

150th
EDITION



December, 2023

TAX Bulletin

Volume - 150 | 17.12.2023



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016

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Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003

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“

VISION STATEMENT

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

”

MISSION STATEMENT

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

Objectives of Taxation Committees:

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

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1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - <https://eicmai.in/advsc/DelegatesApplicationForm-new.aspx>

Modalities

| Description | Course Name | | | | | | |
|-----------------|---|--------|--------|--------|--------|--------|--------|
| | CCGST | ACCGST | ACGAA | CCTDS | CCFOF | ACIAA | CCIT |
| Hours | 72 | 40 | 30 | 30 | 30 | 30 | 50 |
| Mode of Class | Offline/ Online | Online | | | | | |
| Course Fee* (₹) | 10,000 | 14,000 | 12,000 | 10,000 | 10,000 | 12,000 | 10,000 |
| Exam Fee* (₹) | 1,000 per attempt | | | | | | |
| Discounts | 20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students | | | | | | |

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

Eligibility Criteria for Admission

- ▲ Members of the Institute of Cost Accountants of India
- ▲ Other Professionals (CA, CS, MBA, M.Com, Lawyers)
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On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

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

Courses for Colleges & Universities by the Tax Research Department

Modalities

Eligibility

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

| Description | Courses for Colleges and Universities | |
|-----------------|--|------------|
| | GST Course | Income Tax |
| Batch Size | Minimum 50 Students per Batch per course | |
| Course Fee* (₹) | 1,000 | 1,500 |
| Exam Fee* (₹) | 200 | 500 |
| Duration (Hrs) | 32 | 32 |

For enquiry about courses, mail at: trd@icmai.in

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

Behind every successful business decision, there is always a **CMA**



CMA (Dr.) V. Murali
Chairman
Direct Taxation Committee, ICAI

FROM THE DESK OF CHAIRMAN

Esteemed Professional Colleague,

As we move into 2024 I wish all our members and students a Very Happy New Year 2024. This year the budget will be just a vote on account as the Elections are slated this year. The Honourable Finance Minister may not make any major changes as it is an Interim Budget only.

POINT TO PONDER

Having a warm smile for everyone will set the world on the right path. It can work wonders, result in miracles and is a sign of universal welcome. As Joseph Addison said “What sunshine is to flowers, smiles are to humanity”. Life is like a camera – focus on what’s important, capture the good times, develop from the negatives and if things don’t work out, just take another shot. Martha Washington said it succinctly “I am determined to be cheerful and happy in whatever situation I may find myself.”

ACTIVITIES AND PLAN OF ACTION

The Tax Research department conducts Crash Course on Income Tax Overview for College and University students.

As I browse through this course, I see that all the basic aspects in filing of Income Tax Returns are being touched upon, like the threshold limits, purposes, due dates, different kinds of returns like original return, belated return, revised return, defective return etc and all related topics which would help a student to get a clearer picture of what is being taught at college. Students are shown practically the filing of ITR 1, how to generate tax payment challans, e-verification of return etc. We have seen this garners huge interest from students as they are practically able to apply what they learn academically.

This course is being conducted by colleges for its students and the course has been well received among many colleges in India. This month the course was conducted in the Sandip University, Nashik and has been immensely appreciated by the students and the faculty. We exhort chapters of the Institute to get in touch with their local colleges and propogate this value adding knowledge initiative further.

WRAP UP POINT

It is said Time and tide wait for no man. Time is slow when you wait; time is fast when you are late; time is deadly when you are sad; time is short when you are glad. Time flies, but the good news is that you are the pilot. So soar high! Time decides whom you meet in life; your heart decides whom you want in life but, your affection decides who will stay in your life. Life has no pause button; Dreams have no expiry date; Time has no holiday; So, cherish every moment of your life and make it count. Live it! Love it! Enjoy it!

Wishing each and every one of you a Life filled with joy, fulfilment, prosperity and bliss at home.

With Warm Professional Regards,

Forever, yours in service,

A handwritten signature in black ink, appearing to read 'V Murali', with a small dot at the end.

CMA (Dr.) V Murali

Chairman

Direct Taxation Committee, ICMAI

17.12.2023



CMA Rajendra Singh Bhati
Chairman
Indirect Taxation Committee, ICAI

FROM THE DESK OF CHAIRMAN

An important webinar on the topic 'Precautions in Filing GSTR 9 & 9C' conducted on 06.12.2023. The webinar discussed the steps in filing these two returns as the last date to file GSTR 9 and GSTR 9C along with GSTR 9 for FY 2022-23 (AY 2023-24) is December 31, 2023. It also emphasized on the impact of self-certification of GSTR 9C which leads to the absence of a maker-checker concept and hence is more susceptible to errors enhancing the risk on taxpayers for filing the returns incorrectly. Incorrect filing may lead to a Departmental Audit which would directly be dealt with by the assessee. The webinar discussed in details the precautions that are to be taken in this regard as all the data reported should be provided in the proper table under the relevant description. Wherever possible, the assessee is to ensure that all optional fields are filled and they have provided full and proper information and clerical mistakes are to be strictly avoided. Even all the changes that have occurred and informed through notifications are to be taken into consideration.

Another important workshop was conducted by the department addressing the issues on GSTR 9 & 9C, the name being 'Comprehensive Session on GSTR 9 & 9C'. The details related to the forms were discussed therein and also filing the forms was practically discussed during the session. The highlight of the session was a deliberation by **Shri Anil Kumar Gupta, IRS, Principal Director General - DGGI**. Shri Gupta elaborated on the points that are of utmost importance for compliance during the filing and also threw light on the issues that are critically examined by the department. It was a 4-day session starting from the 13th to the 16th of December, 2023. The faculties for the sessions were CMA Dipak N Joshi and CMA Mukesh Pandey and the moderators were CMA Anil Sharma and CMA Bhaogavalli Mallikarjun Gupta, all being practicing Cost Accountants by profession.

We are optimistic that these workshops and webinar would help the aseessees to file timely and accurate returns and will have a transparent compliance.

The activities of the department for this fortnight has been the conduct of the classes of the Taxation courses, publishing of the fortnightly bulletin and conduct of the quiz for the members are being carried on sincerely. The classes for GST Course for college and university students was successfully commenced at Sheshadripuram Degree College, Mysore Karnataka.

I appreciate the sincerity and diligence of the members of the Tax Research Department.

Thank You.

A handwritten signature in black ink, appearing to be 'Rajendra Singh Bhati', written in a cursive style.

