authority to question the wisdom of the assessee.

- Further, such an issue was settled by the orders of the Tribunal in the case of the assessee for all the earlier years. Thus, in the absence of any change in the facts of the case and legal proposition, the Tribunal remitted the case back to the TPO for benchmarking of the interest as per the similar directions of the Tribunal.

Depreciation can't be disallowed if business assets are kept ready for use as assessee waiting for favorable market situation

Facts of the case : Sambhav Energy Ltd. v. ACIT - [2023] (Jodhpur - Trib.)

Assessee-company engaged in the business of generation and sale of electricity. While filing the return of income, assessee claimed depreciation on the business assets. During the assessment proceedings, the Assessing Officer (AO) noticed that the assessee had not carried out any business activity in the relevant assessment year.

In response, assessee submitted that it had stopped business activity since the production became unviable as the sale price was less than its manufacturing cost. Considering that the assessee had no intention to carry on the business activity, AO disallowed the depreciation claim and made additions to the income of assessee.

On appeal, the CIT(A) confirmed the additions made by the AO, and the matter reached Jodhpur Tribunal.

Decision of the case :

- The Tribunal held that the assessee had not completely stopped the business as presumed by the tax authorities. Though the AO stated that the assessee did not start business activities in the subsequent years also, it was not shown that the electricity generation business was completely abandoned.

- In the instant case, the assessee kept the assets ready for use, and it was expecting only a favourable market situation. Assessee may revive its business when the market position turns favourable. Further, the business establishment was properly maintained, and it was generating other types of income. Therefore, the additions made by the AO were deleted.

AO can't levy penalty in absence of jurisdictional fact that assessee accepted cash loan from wife: ITAT

Facts of the case : ITO v. Sudhir Kumar Rawat - [2023] (Jabalpur - Trib.)

Assessee, an individual, was show-caused for levy of

penalty for violation of Section 269SS for receiving around Rs. 15 Lakhs in cash from his wife. In response, the assessee replied that his wife sold a property during the relevant assessment year, and the buyer deposited the purchase consideration in his account. This money was then returned to her by the assessee as the same belonged to her.

Further, the assessee demonstrated that he and his wife maintained books of accounts and that the corresponding debit and credit transactions in the books of accounts were not in relation to any loan or deposit of money. However, contending it as a violation of Section 269SS, the Assessing Officer (AO) levied a penalty under section 271D.

On appeal, CIT(A) cancelled the penalty order, and the matter then reached the Jabalpur Tribunal.

Decision of the case :

- The Tribunal held that the entire payment was only in satisfaction of the amount standing to the credit of the assessee's wife, who was only receiving back her money from the assessee. It may attract penalty under section 271E for contravention of section 269T, but there was no question of contravention of section 269SS.

- The penalty levied under section 271D was unsustainable in law due to the absence of jurisdictional fact i.e., the acceptance of money in cash by the assessee from his wife. The ledger accounts of the assessee and his wife reveal that the assessee had paid that amount in cash to his wife, and, further, it was the only cash transaction between the two.

- Incorrectly mentioning a section of law does not necessarily invalidate the judicial action if the authority has the power to take such action. However, if the incorrect section was mentioned and the underlying facts do not support the intended action, then the action is invalid.

- For instance, if an assessee received cash from their spouse, which should attract a penalty under section 271D, but the authority mentioned section 271E incorrectly, the action would still be valid as long as the facts support the intended action.

- Accordingly, the penalty under section 271D cannot be imposed without the proper jurisdiction. However, the AO was at liberty to initiate penalty under section 271E.

Assessee eligible for Sec. 54F relief if second house occupied by him is situated in foreign country: ITAT

Facts of the case : Smt. Maries Joseph v. DCIT - [2023] (Cochin - Trib.)

