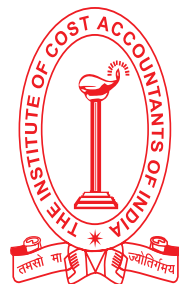




June, 2023

TAX Bulletin

Volume - 138
17.06.2023



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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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.”

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“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:

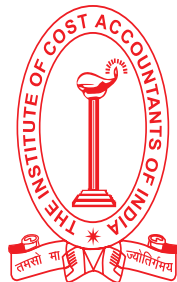
1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to 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 Taxes has brought an important modification in the advance ruling scheme known as e-advance rulings (Amendment) Scheme. Two new points has been substituted namely “(iv) the Board for Advance Rulings shall, after considering the response as referred to in clause (iii), and after providing an opportunity of being heard (through video conferencing or video telephony) under subsection (5) of section 245R of the Act on the request of the applicant, subject to the provisions of clause (v), if applicable, pronounce the advance ruling on the question specified in the application and send a copy thereof to the applicant and the authority to whom the reference has been made; (v) if the Members of a Board for Advance Rulings differ in opinion on any point or points, the Board for Advance Rulings shall refer such point or points to the Principal Chief Commissioner of Income-tax (International Taxation), who shall nominate one Member from any other Board for Advance Rulings and such point or points shall be decided according to the opinion of the majority of the Members.” The changes have been made keeping in mind to bring transparency in the advance ruling decisions. The department of revenue has also brought out FORM No. 34C, form of application by a non-resident applicant for obtaining an advance ruling under section 245Q(1) of the Income-tax Act, 1961. The form was released by making ninth amendment to the Income tax rule 2023 dated June 12, 2023.

The government has also notified the cost of inflation index for the financial year 2023 - 2024. The CII stand as “348” as against “331” for financial year 2022-2023.

Classes for the following Courses of the Tax Research Department have been concluded during the month. This is significant to note that some of the courses are running for more than 10 batches which shows the popularity of the courses and assures us about the quality of the courses conducted by the Department. The exam for the said batches are schedule on August 20, 2023. The admission process for the next batches are expected to be open by next month.

Tax Research Department

17.06.2023

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

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



Understanding Composition scheme...A simple learning....

(PART- II)

Registration under GST

In any tax system, registration is the most fundamental requirement for the identification of taxpayers for ensuring tax compliance in the economy. Without registration, a person can neither collect tax from his customers nor claim any Input Tax Credit of tax paid by him. The registration in GST is PAN-based and State specific. The taxpayer has to register in each of such State or Union Territory from where he affects supply.

If a person has a unit in (Special Economic Zone) SEZ and also a unit in a domestic tariff Area (i.e. outside the SEZ) in the same State, then he has to take separate registration i.e. one for his SEZ unit and another for the business

vertical of him.

If a supplier also wants to distribute credit on common input services to his same-PAN entities, then he will take separate registration as an "input service distributor" in addition to his registration as a 'supplier'. Unlike the service tax regime, the GST law does not have the facility of centralized registration for units located across multiple States.

Now registration turnover limits have been prescribed by the law. Moreover, there the registration is optional on the part of the supplier if the aggregate turnover is below the prescribed limit by the GST law.

The Composition Scheme as the Act

Section 10	Composition levy
Sub-section	Particulars
(1)	Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-section (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed Rs.1.5 crores, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—
(a)	one percent of the turnover in State or turnover in Union Territory in case of a manufacturer
(b)	two and a half percent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
(c)	half percent of the turnover in State or turnover in Unionterritory in case of other suppliers
	Subject to such conditions and restrictions as may be prescribed.
	Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten percent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.

Section 10	Composition levy
Sub-section	Particulars
	<i>Explanation - For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.</i>
(2)	<i>The registered person shall be eligible to opt under sub-section (1), if—</i>
	<i>(a) save as provided in sub-section (1), he is not engaged in the supply of services</i>
	<i>(b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act</i>
	<i>(c) he is not engaged in making any inter-State outward supplies of goods or services</i>
	<i>(d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; and</i>
	<i>(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council</i>
	<i>(f) he is neither a casual taxable person nor a non-resident taxable person.</i>
	<i>Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.</i>
(2A)	<i>Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed 1.5 crore rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—</i>
	<i>(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;</i>
	<i>(b) engaged in making any inter-State outward supplies of goods or services;</i>
	<i>(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;</i>
	<i>(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and</i>
	<i>(e) a casual taxable person or a non-resident taxable person.</i>
	<i>Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.</i>
(3)	<i>The option availed of by a registered person under sub-section (1) or sub-section (2A), as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or sub-section (2A), as the case may be.</i>
(4)	<i>A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.</i>



Section 10	Composition levy
Sub-section	Particulars
(5)	<p><i>If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.</i></p>
	<p><i>Explanation 1 — For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</i></p> <p><i>Explanation 2 — For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely: —</i></p> <ul style="list-style-type: none"> (i) <i>supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and</i> (ii) <i>exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</i>

Analysis of the Composition Scheme

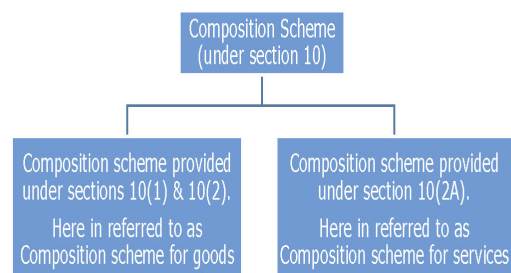
The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to a prescribed limit. The objective of the composition scheme is to bring simplicity and to reduce the compliance cost for small taxpayers. Under this scheme, suppliers of goods have the option to pay tax at the concessional rate. Small taxpayers with an aggregate turnover in the preceding financial year up to Rs.1.5 crore are eligible to pay tax at lower rates in the current financial year.

Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. They are not required to raise any tax invoice but have to issue a Bill of Supply wherein no tax will be charged from the recipient.

Primarily, the composition scheme was available to the supplier of goods and restaurant services, but composition suppliers are permitted to supply services up to a specified

marginal value in the year opting for the composition scheme.

An eligible person opting to pay tax under the composition scheme shall, instead of paying tax on every invoice at the specified rate, pay tax at the prescribed percentage of his turnover every quarter. At the end of a quarter, he would pay the tax, without availing the benefit of input tax credit. Return is to be filed annually by a composition supplier.



Turnover limit for opting composition scheme.

- The taxpayer shall be registered under the Composition Act;
- A taxpayer whose turnover is less than Rs. 1.5 crore and Rs 50 lakh in case of service.

A registered person opting for composition scheme for goods should have an aggregate turnover up to Rs. 1.5 crore [Rs. 75 lakh in 8 specified Special Category States] in the preceding financial year and he can avail the benefit of said scheme in the current financial year till the time his aggregate turnover in the current financial year does not exceed Rs. 1.5 crore/ Rs. 75 lakh. Similarly, a registered person opting for composition scheme for services should have an aggregate turnover upto Rs 50 lakh in the preceding financial year and he can avail the benefit of said scheme in the current financial year till the time his aggregate turnover in the current Financial Year does not exceed Rs. 50 lakhs.

- 8 specified states are Arunachal Pradesh, Mizoram, Sikkim, Tripura, Nagaland, Uttarakhand, Manipur, and Meghalaya.

Aggregate turnover under composition levy

The definition of aggregate turnover as contained in section 2(6) of the CGST Act is summarized as follows.

The aggregate turnover is the sum of the value of all outward supplies falling in the following categories

- Taxable supplies
- Exempt supplies
- Exports of goods or services or both
- Inter-State supplies It excludes:
 - The value of inward supplies on which tax is payable by a person on a reverse charge basis
 - Taxes including cess paid under GST law.

It is computed on all India basis for a person having the same Permanent Account Number (PAN). Further, to compute aggregate turnover of a registered person for determining his eligibility to pay tax under this section, aggregate turnover includes the value of supplies from 1st

April of a financial year up to the date of his becoming liable for registration and excludes the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. The value of exports and inter-State supplies are relevant only while determining the aggregate turnover of the preceding financial year. These values are not relevant for determining the aggregate turnover of the current FY in which the composition supplier has opted for a composition levy as he is not permitted to make inter-State supplies and exports in the said financial year.

Turnover in State or turnover in Union territory under composition levy

As per section 2(112), turnover in State/ turnover in Union territory means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on a reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax, and cess.

Further, to determine the tax payable by a person under this section, the expression turnover in State or turnover in Union territory shall not include the value of following supplies, namely:

- supplies from 1st April of a Financial Year up to the date when such person becomes liable for registration under this Act; and
- exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Who is not Eligible for Composition Under GST?

A registered person who is not eligible for composition scheme for goods

- Supplier engaged in making any supply of goods which are not leviable to tax
- Supplier engaged in making any inter-State outward supplies of goods



- c. Person supplying any goods or services through an electronic commerce operator who is required to collect tax at source under section 52
- d. Manufacturer of ice cream, pan masala, tobacco, and aerated waters
- e. Supplier who is either a casual taxable person or a non-resident taxable person
- f. Supplier of services, save as provided in section 10(1).

A registered person who is not eligible for composition scheme for services

- a. Supplier engaged in making any supply of services that are not leviable to tax
- b. Supplier engaged in making any inter-State outward supplies of services
- c. Person supplying any goods or services through an electronic commerce operator who is required to collect tax at source under section 52
- d. Manufacturer of notified goods [ice cream, pan-masala, tobacco, and aerated waters] or supplier of notified services
- e. Supplier who is either a casual taxable person or a non-resident taxable person.