CMA Rajendra Singh Bhati
Chairman
Indirect Tax Committee, ICAI
17.12.2023

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CONTENTS

| ARTICLES | | |
|-----------------------------|---|-----------|
| INDIRECT TAX | | |
| 01 | Impact of GST on healthcare services provided by one hospital to the other | |
| | CMA Mukesh Pandey | Page - 1 |
| DIRECT TAX | | |
| 02 | Taxation on the Interest on Debentures in India | |
| | CMA Dipankar Biswas | Page - 5 |
| PRESS RELEASE | | |
| | Indirect Tax | Page - 10 |
| NOTIFICATIONS AND CIRCULARS | | |
| | Indirect Tax | Page - 15 |
| JUDGEMENTS | | |
| | Indirect Tax | Page - 20 |
| | Direct Tax | Page - 22 |
| TAX CALENDAR | | |
| | Indirect Tax | Page - 25 |
| | Direct Tax | Page - 25 |
| PUBLICATIONS | | |
| | E-Publications of Tax Research Department | Page - 26 |

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

Impact of GST on healthcare services provided by one hospital to the other



CMA Mukesh Pandey
Cost Accountant

Nowadays it is very common to have a joint arrangement between two hospitals to provide health care services or outsource a particular branch such as orthopedic, cardiac, neuro etc. to another hospital that specialises in such areas. The said arrangement can be understood through an example:

Hospital Alpha is engaged in providing Medical Services, but Alpha does not possess excellence in orthopaedic surgery. Given this, he enters into a contract with hospital BETA for performing orthopaedic surgeries in their hospital/outourcing orthopaedic department wherein BETA will operate/run the orthopaedic department and all responsibilities related, including necessary orthopaedic setup and install and perform the surgery on the patients of the Alpha is on BETA. In such cases, Alpha will invoice the patients for the services provided in the orthopaedic centre, and after that, BETA will raise an invoice on Alpha for their share. Now, the question of whether healthcare services provided by BETA to Alpha shall be exempted from GST arises.

Most players in the healthcare industry do not pay GST on revenue retained in cases where healthcare services are provided by one hospital to the patients of another hospital, considering the same exempted from GST entry no. 74 of the Notification No. 12/2017 – CGST.

The entry no. 74 of Notification No. 12/2017 – CGST exempts health care services provided by clinical establishments. The purpose of such an exemption is not to put the GST burden on the

patients who are already buried with medical treatment expenses.

However, recently in the case of ARPK Healthcare services, wherein M/s Asian Institute of Medical Science engaged ARPK Healthcare services for providing Gastroenterologist Services to their patients, The Advance Ruling Authority of Panchkula, Haryana vide Advance Ruling No. HR/HAAR/07/22-23 held that the share received by ARPK Healthcare Services from M/s Asian Institute of Medical Science for providing healthcare services to the patients of M/s Asian Institute of Medical Science shall be liable to GST.

The Advance Authority has contended that in this case, ARPK Healthcare services are providing services to M/s Asian Institute of Medical Science. M/s Asian Institute of Medical Science provides the services to the patients. It was held that as ARPK Healthcare services are not providing services to its patients but providing services to the patients of M/s Asian Institute of Medical Science, the same cannot be considered as a clinical establishment. A relevant extract of the Advance Ruling is reproduced below:

“Further, it is also observed that the applicant who is a company will render its specialized services at the premises of M/s Asian hospital Faridabad, who are the recipient of the services, and the applicant will supply the services to consumers/ patients who don't make payment to the applicant. The applicant is paid only by the



recipient of the services (M/s Asian). Here it can be said that the services are rendered by one company to another company/ hospital and one of them is supplier and another is recipient of the services. The applicant stressed that the main recipient of the services are the patients and services to the patient is covered under the entry no. 74 of the Notification no 12/2017 however it is altogether different aspect and can be better understood by the following explanation: -

1. A patient comes to the M/s Asian Hospital for treatment of some gastroenterological disease. The patient pays a sum of Rs X for his OPD/IPD to the counter of the Asian Hospital. Here the M/s Asian Hospital is a clinical Establishment and it is providing the patient the requisite medical treatment. The hospital has charged the payments/ fees from the patient, and so the hospital becomes liable to deliver the services. The Asian Hospital has all the facilities for treatment of the ailments but not having the specialized doctors (neither as an employee nor the hired one). The doctors in this regard are supplied by the applicant company. Here, the applicant company is paid by the hospital to acquire its services and not by the patients. The consideration amount will be paid as per the terms and condition of the contract. The Company being incorporated under the Companies Act 2013 may or may not be a clinical establishment. This company would act as a clinical establishment only if it is involved in treating the patients as defined under the definition (of the healthcare services) of the notification issued under the Act *ibid* but it becomes a supplier of specialized man power if it act differentially as it's in the present case.

2. M/s Asian Hospital outsourced its requirements of specialized doctors particularly for the gastroenterological services from the

applicant company and not treating the patient by itself as a clinical establishment. The exemption claimed by the applicant is available as per the entry of the said notification only when the clinical establishment itself provides this service (treatment related to gastroenterological problems) as a part of health care services to the in-patients as well as out-patients and the same is not available when such supply of services provided by a third party as a contractual arrangement.

In this regard, we need to see what is the legislative intention behind any exemption of tax given under the GST Act i.e. the purpose for not taxing the healthcare services is to give benefit to the common man/patients as it (Healthcare services) is one of the basic necessities of life. Similarly, in the field of education i.e. School/College/University tuition fees is exempted whereas the tuition fees charged by the coaching centres institutions is taxable.

And it is also observed that a company/corporation cannot be a doctor for providing the health care services which are exempted under the notification no. 12/2017 dated 28.06.2017”

If we go by the ratio of the said advance ruling, GST is applicable to the health care services provided by one hospital to another hospital which may result into either huge litigation or overburdening the patients especially when ITC of tax paid shall not be available as credit to the recipient hospital.

Authors comment:

The entry no. 74 of the Notification No. 12/2017 – CGST provides exemption to health care services and accordingly, it important to analyze the definition of health care services in light of the entry exempting the health care services. As per entry no. 74 of the Notification No. 12/2017 – CGST the Health Care Services provided by the Clinical is exempted from the GST. the relevant extract is reproduced below:



| Sr. No. | Service Code | Description of Services | Rate (Percent) | Conditions |
|---------|--------------|--|----------------|------------|
| 74 | Heading 9993 | Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above. | Nil | Nil |

Now, it is important to understand what “healthcare service” is and who can be said to be a clinical establishment?

The term “healthcare service” is defined under definition clause (zg) of Notification No. 12/2017 CGST dated 20.06,2017. The same is reproduced below for ready reference:

“(zg) ‘‘health care services’’ means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;’’

On perusal of above definition it can be accredited that any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India is considered as Health Care Services.

In the present scenario, one hospital is providing specialized services by way of diagnosis/ treatment/ care for illness/ deceases to the patients of the partner hospital,

The term “clinical establishment” is defined under definition clause (s) of Notification No. 12/2017 CGST which reads as follows:

“(s) ‘‘clinical establishment’’ means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity,

abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases

In this case we understand that 1st hospital is offering services or facilities requiring diagnosis or treatment or care for illness/ deceases to the second hospitals patients. The treatment given by 1st hospital is recognized in system of medicines in India. Thus, author is of the view, the first hospital shall qualify as clinical establishment.

Now, the question is whether the health care services provided by 1st hospital to other shall qualify for exemption under Notification No 12/2017 Central Tax (Rate) dated 28.06.2017.

In this case, it is relevant to note that Notification No 12/2017 Central Tax (Rate) provides exemption to health care services which includes Services by way of health care services by a clinical establishment, an authorized medical practitioner or para-medics.

The author is of the view that Notification No 12/2017 Central Tax (Rate) provides an exemption to health care services provided by clinical establishments irrespective of the fact to whom such services are provided.

Therefore, the exemption should be available even when the healthcare services are being provided by one clinical establishment to patients of another clinical establishment.

