National Tax Conference, Amritsar

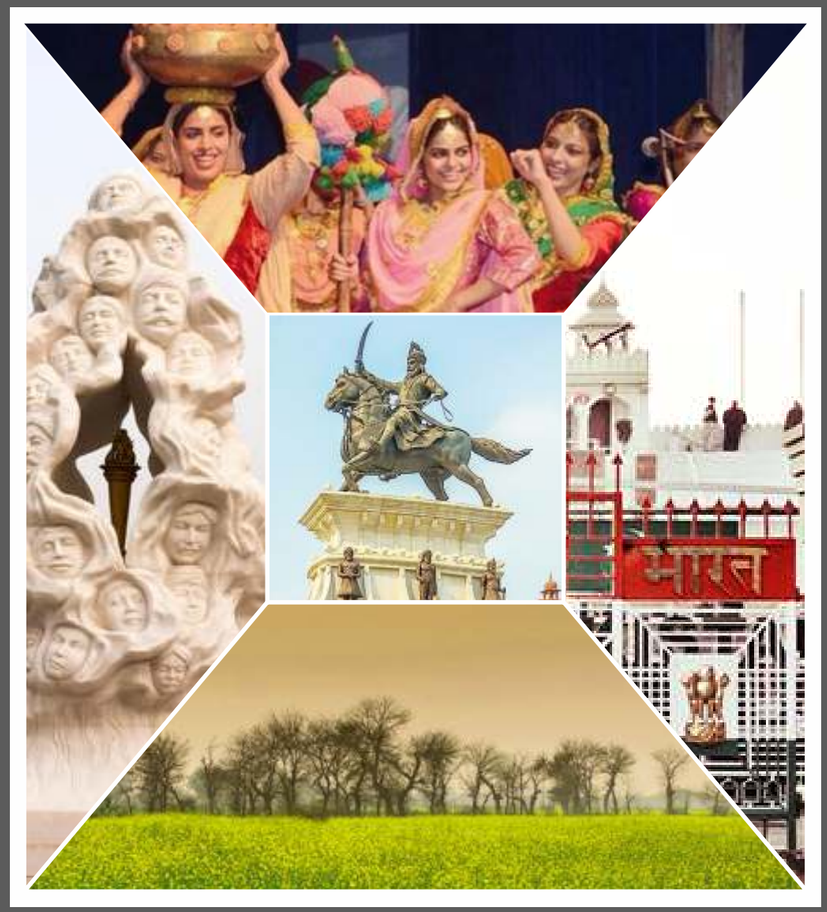
'Amrit Kalash'

Theme : Engaging Minds to Empower Knowledge

Venue: M.K. Hotel, Ranjit Avenue, Amritsar

on

15th & 16th July, 2023



Organised by:

All India Federation of Tax Practitioners (North Zone)

In Association with

Association of Tax Practitioners, Amritsar

GST Practitioners' Association, Amritsar

Residential Refresher Course Committee (Amritsar) 2021

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GST Practitioners' Association, Amritsar

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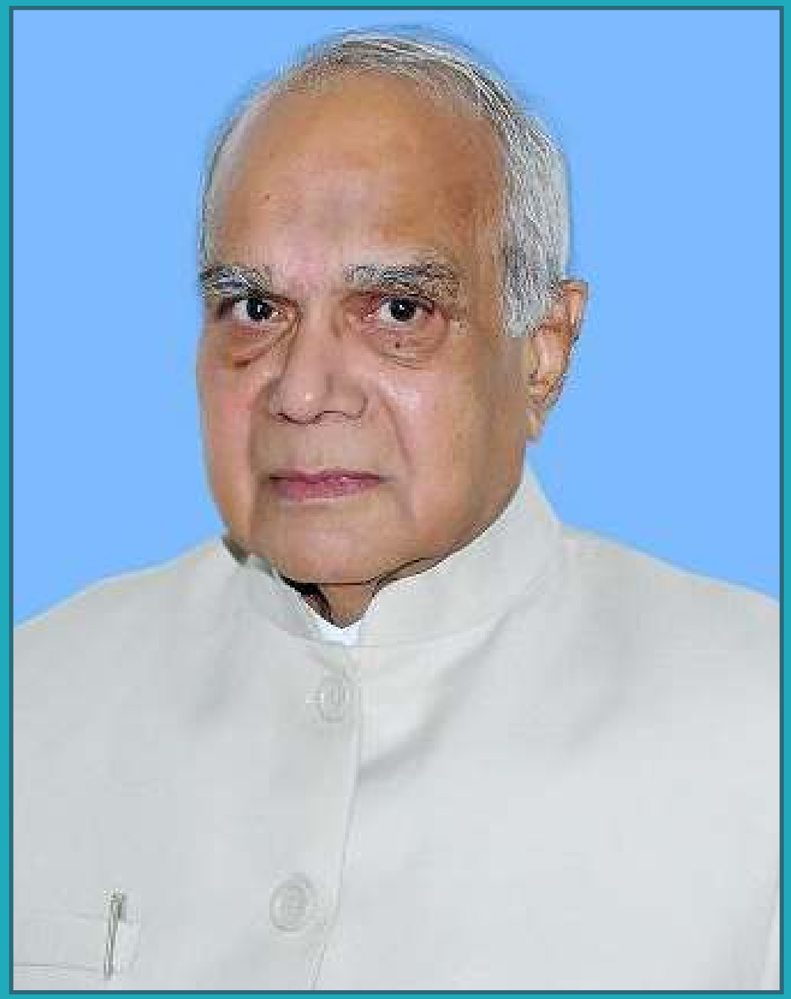

Sh. Banwarilal Purohit

Hon'ble Governor of Punjab
and
Administrator
Union Territory, Chandigarh

Banwarilal Purohit

Governor of Punjab
and
Administrator
Union Territory, Chandigarh

Raj Bhavan
Chandigarh.
July 10, 2023

MESSAGE

I am glad to know that the All India Federation of Tax Practitioners, Association of Tax Practitioners and GST Practitioners' Association, Amritsar are organizing National Tax Conference, 2023 titled 'Amrit Kalash' at Amritsar.

A healthy tax ecosystem is conducive to a vibrant national economy. The path breaking taxation reforms, including faceless income tax assessment brought about by the Honourable Prime Minister, has not only made the tax regime in India friendly to tax payers but have also enhanced ease of business and revenue collection manifold.

Direct and Indirect Tax practitioners play an important role in efficient management of taxation. I congratulate all concerned for taking the initiative of organising this conference. I hope the Conference will make significant contribution in the field of professional development and excellence of Advocates, CAs and other tax professionals.

My best wishes for the success of the conference.

[Banwari Lal Puorhit]

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Hon'ble Mr. Justice Rajesh Bindal

Judge, Supreme Court of India

RAJESH BINDAL
Judge

SUPREME COURT OF INDIA
TILAK MARG
NEW DELHI-110 001

MESSAGE

Every step, small or giant, towards the upliftment of the nation counts. With immense pleasure I congratulate the entire team of AIFTP (North Zone), Association of Tax Practitioners, Amritsar and GST Practitioners Association, Amritsar who have taken another remarkable step in showcasing and discussing the existing and emerging issues in GST, Income Tax Act and Prevention of Money Laundering Act in the Conference to be held at the historic city of Amritsar. I am sure that their relentless hard work towards enlightening the fraternity and removing blockages in fathoming and applying tax laws will usher in an era of growth, progress and development of our nation.

The topics to be discussed in the Conference are of colossal importance. By organizing the Conference, the effort of AIFTP is to abreast its members, tax professionals with latest developments in tax laws.

The topics chosen for the technical sessions are also in line with the latest issues. The speakers in different sessions are experts in the subjects. I am sure that participants and delegates would gain immensely out of their rich and vast experience and the deliberations made during the sessions.

An important aspect regarding professional development and growth has also been kept as a topic in one of the sessions.

The efforts of Federation in achieving the object of continuous legal education are appreciable. I wish the office bearers of AIFTP, organizers of the Conference and the participants a great success.

(Rajesh Bindal)

उपेंद्र गुप्ता भा रा से
मुख्य आयुक्त
Upender Gupta IRS
CHIEF COMMISSIONER

सत्यमेव जयते

मुख्य आयुक्त
केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क
क्षेत्र पंचकूला
CHIEF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
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Dated : 16.06.2023
F. No. CC/Pkl /UG/ 01/2023-24

MESSAGE

To my great delectation, I have been informed that All India Federation of Tax Practitioners (North Zone) in Association with Association of Tax Practitioners' Association, Amritsar and GST Practitioners' Association, Amritsar is organizing the National Tax Conference 'AMRIT KALASH' on a topic closely pertinent to the current taxation environment - "Engaging Minds to Empower Knowledge".

The words 'Amrit' mean nectar of life. Amritam or amritam literally means that which is without death. As most of us already know, it denotes the state of immortality as well a drink which makes one immortal. In Ancient texts it has been written that Amrit was not just a gift of nature, but was created after a long and arduous efforts. I mention this because after a long effort and deliberations the current tax system has been churned out.

Taxation is also very closely related to 'life' as we know it in current times. Government schemes in the health and education sector, subsidies, sanitation, infrastructure and defense expenditure etc are the areas where tax collected is spent and directly or indirectly is responsible for life of more than a billion citizens of this country, where some groups entirely rely on the same. The taxation structure and mechanism both in the case of Direct and Indirect taxation has evolved from a basic fundamental rate and uniform implementation, towards a more equitable, efficient and fair and implementation. The challenge of collection of taxes in most equitable way has been met with huge success, for example by reforms in tax slabs, higher taxation on luxury/sin goods, lower or no taxes on goods used by the poor, and uniform law, rules and procedures throughout the country.

In the current era of tax management, compliances and reporting there is an increasing interest and reliance on a predictable policy formulation and implementation mechanism for businesses, shareholders, Banking institutions, lending institutions, financial analysts and the common man, among many others. The tax practitioners become the most important interlink for this engagement and empowerment, which quickly spills across all other stakeholders.

It is no longer a one-off engagement to *empower and share knowledge* but an extremely responsive and dynamic ecosystem. For instance, in the GST regime the representations, suggestions and feedbacks are taken up after due deliberations and the GST council has been proactive in making compliance as simple and predictable as possible on numerous issues.

We are moving towards an ecosystem where data generation and sharing through various platforms as input by the taxpayer can be analyzed into meaningful patterns and accordingly policy is being structured accordingly.

Aimed at further simplifying the tax compliance landscape, the tax administration has introduced transformational initiatives like the Launch of faceless assessments, Introduction of TDS and TCS on transactions involving goods, Incremental tax KYC requirements, E-invoicing, Use of analytics in tax, Expansion of reportable matters among many others.The above efforts also demand a better management of compliance requirements and proactive tax management strategies.

In the era where companies are looking towards downsizing and increasing the use of digital tools and Artificial intelligence, a readiness to transform in an open and proactive manner will enable them to consistently deliver on the expectations from their tax compliance functions. This also enables the human resources to be utilized in a more value-added output in core areas where these organisations function.

Keeping in view the above I would rather not agree that 'change is happening'. I would most certainly say that change is already here and taxpayers are also transforming their tax function.

This conference plays a vital role in above scenario in empowerment of the key players who will drive the growth and evolution not only in the tax environment of the country but the economic growth which will prepare us for upcoming challenges in providing basic services, security and growing environmental concerns. Through Budget 2022, the Government of India has also spread the message of economic growth towards the Government's vision called "Amrit Kaal" which aims to power India's journey from India @ 75 to India @ 100. AMRIT KALASH is a step in the right direction and I sincerely wish all the best to the organisers and participants of the conference for fruitful discussions and learning.

16/06/2023

(Upender Gupta)
Chief Commissioner

City Tour of Guru Ki Nagri 'Sri Amritsar'

Amritsar, Ambarsar or Ramdaspur , it is one city with many names. Amritsar is a city located in the north-western part in India and is the second largest city in the Indian states of Punjab, after Ludhiana. It lies about 15 miles (25 km) east of the border with Pakistan.

Founded in the fifteenth century by Guru Ram Das, the fourth guru of the Sikhs. The heritage city of Amritsar is one of the most spiritually significant and historically rich cities of India. The name of the city has its etymological roots in the Punjabi language and Amritsar comes from Amrit Sarovar, which when literally translated from Punjab means of pool of nectar. One of the largest cities in Punjab. Amritsar is home to India's most serene and humbling sight, the Harimandar Sahib, famously knows as The Golden Temple, the Place of reverence for pilgrims. Amritsar boasts of various temples and shrines dedicated to Sikh Culture. Besides offering spiritual salvation, the city is also famous for hospitality, tourism, carpets, handloom fabrics and handicrafts. Amritsar does not merely give nourishment to the soul, but also serves mouth-watering delicious authentic Punjabi food steeped in rich tradition. Its resplendent places of worship, quirky bazaars, vibrant theatrical practices, fascinating folklore and colourful festivals of Baisakhi and Diwali; all of which make Amritsar a premier destination for tourists.

HISTORY –

The Holy city was founded by Guru Ram Das in 1574 on land bought by him for 700 rupees from the owners of the village Tung. Earlier Guru Ram Das had begun building Santokhsar Sarovar, near the village of Sultanwind in 1564(according to a source in 1570). It could not be completed till 1588. In 1574, Guru Ram Das built his residence and moved to this place. At that time, it was known as Guru Da Chakk. After his coronation in 1574, and the hostile opposition he faced from the sons of Guru Amar Das, Guru Ram Das ji founded the town named after him as "Ramdaspur". He started by completing the pool, and building his new official Guru centre and home next to it. He invited merchants and artisans from other parts of India to settle into the new town with him. The town expanded during the time of Guru Arjan Dev ji financed by donations and constructed by voluntary work. The town grew to become the city of Amritsar, and the pool area grew into a temple complex after his son built the gurdwara Harmandir Sahib, and installed the scripture of Sikhism inside the new temple in 1604.

The foundation of the Darbar Sahib was laid by Guru Arjan Sahib on January 3, 1588, and by 1601, it was fully completed. Starting from April 13, 1634, till 1709 the Mogul of Patti tried to vanquish Amritsar many times. Darbar Sahib became prey to the bad intentions of Afghan army who demolished it several times. A major battle was fought where several thousand of Sikhs embraced crucifixion. Then in 1765, the shrine was re-constructed and around 1830, Ranjit Singh got interiors of the Darbar Sahib gold-plated.

In 1846, the British settled in the Lahore Darbar, and, started frequently visiting Amritsar. Under there regime Amritsar witnessed many changes as a Municipal Committee was set, the first Sikh college Khalsa College was established and the city was electrified. In September 1915, Amritsar was christened as a "Holy City" by the British government.

MAJOR ATTRACTIONS OF AMRITSAR CITY –

- **GOLDEN TEMPLE –** The Golden Temple or Harmandir Sahib is the holiest shrine for the people of Sikh religion.The Golden temple is famous for its full golden dome, it is one of the most sacred pilgrim spots for Sikhs. The Mandir is built on a 67-ft square of marble and is a two storied structure. The 'Guru Ka Langar' offers free food to around 20,000 people everyday providing free food to all visitors, regardless of colour, creed, caste or gender. The Granth Sahib is kept in the Temple during the day and is kept in the Akal Takht or Eternal Throne in the night. The Akal Takht also houses the ancient weapons used by the Sikh warriors. Guru Hargobind established it. The rugged old Jubi Tree in the north west corner of the compound is believed to possess special powers. It was planted 450 years ago, by the Golden Temple's first high priest, Baba Buddha.
- **JALLIANWALA BAGH –** This martyrdom's memorial is situated in the vicinity of Golden Temple. It commemorates the glory of killing of thousands of Indians during a struggle for freedom gathering by savage British Soldiers. In 1951, the government of India established the site as a 'memorial of national importance'.The site was renovated between 2019 and 2021. The memorial was closed to the public in February 2019 for the renovation work, and reopened in August 2021.
- **WAGHA BORDER -** The Wagah border plays a major role in maintaining the diplomatic relationship between India and Pakistan. Lots of people assume that Wagah is in India, but actually, it is a tiny village in Pakistan. It is a goods transit terminal and a railway station between the countries. However, the main attraction is the Wagah border ceremony! Wagah border is 24 kilometres away from Lahore and 32 kilometres away from Amritsar, also known as the Attari-Wagah border. Citizens from both nations visit the border from their sides to witness the evening ceremony that takes place every day. Attari village is a village in India, three kilometres away from the border.
- **RAM TIRATH MANDIR -** Shri Ram Tirth Temple, dedicated to Lord Ram is situated 11 kms west of Amritsar on Amritsar Lopoke road. The temple dates back to the period of Ramayana and the place is famous for the ashram of sage Valmiki. It is the place where the sage gave shelter to Sita, wife of Rama when she was abandoned after the Lanka Victory. It was here that she gave birth to the twins Lav and Kush. The great epic Ramayana is also said to have been composed here by Rishi Valmiki. It is also believed that the fight between Lord Ram Chandra's forces and Luv and Kush had also taken place at Ram Tirath.
- **GOBINDGARH FORT –** Gobindgarh Fort is a historic military fort located in the center of the city of Amritsar in the Indian state of Punjab. The Fort was earlier occupied by the Indian Army, but was opened to the public on 10 February 2017. Today the fort is being developed as a museum and theme park, as a repository of Punjab's history: popularly known as the Bhangian da Killa (fort of the Bhangis) after its 18th- century founder belonging to Bhangi Misl of Dhillo Jats rulers. Maharaja Ranjit Singh renamed it in the early 19th-century after the 10th Sikh guru, Guru Gobind Singh.
- **PARTITION MUSEUM -** The Partition Museum is a public museum located in the town hall of Amritsar, Punjab, India.The museum aims to become the central repository of stories, materials, and documents related to the post-partition riots that followed the division of British India into two independent dominions: India and Pakistan. The museum was inaugurated on 25 August 2017.

- **SADA PIND** – Sada Pind is a Punjabi culture living village museum spread across 12 acres of land. It brings a chance to experience authentic culture ,colors and flavours of Punjab at one place. The young can reconnect with their roots and understand the traditions and values of their forefathers. One can grasp the knowledge of traditional ways to create masterpieces of their own by learning it here. Some traditional arts such as Punjabi Jutti, Toys and Utensils made of clay, Pulkari, Ironwork, Durries, and other similar implementations.
- **WAR MEMORIAL MUSEUM** – Punjab is the sword arm of the country and has been on the invasion route to the heart land of India since, the beginning of the recorded history. It is an amazing reality that the heroic people of this land across gender have never reneged on their duty towards the Idea of India in terms of living and dying by the military ethos of 'Naam, Namak, Nishan" (Honour, Integrity, Flag) always and every time there has been a call for duty.The Punjab State War Heroes' Memorial and Museum is located on a plot of about three hectares abutting Amritsar - Attari Road on the outskirts of the holy city of Amritsar. Its location on the National Highway-1, and that too only 18 kms away from Indo-Pak International border makes it a prominent landmark and source of attraction for the tourists who visit a daily event of interesting beating-retreat ceremony at the Wagah Border.

CERTAIN AMAZING FACTS ABOUT AMRITSAR –

- The foundation stone of golden temple was laid down by a sufi saint on the request of Sri Guru Arjan Dev Ji.
- This temple came to be known as Harminder Sahib and was rebuilt by legendary King Ranjit Singh post its destruction by the attack of Ahmed Shah Abdali, ruler of Afganistan.
- Indo-Park Wagah Border gets about 30,000 visitors daily.
- When Lord Rama performed Ashwamedha Yagna, a horse was sent out to claim territories under the rule of the king Rama, Luv-Kush intercepted and caught the horse in Amritsar and defeated an entire army including Lakshmana and miracally they even tied up Lord Hanuman at this place.
- Shri Durgiana Tirath on Amritsar is a focal point of faith for Hindus. It is believed that the Hanuman temple here has the foot prints of Lord Hanuman.
- Famous personalities such as Former PM S. Manmohan Singh, Raj Kapoor, Rajesh Khanna , Akshay Kumar, Kiran Bedi and of course Kapil Sharma were born in Amritsar.
- The Jallianwala Bagh in Amritsar still has walls with visible bullet marks from the in famous massacre.

From the Desk of Conference Chairman

I take this privilege to warmly welcome you all to the National Tax Conference-2023 "AMRIT KALASH" organised by All India Federation of Tax Practitioner (North Zone) in association with Association of Tax Practitioners, Amritsar and GST Practitioners' Association, Amritsar, a gathering of the most esteemed tax professionals and advocates from across the country.

The theme of the conference is "Engaging Minds to Empower Knowledge". The theme of this conference is one that resonates deeply with the challenges and opportunities of our time. It is a theme that underscores the importance of collaboration, adaptability, and resilience in an increasingly interconnected and rapidly evolving world. As we navigate through an era of unprecedented change, it is imperative that we leverage our collective knowledge, skills, and creativity to address the complex problems that lie ahead.

I am truly honoured and welcome our esteemed Chief Guest of the event, Hon'ble Mr. Justice Rajesh Bindal, Judge of Supreme Court of India, Hon'ble Ms Justice Ritu Bahri, Judge of Punjab and Hon'ble Mr. Justice Arun Palli, Justice of Punjab and Haryana High Court and Haryana High Court for giving their consent and gracing the inaugural Session of this National Tax Conference, 2023 at Amritsar.

I am truly honored to have the presence of distinguished guests including Adv. Pankaj Ghiya, National President of AIFTP, Adv. Naryan P Jain, Dy. President of AIFTP, Adv. (Dr.) Naveen Rattan, NVP (AIFTP), Mr. O P Shukla, Chairman of AIFTP (NZ) and CA Rajesh Mehta, Secretary General of AIFTP.

The field of taxation is dynamic and ever-evolving, influenced by changes in legislation, economic trends, and global practices. Our role as professionals demand that we remain adaptable and well-informed, constantly updating our knowledge and skills to provide the best possible guidance to our clients and contribute to the growth and development of our nation. This conference serves as a platform for sharing insights, exchanging ideas, and fostering collaboration. It is an opportunity for us to engage in meaningful discussions on emerging tax issues,

Adv. Ranjit Sharma
Conference Chairman,
National Tax Conference,
Amritsar.

explore innovative approaches, and address challenges faced by taxpayers and practitioners alike.

It's moment of pleasure for us to have well versed eminent speakers like CA Bimal Jain, Adv. Ashwani Taneja, Adv. Amit Khema, CA R S Poonia and many other learned experts are with us.

I encourage each one of you to actively participate in the sessions, engage in thought-provoking debates, and seize the opportunity to learn from the expertise of our distinguished speakers and panellists. Let us leverage this conference to enhance our professional networks, establish new partnerships, and strengthen the collective knowledge of the tax community.

The presence of esteemed Hon'ble Judges reminds us of the critical role that the judiciary plays in interpreting tax laws and ensuring the just resolution of disputes. We are privileged to have their guidance and wisdom, which adds immense value to our discussions and deliberations. Their presence also signifies the collaborative efforts between the legal and tax professions in upholding the rule of law and achieving justice.

I extend my heartfelt appreciation to the organizing committee for their meticulous planning and hard work in bringing this conference to fruition under the able guidance of Adv. (Dr.) Naveen Rattar, NVP. Their dedication and commitment have made this event possible, and their efforts deserve our gratitude.

I wish to express my sincere gratitude to all the attendees for their presence and active participation. May this National Tax Conference be a resounding success, fostering the exchange of ideas, creating lasting professional connections, and serving as a catalyst for positive change in our profession and our nation. Though we have left no stone unturned to make this conference memorable for you all and may you leave the conference with sweet and pleasant memories, still if you find any shortcoming or error of any sort, I tender my unconditional and hand folded apology for the same.

Thank you, and I wish you all a fruitful and rewarding conference ahead.

From the Desk of Conference Co-Chairperson

I take pride in welcoming everyone to this National Tax Conference 2023 "AMRIT KALASH" organized by All India Federation of Tax Practitioners (North Zone) in association with GST Practitioners Association, Amritsar and Association of Tax Practitioners, Amritsar.

I am extremely thankful and extend my warm welcome to Hon'ble Judges for accepting our invitation to grace the inaugural session of the Conference. Also, the theme selected for the Conference "Engaging Minds to Empower Knowledge" is exceptionally significant in order to impart knowledge on intricate matters in the field of Taxation.

In addition to the above, we are glad to have such passionate speakers in the Conference who will guide us thoroughly and elaborate their topics in the most efficient manner.

I also acknowledge the efforts put by my seniors like Sh. Pankaj Ghiya (NP), Dr. Naveen Rattan (NVP), Mr. O.P. Shukla (Chairman-NZ) and longlist of other for their constant support. My organizing committee deserves full appreciation for their concrete contribution in National Tax Conference, Amritsar.

Last but not the least I am extremely indebted to all the delegates who have participated in the Conference and make it look splendid. I personally acknowledge the presence of each and every delegate and their families. We have done our best to provide you with an amicable atmosphere but if any error/omission takes place, I look for an apology from you.

I wish the Conference a great success.

Simmi Rattan

Adv Simmi Rattan
Conf. Co-Chairperson
(NTC Amritsar)

Message

All India Federation of Tax Practitioners

(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

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PANKAJ GHIYA, Adv.
NATIONAL PRESIDENT

Dated – 19.06.2023

MESSAGE

My congratulations to the AIFTP North Zone for the National Tax Conference & NEC to be held at Amritsar on 15th – 16th July, 2023. In the Conference souvenir will also be published for the benefit of the participants and it will contain the details of the Conference and also Articles on the important topics on GST, Income Tax and other allied laws.

It will be unique event as it is being organized jointly by AIFTP with other Associations. The "Golden Temple" Darshan being provided will be an added attraction.

Vast changes are being made in the Tax Laws regularly and the updation is necessary. Organizing of National Conference and getting the tax legends as Speakers in the Conference is a service to the Tax Profession. It provides the delegates to clear their issues and queries and also to hear about the latest amendments and changes in the Tax Laws and the effect of it. North Zone is always ahead in organizing Conferences and Seminars and I congratulate them for it.

AIFTP this year is focusing on continuous education and Conferences and Seminars are planned throughout India. It is a unique body of Tax Professional consisting of Advocates, Chartered Accounts and Tax Practitioners. I call upon all Tax Professional to join AIFTP.

Many programs are being organized by AIFTP in the coming months including Conference at Rameswaram amongst others. It has been endeavor of all of us to have Conferences / Seminars at the local level so that all the Professionals practicing and Taxation Laws joins them and it also helps in spreading the knowledge and the work AIFTP is doing.

My best wishes for the National Conference at Amritsar and I am confident that it would be a grand success and all the participants will benefit from the Educational discussions.

PANKAJ GHIYA
National President
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Adv. Pankaj Ghiya
National President
(AIFTP)

Message

It gives me immense pleasure to learn that North Zone of All India Federation of Tax Practitioners Jointly with, G S T Practitioners Association Amritsar is organizing the 2 day National Tax Conference Amrit Kalash on 15th & 16th July 2023.,

I congratulate the Organizers for coming forward to take a lead in organizing this Conference at Amritsar (GURU KI NAGRI).. The Theme of the Conference is – ENGAGING MINDS TO EMPOWER KNOWELEDGE.

The coming to Conference reminds us to ENERGISE OUR CELLS with fresh ideas.

Theme of conference is in consonance with the three basic principles of Federation EDUCATION, ETHICS AND EXCELLENCE.

The subjects chosen for the Technical sessions are of great professional interest. The speakers are well known experts of the Country. I am quite sure that deliberations made in this Conference will be of Great help in enhancing the Legal Treasure of Participants which shall help them in serving the society and nation more efficiently.

Besides the two days study session, a complimentary Trip to JALLIANWALA BAGH, GOLDEN TEMPLE, DURGIANA MANDIR, GOBINDGARH FORT, has been organized for which organizers deserves special applause for maintaining the footprints of earlier RRC organized in 2021 at Amritsar ..

I extend my heartiest Congratulations and good wishes to all the Members of the organizing committee of the conference for organizing this mega Two day National Tax Conference and special thanks to all the members of the A.I.F.T.P North Zone and G.S.T Practitioners Association Amritsar for the great success of the conference.

Special Applause for Dr. Naveen rattan National Vice President N.Z for apt Guidance and congratulations to Mr. O.P.Shukla Chairman (N.Z.) for leading the Zone. Very Special appreciation to Mr. Ranjit Sharma for carrying forward this uphill task of organizing this Mega National Tax Conference . In Last Name of Madam Simmi as Co- Chairperson of conference is worth mentioning who deserves applause for working so silently and fabulously for Federation.

Adv. Devndra Gandhi
Immediate Past President
A.I.F.T.P

Message

My Dear Mr. Ranjit Sharma,

I am happy to learn that under your leadership a National Tax Conference is being arranged at Amritsar under the aegis of AIFTP with the assistance of the Association of Tax Practitioners'; Amritsar and GST Tax Practitioners thereat. The theme of the conference is very aptly chosen of "Engaging Minds to Empower Knowledge". The theme so chosen is in accordance with the avowed object of AIFTP to keep its members updated on continuous basis through seminars and conferences arranged at different places.

Chapter IV of "BHAGWAT GEETA"conveys the idea that "GYAN YAGNA" is the best 'YAGNA' that has to be performed by anyone desiring to be a real "GYANEE".

On achieving 'Gyan'; vanishes AGYAN,whereafter the 'GYANEE' will have no doubt about anything. Applying that principle to the participants of the conference, I can very well say, that each of them; after attending the conference, will be able to view the real and correct meaning of any expression used in the Act or action by the authority.

I WISH THE CONFERENCE ALL SUCCESS.

Adv. P C Joshi
Past President, AIFTP
Mumbai

Message

It's a matter of massive happiness that All India Federation of Tax Practitioners (NZ)is organizing a National Tax Conference "Amrit-Kalash" in association with GST Practitioners Association, Amritsar and Association of Tax Practitioners, Amritsar on 15thand 16thJuly, 2023 at a very pious city AMRITSAR.