Interest income to be excluded for determining the value of turnover in a State or Union territory under the second proviso to section 10(1)

Generally, businesses tend to save and invest money in the form of deposits, loans, or advances. However, this way they get engaged in the supply of service by way of extending deposits, loans, or advances – a service other than restaurant service. And where the income from such services causes the value of services supplied to exceed the value referred in the second proviso to section 10(1)30 [10% of the turnover in the preceding FY in a State/Union territory or Rs. 5 lakh, whichever is higher], said the business would have become ineligible for the composition scheme for goods and one has to opt out of the composition scheme. This can cause a lot of hardship to small businesses.

Given the above, an explanation is inserted to clarify that

for the purposes of the second proviso to section 10(1), the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account for determining the value of turnover in a State or Union territory.

A registered person opting for the composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or Rs. 5 lakh, whichever is higher. Thus, while computing the value of services [other than restaurant services] as referred to in this proviso, interest on loans/deposits/advances will not be taken into account.

Benefits of the Composition Scheme

- The composite scheme has fewer compliances for the taxpayer.
- It reduces tax liability for the composite taxpayer.
- The composite taxpayer has to maintain fewer details in his books of accounts.
- The composite taxpayer has to file fewer returns under GST as compared to the normal taxpayer.

Conditions and restrictions for composition levy

A person opting for the composition levy has to comply with the following conditions

- he was not engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY. The following goods have been hereby notified vide Notification No. 14/2019 CT dated 07.03.2019

Tariff item, subheading, chapter heading	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
24	All goods, i.e. Tobacco and manufactured tobacco substitutes
2202 1010	Aerated Waters

- he shall pay tax under section 9(3)/9(4)31 (reverse charge) on inward supply of goods or services or both.

- he is neither a casual taxable person nor a non-resident taxable person
- he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Further, where the goods held in stock by him are liable to be taxed under reverse charge, the tax thereon has been paid under reverse charge.

Intimation of opting for composition levy

1. Intimation by the person applying for registration: Any person who is not registered and applies for registration may give the option to pay tax under the composition levy in Part B of the registration form, Form GST REG-01. The same shall be considered as an intimation to pay tax under the composition levy. Such intimation shall be considered only after the granting of registration to the applicant. The option to pay tax under the composition levy shall be effective from the date from which registration is effective.
2. Intimation by a registered person: A registered person who opts to pay tax under the composition levy scheme shall electronically file an intimation in the prescribed form on the GST Common Portal [www.gst.gov.in]. The intimation shall be filed before the commencement of the FY for which said option is exercised.

Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN. The option to pay tax under the composition levy shall be effective from the beginning of the FY.

Validity of composition levy [Rule 6]:

- (1) **Option valid - Till satisfaction of Conditions [Rule 6(1)]:** The option exercised by a registered person to pay tax under Section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said Section and under these rules.

- (2) **Mandatory cessation of Composition levy on Violation of Conditions [Rule 6(2)]:** The composite taxable person *shall be liable to pay tax under the normal scheme* from the day *he ceases to satisfy any of the conditions* mentioned in Section 10 or the provisions of this Chapter.

He shall issue a tax invoice for every taxable supply made thereafter, and he shall also file an intimation for withdrawal from the scheme in **FORM GST CMP-04 within 7 days** of the occurrence of such event.

- (3) **Application for Withdrawal from Scheme [Rule 6(3)]:** The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through EVC, electronically on the common portal.

- (4) **SCN for cessation of option on Violation of Conditions [Rule 6(4)]:** Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under Section 10 or has contravened the provisions of the Act or Rules, he may issue a notice to such person in FORM GST CMP-05 to show cause within 15 days of the receipt of such notice as to why the option to pay tax u/s 10 should not be denied.

- (5) **Reply to SCN [Rule 6(5)]:** The registered person shall reply to the show-cause notice issued under Rule 6(4) in FORM GST CMP-06.

Final order within 30 days of Receipt of Reply:

The proper officer shall issue an order in FORM GST CMP-07 within a period of 30 days of the receipt of such reply, either accepting the reply or denying the option to pay tax under Section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

- (6) **Details of stock to be furnished on opting out of such Scheme [Rule 6(6)]:** Every person who has furnished an intimation under Rule 6(2) or filed an application for withdrawal under Rule 6(3) or a person in respect of whom an order of withdrawal of option has been passed in **FORM GST CMP-07** under Rule 6(5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in **FORM**



GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within **a period of 30 days** from the date from which the option is withdrawn or from the date of the order passed in **FORM GST CMP-07**, as the case may be.

He shall be entitled to avail of input tax credit in respect of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him and on capital goods held by him on the date of withdrawal.

(7) Withdrawal applies to all units [Rule 6(7)]: Any intimation or application for withdrawal under Rule 6(2) or (3) or denial of the option to pay tax under Section 10 in accordance with Rule 6(5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

Penalty provisions in case of irregular avilment of the composition scheme: If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of Section 73 or 74 of the CGST Act shall be applicable for the determination of tax and penalty. All

registered persons having the same Permanent Account Number (PAN) have to opt for the composition scheme. If one such registered person opts for normal scheme, others become ineligible for the composition scheme

Example: A dealer 'Gupta & Brothers' has two offices in Delhi and is eligible for composition levy for goods. If 'Gupta & Brothers' opts for the composition scheme for goods, both the offices would pay taxes under the composition scheme and abide by all the conditions as may be prescribed for the said composition scheme

The composition scheme supplier cannot collect tax

A taxable person opting for the composition scheme shall not collect tax from the recipient on supplies made by him. It implies that a composition scheme supplier cannot issue a tax invoice.

Disqualification and Penalty

If tax authorities believe that a business is wrongfully enrolled or not eligible, they may disqualify the business from the composition scheme or demand a penalty equal to the tax amount owed. In case of late filing of GSTR-4, the business owner will be fined Rs. 100 per day to a maximum amount of Rs. 5,000/-. Also, not furnishing returns for 3 consecutive tax periods may result in the cancellation of registration by the tax authorities.

Rates under the Composition scheme

Composition Scheme	Eligible Persons	IGST	CGST	Total
For Goods	Manufacturer	0.5%	0.5%	1%
	Restaurant Service not serving alcohol	2.5%	2.5%	5%
	Other	0.5%	0.5%	1%
For Service	Other Suppliers	3%	3%	6%

Composition Scheme Form and Returns

GST return is a document that contains all the details of sales, purchases, tax collected on sales (output tax), and tax paid on purchases (input tax). Once we file GST returns, we will need to pay the resulting tax liability (money that we owe to the government). Composition Scheme Rules under GST provides for the submission of different forms, which are as follows

Forms	Purpose	Due Dates
Form GST CMP-01	To opt into the scheme by provisional GST registration holder(from the VAT regime)	Prior to the appointed date or within 30 days of the said date
Form GST CMP-02	Intimation of willingness to opt into the scheme for GST-registered normal taxpayers	Before the commencement of the Financial Year
Form GST CMP-03	Details of stock and inward supplies from registered and unregistered persons	Within 90 days of the exercise of the option
Form GST CMP-04	Intimation of withdrawal from the scheme	Within 7 days of the occurrence of the event
Form GST CMP-05	Show cause notice on contravention of Rules or Act by a proper officer	On any contravention
Form GST CMP-06	Reply to show cause notice	Within 15 days
Form GST CMP-07	Issue of Order	Within 30 days
Form GST CMP -08	To deposit payments every quarter	18 th of the month succeeding the quarter
Form GST REG-01	Registration under the Composition scheme	Prior to the appointed date
Form GST ITC-01	Details of inputs in stocks, semi-finished, and finished goods	30 days of withdrawing option
Form GST ITC-03	Intimation of ITC available	Within 60 days of commencement of the financial year

Practical Illustrations

1. PQ Ltd. has two registered places of business in the State of Madhya Pradesh. Its aggregate turnover during the previous financial year was Rs.62 lakhs. It wishes to opt for a composition levy under sub-section (1) and (2)

of section 10 for one of the places of business in the current year and wants to continue with registration under the regular scheme and pay taxes at the normal rate for the other place of business. Can PQ Ltd. do so? Explain with reason.

Ans: As per the relevant provision, where more than one registered persons are having the same PAN issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme under section 10(1) unless all such registered persons opt to pay tax under said composition scheme. In the given case, since MN Ltd. has two places of business (they are not separate entities

under the Income-tax Act, 1961), they would be registered under the same PAN. Therefore, MN Ltd. cannot opt a for composition levy for only one of the places of business and pay tax under the r regular scheme for another place of business. For availing the option to pay tax under the composite scheme it has to register both the places of business having the same PAN.

2. Tintin Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of Tintin Industries in the preceding financial year is Rs. 70 lakh. It has opted for composition levy under sub-section (1) and (2) of



section 10 in the current financial year and paid tax for the April – June quarter of the current year under the composition levy. The proper officer has levied penalty for wrongly availing the scheme on Tintin Industries in addition to the tax payable by it. Examine the validity of the action taken by the proper officer.

Ans: As per section 10(1), a registered person, whose aggregate turnover in the preceding financial year did not exceed Rs. 1.5 crore in a State/UT [Rs. 75 lakh in the case of Special Category States except for Assam, Himachal Pradesh, and Jammu and Kashmir], may opt for the composition scheme. However, he shall not be eligible to opt for the composition scheme if, he is engaged in making any inter-State outward supplies of goods or services. In the given case, since Tintin Industries is engaged in making inter-State supplies of readymade garments, it is not eligible to opt for the composition scheme in the current year irrespective of its turnover not exceeding the threshold limit of Rs. 75 lakh in the preceding FY. Further, if the proper officer has reasons to believe that a taxable person has paid tax under the composition scheme despite not being eligible, such person shall, in addition to any tax payable, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty. Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

3. Mr. X opened a retail shop - 'Sunlight House' in Janta Market, Jaipur, Rajasthan on 01st April, 2022 on the same date he obtained the registration on the same date. He opted to pay tax under Section 10 of the CGST Act, 2017 in the said financial year. The aggregate turnover of the retail shop for the quarter ending 30th June 2022 was Rs.40 lakh. Further, for the half year

ending 30th September 2022, the turnover reached Rs.85 lakh. 'Sunlight House' recorded a rapid growth and the turnover reached Rs.150 lakh by the end of December 2022 and Rs.165 lakh by the end of January 2023. Determine the total tax liability of Sunlight House. Mr. X has duly complied with the provisions of GST laws. The normal rate of tax in respect of goods sold in the shop is 12%.