CBIC Circular Circular No. 32/06/2018-GST dated 12.02.2018 has laid down the following clarification in case of services provided by doctors to the hospital. The relevant extract of the same is reproduced below for ready reference:

| S. No. | Issue | Clarification |
|--------|---|--|
| 5. | Is GST leviable in following cases: (1) Hospitals hire senior doctors/ consultants/ technicians independently, | Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of notification |



| | |
|--|--|
| <p><i>without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?</i></p> | <p><i>No. 12/2017- CT(Rate) dated 28.06.2017 as amended refers].</i></p> <p><i>(1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.</i></p> |
|--|--|

On perusal of above, it is clear that healthcare services provided by the doctors to the hospitals is exempted from GST whether they are working as employee or hired on sharing basis. The same ratio could be applied to the present case also where in one hospital is providing healthcare services to other.

Accordingly, it is the need of hour that the Government should come up with some clarity on

this issued in order to avoid any unnecessary litigation on this issue.

Note: The view in the present case is author's personal view, the GST authorities may have different view. Hence, the same should not be considered an advice in any manner. It is suggested that before taking any decision, the person should take legal advice from their consultant as per fact and circumstances of their case.



Taxation on the Interest on Debentures in India



CMA Dipankar Biswas

Deputy Manager(F&A)-NPCIL under Department of Atomic Energy

BRIEF OF THE INTEREST ON DEBENTURES:

When the businesses need to raise funds for a/several specific objectives, they issue debentures like Convertible and Non-Convertible debentures with a fixed coupon rate and a fixed maturity period. It is a financial instrument or financial asset where the investors invest their funds to get a fixed rate of interest. Investors can purchase NCD through Public Offerings or Private Placement. NCDs are initially issued by the listed entities in the Stock Exchange and later, the same will be traded in the Secondary Market.

IMPORTANT FEATURES OF NCD:

- A. Investors can purchase debentures through Public Offerings or Private Placement.
- B. Debentures may be Secured or Unsecured. Secured NCD issues are backed by the company's assets and if the company fails to make payments on time, investors are entitled to recover their money by selling off the assets of the company. But, in case of Un-Secured NCD issues, this option is not eligible.
- C. Interest receivable from Debentures is taxable under the head of "Income from other sources".

TAXATION ON THE INTEREST ON DEBENTURES IN INDIA FOR RESIDENT INVESTORS- BEFORE AND AFTER THE FINANCE ACT, 2023

BEFORE THE FINANCE ACT, 2023

1. As per the clause (ix) of the Proviso to Section 193 of the Income Tax Act, 1961, no tax shall be deducted on interest payable on any security issued by a company to a resident payee where such security is in Demat Form and is listed on a recognized stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956.
2. No TDS was deducted on interest payable to the resident payee.

AFTER THE FINANCE ACT, 2023

1. As per the amendment issued by the Finance Act, 2023, the clause (ix) of the Proviso to Section 193 of the Income Tax Act, 1961 is omitted with effect from 01-04-2023 and TDS is to be deducted w.e.f. 1st April, 2023 on interest payable to the resident payee.
2. TDS @10% is deducted on interest payable to the resident payee.

Note- For the following cases, TDS will be deducted @20% instead of 10%-

- A. Investors who do not have a valid PAN/ have not registered their valid PAN details in their Demat account/with the company/ Registrar and Transfer Agent/ Depository Participant.
- B. Investors who are classified as Specified Persons under Section 206AB.



NO TDS FOR THE FOLLOWING CASES-

No tax shall be deducted in the following cases where the Residential Investors (individual, HUF, Trust, Mutual Funds etc.) will fall under the following categories:

1. Individual/HUF has submitted the valid Form 15G/Form 15H.
2. Any interest payable to the LIC established under the Life Insurance Corporation Act, 1956-refer Section 193(vi) in respect of any securities owned by it or in which it has full beneficial interest.
3. Any interest payable to the General Insurance Corporation of India-refer Section 193(vii).
4. Any interest payable to any other insurer in respect of any securities owned by it or in which it has full beneficial interest-refer Section 193(viii).
5. Any interest payable to a business trust –refer to Section 193(ix)substituted by the Finance Act, 2023.
6. Any income received by the Board of Trustee constituted under the Employees' Provident Funds and Miscellaneous Provisions Act,1948-refer to Section 10(25)(v)(a).
7. Any income of ESI Fund set up under the Provision of ESI Act, 1948.
8. Any income received by any person for or on behalf of the New Pension System Trust established under the Provision of the Indian Trusts Act, 1882 etc.

FORMAT FOR EXEMPTION FROM TDS ON INTEREST OR LOWER TDS DEDUCTION

Date:

TO WHOMSOEVER IT MAY CONCERN

Dear Sir/Madam,

Sub: Declaration with regards to the Exemption from TDS or Lower TDS on Interest Income of NCDs for FY 2023-2024.

For the purpose of determination of Income-tax TDS liability under Income Tax Act 1961, we hereby certify as follows:

| Nature of information | Details |
|--|---------|
| Name of the Bond/Debenture holder with ISIN | |
| Status (Mutual Fund/Insurance/ Others) | |
| Contact number | |
| PAN | |
| Registration number of the certificate obtained from IRDA /SEBI /Other Regulator as a supporting document for exemption from TDS on interest income on NCDs. | |
| Specified Person(Y/N) under Section 206AB of the Income Tax Act | |
| Nature of Business (Mutual Fund/Insurance/Others) | |

In this regard, we have enclosed the certificate of registration with IRDA / SEBI /Any other Regulatory Body as applicable for TDS Exemption from the Interest Income from NCDs.

In this connection, we also certify that the above made declarations applies to all DP ID & Client ID linked with PAN.....



The declaration furnished herewith, will be valid for the current financial year i.e., F.Y. 2023-2024 and all the financial years henceforth, till further communicated or till any further amendments in the Finance Act, 2023.

In case, the above declaration turns out to be in-accurate or untrue, we undertake to reimburse the applicable tax, interest and consequential penalty charged or levied to the company in respect of non-deduction of TDS.

For: (Name of Bondholders)

Authorized Signatory

Name and Designation:

Mandatory Documents enclosed-1. PAN and 2. Relevant Certificate for exemption from TDS OR Lower Deduction of TDS.



TAXATION ON THE INTEREST ON DEBENTURES IN INDIA FOR NON-RESIDENT INVESTORS-BEFORE AND AFTER THE FINANCE ACT, 2023

1. Section 115A of the Income Tax Act, 1961 (**the Act**) is for the taxability of the interest income earned by the non-residents (including interest income on securities). The interest income on securities can be earned by the Foreign Portfolio Investors (FPIs) or Foreign Institutional Investors (FIIs) or Qualified Foreign Investors (QFIs) and Section 115AD of the Income Tax Act, 1961 deals with the taxability of the interest earned by FPIs, FIIs and QFIs.

2. A concessional rate of tax was introduced in Section 115A and 115AD and withholding taxes were effective under Section 194LC and Section 194LD of the Act.

3. Section 194LC of the Act allowed the concessional rate of TDS@5% on certain interest income receivable by the non-resident including interest on rupee-denominated bonds.