Further organizing conference at a place like Amritsar is remarkable because the attendance of delegates at this place is bound to result in a rewarding experience for all the participants. In addition to this, the significance and importance of Golden Temple, Wagha Border etc. cannot be minimized. I wish every delegate to have a pleasant and enjoyable stay at Amritsar.

The theme of this Conference "Engaging Minds to Empower Knowledge" is to discuss the challenges in better taxation and the practical issues faced by Tax Professionals by some major legal luminaries from all over India. Their insight to the subject will certainly engineer a change in dealing the problems related to tax matters.

I offer my congratulations to the Organizing team who has worked persistently to make this conference a grand victory.I am extremely grateful to deliver my gratitude to the organizing team for contributing best in terms of their efforts. Moreover, I would not miss to congratulateMr. Pankaj Ghiya (National President),Mr. O.P. Shukla (Chairman AIFTP-NZ),Mr. Ranjit Sharma (Conference Chairman), Mrs. Simmi Rattan (Conference Co-Chairperson) and the entire team. They were bend upon to make this conference memorable and valuable without any element of doubt.

Lastly, I am very obliged to all the members for their participation at such a great level. Every effort has been ensured to provide great hospitality to each and every delegate joining the conference.

I wish all the organizing team a grand success. Keep it up.

Dr. Naveen Rattan (Adv.)
National Vice President
(AIFTP-NZ)

Message

Warm greetings to each and every one of you!

I am glad to note that All India Federation of Tax Practitioners is organizing National Tax Conference 2023, at Amritsar in association with Association of Tax Practitioners, Amritsar and GST Practitioners' Association, Amritsar on 15th and 16th July, 2023. The theme of the conference "Engaging Minds to Empower Knowledge" is very relevant. I learn that a beautiful and informative Souvenir, capturing the memories, achievements, messages and articles is also being published to mark the occasion.

The inspiration for the NTC is Adv. Pankaj Ghiya, our dynamic National President. I immensely thank Dr. Naveen Rattan (NVP -NZ), Adv. Ranjit Sharma (Conference Chairman), Adv. Simmi Rattan (Conference Co-Chairperson), Adv. OP Shukla, Chairman, NZ; Adv. M.S. Suri, Adv. Gaurav Sharma, Adv. T.S. Madan, Mr. Bharat Arora and all members of the team.

I wish all the participants a very enjoyable and result oriented deliberation in the NTC.

With warm regards.

Adv. Narayan P Jain
Deputy President, AIFTP
Kolkata

Message

It is a matter of immense pleasure that All India Federation of Tax Practitioners (North Zone) in association with Association of Tax Practitioner and Gst Practitioner Association Amritsar is organizing Two Days National Tax Conference "AMRIT KALASH" on 15TH & 16th July 2023 at Hotel MK Ranjeet Avenue, in the ancient holly and poise city which is not known only and religious city but also known as the cultural heritage and brother hood, patriotism, and literally translating to pool of nector , a city whose foundation were laid 440 years ago by the Grate Guru Ram Das, This place was first know as Chakk Ram Das and finally become a Amritsar.

The conference Theme is "Engaging Minds to empower Knowledge" our Federation Theme is Ethics Education and Excellence and spread the knowledge through out the country through its various conference, seminar and publication.

The Basic Vision of Federation is GAINING EXCELLENCE THROUGH IMPARTING EDUCATION. EDUCATION is a Constant endeavour in everyone's. lives. A.I.F.T.P has been a Leading organization in spreading the essence of reaching excellence, by organizing Seminars, Conferences, Residential refresher courses throughout the year & therefore holding National Tax Conference 2023 is not the only one occasion for change of guard but continuation of a respected tradition of continuous educating its Members. Due to change in Direct and Indirect Taxes the roll and responsibility of the tax Professionals have also increased the such conference will make us aware of our responsibility which will ultimately help in nation building.

The participation and address on the subject relating to tax by legal luminaries would provide a common platform to deliberate upon the recent change in tax laws. Particularly implementation of GST, Critical issue on input tax credit and False allegation of fictitious of tax invoices to with hold benefit of input tax credit, drafting and pleading under direct and indirect taxes, Legal pronouncement u/s 147/148 and new provision u/s 148A and New Changes in Trust/Societies.

Adv. Om Prakash Shukla
Chairman
All India Federation of
Tax Pracitioners (NZ)

Message

Surely, the deliberation in this Tax conference will go a long way in bringing a variety of prospective, orientations and guidance to the undertaking of tax laws including the solution for common as well as complex problems in undertaking the tax laws.

My sincere thanks to organising team, specially conference Chairman Ranjeet Sharma, Conference Co-Chairperson Madam Simmi Rattan, and also Adv. Amit Goenka, Adv. M S Suri, who have given all the supports in organizing this National Tax Conference, under the Leadership of National Vice President (NZ) Dr. Naveen Rattan and also Thanks to all the members of Conference Committee and different organizing Committee of the conference of their untiring efforts for making this conference a grand success.

I am also delighted that a souvenir is also being published on this occasion which will lend valuable insight into the discussion that will take place at the conference.

Besides, The Organizing Team has taken all possible steps in ensuring a comfortable and a memorable stay for the delegates and other attendees in Ghaziabad. Despite all the efforts there always remain possibilities of a few lapses for which as chairman (NZ) AIFTP, I take the responsibility and seek pardon on behalf of all organizing team members.

It is commendable that Two days National Conference is being organized to sharpen the professional skills and the disseminate the technical knowledge on the various subject, which will be fruitful not only the delegates but the entire fraternity.

I extend my heartiest congratulation to the organizers of the "National Tax Conference-2023" "AMRIT KALASH" and wish them a grand success in their endeavour.

Message

CA H.L. Madaan
Former Chairman
All India Federation of
Tax Pracitioners (NZ)

It is a matter of immense pleasure for me that All India Federation of Tax Practitioners (North Zone) is organizing a two days National Tax Conference on 15th -16th July, 2023 at M.K Hotel, Ranjit Avenue, Amritsar in association with Association of Tax Practitioners, Amritsar and GST Practitioners' Association, Amritsar with theme - " Engaging Minds to Empower Knowledge ".

It is a matter of great pride for the members of AIFTP to have Hon'ble Mr. Justice Rajesh Bindal, Judge Supreme Court of India as our Chief Guest and Hon'ble Ms. Justice Ritu Bahri & Hon'ble Mr. Justice Arun Palli, Judges Punjab & Haryana High Court as guest of honour in the inaugural session on 15th July, 2023. Their presence, address and words of wisdom will add immense value to the conference and the participants. We are honoured and grateful to both the guests for accepting our request and agreeing to address our members by sparing valuable time from their busy schedule.

I am extremely happy to share that participants are joining from all parts of the country including Delhi, Punjab, Haryana, Rajasthan, Uttar Pradesh, Madhya Pradesh, Odisha, West Bengal, Maharashtra, Gujarat, Andhra Pradesh etc. in large numbers to make this conference a memorable event. My sincere regards to each and every participants.

A souvenir is also being published on this occasion containing articles from eminent professional and experts in their respective fields of taxation. I am confident that the souvenir would be immensely useful and beneficial for the readers and the participant.

My best wishes to the organizing team especially National Vice President (AIFTP-NZ) – Adv.(Dr.) Naveen Rattan, Chairman (AIFTP-NZ) – Adv. O.P.Shukla, Conference Chairman – Adv. Ranjit Sharma, Conference Co-Chairperson – Adv. Simmi Rattan, and all the members of the conference committees and sub committees. My sincere thanks to everyone in the North Zone Executive Committee for their continued support.

My special thanks to the National Leadership of AIFTP for giving this opportunity to the North Zone to organize this NTC at Amritsar. Thanks to our National President Mr. Pankaj Ghiya for his great support.

I wish the conference a grand success.

Programme

1st Day

15th July, 2023 (Saturday)

09:00 AM to 10:00 AM	**Registration & Fellowship**
10:00 AM to 12:00PM **Inaugural Session**	**Chief Guest : Hon'ble Justice Mr. Rajesh Bindal** **Judge Supreme Court of India** **Guest of Honor :** 1. **Hon'ble Justice Ms Ritu Bahri** (Judge Punjab & Haryana High Court) 2. **Hon'ble Justice Mr. Arun Palli** (Judge Punjab & Haryana High Court) 3. **Adv.Pankaj Ghiya,** Jaipur National President AIFTP 4. **CA Rajesh Mehta,** Indore Secretary General AIFTP
12:00 PM to 12:30 PM	**High Tea**
12:30 PM to 02:30 PM **1st Technical Session**	**Fake Invoices, Search and Seizure** **Convenor:** Adv. (Dr.) Naveen Rattan, Amritsar **Chairman:** Adv. Mukul Gupta, New Delhi **Speaker :** **CA Bimal Jain,** New Delhi (Chairman IDTC, PHD Chamber of Commerce, New Delhi)
02:30 PM to 3:00 PM	**Lunch Break**
03:00 PM to 05:00 PM **2nd Technical Session**	**Impact of PMLA** **Convenor:** Adv. Rajiv Shanker Dwivedi, New Delhi **Chairman:** Adv. D.K. Gandhi, Ghaziabad (IPP AIFTP) **Topic:** Interplay of Anti Money Laundering Law with other Economic Offences and Impact of PMLA recent notifications on Advocates and CAs **Speaker:** **Adv. (CA) Ashwani Taneja,** New Delhi (Ex Member ITAT) - Founder Partner Prudent Law Chambers **Topic**: Handling of Prosecution under PMLA, Benami, Black Money Act, GST and Income Tax Act **Speaker:** **Adv. Amit Khemka,** New Delhi
05:00 PM to 06:00 PM **3rd Technical Session**	**Brain Trust- Current Issues related to Income Tax** **Convenor:** Adv. Sandeep Agrawal, Jaipur **Chairman:** Adv. V. P. Gupta, New Delhi **Panelists:** **CA A. K. Srivastava** **CA. Jamuna Shukla** **Adv. Asim Zafar** **Adv. K. K. Dixit** **Adv. Parkash Gupta** **Adv. Anand Pandey**
07:00 PM onwards	**Musical Evening followed by Dinner**

Programme

2nd Day

16th July, 2023 (Sunday)

10:00 AM to 11:30 AM **4th Technical Session**	**Presumptive Tax and Section 148 of Income Tax Act** **Convenor:** Adv. Arvind Shukla, Varanasi **Chairman:** M. Srinivasa Rao, Eluru **Speaker :** **CA Rajesh Mehta,** Indore
11:30 AM to 11:45 AM	**Tea Break**
11:45 AM to 01:00 PM **5th Technical Session**	**Professional Development & Growth** **Convenor:** Adv. Anand Kumar Pasari, Ranchi **Chairman:** CA H. L. Madan, New Delhi **Speaker:** **CA Raghuvir Singh Poonia,** Jaipur
01:00 PM to 01:45 PM	**Brain Trust- Current Issues related to GST Tax Laws**
6th Technical Session	**Convenor:** Adv. Varinder Sharma, Ludhiana **Chairman:** Adv. Arvind Mishra, Prayagraj **Penalist:** **Adv. Sandeep Goyal** **Adv. Vineet Bhatia** **Adv. (Dr.) Ranjit Padhi** **Adv. Ishant Patkar** **CA Arun Chhajer**
01:45 PM to 2:30 PM	**Valedictory Session**
02:30 PM Onwards	**Lunch**

For Any Inquiry Please Contact

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Adv. Amit Goenka	**94174-51940**
Adv. M. S. Suri	**98156-31383**
Adv. Rimika Khera	**78372-03059**
Adv. Gaurav Sharma	**98782-91519**


HAPPY NEW YEAR 2023
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ESTD 11th NOVEMBER 1976
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INDEX OF ARTICALS

TYPICAL ISSUES IN TAXATION OF RELIGIOUS & CHARITABLE TRUSTS & INSTITUTIONS UNDER INCOME TAX ACT

CA. Rajesh Mehta, Indore

1. **Any trust or institution can furnish Form 10A and 10AB upto 30-9-2023:-** . If any of the trust or fund or institution was already registered U/s. 10(23C)(iv)/(v)/(vi)/(via) under erstwhile provisions applicable before TOLA 2020, it was to make an application for grant of approval in form 10A for which due date is extended to 30-09-2023. Such registration will be in force for 5 years.

   The said trust or institution 6 months prior to expiry of 5 years shall have to again apply for grant of approval for further 5 years in form 10AB.

   If it is not already registered, i.e. first time application for grant of approval, then provisional registration shall be granted for 3 years and it will have to apply for grant of approval for next 5 years at least 6 months prior to expiry of 3 years or within 6 months of commencement of activities, whichever is earlier in form 10AB.

   Any Trust or institution which is already having registration u/s. 12A/12AA, shall make an application for fresh registration in form 10A upto 30-9-2023 and for the form No. 10AB also the extended due date is 30-9-2023. Upon receipt of the said application from a trust already registered u/s. 12A/12AA, an order shall be passed by Pr. Commissioner/Commissioner, in writing registering the trust or institution for a period of five years U/s. 12AB.

   CBDT circular No. 16/2021 dt. 29-8-2021 extended certain due dates. The application for registration or intimation or approval under Section 10(23C), 12A, 35(1)(ii)/(iia)/(iii) or 80G of the Act in Form No. 10A required to be filed on or before 31st August, 2021 could be filed on or before 31st March, 2022; further this date was extended to 25/11/22 and now CBDT has vide Cir. No. 06/2023 dt. 24-5-2023 extended due date for filing form 10A or 10AB as the case may be to 30-9-2023.

2. **No provisional registration needed w.e.f. 1-10-2023:-**

   Any trust or institution which requires or needs to get registration U/s 10(23C) or 12AB or 80G need to apply for provisional registration before commencement of activities. If any of the trust or institution which have already commenced its activities then even if it is applying for first time it need not apply for provisional registration, it can directly apply for final registration under sub-clause (iv)(B) of first proviso to 10(23C) or sub-clause(vi)(B) of 12A(1)(ac), or sub-clause (iv)(B) of first proviso to 80G(5). Pr. Commissioner or commissioner if satisfied pass an order granting registration for 5 years, order granting or rejecting such application shall be passed within 6 months from the end of month in which such application is received.

3. **No simultaneous registration U/s 12AB & 10(23C):-**

   Under the new procedure for registration, where a Trust or institution is registered u/s. 12AA and section

10(23C)/(46) both, then the registration of the trust u/s. 12AA will become inoperative from 1st April, 2021 and thereafter, the trust may claim exemption u/s. 10(23C) or (46) only.

However, a Trust may make an application at least 6 months prior to commencement of assessment year relevant to previous year for which exemption is sought, for registration to be operative U/s.12AB. If the trust has applied for registration U/s.12AB, then said trust will not be entitled to claim exemption u/s. 10(23C)/(46) of the Act.

4. Filing of Return :-

If the income of trust or institution before giving effect to provisions U/s 10(23C)(iv)/(v)/(vi)/(via), or 11 and 12 is more than basic exemption limit (Rs. 2.50 Lakh at present) (Rs. 3 Lakh from AY 24-25) then trust is required to file its income tax return. If income tax return is not filed as per Sec. 139(4A) or 139(4C) within due date specified U/s 139(1) or 139(4) then exemptions provided u/s 10(23C) or 11 & 12 will not be allowed.

5. Anonymous Donation Sec. 115BBC :-

Any income in the form of anonymous donation is taxable @ 30%. Anonymous donation means where name, address and identity of the donor is not maintained. Aggregate anonymous donation in excess of (5% of total donation recd. or Rs. 1 Lakh, whichever is higher), will be taxable. Provisions of Sec. 115BBC shall not be applicable where recipient trust or institution is wholly for religious purpose or donation is towards religious purposes in case of religious and charitable institution.

6. Sec. 115TD - Modification of objects of the trust :

If the objects or activities undertaken by the trust or institution registered u/s. 12AA or 12AB of the Act are modified and the said modification is not in accordance with the conditions of registration granted u/s. 12AA or 12AB of the Act, then the trust will have to make an application u/s. 12AB for registration within 30 days of such modification. If approving authority not satisfied about genuineness of activities or compliance of any other law then he will reject the application and cancel the registration of the trust or institution

If registration of any trust is cancelled or trust is merged with another trust not registered U/s 12AA/12AB or the trust after dissolution does not transfer its assets to another trust registered U/s. 12AA/12AB/10(23C) then it will attract Sec. 115TD.

7. Sec. 115TD amended w.e.f. 1-4-23 to be applicable from A.Y. 2023-24 in case of non-registration under new regime:-

Accreted income of the trusts not applying for registration/ approval in form 10A, within the specified time, shall be made liable to tax in accordance with the provisions of section 115TD of the Act, therefore any of the trust or institution which could not apply for registration upto 30-11-2022 can now apply upto 30-9-23 to save itself from Sec. 115TD.

Sec. 115TD will be applicable if :-

(i) Trust or institution was already having registration under old regime U/s 10(23C)(iv)/(v)/(vi)/(via) or 12A or 12AA and failed to apply for fresh registration in form 10A under new regime within specified due date as extended upto 30-9-23 or

(ii) Trust or institution which were having registration under old regime and has got registration under new regime U/s 10(23C)(iv)/(v)/(vi)/(via) or U/s. 12AB and later on fails to apply for continuation at least six months prior to expiry of period of 5 years.

(iii) Trust or institution which have got provisional registration under new regime and failed to apply for further renewal at least six month prior to expiry of period of provisional registration or failed to apply for permanent registration within 6 months of commencement of its activities.

8. Rate of tax U/s. 115TD -

If the registration of the trust is cancelled or has not applied for fresh registration after modification of objects or fresh application after modification of objects is rejected or fails to apply form 10A or 10AB within specified due date, the trust shall be liable to pay tax on accreted income @ MMR, i.e. 42.744%% (30% + 37% surcharge + 4% Health and Education Cess). Accreted income means excess of fair market value of assets over liabilities.

9. Postponment of application of income if income not received or for any other reason:-

If any income could not be applied towards objects of the trust during the same year, even though it can be treated as deemed to have been applied during the same year in which it is derived, if it is applied towards objects of the trust in the just following financial year (amount not utilised will be deemed to be income of the said following previous year) or if the amount could not be spent only because it was not received during the same year then it can be applied only in the subsequent year in which it is received or in the just following year in which it is received (amount not utilised will be deemed to be income of the immediately following previous year in which the amount is received). But, to opt for this relaxation, it will be necessary for the trust to, online file Form No. 9A and form No. 10 as per rule 17 as specified in Sec. 11 and form No. 10 as specified in Sec. 10(23C) of the act, at least two months prior to the due date specified under Section 139(1) of the act applicable form AY 2023-24 (upto AY 22-23 these forms could be furnished upto due date specified U/s. 139(1) of the act).

10. Disallowance of cash expenses or disallowance of payments without TDS :-

For the purposes of determining the amount of application of income U/s 11 or computing income exempt U/s 10(23C)(iv)/(v)/(vi)/(via) the provisions of 40(a)(ia) and 40A(3)/(3A), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession" [w.e.f. AY 2019-20].

11. Application in the year of actual payment:-

As per expln.to Sec. 11(7) any sum payable by any trust on institution shall be considered as application of income in the previous year in which such sum is actually paid by the assessee irrespective of the previous year in which liability to pay such sum was incurred.

12. Form 10 and ITR to be filed within specified due date :-

If income received during the year is to be spent during next 5 years for specific purposes then intimation in form No. 10 is compulsorily to be at least two months before due date of filing of income tax return and such accumulated amount is invested in the forms of investments as specified under section 11(5). As per Section 13(9) if the return of income of the relevant year is not filed within due date specified U/s 139(1) and notice in form 10 at least two months before due date specified U/s. 139(1) then exemption regarding

accumulation U/s 11(2) will not be allowed. W.e.f. A.Y. 2023-24 the exemption under section 11, 12 and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act will be available if the return of income has been furnished within the time allowed under sub-section (1) or sub-section (4) of section 139 of the Act.

13. Set-off of excess application of income :-

From AY 22-23 any set-off of excess application of income or allowance of year preceding to previous year/s shall not be allowed in claiming exemption U/s 11 & 12 or 10(23C)(iv)/(v)/(vi)/(via).

14. (a). Expenditure out of corpus donation not an application of income :-

Any expenditure or payment out of corpus donation will not be treated as application of income, it will be treated as application of income when such amount is again deposited back in corpus and invested in modes specified U/s 11(5).

(b). No application of income out of loan :- Any amount shall not be treated as application of income if spent out of loan or borrowing, but it shall be treated as application of income when such loan or borrowing is repaid out of income of that year.

(c). Depositing back of corpus or repayment of loan within 5 years :- Finance Act 2023 provides that Application out of corpus or loans or borrowings before 01.04.2021 should not be allowed as application for charitable or religious purposes when such amount is deposited back or invested in to corpus or when the loan or borrowing is repaid. It is further provided that if the trust or institution invests or deposits back the amount in to corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes. It is also provided that where the application from corpus or loan did not satisfy the following conditions, the repayment of loan or investment/depositing back in to corpus of such amount will not be treated as application :-

(i) Such application should not be in the form of corpus donation to another trust;

(ii) TDS, if applicable, should be deducted on such application;

(iii) Application whereby payment or aggregate of payments made to a person in a day exceeds Rs 10,000 in other than specified modes (such as cash) is not allowed;

(iv) Carry forward and set off of excess application is not allowed;

(v) Application is allowed in the year in which it is actually paid;

(vi) Application should not directly or indirectly benefit any person referred to in sub-section (1) of section 13 of the Act and the income of the trust or institution should not enure any benefit to such person;

(vii) Application should be in India except with the approval of the Board in accordance with the provisions of clause (c) of sub-section (1) of section 11 of the Act.

15. Donation to other trusts or institutions - From AY 24-25:-

Any trust or institution claiming exemption U/s. 11 & 12 or 10(23C)(iv)/(v)/(vi)/(via), if giving donation to another trust or institution registered U/s. 10(23C) (iv)/(v)/(vi)/(via) or 12AB of the act, only 85% of the amount of such donation will be treated as application of income.

16. Lower Rate Certificate of TDS :-

Trust can submit Form No. 15G in respect of Interest income from deposits for not deducting tax at source u/s. 194A if the aggregate interest income and rental income doesn't exceeds Rs. 2.50 Lakh (From A.Y. 24-25 this limit is 3 Lakh). and tax on estimated total income of the Trust is Rs. NIL. If such amount is exceeding Rs. 2.50 Lakh (3 Lakh from AY 24-25) then as per rule 28AB the trust will have to apply in form 13 for lower rate certificate.

17. Survey U/s 133A :-

Survey u/s. 133A of the Act cannot be conducted on place where religious activities are being conducted, i.e. a religious trust or institution. TDS/TCS Survey cannot be conducted on places where charitable or religious activity is being carried out. [Section 133A(2A)].

18. Substantially financed by Government 10(23C)(iiiab)/(iiiac) :-

Income of any trust or institution carrying out educational or medical facilities is exempt if substantially financed by government i.e. if grants from government exceeds 50% of its gross receipts during the year.

19. Gross receipt exceeds Rs. 5 crores 10(23C)(iiiad/iiiae) :-

Income of any trust or institution carrying out education or medical facilities is exempt if its aggregate receipts during a year does not exceed Rs. 5 crore and is not required to obtain registration in form 10A. Upto AY 2021-22 this limit was Rs. 1 crore for each medical or educational institution.

20. Maintenance of books of account:-

Any of the trust or institution claiming exemption U/s. 10(23C)(iv)/(v)/(vi)/(via) or Sec. 11 & 12 of the act is required to maintain specified books of account and various records as specified in Noti. No. 94/2022 dt. 10-8-22, record of voluntary contribution and corpus donation containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available). The Books of accounts and other document will have to be kept and maintained for a period of 10 years from the end of relevant assessment year.

21. Audit report in form 10B or 10BB – from AY 23-24:-

If total income of any of the trust or institution claiming exemption U/s 11 & 12 or 10(23C)(iv)/(v)/(vi)/(via) of the act before giving effect to provisions under these section exceeds Rs. 5 crore or if it has received foreign donation or spent money outside India then audit report will have to be furnished in form 10B and in other cases audit report will be furnished in form No. 10BB. Such audit report is to be furnished at least two months before the due date specified U/s. 139(1).

22. Institutions specified U/s 80G(2)(a)(iv) should be only for charitable purposes, such institution may incur expenditure for religious purposes not exceeding 5% of its total income.

23. Deduction U/s 80G will not be allowed to donor if donation exceeding Rs. 2000/- is made in cash.

24. Deduction u/s. 80G shall not be available to donor in case of donation in kind. Deduction u/s. 80G is available only where the donation is of a sum of money.

25. Due date of form 10BD & 10BE :-

for FY 22-23 due date of form 10BD & 10BE is extended to 30-6-2023.

26. Any income of any body or authority formed by government for adiminstration of trust is exempt:-

As per Section 10(23BBA) any income of any body or authority established under any Central or State Act which provides for the administration of public religious or charitable trust or places of public religious worship or societies for religious or charitable purposes is exempt from tax.

Provided that income of any trust or society referred to above shall not be exempt under this clause.

Conclusion :- The tax provisions relating to charitable and religious trust and institution are very vast and have to be checked with recent provisions of the act and other prevailing provisions, at every important financial step while carrying out and implementing activities of any trust or institution or fund. Only some of the relevant important provisions have been briefed hereabove.

The Principles of Natural Justice Judicial view & Relevance to Tax Law

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Introduction

The doctrine or the Concept of principles of natural justice although not expressly referred/defined in any statute or Constitution, still invariably find a place among all prevailing legal systems. It may also be said to have its genesis from article 14 and article 21 of the Constitution. **C.B Gautam v. UOI (1993) 199 ITR 530 (SC), Dharkeswari Cotton Mills Ltd v CIT (1954) 26 ITR 775 (SC)** "Violation of the principle of natural justice may lead to violation of Fundamental rights of equality guaranteed by Article 14 or 21 of the Constitution of India". **Maneka Gandhi v. UOI 1978 AIR 597 (SC)/ 1978 SCR (2) 621 (SC)** "Constitution of India 1949, Art 21 – Natural Justice – Opportunity to be heard is universally recognized as an essential ingredient of principle of natural justice."

This doctrine which provides important procedural rights in administrative decision making has come to have wide-spread application and is presumed by the Courts to apply in the exercise of virtually all statutory powers, whether judicial, quasi-judicial or administrative and while adjudicating disputes. Non-adherence to the principles of natural justice can and does have the potential to render the decision non-est, null and void ab initio and a negation of the conclusion drawn therefrom so as to prevent further miscarriage of justice.

The principles essentially entail that a person receives a fair and unbiased hearing before a decision, having the potential to negatively affect him, is made and to shield him against any arbitrary or unilateral action and is mostly aptly represented in the phrase "duty to act fairly". **Bharti Reddy v. State of Karnataka (2018) 6 SCC 162 (SC)** dated March 6 2018-Where the order is passed by thejurisdictional authority without hearing the party affected, which entails injury to a constitutionally guaranteed right to the affected party. It held that such orders may be treated as void and ineffectual to bind the parties from the beginning.

The Principal of Natural justice is derived from the concept of ***"jus naturale"*** (Latin for "natural law") which is a philosophical system of legal and moral principles that are purported to be based on human nature and moralistic and fundamental ideas of right and wrong rather than on legislation, judicial action or statutes.

Rules of Principles of Natural justice

Principles of natural justice are the rules which have been laid down by the courts as being the minimum protection of the rights of a person/entity against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These principles are essence of fair adjudication.

The principles of natural justice are based broadly on three rules/Principles: -

1. The first principle; that nobody shall be a judge in his own cause or in a cause in which he is interested. It is also known as the "Doctrine of Bias" ***("Nemo Judex in Causa Sua")***. It has to be interpreted like that the authority sitting in judgment should be impartial and act without bias. It is necessary to instill confidence in the system and also fulfill the requirement according to which "justice should not merely be done but seen to be done". ***The decision of the Supreme Court of India in the case of A. K. Kraipak v. UOI AIR 1970 SC 150*** is considered a classic one on the issue of personal bias. In this case, the acting Chief Conservator of Forests was a member of selection committee along with the Members of UPSC for selection to the post of Chief Conservator. At the same time, he was also a candidate for the post of Chief conservator. Although in the course of selection he did not participate in the proceedings when his name was considered, the Court held that the very fact that he was a Member of the Selection Board must have had its own impact on the decision of the Selection Board. Further, he participated in the deliberations of the Selection Board when the claims of his rivals were considered. The Court held that there was definitely a conflict between his own interest and the duty cast on him which could prevent him from being impartial. The Court observed that there was a reasonable likelihood of bias, which operates in a very subtle manner. The decision so arrived at is in violation of the principle of natural justice. **Oryx fisheries v. UOI (2010) 13 SCC 427 (SC) dated October 29, 2010** "Requirement of natural justice is that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceedings if such a proceeding has to inspire confidence in the mind of those who are subjected to it."
2. The second principle; "**Audi Alteram Partem"** i.e., right to fair hearing which requires that individuals are not penalized by decisions affecting their rights or legitimate expectationunless they have been given prior notice of the cases against them, a fair opportunity to answer them, and an opportunity to present their own case and that no one should be condemned unheard. It requires that any person against whom any action is sought to be taken, whereby his rights or interest are/or are likely to be affected, should be given an equal and fair opportunity of being heard.
3. The third principle of natural justice; **requires speaking orders or reasoned decisions to be passed by the concerned authority.** Passing of a reasoned and speaking order is one of the fundamentals of good administration and a safe-guard against arbitrariness. When the order to be passed is an appealable order, the requirement of giving reasons would be a real requirement. The refusal to give reason may excite the suspicion that there are probably no-good reasons to support the decision, therefore, reasons are useful as they may reveal an error of law, the grounds for an appeal or simply remove what might otherwise be a lingering sense of injustice on the part of the unsuccessful party. Similarly, the reasons are also required to be given when the Appellate or revisionary authority affirms the order of the lower authority. **Hon'ble Apex Court in the case of Kranti Associates (P.) Ltd. v. Masood Ahmed Khan [2010] 9 SCC 496** has discussed the importance of passing a speaking order and it is observed "the need to give reasons in support of the decision/order, in all proceedings (whether administrative or quasi-judicial) which affect the rights of the parties involved. From time to time, court has held that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of Sphinx'."