Ans: Section 10(1) of the CGST Act, 2017 provides that a registered person, whose aggregate turnover in the preceding financial year did not exceed Rs. 1.5 crore in the State of Rajasthan, will be eligible to opt for payment of tax under the composition scheme. According to Section 10(3), the benefit of the composition scheme can be availed up to the aggregate turnover of Rs.1.5 crore in the current financial year. The option availed of by a registered person under Section 10(1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit of Rs. 1.5 crore.

For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely: –

- (i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Thus, Sunlight House is eligible to pay tax under this section upto the turnover of Rs.150 lakh. The total tax payable by it is as under: -

Period	Tax rate	Turnover (Rs.)	Tax liability (Rs.)
1st Quarter	Since turnover did not exceed `40 lakh, it was not required to obtain registration. Hence, no tax was required to be paid	40 lakh	Nil
2nd Quarter	Effective rate is 1% (CGST+ SGST/UTGST)] under Section 10(1)	45 lakh [(85-40) lakh]	45,000

Period	Tax rate	Turnover (Rs.)	Tax liability (Rs.)
For 3rd Quarter	Effective rate is 1% (CGST+ SGST/UTGST)] under Section 10(1) up to `150 lakh	65 lakh [(150-85) lakh]	65,000
For the month of January 2023	The normal rate of tax i.e. 12% will be applicable	15 lakh (165 -150) lakh]	1,80,000
Total tax liability			2,90,000

4. Narayan traders are engaged in the trading of goods within the state of Maharashtra. In the preceding financial year, it has a turnover of Rs. 140 lakh from the trading of goods. Further, it has also earned a bank interest of Rs.20 lakh from the fixed deposits. Narayan traders wishes to opt for the composition scheme in the current year. You are required to advise Narayan traders on the same. Would your answer be different if Narayan traders is also engaged in supply of farm labour and the turnover from the said activity is Rs.14 lakh?

Ans: The eligibility of Narayan Trader under the composition scheme is discussed as under-

- *Eligibility under the Composition scheme: As per Section 10(1) of the CGST Act, 2017, a registered person, engaged in the trading of goods and supplier of services whose aggregate turnover in the preceding financial year did not exceed Rs. 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates.*
- *According to the GST Act, "Aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. Thus, in computing his aggregate turnover to determine his eligibility for the composition scheme, the value of supply of any exempt services by way of extending deposits, loans, or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.*
- *Narayan traders are eligible for composition*

scheme: In the given case, the services provided by Narayan traders apart from trading of goods, viz. services by way of extending deposits where the consideration is represented by way of interest shall not be taken into account for computation of aggregate turnover for determination of eligibility of composition scheme. Since the aggregate turnover of Narayan traders does not exceed Rs. 1.5 crores in the preceding financial year, it shall be eligible to opt for the composition scheme.

- *Narayan traders is not eligible for the composition scheme: However, if Narayan traders is also engaged in the supply of farm labour, it will not be eligible for the composition levy since the only value of the supply of exempt services by way of extending deposits, loans, or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account. Other exempt services shall be taken into account. Since its aggregate turnover is Rs.1.54 crores in the preceding financial year it will not be eligible to opt for composition scheme.*

5. A Ltd. is a manufacturing concern in West Bengal. In Financial Year 2021-22 total value of supplies including inward supplies taxed under reverse charge basis is Rs. 1,53,60,000. (exclusive of taxes). The break-up of supplies are as follows –

Particulars	Amount (Rs)
(1) Intra-State Supplies made under forward charge	75,00,000
(1) Intra-State Supplies of goods which are chargeable to GST at Nil rate	43,00,000



Particulars	Amount (Rs)
(1) Intra-State Supplies which are wholly exempt under Section 11 of CGST Act, 2017	32,00,000
(1) Value of exempt supply of services being interest earned on fixed deposits with the bank	1,00,000
(1) Value of inward supplies on which tax is payable under RCM	2,60,000

Briefly explain whether A Ltd. is eligible to opt for the Composition scheme in Financial Year 2022-23.

Ans: A registered person, whose aggregate turnover in the preceding financial year did not exceed Rs. 1,50,00,000, may opt for payment of tax under the Composition scheme.

- As per Section 2(6) of the CGST Act, 2017, "Aggregate turnover" means the aggregate value of -
- all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on a reverse charge basis),
- exempt supplies,
- exports of goods or services or both, and
- inter-State supplies

of persons having the same Permanent Account Number, to be computed on all India basis, but excludes -

- Central tax,
- State tax,
- Union territory tax,
- Integrated tax, and
- Cess.
- Accordingly, for the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall not include the value of exempt supply of services provided by

way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Thus, aggregate turnover shall be computed as under —

Computation of Aggregate Turnover (amount in ₹):

(1) Supplies made under forward charge	75,00,000
(2) Supplies made which are chargeable to GST at Nil rate (covered under exempt supply)	43,00,000
(3) Supplies that are wholly exempt under Section 11 of the CGST Act, 2017	32,00,000
(4) Value of exempt supply of services being interest earned on fixed deposits with the bank	Nil
(5) Value of inward supplies on which tax payable under RCM (specifically excluded)	Nil
Total	1,50,00,000

Since Aggregate turnover does not exceed Rs. 1,50,00,000 during the Financial Year 2021-22, So, A Ltd. is entitled for Composition Scheme for Financial Year 2022-23.

6. AXT Ltd. a manufacturing concern of Uttar Pradesh having an aggregate turnover of Rs. 120 lakhs in the financial year 2021-22 has opted for composition scheme and furnishes you with the following information for Financial Year 2022-23. It requires you to determine its composition tax liability and total tax liability. The break-up of supplies are as follows –

Particulars	Amount (Rs)
(1) Intra State Supplies of Goods X chargeable @ 5% GST	30,00,000
(2) Intra State Supplies of goods which are chargeable to GST at Nil rate	18,00,000
(3) Intra-state supply of services chargeable with 5% GST	6,00,000
(4) Interest earned on fixed deposits with banks	8,00,000
(5) Intra-state supplies which are wholly exempt under Section 11 of CGST Act, 2017	2,40,000
(6) Value of inward supplies on which tax payable under RCM (GST Rate 5%)	5,00,000

Particulars	Amount (Rs)
(7) Intra State Supplies of Goods Y chargeable @ 18% GST	30,00,000

Also, determine composition tax liability if AXT Ltd. is a trader instead of a manufacturer.

Ans: The composition tax liability of A Ltd. shall be as under –

Computation of Aggregate Turnover and composite tax (amount in Rs.):

Particulars	Manufacturer	Trader
(1) Intra State Supplies of Goods X chargeable @ 5% GST	30,00,000	30,00,000
(2) Intra State Supplies of goods which are chargeable to GST at Nil rate	18,00,000	----
(3) Intra-state supply of services chargeable with 5% GST	6,00,000	6,00,000
(4) Interest earned on fixed deposits with banks [WN-2]	----	----
(5) Intra-state supplies which are wholly exempt under Section 11 of CGST Act, 2017	2,40,000	----
(6) Value of inward supplies on which tax payable under RCM (GST Rate 5%) (not to be included)	5,00,000	
(7) Intra State Supplies of Goods Y chargeable @ 18% GST	30,00,000	Nil
Aggregate turnover	86,40,000	66,00,000
Rate of composite tax	1%	1%
Total Composite tax (A)	86,400	66,000

(2) Tax payable under reverse charge basis (amount in Rs):

Value of inward supplies on which tax is payable under RCM	5,00,000	5,00,000
--	----------	----------

Rate of GST	5%	5%
Tax payable under RCM (B)	25,000	25,000
Total Tax liability [A+B]	1,11,400	91,000

Working Note:

(1) Section 10(1) provide that a composition supplier may supply services of value not exceeding 10% of the turnover in the preceding financial year in a State or Union Territory or Rs.5 lakhs whichever is higher. Thus, A Ltd. can supply services to the extent of 10% of Rs.120 lakhs i.e. Rs. 12 lakhs. According to the explanation to Section 10(1), the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

Since the value of services provided excluding interest earned on deposits is Rs.6,00,000 which is within the limit of Rs. 12 lakhs, hence A Ltd. is eligible for the composition scheme.

(2) According to Explanation 2 to Section 10, for the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

FAQ

When will a person opting for composition levy pay tax?

A person opting for a composition levy will have to pay tax every quarter before the 18th of the month succeeding the quarter during which the supplies were made.

How will the aggregate turnover be computed for the purpose of composition?

Aggregate turnover will be computed on the basis of turnover on an all India basis and will include the value of all taxable supplies, exempt supplies, and exports made



by all persons with the same PAN, but would exclude inward supplies under reverse charge as well as central, State/Union Territory and Integrated taxes and cess.

Can a person who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies?

No. A taxable person opting to pay tax under the composition scheme is out of the credit chain. He cannot take credit for his input supplies. When he switches over from the composition scheme to the normal scheme, eligible credit on the date of transition would be allowed.