Assessee, a non-resident, filed its return of income for the relevant assessment year. During the relevant assessment year, the assessee sold land she jointly held with her husband. He made an investment in a residential property for claiming exemption under section 54F. During the scrutiny proceedings, the Assessing Officer (AO) disallowed claim for deduction under section 54F based on the fact that assessee owned two residential houses in USA.

On appeal, the CIT(A) affirmed the deletions by AO. Aggrieved by the order, assessee preferred an instant appeal to the Cochin Tribunal.

Decision of the case :

- The Tribunal held that the exemption under section 54F is available with respect to a residential house property provided the assessee does not own more than one residential house other than the new asset but does not explicitly say whether in India or abroad. The Finance (No. 2) Act, 2014 amended the section 54F to bring in clarity that the deduction is allowable only if the investment in the new residential house is made in India and not abroad.

- Section 54F to the assessee is a benefit which is granted towards making an investment, whereas what is contained in the proviso is a condition/ restriction towards existing ownership of the asset and, therefore, it cannot be categorically said that the same interpretation should be applied to both.

- It is important that a proviso must be construed harmoniously with the main statute to give effect to the legislative objective, and the section should be read as a whole inclusive of the proviso in such a manner that they mutually throw light on each

other and result in a harmonious construction. The legislative intent behind granting relief to the assessee through section 54F is investments in a residential house in India. Therefore, the proviso imposing the conditions cannot be read in isolation and should be construed harmoniously with the main section.

- Accordingly, the condition that the deduction is not available if the assessee owns more than one residential house other than the new asset should be interpreted to mean ownership of residential houses in India. Therefore, the ground on which the deduction under section 54F was denied that the assessee owns two residential houses in the USA was not tenable.

Assessee can raise jurisdictional issue in misc. petition filed before ITAT even if matter travelled to HC: ITAT

Facts of the case : YCH Logistics (India) (P.) Ltd. v. Deputy Commissioner of Income-tax - [2023] (Chennai - Trib.)

Assessee, a private limited company engaged in providing services related to logistics, filed its return of income for the relevant assessment year. Since the assessee was involved in an international transaction with Associate Enterprises, the matter was referred to the Transfer Pricing Officer (TPO).

Later, Assessing Officer (AO), along with the draft assessment order, passed the final assessment order by raising demand under section 156 and also initiated penalty proceedings. On appeal, the Tribunal partly allowed assessee's appeal. Assessee moved miscellaneous petition before the Tribunal.

The assessee also challenged the order of the Tribunal before the High Court, wherein the High Court recalled the issue of claim of deduction under section 10AA and sustained the miscellaneous petition order where the Tribunal had already recalled the issue of TP adjustment for fresh adjudication.

In the instant appeal, the assessee had filed additional grounds on the issue of jurisdiction of AO in framing the final assessment order. Department contended that once the matter travelled up to the High Court and the assessee had not raised the issue of jurisdiction either before the Tribunal or before the High Court, the assessee was totally precluded from raising the jurisdictional issue now after almost 10 years.

Decision of the case :

- The Tribunal held that once High Court had set aside the original order of the Tribunal and also confirmed the order passed by the Tribunal in the miscellaneous petition, the appeal before the Tribunal becomes alive and pending from the date of inception, i.e., from the date of filing of the appeal.

- Further, the jurisdictional provision enacted in public interest could never be waived and is always open to challenge even if the issue has not been raised in the first round. It is always open to question or challenge the jurisdictional proceedings as long as the matter has not reached finality.

CIT(E) doesn't have authority to condone any delay in submitting application for approval u/s 10(23C)(vi): ITAT

Facts of the case : Manav Rachana Education Society v. CIT(E) - [2023] (Raipur - Trib.)

Assessee, a society established to impart education, applied belatedly to the Commissioner of Income-Tax (Exemption) for grant of approval under Sec. 10(23C)(vi). CIT(E) rejected the application on the ground that assessee filed the such application after the prescribed time limit. Pursuant to such rejection, the assessee was unable to apply for approval under section 10(23C)(vi) for the subsequent years.