Supreme Court on adhering to Principles of Natural Justice

The importance of the principles of natural justice has been emphasized by the Supreme Court in a number of cases wherein the Court has also clearly affirmed that **"an Act or as a quasi-judicial Act in violation of the principles of natural justice is void or of no value"** and **"that breach of natural justice nullifies the order made in breach".** In particular, in the case of **Mohinder Singh Gill v. Chief Election Commissioner AIR 1978 SC 851** it has very clearly observed as follows: —

> **"Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colors and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of Authority. It is the bone of healthy government, recognized from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam-and of Kautilya's Artha sastra -the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the, roots of natural justice and its foliage are noble and not new-fangled. Today itsapplication must be sustained by current legislation, case- law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system".**

Similerly in case of **State of Orissa v. Dr. (Miss) Binapani Rai AIR 1967 SC 1269,** the Supreme Court observed-

"This rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. ***If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case".***

Relevance under Tax Laws

The principles of natural justice are equally applicable to income tax proceedings. In the context of administration and adjudication of tax laws, the right to a fair hearing (i.e., **"Audi Alteram Partem"**) acquires significance and sometimes plays a pivotal role in the determination of the validity or otherwise of any proceedings. This rule is based on the fundamental understanding "that justice should not only be done but should manifestly and undoubtedly be seen to be done" and entails the following facets: —

(a) Right to "adequate notice" which should in the least contain the time, place and of hearing, legal authority under which a hearing to be held and the statement of specific charges which the person has to meet.

(b) Right to "hearing" i.e., reasonable opportunity to the party to present his/its case and evidence in support thereof.

(c) Right to "rebut adverse evidence" which presupposes that the person has been informed about

the evidence/adverse material against him and provided an adequate opportunity to rebut the same. It further involves granting an opportunity to cross-examine the person whose testimony is being or is attempted to be relied upon in support of the proposed action.

(d) Right to "legal representation" in order to make his right to defend himself more meaningful, subject of course to the limitations, if any imposed by statute.

(e) "Reasoned decision" which provides and establishes a link between facts and decision, guards against non-application of mind and random/arbitrary decision making and fosters the maintenance of public confidence in judicial and administrative authorities. A reasoned decision further mitigates against the arbitrary exercise of judicial power vested in an executive authority and also facilitates in the judicious framing of case while challenging the decision before the appellate or revisional authorities.

Hon'ble Apex Court in the case of Canara Bank v. Sri Debasis Das AIR 2003 SC 2041 has analyzed in depth "Natural Justice" and "Audi Alteram Partem". The observations in the said judgment can be summarized as follows: —

a. Natural Justice is another name of commonsense Justice.
b. Rules of Natural Justice are not codified canons.
c. But they are principles ingrained into the conscience of man.
d. Natural Justice is the administration of Justice in a commonsense liberal way.
e. Justice is based substantially on natural Justice is based substantially on natural ideals and human values.
f. The administration of Justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties.
g. It is the substance of Justice which has to determine its form.
h. The expressions "Natural Justice" and "Legal Justice" do not present a water tight classification.
i. It is the substance of Justice which is to be secured by both and whenever legal justice fails to achieve this solemn purpose, natural Justice is called in aid of legal justice.
j. Natural Justice relieves legal Justice from unnecessary technicality, grammatical pedantry or logical prevarication.
k. It supplies the omissions of a formulated law.
l. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defense.
m. The adherence to principles of Natural Justice as recognized by all civilized States is of Supreme importance when a quasi - judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue.
n. Notice it is the first limb of the principle of Audi Alteram Partem.
o. Notice should apprise the party the case he has to meet.
p. Adequate time should be given to make his representation.

Suraj Mall Mohta and Co. v. A. V. Viswanatha Sastry, (1954] 26 ITR 1 (SC) "The SupremeCourt has ruled that assessment proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at. The assesse has a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal. This right has not been taken away by any express provision of the Income-tax Act."

Navbkhan Abbas khan v. State of Gujarat 1974 AIR 1471 /1974 SCR (3) 427 (SC) "An order which infringed a fundamental freedom passed in violation of Audi alteram partem rule was 'nullity'."

Bharti Reddy v. State of Karnataka (2018) 6 SCC 162 (SC) dated March 6 2018 "Where the order is passed by the jurisdictional authority without hearing the party affected, which entails injury to a constitutionally guaranteed right to the affected party. It held that such orders may be treated as void and ineffectual to bind the parties from the beginning."

The opportunity of being heard should be real, reasonable and effective. The same should not be for name's sake. It should not be a paper opportunity. This was so held in CIT v. Panna Devi Saraogi [1970] 78 ITR 728 (Cal.). In Smt. Ritu Devi v. CIT [2004] 141 Taxman 559 (Mad.), time of just one day was given to the assesse to furnish reply. This was held as denial of opportunity. As held in E. Vittal v. Appropriate Authority [1996] 221 ITR 760 (AP), where a decision is based upon a document in a proceeding, copy of the same should be provided to the affected party. Otherwise, it would violate the principles of natural justice as the opportunity of being heard should be an effective opportunity and not an empty formality. Denial of opportunity may make an order void. Limitation of time cannot stand in the way of not giving adequate opportunity. The principle is inviolable.

State Of Kerala v. K.T. Shaduli Yusuff Etc. 1977 AIR 1627, 1977 SCR (3) 233 (dt 15 March, 1977) Natural justice – Best judgement assessment relying on certain entries in account books of other dealers – Cross examination of dealers is part of principle of natural justice. Particularly when the assesse makes a specific prayer to this effect.

Andaman Timber Industries v CCE (2015) 127 DTR 241/ 281 CTR 241 (SC) Order passed denying the opportunity of cross examination is violates principle of natural justice which is a serious flaw which renders the order a nullity.

CIT v Odeon Builders (P) Ltd (2019) 418 ITR 315 (SC) Entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to appellant, thus, denying opportunity of cross examination to appellant. Addition was deleted.

Kumaon Mandal Vikas Nigam Ltd v. Girija Shankar Pant & Ors (2001) 1 SCC 182- Showcause notice must specify the specific charge. ***Tar Lochan Dev Sharma v. State of Punjab [2001] 6 SCC 260-*** The person proceeded against is required to be informed about the exact nature of charges levelled against him. The authority taking a decision must apply his mind to the explanation furnished. Application of mind must be apparent from the order.

The importance of a show cause notice has been reiterated by Supreme Court in the case of

Umanath Pandey v. State of UP [2009] 12 SCC 40-43 as under:

"Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him."

Adherence to principles of natural justice- Judicial review

The Courts have repeatedly emphasized the importance of adhering to the principles of natural justice in all its facets: -

It is true that a quasi-judicial authority is not required to hold an enquiry into a dispute before him according to the procedure followed in a court. Where a tribunal which has the power to make any enquiry as it thinks fit, decides a case on a matter of fact discovered by the tribunal itself on inspecting the premises in question, it will be breach of natural justice if it does not inform the parties and give them a chance of dealing with it. If a tribunal receives from a third party a document relevant to the subject matter of the proceedings, it should give both parties an opportunity of commenting on it. It was the duty of the collector of customs to inform the persons charged before him of the charges against them. A quasi-judicial authority would be acting contrary to the rules of natural justice if it acts on information collected by it which has not been disclosed to the party concerned and with respect to which full opportunity of meeting the inferences which arise out of it has not been given. **Collector of Central Excise and Land Customs v Sanawarmal Purohit [1979 (4) ELT J 613 (SC)]**

It is trite that the rules of 'natural justice' are not embodied rules. The underlying principle of natural justice, evolved under the common law, is to check the arbitrary exercise of power by the state or its functionaries. Therefore, the principle implies a duty to act fairly i.e., fair play in action. ….. that the aim of rules of natural justice is to secure justice or to put it negatively to present miscarriage of justice. Automotive Tyre Manufacturers Association v Designated Authority 2011 (263) E.L.T 481 (SC)The basic rules of natural justice entail that

(i) notice of the charge or charges on which a person was sought to be proceeded against;

(ii) opportunity to be heard:

(iii) hearing before an impartial tribunal so that no man could be a judge of his own cause and that the decision could be made in good faith and without bias: and (iv) an orderly course of procedure before the tribunal so that a man might have opportunity to rebut the evidence sought to be used against him. **Bagsu Devi Bafna v CIT [1966] 62 ITR 506 (Cal).**

It will therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of the Punjab National Bank Ltd, to the ITO, no reliance could be placed upon it, since it was no shown to the assesse until at the stage of preparation of the supplemental statement of the case and no opportunity to cross examine the manager of the bank could in the circumstances be sought or availed of by the assesse. It is true that the proceedings under the income-tax law, are not governed by the strict rules of evidence and therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the I.T authorities could reply upon it, they were bound to produce it before the assesse so that the assesse could controvert the statements contained in it by asking for an opportunity to cross-examine the manager of the bank with reference to the statements made by him. **"Kishinchand Chella Ram v. CIT [1980] 4 Taxman 29/125 ITR 713(SC)**

Reading the order, it appears to us, that though the appellant had made submissions on the Commissioner's objections, there was no clear opportunity given to the appellant to make submissions on the Commissioner's objection in the sense of demonstrating that the Commissioner was not justified in making the objections and, secondly, that the Commissioner should not accept or accede to the objections in the facts and circumstances of the present case. We are of the opinion that in view of the facts and circumstances of the case and in the context in which these objections had been made, it is necessary, as a concomitant order for the years for which the Commissioner had objected, concealment had been upheld in the appeal before the appropriate authorities. But it may be that in spite of this concealment, it may be possible for the appellant to demonstrate or to submit that in disclosure of concealed income for a spread-over period, settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested by the Commissioner's objections. This objection the appellant should have an opportunity to make. In exercise of our power of judicial review of the decision of the Settlement Commission, we are concerned with the legality of procedure followed and not with the validity of the order. Seethe observations of Lord Hailsham in Chief Constable of the North Wales Police v. Evans [1982] 1 WLR 1155 (HL) judicial review is concerned not with the decision, but with the decision-making process. **R. B. Shreeram Durga Prasad & Fatehchand Nursing Das v. Settlement Commission [1989]43 Taxman 34/ 176 ITR 169 (SC)**

The observance of principles of natural justice is the pragmatic requirement of fair-play in action. **C.B. Gautam v. Union of India [1992] 65 Taxman 440/ [1993] 199 ITR 530 (SC)**

Since correctness or otherwise of report on basis of which assessment order was passed against assesse was itself under challenge, said report could not be automatically accepted and Assessing Officer committed violation of principles of natural justice in not permitting cross-examination of analyst and relying upon his report to be detriment of assesse. **CIT v. Dharam Pal Prem Chand Ltd. [2008] 167 Taxman 168/ [2007] 295 ITR 105 (Delhi)**

The impugned orders are non-speaking orders inasmuch as admittedly it has not considered the petitioner's submissions which go to the root of the matter. The object of natural justice is to ensure that parties views/objections are taken on board and considered before it is rejected. At times, the reply filed by the respondent may require certain clarifications. This clarification the authority must seek before taking any decision adverse to the party. The requirement of natural justice is only to ensure that the party's stand is effectively dealt with by the authorities under the Act. Mere ritualistic giving of hearing and reproducing the submissions made without understanding the party's case would not satisfy the test of natural justice. It is not open to the Authority to ignore the evidence/submissions made by the party as it is not the object of quasi-judicial authority to confirm their prima facie view, but the object is to find the correct facts and thereafter apply the law to those facts and take a decision in terms thereof. **TLG India (P.) Ltd. v. Dy. CIT [2019] 111**

taxmann.com 376/ [2020] 269 Taxman 295/421 ITR 418 (Bom.)

In proceedings under the Act, the Department must serve notice on the assesse giving reasonable time for him to respond and file his response. Where the assesse was given only three days to respond, there had been a gross breach of principles of natural justice, and, therefore, order of appropriate authority had to be quashed. **Sona Builders v. Union of India [2001] 119 Taxman 430 /251 ITR 197 (SC)**

Exceptions to the Principles of natural justice-Judicial review

It may be mentioned that in some of the early decisions of Apex Court, non-observance of natural 10justice was held to be prejudice in itself to the person affected, and proof of prejudice and independent of proof of denial of natural justice was held to be unnecessary except to the rule where, on "admitted or undisputable", facts only one conclusion is possible and under the law only one penalty is permissible and in such cases it was held that a court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, **but courts do not issue writs which are "futile". [S.L. Kapoor v. Jagmohan [1980] 4 SCC 379].**

Similarly, in another decision in the case of Viveka Nand Sethi v. Chairman, J&K Bank Ltd. [2005] 5 SCC 337 has held as under: —"22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash [(2004) 5 SCC 263].] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."

Where a statutory provision either specifically or by inevitable implication excluded the application of the rules of natural justice, then the court cannot ignore the mandate of the Legislature and extend the application of the rules even to the excluded categories. **Laxman Das Pranchand v. Union of India [1998] 98 Taxman 203/234 ITR 261 (MP).**

In the case of **Dharampal Satyapal Ltd. v. Dy. CCE [2015] 8 SCC 519** it has been held by the Hon'ble Apex Court that it is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. It is also held that the courts are empowered to consider that as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. The relevant observations are reproduced below: -

"33……. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority "

"34. In view of the aforesaid enunciation of law, Mr. Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the Appellant since judgment in R.C. Tobacco (supra) had closed all the windows for the Appellant."

Conclusion

Hon'ble Supreme Court vide decision dated October 16, 2020 in Civil Appeal No. 3498 Of 2020 (arising out of SLP (C) No. 5136 Of 2020) State of U.P. v. Sudhir Kumar Singh, after considering thejudicial trend prevailing right from the beginning has culled out the principles governing the rules of natural justice as under: —

"(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the Audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

Principles of natural justice founded as they are on fairness, reasonableness and equality, tax adjudicating and appellate authorities, while performing their administrative/quasi-judicial functions are well advised to ensure due compliance with procedures so as to prevent the entire process not only from being derailed but also to ensure that the right decision is arrived at by doing what is right and following due process. Correspondingly, assesses should also be at guard at all stages of the adjudication as well as appellate process to unearth any deviation therefrom and use that to challenge the basic legal validity of the underlying process.

REAL ESTATE TRANSACTIONS UNDER THE INCOME TAX ACT

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Real estate transactions are believed to be one of the main source for generation of black money. Hence the Govt. is regularly trying to plug loop wholes in such transactions by inserting various provisions from time to time, important of which are section 56(2)(vii), section 50C and section 43CA.

Taxability of real estate transactions can be seen from the point of view of builder / developer or dealer in real estate as well as from the point of view of investor. Section 56(2)(vii)(b) is applicable to the buyer / investor whereas section 50C and section 43CA are applicable to the seller.

A. Section 56(2)(vii) of the Income Tax Act

Clause (vii) has newly been inserted by the Finance (No.2) Act 2009 w.e.f. 01.10.2009 and subsequently amended by the Finance Act 2010, with retrospective effect from 01.10.2009 and further amended by the Finance Act 2012 with retrospective effect from 01.10.2009 so as to treat a gift of money, immovable property and property other than immovable property exceeding `50,000/- received by an Individual or HUF from any person or persons on or after 01.10.2009 to be chargeable to tax under the head "Income From Other Sources".

Section 56(2)(vii)(b)(i) deals with the situation where an Individual or HUF receives any immovable property without consideration, the stamp duty value of which exceeds `50,000/-, the stamp duty value of such property be treated as income under this head.

Sub-clause (ii) deals with a situation where Individual or HUF receives any immovable property for a consideration which is less than the stamp duty value of the property by an amount exceeding `50,000/-, the stamp duty value of such property as exceeds such consideration be treated as income under the head "Income From Other Sources".

Finance Act 2013 has extended the scope of this section by introducing sub-clause (ii), inter alia covering the cases when any immovable property is received by an Individual or HUF for inadequate consideration.

Salient Features

a) This section is applicable only to Individual and HUFs. Transactions related to purchase of property by Company, Partnership Firm, LLP, Trust, AOP are out of the purview of this section.

b) The stamp duty value of immovable property should be more than `50,000/- if property is transferred without any consideration. In such circumstances, stamp duty value shall be treated as deemed consideration for the purpose of income tax.

c) The difference in stamp duty value and consideration received should be more than `50,000/- if the immovable property is transferred without adequate consideration. Such difference would be treated as income under the head "Income From Other Sources".

d) As per the provisos, if the consideration amount has been paid by mode other than cash either partly or fully in the year of agreement, prior to the year in which the registration of the property is done, the stamp duty value of the property of the year in which agreement to sell was executed shall be treated as deemed consideration in the year of registration for the purposes of income tax.

Cost of Acquisition

The question arises as to what would be the cost of acquisition to the buyer / transferee in a case when he has paid tax under this section on the excess of stamp duty valuation over the actual consideration paid by him. The legislature has provided sub-section (iv) to section 49 prescribing cost of acquisition with reference to certain modes of acquisition. It states that where the capital gain arises from the transfer of a property, the value of which has been subject to income tax under clause (vii) or clause (viia) of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) or clause (viia).

It means that in a case where the buyer acquires the property as capital asset then only cost step-up is available and that too for the purposes of calculating capital gain when such property is transferred at a later date as capital asset.

Since provisions of section 49(4) cannot be extended to section 32, assessee cannot account for such asset at higher value in the books of accounts and claim depreciation on the enhanced value. Further in case the Individual or HUF acquires the property as trading asset, the enhanced value of such asset cannot be accounted for in the books of accounts as no such provision corresponding to section 49(4) has been brought under the head profit and gains of business or profession.

It would mean that if an Individual or HUF, being in the business of real estate buys the land or building at less than stamp duty value and therefore, being subject to rigour of newly inserted clause (b) of section 56(2)(vii), pays tax on the difference of stamp duty value and the actual consideration, yet such Individual or HUF would not be able to take advantage of the cost step-up despite the fact such person had paid the tax with reference to stamp duty value. This provision is not applicable to business entities like firm, Co. etc.

A question arises as to whether this is a lapse on the part of legislature where no provision for trading asset corresponding to section 49(4) has been introduced in the statute.

As discussed earlier, the underline assumption behind section 56(2)(vii) seems to be that the actual consideration for a property cannot be less than a circle rate / stamp duty value and if the apparent consideration paid is less than the stamp duty value, the difference appears to have been paid in cash outside the books of accounts by the transferee. Such amount is deemed to be the income of the Individual or HUF as provided u/s 56(2)(vii)(b). if analogy and comparison of this situation with the deeming provision of section 69 for unexplained investment and 69C for unexplained expenditure is made, it appears that the legislature has intended with a conscious mind not to prescribe the cost step-up in case of trading asset on the lines of section 49(iv).

Further as per the proviso to section 69C, the unexplained expenditure which is deemed to be the income

of the assessee is not allowed as a deduction under any head of income, while in case of unexplained investment u/s 69, there is no such restrictive provision, meaning thereby that if unexplained investment is deemed to be the income of the assessee u/s 69 such investment is allowed as deduction as cost of acquisition of the asset, when it is sold.

However, this controversy is of limited applicability as the provisions of section 56(2)(vii) is applicable only to Individual and HUF and not to the business entities such as firm / companies.

Draft report of Justice Easwar Committee has proposed that section 56(2)(vii)(b)(ii) be deleted as this provision works on the assumption that the buyer of the property would have paid consideration more than the stated consideration; This presumption is not in accordance with judicial interpretation and therefore, deserves to be deleted.

Forfeiture Of Advance Money

A new sub-clause (ix) has been inserted in section 56(2) by Finance (No.2) Act 2014 w.e.f. 01.04.2015 whereby any sum of money received by the vendor as advance and the deal does not materialize then that amount be treated as income from other sources. Sub-clause (ix) runs as under:

(ix) – Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if, -

(a) such sum is forfeited; and

(b) the negotiations do not result in transfer of such capital asset.

This provision is applicable to the seller.

B. Section 43CA of the Income Tax Act

Section 43CA lays down as under :

(1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset."

Salient feature of Section 43CA of the Income Tax Act, 1961

a) Section 43CA is applicable from AY 2014-15,

b) this section is applicable on transfer of land or building or both only,

c) land or building or both should be held as business assets i.e. stock in trade (other than capital asset),

d) this section is applicable only to compute income under the head "Profit & Gain from Business or Profession",

e) this section is applicable only in a case where the sale consideration is less than the value as per stamp authority,

f) the value as per stamp authority may be adopted or assessed or assessable,

Consequences

a) If aforesaid points are satisfied then stamp duty value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

b) For determination of value adopted or assessed or accessible, the provisions of sub-section (2) and (3) of section 50C shall apply [(Section 43CA(2)].

c) All the provisions relating to determination of full value of consideration after disputing value as per stamp authority are applicable as provided in section 50C.

Exception

As per sub-section (3) & (4) , where the date of agreement of sale and the date of registration of transfer are not the same, the stamp duty value on the date of agreement shall be taken in place of stamp duty value on the date of registration, provided the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the assets. These sub-sections are similar to both the provisos to section 56(2)(vii)(b).

C. Section 50C

This section states that where an assessee sold an immovable property (land or building or both) being capital asset at the sale consideration less than the stamp duty value (SDV) adopted by the state Govt. for the purpose of stamp duty then such SDV shall be considered as sale consideration for the purpose of capital gain computation.

This section is not applicable to the immovable property held by the assessee as stock-in-trade (i.e. builder/developer). If land or building or both has been held as capital asset (may be long term or short term) whether related to business or not then the said provision is applicable.

Consequences where SDV is disputed

a) Where value is disputed under the Stamp Act

If the value is disputed by the assessee under Stamp Act then the value finally determined or accepted by stamp authority is taken as full value of consideration.

Once the value is disputed under the Stamp Act, the assessee cannot dispute the same under Income Tax Act.

b) Where value is disputed under Income Tax Act

If the assessee claims under Income Tax Act, provided the value is not disputed under Stamp Act, that value adopted by stamp authority is more than the fair market value of capital asset then the AO is bound to refer the matter to DVO to determine the value of capital asset.

If the value determined by DVO is less than SDV then the value determined by DVO is to be taken as consideration for the purposes of computation of capital gain.

If the value determined by DVO is more than SDV then SDV has to be treated as consideration for the purpose of computation of capital gain.

D. Section 194IA

This section has been inserted by the Finance Act 2013 w.e.f. 01.06.2013 whereby any person, being a transferee, responsible for paying to a resident transferor any sum by way of consideration for transfer of any immovable property other than agricultural land, shall deduct an amount equal to 1% of such sum either at the time of credit of such sum to the account of transferor or at the time of payment of such sum by any mode, whichever is earlier. NO tax is to be deducted if consideration paid or payable is less than `50 lac. Moreover, provisions of section 203A i.e. filing of return of TDS or to apply for TAN is not applicable to the transferee.

E. Section 269SS and 269T

In order to curb generation of black money by way of dealing in cash in immovable property transactions, Finance Act 2015 has brought amendment in section 269SS and 269T by inserting the definition of specified sum in the Explanation. Section 269SS is amended so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property other than by way of an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or a specified sum is `20,000/- or more.

Similarly, section 269T is also amended so as to provide that no person shall repay any loan or deposit or any specified advance received by it in relation to transfer of an immovable property, whether or not the transfer takes place, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing through a bank account, if the amount or aggregate amount of loan or deposit or specified advance is `20,000/- or more.

If any person violates these provisions then 100% of the sum involved shall be imposed as penalty.

F. Taxation of annual value of unsold flats / shops / units held by a real estate developer / builder

Now a days the issue has arisen in the case of builder / developer as to whether annual value / notional income in respect of vacant unsold flats / units held as stock-in-trade is chargeable to tax in the hands of builder / developer under the head "Income From House Property". Section 22 charges annual value of the property being building or land appurtenant thereto to tax under the head "Income From House Property". However, if the property is occupied by the owner for the purpose of his business or profession carried on by him then the annual value of the said property is not chargeable to tax.

Annual value of the property is chargeable to tax u/s 22. Annual value can be determined u/s 23. Section 23(1) inter alia states that annual value shall be deemed to be the sum for which the property might reasonably be expected to let from year to year……. Thus annual value would be the same irrespective of the fact whether unsold unit is let out or vacant. However this depend upon the facts as to whether unsold units have been held by the assessee as stock-in-trade (like builder) or capital asset. Further question arises as to whether unsold flats etc held as stock-in-trade can be said to be occupied by the assessee for the purpose of business, profit of which is chargeable to tax under the head "Business Income". In CIT vs Neha Builders (P) Ltd. (2007) 164 Taxmann 342 (Guj), Gujarat High Court have held that income derived from the property would always be treated as income from house property but where the property is held as stock-in-trade then any income derived from such stock by way of letting would be income from business and not the income from house property. If the business of the assessee is to construct the property and sell it or to let out the same then the income would be business income.

Calcutta High Court in Azim Ganj Estate (P) Ltd. vs CIT (ITA No.242 of 2003) decided on 13.09.2011 held that the rental income from unsold flats which were let out would be assessable under the head "Income From House Property" and not under the head "Business Income".

In the case of CIT vs Ansal Housing Finance & Leasing Co. Ltd. (2012) 83 CCH 46 (Del) the issue arose as to whether annual value of unsold flats (which were not let out) held as stock-in-trade was chargeable to tax under the head "Income From House Property". Delhi High Court held that the ALV of such property is chargeable to tax under the head "Income From House Property" as the incidence of charge is because of the fact of ownership. The intention of the assessee was to hold the properties till they are sold. The capacity of being an owner is not diminished because the assessee carried on the business of developing, building and selling flats in housing estates.

Bombay High Court in the case of Mangla Homes (P) Ltd. vs ITO (182 Taxmann 55) treated the rental income earned by the assessee builder from letting out unsold flats as income from house property. Now the issue has been set at rest by the Supreme Court in the case of Chennai Properties & Investment Ltd. vs CIT (Civil Appeal No.4494 of 2004 dated 09.04.2015) Supreme Court have held that where the main object as per MOA of the assessee is to hold the properties and earn income by letting out the same then the rental income has to be treated as business income.

Development Agreement

Development agreement is not an agreement for sale simplicitor. It is an executory agreement whereby the developer undertakes to put-up a superstructure on that part of the portion of land retained by the owner in consideration of transfer of remaining part. Development agreement is not a sale simplicitor because there is an element of builder's contract with the only difference that the consideration is not cash but in kind i.e. constructed portion on the retained land. In Development Agreement, one cannot expect construction to be undertaken by the developer, once a breach has occurred so that there is only damages for the party, who had suffered the breach.

A development agreement was treated as an agreement for sale in **Ashok Leyland Finance Ltd. vs Appropriate Authority (230 ITR 398)(Mad) and Ashish Mukherjee vs Union of India (222 ITR 168)(Pat) and Ansal Properties & Industries Ltd. vs Appropriate Authority (236 ITR 793)(Del).**

But in Mahabodhi Society of India vs Union of India (209 ITR 412)(Cal), it was held that it is not an agreement for sale which can come within the purview of Chapter-XXC.

It is in the above context that one has to take care to avoid the inference of transfer on mere signing of the agreement. It is advisable that development agreement specifically stipulates possession with owner till obligations undertaken by the developer is discharged with only right of entry for developer or his nominees to discharge the obligations undertaken in the agreements.

If the Development Agreement had granted an unqualified, uninterrupted and irrevocable right of possession to the developer, it will be difficult to avoid liability to tax in the year in which development agreement was executed, though there is a possible argument that the possession is not in the capacity of a buyer but only as a builder, the property itself is not for enjoyment by the developer but by the prospective flat owners. Even if such a stand is taken, liability cannot be postponed till completion of the agreement, if there are registered sales prior to completion. Proportionate profit there from will have to be accounted.

Where the owner immediately sales the units in respect of plot retained by him with absolute right both over the plot and superstructure to the prospective owners, there may be no margin of profit on sale of superstructure because sale consideration would be equivalent to cost and the entire capital gain pertain to sale of land. If the sale takes place after sometime, the price will be bifurcated between land and superstructure and the capital gain would be ascertained separately for them. If sale is within 03 years of such completion, gain on superstructure would be short term capital gain whereas the sale pertaining to land would be long term capital gain.

In Jasbir Singh Sarkaria, In Re (2007) 294 ITR 196 (AAR), authority for advance ruling found that the assessee had given an irrevocable General Power of Attorney not only to develop the plot but also to book and sell dwelling house units, though such Power of Attorney could be utilized only after some crucial steps had been taken. Power was executed during the financial year, so that possession had to be inferred in the context of the Power of Attorney. The fact that the owner himself had only the right to enter the land and oversee development is more consistent with the inference of transfer of possession. Accordingly, it was held that the liability to tax arose during the financial year in which the effective possession was given.

Merely because a developer was allowed construction in pursuance of development agreement, no transfer could be inferred as was decided in CIT vs G. Saroja (2008) 301 ITR 124 (Mad) in the facts of the case.

The Tribunal in the case of Mrs Durdana Khatoon vs ACIT (2013) 24 ITR (T) 55 (Hyd) have discussed the following criteria for interpretation of section 2(47)(v) R/W section 53A of the transfer of property Act.

a) existence of a contract,

b) transfer of rights

The Tribunal following the Pune Bench Decision in Taher Ali Mohd Punawala vs Additional CIT (2011) 10 ITR (T) 534 (Pune) and Dr Maya Shenoy vs ACIT (2009) 124 TTJ (Hyd) 692 held that capital gain would arise from the year in which development agreement took effect irrespective of the legal ownership being retained by the sellers,

c) the privilege of constructive ownership and the connected bundle of rights indicate that ownership must have been transferred, where steps have been taken to construct flats as per agreement,

d) the existence of consideration in cash or kind,

e) the existence of unambiguous terms which determined what constitutes a transfer of property,

f) handing over of possession : in this case, there is no warrant to postpone the operation of clause (v) merely because the legal owner continues to have a right of entry / possession of the property and in this scenario, concurrent possession of both the legal owners and the developers has been created,

g) willingness to perform part of the contract.