Can a registered person, who purchases goods from a taxable person paying tax under the composition scheme, avail credit of tax paid on purchases made from the composition dealer?

No, as the composition dealer cannot collect tax paid by him on outward supplies from his customers, the registered person making purchases from a taxable person paying tax under the composition scheme cannot avail credit

Is Uniform application of the composition scheme for a person having the same pan number compulsory?

Yes, it is compulsory. It can be understood as “A dealer ‘Gupta & Brothers’ has two offices in Delhi and is eligible for composition levy for goods. If ‘Gupta & Brothers’ opts for the composition scheme for goods, both the offices would pay taxes under the composition scheme and abide by all the conditions as may be prescribed for the said composition scheme”.

Whether the composition scheme is optional or compulsory?

Yes, it is optional, and voluntary in nature.

Can a Composition Dealer issue a Tax Invoice?

No. Since a Composition Dealer is not allowed to avail input tax credit, such a dealer cannot issue a tax invoice as well. A buyer from composition dealer will not be able to claim input tax on such goods.

Which returns are required to be filed by a taxable person registered under Composite Scheme?

The taxable person is required to furnish only one return i.e. GSTR-4 on a quarterly basis and an annual return in FORM GSTR-9A. Quarterly return needs to be furnished by the 18th of the month succeeding the quarter. For example, return in respect of supplies made from January 2023 to March 2023, is required to be filed by 18th April 2023.

Can a Composition Dealer collect composition tax separately?

No, a Composition Dealer is not allowed to collect composition tax from the buyer.

When will a person opting for composition levy pay tax?

A person opting for composition levy will have to pay tax on a quarterly basis before the 18th of the month succeeding the quarter during which the supplies were made.

Can a person making an application for fresh registration under GST opt for the composition levy at the time of making an application for registration?

Yes. Such persons can give the option to pay tax under the composition scheme in Part B of FORM GST REG-01. This will be considered as an intimation to pay tax under the composition scheme.

What is the validity of the composition levy?

The option to pay tax under composition levy would remain valid so long as conditions mentioned in section 10 of the CGST Act, 2017 and Rule 3 to 5 of the CGST Rules, 2017 remain satisfied

Can a person paying tax under composition levy, withdraw voluntarily from the scheme? If so, how?

The registered person who intends to withdraw from the composition scheme can file a duly signed or verified application in FORM GST CMP-04. Every person who has filed an application for withdrawal from the composition scheme may electronically furnish, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date of withdrawal, within a period of thirty days of withdrawal. But a person can switch from composition to regular only at the beginning of the FY and not during the year.



Press Releases

India G20 – South Centre Event on International Taxation concludes successfully at Nagpur

Posted On: 02 JUN 2023 4:57PM by PIB Delhi

Keeping in view the vision of Prime Minister Shri Narendra Modi for India's G20 Presidency to attempt to voice the views of the Global South on important international issues, a two-day event on International Taxation was organised on the 1st and 2nd June, 2023 at the National Academy of Direct Taxes (NADT), Nagpur in collaboration with South Centre, a Geneva-based intergovernmental policy research think-tank of 55 developing countries, including India.

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF) has agreed on the historic two-pillar solution to address the tax challenges arising from the digitalisation of the economy. Indian tax administrators and policy makers deliberated on the IF's "Two Pillar Solution" on the taxation of the digital economy and the global minimum tax. International tax experts from renowned multi-lateral organizations including the United Nations Tax Committee, Tax Justice Network Africa, West African Tax Administration Forum (WATAF), and Independent Commission for Reform of International Corporate Taxation

(ICRICT) enriched the Global South discourse on the Two-Pillar Solution, as panellists.

The G20-South Centre Capacity Building Event on International Taxation titled 'Two Pillar Solution – Understanding the Implications for the Global South' comprised of two panel discussions on the Two-Pillar Solution and its alternatives. The discussions during the event focussed on the ramifications of the Two-Pillar Solution for the developing economies. The event also included a workshop on Tax Treaty Negotiations. This event is an initiative of the Indian Presidency to bolster capacity building for Indian tax officials of both senior and middle management levels in the area of International Taxation, with a global south perspective.

NADT, the apex training institute for the officers of the Indian Revenue Service, hosted the two day Indian G20 Presidency event. The event also included a cultural evening where the vibrant culture of the state of Maharashtra was showcased to the participants and concluded with an excursion for the foreign delegates to explore the rich heritage of Nagpur.





NOTIFICATIONS & CIRCULARS

Indirect Tax

Notifications
Customs
Notification No. 39/2023-CUSTOMS (N.T)
Dated 1st June 2023

The Central Government Fixes Exchange rate vide
Notification No. 39/2023-Cus (NT) dated 01.06.2023-reg

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 36/2023-Customs(N.T.), dated 18th May, 2023 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 2nd June, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods

Schedule I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	55.00	52.65
2.	Bahraini Dinar	225.85	212.40
3.	Canadian Dollar	61.90	59.85
4.	Chinese Yuan	11.80	11.45
5.	Danish Kroner	12.05	11.65

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
6.	EURO	89.85	86.70
7.	Hong Kong Dollar	10.70	10.35
8.	Kuwaiti Dinar	276.90	260.30
9.	New Zealand Dollar	51.00	48.70
10.	Norwegian Kroner	7.60	7.35
11.	Pound Sterling	104.45	101.00
12.	Qatari Riyal	23.40	21.95
13.	Saudi Arabian Riyal	22.60	21.35
14.	Singapore Dollar	62.10	60.10
15.	South African Rand	04.30	04.05
16.	Swedish Kroner	7.75	07.50
17.	Swiss Franc	92.40	89.00
18.	Turkish Lira	4.10	03.85
19.	UAE Dirham	23.20	21.80
20.	US Dollar	83.40	81.70

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
		(a) (For Imported Goods)	(b) (For Export Goods)
1	2	3	
1.	Japanese Yen	60.15	58.25
2.	Korean Won	06.45	06.05

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009744/ENG/Notifications>

**Notifications
Customs**

**Notification No. 40/2023-CUSTOMS (N.T)
Dated 7th June, 2023.**

The Central Government provides Exchange Rate Notification No. 40/2023 (Amended)- Reg.

In exercise of the powers conferred by Section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following amendments in the Central Board of Indirect Taxes and Customs Notification No.39/2023-CUSTOMS (N.T.), dated 1st June, 2023 with effect from 8th June, 2023. In the SCHEDULE-I of the said Notification, for serial No.18 and the entries relating thereto, the following shall be substituted, namely: -

Schedule - I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		For Imported Goods	For Exported Goods
18	Turkish Lira	3.85	3.60

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009745/ENG/Notifications>

**Notifications
Customs**

**Notification No. 41/2023-CUSTOMS (N.T)
Dated 8th June, 2023.**

The Central Government provides Exchange Rate Notification No. 41/2023 - Reg.

In exercise of the powers conferred by Section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following amendments in the Central Board of Indirect Taxes and Customs Notification No.39/2023-CUSTOMS (N.T.), dated 1st June, 2023 with effect from 8th June, 2023. In the SCHEDULE-I of the said Notification, for serial No.18 and the entries relating thereto, the following shall be substituted, namely: -

Schedule - I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		For Imported Goods	For Exported Goods
18	Turkish Lira	3.65	3.45

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009746/ENG/Notifications>

**Notifications
Customs**

**Notification No. 44/2023-CUSTOMS (N.T)
Dated 15th June 2023**

The Central Government Exchange rate Notification No. 44/2023-Cus (NT) dated 15.06.2023-reg

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 39/2023-Customs(N.T.), dated 1st June, 2023 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect



Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 16th June, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods

Schedule I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a) (For Imported Goods)	(b) (For Export Goods)
1	2	3	
1.	Australian Dollar	57.10	54.70
2.	Bahraini Dinar	224.90	211.50
3.	Canadian Dollar	62.65	60.55
4.	Chinese Yuan	11.60	11.30
5.	Danish Kroner	12.15	11.70
6.	EURO	90.50	87.30
7.	Hong Kong Dollar	10.70	10.30
8.	Kuwaiti Dinar	276.05	259.50
9.	New Zealand Dollar	52.10	49.75
10.	Norwegian Kroner	7.80	7.55
11.	Pound Sterling	105.65	102.15
12.	Qatari Riyal	23.30	21.85
13.	Saudi Arabian Riyal	22.30	21.25
14.	Singapore Dollar	62.15	60.15

15.	South African Rand	04.60	04.30
16.	Swedish Kroner	7.75	07.50
17.	Swiss Franc	92.80	89.30
18.	Turkish Lira	3.60	3.40
19.	UAE Dirham	23.10	21.70
20.	US Dollar	83.05	81.35

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
		(a) (For Imported Goods)	(b) (For Export Goods)
1	2	3	
1.	Japanese Yen	59.20	57.35
2.	Korean Won	06.60	06.20

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009750/ENG/Notifications>

Notifications

Customs

Notification No. 39/2023-CUSTOMS

Dated 14th June 2023

The Central Government Seeks to further amend 48/2021-Customs dated 14.06.2023 to reduce BCD on Refined Soya Bean Oil and Refined Sunflower oil to 12.5%

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), 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. 48/2021-Customs, dated the 13th October, 2021, published in the Gazette of India, Extraordinary, Part

II, Section 3, Sub-section (i), vide number G.S.R. 733(E), dated the 13th October, 2021, namely:-

In the said notification, in the Table,

against S. No. 2, in column (4), for the entry, the entry "12.5%" shall be substituted;

against S. No. 6, in column (4), for the entry, the entry "12.5%" shall be substituted.