4. Section 194LD of the Act allowed the concessional rate of TDS@5% when FPIs, FIIs and QFIs earn interest income on rupee-denominated bonds of the Indian company and government securities.

Here, Section 194LC and Section 194LD are very important Sections of the Income Tax Act, 1961 and both sections are summarized hereunder:

| Particulars | Section 194LC | Section 194LD |
|------------------------------|--|---|
| Section For | Interest on Foreign Currency Loan including Rupee denominated bond paid by Indian Company. | Interest on Rupee Denominated Bond or Government Security payable to FIIs/FPIs or QFIs. |
| Inserted date | 01.07.2012 | 01.06.2013 |
| Payer | Specified Company (means Indian Company), Business Trust | Any Person |
| Payee | Non-Resident not being a company or Foreign Company | FIIs/FPIs or QFIs |
| Income covered | 1. Interest on moneys borrowed in foreign currency from a source outside India under a Loan Agreement. | 1. Interest on moneys borrowed through rupee-denominated bonds. |
| | 2. Interest on moneys borrowed in foreign currency from a source outside India in form of issue of long-term bonds including long-term infrastructure bonds. | 2. Interest income on investment made in government securities. |
| | 3. Interest on moneys borrowed in foreign currency from a source outside India in form of issue of rupee-denominated bonds. | 3. Interest income on investment made in municipal debt securities. |
| | 4. Interest on bonds listed on a recognized in International Financial Services Centre | |
| Before the Finance Act, 2023 | The concessional withholding tax rate was 5% | The concessional withholding tax rate was 5% |
| After the Finance Act, 2023 | The concessional rate of 5% is available on interest income arising out of moneys borrowed before 01.07.2023 | The concessional rate of 5% is available on interest payable to FIIs/FPIs on or before 01.07.2023. Afterwards, the rate is 20% instead of 5%. |

Important Points: 1. Interest on securities earned by FIIs/FPIs is covered by Section 115AD of the Act and this section excludes interest income under Section 194LD w.e.f. 01.07.2023 and the same is covered under Section 196D with the TDS rate of 20%.



2.The FIIs/FPIs can avail the benefits of the Double Tax Avoidance Agreement (DTAA) if the tax rates are more beneficial than the provision of the Act. Here, Surcharge and Education Cess will not be charged.

3.Section 206AA shall not be applicable (**refer Sub-Section 7 of the Section 206AA**) and Section 206AB shall not be applicable (**refer Sub-Section 3(i) of Section 206AB**).

4. Form 15CA (declaration form of the foreign remittance made outside India before paying to a non-resident) and 15CB (a certificate for payment to be made to a Non-Resident (not being a company) or to a Foreign Company which is taxable and if the payment/sum total of such payments exceed Rs.5 lakh in the Financial Year) are important forms.



Press Release

GST Revenue collection for November 2023, at ₹1,67,929 lakh crore records highest growth rate of 15% Y-o-Y

Gross GST collection crosses ₹1.60 lakh crore mark for the sixth time in FY 2023-24

GST collection higher by 11.9% Y-o-Y for FY2023-24 up to November, 2023

Posted On: 01 DEC 2023 6:30 PM by PIB Delhi

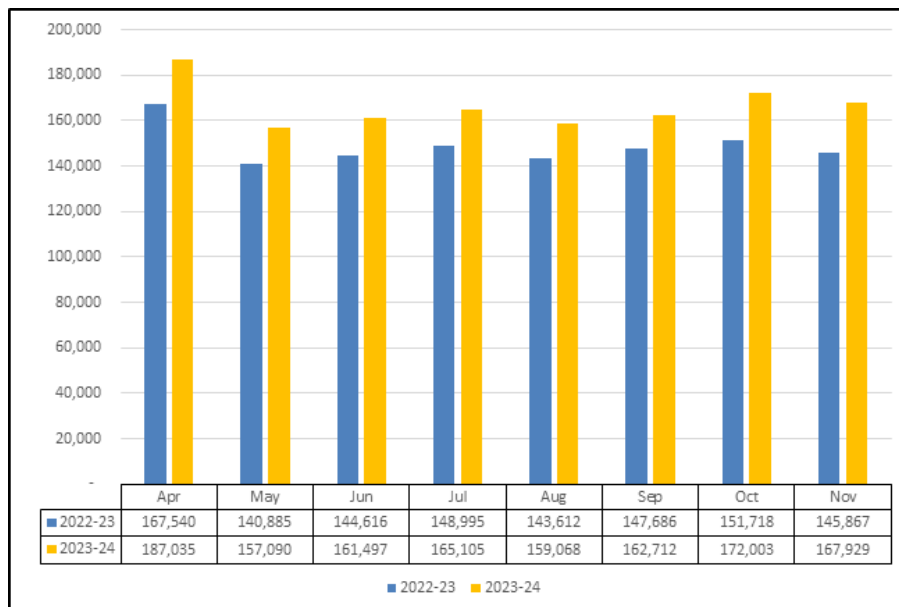
The gross GST revenue collected in the month of November, 2023 is ₹1,67,929 crores out of which CGST is ₹30,420 crores, SGST is ₹38,226 crores, IGST is ₹87,009 crore (including ₹39,198 crore collected on import of goods) and cess is ₹12,274 crore (including 1,036 crore collected on import of goods).

The government has settled ₹37,878 crore to CGST and ₹31,557 crore to SGST from IGST. The total revenue of Centre and the States in the month of November, 2023 after regular settlement is ₹68,297 crore for CGST and ₹69,783 crore for the SGST.

The revenues for the month of November, 2023 are 15% higher than the GST revenues in the same month last year and highest for any month year-on-year during 2023-24, upto November 2023. During the month, the revenues from domestic transactions (including import of services) are 20% higher than the revenues from these sources during the same month last year. It is for the sixth time that the gross GST collection has crossed ₹1.60 lakh crore mark in FY 2023-24. The gross GST collection for the FY 2023-24 ending November, 2023 [₹13,32,440 crore, averaging ₹1.66 lakh per month] is 11.9% higher than the gross GST collection for the FY 2022-23 ending November, 2022 [₹11,90,920 crore, averaging ₹1.49 lakh crore per month].

The chart below shows trends in monthly gross GST revenues during the current year. Table-1 shows the state-wise figures of GST collected in each State during the month of November 2023 as compared to November 2022. Table-2 shows the state-wise figures of post settlement GST revenue of each State till the month of November 2023.