After considering these facts, Tribunal held that the fulfillment of the conditions as laid down in section 53A of the transfer of Property Act including handing over of possession and willingness to perform obligations under consent terms, must be treated as satisfied for determining accrual of real and certain income in terms of the language and principles of section 2(47)(v) of the Income Tax Act.

Development Agreement – whether section 50C will apply

Merely because the assessee had transferred his interest in a property to various prospective flat owners in pursuance of a joint development agreement with a developer through a power of attorney, application of section 50C, it was held, cannot be avoided in Smt Meera Somasekaran vs ITO (2010) 4 ITR (Trib) 271 (Chennai).

Non-registration by itself cannot avoid application of section 50C after the amendment by the Finance (No.2) Act 2009 with effect from 01.04.2010, but there has still to be a transfer of beneficial ownership. If a transfer is inferred in pursuance of a development agreement prior to such registration, section 50C could have no application with reference to subsequent registration.

A question therefore can arise whether the transfer inferred in development agreement should at all be covered by section 50C. Since the transfer under development agreement is not a sale simplicitor, it being an executory contract not amenable to a suit for specific performance, there may be no scope for application of section 50C.

Development Rights

Whether an assessee, a Cooperative Housing Society, transferred development rights acquired by it and received consideration therefore, the question arose whether such amount would be liable for capital gain in Land Breez Cooperative Housing Society Ltd. vs ITO (2013) 21 ITR (Trib) 467 (Mum). The right, it was inferred, could not be a right in rem so that it is not an immovable property. They cannot also be said to be embedded in land since no detriment is caused to land on grant of such right.

The Tribunal found that thought transferable development right amounted to transfer of capital asset, it is not liable for capital gain tax as no cost was incurred. Tribunal relied upon various decisions apart from the decision in CIT vs B.C. Srinivasa Setty, 128 ITR 294(SC).

Transfer Of A Right To Allotment Of Flat In The Housing Scheme

The right to allotment of a flat in housing scheme is also a property for purposes of capital gain. In CIT vs Vimal Lalchand Mutha (187 ITR 613)(Bom), assessee had entered into an agreement for purchase of flat on 04.12.1978 and transfered the right after 03 years on 28.04.1983 but within 03 years the possession was given but before registration in favour of the assessee, so that what was transferred was only a right to allotment. The stand of the Department was that the surplus would be assessable only as short term capital gain as the assessee had obtained possession but High Court held that the assessee had held the right to have allotment for more than 36 months before it was transferred. Supreme Court has asked for a statement of case in this matter.

It is pointed out that it is not the title but the beneficial right, that is considered to be relevant for the purpose of taxation as is held in the case of Poddar Cement (226 ITR 625)(SC).

Power of Attorney Sale

The concept of transfer has been expanded w.e.f. 01.04.1988. Frequently the persons acquiring possession of immovable property in terms of section 53A of transfer of property Act is a perfect shield against the legal owner and his successor–in–interest. Also common is the case of a company or a cooperative society owning a property (generally a block of flats) with the real enjoyment in the hands of Individual members of the Company or Cooperative Society. This type of transfers are now brought within the purview of section 2(47) w.e.f. 01.04.1988. A right under an agreement of sale is itself an asset as has been decided in CIT vs Vijay Flexible Containers (186 ITR 493)(Bom), K R Srinath vs ACIT (268 ITR 436)(Mad) where even a compensation for cancellation of an agreement for sale was held to attract liability for capital gain.

In M Syamala Rao vs CIT (234 ITR 140)(AP), Madras High Court held that on registration of a sale agreement already executed, it relates back to the date on which the agreement for sale was itself executed.

Development Agreement is not an agreement for sale, because it is an executory contract with the developer, not being the intended purchaser, so that a suit for specific performance should not ordinarily lie on the basis of a development agreement, which is essentially a business agreement.

It is not unusual for the developer to insist that he would be given possession even on signing the contract or on plan approval, so as to secure for him the safety of the money invested in development, but such possession could be understood as possession limited for the purpose of development.

THE IMPLICATION OF DHARMENDRA M. JANI JUDGMENT ON GST LEVIABLE ON EXPORT OF INTERMEDIARY SERVICES

Adv. Aakriti Gupta

INTRODUCTION:

The Goods and Services Tax was introduced with an object to subsume all the indirect taxes in India under one umbrella of GST. GST is a destination based tax. At the time of introduction of GST, the Constitution of India was amended by virtue of the 101st Amendment to provide legislative competence to the Centre and State to pass laws for the levy of GST in a way that GST was envisioned. Accordingly, inter alia, Articles 246A and 269A were introduced. GST is levied by three acts- Central Goods and Services Tax Act, 2017 for CGST on intra-state supply; State Goods and Services Tax Act, 2017 for SGST on intra-state supply and Integrated Goods and Services Tax Act, 2017 for inter-state supply.

Under the GST regime, export of goods and services is termed as a zero-rated supply under Section 16(1)(a) of the IGST Act, 2017. However, an exception has been carved out by virtue of a conjoint reading of Section 13(8) and Section 8(2) of the IGST Act, 2017 whereby the place of supply of intermediary services is the location of the intermediary and therefore, it is treated as an intra-state supply and CGST and SGST is charged on it.

The Bombay High Court has, on two occasions, discussed the constitutional validity of Section 13(8) and Section 8(2) of the IGST Act, 2017 vide the judgments in the case of **Dharmendra M. Jani v. Union of India and others, 2021 SCC OnLine Bom 839 and Dharmendra M. Jani v. Union of India and others, 2023 SCC OnLine Bom 852.** At the first instance, Justice Ujjal Bhuyan and Justice Abhay Ahuja took cognizance of the matter. While Justice Ujjal Bhuyan was of the opinion that the provisions of Section 13(8) read with Section 8(2) of the IGST Act, 2017 is ultra vires the Constitution, Justice Abhay Ahuja most respectfully disagreed. Accordingly, the matter was referred to the Chief Justice of Bombay High Court.

The aim of this article to discuss the take of the Bombay High Court on the constitutionality of the provisions of Section 13(8) and Section 8(2) of the IGST Act, 2017 at the footing of Article 14, 19(1)(g), 245, 246, 246A, 269A and 289 of the Constitution of India and the overall scheme of the CGST, MGST and IGST Act, 2017.

BRIEF BACKGROUND OF THE CASE:

The Petitioner in this case, is engaged in providing marketing and promotional services to customers located outside India under an agreement. These overseas customers are engaged in manufacture and/or sale of goods. Such overseas customers may or may not have establishments in India. However, the Petitioner provides services only to the principal located outside of India and in lieu thereof receives consideration in convertible foreign currency from the principal located outside India.

LEVY OF TAX ON EXPORT OF SERVICES:

Before discussing the verdict in the Dharmendra M. Jani judgments, it would be appropriate to discuss certain provisions of the Integrated Goods and Services Tax Act, 2017 which have the cumulative effect of levy of GST on export of services of an intermediary.

Section 5, IGST Act, 2017

Section 5 of the IGST Act, 2017 is the charging section and states that IGST shall be levied on all inter-state supplies of goods or services or both on the value determined under Section 15 of the CGST Act, 2017 and at such rate not exceeding 40% and collected in the prescribed manner and shall be paid by the taxable person. Therefore, IGST is charged on inter-state supply of goods or services or both.

Section 7 and 8, IGST Act, 2017

Section 7(3) defines inter-state supply of services as supply of services where the location of the supplier and the place of supply are in: -

(a) two different states; or

(b) two different Union Territories or

(c) a state and a Union Territory.

A conjoint reading of Section 7(3) and Section 5 of the IGST Act, 2017 would reveal that only where the supply fall in the aforementioned three cases, IGST can be levied.

Similarly, Section 8(2) defines intra-state supply of services as supply of services where the location of the supplier and the place of supply of services are in the same State or the same Union Territory. A conjoint reading of Section 8(2) and Section 5 of the IGST Act, 2017 would reveal that IGST cannot be levied on the transactions falling under the definition of intra-state supply under Section 8(2). Therefore, the transactions which fall under Section 8(2) are completely outside the scope of IGST Act, 2017 and only CGST and SGST can be levied upon them.

Zero-Rated Supply

The term zero-rated supply has been defined under Section 2(23) of the IGST Act, 2017 as the meaning assigned to it under Section 16 of the Act. As per the definition of zero-rated supply under Section 16, export of goods or services or both are zero-rated supplies. Thus, the general rule is that on the export of goods or services or both, no GST shall be levied.

The term export of services has been defined under Section 2(6) of the IGST Act, 2017 as supply of services when: -

(i) The supplier of services is located in India;

(ii) The recipient of the services is located outside India;

(iii) The place of supply of services is outside India;

(iv) The payment for such services is received by the supplier of service is convertible foreign exchange or in Indian rupees wherever is permitted by the RBI; and

(v) The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 of Section 8.

Therefore, where all the conditions of Section 2(6) are fulfilled, the supply of services is treated as export of services. Here, for our discussion, it is pertinent to focus on the third condition- "the place of supply of services is outside India".

Section 13: Place of Supply

Section 13 defines the place of supply of services where the location of supplier where the location of recipient is outside India. Vide Section 13(8) of the IGST Act, 2017, a deeming fiction is enacted by virtue of which the place of supply of intermediary services shall be the location of supplier of services. Since, the place of supply is the location of supplier, it shall be treated as intra-state supply and the transaction, if any, is liable for CGST and SGST and not IGST.

In this background, the two major questions before the Hon'ble Bombay High Court were: -

a. Whether the Central Government has legislative competence to levy CGST and SGST by a deeming provision under the IGST Act, 2017?

b. Whether the provisions of Section 13(8) are constitutionally valid at the footing of Article 14 as it treats exports of services by an intermediary at a different footing from exports of services by any other service provider?

LEGISLATIVE COMPETENCE TO LEVY CGST/SGST

Article 246A

Article 246A of the Constitution of India is a special provision with respect to the Goods and Services Tax. It provides that notwithstanding anything contained under Article 246 or Article 254, the parliament and subject to clause (2), the legislature of every state has the power to make laws with respect to GST imposed by the Union or by such State. As per clause (2), parliament has the exclusive power to make laws with respect to GST where the supply of goods or services or both take pace in the course of inter-state trade or commerce.

Article 269A

Article 269A provides for levy and collection of GST in the course of inter-state trade or commerce. Clause (1) provides that GST on supplies in the course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between he union and the states in the manner as may be provided by the parliament. Further, clause (5) provides that the parliament may by law formulate principles to determine the place of supply.

In the light of the power granted to the parliament under Article 246A and Article 269A, the petitioner argued that the parliament is not empowered to impose tax on export of services out of the territory of India by treating the same as a local supply.

Article 286

Article 286(1) provides that no law of a state shall impose or authorise imposition of a tax on the supply of goods or services or both where such supply takes place outside the state or in the course of import of the goods or services or both into the territory of India or export of goods or services outside the territory of India. Thus, no state has a power to levy local tax on export of services.

CUMULATIVE EFFECT OF ARTICLES 246-A, 269-A AND 286

a. Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods or of services, or both takes place 'in the course of inter-state trade or commerce'.

b. GST on supplies 'in the course of inter-state trade or commerce' shall be levied and collected by the Government of India and such tax shall be appropriated between the union and the states.

c. Supply of goods or services or both in the course of import shall be deemed to be supply in the course of inter-state trade or commerce.

d. Parliament may by law formulate the principles for determining place of supply and when supply of goods or services or both takes place in the course of inter-state trade or commerce.

e. No law passed by the state legislature shall impose or authorise the imposition of a tax on the supply of goods or services or both where such supply takes place outside the state or in the course of import or export.

Therefore, even if CGST can be levied upon export of intermediary services, no SGST can be levied upon the same on account of the bar under Article 286(1).

RULE OF CONSISTENCY:

The respondents argued that the petitioners had been supplying the same intermediary services during he service tax regime and therefore, because the provisions of the Finance Act, 1994 and the CGST/IGST Act are the same, they cannot challenge the same now.

MATERIAL RECYCLING ASSOCIATION V. UNION OF INDIA

The respondents also submitted that the constitutionality of Section 13(8)(b) has already been upheld by the Hon'ble Gujarat High Court in the case of Material Recycling Association v. Union of India, decided on 24.07.2020. However, it was observed that the decision of one high court cannot be held to be binding on another high court. It was also observed that the challenge to Section 13(8) that it is ultra vires Article 286 read with Article 246A and Article 269A of the Constitution of India was neither canvassed before nor considered by the Gujarat High Court. There is no decision on Articles 14 and 19(1)(g) as well. Thus, the view taken by the Bombay High Court is completely independent of the view taken by the Gujarat High Court.

EQUALS TO BE TREATED AS EQUALS

It was argued that similarly placed services provided by market research agencies, marketing agents, advertising consultants, professional services provided by lawyers, accountants etc. are all treated as export of services. Therefore, there can be no justifiable reason for singling out the petitioner as intermediary and creating a legal fiction to deny export of services by treating it to be service rendered in India and taxed accordingly. By virtue of the exception carves out under Section 13(8)(b), the service rendered by the petitioner despite satisfying all the conditions of Section 13(2) read with Section 2(6) would be subject to GST.

GST IS A CONSUMPTION BASED TAX

Reliance in this regard was also placed upon the 139th Parliamentary Committee report on "Impact of Goods and Services Tax (GST) on Export" to state that levy of GST on intermediary services is contrary to the basic fundamental concept of GST for the reason that GST is a destination/ consumption-based tax. The Committee recommended that the government may amend Section 13(8) of the IGST Act, to exclude intermediary services so that the benefit of export of services shall be available to the Indian exporters.

It was argued that once, the service is admitted to be an export of service which is consumed outside India, no GST can be levied on the same by a inserting a legal fiction.

DOUBLE TAXATION

It was also argued that levy of GST on export of intermediary services would amount to double taxation because tax would be charged twice on the same transaction: -

(i) At the time of export for the supplier

(ii) At the time of import got the recipient

Thus, it was argued that the same supply would be taxed at the hands of the Petitioner and following the destination principle, it would be an import of service from India for the foreign service recipient and would be taxes at his hands in the importing country.

Justice Ujjal Bhuyan observed that Section 13(8)(b) read with Section 8(2) of the IGST Act, 2017 has created a fiction deeming export of services by an intermediary to be a local supply. He observed that it is definitely an artificial device created to overcome a constitutional embargo. He further held that the extra-territorial effect given by way of Section 13(8)(b) of the IGST Act, has no real connection or nexus with the taxing regime in India introduced by the GST system; rather it runs contrary to the very fundamental principle of which GST is based, i.e., it is a destination based consumption tax as against the principle of origin based taxation. Accordingly, he held the provisions to be contrary to the scheme of Acts as well as the Constitution of India. However, Justice Abhay Ahuja most respectfully disagreed with the view taken by Justice Ujjal Bhuyan and therefore the matter was referred to Justice G.S. Kulkarni.

Justice G.S. Kulkarni, very interestingly took a different view from both Justice Ujjal Bhuyan and Justice Abhay Ahuja.

OBSERVATIONS OF THE HON'BLE CHIEF JUSTICE OF THE BOMBAY HIGH COURT:

Justice G.S. Kulkarni has held that the provisions of Section 13(8)(b) and Section 8(2) of the IGST Act, 2017 are legal, valid and constitutional, provided that their operation is confined to the provisions of IGST Act only and the same cannot be made applicable for levy of tax on services under CGST and MGST Act.

CONCLUSION:

As per the author, even though Section 13(8)(b) and Section 8(2) has been held to be constitutional as long as their operation is confined to IGST Act, 2017, they have been reduced to a toothless tiger. It is so because there can be no situation in which the supply by an intermediary would be an inter-state supply as per Section 7 and Section 8 and accordingly, there can be no scenario in which IGST can be levied upon it. It would always stay outside the purview of the IGST Act, 2017 and thus, Section 13(8)(b) has been reduced to a toothless tiger by the Hon'ble Bombay High Court.

Faceless assessment and Inordinate delay in disposal of appeals cause of concern for taxpayers

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The Faceless Assessment Scheme, 2020 was launched by the Income-Tax Department to eliminate the interface between the Assessing Officer and the Assessee. Section 143(3A) of Faceless Income-Tax Assessment was introduced by the Finance Act, 2018 where Central Government was enabled to empower the new assessment procedure with new technology and minimum human interface.

The Faceless Assessment Scheme aims to abolish territorial jurisdiction, whereby the return filed by a taxpayer would get scrutinized anonymously. This will narrow down the scope of the human interface and corruption. Additionally, Faceless Assessment will offer functional specialization in specific parts of the assessment with the assistance of specialized units.

The salient features of the Faceless Assessment Scheme are:-

The Faceless Assessment Scheme is applicable with effect from 1st April 2021.

Faceless Assessment makes use of specialized units to bring more efficiency to income tax governance.

It uses smart technology such as data analytics, artificial intelligence (AI), machine learning, and other latest tools to ascertain misreporting or tax evasion.

The Faceless Assessment Scheme aims to eliminate human interface & resultant corruption.

The government took the scheme further and the appeals before CIT(Appeals) were also made faceless. Finance Minister Nirmala Sitharaman introduced this scheme applicable from April 2021 with a promise "to remove any element of discretion and any feeling of harassment that taxpayers may have". CBDT notified Faceless Appeal Scheme, 2021 vide Notification No. 139/2021- Dated: 28th December, 2021. As per Faceless Appeal Scheme, 2021 the interface between the litigant and the CIT(A) was also eliminated. However a personal hearing through Video Conference (VC) can be requested by Assessee to CIT (A) and when such request is made the same shall be allowed by CIT(A) . No discretion with the CIT (A) to refuse such request of oral hearing through VC.

The faceless assessment scheme, which was introduced as the biggest direct tax reform four years back to reduce human interaction and rein in corruption, is in throes of major constraints with over six lakh appeals pending before tax commissioners and appellate tribunals. About assessments it can only be said that the quality has gone down drastically. Large number of high pitched assessments are made due to technical defaults like non-appearance, ignorance of assesses about e-proceedings and also impractical/ casual approach of officers. The government has thrust the faceless scheme without properly educating the masses about e-working. Large number of assessees , particularly with rural or less literate backgrounds have no clue of proceedings through portals and they realise only when huge demands are fastened on them. Further defaults like delays in filing appeals with condonation applications are the natural outcome. Rise in number of infructuous appeals which were easily avoidable with proper explanations taken, are tremendous.

Presently over 6 lakh appeals are pending before the I-T department and tribunal; the Finance Ministry claims less manpower is leading to the pile-up. But respectfully speaking such excuse is totally unacceptable and incorrect. Even before faceless era the appeals were disposed within few months or a year but how does the department justify undisposed appeals for last 4 years when entire submissions by the assessee are on record and the number of officers are not reduced. Will the department come out with the comparative data of disposals before faceless and after. If the officers are not reduced then why are the disposals? Moreover now the officers have more time at their disposal as the time taken in commuting, arguments and meeting representatives is cut short.

With the new system the assesses are finding it difficult to explain facts and circumstances of their cases, and consequently are presenting a plethora of documents on the portal which becomes difficult for the CIT(A) to understand. The difficulty in disposal is leading to the piling up of appeals. On the other hand, the finance ministry claims it has less manpower to deal with the huge number of appeals.

According to a senior Finance Ministry official, the number of disposals of appeals is not what was expected. We have fewer people to man the posts, so work is according to it. The pendency is very high, which the Central Board of Direct Taxes (CBDT) acknowledges, but efforts are on to dispose of the cases.

At the Income Tax Appellate Tribunal (ITAT) about one lakh; and at commissioner appeals about five lakh cases may be pending.

The non-interactive assessment in which facts are often not captured correctly is a major constraint. Many a time human interaction serves a better purpose, which is missing in this scheme. There have been assessments in the past, where taxpayers have not been given enough opportunity to present their case thus violating the principles of natural justice. Of late we have seen many assessment orders meet the fate of being challenged by way or writ before high courts due to violation of natural justice principles. The departmental records will also reveal that the number of ex-parte assessments has increased sharply. Particularly assessments made on the basis of bank accounts or transactions in property by a non-filer. Such instances do not necessarily mean escarpment of income but due to lack of proper communication to the persons high pitched and often ex-parte assessments are made. The most disturbing trend is the addition of the entire credit side of the bank account as unexplained money creating huge and practically unrealisable demands. To add misery for the asessees the appeals are not disposed and the field officers justify their duty by attaching bank accounts for tax realisation. Please appreciate that in most cases the action amounts to gross injustice even to the extent of closure of business and extinction of sources of livelihood. We appeal that the department must be more sensitive and stop this carnage in the name of faceless assessments and realisation of infructuous demands.

The Delhi High Court in the case of Shree Amba Industries in December 2022 [2023] 147 taxmann.com 565 (Delhi)[21-12-2022] has remanded back the matter to the assessing officer for passing a fresh order after a personal hearing to the assessee since no opportunity of being heard was given to the assessee. The assessing officer on finding fault in a transaction of purchase and sale of immovable property had proceeded to issue a notice of demand upon the assessee without hearing the assessee.

The Gujarat High Court in August 2022 in the case Dipesh Lalchand Shah vs. National Faceless

Assessment Centre, [2023] 146 taxmann.com 517 (Gujarat)[01-08-2022] also remanded the matter back to a jurisdictional assessing officer to pass a fresh order as he had failed to consider the 16 documents submitted in response to a show cause notice. The assessing officer had carried out faceless assessment proceedings against the assessee and passed an order without considering the reply filed by him by recording.

Overall, the scheme seems to have added more to litigation and has somehow missed the whole momentum of being a taxpayer-friendly initiative.

The scheme was intended to prevent tax officials from becoming unscrupulous or lenient towards specific taxpayers, eventually reduce corruption and bring more efficiency, transparency and accountability.

It's a laudable objective but the problem is that it is difficult to put across your point of view to authorities. Appeals are piling up, delayed and not being heard. CBDT may start issuing notices for hearing soon, but it's going very slowly. Assessees are filing replies but there is no hearing.

There is big lag time where a hearing has not happened. In the order passed, even for rectification, we have to file an appeal which is still pending. Dispute resolution is not happening, that's why the pendency numbers have gone up. There is a manpower shortage and the system is new. If they are able to understand and rectify the order, a lot of pendency cases will go down. They need to enhance manpower to hear cases.

The income tax law may be in black and white but the grey area which all the legal representatives cover to help the assessee is not justifiably put across due to the lack of communication between the two parties involved in the legalities.

There is less personal interaction between the representative and the assessment officer so the processing of the return becomes difficult. The communication barrier during rectification becomes difficult as we are not able to put our points across properly. During the appeal proceedings, it would be easier to explain certain circumstances as well as certain case laws as reported by various courts of law. Though the concept of faceless assessment is welcome, it is certainly difficult to make the assessment officer understand what the assessees are trying to say.

There are practical challenges in faceless assessment as the big companies, which have voluminous amounts of data find it difficult to upload the data in a prescribed format. Technical glitches on the website make it difficult to upload data. Relevant documents are uploaded by the taxpayer on the tax portal, however, the same does not reflect to the tax officer, which leads to the belief that the taxpayer is non-compliant and adverse orders are being passed.

Procedures involved are complicated which makes it difficult for the small business owner, who now has to hire a professional to comply with the relevant procedures, Lack of personal interaction also sometimes results in misinterpretation or misunderstandings, which lead to more chaos.

The Delhi High Court in the case of I Money Wallet (P.) Ltd. vs. National Faceless Assessment Centre, [2023] 146 taxmann.com 211 (Delhi) [21-09-2022] instructed the revenue department to set up an online portal so that the assessee may submit his requests as the assessee had failed to file the reply to the show cause notice due to a technical error on the portal, which showed that the response page had been closed.

In the case of YCD Industries vs. National Faceless Assessment Centre, [2021] 127 taxmann.com 606 (Delhi)[27-05-2021], the Delhi High Court set aside the assessment order, where no such show cause notice cum draft assessment order was served on the assessee in faceless assessment proceedings, even though a variation in returned income was proposed.

The faceless assessment was brought in to alleviate the high quantum of corruption and harassment of the ordinary taxpayer, but has it been achieved?

The very purpose for which this scheme was brought has absolutely failed. More than two to three hearings are not needed to decide a case but they are just delaying the cases due to institutional incompetence. Ordinary taxpayers are getting more harassed in this regime. For everything one has to go to court, which ordinary taxpayers cannot afford.

According to Finance ministry officials, a lot of original concerns from assessees have been broadly ironed out in 2022. The system has become much more robust, according to Finance Ministry officials. Assessment is bound by time and date and it cannot linger on. Faceless appeals have delays, which people are pointing out but the system is becoming relatively smoother. Appeals are categorised on the basis of disputed demand. Smaller appeals may be disposed of in a couple of hearings, however, complex ones may take 10 hearings. The CBDT has notified e-Appeal Scheme, 2023 on 29th May, 2023 and launched the JC 100 scheme aiming at finalising all the small appeals in this fiscal. A hundred joint commissioners will be placed for the disposal of small appeals this year. JC 100 is an outcome of recognising that there is huge pendency. The process will soon become operational. It will solve the problem to some extent for smaller appeals. There is a problem of delays for even 2-3 years that people highlight in appeals. Bigger appeal action plan is being addressed through target setting.

However we do appreciate that the tax assessments which have no tax dues and are simple returns have agreeably become very fast. Things have improved in some aspects. But the faceless assessments and appeals have increased the problems and need to be addressed suitably and practically.

Some pertinent suggestions are:-

1. Wherever desired the assessee should be allowed a personal hearing, through video conferencing or may be before a panel of officers.
2. In case of non filers wherever there is any information extra precaution should be taken to ensure natural justice, proper service of notices, opportunity of proper hearing. Very often these are agriculturists, of small businessmen with turnover deposited in bank but having below taxable income or even non-computer educated persons. Simply uploading of notice should not be considered proper and physical service of notice should also be ensured, at least in cases of new assesses or non-filers. Please appreciate that non-filers are not necessarily tax evaders and they should be given proper opportunity of being heard.
3. Reopening of cases due to information from external sources must be done with proper physical service of notice and not simply by service on the portal which often goes unnoticed.
4. The appeals must be decided in a time frame and if the appeal is not decided say within a year then there should be no recovery by coercive means.

This Article is also being sent to the concerned officials in the Ministry of Finance, Government of India, North Block, New Delhi with the hope of getting some ease and convenience for the tax-professionals and the tax-payers at large.

Technology empowering Tax Professionals

CA Akhil Gandhi

In existing era of technology which has completely changed the way we work or connect socially it is imperative not to restrict ourselves to traditional way of working.

As tax professionals, we need to keep ourselves updated with everchanging law, interpreting it, analysing impact of the same and accordingly advising the clients on way forward. With increased compliance, complex transaction structures and piled up litigations, it becomes enormously difficult to work without adopting technology. Technology may not overrule the mental capabilities; however, one can't ignore it's potential to add value in the professional work we do and how we do.

Technical tools and software solutions collectively known as tax technology is helping tax professionals to streamline processes, enhance efficiency, and augment their capabilities. With the word technology, one should not always think of large ERP systems and advanced technologies related to Artificial Intelligence or Machine Learning or advanced data analytics adopted by big corporate houses or big accounting firms or government. There may be different ways, wherein involvement of technology could add value to the work of professionals having small practices. A few steps, which once adopted can help such professionals. It includes:

Adoption of Tax Compliance Software: Tax compliance software designed for professionals can significantly streamline workflows and increase efficiency. These software solutions provide features such as automated data entry, tax return preparation, error checking, and e-filing capabilities. By using tax software, professionals can save time on manual tasks, reduce errors, and focus on providing higher-value services to clients. This is what most of us are already using it in one way or the other either as part of the large ERP systems, small accounting software or tax compliance utilities.

Integration with Accounting Packages: Tax technology automates repetitive and time-consuming tasks. Integration of tax compliance software with accounting packages automates extraction, analysis, and validation of financial data, ensuring accurate and timely compliance with tax laws and regulations. Small one-time investment in integrating the two packages, enhances capabilities of automated data entry, tax return preparation, and electronic filing, which reduces the risk of errors and enhance efficiency.

Risk Management: Technology can assist professionals in identifying potential risks and ensuring compliance. Real-time monitoring of transactions and integration with accounting systems enable professionals to detect errors, anomalies, or potential compliance issues promptly. This includes identifying missing transactions, outliers, reconciliations between different reporting, related party transactions and many more such instances. By leveraging automation and built-in tax compliance features, technology reduces the risk of penalties, audits or wrong reporting.

Tax Planning and Optimization: Professionals are now not restricting them to regular compliance work or attending the matters before tax authorities. They are also moving towards identifying areas of tax planning within the four corners of law. Technology can equip such professionals with powerful tools for tax planning and optimization. Sophisticated software solutions can simulate various scenarios, analyse tax implications and identify tax-saving opportunities. This could include re-defining supply chain, evaluating benefits from government tax beneficial schemes or re-defining sales strategy. By leveraging machine learning algorithms and historical data, tax technology can recommend strategies to minimize tax liabilities while remaining compliant. This empowers tax professionals to provide comprehensive tax planning services to their clients, ensuring they achieve optimal tax outcomes.

Data Management: Tax professionals deal with vast amounts of data, and managing it efficiently is crucial. Technology can provide robust data management capabilities, allowing professionals to store and organize data based on rules defined. Well organised data adds much more value to the day to day working by enhancing search capabilities, reports generations and role-based access. Cloud-based platforms enable seamless collaboration and real-time access to data from multiple devices and locations. Advanced data analytics tools help in identifying patterns, trends, and anomalies in financial data, enabling professionals to make informed decisions and provide valuable insights to clients.