2. This notification shall come into force with effect from the 15th day of June, 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009749/ENG/Notifications>

Notifications Customs

Notification No. 45/2023-CUSTOMS (N.T) Dated 15th June, 2023.

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

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

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

TABLE - I

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	820

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
2	1511 90 10	RBD Palm Oil	839
3	1511 90 90	Others – Palm Oil	830
4	1511 10 00	Crude Palmolein	858
5	1511 90 20	RBD Palmolein	861
6	1511 90 90	Others – Palmolein	880
7	1507 10 00	Crude Soya bean Oil	976
8	7404 00 22	Brass Scrap (all grades)	4803

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

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009751/ENG/Notifications>

Notification Direct Tax

Notification No. 39/2023 Dated 12th June, 2023.

The Central Government provides Cost on Inflation Index for the Assessment year 2024-2025

In exercise of the powers conferred by clause (v) of the Explanation to section 48 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O. 1790(E), dated the 5th June, 2017, namely: -

2. In the said notification, in the Table, after serial number 22, the following serial number and entries relating thereto, shall be inserted, namely:



Sl.No	Financial year	Cost Inflation Index
(1)	(2)	(3)
“23	2023-2024	348

This notification shall come into force with effect from the 1st day of April, 2024 and shall, accordingly, apply to the assessment year 2024-25 and subsequent assessment years.

For more details, please follow

<https://incometaxindia.gov.in/communications/notification/notification-39-2023.pdf>

**Notification
Direct Tax
Notification No. 38/2023
Dated 12th June, 2023.**

The Central Government provides amendment to the principal scheme published earlier vide notification 38/2023

In exercise of the powers conferred by sub-sections (9) and (10) of section 245R of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendments in the advance rulings Scheme, 2022, namely:

1. Short title and commencement. –

- (1) This Scheme may be called the e-advance rulings (Amendment) Scheme, 2023.
- (2) It shall come into force on the date of its publication in the Official Gazette.

2. In the e-advance rulings Scheme, 2022, in paragraph 6, in sub-paragraph (C), for clause (iv), the following clauses shall be substituted, namely: —

“(iv) the Board for Advance Rulings shall, after considering the response as referred to in clause (iii), and after providing an opportunity of being heard (through video conferencing or video telephony) under subsection (5) of section 245R of the Act on the request of the applicant, subject to the provisions of clause (v), if applicable, pronounce the advance ruling on the question specified in the application and send a copy thereof to the applicant and the authority to whom the reference has been made;

(v) if the Members of a Board for Advance Rulings differ in opinion on any point or points, the Board for Advance Rulings shall refer such point or points to the Principal Chief Commissioner of Income-tax (International Taxation), who shall nominate one Member from any other Board for Advance Rulings and such point or points shall be decided according to the opinion of the majority of the Members.”.

For more details, please follow,

<https://incometaxindia.gov.in/communications/notification/notification-38-2023.pdf>

**Notification
Direct Tax
Notification No. 37/2023
Dated 12th June, 2023.**

The Central Government provides notification No. 37/2023 for Basis of claim for being a non-resident 12 The Commissioner and the Assessing Officer having jurisdiction over the applicant (in the case of existing assessee)

In exercise of the powers conferred by section 245Q read with section 295 of the Income tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend Income-tax Rules, 1962, namely.

In the Income-tax Rules, 1962, (hereinafter referred to as the said rules), in rule 44E, for sub-rule (2), the following sub-rule shall be substituted, namely: —

“(2) The application referred to in sub-rule (1), the verification appended thereto, the annexures to the said application and the statements and documents accompanying the annexures, shall be,— (a) in the case of an individual,—

(I) signed or digitally signed, —

- (i) by the individual himself; or
- (ii) where, for any unavoidable reason, it is not possible for the individual to sign the application, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the individual to do so, which shall be attached to the application; and

(II) furnished through his registered e-mail address;

(b) in the case of a Hindu undivided family, —

(I) signed or digitally signed, —

(i) by the karta thereof; or

(ii) where, for any unavoidable reason, it is not possible for the karta to sign the application, by any other adult member of such family; and

(II) furnished through its registered e-mail address;

(c) in the case of a company, —

(I) signed or digitally signed,—

(i) by the Managing Director thereof; or where for any unavoidable reason such Managing Director is not able to sign and verify the application, or where there is no Managing Director, by any Director thereof; or

(ii) where, for any unavoidable reason, it is not possible for the Managing Director or the Director to sign the application, by any person duly authorised by the company in this behalf: Provided that in the case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the company to do so, which shall be attached to the application; and

(II) furnished through its registered e-mail address;

(d) in the case of a firm, —

(I) signed or digitally signed, —

(i) by the managing partner thereof; or

(ii) where for any unavoidable reason such managing partner is not able to sign and verify the application, or where there is no managing partner as such, by any partner thereof, not being a minor; and 25 (II) furnished through its registered e-mail address;

(e) in the case of an association of persons, —

(I) signed or digitally signed by any member of the association or the principal officer thereof; and

(II) furnished through its registered e-mail address;

(f) in the case of any other person, —

(I) signed or digitally signed by that person or by some other person competent to act on his behalf; and (II) furnished through his registered e-mail address.

3. In the said rules, in rule 44F,—

(i) in the marginal heading, for the word “Authority”, the word “Board” shall be substituted;

(ii) for the word “Authority” at both the places where they occur, the word “Board” shall be substituted, in both places.

For more details, please follow

<https://incometaxindia.gov.in/communications/notification/notification-37-2023.pdf>

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JUDGEMENT INDIRECT TAX

Order for detention of goods passed on same date of notice without providing hearing opportunity to be set aside: HC

Facts of the case -

Shido Pharma v. Assistant Commissioner (ST) - [2023] (Madras)

A conveyance was intercepted and notice was issued by the department proposing addition of tax under the IGST Act. The petitioner filed a detailed reply stating that the provisions of the IGST Act were inapplicable to the transaction. However, on the same date, the department issued a revised notice applying the provisions of the CGST Act and SGST Act without granting an opportunity to the assessee to respond.

As a result, an order for detention of goods was passed by the department under section 129(3) of the CGST Act. The assessee filed a writ petition challenging the detention order on the grounds of a violation of the principles of natural justice.

Decision of the case :

- The court held that there was merit in the allegation that the proceedings were concluded contrary to the principles of natural justice. Therefore, the impugned order of detention was set aside. The court directed the assessee to appear before the department without any further notice, and the department was instructed to pass orders de novo after hearing the assessee.

HC permitted department to re-deposit amount unilaterally recovered from assessee's bank account

Facts of the case -

Pradeep Kumar Siddha v. Union of India - [2023] (Bombay)

The petitioner filed a writ petition challenging the unilateral deduction of funds from their bank account by the GST authorities without their permission and without

informing the petitioner. The court expressed concern over the authorities' actions and considered it a gross abuse of power and a violation of the taxpayer's rights.

Decision of the case :

- The court instructed the concerned officer responsible for instructing the bank to debit the petitioner's account to file a personal affidavit explaining the legal basis for their actions and why they did not inform the petitioner. In the affidavit-in-reply, the officer relied on Section 79(1)(c)(i) of the CGST Act to justify their actions. However, the petitioner argued that this provision was not applicable in their case.
- Section 79 of the CGST Act deals with the recovery of tax and outlines various modes for recovery. The court observed that in this case, the respondents unilaterally deducted the amount from the petitioner's bank account without proper legal justification. The officer responsible for the deduction was directed to file an affidavit specifying the time frame for crediting the amount to the petitioner's account. Once the affidavit was filed within two weeks, the court registrar would allow the respondents to withdraw the amount, and it would be credited back to the petitioner's bank account within two weeks. Given the above, the writ petition was disposed of by the court.

HC set aside assessment order since authority didn't assign any reason and order didn't contain details of demand raised

Facts of the case -

Jogesh Kumar Dehury v. Additional CT & GST Officer - [2023] (Orissa)

In this petition, the assessee had challenged the assessment order passed by the GST authority and contended that no notice was issued prior to passing of assessment order. It was also contended that Assessing Authority initiated proceeding for assessment under Section 63 of GST Act

and passed assessment order by treating assessee as unregistered by assigning Temp Id.

Decision of the case :

- The Honorable High Court noted that the assessee's registration certificate was valid but the Assessing Authority passed assessment order by treating the assessee as unregistered. Moreover, the Authority did not assign any reason and order did not contain details of demand raised.
- Therefore, it was held that the impugned order was not sustainable in eye of law since assessee was deprived of availing opportunity of hearing. The Court also directed the department to provide opportunity of hearing and directed the assessee to appear before the Assessing Authority.

Cancellation of registration order passed without mentioning any specific violation can't be sustained: HC

Facts of the case -

Star Metal Company v. Additional Commissioner Grade-2 - [2023] (Allahabad)

A survey was conducted at the business place of the assessee and it was found that business place of the firm was not disclosed in the registration certificate. Accordingly, the registration of the assessee was cancelled. The assessee moved a revocation application which was rejected and aggrieved by the said order, the assessee preferred an appeal, which was also dismissed. Thereafter, it filed writ petition and contended that the cancellation of registration suffered from illegality as none of the conditions mentioned in section 29(2) of the GST Act were complied with.

Decision of the case :

- The Honorable High Court noted that as per Section 29 of GST Act, the registration once granted could be cancelled only if one of the five statutory conditions was found present. If GST Authority proposed to cancel the registration then a heavy burden shall lay on the authority to establish the existence of facts which may allow for such cancellation of registration. In the instant case, the notice was issued without mentioning any specific violation as prescribed in Section 29(2) of GST Act. Therefore, the impugned

order was liable to be quashed and the authority may issue a fresh notice on any specific ground mentioned under section 29(2) of the GST Act.