Chart: Gross GST Collection (Rs. crore)





State-wise growth of GST Revenues during November, 2023

(Rs. Crore)

| State/UT | Nov-22 | Nov-23 | Growth (%) |
|-------------------|--------|--------|------------|
| Jammu and Kashmir | 430 | 469 | 9% |
| Himachal Pradesh | 672 | 802 | 19% |
| Punjab | 1,669 | 2,265 | 36% |
| Chandigarh | 175 | 210 | 20% |
| Uttarakhand | 1,280 | 1,601 | 25% |
| Haryana | 6,769 | 9,732 | 44% |
| Delhi | 4,566 | 5,347 | 17% |
| Rajasthan | 3,618 | 4,682 | 29% |
| Uttar Pradesh | 7,254 | 8,973 | 24% |
| Bihar | 1,317 | 1,388 | 5% |
| Sikkim | 209 | 234 | 12% |
| Arunachal Pradesh | 62 | 92 | 48% |
| Nagaland | 34 | 67 | 99% |
| Manipur | 50 | 40 | -21% |
| Mizoram | 24 | 33 | 37% |
| Tripura | 60 | 83 | 39% |
| Meghalaya | 162 | 163 | 1% |
| Assam | 1,080 | 1,232 | 14% |
| West Bengal | 4,371 | 4,915 | 12% |
| Jharkhand | 2,551 | 2,633 | 3% |
| Odisha | 4,162 | 4,295 | 3% |
| Chhattisgarh | 2,448 | 2,936 | 20% |
| Madhya Pradesh | 2,890 | 3,646 | 26% |



| | | | |
|------------------------------------|-----------------|-----------------|------------|
| Gujarat | 9,333 | 10,853 | 16% |
| Dadra and Nagar Haveli and Daman & | 305 | 333 | 9% |
| Maharashtra | 21,611 | 25,585 | 18% |
| Karnataka | 10,238 | 11,970 | 17% |
| Goa | 447 | 503 | 12% |
| Lakshadweep | 0 | 0 | -15% |
| Kerala | 2,094 | 2,515 | 20% |
| Tamil Nadu | 8,551 | 10,255 | 20% |
| Puducherry | 209 | 228 | 9% |
| Andaman and Nicobar Islands | 23 | 31 | 37% |
| Telangana | 4,228 | 4,986 | 18% |
| Andhra Pradesh | 3,134 | 4,093 | 31% |
| Ladakh | 50 | 62 | 25% |
| Other Territory | 184 | 222 | 21% |
| Center Jurisdiction | 154 | 223 | 45% |
| Grand Total | 1,06,416 | 1,27,695 | 20% |

Table-2: SGST & SGST portion of IGST settled to States/UTs

April-November (Rs. crore)

| State/UT | Pre-Settlement SGST | | | Post-Settlement SGST | | |
|-------------------|---------------------|---------|--------|----------------------|---------|--------|
| | 2022-23 | 2023-24 | Growth | 2022-23 | 2023-24 | Growth |
| Jammu and Kashmir | 1,513 | 1,960 | 30% | 4,892 | 5,367 | 10% |
| Himachal Pradesh | 1,547 | 1,731 | 12% | 3,838 | 3,701 | -4% |
| Punjab | 5,102 | 5,612 | 10% | 12,906 | 14,734 | 14% |
| Chandigarh | 401 | 439 | 9% | 1,414 | 1,505 | 6% |
| Uttarakhand | 3,193 | 3,625 | 14% | 5,157 | 5,586 | 8% |
| Haryana | 12,052 | 13,415 | 11% | 20,761 | 23,134 | 11% |



| | | | | | | |
|---|--------|--------|------|--------|--------|------|
| Delhi | 9,127 | 10,340 | 13% | 19,202 | 21,037 | 10% |
| Rajasthan | 10,146 | 11,348 | 12% | 22,853 | 25,699 | 12% |
| Uttar Pradesh | 17,924 | 21,624 | 21% | 43,951 | 49,282 | 12% |
| Bihar | 4,715 | 5,377 | 14% | 15,672 | 16,991 | 8% |
| Sikkim | 202 | 321 | 59% | 558 | 677 | 21% |
| Arunachal Pradesh | 311 | 418 | 34% | 1,059 | 1,276 | 21% |
| Nagaland | 138 | 206 | 49% | 635 | 701 | 10% |
| Manipur | 190 | 229 | 20% | 924 | 730 | -21% |
| Mizoram | 117 | 182 | 56% | 557 | 634 | 14% |
| Tripura | 272 | 335 | 23% | 955 | 1,037 | 9% |
| Meghalaya | 298 | 394 | 32% | 961 | 1,103 | 15% |
| Assam | 3,379 | 3,885 | 15% | 8,236 | 9,553 | 16% |
| West Bengal | 14,298 | 15,600 | 9% | 25,878 | 28,042 | 8% |
| Jharkhand | 4,947 | 5,866 | 19% | 7,374 | 8,116 | 10% |
| Odisha | 9,279 | 10,626 | 15% | 12,486 | 15,515 | 24% |
| Chhattisgarh | 4,838 | 5,398 | 12% | 7,366 | 8,831 | 20% |
| Madhya Pradesh | 6,979 | 8,496 | 22% | 17,772 | 20,673 | 16% |
| Gujarat | 24,753 | 27,671 | 12% | 37,497 | 41,545 | 11% |
| Dadra and Nagar Haveli and Daman and Diu | 427 | 426 | 0% | 792 | 699 | -12% |
| Maharashtra | 55,650 | 65,983 | 19% | 84,633 | 96,551 | 14% |
| Karnataka | 23,026 | 26,713 | 16% | 43,152 | 48,766 | 13% |
| Goa | 1,272 | 1,487 | 17% | 2,325 | 2,616 | 13% |
| Lakshadweep | 6 | 16 | 157% | 20 | 69 | 239% |
| Kerala | 8,005 | 9,171 | 15% | 19,657 | 20,623 | 5% |
| Tamil Nadu | 23,802 | 27,046 | 14% | 38,849 | 42,472 | 9% |
| Puducherry | 308 | 330 | 7% | 793 | 933 | 18% |



| | | | | | | |
|-----------------------------|-----------------|-----------------|------------|-----------------|-----------------|------------|
| Andaman and Nicobar Islands | 123 | 140 | 14% | 322 | 347 | 8% |
| Telangana | 10,926 | 12,994 | 19% | 24,460 | 26,691 | 9% |
| Andhra Pradesh | 8,325 | 9,291 | 12% | 18,742 | 20,952 | 12% |
| Ladakh | 111 | 155 | 40% | 378 | 457 | 21% |
| Other Territory | 114 | 156 | 37% | 329 | 702 | 113% |
| Grand Total | 2,67,818 | 3,09,003 | 15% | 5,07,355 | 5,67,464 | 12% |



Notifications and Circulars

Notifications

CUSTOMS

Customs (Tariff)

Notification No. 64/2023 - Customs
7th December, 2023

- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 124 of the Finance Act, 2021 (13 of 2021), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below, falling under the tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the 'Customs Tariff Act'), specified in the corresponding entry in column (2) of the said Table, when imported into India, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act and from the whole of the Agriculture Infrastructure and Development Cess leviable thereon under the said section of the Finance Act, 2021 (13 of 2021), namely: -

| Sl. No. | Tariff item | Description of goods |
|---------|-------------|----------------------|
| (1) | (2) | (3) |
| 1. | 0713 10 10 | Yellow Peas |

- This notification shall come into force with effect from the 8th day of December, 2023, and shall remain in force up to and inclusive of the 31st day of March, 2024.