It is observed that past year litigations or scrutinises gives tough time to tax professionals as well as clients to defend the claims, legal backing of financials and reasoning of claims made in tax returns. Data management tools enables practitioners to store and access client information, tax returns, and supporting documents securely and in an organized manner.

Keeping Up with Regulatory Changes: Tax laws and regulations are subject to frequent changes and updates. Technology helps professionals stay abreast of these changes by providing regular updates and alerts. Automated tax research tools and online resources enable professionals to access the latest tax laws, rulings, and interpretations, ensuring accurate and up-to-date advice to clients. Various entities provide access to these facilities by way of periodic subscriptions. However, enhancement to the same can be achieved by integrating such database and search capabilities with internal documents, advisories and submissions done in past to help reduce search work and preparation of submissions for any future litigation or advisory work.

This can be attained individually or collectively at a common platform by introducing redaction, which is a fairly common practice in legal documents. This refers to the process of editing a document to conceal or remove confidential information before disclosure or publication.

Seamless Communication and Collaboration: Technology can facilitate seamless communication and collaboration between tax professionals, clients, and tax authorities. Secure client portals and electronic document sharing platforms enable efficient exchange of information, eliminating the need for physical paperwork.

Real-time collaboration features enable tax professionals to work closely with clients, answer queries promptly, and provide timely advice. Integration with tax authority portals simplifies the filing of tax returns and other compliance documents, enhancing efficiency and accuracy.

Conclusion: Embracing tax technology is crucial for tax professionals seeking to stay competitive, deliver exceptional service, thrive in an evolving tax landscape and achieve scalability in the tax practice. It helps in transforming the way tax professionals work, providing them with powerful tools and solutions to streamline processes, enhance efficiency, and provide value-added services to their clients. From automation of compliance tasks to advanced data management, tax planning, risk management, and collaboration capabilities, tax technology empowers professionals to deliver accurate, timely, and strategic tax solutions.

SIGNIFICANCE OF PRINCIPLES OF NATURAL LAW JUSTICE

Advocate Rimika Khera, Amritsar

Introduction

In order to protect himself against the excesses of organized power, man has always appealed to someone beyond his own creation and such someone could only be God and His laws, divine law or natural law. This was the origin of the concept of Natural Law Justice. These are the principle of common-sense justice. These are the principles which protect a person when he finds himself chained in the prevailing arbitrariness and biasness of the system. Neither, the principles of natural law justice are codified under any statute nor any express provisions are there. These are the implied rules of law which the courts follow in order to give justice in true form.

Nature and Scope of Natural Justice

Natural Law Principles apply to both judicial as well as Quasi Judicial Authorities and even on executive branches as well and these authorities have to follow these principles while deciding any mater before them. In the case of Maneka Gandhi V. Union of India, it was held by the Hon'ble Supreme Court that

"The Frontier between judicial or quasi judicial detrmination on one hand and an executive on the other hand has become blurred. The rigid view that the principles of natural justice applied only to judicial and quasi judicial acts and not to administrative acts no longer holds the field."

The basic principles of The rule of Natural Justice are as follows:

- Nemo in propria causa judex, esse debet: No one should be allowed to be made a judge in his own case or the rule against bias.
- Audi alteram partem: Hear the other party, or rule of fair hearing, or the rule that no one should be condemned unheard.
- Reasoned Decisions: The authority must pass the orders or decisions with reasons or the orders must be speaking orders.

The natural justice should not be restricted to these principles only and the idea of natural justice principles are very wide. These are elaborated as follows:

Rule against Bias

While the term natural justice is often retained as a general concept, it has largely been replaced and extended by the general "duty to act fairly". The basis for the rule against bias is the need to maintain public confidence in the legal system. Bias can take the form of actual bias, imputed bias or apparent bias. “Bias”

1. I.P.Massey, "Administrative Law" (Eastern Book Company, Licknow,2008,) Pg 195
2. AIR 1978 SC 597
3. Wikipedia.org

means an operative prejudice, whether conscious or unconscious, in relation to party or issue. Such operative prejudice may be the result a pre conceived opinion or a pre disposition or a predetermination to decide a case in a particular manner. Biasness or arbitrariness in the decision making process will be on equal footing as compared to NO justice at all.

The right to a fair hearing is also referred to in Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms, which states

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

If a person, whatever may be the reason, if cannot take an objective decision which is based on evidences and contentions supported, is said to be a biased person. Biasness can be there if person is somewhere interested in the subject because this is the human psychology which says that a person can very rarely take an objective decision in which he is having any sort of substantial interest.

Biasness must be in true and real form. Although, no straight jacket formula is there to determine the biasness in any decision and it depends upon the facts and circumstances of each and every case. Allegation of Bias on imaginary basis cannot be sustained at all.

The rule against biasness helps in imparting true and fair justice to the society because if a judge will be impartial and unbiased only then he can give justice in truest form otherwise the whole idea of imparting fair justice will be of no use.

However, there is an exception to this rule of Biasness and that is "Doctrine of Necessity". If there are necessary conditions under which the authority has to take decisions even under biasness, it would not amount to the violation of Natural Law Principles. In the case of Re: Vinay Chandra Mishra, the court held that in case of bias facie curiae contempt (contempt in the face of the court) the rule against can bias does not apply and the judge before whom contempt is committed can punish the contemnor on the spot.

Rule of Fair Hearing

This is the second most principle of Natural Law principles under which a person is provided with an opportunity of fair hearing so that he can plead his case fairly. This opportunity or right of being heard is given to the person just to avoid the possibility of any wrong or arbitrary decision. So no order or decision can be passed without affording the person a reasonable opportunity of being heard. Reasonable means the opportunity must be fair and should not be mere an empty opportunity. So under this principle, no one should be condemned unheard in any case. As the Hon'ble Apex Court in the judgment M/s Tin Box Company, New Delhi Vs. Commissioner of Income Tax, New Delhi, held that the opportunity of fair hearing is mandatory under the law. Further, the opportunity to rebut all the facts or material against him must also be complied with. This opportunity of fair hearing includes the following:

- Right to Notice
- Right to know the evidence against him
- Right to present case and evidence.
- Right to rebut adverse evidences
- No evidence should be taken at the back of other party

In addition to this, the importance of serving a show cause notice to the person has been discussed by Hon'ble Supreme Court of India in the case of M/s Umanath Pandey V. State of U.P. whereby the court has held the following:

"Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him."

Reasoned Decisions

In order to keep a check on the arbitrariness in the decision of the authorities, the third principle of the natural justice states that the decisions must be reasoned one i.e. it must be backed by the reasons which lead to such conclusions in the shape of orders or decisions. The decisions must be speaking. A decision supported by reasons is much less likely to rest upon the arbitrariness. This principle in a way bring out the transparency in the process of decision making by the authorities. In the case of M.P Industries V. Union of India, the court held that:

" The compulsion of disclosure guarantees consideration. The condition to give reasons minimizes arbitrariness. It gives satisfaction to the party against whom the order is made."

The Supreme Court further held that,

" Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion that the requirement to record reasons can be regarded as one of that principle of Natural Justice which govern exercise of power by the administrative authorities."

So the reasons reveal a nexus between the facts which judges consider and the conclusions reached by them. Reasoned decisions show the fair application of mind by the judges while giving verdict. Supreme Court and other lower courts have number of times held that decisions must be supported by reasons otherwise the whole idea of imparting fair and true justice would be illusionary.

Exceptions to the Principles of Natural Justice:

However there are certain exceptions developed with these uncodified rules during the course of time and some of which are listed as follows:

- In case of Emergency
- In case of Confidentiality
- Where no right is infringed
- In case of Contractual Arrangement
- In case of Government Policy Decision

4. I.P Massey, Administrative Law, 201(Eastern Book Company, 2008,Lucknow)
5. Federation of Railway Officers Assn. V. Union of India, (2003) 4 SCC 289
6. (1995) 2 SCC 584
7. (2001) 14 IT Rep. 14 (SC)(FB)
8. [2009] 12 SCC 40-43
9. AIR 1966 SC 671
10. S.N Mukherji V. Union of India, AIR 1990 SC 1984

Natural Justice in Taxation : A Judicial Approach

- **Hon'ble Supreme Court in the case of Swadeshi Cotton Mills V. Union of India**

"The rules of natural justice can operate only in areas not covered by any law validly made. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice then the Court cannot ignore the mandate of the Legislature. Whether or not the application of the principles of natural justice in a given case has been excluded in the exercise of statutory power depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of that power."

- **Hon'ble Supreme Court of India in Rajesh Kumar V. Dy. CIT**

When the action of a statutory authority results in civil or evil consequences, the principles of natural justice are required to be followed even in the absence of a statutory provision. It is well settled that the income tax authority must adhere to the principles of natural justice while acting in their quasi-judicial capacity.

- **Hon'ble Allahabad High Court in the case of Bharat Mind & Allied Chemicals V. Commissioner Commercial Tax and 2 others**

The Revenue Department cannot issue assessment orders without giving the assessee an opportunity of being heard and is against the principles of natural justice. Further, remanded back the matter to be heard as a fresh case.

- **Hon'ble Patna High Court in G.Power Solution V. State of Bihar**

The Assessing Authority shall decide the case on merits after complying with the principles of natural justice and opportunity of hearing shall be afforded to the parties and place on record all the essential documents.

- **Hon'ble Delhi High Court in Blue Square Infrastructure LLP**

the court has set aside the assessment order as the same was passed without considering the request for adjournment and without waiting for the expiry of the time limit given under the show cause notice.

Conclusion

To sum up, the above noted principles of natural justice are though no where written specifically but these are derived from English Common Law and followed in our Indian System in order to impart fair justice to the masses. Courts have several times taken the view that any decision contrary to these above said principles are void. For instance the Hon'ble Apex Court very righty pointing out the importance of these natural law principles in the case of A.R Antulay V. R.S Nayak, held that:

"Petitioner has also a right not to suffer any order passed behind his back by a Court in violation of the basic principles of natural justice.

It must be borne in mind that every quasi-judicial must not hesitate to apply the principles of natural justice. These are the basic principles which are essential to impart the justice. In India, judges are considered next to God and there is no reason that they should not follow the principles of natural justice.

11. Appeal (Civil) 4633 of 2005
12. Writ Tax No. 1029 of 2021
13. CWP Case No. 11384 of 2022
14. W.P. (C) 5418/2021
15. 1988 AIR 1531

DETENTION & CONFISCATION OF GOODS IN GST WITH LATEST AMENDMENTS

CA YATHARTH SEHGAL

Legal Provisions in GST Act

Section 68 read with Rules 138B & Rule 138C deal with inspection of goods in movement whereby any conveyance can be intercepted by the proper officer at any place and he may require the person in charge of conveyance to produce the documents for verification. Section 129 deals with detention and seizure of goods whereas Section 130 deals with confiscation of goods.

Procedure for interception, detention and seizure of goods

Circular 41/15/2018- GST outlines the procedure to initiate proceedings by the proper officer in cases of interception, detention or confiscation of goods which is as follows:

- If person in charge of the conveyance fails to produce any prescribed document or proper office intends to inspect, he shall record the statement of person in charge of conveyance in GST MOV-01.
- An order for physical verification of the conveyance/documents will be issued in GST MOV 02.
- Inspection proceedings have to be concluded within three days of issue of GST MOV 02. A written permission from Commissioner or officer authorized by him is required for extension of such time period in GST MOV 03.
- Report of physical verification is prepared in GST MOV 04 and served on the person in charge of the conveyance.
- If no discrepancies are found, a release order is issued in GST MOV 05 otherwise order of detention is issued in GST MOV 06 and a notice in GST MOV 07 specifying the penalty payable is issued within seven days of GST MOV 06.
- Where the owner of goods intends to release the goods by furnishing a security, goods will be released after obtaining a bond in GST MOV 08 alongwith a security in the form of bank guarantee equal to the amount payable as determined by proper officer in accordance with the provisions of Section 129.
- Where objections are filed against the proposed amount of penalty, the proper officer shall consider such objectives and pass an order in GST MOV 09 quantifying the penalty to be paid within seven days of notice i.e GST MOV 07. On payment of such penalty , goods will be released.
- The goods and conveyance detained shall become liable to be sold or disposed off if penalty imposed is not paid within fifteen days of date of receipt of order(GST MOV 09). However conveyance can be released on payment of penalty imposed or Rs 1 lakh whichever is less by the transporter.

Procedure for confiscation of goods

- Where the proper officer is of the opinion that movement of goods intends to cause tax evasion, proper officer will propose confiscation of goods by issuing a notice in GST MOV 10.
- An order of confiscation of goods in GST MOV 11 shall be passed after taking into consideration objections filed by the person in charge of the goods.
- If the payment of penalty and fine in lieu of confiscation as quantified in GST MOV 11 is not paid within suitable time(not exceeding three months), the title of goods shall stand transferred to the Government.

Penalities

- **Seizure and detention of goods**

(a) Penalty equal to 200% of the tax payable on such goods and, In case of exempted goods, an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty.

(b) Penalty equal to the 50% of the value of the goods or 200% of tax payable on such goods whichever is higher and, in case of exempted goods, an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less,

where the owner of the goods does not come forward for payment of such tax and penalty Goods detained can also be released upon furnishing a security equivalent to the amount payable as mentioned in above two clauses in MOV-08.

- **Confiscation of goods**

Confiscation of goods is applicable only in the below mentioned scenarios:

(i) If any person supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax

(ii) If any person does not account for any goods on which he is liable to pay tax under this Act

(iii) If any person supplies any goods liable to tax under this Act without having applied for registration

(iv) If any person contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax

(v) If any person uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder.

In such cases goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122. In addition to the penalty, the person shall be liable to pay fine as decided by the proper officer not exceeding the market value of the goods confiscated, less the tax chargeable thereon:

Safeguards from penalty proceedings

- As per Section 126 of GST Act ,"No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence." Therefore this section provides a safeguard against penalty proceedings in the cases where there is a minor breach or if the error or omission apparent on the face of record is easily rectifiable .
- As per Circular 64 dated 14.09.2018, in below mentioned specified instances penalty to the extent of Rs 1000 is applicable and penalty proceedings under Section 129 will not be initiated.

1. Spelling mistakes in names of consignor or consignee
2. Error in pin code provided the address mentioned is correct and there is no impact on e way bill validity period
3. Error in one or two digits of document mentioned in e way bill
4. Error in 4 or 6 digit HSN where first two digits of HSN and rate of tax mentioned is correct
5. Error in one/two digits of vehicle number.

- Only such consignments will be detained where provisions of GST Act are violated. For example if a conveyance is carrying ten consignments and violation is made only in respect of three consignments, only such three consignments are liable for detention.

In case the assessee wishes to file appeal with the Appellate Authority against the order of proper officer, he has to deposit a sum equal to 25% of penalty specified in the order. Earlier there was no separate provision for filing the appeal in case of detention of goods.

ADDRESSING PRACTICAL CHALLENGES FOR EFFECTIVE IMPLEMENTATION OF GOODS & SERVICES TAX

Advocate Ishaan Loomba
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INTRODUCTION

The introduction of the Goods & Services Tax regime is aimed to enhance the country's indirect taxation system by consolidating various central and state taxes which will further reduce incidences of double taxation on the end consumer and ensure a seamless flow of economy. While this tax reform has been recognized for its numerous benefits and advantages, there remain certain areas that require attention to ensure its long-term positive impact. If the challenges associated with implementing GST are not effectively addressed, this tax reform could have enduring consequences on our economy.

The advantages of GST are unquestionable. It facilitates the inclusion of India's informal sector, boosts exports, reduces business costs in various sectors, and minimizes instances of double taxation. These benefits contribute to its effectiveness as a tax reform.

CHALLENGES ASSOCIATED WITH GST – TIME RESTRICTION ON AVAILMENT OF INPUT TAX CREDIT

However, there are certain challenges associated with the implementation of GST that need to be addressed. One such pertinent issue which has arisen off lately is the constitutional validity of Section 16 (4). This section poses multiple concerns with respect to any fluid situation in which there is a bona fide uncertainty with respect to payment of GST in any given transaction as it imposes a time constraint on availment and utilisation of Input Tax Credit for the relevant assessment year.

The utilisation of Input Tax Credit is what eliminates the cascading effect i.e., of tax on tax which was a major flaw in the earlier laws governing Indirect taxation. The objective is to avoid payment of tax on a single supply twice. Seamless flow of Credit was the aim by way of which a cleaner economy could be achieved, wherein when a registered person supplies to another registered person they may utilize Credit of the tax paid on inputs for paying the tax on their supplies.

However, a challenge arises when there is a legitimate uncertainty regarding the tax payment for a particular transaction, and the registered supplier receives notice from the revenue authority at a later stage, beyond the timeframe specified in Section 16(4), stating that certain tax liabilities were required to be settled in the past. This would necessarily imply that even if such tax liability is discharged at a later stage, the bona fide tax payer would not be able to claim the benefit of Input Tax Credit to offset its output tax liability. Therefore, due to a procedural limitation, it would be denied of a substantive right in the form of Input tax credit which essentially forms the basis of the GST structure.

Also, in scenarios wherein the government fails to establish appropriate mechanisms for claiming Input Tax Credit and the same is not claimed within the designated timeframe, the applicability of Section 16(4), which denies the assessee's right to claim input tax credit beyond a certain period, undermines the fundamental objective for which GST was initially introduced.

ILLUSTRATION

Let us consider a recent case involving a trader registered under the PGST/CGST Act, 2017. The traders faced a financial crunch in the assessment year 2019 due to which it could not file its Returns for the month of April and onwards in Form GSTR-3B. As a consequence of non-compliance, the trader's GSTIN gets blocked, causing significant obstacles to its business operations.

However, the trader decides to approach the revenue department, seeking permission to access the E-way portal using its GSTIN, with the intention of promptly settling its entire tax liability. The petitioner successfully executes this plan, fulfilling not only the tax liability but also the applicable interest charges as well.

However, soon afterwards the trader is again in receipt of notice in Form GST DRC-01A issued by the revenue department asking it to reverse Input Tax Credit to with respect to the aforementioned time period as the same is not admissible now to the petitioner in view of Section 16(4).

Considering the tax liability pertaining to the months of February and March 2019 were discharged by the him on 05.11.2019 and 03.12.2019 respectively, resulting into delay of 230 days and 227 days respectively. Therefore, as per provisions of Section 16(4) read with Section 59, the petitioner could have filed the Return up to September 2019 and claimed the credit. Since, it failed to do so and claimed the said credit which became inadmissible to him after September 2019, the petitioner was asked to pay the amount of tax along with applicable interest and penalty failing which show cause notice would be issued under Section 74 of the Central GST Act, 2017.

Now, in the aforementioned illustration the denial of Input Tax Credit to the assessee due to the delayed filing of returns which is solely a procedural lapse cannot be sustained as Input Tax Credit is an inherent right of the assessee. It is well-established under previous indirect taxation laws that substantive Input Tax Credit cannot be denied or altered on account of procedural grounds. Since, the Credit earned under the law is the property of the petitioner, its appropriation solely due to procedural failure would be in violation of Article 300A of the Constitution of India.

It is well established that procedural law should always serve as a tool rather than an obstacle. It is meant to facilitate the implementation of provisions within the Act, rather than obstruct them. Procedural laws should never be considered as mandatory but should always be subordinate to and aid the implementation of the statutory provisions.

Therefore, by virtue of the time limit imposed under section 16(4) not only is the trader being denied of its substantive right to claim the credit of the tax paid on the inputs but is also being denied of the benefit of the fundamental reason for which the GST regime was introduced in the first place i.e. preventing incidences of double taxation.

In the current scenario if the revenue is allowed to retain the Input Tax Credit which should rightfully be utilized by the assessee for discharging its GST liability, it would lead to unjust enrichment and shall cause

irreparable loss and injury to him. It would amount to double taxation in the sense that on one hand they would pay the tax to their supplier at the time of purchase of inputs and when the Input Tax Credit is disallowed the assessee would again be liable to pay the same tax to the government exchequer.

In order to simplify the abovementioned proposition - let's consider a situation where A purchases raw materials from B for Rs. 100, including 5% GST. The total amount paid by A to B is Rs. 105, tax included. After utilizing and processing the raw materials, A sells the final product to customers for Rs. 200, with 5% tax applicable, resulting in final price of Rs. 210.

If A is eligible for Input Tax Credit, the effective tax payable to the government would be Rs. 5 (output tax liability of Rs. 10 minus input tax liability of Rs. 5), considering that Rs. 5 has already been paid by B. However, in the current scenario where Input Tax Credit is denied, A would have to pay Rs. 10, over and above the tax already paid by B.

This situation demonstrates the absurdity of recovering GST twice for the same transaction, which is highly detrimental to the taxpayer, solely due to a minor procedural lapse.

Hence, if such disallowance of Input tax credit is upheld it would directly contradict the fundamental principle on which the Goods & Services Tax Act, 2017 was introduced. The Act places significant emphasis on the concept of Input Tax Credit, which aims to eliminate the cascading effect of tax-on-tax that was prevalent in previous indirect taxation laws. The primary objective is to prevent the double payment of tax on a single supply.

Moreover, the underlying principle of the aforementioned proposition also covers situations in which there is legitimate uncertainty with respect to payment of Tax. For instance- Liability to pay GST on Royalty/ Dead on mining operations. As the aforementioned are already in the nature of tax paid to the government therefore, a bonafide assesee cannot be asked to pay GST on the same. This issue is also pending before the Hon'ble Apex court vide Writ Petition (Civil) No. 1076/2021 in the case of Lakhwinder Singh v. Union of India wherein interim protection has been granted by the Hon'ble court vide order dated 04.10.2021. Now even if in such a situation if it is held that GST would be payable on such mining concessions, the Input Tax credit on the same would not be admissible to the Bona fide assessee keeping in view, the time constraint imposed by Section 16(4) and this would further amount to double taxation.

Therefore, the Assessee in such a scenario would still be aggrieved with the operation of section 16 of the CGST Act/SGST Act which imposes such restriction on the claim of Input Tax Credit up till a certain date.

CONCLUSION

The introduction of Input Tax Credit under the GST structure facilitates a seamless flow of credit, enabling a cleaner economy. It allows registered persons to utilize the tax credit obtained from inputs to offset the tax payable on their supplies when transacting with other registered persons. This mechanism promotes efficiency and ensures that tax is paid only on the value added at each stage, eliminating redundant tax payments. However, the same being limited by provisions of section 16 (4) of the CGST Act is just an example of a law being well conceived on paper but unable to take stock of the practical difficulties being faced by the tax payer under its mould.

Hence, for the Goods & Services Tax to truly have a transformative impact on the Indian economy, it is crucial for the legislature to acknowledge and address the practical challenges faced by taxpayers. By simplifying its implementation at the grassroots level and taking into account the taxpayer's difficulties, the Act can effectively fulfill its intended purpose in a comprehensive manner.

DE-DOLLARIZATION AND ITS IMPACT ON OUR LIVES

CA (Dr.) Aman Chugh

We have often heard that Change is the law of nature and it holds true in case of everything - peoples' lives, cultures, values, traditions, the ways we do business and consume materialistic things. It also applies to the ever changing rulers of the world states, who controls or dominates whom, everything keeps on changing.

In this article, shall be summarizing how the World Economic order is changing that could impact Everyone's Jobs, Career, Qualifications & obviously our Hard earned Portfolios of Money. Such World order changes can be coined as De-dollarisation.

We would try to understand De-Dollarization in the backdrop of the following 3 things:-

1. **Dollar weakening against the basket of other currencies: -**

   We might not be able to see the US Dollar weakening against a basket of currencies in the current scenario, which is also known as the Dollar Strength Index or the DXY. But later in this article, we would also share a take on whether that is the correct way of looking at things.

2. **Dollar weakening against Goods and Services in the domestic market: -**

   Inflow of Dollars from other countries back into the US would lead to a surging inflation, which would mean the value of Dollar depreciating in terms of the goods and services it can buy.

3. **Dollar losing its value as a Tradeable Currency and a Reserve Currency: -**

   If other countries choose not to bill their international transactions in the US Dollar, (roughly 80% of the world trade is presently being billed in US Dollars) and also not to park their excess funds in Dollars or Dollar denominated instruments, Dollar would no longer be the international currency or the Store of Value it used to be.

However, it is equally important to understand that because of the above developments, US would not get completely destroyed or erased from the world map; neither would the US Dollar get wiped out. US would still remain as a state and Dollar would still remain as an independent currency in the US, **THEY WOULD JUST LOSE THEIR POSITION OF POWER, THE POSTION FROM WHERE THEY HAVE BEEN ASSERTING DOMINANCE OVER THE WORLD.**

PRE AND POST COVID- 2 DIFFERENT WORLDS

It was very well evident while the world strived to come out of the COVID induced economic crisis that Post COVID would be an entirely different world, challenging the age-old customs of trade and positions of power, leading to emergence of new leaders all over. On one side, just at the end of the crisis, fundamental data was coming in strong and US was projecting strong growth, however the problems are imminent now. It

does not matter to us if the US goes down or someone else rises up, we just need to understand its impact on our lives and how we need to manage it to ensure we are not on the losing side.

Let us look at certain developments around the world now and try to understand how they are hinting at imminent crisis for the US and its dollar.

1. China no longer wants to sell to the US:-

Historically, China sided with the US in order to fulfill its aspirations of rapid industrialization and becoming the factory of the world, after the **"Great Leap Forward"** Policy of one of its most (in)famous leaders **Mao Zedong** fell on its own head as roughly 50-60 million Chinese civilians died of hunger since Zedong wanted people to give up agriculture to set up industrial establishments, particularly furnaces and steel processing units in their own backyards.

Following the advice of US, China brought about cultural reforms in the country, abolishing the customs of festival celebrations, introduced 9-9-6 working hour system (9 am – 9 pm, 6 days a week), forcing its young population to abandon their homes and families and just relentlessly work, implemented the 1-child policy and ultimately over a course of 4 decades, became the manufacturing hub of the world.

But, China was majorly producing for US owned companies, who outsourced the cheap labour based manufacturing to China and in turn, earned the major profits by selling to the world. Also, the cultural changes implemented forcefully resulted in huge demographic setbacks for China in the form of a declining young population, declining domestic demand and therefore, over dependence on US for its growth.

Of late, China has been advertising only one idea among its masses, that it does not want to export to the US, especially against payments made in US Dollar (not backed by any physical commodity for value). China has also been hinting at trying to bring back the old customs and traditions that ensured a robust family system and domestic demand in the economy. Therefore, China would like to export to the US only against Gold or maybe its own currency, Yuan.

The thought behind this revelation is that everyone in the world is wary of the fact that US abolished the Gold Standard in 1971 and since then, the US Dollar has been the world currency only because of its face value; however it does not have any physical commodity to back it (Although the US claims to possess 8000 MT of gold in exchange for the Dollars it has printed over time, but it has already printed many much more than the Gold being held and that opens up doors for fall in the Fiat currency order established by US)

Impact:- This would further deepen the unemployment crisis in China and on the other hand, completely shatter the supply chains in the US since apart from Technology and Defense equipments, everything consumed by the US is made elsewhere, bulk of it being in China, leading to soaring inflation in the US.

2. China trying to convince Gulf countries to bill their oil in Yuan: -

Since China understands that it is not the only one in a spot of bother with the US, it is trying to convince the Gulf Countries to stop billing their oil to other nations in US Dollar terms and rather do it in Yuan.

Here it is noteworthy, that the US in order to instill everyone's confidence in the US Dollar in 1973, entered into the Oil for Securities programme, leading to the birth of the Petro Dollar.

3. Upcoming BRICS Meeting- GAMECHANGER?

In light of the upcoming BRICS meeting, following could be the points if discussion/ deliberation from India's side: -

a) **A new common currency/ basket of currencies based on natural resource reserves: -** Since the US Dollar is seemingly not backed by any physical commodity and quite a few major countries of the world are not willing to trade in Dollars it would not be surprising to see that e new basket of currencies/ a common currency backed by a basket of commodities come up as a new trade/ reserve currency.

Just to hint at the backdrop, of late, India has also been finding huge reserves of precious metals at many places in the country and if more such reserves continue to be found, chances are Indian Rupee will be a front runner for the position of the new currency/ basket of currencies.

b) **Private Cryptocurrencies: -** India had already clarified its stance on crypto currencies owned and controlled by private individuals and groups such as the Bitcoin last year by announcing that such currencies would not amount to legal tender and speculative transactions in those currencies would be subject to Income Tax. Since they would be replaced by government's own version of them, this would an interesting topic to watch upon.

c) **Dollar Holdings: -** If Dollar would not be the currency of choice for international trade and investments, WHAT WOULD OTHER COUNTRIES DO WITH THEIR FOREIGN EXCHANGE RESERVES COMPOSED OF DOLLARS? This could be the third agenda topic in the much looked forward to (by world leaders) BRICS meeting.

DXY- THE DOLLAR INDEX AND ITS COMPLETE TRUTH

We earlier understood that US concocted the Oil for Securities Programme in 1973 in order to make people trust in the strength and trustability of the US Dollar, however that is not the only step taken for the same purpose. A careful examination of the construction DXY reveals something.

Most people around the world use Dollar Index (DXY) to gauge the strength of US dollar. DXY is a relative measure of US Dollar's strength against basket of 6 currencies including the Euro (57.6%), Japanese Yen (13.6%), British Pound (11.9%), Canadian Dollar (9.1%), Swedish Krona (4.2%), and Swiss Franc (3.6%). The DXY is a weighted geometric mean of Dollar's value relative to these 6 currencies, or simply the average of USD/ Other currency exchange rates multiplied with the given weights.

Now while the US states it to be the currencies of its trade partners, actually it is the currencies of countries dependent on US in terms of trade. This to ensure that if dollar weakens, these currencies being dependent on US would fall more thereby giving a stable Dollar Index. So, in the coming times even if Dollar Index is stable or rises marginally it will not mean that Dollar as a currency is still strong. Although DXY being strong due to the US economy actually doing well is a completely different story.