Aggrieved by the order, assessee preferred an appeal to the Raipur Tribunal and requested that the delay in filing the application to be condoned. Assessee also requested that application for Sec. 10(23C) exemption shall be considered as an application for the next assessment year 2019-20 and onwards.

Decision of the case :

- The Tribunal held that the request of the assessee that the delay involved in filing the application for approval be condoned, the same could not be accepted in accordance with the mandate of law.

- The assessee filed the application for approval under section 10(23C)(vi) on 25-4-2019 for the assessment year 2018-19; it was required to be filed by 30-9-2018 as per the sixteenth proviso to section 10(23C). The Commissioner had no authority under the Act to pardon the delay in filing the application.

- Since the Commissioner was not vested with any power to condone the delay involved in filing the application, he had rightly rejected the application.

- Further, the assessee's application for approval under section 10(23C)(vi) for the assessment year 2018-19 was pending until 30-9-2020, which meant they couldn't apply for the subsequent assessment year 2019-20. The matter was remanded to the Commissioner with directions to consider the same application for the subsequent assessment year 2019-20 and beyond.

ITAT refused sec. 54F relief to assessee with multiple houses as he didn't prove that those were commercially rented

Facts of the case : Surendra Babu Sabbineni v. DCIT - [2023] (Hyderabad - Trib.)

Assessee, an individual, filed its return of income for the relevant assessment year. A search operation was conducted, and a revised return of income declaring capital gains was filed. The Assessing Officer (AO) completed the assessment proceedings by allowing the claim under section 54F with respect to such capital gains.

Subsequently, the Principal Commissioner of Income Tax (Pr. CIT) noticed that the assessee owned more than one residential house property at the time of transfer of such capital asset. The AO allowed the deduction claim under section 54F without proper verification of the facts and ordered AO to investigate the case.

Assessee contended that these properties were let out for commercial use and, therefore, did not fall under the purview of a residential unit. Dissatisfied by the assessee's reply, AO disallowed the deduction claimed under section 54F and computed the income accordingly.

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

Decision of the case :

- The Tribunal held that there was no merit in the assessee's contention that all the properties were let out for commercial use and, therefore, did not fall under the purview of a residential unit. As per the details furnished with respect to such properties, although the properties were let out, all these properties are situated in residential societies. The assessee could not prove with evidence that these properties were, in fact, used for commercial purposes.

- Further, it was observed that the assessee could not prove that the local authorities were charging taxes on the said properties as applicable to commercial properties. In addition, the assessee furnished no evidence to support the claim that the Electricity Department was charging electricity for the said flats at commercial rates.

- Since the evidence was insufficient to support the claim, the CIT(A) rightly upheld order AO disallowing Section 54F's claim to the assessee.

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.

Tax Calendar

Indirect tax

Returns	Due Date
GSTR-7 (Mar 2023)	April 10, 2023
GSTR-8 (Mar 2023)	April 10, 2023
GSTR-1 (Mar 2023, (turnover > Rs. 5Cr or opted to file monthly Return)	April 11, 2023
GSTR 1 - (Taxpayer Opt QRMP Sch) – Quarterly (Jan 2023)	April 13, 2023
GSTR-5 – (Monthly filing by Non Resident Taxable Persons) (March 2023)	April 13, 2023
Monthly filing of GSTR-6 - By Input Service Distributor (March 2023)	April 13, 2023
RFD-10	18 Months after the end of quarter for which refund is to be claimed

Tax Calendar

Direct tax

Due Dates	Returns
7 April 2023	Due date for deposit of Tax deducted by an office of the government for the month of March, 2023. However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
14 April 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of February, 2023
14 April 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of February, 2023
14 April 2023	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of February, 2023
14 April 2023	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of February, 2023 Note: Applicable in case of specified person as mentioned under section 194S
15 April 2023	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March, 2023
15 April 2023	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2023

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

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

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

Notes

Notes

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

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