Customs (Non- Tariff)

Notification No. 90/2023 - Customs
7th December, 2023

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 84/2023-Customs(N.T.), dated 16th November, 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 8th December, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

| Sl No | Foreign Currency | Rate of exchange of one unit of foreign currency equivalent to Indian rupees | |
|-------|-------------------|--|--------------------|
| (1) | (2) | (3) | |
| | | (For Imported Goods) | (For Export Goods) |
| 1 | Australian Dollar | 55.70 | 53.30 |
| 2 | Bahraini Dinar | 229.80 | 213.05 |
| 3 | Canadian Dollar | 62.30 | 60.35 |
| 4 | Chinese Yuan | 11.90 | 11.45 |



| | | | |
|----|---------------------|--------|--------|
| 5 | Danish Kroner | 12.20 | 11.85 |
| 6 | EURO | 91.35 | 88.25 |
| 7 | Hong Kong Dollar | 10.80 | 10.55 |
| 8 | Kuwaiti Dinar | 279.10 | 261.75 |
| 9 | New Zealand Dollar | 52.20 | 49.90 |
| 10 | Norwegian Kroner | 7.70 | 7.50 |
| 11 | Pound Sterling | 106.45 | 103.00 |
| 12 | Qatari Riyal | 23.65 | 22.20 |
| 13 | Saudi Arabian Riyal | 22.95 | 21.55 |
| 14 | Singapore Dollar | 63.15 | 61.15 |
| 15 | South African Rand | 4.55 | 4.25 |
| 16 | Swedish Kroner | 8.05 | 7.85 |
| 17 | Swiss Franc | 97.15 | 93.50 |
| 18 | Turkish Lira | 2.95 | 2.80 |
| 19 | UAE Dirham | 23.40 | 22.05 |
| 20 | US Dollar | 84.30 | 82.55 |

SCHEDULE-II

| SI No | Foreign Currency | Rate of exchange of 100 units of foreign currency equivalent to Indian rupees | |
|-------|------------------|---|--------------------|
| | | (3) | (3) |
| (1) | (2) | (For Imported Goods) | (For Export Goods) |
| 1 | Japanese Yen | 57.65 | 55.90 |
| 2 | Korean Won | 6.50 | 6.10 |

Notification No. 91/2023 - Customs (N.T.)
15th December, 2023

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

| SI No | Chapter/ heading/ subheading/tariff item | Description of goods | Tariff value (US \$Per Metric Tonne) |
|-------|--|--------------------------|--------------------------------------|
| (1) | (2) | (3) | (4) |
| 1 | 1511 10 00 | Crude Palm Oil | 864 |
| 2 | 1511 90 10 | RBD Palm Oil | 873 |
| 3 | 1511 90 90 | Others – Palm Oil | 869 |
| 4 | 1511 10 00 | Crude Palmolein | 877 |
| 5 | 1511 90 20 | RBD Palmolein | 880 |
| 6 | 1511 90 90 | Others – Palmolein | 879 |
| 7 | 1507 10 00 | Crude Soya bean Oil | 1012 |
| 8 | 7404 00 22 | Brass Scrap (all grades) | 4802 |



TABLE - II

| SI No | Chapter/ heading/ sub-heading/tariff item | Description of goods | Tariff value (US \$) |
|-------|---|---|-------------------------|
| (1) | (2) | (3) | (4) |
| 1 | 71 or 98 | Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed | 659 per 10 grams |
| 2 | 71 or 98 | Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed | 776 per kilogram |
| 3 | 71 | (i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi manufactured forms of silver falling under sub-heading 7106 92 (ii) Medallions and silver coins having Silver content not below 99.9% or semi manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver. | 776 per kilogram |
| 4 | 71 | (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, lamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place | 659 per 10 grams |

TABLE - III

| SI No | Chapter/ heading/ sub-heading/tariff item | Description of goods | Tariff value (US \$ Per Metric Tonne) |
|-------|---|----------------------|--|
| (1) | (2) | (3) | (4) |
| 1 | 080280 | Areca nuts | 8140 |

2. This notification shall come into force with effect from the 16th day of December, 2023.



Customs (Anti-Dumping Duty)

NOTIFICATION No. 14/2023-Customs (ADD)
11th December, 2023

1. Whereas, in the matter of “Synthetic Grade Zeolite 4A” (hereinafter referred to as the subject goods), falling under tariff items 2842 90 90, 2826 90 00, 2839 90 90 and 2842 10 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from the Iran and Thailand (hereinafter referred to as the subject countries) and imported into India, the designated authority in its final findings, vide notification F. No. 6/5/2022-DGTR, dated the 29th September, 2023, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 29th September, 2023, has come to the conclusion inter alia that-
- (i) the product under consideration has been exported to India at a price below normal value, thus resulting in dumping;
 - (ii) the imports from the subject countries have increased in absolute as well as relative terms throughout the injury investigation period;
 - (iii) the landed value of imports of the subject goods from subject countries is much below the non injurious price of the domestic industry indicating significant injury margin/price underselling, and has recommended imposition of anti-dumping duty on imports of the subject goods, originating in, or exported from the subject countries and imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under the tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (7), in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8) of the said Table, namely :-

Table

| SN | Heading | Description | Country of Origin | Country of Export | Producer | Amount | Unit | Currency |
|-----|--|----------------------------------|--|---|---------------------------------------|--------|------|----------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1 | 28429090 28269000 28399090 28421000 | Synthetic Grade Zeolite 4A | Thailand | Any country including Thailand | PQ Chemicals (Thailand) Ltd. | 54.09 | MT | USD |
| 2 | -do- | -do- | Thailand | Any country including Thailand | Any other than Row (1) | 92.55 | MT | USD |
| 3 | -do- | -do- | Any country other than Thailand & Iran | Thailand | Any | 92.55 | MT | USD |
| 4 | -do- | -do- | Iran | Iran | Any | 179.96 | MT | USD |
| 5 | -do- | -do- | Iran | Any other | Any | 179.96 | MT | USD |



| | | | | | | | | |
|---|------|------|---|--------------|-----|--------|----|-----|
| | | | | than Iran | | | | |
| 6 | -do- | -do- | Any other than Iran & Thailand | Iran | Any | 179.96 | MT | USD |

Note: The customs authorities may verify the origin of subject goods in case imports are reported as originating in United Arab Emirates.

2. The anti-dumping duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, rate of exchange applicable for the purpose of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.



Judgements

INDIRECT TAX

HC directed assessee to file reply to SCN who failed to file ITC-02 electronically due to non-availability on portal

Facts of the case - Tikona Infinet (P.) Ltd. v. State of Gujarat - [2023]

In the present case, the petitioner attempted to transfer unused input tax credit as per Rule 41 of CGST Rules, 2017. However, Form ITC-02 under GST portal was unavailable and hence, the petitioner filed Form ITC-02 manually. The department issued a show-cause notice to petitioner for not filing form electronically. It filed writ petition against the notice and contended that petitioner was unable to comply with requirements since form was not available on portal.

Decision of the case:

- The Honorable High Court noted that as per Rule 41, transferor shall file GST ITC-02 electronically on common portal along with a request for transfer of ITC remaining unutilized in his Electronic Credit Ledger (ECL) to the transferee. In the instant case, the functionality for filing Form ITC-02 was not available on the common portal and therefore, petitioner was unable to comply with the requirement of filing the said form.
- Thus, the Court directed the petitioner to file response to show-cause notice within 2 weeks and department was directed to consider case of petitioner in light of decision of Division Bench of Allahabad High Court in Writ Tax No. 859 of 2023, where it was held that transferee company shall not be liable to file Form GST ITC-02 electronically if Form was not available on GST portal.