US AND ITS DEBT LADEN JOURNEY

US has had a successful history of raising debt using its Treasury Bonds and it has never been worried about repayment owing to its reputation of being the safest in the world (Dollar enjoying the status of reserve currency). Therefore, its strategy of rolling those bonds over has worked for an indefinite period.

After the 2008 crisis, to survive, US printed about $4Tn and decided to finance it using its age old

strategy of Treasury Bonds. It is worth noting here that in 2010 US's Debt to GDP ratio increased to 72% with debt skyrocketing to $13Tn. But the same was never a problem since the growth seemed good on paper and hence, debt was justifiable. And whenever crisis knocked on the door, US was ready to print massive amounts of money better known as Quantitative Easing.

However, the successful stint of US experienced shock in recent past when some countries refused to subscribe/ roll over the US Treasury bonds and instead demanded their money back. Matters further worsened in 2020 when US was at headlock with China followed by Ukraine Russia episode after which both the countries clearly refused to subscribe to the US Treasury bonds.

COVID induced crisis and all these events made the debt position of US worrisome as Debt level rose to a record $31Tn and was accompanied by yearly budget deficit of about $1Tn. To finance the deficit US had two options, either to sell its assets or borrow. Data suggests that for the past 2 years US has not been able to finance its deficit form external sources.

To overcome the above problem, DEBT CEILING which is the maximum amount that the US govt can borrow using treasury bonds, has been increased many times in a year.

CONCLUSION: - GRAVITY OF THE SITUATION

The million-dollar question here is Why is The US recession and the ongoing De-Dollarization so important for us?

- First, US GDP accounts for almost 26% of the World's GDP. If it goes into recession entire world will be thrown into panic. Second, the recession of 2008 was so severe that it took almost 15 years for some economies, business and assets class to recover and the one in question is estimated to be even more severe and bigger because the world is wary of the US and its true intentions. This is further substantiated by the fact that some Exotic derivatives, knock in knock out, One touch options, Double Touch Options have their maturities in 2023-2025.

The recession can be seen coming in the following phases:

Phase I- Inflation back in US will start rising which has already surged quite a bit due to massive Quantitative Easing.

Phase II- Many Banks of US including banks of other western economies will go bankrupt, glimpses which are already visible.

Phase III- Stock prices and Bond Markets in US will correct and MNC's will crash.

Phase IV- Increased flow of Dollar due to maturity proceeds will lead to forced salary cuts and further layoffs to reduce the supply of Dollar in the economy.

- Due to the above reasons, if US suffers a setback, all the countries that have partnered with the US or are dependent on it for trade will also suffer a similar fate, experiencing high layoffs, salary cuts and shutdowns.
- The developments in the Real Estate Sector of US point at a major crash and Real Estate being the backbone of any economy, will lead to a crash in other asset classes as well, be it Stock Markets or Bond Markets.
- Following this, many people who had immigrated to such countries, will be forced to reverse immigrate to their home countries, due to low incomes and job losses.
- These developments would especially be true for White collar jobs and if these people were to return to their homelands, the qualifications they had gathered there would be rendered useless as local qualifications would be required to work here.
- Even in our countries, if we have exposure towards Western Economies through our businesses or investments in such Assets which in turn are directly or indirectly linked to businesses or assets in the US and other western economies, they will also correct significantly and trap retail investors.
- The most crucial point in the entire scenario being that all this might not be visible to a naked eye, rather would need reading between the lines, as US FoMC would not like to openly admit that US is experiencing a recessionary Phase, even the fall in the Real Estate would be relatively silent and a common man would never get to understand as his money gets silently taken away from him as Inflation adjusted prices fall.
- My entire effort in this article is to stress on the fact that we pay attention to all the developments taking place in the western world. Even if the western world keeps on giving a different terminology for De-Dollarization in the form of “De-coupling” or “Friendshoring”. There may be talks of DXY being still strong and questions around De Dollarization but we have also tried to shed some light on the intrinsic flaw of DXY Construction. We must only be focused on one thing – we do not end up on the losing side. We need to share with our near and dear ones, friends and relatives planning to relocate to western countries to be wary of the situation and rather look for better opportunities back home, because at the end we can say that Western World has been running on Capitalism and Communism for the last few centuries and they have never been at peace. The best contestant to benefit from the present conflict is India – with bright future prospects and a multi decade growth story being laid the foundation for.

WITH THIS, I CONCLUDE THIS ARTICLE HERE WITH THE MESSAGE – BE AN INDIAN TRUE TO YOUR ROOTS, TIME WILL REWARD YOU. JAI HIND!

Taxability of Ancillary Services at Restaurants under GST

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Introduction

Adaptability has become the key to success of any business. If a business is not able to be proactive and adapt to its environment better than its competitors, it is bound to be a failure. Over the past decades there has been a gradual change in the services being provided at restaurants and by other food service providers. Restaurants are not only providing food but a complete dining experience. In addition, the provision of food services, other ancillary services like live music, live performances, DJs, recreational activities, karaoke, sports screenings, etc. are being provided in complement to the food.

Even though these services are aimed at giving a competitive edge to the restaurants, the tax implications of these complimentary services is something that needs to be pondered upon. The aim of this Article is to try and clarify the confusion as to whether the supply of such additional services with the food services at these restaurants being treated as Composite Supply or Mixed Supply under the Goods and Services Tax Regime.

Before understanding the classification of this particular bundle of services, we need to understand the meaning of composite and mixed supply.

IMPLICATION OF SERVICES BEING TREATED AS COMPOSITE AND MIXED SUPPLY: -

Section 8 of the Central Goods and Services Tax Act, 2017 lays down tax liability and mixed supplies. It states that the tax liability on a composite or a mixed supply shall be determined in the following manner: -

(a) A composite supply, comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

The difference can be understood by the following illustration: -

Let's assume a composite supply where the principal supply is rated at 5% and the other supplies at taxable at the rate of 18%, 28% and 12%. In this case, the entire supply will be taxable at the rate of 5%.

In case, the supply is mixed supply, the entire supply will be taxable at the rate of 28%.

COMPOSITE SUPPLY: MEANING AND INGREDIENTS

The term composite supply has been defined under Section 2(30) of the Central Goods and Services Tax Act, 2017. It states that: -

"Section 2. Definitions –

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;"

On perusal of the definition of Composite supply, it is clear that to constitute composite supply, the following ingredients needs to satisfy:

a. **Supply made by a taxable person:** The person making the supply must be person registered with the GST and must have a valid GSTIN. Further, he must be paying the tax as prescribed in the Act levied on such supply.

b. **Consisting of two or more taxable supplies of goods or services or both, or any combination thereof:** The supplier must be supplying two or more supplies together for the supplies to be considered a composite supply.

c. **Naturally bundled supplied in conjunction with each other in the ordinary course of business:**

In GST Flyer on Composite Supply and Mixed Supply published by the Central Board of Indirect Taxes and Customs defines Bundled Service as,

"Bundled service means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different."

One of which is a principal supply: One of the said supplies needs to be the primary supply for which the other supplies are ancillary and are complimentary the this primary supply. In case of Composite supply, the entire bundle of services is taxed at the rate of GST for the principal supply.

MIXED SUPPLY: MEANING AND INGREDIENTS:-

Mixed Supply is defined under Section 2(74) of the CGST Act, which state as follows:

"Section 2. Definitions

(74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;"

The definition of Mixed supply can be bifurcated into the following ingredients:

a. Two or more individual supplies of goods or services: There must be provision of two or more individual supplies. Individual supplies include services which can be provided separately and can be availed by the consumer individually.
b. Made in conjunction with each other by a taxable person: These goods and services must be provided in a package where two or more of such individual supplies are being provided together.
c. For a single price: The entire package of these supplies must be provided at one combined price as being provided with each other.
d. Such supply does not constitute a composite supply: These supplies must not be classified as Composite supply and shall not satisfy the ingredients of composite supply.

CLASSIFICATION OF THE FOOD SERVICES BEING PROVIDED AT RESTAURANTS

In order to determine whether the ancillary services in a restaurant are to be treated as a composite supply or mixed supply, the following three questions need to be answered: -

i. Whether the services supplied by a taxpayer are naturally bundled?
ii. Whether the bundled supply is made in the ordinary course of business?
iii. Whether the restaurant services i.e., supply of food is the principal supply or not?

i. Analyzing the first issue we look into the ruling passed by the Authority for Advance Ruling, Uttarakhand in the case of Kundan Misthan Bhandar [2018] 100 taxmann.com 18 (AAR-Uttrakhand) wherein it has been stated:

"C. From the discussion supra and submission made by the Noticee we find that in the case of sweet shop cum restaurant, the services from the restaurant is a principle supply which provides a bundled supply of preparation & sale of food, and serving the same and therefore it constitutes a composite supply. It further satisfied the following conditions of a composite supply:

(1) Supply of two or more goods or services or both together

(2) Goods or services or both are usually provided together in the normal course of business.

In the instant case the nature of restaurant services is such that it may be treated as the main supply and the other supplies combined with such main supply are in the nature of incidental or ancillary services. Thus, restaurant services get the character of predominant supply over other supplies. Therefore, in the present case the supply shall be treated as supply of service and the sweet shop shall be treated as extension of the restaurant in as much as the said activity covered under Schedule II of the Act."

In view of the aforesaid ruling, we see that the restaurant services are of a predominant nature along with other additional services like the provision of sweets which may provide as an ancillary service to the restaurant services, thus in the domain of restaurant services, providing of such services are naturally bundled with principle supply of food services. Similarly, if the said ancillary services can be considered as ancillary to the principal service and are bundled naturally in the course of business then this can be considered as Composite Supply.

ii. GST Flyer on Composite Supply and Mixed Supply published by the Central Board of Indirect Taxes and Customs explains the concept of services being bundled together in the ordinary course of business and states,

"Whether the services are bundled in the ordinary course of business, would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

The perception of the consumer or the service receiver - If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Other illustrative indicators, not determinative but indicative of bundling of services in the ordinary course of business are:

- There is a single price or the customer pays the same amount, no matter how much package they actually receive or use
- The elements are normally advertised as a package
- The different elements are not available separately
- The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above. The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification

and rate of tax of such composite supply."

Considering the above, we analyse the factors to be considered while classifying a supply is naturally bundled in the ordinary course of business:

a) The perception of the consumer or the service receiver: Over the last decades, consumers are not just looking for food at restaurants but the entire ambience of the place and are looking for a holistic experience. To provide such an experience, restaurants have started incorporating elements like live music, live performances, DJs, recreational activities, karaoke, sports screenings, etc. Hence, the provision of such services would be termed as something that a consumer perceives to receive at restaurants.

b) Majority of service providers in a particular area of business provide similar bundle of services: Restaurants have been providing such additional services with the primary supply, being the food services, to improve their ambience and to provide the customers with a better dining experience. This has been a common practice in most restaurants and similar service providers.

c) Nature of Services: The services offered must have one supply which is principal in nature and other being ancillary to the principal supply. These ancillary services must compliment the principal supply. In Symmetric Infrastructure (P.) Ltd., In re, [2021] 130 taxmann.com 136(AAR – RAJASTHAN), the Authority of Advance Ruling Rajasthan, it was held that the Noticee who is providing coaching services to its enrolled students and is further providing study material, test papers, printed material, uniform, bag and other goods to its students would constitute a Composite Supply and the coaching services would be the Principal supply, tax on such supply shall be levied accordingly.

d) Illustrative Indicators: These ancillary services must be complementary to the principal supply and have to be provided with the said principal supply. If ancillary services, can be availed individually and without availing such principal supply, then it must not be considered ancillary and cannot be termed as Composite.

iii. "Principal supply" is defined under Section 2(90) of the HGST/CGST Act, 2017 which states, "the supply of goods or services which constitute the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary."

As discussed above, the principal supply must be in conjunction to the ancillary services and must hold a pre dominant position.

In Bishops Weed Food Crafts (P.) Ltd., the Authority of Advance Rulings, Karnataka [2021] 126 taxmann.com 2 (AAR-KARNATAKA) stated that the Noticee was engaged in the business of provision of Leasing of residential units for use an residence to Tenants. It further provided basic amenities such as maintenance, security and housekeeping to the residents. It was held that this would be these services are provided as a comprehensive bundle and not available as separate components, the charges are fixed for each month and the tenant do not have the option to select individual supplies from the bundle. It was hence held to be composite supply.

Where the service provider is charging for the primary supply and the other services are ancillary and included in the said payment, then such a primary supply is considered as principal and other services provided with the said principal supply with be ancillary.

Conclusion

In the present discussion we have analysed the definitions of Composite Supply and Mixed Supply in relation to the Restaurant and Food Services Industry. As per the author, ancillary services being provided with the Food services cannot be considered as Mixed Supply because the additional services being provided are not individual supplies and are only being provided as complementary services with the principal supply of food services. Further, these services are naturally bundled as have become a common practice in the industry and is being perceived by the customers. Therefore, such services being bundled together and provided in the ordinary course of business with the food services like live music and other recreational activities would be considered as Composite Supply.

Benami Transactions (Prohibition)Act: India's Crackdown on Illicit Property Transactions

Adv. Rajiv Shankar Dvivedi

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Introduction:

'Benami' literally means 'without a name'. Benami transactions are characterized as any financial dealings conducted by an individual without revealing their true identity or by purchasing a property under someone else's name. These transactions are often employed to conceal true ownership for various reasons, such as evading taxes, maintaining confidentiality, accumulating personal wealth at the expense of businesses, and concealing unreported funds. Given this context, there arose a necessity to enact laws that discourage and discourage benami transactions. The Benami Transactions (Prohibition) Act is a crucial piece of legislation in India aimed at tackling this issue. The Act was originally enacted in 1988 and subsequently amended in 2016 as the previous Act was ineffective due to the absence of framed rules, regulations, and procedures, notably lacked regulations concerning property confiscation.

Benami transactions encompass the following scenarios:

· Property held under a fictitious name.

· The actual owner has no knowledge or denies ownership of the property.

· When the person providing consideration is untraceable or their identity as the beneficial owner is unknown.

The Supreme Court, in the case of Bhim Singh v. Kan Singh AIR 1980 SC 727, provided an explanation of a benami property transaction as-

"Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami and the Property is called Benami Property. In such cases the transferee holds the property for the benefit of the person who has contributed the purchase money, and he is the real owner."

Provisions of the Act:

The Benami Transactions (Prohibition) Act establishes a comprehensive framework to identify, investigate, and seize benami properties. The Act also outlines various provisions and penalties for individuals engaging in benami transactions.

1. Properties under the scope of the Act: The Benami Act covers all types of properties, including movable and immovable assets, tangible and intangible assets, and legal documents or instruments representing ownership or interest in the property. It also includes converted forms of the property and proceeds derived from it. For example, even depositing old currency into another person's account with an arrangement for them to return the money in new currency during demonetization qualifies as a benami transaction.
2. Definition of Benamidar: A 'benamidar' refers to an individual or a fictional entity in whose name a benami property is transferred or held, but who is not the actual beneficiary of the transaction. According to the law, a benamidar is prohibited from transferring the benami property to the beneficial owner. Any such transfer would be deemed invalid under the legislation.
3. Exceptions to Benami transactions: The Act excludes the following transactions from being considered as benami transactions under Section 4(3) and Section 3(2):
   - Property held by a member of a Hindu Undivided Family (HUF) or coparcener for the benefit of the coparceners in the family, with consideration paid from known sources of income.
   - Property held under a fiduciary relationship where the person holding the property is a trustee, and the property is held for the benefit of all individuals for whom the trustee is responsible in their capacity as a trustee.
   - Property held in the name of a spouse or unmarried daughter, with consideration paid from known sources of income, unless proven otherwise that the property was purchased for the benefit of the spouse or unmarried daughter.

The Calcutta High Court in Sekhar Kr Roy v Lila Roy & Anr. (FA 109 of 2018) has reiterated that if a husband supplies the consideration money for acquiring property in the name of his wife, the fact itself does not necessarily imply a benami transaction. The Court further noted that it has to be proved that the person intended to enjoy the full benefit of the title in him alone. While referring to Jaydayal Poddar (Deceased) thr. Lrs. vs. Mst. Bibi Hazra AIR 1974 SC 171 in which the Hon'ble Court ruled as follows:

"The essence of a benami is the intention of the party or parties concerned….Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale." A bench of Justice Partha Sarathi Chatterjee and Justice Tapabrata Chakraborty dismissed the petition, as the petitioner failed to show what the amount of consideration money was and how the consideration money was paid. Further failed to bring in evidence as to how the suit property was purchased and could not prove who paid the consideration money. The Court was also of the opinion that "…In the Indian society, if a husband supplies the consideration money for acquiring property in the name of his wife, such fact does not necessarily imply benami transaction. Source of money is, no doubt, an important factor but not a decisive one. The intention of the supplier of the consideration money is the vital fact to be proved by the party who asserts benami. In other words, even if it is proved that the husband paid the consideration money, the plaintiff must further prove that the husband really intended to enjoy the full benefit of the title in him alone".

4. Prohibition of Benami transactions: The Act explicitly prohibits benami transactions and restricts the right to recover property held benami. It empowers authorities to initiate investigations and take action against benami transactions, irrespective of whether the property was acquired before or after the Act

came into force. The legislation covers both movable and immovable properties, including assets such as land, buildings, financial instruments, and other tangible and intangible assets.

5. Authorities and their Powers: The Act establishes several authorities responsible for implementing and enforcing its provisions. These include the Initiating Officer, Approving Authority, Administrator, and Adjudicating Authority. These authorities have the power to conduct inquiries, issue notices, summon individuals for questioning, gather evidence, and seize benami properties. The Act ensures that due process is followed and provides avenues for appeals and adjudication.
6. Punishments and Penalties: The Act prescribes strict punishments for those found guilty of engaging in benami transactions. Offenders can face imprisonment for a term ranging from one year to seven years, along with monetary fines that can extend up to 25% of the fair market value of the benami property. Any person who furnishes false information or document is punishable with rigorous imprisonment from six months to five years with an additional fine up to 10% of the fair market value of the property. Additionally, benami properties may be confiscated by the government, depriving the offenders of their ill-gotten gains.
7. Initiating Investigations: The Act allows authorities to initiate investigations based on various sources of information, including public tips, intelligence reports, or their own knowledge. The authorities are empowered to issue notices to persons involved in the suspected benami transactions, including the alleged benamidar (the person in whose name the property is held), the beneficial owner (the actual owner), and any other interested parties.
8. Protecting Whistleblowers: Recognizing the importance of whistleblower protection in combating benami transactions, the Act includes provisions to safeguard the identity and confidentiality of individuals providing information. Whistleblowers who come forward with credible information leading to the detection and confiscation of benami properties are eligible for rewards and protection against victimization.
9. Recent amendments on the retrospective application of the Act: In a landmark decision, the Supreme Court in Union of India v. M/s. Ganpati Dealcom Pvt. Ltd. Civil Appeal No. 5783 of 2022, declared the amendments introduced in the 2016 Benami Transactions (Prohibition) Amendment Act as "unconstitutional and manifestly arbitrary." These amendments, which applied retrospectively, allowed for imprisonment of up to three years and the confiscation of any property involved in a benami transaction. The court specifically declared Sections 3(2) and 5 of the 2016 Act unconstitutional. It emphasized that the provision violated Article 20(1) of the Constitution, which protects individuals from being convicted of an offense that was not in force at the time of the act. The court further noted that the 2016 Act condemned not only traditional benami transactions but also fictitious and sham transactions aimed at acquiring ill-gotten wealth. It clarified that the Act contemplated an "in-rem forfeiture" where the taint of a benami transaction is attached to the asset itself. The court also highlighted the extensive powers granted to authorities and the provision for rigorous imprisonment for supplying false information. As a result of this decision, all prosecutions and confiscation proceedings related to transactions entered into before October 25, 2016, stand quashed. This judgment provides significant relief to parties accused of benami transactions.

Impact and Challenges:

The Benami Transactions (Prohibition) Act has significantly contributed to curbing illicit property transactions and promoting transparency in India. It has helped unearth numerous benami properties and initiate appropriate legal actions against the offenders. The Act has also acted as a deterrent, discouraging individuals from engaging in benami transactions due to the severe penalties involved.

However, there have been challenges in effectively implementing the Act. Some of these challenges include the need for capacity building among authorities responsible for enforcement, ensuring a streamlined and efficient adjudication process, and raising awareness among the public about the consequences of engaging in benami transactions.

Conclusion:

The Benami Transactions (Prohibition) Act is a critical legislation in India's fight against corruption, money laundering, and the use of illicit funds. By targeting benami transactions and unauthorized property holdings, the Act aims to promote transparency, discourage the generation of black money, and restore the integrity of property transactions. With continued efforts in implementing and strengthening the Act, India seeks to create a more accountable and law-abiding society.

Interplay of Provisions of Arrest and Offences under GST Act & Code of Criminal Procedure, 1973

Adv Prateek Gupta

The CGST Act, 2017 provides power of arrest for certain specified offences provided under Section 132. But, the question which arises is that what procedure would prevail during and after the arrest is made, as arrest is something which affects the personal liberty of the individual against whom some investigation for possible evasion of GST is in progress. Therefore, proper codified procedure should be followed at the time of arrest and further proceedings thereafter.

It may be noted that as per Sec 69(1) only if the Commissioner has 'reasons to believe' then he may order or authorize any officer to arrest the offender.

Section 69. Power to arrest. -

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

The offences under which Commissioner can authorize to arrest the offender are as follows:

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

shall be punishable-

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

It is necessary that per Sec 69(2) of the said Act, where a person is arrested has a right to be informed about the 'grounds of arrest' and have to be produced before the Magistrate within 24 hours, which is also mandatory under Section 57 of Cr.P.C. The relevant extract is as under:

Section 69. Power to arrest. -

(2) Where a person is arrested under sub-section (1) for an offence specified under sub- section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.

The issue which arise is that except for the offences provided in Sec 132 (1) (a), (b), (c) & (d) there is no provision for producing the arrested person before Magistrate. Such offences are as under:

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax 3[****]or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) ……;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) ……;

(k) ……; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f), (h) and (i) of this section,

The above said offences are bailable and non-cognizable as per Section 132(4) and Section 132(5) of the CGST Act, 2017. Thus, as per Section 69(3)(a) if a person is booked under the above said offences, then the bail shall be granted by the GST Officers itself and if the bail has not been granted, then the person shall be forwarded to the custody of the magistrate, however the issue arises that under what power the person shall be arrested for these offences, as Sec 69(1) only mentions about the offences described under Sec 132 (1) (a), (b), (c) & (d).

By virtue of Sec 69(3)(b), the Deputy Commissioner or the Assistant Commissioner have been vested with the powers of officer-in-charge of a police station while providing bail, that means surprisingly the legislature has neither intended to give judicial interference after the arrest or to record 'reasons to believe' prior to the arrest by the Commissioner or any other proper officer in the said offences. The relevant provision of Section 132(4), (5) and Section 69(3)(a) is reproduced as under:

Section 69. Power to arrest. -

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

Section 132. Punishment for certain offences.-

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non- cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

CrPC 2. Definitions.—In this Code, unless the context otherwise requires,—

(a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

Since in the whole GST Laws, the procedure of arrest has not been determined, therefore in the absence of any procedural provisions, the provisions of Cr.P.C. would be applicable alongwith provisions of arrest pertaining to Section 69 and 132 of the CGST Act, 2017. This contention is supported by the provisions contained in Section 2(n), 4 and 5 of the Cr.P.C., the provisions of Cr. Procedure Code would be pari materia applicable to GST Laws also. The relevant extract of the provisions of Cr.P.C. are as under:

2. Definitions.—In this Code, unless the context otherwise requires,—

(n) "offence" means any act or omission made punishable by any law for the time being in force and …….;

4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Rights of the arrested person under the Cr.P.C.

There are some rights of the accused also, which have been prescribed under Cr.P.C. and are essentially needed to be observed by the GST Officers at the time of arrest. Since, the GST officer has been given the same power as of a police officer as per provisions of 69(3)(b) of the GST Act, 2017, so he has to adhere with the provisions of Cr.P.C. including the following notable provisions:

41D. Right of arrested person to meet an advocate of his choice during interrogation.—When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

49. No unnecessary restraint.—The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

50. Person arrested to be informed of grounds of arrest and of right to bail.—(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

56. Person arrested to be taken before Magistrate or officer in charge of police station.—A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

57. Person arrested not to be detained more than twenty-four hours.—No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

60A. Arrest to be made strictly according to the Code.—No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

Apart from the provisions pertaining to anticipatory bail provided under Sec 438 Cr.P.C., there is inherent powers of High Court under Sec 482 Cr.P.C. which would also prevail as the procedure pertaining to Cr.P.C. would be applicable in the cases of arrest under offences for evasion of GST.

Some of the important case laws pertaining to the applicability of Cr.P.C. over GST Laws and 'Reasons to Believe', which has a very important bearing, are as under:

ANTICIPATORY BAIL

NITESH WADHWANI v State of MP, 2020 (41) G.S.T.L. 155 (M.P.)

15. It emerges from most of the judgments on the issue of granting anticipatory bail cited by the respondent that the Hon'ble Courts have held that the facts of a particular case are the paramount consideration for granting or refusing the protection of a pre-arrest bail. It is nowhere stated that the anticipatory bail is barred by law or cannot be granted in a case registered under the GST Act.

HANUMANTHAPPA PATHRERA LAKSHMANA Versus STATE, SENIOR INTELLIGENCE OFFICER, D.G. OF GST INTELLIGENCE, BENGALURU

2020 (38) G.S.T.L. 447 (Kar.)

15. On bare reading of Section 69 of the CGST Act clearly empowers the Commissioner to authorize any Officer to arrest a person, if the Commissioner has reasons to believe that if a person committed the offence specified in Clause (a) or (b) or (c) or (d) of sub-section (1) of Section 132 and as per Section 132(4) of the CGST Act, if any offence is committed, other than the offence, Clause (a) or (b) or (c) or (d) of sub-section 1 of Section 132 shall be non-cognizable and bailable. As per sub-section (5) of Section 132, the offences specified in Clause (a) or (b) or (c) or (d) of sub-section (1) of Section 132 shall be cognizable and non-bailable and punishable under Clause (i) up to 5 years and fine. Therefore, if the petitioner is arrested for the offences other than the offence stated under sub-section (4) of Section 132 of the CGST Act which are non-cognizable and bailable, wherein the Deputy Commissioner or Assistant Commissioner has power to release the petitioner on bail. If the Commissioner has reasoned to believe that the petitioner is arrested for the offence committed under Section 132(1)(a) or (b) or (c) or (d) which is punishable under sub-section (5) of

Section 132 of the CGST Act, which is cognizable and non-bailable offence, the Officer authorized by the Commissioner after informing the grounds of arrest has to produce before the Magistrate within 24 hours. If the assessee is arrested and produced before the Magistrate, the petitioner/assessee is likely to be remanded to judicial custody. Therefore, when the offences punishable under sub-section 1 Clause (a) or (b) or (c) or (d) of Section 132 of the CGST Act which falls under the provisions of sub-section 5 of Section 132 of the CGST Act is a cognizable and non-bailable offence punishable with imprisonment up to 5 years and fine. Once a person apprehends his arrest in the hands of the Commissioner under Section 69 of the CGST Act, the assessee has statutory right to seek anticipatory bail under Section 438 of the Cr.P.C.

CHARGE SHEET

NITIN NIKHRA v State of MP, 2019 (28) G.S.T.L. 199 (M.P.)

10. This is a case where the applicant is facing heat of investigation under Section 132 of the Act. Section 132 of the Act prescribes punishment for certain offences and maximum sentence which can be awarded, is five years. Section 167(2) of the Cr.P.C. provides 60 days time to the investigating agency to submit charge sheet for the offences where investigation relates to any offence other than total imprisonment for life or imprisonment for a term of not less than 10 years. Here the maximum sentence punishable is imprisonment for five years therefore, respondent had to file the charge sheet within 60 days. But admittedly, charge sheet has not been filed, therefore, right of 'default bail' accrued to the applicant after completion of 60 days. It was the duty of the investigating agency to submit charge sheet within the stipulated period, but same has not happened. Apex Court in the case of Rakesh Kumar Paul (supra) has categorically outlined the concept of 'default bail' and held that in the case of indefeasible right, right is said to be accrued to the accused if the charge sheet is not filed within the stipulated period (60 days in the present case). In the case of Achpal alias Ramswaroop (supra) said principle has been reiterated by the Apex Court.

REASONS TO BELIEVE

ABDUL SHAJI V CCE, 2021 (50) G.S.T.L. 33 (KER.)

7. Section 69 of the CGST Act appears to empower the Commissioner to authorise any officer to arrest persons who he believes to have committed some of the aforementioned offences. From a perusal of the aforementioned provisions, it appears that certain safeguards against abuse of the powers to arrest have been inserted under the CGST Act itself. The power to arrest has been granted only in respect of certain specific offences. These offences include cases where the act in question is committed with an intention to evade tax or where it results in monetary loss to the Government exchequer. In addition to the nature of the offences, the legislature has also added an additional layer of restriction on the power to arrest for most first time offenders by stating that such power can only be exercised when the aforementioned offences involve an amount exceeding Rupees one hundred lakh or more. Notably, the aforementioned monetary threshold is not applicable to all offences. In certain cases, the amount involved in the offence is not relevant. For instance, in cases where any of the specified offences are committed for the second time, the power to arrest is applicable regardless of the amount involved. Similarly, in cases where one commits or abets the commission of offences such as falsification of records, or obstructing an officer from conducting his duty, or tampering or destruction of material evidence, the amount involved is immaterial, and the power to arrest exists regardless. Therefore, it appears that the grant of such powers under the CGST Act have been allowed based on the combined assessment of the severity of the offence and the amount involved therein. The safeguards in the form of pre-arrest authorisation have also been inserted in the text of the CGST Act itself. As noted above, Section 69 of the CGST Act permits the Commissioner GST to authorise arrests in certain cases, based on the seriousness and the amount involved, but in all other cases, arrests are to be conducted according to provisions of the Code of Criminal Procedure ('Cr.PC'). There appears to be an inversely proportional relationship between the gravity of the offence in question and the safeguards applicable thereon. However, the provisions still appear to comply with basic standards as even in cases of the grave offences under the Act, the Commissioner who is a Senior GST official is permitted to authorise arrest only if he has reason to believe that a person has committed an offence. The Senior Intelligence Officer is not permitted to conduct arrests under the CGST Act till the Commissioner records his satisfaction on 'reasons to believe' authorizing him to arrest the assessee. The scope of the expression 'reason to believe' has been examined in several cases. The expression 'reason to believe' must not be purely subjective satisfaction and must have a rational connection with, or a relevant bearing on the formation of the belief. The insertion of the phrase 'reason to believe' demonstrates the legislature's intention to make an affirmative attempt to circumscribe the discretionary powers and permit their exercise only in a bona fide manner, to further the interest of revenue. Thus, the discretion of the Commissioner to authorise arrest is in the most serious offences listed under the CGST Act. The CGST Act also provides the process to be followed once arrests are conducted by a central tax officer on the authorisation of the Commissioner. The officer in question is required to inform the arrested person of the grounds of his arrest and must produce such person before the Magistrate within twenty four hours of arrest. This is in line with the safeguards provided under Section 49 of the Cr.PC and Article 22 of the Constitution of India.