HC quashes demand notice for ITC which was earlier used for discharging overstated liability but later reclaimed

Facts of the case -

Instakart Services (P.) Ltd. v. Sales Tax Officer - [2023] (Delhi)

In the instant case, the assessee had erroneously typed its tax liability as Rs. 32.33 crore instead of Rs. 3.23 crore in its monthly return for September, 2017. The liability was discharged by using available balance of ITC of Rs. 29.10 crore which assessee claimed as an apparent error. The department issued show cause notice due to mismatch in FORM GSTR-2A and FORM GSTR-3B.

The assessee stated that there was no defined mechanism to rectify submitted FORM GSTR-3B, filed for September, 2017 and ITC that was used for discharging overstated liability was reported in its monthly return filed for October, 2017. However, the department raised demand notice with interest. It filed writ petition against the demand notice.

Decision of the case :

- The Honorable High Court noted that if there was an inadvertent or typographical error that had crept in any returns, taxpayer cannot be mulcted with tax liability in excess of what is due and payable. It was apparent in the instant case that the explanation provided by assessee had not been considered. Therefore, it was held that the impugned show cause notice demanding tax with interest was liable to be quashed.

Payment made through GST DRC-03 to be refunded if proper officer failed to issue acknowledgment in GST DRC-04

Facts of the case -

Samyak Metals (P.) Ltd. v. Union of India - [2023] (Punjab & Haryana)

The petitioner was engaged in business of manufacturing of Aluminium ingots. The business premises of petitioner was searched by the GST department. On basis of search, the petitioner was forced to deposit tax in lieu of Input



Tax Credit including interest and penalty. It filed writ petition and the grievance was that even after depositing the amount, no GST DRC-04 had been issued by the department.

Decision of the case :

- The Honorable High Court noted that as per Rule 142 (2) of CGST Rules, 2017, when a payment is made in FORM GST DRC-03, proper officer must issue acknowledgment, accepting payment in FORM GST DRC-04. However, in instant case, the payment was made way back on 26.02.2021 but neither department had issued FORM GST DRC-04 nor issued any notice under section 74 (1).
- Therefore, the Court directed the department to return amount in question to petitioner along with simple interest at rate of 6% p.a. from date of deposit till payment is made.

HC directed to return currency seized by GST officers being illegal & without any authority of law

Facts of the case -

Arvind Goyal CA v. Union of India - [2023] (Delhi)

A search operation was conducted at residence of petitioner by GST officers under section 67(2) of GST Act. During course of search, the officers found cash aggregating to Rs.1,22,87,000 and took possession of the said cash. The petitioner filed writ petition and challenged search conducted since no seizure memo was drawn in respect of the said cash.

Decision of the case :

- The Honorable High Court noted that the power under section 67(2) to seize goods could be exercised only if goods were liable for confiscation and documents, books or things, could only be seized if same were useful or relevant to any proceedings under GST Act.
- In the instant case, the officers forcibly took over possession of currency from the premises and no seizure memo was drawn in respect of seized cash. It was clear that the action of taking away currency was illegal and without any authority of law. Therefore, the Court directed to return cash amount

along with interest accrued thereon to petitioner and bank guarantee furnished by petitioner for release of currency was directed to be released forthwith.

Reason of daughter's marriage adduced for adjournment was genuine and sufficient; HC directed to hear appeal

Facts of the case -

Swaraj Equipment (P.) Ltd. v. Commissioner (Appeals II) - [2023] (Madras)

In the instant case, the writ petition was filed by the petitioner to challenge the order of Appellate Authority on ground that opportunity for personal hearing was not granted. However, the department contended that personal hearing was granted twice but the petitioner sought adjournment.

Decision of the case :

- The Honorable High Court noted that the personal hearing was fixed on 06.01.2023 and re-fixed on 08.02.2023 and on both occasions, only adjournment was sought by the petitioner. The Court observed that the reason of marriage reception of daughter which was mentioned in letter seeking adjournment was genuine and the officer ought to have taken note of and re-scheduled date of hearing. Therefore, the Court set aside the impugned order and Appellate Authority was directed to hear petitioner and appeal was restored.
- Refund filed within time can't be rejected on ground of limitation if proper officer demanded further documents: Delhi HC

Facts of the case -

National Internet Exchange of India v. Union of India - [2023] (Delhi)

The petitioner had filed an application for refund on 31-10-2019 in 'form and manner' as prescribed under Section 54 and the application was accompanied by documents as prescribed under rule 89(2) of CGST Rules, 2027. The proper officer noticed certain discrepancies in documents and issued deficiency memo and petitioner was asked to submit fresh application for refund.

It submitted the fresh application and the officer issued

deficiency memo again and again. After submission of application for 4th time, SCN was issued to show cause as to why its refund application should not be rejected on the ground that it was filed after the prescribed period of two years and application was rejected on the ground of limitation. It filed writ petition against the rejection of refund.

Decision of the case :

- The Honorable High Court noted that an application for refund is required to be made within a period of two years from the relevant date and the application can be rejected as deficient only where any deficiencies are noted. In the instant case, the deficiency memo did not indicate that application filed by petitioner was incomplete in terms of rule 89(2).
- The nature of the deficiencies as set out in deficiency memo clearly indicated that the application filed by the petitioner was not incomplete. Also, the petitioner had submitted required statement containing number and date of invoices and relevant bank realisation certificates/foreign inward remittances certificates. Thus, the Court held that the application for refund filed by petitioner could not be ignored or rejected.

Writ Jurisdiction can't be exercised at SCN stage when it contains necessary details and grounds: Allahabad HC

Facts of the case -

Abhay Traders v. Commissioner Commercial Tax U.P. - [2023] (Allahabad)

The petitioner received a notice alleging that it had made

bogus purchases and credit was wrongly claimed. The petitioner was directed to reply why tax, penalty and interest would not be imposed upon the petitioner. The petitioner filed writ petition to challenge the notice by contending that the notice itself was vague and bad in law and, therefore, be quashed and set aside.

Decision of the case :

- The Honorable High court noted that the requirement of principles of natural justice by a show cause notice can only be met if a show cause notice contains the material/ground which, according to the department necessitates an action and the particular penalty/ action which is proposed to be taken.
- In the present case, it was specifically mentioned in the notice that there was no actual supply of goods on 12th June, 2018 by M/s Raghav Enterprises to petitioner and the petitioner was directed to submit reply to the notice and it was stated that if no reply was furnished then order under section 74(9) of CGST Act, 2017 would be passed.. Therefore, the Court dismissed the petition since notice contained necessary details and grounds and there was no ground for quashing same under Article 226 of Constitution of India.



JUDGEMENT DIRECT TAX

Portuguese law doesn't allow wife to hold 50% voting rights in husband's shares; deemed dividend applicable: HC

Facts of the case -

Dattaprasad Kamat v. ACIT - [2023] (Bombay)

Assessee-individual held 33% shares in a private limited company. Assessee was married to his spouse as per the provisions of the Portuguese Civil Code, as applicable to the State of Goa.

As per section 5A of the Income-tax Act, if the Portuguese Civil Code governs the husband and wife, the income of the husband and wife under any head of the income, except income derived from "salaries", shall be apportioned equally between them.

A search was conducted in the Company's office and directors' residences. After the search, Assessing Officer (AO) held that various payments made by the assessee through the Company were deemed dividends under section 2(22)(e).

Applying the Portuguese Civil Code, the assessee contended that his wife is the beneficial owner of half of the 33% shares (16.5% shares) in the said Company. Since the qualifying limit of 20% referred to in Section 2(22)(e) isn't satisfied, the deemed dividend provisions aren't applicable.

The matter reached before the Bombay High Court.

Decision of the case :

- The High Court held that if the wife doesn't make any statement under Section 187-C(2) of the Companies Act, 1956, asserting her ownership of a 50% beneficial interest in the shares held by her husband, then the husband would be considered sole owner of entire 33% share portion. This ownership would come with complete voting rights and authority linked to these shares.

- A shareholder would be one whom the Company recognizes as the person to whom dividends declared are legally payable. The Memorandum of Articles essentially binds the shareholders of the Company to itself through the various covenants contained therein, which regulate and restrict the liabilities of the shareholders in relation to the Company, which is a separate juristic entity.
- In the present case, the wife did not claim to have had a name entered into the Register or Members of the Company. She did not participate in passing resolutions or exercising any voting rights, as she did not hold any shares in the Company.
- The provisions of the Civil Code could not create any right in a spouse who is not a registered shareholder of the Company. The Company Act provisions exclusively regulate the relationship between the Company and a shareholder. The wife would have no voting powers under the scheme of the Companies Act attached to any of the shares, which have been exclusively registered in the husband's name.
- Consequently, the submission that the wife of the assessee, married under the provisions of Portuguese Civil Code, would be entitled to the beneficial ownership of the husband's shares was to be rejected. Thus, the provisions of 2(22)(e) would fully apply to the husband.

No sec. 263 revision if view taken by AO was plausible view supported by CBDT Circular No. 16/2017: ITAT

Facts of the case -

Agrani Buildestate v. Principal Commissioner of Income-tax - [2023] (Jaipur - Trib.)

Assessee-firm was engaged in the business of letting out properties. Since income earned was from letting out properties along with various services to lessees, the income was offered for tax under the head income from business and profession. The very basis for partnership

was to carry on business. The partnership deed also categorically provided for carrying on the business of leasing, managing, and maintaining the property.

During the assessment proceedings, a detailed questionnaire was issued by the Assessing Officer (AO) seeking pinpointed queries about the nature of business activities and verification of receipts. The nature of the business was explained, the partnership deed was submitted, and a complete explanation was rendered regarding income falling under the head 'income from business and profession'.