No interference required in scrutiny proceedings which are at the stage of SCN: HC

Facts of the case - Tikona Infinet (P.) Ltd. v. Government of NCT of Delhi - [2023]

In the present case, the petitioner received a show cause notice on account of wrongful availment of the ITC. It filed writ petition against the initiation

of proceedings and contended that ITC was transferred manually due to the transfer of the business since GST portal was not functioning and therefore, the transfer of ITC could not be filed on the portal.

Decision of the case:

- The Honorable High Court noted that the petitioner was aggrieved by the impugned SCN as explanation had apparently not been accepted and the department initiated proceedings for recovery of the ITC. The Court further noted that it wouldn't be appropriate to interfere in the proceedings since the present petition was at the stage of the impugned SCN.
- However, the Court directed the concerned officer to consider all contentions of the petitioner including the directions issued by the Allahabad High Court and the Gujarat High Court in the similar cases of non-availability of Form GST ITC-02 on the online portal.

No interference required in order imposing tax & penalty if assessee didn't establish actual movement of goods: HC

Facts of the case - Shiv Trading v. State of U.P. - [2023]

The petitioner was engaged in business of purchase and sale of iron machinery parts and hardware. It availed input tax credit on purchases made from a company. The inspection was carried out by the GST department and it was found that said company was non-existent and therefore it was alleged that transactions shown by petitioner were bogus, fictitious and fake. Thereafter, an order imposing tax and penalty along with interest was passed upon petitioner. It filed writ petition against the demand.

Decision of the case:

The Honorable High Court noted that the petitioner failed to discharge its onus to prove and establish beyond doubt actual transaction, actual



physical movement of goods as well as genuineness of transactions. Since, the burden of proving the correctness of ITC remains upon the dealer claiming such ITC and thus, such burden of proof can't get shifted on the revenue. Therefore, the Court held that the proceedings had rightly been initiated against petitioner under Section 74 and no interference was called for said order.

Madras HC set aside non-speaking order which failed to consider reply/ objections made by assessee

Facts of the case - Chennai Silks v. Assistant Commissioner (ST) (FAC) - [2023]

The petitioner was engaged in business of trading of garments and other allied items. The GST department issued an intimation in Form DRC-01A with regard to ascertained tax liability under Section 74 wherein, issues were mainly concerned with reconciliation of returns and books, ITC verification with GSTR-2A among other things.

The petitioner had replied and thereafter, DRC-01 show cause notice was issued which was also replied but an order came to be issued by department without considering replies. It filed writ petition against the order.

Decision of the case:

- The Honorable High Court noted that once assessee filed reply/objections pursuant to show cause notice, it was bounden duty of revenue to pass a speaking order, providing reasons for rejection of the reply/objections raised by assessee. In instant case, the GST department admittedly, failed to consider reply/objections made by petitioner pursuant to show cause notice and passed a non-speaking order.
- Therefore, the failure on part of revenue to address reply/objections of petitioner by a speaking order, would vitiate impugned

proceedings. Thus, the Court held that the impugned order was to be set aside and matter was to be remitted back for re-considerations.

HC dismissed writ petition against demand of 18% on right to collect human hair at temple premises

Facts of the case - Naresh Women Hair Enterprises v. State of Telangana - [2023]

In the present case, Devasthanam issued an auction notification for disposal of human hair and petitioner got right to collect human hair from temple premises. The department imposed GST of 18% on right to collect human hair and it filed writ petition against imposition of GST by contending that collection of hair from the temple premises would amount to outright sale and Notification No. 2/2017-Central Tax (Rate) exempts charging of GST on the sale of human hair.

Decision of the case:

- The Honorable High Court noted that as per tender agreement, it was clear that person in whose name bid would be finalized would be liable to make payment of GST at 18% and the petitioner was quite aware of said condition and with wide open eyes, participated in tender process and quoted its price.
- Moreover, the petitioner got only a right to collect human hair which had been offered in tender and the same had been accepted by it. Thus, the Court held that nature of function performed couldn't be brought within ambit of sale of goods, but it would fall within ambit services of granting right to collect hair. Therefore, the Court held that there were no merits in petition against imposition of tax and writ petition was to be disposed of.



DIRECT TAX

Payment for processing of milk into milk products is subject to TDS under Sec 194C, not Sec. 194J: Gujarat HC

Facts of the case - PCIT vs. Maahi Milk Producer Co. Ltd. - [2023] (Gujarat)

The assessee was engaged in the business of selling milk and milk products. It made payments to a dairy for converting raw milk into processed milk and milk products and deducted tax at source under section 194C at 2%, treating payments as contract payments.

Assessing Officer (AO) held that the payments were in the nature of payments for technical services. Thus, the same should have been subjected to TDS at the rate of 10% under section 194J. Under section 40(a)(ia), he made disallowance on the proportionate amount of payments for short tax deduction at source at the rate of 8 percent.

On appeal, the Tribunal deleted the additions, and the matter reached the Gujarat High Court.

Decision of the case:

- The High Court held that the assessee provided raw milk and necessary materials to the dairies for processing as per specification. The dairies pack it on a job-work basis. Since the job work falls within the definition of 'work' under section 194C, the assessee deducted tax under section 194C on conversion charges paid to such dairies.
- The services rendered by the dairies were not technical services. The dairies were not experts on any technology they could provide to the assessee, nor did they provide any managerial or consultancy services. The dairies were not assigned any exclusive work relating to quality checks but were assigned work relating to the conversion or processing of milk and milk products, wherein one of the requirements is to ensure quality parameters. The main and basic nature of the transaction viz., conversion or processing of milk on a job-work basis does not lose its true characteristic.
- Accordingly, the appeal was dismissed.

AO to record reasons for carrying out reassessment even in case of an ex-parte proceedings: HC

Facts of the case - GSP Piling Constructions Private Limited & anr. vs. ACIT - [2023]

For the relevant assessment year, a notice under Section 148A(b) of the Income-tax Act was issued to which the assessee did not reply despite three adjournments being granted. Subsequently, the Assessing Officer (AO) passed the final assessment order under section 147.

The assessee filed a writ petition against the order passed under Section 148A(d) and the final assessment order contending to be a non-speaking order.

Decision of the case:

- The High Court held that the assessee is partly to be blamed for not giving a reply to the show cause notice issued under Section 148A(b) despite three adjournments being granted. Nevertheless, while affirming the proposal in the show cause notice, the authorities are expected to record reasons, at least brief reasons, and if not brief, why the proposal in the show cause notice is to be confirmed despite the assessee submitting the reply.
- The reading of the order gives an impression that on account of assessee's default in not submitting the reply to the show cause notice, it was a fit case to issue notice under Section 148. However, even in ex parte proceedings, the authority has to record reasons for concluding why the case has been taken out to reopen the assessment.
- Accordingly, the Court directed the proceedings to be re-done with the matter by giving the assessee a fresh opportunity to submit a reply to the show cause notice under Section 148A(b).

Assessee is duty bound to respond to notices, appear & offer explanations before AO; HC refuses to halt proceedings

Facts of the case - T. M. Subash Thangam v. ITO - [2023]



The assessee filed the writ petition under Article 226 of the Constitution of India. The prayer of assessee was to issue a writ of mandamus to direct the Assessing Officer (AO) to drop all proceedings initiated against him based on the notices issued under provisions of the Income-tax Act, 1961 for the Financial Years of 2017-2018 to 2020-2021.