Further, the question arises that no requirement in the present GST Law has been surprisingly envisaged requiring the satisfaction of the Commissioner or any Proper Officer in the shape of recording of "Reasons to Believe" to arrest the accused for the offence committed as mentioned in Clause (iii) & (iv) of Section 132 (1) of the CGST Act, 2017. Even though these Clauses prescribes the offences of lesser magnitude but still arrest can be made by the GST Officers which is pre-judicial to the 'right of liberty' of a person as per Article 21 of the Constitution of India.

Important Legal Jurisprudence in GST

CA Bimal Jain

Recently, various courts had allowed the rectification of the bonafide and inadvertent mistakes committed by the taxpayers, at the time of filing/submitting of GST Forms/ Returns, which has occurred due to certain bonafide reasons, unavoidable circumstances, and sufficient cause, in order to claim the Input Tax Credit ("ITC") by the recipient of the supplies.

It is pertinent to note that, recently, the CBIC had issued Circular No. 183/15/2022-GST dated December 27, 2022 ("Circular No. 183") regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in Form GSTR-3B and the amount as available in Form GSTR-2A during Financial Year ("F.Y.") 2017-18 and F.Y. 2018-19 and the stated Circular further allowed the rectification of such bonafide and inadvertent mistakes committed while filing of GST Form/ Return during F.Y. 2017-18 and F.Y. 2018-19.

A. Registered Person allowed to rectify its GSTR-1 after the specified due date, for showing B2B Supplies wrongly as B2C Supplies:

The Hon'ble Orissa High Court in the matter of M/s. Shiva Jyoti Construction v. The Chairperson, Central Board of Excise & Customs and others [W.P. (C) No. 18216 of 2017 dated January 12, 2023] permitted the assessee to rectify its Form GSTR-1 filed for the months of September 2017 and March 2018, in order to claim ITC benefit by the recipient, wherein B2C supplies was erroneously mentioned, instead of B2B supplies. Held that, the assessee will be unnecessarily prejudiced if it is not allowed to avail the benefits of ITC.

Facts of the case:

M/s Shiva Jyoti Construction ("the Petitioner") has filed this petition seeking to permit them to rectify Form GSTR-1 filed for the months of September 2017 and March 2018, wherein the Petitioner had wrongly mentioned B2C instead of B2B, due to which the recipient was unable to avail the ITC. The Petitioner was unaware of such error until January 21, 2020.

Thereafter, the Petitioner had made requests to the Revenue Department ("the Respondent") to allow it to rectify the Form GSTR-1. The Respondent rejected the request of the Petitioner was rejected, on the ground that the last date of filing the return was March 31, 2019 and the last date of carrying out such rectification was April 13, 2019. Thus, the deadline for the rectification of errors in Form GSTR-1 had crossed.

Issue involved in this case:

Whether the Petitioner can be allowed to make rectifications in its Form GSTR-1 after the deadline for rectification of errors had crossed?

Held:

The Hon'ble Orissa High Court in W.P. (C) No. 18216 of 2017 held as under:

· Observed that, no loss would be caused to the Respondent by allowing the Petitioner to make the rectifications and that, the Petitioner will be unnecessarily prejudiced if it is not allowed to avail the benefits of ITC.

· Relied on the judgment of the Hon'ble Madras High Court in the matter of M/s. Sun Dye Chem v. the Assistant Commissioner (ST) [Writ Petition No.29676 of 2019 dated October 6, 2020] wherein, the Court allowed the assessee to rectify and correct its Form GSTR-1 for the Period August 2017 to December 2017 and redistribute the ITC available and directed the Revenue Department to enable amendment in Form GSTR-1.

· Directed the Respondent to receive the forms manually and facilitate the uploading of details in the web portal within a period of 4 weeks.

Recently, in a similar matter, the Hon'ble Orissa High Court in M/s. Y. B. Constructions Pvt. Ltd. v. Union of India and others [W.P.(C) No.12232 of 2021 dated February 22, 2023] has permitted the assessee to rectify the error of mentioning B2C instead of B2B at the time of filing Form GSTR-1. Held that, the assessee would be prejudiced if it is not allowed to rectify such mistake and avail the benefits of ITC. Directed the Revenue Department to receive the corrected Form GSTR-1 manually and upload the details on the web portal within 4 weeks.

On similar line, in recent past, the Hon'ble Jharkhand High Court in Mahalaxmi Infra Contract Ltd. v. GST Council [W.P.(T) No. 2478 of 2021, dated October 18, 2022] had allowed the assessee to amend its Form GSTR-1 to rectify mistake of wrong GSTIN mentioned against invoices raised on purchaser.

Further, the Hon'ble Calcutta High Court in T.M.C. - Hi-tech. v. Assistant Commissioner State GST [W.P.A. No. 1611 of 2022 dated July 12, 2022] had also directed the Revenue Department to consider the representation of the assessee to rectify Form GSTR-1 and pass a reasoned order after hearing, wherein, certain entries were mistakenly shown in B2C column instead of B2B column in Form GSTR-1 by the assessee.

However, in this regard, a contrary view has been taken by the Hon'ble Telangana High Court in M/S Yokohama India Private Limited v. the State of Telangana [Writ Petition No.15284 of 2022 dated October 31, 2022] stating that, beyond the statutorily prescribed period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in the electronic records. Further, denied the rectification of Form GSTR-1 for error by the supplier in mentioning the details of the recipient in Form GSTR-1 on account of the limitation period prescribed in Section 39(9) the Central Goods and Services Tax Act, 2017 ("the CGST Act") to rectify omission/errors in Form GSTR-1.

Our Comments:

The taxpayers should be permitted to amend any such bonafide mistakes in Form GSTR-1 even after specified due dates for rectification of any omission or error in Form GSTR-1, for the following reasons:

· The situation is wholly revenue neutral and there is no loss to the Govt. Exchequer as the taxes are already deposited.

· It would be unnecessarily prejudiced if the Recipient is not allowed to avail the benefits of ITC on such mistakes, which could not be corrected within specified time period.

· Automated GST Return System with GST ITC matching and mis-matching provisions were not implemented, as envisaged in Section 37, 38, 39, 42, 43 and 43A of the CGST Act and rules made thereunder, which either stands modified or omitted w.e.f October 01, 2022 (Applicable Prospectively only).

B. Assessee permitted to make changes in Form GSTR-3B for the months of July, 2017 and March, 2018

The Hon'ble Karnataka High Court in M/s. Orient Traders v. the Deputy Commissioner of Commercial Taxes (Audit) [Writ Petition No. 2911 of 2022 (T-RES) dated December 16, 2022] has permitted the assessee to make the necessary changes to its Form GSTR-3B returns for the months of July 2017 and March 2018. Held that, allowing the assessee to make such changes, would not cause any prejudice to the Revenue Department nor would it upset the chain of credit under the GST scheme. Further held that, the authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the CGST Act.

Facts of the Case:

M/s Orient Traders ("the Petitioner") is engaged in the supply of machinery, mechanical appliances, parts and its erection, commissioning and installation.

The Petitioner submitted its Form GSTR-3B for the F.Y. 2017-18. The Revenue Department ("the Respondent") issued a notice to the Petitioner on January 20, 2021 calling for books of accounts in order to conduct a Desk Audit and thereafter, an Audit Enquiry was issued on July 12, 2021 under Section 65(6) of the CGST Act read with Rule 101(4) of the Central Goods and Services Rules, 2017 ("the CGST Rules").

While reviewing the returns, the Petitioner noticed that certain inadvertent errors and mistakes were made while filing its returns, wherein, the Petitioner had claimed the ITC under wrong column, and due to oversight and inadvertence, the Petitioner had considered the import Integrated Goods and Services Tax ("IGST") pertaining to July 2017 as local IGST and import IGST pertaining to March 2018 as local Central Goods and Services Tax ("CGST") and State Goods and Services Tax ("SGST"). This error resulted in a mismatch between the Form GSTR-3B and Form GSTR-2A due to which the Respondent stated that the ITC which had accrued to the Petitioner was liable to be disallowed.

The Petitioner had sought permission to rectify these errors by submitting a revised input table on July 29, 2021 but the same was rejected by the Respondent. Thereafter, a Show Cause Notice was issued on January 17, 2022 ("the Impugned SCN") by the Respondent under Section 73(1) of the CGST Act, proposing to disallow the ITC due to such errors.

Being aggrieved, this petition has been filed.

Issue involved in this case:

Whether the Petitioner can be allowed to rectify its GSTR-3B filed for the months of July, 2017 and March, 2018?

Held:

The Hon'ble Karnataka High Court in Writ Petition No. 2911 of 2022 (T-RES) held as under:

· Stated that, the introduction of GST required a major overhaul of the indirect tax regime, including the number and formats of statutory returns that were to be filed and that it was expected that dealers across the country would take a reasonable amount of time to readjust to the new system.

· Noted that, the Petitioner entered certain figures in the wrong column of its Form GSTR-3B returns for the months of July 2017 and March 2018 i.e. during the very first F.Y. after the introduction of GST.

· Observed that, the ITC which is admittedly available to the Petitioner has been entered under the wrong column due to errors which are entirely bona fide and inadvertent therefore, a lenient view is required to be taken, particularly since the tax periods involved relate to the very first year of the GST regime.

· Opined that, the authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the CGST Act.

· Further noted that, the Respondent were aware of the actual figures and error committed by the Petitioner, but has chosen to selectively ignore the IGST import amounts reflected in the ICE GATE portal of the Customs Department for all the months, except those in which the errors have been committed.

· Set aside the the Impugned SCN and held that, the Petitioner is entitled for the limited relief of being permitted to make the necessary changes to its Form GSTR-3B return for the months of July 2017 and March 2018, particularly, since doing so would not cause any prejudice to the Respondent nor would it upset the chain of credit under the GST scheme.

· Directed the Respondent, to permit the Petitioner to carry out the corrections online by reopening the portal for a limited period.

C. Assessee allowed to rectify bonafide errors committed in filing GSTR-1 for F.Y. 2017-2020

The Hon'ble Karnataka High Court in M/s. Wipro Limited India v. the Assistant Commissioner of Central Taxes and Ors. [Writ Petition No. 16175 of 2022 (T-Res) dated January 6, 2023] has allowed the assessee to rectify the errors committed at the time of filing of Form GSTR-1. Held that, the error committed by the assessee in showing the wrong Goods and Services Tax Identification Number ("GSTIN") in the invoices, which was carried forward in the relevant forms is a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances and sufficient cause. Hence, the Circular No. 183, which allows rectification of such bonafide and inadvertent mistakes, would be directly and squarely applicable. Further, allowed the assessee to avail the benefit of the Circular No. 183 for F.Y. 2019-20 also.

Facts of the case:

M/s Wipro Limited India ("the Petitioner") while making supplies to the M/s ABB Global Industries and Services Private Limited, incorrectly mentioned the GSTIN in the invoices of ABB India Limited, which is a completely different and independent juristic and legal entity.

Being aggrieved this petition has been filed by the Petitioner, contending that the error committed in the invoices and relevant forms were bonafide and therefore, as per the Circular No. 183, the Petitioner should be allowed to access the GST portal in order to rectify Form GSTR-1 uploaded between F.Y. 2017-18 and 2018-19 so that the recipient can claim credit of the tax paid by the Petitioner.

Issue involved in this case:

Whether the Petitioner is entitled to rectify the error committed in Form GSTR-1 due to bonafide mistake?

Held:

The Hon'ble Karnataka High Court in Writ Petition No. 16175 of 2022 (T-Res) held as under:

· Observed that, the Circular No. 183 allows rectification of the bonafide and inadvertent mistakes committed by the assessee at the time of filing of Forms and submitting Returns is applicable in peculiar and special facts and circumstances.

· Opined that, the error committed by the Petitioner in the invoices which was carried forward in the relevant forms is clearly a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances and sufficient cause thus, the Circular No. 183 is directly and squarely applicable.

· Held that, the petition be disposed and the Revenue Department is directed to follow the procedure as stated in the Circular No. 183 to the transactions of Petitioner in the F.Y. 2017-18, 2018-19 and 2019-20.

· Stated that, though the Circular No. 183 is only referred to F.Y. 2017-18 and 2018-19, the benefit would be given for the F.Y. 2019-20 also, since there are identical errors committed by the Petitioner in the F.Y. 2019-20.

Our Comments:

It is pertinent to note that, even before such clarification as provided by Circular No. 183, the Hon'ble Madras High Court in Pentacle Plant Machineries Pvt. Ltd. v. Office of the GST Council and ors. [W.P. No. 1022 of 2020, dated 23.02.2021] had allowed the assessee to correct a "human error" while filing Form GSTR-1, wherein, the assessee mentioned the GST number of the purchaser in Uttar Pradesh instead of the GST number of the purchaser in Andhra Pradesh. It was held that, in the absence of enabling mechanism, the assessee should not be prejudiced from availing credit to which they are otherwise legitimately entitled to and the error committed is an inadvertent human error which the assessee should be in a position to rectify the same in the absence of an effective enabling mechanism under statue.

D. Assessee directed to file representation grievances pertaining to technical glitches in its GST portal

The Hon'ble Madras High Court in M/s Lucas TVS Limited v. Superintendent of GST and Central Excise and Ors. [W.P. No. 3636 of 2023 and W.M.P. No. 3720 of 2023 dated February 10, 2023] has directed the assessee to file a representation before the Revenue Department stating grievances pertaining to technical glitches in the GST portal. Held that, no prejudice will be caused to the Revenue Department, if the assessee's representation seeking for release of the blocked funds in the Petitioner's Bank account is considered, on merits and in accordance with law.

Facts:

M/s Lucas TVS Limited ("the Petitioner") filed Form GSTR-3B for the month of July 2017 on August 19, 2017 and due to some technical glitches in the GST portal, they were unable to capture the Input Tax Credit ("ITC") eligibility, availed for the month of July, 2017 in the Form GSTR-3B. Therefore, the Petitioner manually deducted the ITC duly eligible from the gross amount of output GST payable and provided the final net amount of output tax liability to the tune of INR 8,29,34,603/-.

While filing the annual GST return for the Financial Year ("F.Y.") 2017-18 in Form GSTR-9, the Petitioner duly reflected the actual availed ITC and output GST liability. According to the Petitioner, the reconciliation statement filed in Form GSTR-9C, reflected the said difference in the ITC, availed between Form GSTR-3B and Form GSTR-9.

Subsequently, the Revenue Department ("the Respondent") issued summons to the Petitioner on for the alleged short payment of tax in July 2017 and issued a notice to the Petitioner dated December 12, 2022 ("the Impugned Notice") requesting the Petitioner to reconcile the Form GSTR-1, Form GSTR-3B, Form GSTR-2A and Form GSTR-9, already filed by the Petitioner for the month of July 2017.The Petitioner replied to the same and submitted the details to the Respondent.

Meanwhile, the Petitioner was unable to use their account and realised that the funds in their bank account were blocked for withdrawal under Section 79(1)(c)(i) of the CGST Act and no notice for such blocking of funds was given to the Petitioner.

Further, the Respondent served another notice dated January 27, 2023 on the Petitioner seeking details of the excess availment of ITC in Form GSTR-3B as compared to Form GSTR-2A for the period 2017-18, 2018-19, 2019-20 and 2020-21.

Being aggrieved this petition has been filed, on the ground that the Petitioner's representation seeking for release of the blocked funds in the Petitioner's Bank Account with the Respondent be considered.

Issue:

Whether the blocked funds of Petitioner are liable to be released?

Held:

The Hon'ble Madras High Court in W.P. No. 3636 of 2023 and W.M.P. No. 3720 of 2023 held as under:

· Observed that, since a specific request has not been made, the Petitioner will have to give a fresh representation to the Respondent seeking for release of the blocked funds in the Petitioner's bank account.

· Held that, no prejudice would be caused to the Respondent if the Petitioner's representation seeking for release of the blocked funds in the Petitioner's Bank account is considered, on merits and in accordance with law, after giving due consideration to the submissions made by the Petitioner.

· Directed the Petitioner to submit a fresh representation to the Respondent stating grievances within one week.

· Further directed the Respondent to pass fresh order on merits and in accordance with law, after giving due consideration to the grievances raised by the Petitioner in their representation, within a period of 4 weeks. Furthermore, directed the Respondent not to attach funds lying in any other bank account of the Petitioner, till final orders are passed.

E. Refund cannot be denied for an inadvertent error which was subsequently rectified

The Hon'ble Delhi High Court in the matter of M/s. Shri Shyam Footwear v. the Commissioner of Central Goods and Services Tax and Anr. [W.P. (C). 5845 of 2022 dated January 31, 2023] has set aside the order of the Revenue Department rejecting the refund application of the assessee on the grounds that the rectified information submitted by the assessee was not taken into account while passing such order. Held that, the assessee cannot be penalised for an inadvertent error in submitting an erroneous information, which had already been rectified. Further that, it is essential for the Revenue Department to examine the information as submitted by the assessee and process its claim for refund of unutilized ITC in accordance with law.

Facts:

M/s. Shri Shyam Footwear ("the Petitioner") filed a refund application pertaining to the period of October – December, 2020 in FORM-GST-RFD-01 on April 7, 2021 claiming unutilised ITC as prescribed under the CGST Act. The Revenue Department ("the Respondent") denied the refund application on the ground that it was defective.

Consequently, a Show Cause Notice dated May 22, 2021 ("the Impugned SCN") was issued highlighting the error made by the Petitioner. The Petitioner responded to the Impugned SCN in FORM-GST-RFD-09 on June 7, 2021, accepting the error. Further, the Petitioner, rectified the error on the GST Portal vide an annexure. The Petitioner claimed that the reply to the Impugned SCN was reflected on the GST Portal but the annexure thereto was not reflected.

Being aggrieved, this petition has been filed.

The Petitioner contended that the Respondent had not taken note of the rectified information and issued an order dated June 07, 2021 ("Order-in-Original") rejecting the refund claim. Further, the Petitioner had preferred an appeal before the Appellate Authority but it was rejected vide an order dated February 09, 2022 ("Order-in-Appeal"), but it was rejected on the ground that annexure was incomplete and it was necessary for processing the refund, and further, the Petitioner had failed to upload the same at the time of filing of the application.

Issue:

Whether the Order-in-Original and the Order-in-Appeal passed without taking into consideration the rectified information submitted by the Petitioner sustainable?

Held:

The Hon'ble Delhi High Court in W.P.(C) 5845/2022 held as under:

· Observed that, the rectified information as submitted by the Petitioner was not taken into account while passing the Order-in-Original and the Order-in-Appeal.

· Noted that, it was essential for the Respondent to examine the rectified information submitted by the Petitioner and process its claim for refund in accordance with law.

· Held that, the Petitioner cannot be penalised for its inadvertent error in submitting the erroneous information, which was already rectified.

· Set aside the Order-in-Original and Order-in-Appeal.

· Remanded the matter back to the Respondent for fresh consideration.

· Permitted the Petitioner to submit a fresh copy of the rectified information to the Respondent.

· Directed the Respondent to process the refund within a period of 4 weeks. Further directed the Respondent, to afford an opportunity of hearing to the Petitioner, in case the application for refund is rejected for any reason.

F. Revenue Department cannot retain any amount that has been erroneously paid as tax while filling Form GSTR-1

The Hon'ble Andhra Pradesh High Court in M/s. Varshan Enterprises v. Office of the GST Council [Writ Petition No.10637 of 2021, dated December 12, 2022] wherein, the assessee sought to rectify the details of the recipient of the service due to inadvertent mistake while filling Form GSTR-1 or allow refund claim of tax wrongly paid. It was held that, the Revenue Department cannot retain any amount that has been paid as tax as a result of any inadvertent error, where the error committed by the assessee being accidental, it shall have the opportunity to rectify it. Further, directed the assessee to make an application in manual form for refund of the amount.

Facts of the case:

M/s. Varshan Enterprises ("the Petitioner") is involved in the business supplying telecom pipe-laying services in Telangana and had provided its services to M/s Vodafone Mobile Services Limited with office located in Telangana ("Vodafone, Telangana"). M/s Vodafone Mobile Services Limited also has an office in Mumbai, Maharashtra ("Vodafone, Mumbai"). The Petitioner erroneously issued two tax invoices in June, 2018 to Vodafone, Mumbai instead of Vodafone, Telangana, by entering the GSTIN of Vodafone, Mumbai, while entering the details in Form GSTR-1. Due to such error, Vodafone, Telangana was unable to claim the ITC on the IGST paid by the Petitioner.

However, the Petitioner tried to rectify its mistake in May, 2020 but it was available for rectification only up to October 20, 2019. The Petitioner vide letter dated February 2, 2021 requested the Revenue Department ("the Respondent") to either refund the amount or adjust the same with existing liabilities. In reply, The Respondent directed the Petitioner to adhere to the process specified in Circular CBEC-20/16/04/18-GST, dated November 18, 2019 ("the Circular").

The Respondent contended that the Petitioner's claim was time-barred by limitation because it violated Section 54 of the CGST Act which set a two-year limitation period.

Issue involved in this case:

Whether the Respondent was correct in denying the rectification of the details and the refund amount, under Section 54 of the CGST Act which erroneously paid by the Petitioner?

Held:

The Hon'ble Andhra Pradesh High Court in Writ Petition No.10637 of 2021 held as under:

· Observed that, when Rule 97A of the CGST Rules allows manual filing, but restricts to file the same by electronic means on the common portal, as per the Circular.

· Stated that, the amounts that were paid by the Petitioner, furnishing the incorrect details cannot be taken as a tax due to the Respondents, legally. Further, the Respondent cannot contend that the claim of the Petitioner, is barred by limitation. Further, the Petitioner cannot be compelled to follow the Circular, which debarred the Petitioner from manual filing and be compelled to do certain things which are impossible to be performed.

· Further noted that, the amount that was paid by the Petitioner while providing erroneous details cannot be considered as tax owed to the Respondent and hence the Petitioner cannot be barred by limitation.

· Relied on the judgment of the Hon'ble Supreme Court in the matter of Mafatlal Industries Limited v. Union of India [111 STC 467 SC dated December 19, 1996], wherein it was held that one cannot enrich themselves and is bound to return the amounts which were paid wrongfully, therefore, the assessee cannot be prejudiced from availing credit to which they are entitled to.

· Held that, the Respondent cannot retain the disputed amount that are paid to them, due to inadvertent error and the error committed by the Petitioner was accidental and hence it should have the opportunity to rectify it. Further held that, the Petitioner is not barred by limitation.

· Directed the Petitioner to file a manual application for the refund of the amount. Further directed the Respondent to issue orders accordingly within four weeks.

Taxability of Goods Transport Agencies under GST

CA Arun Chhajer

Taxability of Goods Transport Agencies (hereinafter referred to as GTA) under the GST era, will have lots of confusion. So we are discussing the relevant provision and relevant notification issued till June 2023 in detail.

1. Meaning of Goods Transport Agency (GTA) –

As per Para 2(ze) of Notification No 12/2017 - Central Tax (Rate) dated 28th June 2017 "Goods Transport Agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

Meaning of Consignment note: It is not defined in the GST. However, as per Explanation to Rule 4B, Service Tax Rules, 1994, a consignment note is a document issued by a goods transportation agency against the receipt of goods for the purpose of transporting the goods by road in a goods carriage which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are

2. Registration requirement for GTA:

As per Notification No. 05/2017 –Central Tax (CT) dated 28th June 2017, it specifies that the persons who are only engaged in making the outward supplies on which tax will be paid under RCM by the recipient then supplier is exempted from registration.

Also, Section 23(1)(a) of CGST Act, a person will not be liable to registration who are engaged exclusively in the not taxable supply or wholly exempt supplies.

Thus, to summaries GTA is required to register only in the following cases:

ü GTA not exclusively engaged in services of transport of goods by road. For e.g. GTA also having other business verticals in the same PAN, making taxable supplies

ü GTA Service provider who wish to opt forward charge

If recipient is located in the Non-Taxable territory

3. GTA Service - Exempt Supply

GTA Service will be exempt in following categories –

- Transportation for Specified purpose/goods - Refer below Point No 3A
- Recipient is not of 7 specified category - Refer below Point no 3B
- Recipient is a Govt etc registered only for the TDS under GST - refer below Point no. 3C
- Transportation of Goods by road other than GTA - Refer below point no 3D

3A. Transportation of Specified Purpose/Goods –

As per Sr No 21 of NN 12/2017 – CT (Rate) dated 28th June 2017, Services provided by a GTA, by way of transport in a goods carriage of following, is an exempt supply –

a. Agricultural produce;
b. Goods, where consideration charged in a single carriage does not exceed Rs 1,500; (Omitted by NN 04/2022-CT (R) dated 13.07.2022 w.e.f. 18.07.2022)
c. Goods, where consideration charged for a single consignee does not exceed Rs 750; (Omitted by NN 04/2022-CT (R) dated 13.07.2022 w.e.f. 18.07.2022)
d. Milk, salt and food grain including flour, pulses and rice;
e. organic manure;
f. newspaper or magazines registered with the Registrar of Newspapers;
g. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
h. Defence or military equipment.

3B. Recipient is other than 7 Specified Category

NN 32/2017 – CT (Rate) dated 13th Oct 2017 has added a New serial number i.e. Sr. No 21A in the NN 12/2017 CT(Rate). According to this, If the GTA provide the service to a recipient other than 7 specified category then such GTA Service would be exempted. 7 Specified categories of recipient are as under –

(a) any factory registered under or governed by the Factories Act, 1948; or

(b) any society registered under the Societies Registration Act, 1860or

(c) any co-operative society established; or

(d) any person registered under the Goods and Services Tax Act; or

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not including association of persons; or

(g) any casual taxable person.

3C. Recipient is a Govt etc registered only for TDS under GST

As per NN 28/2018-CT(Rate) dated 31.12.2018 a new serial number 21B is added in the exemption NN 12/2017 CT (Rate). Services provided by a GTA, by way of transport of goods in a goods carriage, to a Department or Establishment of the Central Government or State Government or Union territory; or local authority; or Governmental agencies, which has taken registration only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services, would be exempted in the GST.

3D – Goods Transport Operator

If the Supplier (Transporter) does not issue the consignment note (Bilty/Lorry Receipt by whatever name

called) then such service of Transportation of Goods by Road (Like Tempo, Auto etc) will not be categorised as GTA Service and it is an Exempt Supply as per Serial No 18 of NN 12/2017 – CT (R) dated 28th June 2017.

4. Process for opting forward charge by GTA –

1. Submit the declaration in Annexure V by 15th March before the start of the Financial Year in case of existing tax payer. For ex: If a GTA wishes to opt for paying tax under forward charge for FY 24-25, then it needs to submit a declaration on or before March 15, 2024. (One time extension for the FY 2023-24 by 31st May, 2023).
2. A GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option of forward charge by making a declaration in Annexure V before the expiry of 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration whichever is later.".

   Further, the GAT who has opted forward charge, has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him.

5. RCM on supply provided by unregistered GTA on or after 13th October 2017

If GTA is unregistered then whether RCM is applicable or not, need to analyse. According to Section 9(4) of CGST Act, if the Supplier is Unregistered and Recipient is registered then such registered recipient will pay the tax under reverse charge. This Section is suspended from 13th Oct'17 and then Section 9(4) has been amended.

However, it is important to note that GTA is covered under reverse charge by virtue of section 9(3) which is not suspended. Therefore, even if the GTA is unregistered, still the recipient will be liable to pay the tax under RCM.

6. Reporting of GTA Transaction by Supplier and Recipient in GSTR 3B and GSTR 1

Transaction is falling under Reverse Charge

Reporting by the registered recipient paying GST under RCM, of GTA Service

a. in GSTR 3B –

i) Under Table 3.1.d 'Inward Supply liable to Reverse Charge' and

ii) Take the Input Tax Credit by reporting in Table 4.A.3 (Inward Supply liable to reverse charge other than 1 & 2 above)

b. in GSTR 1 –

GSTR 1 is the details of outward supply however the GTA Service is the Inward Supply for the recipient therefore it will not be reported in GSTR 1 by the recipient. Only Self Invoice numbering is to be reported in the table 13, if GTA is unregistered in the GST.

Reporting by the Registered GTA on which tax is paid by recipient under RCM–

o In GSTR 1 –

a) Under Table 4B if it is B2B (on which recipient is liable to pay the tax under RCM) or

b) Under Table 8 - If it is exempt Supply (Like falling under serial no 21A, 21B, 21, 18 of NN 12/2017 – CT (Rate) etc.

o In GSTR 3B - It will be reported as Outward Supply under GSTR 3B Table 3.1 (Ideally it should come under 3.1.a being the outward taxable supply however we will not be able to proceed with the data if we put the taxable without putting the corresponding tax amount against the 3.1.a.