Reference was also drawn to CBDT's Circular No. 16/2017 dated 25-4-2017. On being convinced of the facts and legal position, AO accepted the assessee's explanation and assessed the income under the head 'income from business and profession'.

However, in the exercise of his jurisdictional power under section 263, the commissioner held that income from property under reference was in the nature of rental income and not business income.

Aggrieved-assessee filed an appeal to the Jaipur Tribunal.

Decision of the case :

- The Tribunal held that the scope of revision jurisdiction under section 263 is very specific, limited, and different from appellate jurisdiction. The law contained in section 263 does not allow the commissioner to impose his view over the judicious view adopted by the AO unless the view adopted by the AO is established to be not at all sustainable in law.
- In the instant case, the view of AO was also supported by the CBDT Circular. AO was also duty-bound to follow the directions of CBDT, more so when specifically brought to his notice by the assessee during the assessment proceedings.
- After adequate enquiry, AO has taken a reasonable view, and accordingly, the revision under section 263 is not permissible merely because the commissioner may entertain a different view on the issue. The stand adopted by AO was plausibly supported by the CBDT Circular and, therefore, cannot be said to be erroneous in terms of the provisions of section 263.

Jurisdictional issue raised in a writ challenging competence of exercise of statutory power is question of law: HC

Facts of the case -

Modern Living Solutions (P.) Ltd. V. Income-tax Officer - [2023] (Bombay)

Assessing Officer (AO) sought to reopen the assessment for the relevant assessment year. The assessee challenged notice by filing an instant writ petition. The assessee submitted that since there was no reason to believe, reopening the proceedings by the AO was without jurisdiction.

The AO raised a preliminary objection to the maintainability of the writ petition on the ground that an alternate statutory remedy was available to the assessee by way of an appeal. It was submitted that since such statutory remedy was available to the assessee, there was no reason to entertain the writ petition in the exercise of extraordinary jurisdiction.

Decision of the case :

- The Bombay High Court held that an objection to the maintainability of a writ petition would go to the root of the matter as the Court would be incapable of receiving the lis for adjudication. However, the question of entertainability is within the realm of discretion of the Court since writ remedy is discretionary in nature.
- When a jurisdictional issue is raised in a writ petition challenging the competence of exercise of statutory power in question, the same being a pure question of law, it can be considered in the exercise of writ jurisdiction.
- In the instant case, the assessee has raised a challenge to initiating proceedings and exercising power under section 148 by urging that the statutory requirements prescribed by section 148 have not been satisfied. Since the jurisdiction of the ITO of initiating the proceedings itself is under challenge, the writ petition would be maintainable. In light of the challenge raised, it cannot be said that the writ petition is not maintainable.

HC can't admit an appeal without formulating any substantial question of law: Apex Court



Facts of the case -

Bikram Singh v. Principal Commissioner of Income Tax - [2023] (SC)

During assessment proceedings, the Assessing Officer (AO) added to the assessee's income under section 68 regarding loans /advances received from eight persons. The additions were made because the assessee could not establish the identity, creditworthiness and genuineness of said persons and transactions.

However, the additions were deleted during the appellate proceedings. The matter reached the Delhi High Court. The Court admitted the appeal and held that the mere establishment of identity and the fact that amounts had been transferred through cheque payments did not mean that transactions were genuine. Accordingly, the HC restored additions made by the AO.

The assessee, aggrieved by the judgment passed by the High Court of Delhi, filed an appeal to the Supreme Court contending that the appeal filed under Section 260A of the Income Tax Act, 1961 was disposed of on merits without being argued on the substantial question of law.

Decision of the case :

- The Supreme Court held that the High Court had not followed the procedure contemplated under Section 260A. It should be noted that an appeal before the High Court is maintainable only on a substantial question of law (not a question of fact or only a question of law).
- The High Court, when entertaining such an appeal, must formulate that question and admit the appeal. Thereafter, the respondent must also be heard on the question so formulated. Consequently, the matter must be disposed of depending on whether the substantial question of law must be answered for or against either of the parties.
- In the instant case, it was found that the High Court did not formulate any substantial question of law when admitting the appeal. Instead, the appeal was heard on merits.
- The Supreme Court held that the High Court has either to admit or not admit the appeal. If the High Court admits the appeal, then substantial question(s) of law have to be framed, and the respondent put

on notice of such substantial question(s) of law. On the contrary, the appeal must be dismissed if the High Court believes that no substantial question of law arises.

- Therefore, the matter was to be remanded to the High Court for reconsideration of the appeal filed by revenue having regard to essentials of section 260A.

CIT can't deny sec. 12AA registration to 'Tennis Association' based on a projection of what might happen in future: HC

Facts of the case -

CIT v. Cuttack District Tennis Association - [2023] (Orissa)

Assessee-association applied for registration as a charitable trust under section 12AA. The primary object of the assessee association was to promote the game of tennis and all other sporting activities by encouraging young persons, providing coaching facilities and organizing tournaments.

The Commissioner rejected the application because the assessee was looking to raise funds from the sponsors and donors in the interest of the game. It would be quite possible that a huge amount of commercial consideration would take effect through advertisement, ticket selling, broadcasting right over the game, etc. Thus, the genuine activities of the association would not be considered as "charity" under the ambit of section 2(15).

On appeal, the Tribunal reversed the order of the CIT, and the matter reached the Orissa High Court.

Decision of the case :

- The High Court held that the Commissioner rejected the application for registration because of future contingency. It was held that section 12AA, by the sub-sections therein, provides for cancellation of the registration, and rejection of the application for registration based on a projection of what might happen in the future could not be sustained. Accordingly, the assessee's appeal was allowed.

Extended time limit provided by TOLA isn't applicable for sanction of notice under Sec. 151: HC

Facts of the case -

Siemens Financial Services (P.) Ltd. v. DCIT - [2023] (Bombay)

Assessee was a Non-Banking Finance Company and classified as an Asset Finance Company. On June 2021, it received Section 148 notice stating that there was reason to believe that income chargeable to tax for AY 2016-2017 had escaped.

Later, Assessing Officer (AO) referred order of the Supreme Court in the case of Union of India vs. Ashish Agarwal (2022) 138 taxmann.com 64 (SC) and treated section 148 notice as show cause notice in terms of Section 148A(b). Later, an order was passed under section 148A(d).

Assessee contended that the Finance Act 2021 amended section 151, which provides for sanction for issue of notice. AY 2016-2017, three years elapsed on 31st March 2020; hence, the provisions of amended Section 151(i) and 151(ii) would have to be fulfilled, which have not been complied with. The matter reached before the Bombay High Court.

Decision of the case :

- The Bombay High Court held that the Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020 [TOLA] provided for a relaxation of certain provisions of the Income-tax Act, 1961. Where any time limit for completion or compliance of an action, such as completion of any proceedings or passing of any order or issuance of any notice, fell between the period 20th March 2020 to 31st December 2020, the time limit for completion of such action stood extended to 31st March 2021.
- Thus, TOLA only seeks to extend the limitation period and does not affect the scope of section 151. AO cannot rely on the provisions of TOLA and the notifications issued thereunder as Finance Act, 2021, amended section 151, and the provisions of the amended section would have to be complied with by AO, w.e.f., 1st April 2021.
- Hence, the Assessing Officer cannot seek to take the shelter of TOLA as subordinate legislation cannot override any statute enacted by the Parliament. Further, the notification extending the dates from 31st March 2021 till 30th June 2021 cannot apply once the Finance Act 2021 is in existence.



- The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained; therefore, the sanction must be obtained by applying the amended section 151(ii). Since the sanction was obtained in section 151(i), the impugned order and notice were bad in law and should be quashed and set aside.

HC reduces withholding tax rate from 16% to 8% on payments made to Amazon-US for purchase of web services

Facts of the case -

Amazon Web Services India (P.) Ltd. v. Income Tax Officer - [2023] (Delhi)

Amazon Web Services (AWS) USA was a company having principal place of business in the United States of America. It was engaged in providing web services to its customers and resellers worldwide, including AWS India. Assessee-AWS India was involved in reselling web services to third-party customers in India.

As per the reseller agreement between the two entities, AWS India was authorized to resell web services to its customers in India and make payments to AWS USA to purchase web services. AWS India contended that AWS USA does not own, lease or operate any data centres in India, therefore not having any permanent establishment in India. However, receipts were chargeable to the Equalisation Levy.

The assessee applied for a certificate for nil withholding of tax on reseller fees. However, the Assessing Officer (AO) proceeded on the information available in the public domain and concluded that AWS USA had significant infrastructural assets (data centres) in India, constituting its PE.

Thus, reseller fees paid by AWS India to AWS USA would fall outside the scope of the Equalisation Levy and would be chargeable as business income under the provisions of the Act. Accordingly, AO directed the assessee to withhold 16% of the remittance on account of the reseller fee paid to AWS USA. Aggrieved by the order, the assessee filed a writ petition to the Delhi High Court.

Decision of the case :

- The Court held that AO's stand that AWS USA has PE in India was contentious. However, even if it is



assumed that the data centres in India are owned or operated by AWS USA, AO failed to determine the proportion of income attributable to the PE in accordance with Indo-US DTAA.

- It can't be accepted that the entire amount payable by AWS India to AWS USA can be considered revenue attributable to AWS's PE (if any) in India and that no part of it is attributable to overseas entities. The exercise conducted by the AO of determining the revenue attributable to a PE, which also requires allowance for the deduction of material expenses to be made, is flawed.
- The proceedings under Section 195(2) only determine the proportion of income chargeable to tax for the limited purpose of determining tax withholding. The determination under Section 195(2) does not constrain the revenue from correctly assessing the payee's income chargeable to tax per the law. AO was correct that the assessee had not provided AWS USA's financial information for the preceding years, which may be essential in determining the application under Section 195(2).
- Considering that the nature of these proceedings was confined to withholding of tax and that the financial year 2022-23 was already over, this Court had suggested to the parties that without prejudice to their rights and contentions regarding the chargeability of AWS USA's income under the Act, a total of 10% be withheld (less 2% Equalisation Levy that has already been paid) as withholding tax.