Decision of the case:

- The Madras High Court held that the prayer made by the assessee appeared to be misconceived. The affidavit shows the petitioner received notice and an order under Section 148A(b) and 148A(d) of the Act, dated 23.03.2022 and 05.04.2022. It's unclear if these proceedings cover all the financial years mentioned in the prayer, as the notice and order only cover some years.
- Further, the assessee is also unclear whether any assessment order was passed for the periods in question.
- Even if it appears that the assessee received orders under Section 148A(d) that have attained finality and was also in receipt of notices under Section 148 of the Act, it is for it to cooperate with the proceedings initiated by the Department and take matters to a logical conclusion, in accordance with the law.
- Revenue also contended that notices were issued continuously and repeatedly to the assessee, but there had been no response from his side. It was incumbent on the part of the assessee to appear before AO and put forth any explanation that he may have in regard to the issues raised by the Department.
- Accordingly, mandamus of the nature sought by the assessee cannot be granted in a case that involves an appreciation of various disputed facts. It is to be noted that in matters relating to assessment, filing of a representation is of no avail as the assessee is duty-bound to respond to notices, appear before the officer and offer explanations.

Explanations 6 & 7 to Sec. 9(1)(i) are to be given retro effect as they have to be read along with Expl. 5: HC

Facts of the case - CIT vs. Augustus Capital (PTE) Ltd. - [2023]

The issue before the Delhi High Court was:

“Whether Explanations 6 and 7 appended to Section 9(1)(i), which was inserted by the Finance Act 2015 with effect from 01.04.2016, can operate retrospectively?”

Decision of the case:

- The Delhi High Court held that section 9(1)(i) inter alia seeks to impose tax albeit via a deeming fiction qua all income accruing or arising, whether directly or indirectly, through or from any property in India or through or from any asset or through transfer of asset situated in India, or the transfer of a capital asset situated in India.
- The judgment of the Supreme Court rendered in the case of Vodafone International Holdings BV v. Union of India excluded from the scope and ambit of section 9(1)(i) gain or income arising from the transfer of shares of a company located outside India. However, the value of the shares was dependent on assets situated in India. Explanations 4 and 5 were introduced via the Finance Act 2012, which was effected from 1-4-1962 to cure this gap in the legislation.
- Explanations 4 and 5 presented difficulties in that the expressions ‘share and interest’ and ‘substantially’ found in the explanations were vague, resulting in undue hardship for transferors where the percentage of share or interest transferred was insignificant. Explanations 6 and 7 alone would have no meaning if they were not read along with Explanation 5. Therefore, if Explanations 6 and 7 have to be read along with Explanation 5, which concededly operates from 1-4-1962, they would have to be construed as clarificatory and curative.
- Accordingly, it was concluded that although Explanations 6 and 7 were indicated in the Finance Act 2015 to take effect from 1-4-2016, they could be treated as retrospective having regard to the legislative history that led to the insertion of Explanations 6 and 7.
- Accordingly, the appeal was dismissed.

Thorough examination of merits of info. in possession of AO isn't required while passing order u/s 148A(d): HC

Facts of the case - Vivek Saran Agarwal vs. Union of India - [2023]

In the instant case, the assessee challenged the order passed under Section 148A(d) and the



issuance of consequential notice under Section 148. Assessee contended that AO proceeded with passing the order under section 148A(d) despite the filing of response.

Decision of the case:

- The High Court held that consideration at the stage of passing an order under section 148A(d) is limited to ascertainment of information with the Assessing Officer (AO) that the income of the assessee has escaped assessment to tax. The final determination on the question of whether the income of the assessee has actually escaped assessment is to be made after notice under section 148 by passing an order of assessment or reassessment under section 147.
- The Income-tax Act did not contemplate any detailed adjudication on the merits of information available with the AO at the stage of passing an order under section 148A(d). At this stage, there is a specific purpose for not introducing any further enquiry or adjudication in the statute on the correctness or otherwise of the information.
- A detailed procedure has been provided under section 148 for issuance of notice whereafter the assessing authority has to determine, in the manner specified, whether income has escaped assessment, and the defence of the assessee, on all permissible grounds, remains open to be pressed at such stage. The ultimate determination made by the assessing authority under section 147 for reassessment is otherwise subject to appeal under section 246A.
- Merits of the information referable to section 148A thus remain subject to the reassessment proceedings initiated vide notice under section 148. For this reason, issues that require determination at the stage of reassessment proceedings and in respect of which departmental remedy is otherwise available are not required to be determined at the decision stage by the assessing authority under section 149A(d). The scope of the decision under section 148A(d) is limited to the existence or otherwise of information that suggests that income chargeable to tax has escaped assessment.
- Accordingly, section 148A(d) order and notice issued under section 148 do not justify interference under article 226 of the Constitution of India. The assessee can challenge these during the reassessment proceedings triggered by the notice under section 148.



Tax Calendar

INDIRECT TAX

| Due Date | Returns |
|-----------------------------|--|
| Dec 20th, 2023 | GSTR-3B (Nov, 2023) |
| Dec 20th, 2023 | GSTR-5A (Nov, 2023) |
| Dec 31 st , 2023 | GSTR 9 [Annual Return for FY 2022-23] |
| Dec 31 st , 2023 | GSTR-9A-Annual Return (Composition Scheme Dealers) |
| Dec 31 st , 2023 | GSTR 9C [Annual Return for FY 2022-23] |

DIRECT TAX

| Due Date | Returns |
|----------------|---|
| Dec 30th, 2023 | <p>Due date for furnishing of challan-cum-statement for tax deducted under section 194-IA, 194-IB, 194-M & 194-S in the month of November, 2023</p> <p>Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2022 to December 31, 2022) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.</p> |
| Dec 31st, 2023 | Filing of belated/revised return of income for the assessment year 2023-24 for all assessee (provided assessment has not been completed before December 31, 2023) |



E-publications of Tax Research Department

| Guide Book for GST Professionals | Handbook on Special Economic Zone and Export Oriented Units |
|--|--|
| Handbook for Certification for difference between GSTR-2A & GSTR - 3B | Handbook on GST on Service Sector |
| Taxation on Works Contract | Handbook on Works Contract under GST |
| Impact of GST on Real Estate | Handbook on Impact of GST on MSME Sector |
| Insight into Customs-Procedure & Practice | Insight into Assessment including E-Assessment |
| Input Tax Credit & In depth Discussion | Impact on GST on Education Sector |
| Exemptions under the Income Tax Act, 1961 | Addendum_Guidance Note on GST Annual Return & Audit |
| Taxation on Co-operative Sector | An insight to the Direct Tax-Vivadse Vishwas Scheme 2020 |
| Guidance Note on GST Annual Return & Audit | International Taxation and Transfer Pricing |
| Sabka Vishwas _Legacy Dispute Resolution Scheme 2019 | Handbook on E-Way Bill |
| Guidance Note on Anti Profiteering | Guidance note on preparation and filing of Form GSTR-9 and 9C |
| Handout on Composition Scheme | Handout on E Commerce |

For E-Publications, Please Visit Taxation Portal

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NOTES

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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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