Provision made in respect of payment to be made to employees based on Co's financial performance is to be allowed: HC

Facts of the case -

CGI Information Systems and Management Consultants (P.) Ltd. v. Income-tax Officer - [2023] (Karnataka)

During the year under consideration, the assessee made a provision in respect of payment to be made to the employees. Such payment was made based on the employee's performance. The assessee paid 80% of the performance pay as an incentive, and the remaining 20% is paid based on the company's financial performance.

Considering such payment as a contingent liability, the

Assessing Officer (AO) disallowed the provision made by the assessee in respect of payment to be made to employees. Assessee argued that it was a liability which the company would know at the time of closure of books of account, i.e., on 31st March of the relevant financial year. Thus, the disallowance of the provision was incorrect.

The matter then reached the Karnataka High Court.

Decision of the case :

- The High Court held that the objection raised by the AO that there are possibilities of employees leaving the company and not getting paid was untenable. The percentage of the employees leaving their employment will be minimal, and in such an event, the assessee was duty bound to reverse the entry in the following year.
- Since the provisions made were ascertained figures, the disallowance made by the AO and confirmed by the two authorities was perverse and unsustainable.

AO can't add new reasons while passing Sec. 148A(d) order without giving opportunity to assessee to explain same: HC

Facts of the case -

Packirisamy Senthilkumar v. Government of India - [2023] (Madras)

Assessee, a non-resident Indian, purchased a property in India, for which tax was deducted, and Form No. 26QB was filed. However, he had not filed the return of income for the relevant assessment year. Upon receiving notice from the Assessing Officer (AO) evidencing the escaped income, the assessee submitted a detailed reply and documentary evidence.

Dissatisfied with the reply, the AO passed an order under section 148A(d) against the assessee. However, while passing the order, the AO dealt with the assessee's loan account, employment details, salary certificate, etc.

Aggrieved by the order, the assessee filed a writ petition to the Madras High Court.

Decision of the case :

- The High Court held that the notice to the assessee was based only on the reason for purchasing such

property. In contrast, in the impugned order, the AO had gone on to deal with the loan account, the employment details, the salary certificate, etc., of the assessee. In the order, the AO added new reasons, and the assessee had not been allowed to answer and explain the same.

- Therefore, taking into account that the very basis of the impugned order was erroneous, and AO proceeded to give new reasons, which the assessee has not been allowed to defend, the impugned order was set aside.
- The notice issued under section 148A(b) shall be treated as an additional show-cause notice and the assessee shall submit his explanation to this additional show-cause notice. AO shall proceed to pass order after giving an opportunity of personal hearing to the assessee.

Cognizant's Rs. 19,000 crores buyback via Court-approved scheme is a colourable device; DDT leviable: ITAT

Facts of the case -

M/s. Cognizant Technology-Solutions India Pvt. Ltd., Vs. ACIT - [2023] (Chennai - Trib.)

Assessee-Cognizant Technology had purchased its own shares from non-resident shareholders in a 'Scheme of Arrangement & Compromise' sanctioned by the High Court of Madras in terms of provisions of Section 391-393 of the Companies Act, 1956.

In accordance with the scheme, the assessee purchased 94,00,534 equity shares from its shareholder at the price of Rs.20,297/- per share and paid a total consideration of Rs.19,080.26 crores.

The share capital of the assessee company was held by four non-resident shareholders, out of which three shareholders are residents of the USA, and one shareholder is a tax resident of Mauritius. The net effect of the scheme was that post-sanction of the scheme, the only shareholder left was Cognizant Mauritius Ltd.

Assessing Officer (AO) held that consideration paid by the assessee to its shareholders for the purchase of its own shares was liable to tax as deemed dividend under section 2(22)(d). Consequently, the assessee was liable to pay Dividend Distribution Tax (DDT) under section 115-O.

On the other hand, the assessee submits that 'Scheme of Arrangement & Compromise' was sanctioned by the High Court of Madras in terms of Sections 391 to 393 of the Companies Act, 1956. It cannot be considered as buyback of shares in terms of provisions of Section 77A or reduction of capital in terms of Sections 100-104/402 of the Companies Act, 1956.

On appeal, the CIT(A) upheld the findings of AO. The matter reached before the Tribunal.

The Tribunal held as follows:

Decision of the case :

A.Applicability of section 2(22)(d)

Two essential prerequisites must be satisfied in order to come within the ambit of section 2(22)(d), i.e., there must be a distribution to the shareholders on the reduction of the capital and further, it must be to the extent that the company possess accumulated profits.

In the present case, it was evident from the audited financial statement that the share capital has been reduced by around Rs.9.4 Crs. equivalent to 54.70% of the total paid-up share capital.

The Supreme Court, in CIT v. G. Narasihan 236 ITR 327, has clarified that Section 2(22)(d) is automatically attracted once these parameters are satisfied. Further, Clause 7 of the scheme clarifies that the distribution of money will be out of the general reserves and accumulated credit balance in the profit and loss account. Thus, both conditions are satisfied to treat the transaction within Section 2(22)(d).

B.Purchase through offer and acceptance is also "distribution"

Assessee also argued that the scheme of purchase of own shares was made through offer and acceptance. This involves an element of quid pro quo, and thus, there was no 'distribution of the purpose of section 2(22)(d).

The Tribunal held that the definition of 'distribution' does not contain any aspect of quid pro quo or lack thereof. The prerequisites for distribution are that there must be payment, and the disbursement must be made to more than one person. Section 2(22)(d) does not distinguish



whether the reduction of share capital is the intended result of the resultant consequence of the scheme.

C. Purchase of own shares would be “reduction of capital” if it is not buyback

The assessee’s transaction would either fall under section 391-393 r.w.s. 77 and Sec.100 of the Companies Act, 1956 or sections 391- 393 r.w.s. 77A of the Companies Act, 1956. The scheme clearly states that it is not a buyback under section 77A.

Therefore, once the assessee states it is not buyback under section 77A, it should automatically fall back to section 77 r.w.s sections 100-104 of the Companies Act, 1956. If said sections are applied, then said transaction was nothing but the reduction of capital and distribution of accumulated profits.

D.Reduction of capital vs. Buy Back

The assessee also contended that Section 115QA was amended in 2016, and the present transaction would only be taxable per the amended provisions.

The arguments of the assessee were not accepted for two reasons. Firstly, there is a distinction between the purchase of own shares upon reduction of share capital and buyback. Buyback’ is a term used only in respect of transactions covered u/s 77A. If all conditions of Section 115-O r.w.s. 2(22) are satisfied;

the same cannot be impliedly excluded based on the amendment to Section 115QA.

E.Scheme was a colourable device to try to avoid payment of tax

The assessee claims to have implemented the scheme to rationalize its shareholding and capital structure. The four reasons given were that:

- (i) To increase earnings per share;
- (ii) To streamline corporate ownership;
- (iii) To optimize the overall capital structure and
- (iv) To reduce the risk in terms of foreign currency fluctuations in respect of rupee funds.

On closer examination of the scheme’s true purpose, it becomes evident that it primarily serves two objectives: (i) transferring the capital base of the company to shareholders based in Mauritius and (ii) distribution of the company’s accumulated profits to non-resident shareholders, all while avoiding the scope of any provisions related to the taxation of payments made for the purchase of its own shares.

It was undoubtedly clear that the scheme was only a colourable device intended to evade legitimate tax dues.

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Tax Calendar

Indirect Tax

Due Dates	Returns
Jun 20th, 2023	GSTR-5A (May, 2023)
Jun 20th, 2023	GSTR-3B (May, 2023)
RFD-10	18 Months after the end of quarter for which refund is to be claimed

Tax Calendar

Direct Tax

Due Dates	Returns
29 June 2023	Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under section 9A in respect of its activities in financial year 2022-23
30 June 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of May, 2023
30 June 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of May, 2023
30 June 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of May, 2023
30 June 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the month of May, 2023 Note: Applicable in case of specified person as mentioned under section 194S
30 June 2023	Return in respect of securities transaction tax for the financial year 2022-23
30 June 2023	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2023
30 June 2023	Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2022-23
30 June 2023	Report by an approved institution/public sector company under section 35AC(4)/(5) for the year ending March 31, 2023
30 June 2023	Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2022-23. This statement is required to be furnished to the unit holders in form No. 64B
30 June 2023	Furnishing of Equalisation Levy statement for the Financial Year 2022-23
30 June 2023	Statement of donation in Form 10BD to be furnished by reporting person under section 80G(5) (iii) or section section 35(1A)(i) in respect of the financial year 2022-23 Note: The due date for furnishing of statement of donation is extended to June 30, 2023 vide Circular No. 6 of 2023, dated 24-05-2023
30 June 2023	Certificate of donation in Form no. 10BE as referred to in section 80G(5)(ix) or section section 35(1A) (ii) to the donor specifying the amount of donation received during the financial year 2022-23. Note: The due date for furnishing of certificate of donation is extended to June 30, 2023 vide Circular No. 6 of 2023, dated 24-05-2023



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 -

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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

Disclaimer:

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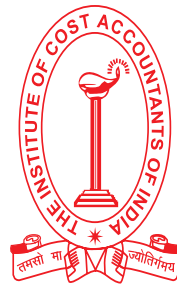
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