Therefore, in my view, we need to report under Table 3.1. (c)

Transaction is falling under Forward Charge

Reporting by the Supplier (GTA) who has opted Forward charge:

a) GSTR-1

- under Table 4A (Not under 4B) if it is taxable supply and made to registered recipient,
- under Table 5A - Taxable supply made to unregistered inter-state and having large Invoice value,
- under Table 6A/6B/6C - Supply made to Export / SEZ / Deemed Export
- under Table 7 - Taxable supply to unregistered inter-state other than table 5,
- Under Table 8 - If it is exempt Supply.

b) In GSTR-3B - it will be reported as Outward Supply under Table 3.1 (a). Also it will be reported in the Table 3.2 if it is supplied inter-state to unregistered recipient. Table 3.2 is only the disclosure and does not create any tax liability.

Registered recipient:

o In the GSTR 3B

- If ITC is eligible - Will be reported in Table 4A(5) of GSTR-3B for availing ITC. The details of Invoices raised by registered GTA will be auto-populated in GSTR – 2A/2B of the registered recipient.
- If ITC is not eligible – Then add in the table 4A5 and then reverse in table 4B (For detail please refer circular 170/02/2022 dated 6th July 2022

7. Rate of Tax –

Forward/Normal Charge – GTA will charge GST@ 5% or 12%

Reverse Charge - Recipient will pay the tax @5% and be eligible to take full input tax credit subject to the other condition of Sec 16 to 18 of CGST Act.

8. Service Accounting Code –

Transportation of Goods by Road will have the SAC Code 9965 or 9967

9. Place of Supply and Nature of Transaction under Reverse Charge on GTA –

If location of Supplier (LOS) and Place of Supply (POS) are in the same state/ Union Territory (UT) then the supply will be intra-state (Section 8 of IGST Act) and CGST & SGST will be paid by the registered recipient under RCM.

Vice versa If LOS and POS are in two different states or two different Union Territories or in one state or one UT then the supply will be interstate (Section 7 of IGST Act) and ICGST will be paid by the registered recipient under RCM.

Place of Supply for the transportation of goods by road is determined as per Section 12(8) of IGST Act (if LOS and LOR both are in India) and per Section 13(9) of IGST Act (if LOS and LOR any one is outside India).

For example, Mr A is a registered person in Delhi and has purchased goods from Rajasthan. Goods are transported by road to Delhi by a transporter of Rajasthan. Therefore we can say that the Location of Supplier is Rajasthan. Now the recipient (being Mr A, as he is liable to pay the freight) is from Delhi. Therefore Place of Supply as per Section 12(8) is Delhi being the location of the recipient. Hence it is an Inter State Supply as per Section 7 of the IGST Act and Mr A will pay IGST under RCM.

10. Self-Invoice as per Section 31(3)(f) of CGST Act-

As per Section 31(3)(f) a registered person who is liable to pay tax u/s 9(3) or Section9(4) of CGST Act shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered.

11. Payment Voucher as per Sec 31(3)(g) of CGST Act-

A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

12. E Invoice for GTA-

As per the NN 13/2020 – CT(Rate) dated 21.03.202 that invoice shall be prepared in prescribed documents, in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person or for exports.

Further the limit has been reduced from Rs 10 Cr to Rs 5 Cr from 1st August 2023. However, GTA is covered by the Rule 54(3) and therefore as per the above notification, GTAs are exempted from E Invoice.

FRACTURED NOTICES-A LUSCIOUS CANDY TO TAX PAYER

CA Aanchal Kapoor

Audi alteram partem meaning 'let the other side be heard'

That no person can be adjudged guilty without being given an opportunity to answer charges against such person. To hear a person, such person should be "put at notice", which clearly states various aspects about the charges or allegations in such notice, so that the person can understand the allegations and answer them.

Show Cause Notice – a 'condition precedent' to a demand. However, cases have been observed where Registrations have been cancelled and Refunds have been rejected without proper opportunity of being heard ignoring the Principle of Natural Justice.

This article is an attempt to compile various Supreme Court and High Court Judgements on the issue of restoration of Registration cancellation due to vague Show Cause Notices, Orders travelling beyond Show Cause, SCN based on assumptions and Refund rejections without proper opportunity of being heard.

(I) Restoration of Cancelled registration on ground of vague SCN without specifying the grounds mentioned in Section 29 or without any inquiry being undertaken or without opportunity of being heard in person or ignoring the reply.

Sr. No.	Name & Citation	Particulars
1.	**[2022] 141 taxmann.com 265 (Allahabad)** **HIGH COURT OF ALLAHABAD** **Apparent Marketing (P.) Ltd.** ***v.*** **State of U.P.***	Registration once granted, could be cancelled only under five circumstances detailed in section 29 - Said section does not contain any provision that registration could be cancelled merely by describing assessee as bogus without any supporting material - It was not a case of department that assessee had not commenced business within six months of grant of registration or he had not furnished returns continuously for six months – Further initial show cause notice issued to assessee was vague as it did not mention any of circumstances mentioned in section 29 or any other specific charge with supporting material - Thus confirmation of cancellation by describing assessee as bogus in subsequent proceedings mean that orders were issued without granting any opportunity to assessee to rebut charge of being bogus - Principles of natural justice were also violated at each stage of proceedings

Sr. No.	Name & Citation	Particulars
2.	**[2022] 141 taxmann.com 263 (Allahabad)** **HIGH COURT OF ALLAHABAD** **Drs Wood Products** ***v.*** **State of U.P***	GST : Where without relying upon any report or any inquiry, show cause notice issued to petitioner alleging that 'taxpayer was found non-functioning/non-existing at principal place of business' and application for revocation of cancellation of registration was rejected without recording any reasons; registration of petitioner was directed to be renewed forthwith; petitioner was harassed therefore, State Government was liable to pay cost of Rs. 50,000 to petitioner
3.	**[2022] 141 taxmann.com 348 (Gujarat)** **HIGH COURT OF GUJARAT** **Vinayak Metal** **v.** **State of Gujarat***	Registration - Cancellation of - Show cause notice issued to petitioner was absolutely vague, bereft of any material particulars - Impugned order was also vague, non-speaking order, cryptic in nature and reason of cancellation were not decipherable therefrom - Cancellation of registration to make dealer liable to both civil and penal consequences - Principles of natural justice were violated - Show cause notices and consequential orders were to be quashed - Matter was remitted to Concerned Authority for denovo proceedings in accordance with law - Consequential respective GST registration to be revived [Section 29 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017] [Para 7][In favour of assessee]
4.	**[2022] 137 taxmann.com 332 (Gujarat)** **HIGH COURT OF GUJARAT** **Aggarwal Dyeing and Printing Works** **v.** **State of Gujarat***	Registration - Cancellation of registration - Non-speaking order - Department ought to have incorporated specific details to contents of a show cause notice - Any prudent person would fail to respond to a SCN bereft of details thereby making mechanism of issuing SCN a mere formality and an eye wash - Department had failed to extend sufficient opportunity of hearing before passing impugned order, in spite of specific request for adjournment - Impugned order was non-speaking, cryptic in nature and reason of cancellation was not decipherable therefrom - SCN and consequential impugned order were to be quashed and set aside [Sections 29 and 30 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017] [Paras 14, 15, 15.1, 16 and 19] [In favour of assessee]
5.	**[2022] 141 taxmann.com 226 (Gujarat)** **HIGH COURT OF GUJARAT** **Vahanvati Steels** **v.** **State of Gujarat***	Registration - Cancellation - Vague SCN and order - In earlier round of litigation, show cause notice proposing cancellation of petitioner's GST registration, was set aside being vague and unreasoned, with liberty given to assessing officer to issue fresh reasoned SCN - Contrary to expectation of issuing fresh SCN, assessing officer went ahead with cancellation of GST registration again with equally vague and unreasoned order - Petitioner's application for restoration of registration was also rejected by a totally absurd and vague order - HELD : Without issuing any notice to assessing officer for contempt of Court, as pleaded by petitioner, he was warned that in future, if he would pass any such vague order or issue vague SCN, it would be his last day in office - Impugned orders were quashed and registration of petitioner was restored [Section 29 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act 2017 - Article 226 of Constitution of India][Paras 7 to 13]
6.	**[2022] 140 taxmann.com 492 (Gujarat)** **HIGH COURT OF GUJARAT** **Shah Industries** **v.** **State of Gujarat***	Show cause notice - Cancellation of GST registration - Vague SCN - Show cause notice was bereft on any material particulars or information - No effective response of any sort can be given to such vague notice - HELD : Show cause notice was to be quashed with liberty to Department to issue fresh show cause notice containing all necessary information and details for purpose of effectively responding to same [Sections 29, read with section 73 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017 - Article 226 of Constitution of India][Paras 4 and 5] [In favour of assessee]
7.	**[2022] 138 taxmann.com 109 (Karnataka)** **HIGH COURT OF KARNATAKA** **Unique Instruments and Mfrs. (P.) Ltd.** **v.** **State of Karnataka***	GST : Cancellation of registration without providing opportunity of hearing is not sustainable; mere consideration of reply and submissions do not amount to affording an opportunity of hearing. Registration - Cancellation of registration - Personal hearing - Petitioner challenged impugned order cancelling registration contending that no opportunity of hearing was afforded before passing said order - Petitioner's argument was that mere consideration of reply and submissions would not be sufficient and opportunity of personal hearing was to be granted - HELD : Examination of reply and submissions by itself would not indicate that assessee was present during hearing of proceedings leading to cancellation of registration - Opportunity of hearing is a statutory mandate without which there shall be no cancellation of registration - Order of cancellation was to be set aside and matter was to be remitted for reconsideration [Section 29 of Central Goods and Services Tax Act, 2017/Karnataka Goods and Services Tax Act, 2017] [Para 2] [In favour of assessee]
8.	**[2020] 119 taxmann.com 113 (Bombay)** **HIGH COURT OF BOMBAY** **Great Sands Consulting (P.) Ltd.** **v.** **Union of India***	GST : Where Competent Authority cancelled registration of assessee stating that in response to show cause notice, no reply was given by assessee, since it was evident from record that assessee had submitted reply to show cause notice within time prescribed in notice, impugned order cancelling registration of assessee deserved to be set aside

Sr. No.	Name & Citation	Particulars
9.	**[2020] 120 taxmann.com 279 (Allahabad)** **HIGH COURT OF ALLAHABAD** **Ashwani Agarwal** **v.** **Union Of India***	Section 29, read with section 30, of the Central Goods and Services Tax Act, 2017/Section 29, read with section 30, of the Uttar Pradesh Goods and Services Tax Act, 2017 - Registration - Cancellation of - Registration of assessee under GST was cancelled by Superintendent, - Where GST authority cancelled registration of assessee without considering reply of assessee to show cause notice, impugned order was liable to be set aside and matter was to be decided afreshAssessee challenged impugned order on ground that it had filed reply to show cause notice and thus, impugned order was passed without application of mind - Whether since impugned order mentioned response of assessee to show cause notice, contrary order passed was liable to be set aside and issue was to be decided afresh - Held, yes [Paras 9 and 10][In favour of assessee]
10.	**2022] 138 taxmann.com 284 (TRIPURA)** **HIGH COURT OF TRIPURA** **OPC Assets Solutions (P.) Ltd.** **v.** **State of Tripura**	**– Show cause notice was issued to petitioner-assessee in printed blank format seeking to cancel registration on ground of 'non-compliance of any specified provisions in GST Act or Rules made thereunder as may be prescribed' but it was not specified in show cause notice** which provisions of GST Act or Rules were not complied with which was likely to result into cancellation of registration of assessee **- Thus, Show Cause Notice asked assessee to meet with non-existent and non-disclosed grounds**
11.	**[2022] 136 taxmann.com 138 (Jharkhand)** **HIGH COURT OF JHARKHAND** **NKAS Services (P.) Ltd.** **v.** **State of Jharkhand**	- HELD: **Unless foundation of case was laid down in SCN, assessee would be precluded from defending charges - Impugned SCN did not fulfil ingredients of proper SCN and amounted to violation of principles of natural justice** - Impugned SCN and summary of SCN were quashed

(II) Order issued on grounds other than grounds specified in SCN:

12.	**[2006] 2006 taxmann.com 1488 (SC)** **SUPREME COURT OF INDIA** **Commissioner of Customs, Mumbai** **v.** **Toyo Engineering India Ltd.**	Section 129B of the Customs Act, 1962 - Appeal-New grounds - submissions not made before adjudicating authority and lower appellate authority, cannot be raised before CESTAT **The Department cannot be travel beyond the show cause notice. Even in the grounds of appeals these points cannot been taken.**
13.	**[2022] 138 taxmann.com 436 (Gujarat)** **HIGH COURT OF GUJARAT** **Pantone Enterprises (P.) Ltd.** **v.** **Union of India***	Registration - Cancellation of registration - Violation of principles of natural justice - Registration was cancelled on ground of availing fake input tax credit while applicants had done no activity - However, show cause notice issued by department was bereft of material particulars - Reasons assigned was without any basis being found in SCN - Sufficient opportunity was not provided while adjudicating such SCN and impugned order also lacked reasons - Department had chosen to proceed on ground other than reason given in original SCN - While rejecting application for revocation of cancellation of rejection, principles of natural justice was also not followed - Department failed to adhere to instructions issued by CBIC - Impugned SCN and consequential orders cancelling registration and further order rejecting revocation application seeking restoration of registration were to be quashed and set aside -
14.	**[2007] 11 STT 6 (SC)** **SUPREME COURT OF INDIA** **Commissioner of Central Excise, Nagpur** **v.** **Ballarpur Industries Ltd.**	The Supreme court held that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest; where a certain matter has not been invoked in the show cause notice, it would not be opened to the Central Excise Officer to invoke the same subsequently.

(III) Notice must contain all essential details and should not be based on assumptions

Sr. No.	Name & Citation	Particulars
15.	**[2007] taxmann.com 728 (SC)** **SUPREME COURT OF INDIA** **Commissioner of Central Excise, Bangalore** **v.** **Brindavan Beverages (P.) Ltd**	Show cause notice - is foundation on which Department has to build up the case - allegations have to be specific and not vague, lacking in details or unintelligible in order to give proper opportunity to noticee to defend.
16.	**Oudh Sugar MillsLtd. vs.** **Union of India 1978 ELT J172**	It stated that the findings based on such show cause notice are without any tangible evidence and are based only on inferences involving unwarranted assumptions.
17.	**[2022] 137 taxmann.com 474 (Jharkhand)** **HIGH COURT OF JHARKHAND** **Godavari Commodities Ltd.** **v.** **State of Jharkhand**	- HELD : Entire adjudication proceedings had been carried out in stark disregard to mandatory provisions and in violation of principles of natural justice - Adjudication order was non-est in eye of law, as same had been passed without issuance of proper SCN - Summary of SCN, adjudication order and summary of orders issued were to be quashed and set aside
18.	**[2021] 131 taxmann.com 230 (Jharkhand)** **HIGH COURT OF JHARKHAND** **Nkas Services (P.) Ltd.** **v.** **State of Jharkhand**	Show cause notice under section 74 issued by Deputy Commissioner to petitioner had been challenged on ground that impugned show cause notice was vague and did not disclose offence and contraventions and, thus, it did not fulfil ingredients of a notice in eyes of law

		- Perusal of show cause notice showed that it was a notice issued in a format without even striking out any irrelevant portions and without stating contraventions committed by petitioner, i.e., whether it was actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax

(IV) Any application for refund can be rejected only after affording sufficient opportunity of hearing to the party.

Sr. No.	Name & Citation	Particulars
19.	**[2021] 124 taxmann.com 556 (Madras)** **HIGH COURT OF MADRAS** **World Home Textiles Inc** **v.** **Additional Commissioner (Appeals), Tiruchirappalli** **ABDUL QUDDHOSE, J.** **W.P. (MD) NO. 17471 OF 2020** **DECEMBER 10, 2020**	GST : Where assessee filed an application before Competent Authority for refund of CGST and said Authority without affording opportunity of hearing to assessee rejected application for refund, impugned order deserved to be quashed and matter was to be remitted back to Competent Authority for fresh consideration and to pass final order on refund application after affording a fair hearing to assessee Competent Authority without affording opportunity of hearing to assessee rejected application for refund - Appellate Authority in his order dated 20-8-2020 even though confirmed that no hearing was afforded to assessee by Competent Authority and despite same dismissed appeal of assessee - Whether when rule 92(3) makes it clear that hearing is mandatory before rejecting any application for refund, Held, yes – Whether impugned orders deserved to be quashed - Held, yes - Whether matter was to be remitted back to Competent Authority for fresh consideration and to pass final order on refund application after affording a fair hearing to assessee - Held, yes [Paras 7 and 8] [In favour of assessee]
20.	**[2022] 142 taxmann.com 498 (Gujarat)** **HIGH COURT OF GUJARAT** **Varidhi Cotspin (P.) Ltd.** **v.** **State of Gujarat*** **N.V. Anjaria and** **BHARGAV D. KARIA, jj.** **R/SPECIAL CIVIL APPLICATION NO. 5172 of 2022** **JULY 6, 2022**	GST : Order rejecting refund claim based on ground not mentioned in show cause notice was not sustainable Application filed for refund of IGST paid on import of goods under Export Promotion Capital Goods Scheme (EPCG) was rejected - Impugned order had rejected refund claim for reason that assessee had claimed wrong input tax credit but said reason was not mentioned in show cause notice (SCN) - Since order was passed based on ground other than mentioned in SCN, opportunity to meet with ground mentioned in SCN had not been given to petitioner Impugned order was to be set aside - Department was directed to consider refund claim afresh and pass order [Section 54 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017] [Paras 5, 6, 6.1 and 7]
21.	**[2023] 148 taxmann.com 462 (Jharkhand)** **HIGH COURT OF JHARKHAND** **C J DARCL Logistics Ltd.** **v.** **Union of India*** **APARESH KUMAR SINGH, ACJ. AND DEEPAK ROSHAN, J.** **W.P.(T) NO. 215 OF 2022** **FEBRUARY 9, 2023**	GST : Where order-in-original rejecting application for refund of tax mistakenly deposited was passed on grounds which were never part of original show cause notice and, further, petitioner's reply to show cause notice was not considered at all, principles of natural justice were violated; show cause notice and order-in-original were to be quashed HELD : Authority cannot go beyond scope of show cause notice to create new ground at later stage of adjudication - Further, neither proper show cause notice issued nor any opportunity of hearing having been given to petitioner, principles of natural justice were violated - Order- in appeal was not deliberated on this issue and simply confirmed order-in-original - Since show cause notice was vague and cryptic in nature and order-in-original passed was beyond scope of show cause notice, both were liable to be quashed and to be set aside [Section 54, read with section 17 and 49, of Central Goods and Services Tax Act, 2017/Jharkhand Goods and Services Tax Act, 2017 - Rule 92 of Central Goods and Services Tax Rules, 2017/Jharkhand Goods and Services Tax Rules, 2017] [Paras 11, 12 and 13]
22.	**[2021] 125 taxmann.com 180 (Bombay)** **HIGH COURT OF BOMBAY** **BA Continuum India (P.) Ltd.** **v.** **Union of India** **UJJAL BHUYAN AND ABHAY AHUJA, JJ.** **WRIT PETITION (L) NO. 3264 OF 2020** **MARCH 8, 2021**	Where refund claim of petitioner-company engaged in information technology services was rejected without granting it an opportunity of being heard, order was passed in violation of proviso to rule 92(3) of CGST Rules and also in violation of principles of natural justice and matter was to be remanded to original authority for fresh decision Refund - Tax - Whether there is a clear legal mandate that if an application for refund is to be rejected, same can only be done after giving applicant an opportunity of being heard - Held, yes - Petitioner-company was engaged in business of providing information technology and information technology enabled services to customers located outside India - Petitioner-company had filed applications for refund of unutilized input tax credit on export services - Respondent-Authority by impugned order rejected petitioner's claim without giving petitioner an opportunity of being heard – Whether impugned order was in violation of proviso to rule 92(3) of CGST Rules and also in violation of principles of natural justice - Held, yes - Whether therefore, matter was to be remanded back to original authority for a fresh

		decision in accordance with law after giving an opportunity of being heard to petitioner - Held, yes [Paras 34.1, 37 & 40]
23.	**[2021] 125 taxmann.com 323 (Karnataka)** **HIGH COURT OF KARNATAKA** **Mohalla Tech (P.) Ltd.** **v.** **Union of India*** **B.M. SHYAM PRASAD, J.** **WRIT PETITION NO. 10774 OF 2020 (T/RES)** **OCTOBER 14, 2020**	GST : Where Competent Authority vide order dated 30-5-2020 issued in Form GSTRFD- 06 rejected assessee's application for refund without affording opportunity of being heard, impugned order required to be quashed Assessee submitted before High Court that impugned order was without opportunity of being heard as contemplated under proviso to rule 92(3) - Whether provisions of proviso to rule 92(3) stipulate a right to be heard and as in instant case this right was not extended to assessee, impugned order required to be quashed - Held, yes - Whether proceedings deserved to be restored for consideration by Competent Authority in accordance with provisions of Act and Rules - Held, yes [Paras 3 and 4] [In favour of assessee]
24.	**[2021] 127 taxmann.com 137 (Jammu & Kashmir)** **HIGH COURT OF JAMMU AND KASHMIR** **Navneet R. Jhanwar** **v.** **State Tax Officer** **SANJEEV KUMAR AND SANJAY DHAR, JJ.** **WP(C) NO. 443 OF 2021** **MARCH 17, 2021**	GST : Where pursuant to show cause notice refund claim of petitioner was rejected by respondent by impugned order and grounds on which impugned order had been passed were never proposed to petitioner nor was he ever given any opportunity to explain his position, it was clear case of violation of principle of natural justice as per proviso to rule 92(3) Held, yes - Whether grounds on which impugned order had been passed were never proposed to petitioner nor was he ever given any opportunity to explain his position, it was, thus, a clear case of violation of principle of natural justice as per proviso to rule 92(3) - Held, yes - Whether impugned order was to be quashed and case was to be remanded back to revenue for passing order afresh after putting petitioner to proper show cause notice and after affording him a reasonable opportunity of being heard - Held, yes [Paras 11, 12 and 15]
25.	**[2023] 147 taxmann.com 152 (Bombay)** **HIGH COURT OF BOMBAY** **Adisan Laboratories (P.) Ltd.** **v.** **Union of India*** **NITIN JAMDAR AND GAURI GODSE, JJ.** **WRIT PETITION NO. 7476 OF 2022** **NOVEMBER 21, 2022**	GST : Notice being neither received by petitioners nor made available on GSTN portal before rejecting claim of petitioners for refund, opportunity of hearing as envisaged under rule 92 of CGST Rules, 2017 was impaired; application was to be restored Refund - Unutilized ITC - Natural justice - Notice was neither received by Petitioners nor was made available on GSTN portal before rejecting claim of petitioners for refund of Input Tax Credit accumulated as a result of inverted duty structure - HELD : Opportunity of hearing to petitioners as envisaged

		under rule 92 of Central Goods and Services Tax Rules, 2017 was impaired - Department was directed to follow methodology under rule 92 ibid [Section 54 of Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017/Rule 92 of Central Goods and Services Tax Rules, 2017/Maharashtra Goods and Services Tax Rules, 2017 [Paras 8 and 9] [In favour of assessee]
26.	**[2023] 148 taxmann.com 164 (Rajasthan)** **HIGH COURT OF RAJASTHAN** **Chandni Crafts** **v.** **Union of India*** **ARUN BHANSALI AND ASHOK KUMAR JAIN, JJ.** **D.B. CIVIL WRIT PETITION NO. 5460 OF 2020** **JANUARY 17, 2023**	GST : Violation of natural justice by Adjudicating Authority cannot be cured by sufficiency of natural justice in appellate authority's proceedings Refund - Natural justice - Issuance of notice in Form GST RFD-08 seeking reply prior to passing of refund orders was essential - Applicant was also to be given opportunity of hearing - In absence of same, principles of natural justice was violated by Adjudicating Authority- Order could not be affirmed by appellate authority only on account of fact that appellate authority had itself provided opportunity of hearing - Both orders were not sustainable and matter was to be remanded to Adjudicating Authority - A failure of natural justice by authority of first instance cannot be cured by sufficiency of natural justice in appellate body, as same would encourage tendency of authorities to give a short shrift to proceedings before them [Section 54 of Central Goods and Services Tax Act, 2017/Rajasthan Goods and Services Tax Act, 2017 - Rule 92 of Central Goods and Services Tax Rules, 2017/Rajasthan Goods and Services Tax Rules] [Paras 11 to 19] [In favour of assessee]

SECTION 270A: PENALTY FOR UNDERREPORTING AND MISREPORTING OF INCOME

CA Rohit Kapoor

Introduction

The Penalty u/s 271(1)(c) of the Act has been probably one of the most litigated provision of the Income Tax Act. However, to rationalize the same, Legislation has revamped the entire penalty provisions from shifting the defaults of 'concealment or furnishing inaccurate particulars of income' to new concepts of 'Underreporting or Misreporting of the Income' vide newly inserted Section 270A with effect from 01/04/2017. As the new penalty provisions is applicable from AY 2017-18 onwards, for which the Assessments are presently completed. The levy of penalty for the concealment of income in respect of the assessment year prior to assessment year 2017-18 would continue to be governed by the earlier provision, that is, section 271(1)(c) of the Act. This is also evident from the amendment in section 271 of the Act by insertion of sub-section (7), which reads as follows:

Section 271(7)

"The provisions of this section shall not apply to and in relation to assessment for the assessment year commencing on or after the 1st day of April 2017".

1. Tax Penalty rates

The penalty in case of 'under reporting income' is '@ 50%' of amount of tax payable on under reported income and penalty in case of 'under reported income in consequence of misreporting of income' is @ 200% of amount of tax payable on under reported income.

2. Satisfaction vis-a-vis mentioning separate charge as done in earlier regime.

Earlier, the penalty was for provided for two separate charges viz concealing the particulars of income or furnishing of inaccurate particulars of income. These two charges were understood to be distinct from each other. The Assessing Officer therefore was required to identify the specific charge with satisfaction and record the same in the assessment order. This enabled the assessee to know the specific charge framed against him. The new penalty now has only one charge ie under-reporting, and therefore no satisfaction is required which is evident from Section 270A(2). The same is evident from the fact that in the first instance every income is underreported income and misreporting income is out of the under reporting income. The AO may not have to arrive at a specific satisfaction in the assessment proceedings about under-reporting nonetheless the application of mind would be inevitable while initiating penalty proceedings. Therefore, the earlier ground taken by the assessee that the penalty was issued without mentioning any charge will not hold good in the new provision. However, it is mandatory for the AO to specify the limb of Section 270A(9) of the Act which is attracted in order to establish that the case falls in under reporting in consequence of misreporting.

3. Section 270A(1)

This Section empowers Assessing Officer or Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

3.1 The section employs language "may direct" implies that the power conferred is discretionary. The same has been clarified by the Supreme court in the case of Hindustan Steel Ltd. v. State of Orissa[1972] 83 ITR 26 (SC) Section 270 of the Income-tax Act, 1961 - Penalty - General - Penalty is not to be imposed if there is no conscious breach of law.

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute"

3.2 The Penalty can be levied either by A.O. or C.I.T. (Appeals) Joint Commissioner (Appeals) or by Pr. Commissioner of income tax / Commissioner of income tax and the proceedings may be any assessment proceeding before A.O. or proceedings before C.I.T.(Appeals) or revisionary proceedings U/s 263 before Pr. Commissioner of income tax / Commissioner of income tax.

4. The section 270A(2), as such, does not define 'underreported'; however, it provides for the circumstances in which a person shall be considered to have underreported his income. The base of penalty is finding to the effect that person has 'underreported' his income. Thus, it is only a guiding factor in the form of a fiction. Having regard to that, prima facie, the intention of the legislature is to consider the applicability of penalty proceedings automatically and merely on the basis of the difference. To put it differently, for considering initiation of penalty proceedings, the difference would be starting point. However, that may not be necessarily conclusive, as it would be subject to other provisions of the section. One significant departure noted from the earlier provision is that recording of satisfaction by the authority, for initiating the penalty, is absent. Does this really make a difference? The authority has to find underreporting of income and based thereon take the appropriate action. That would naturally necessitate application of mind to the facts and accordingly initiate the action as well as record the same in proceedings and/or the notice to be issued to the assessee and the like. The person shall be considered to have under-reported his income, if—

Section 270A(2)a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished 74[or where return has been furnished for the first time under section 148];(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;(e) the amount of

deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where 75[no return of income has been furnished or where return has been furnished for the first time under section 148];(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.5. The amount of under-reported income as per section 270A(3) shall be,—(i) in a case where income has been assessed for the first time,—(a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;(b) in a case where 76[no return of income has been furnished or where return has been furnished for the first time under section 148],—(A) the amount of income assessed, in the case of a company, firm or local authority; and(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);(ii) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:Provided that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula—

(A — B) + (C — D)

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:

Provided further that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

Explanation.—For the purposes of this section,—(a) "preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;(b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.5.1 The Income is assessed greater than processed Income. {Sec270A(2)(a) r.w.t. 270A(3)(i)(a)}

The point to be noted is that in case of first assessment, the additions are being seen not with reference to the return filed by the assessee but with reference to the income determined after processing of return u/s. 143(1)(a). This means that in respect of any additions which occur between returned filed by the assessee and its processing u/s. 143(1)(a), no penalty is leviable.

For Eg;- XYZ Ltd had filed Return for Rs 10 Lakh after claiming exemption U/s 80IAB for say ₹ 25 lakh. The return was filed in December 2022 for A.Y. 2022-23. The processing was completed on 15th April 2023 at ₹35 Lakh by disallowing deduction as return was filed late. The assessment U/s 143(3) was completed at ₹ 50 lakhs. The under reported income is ₹15 lakhs (50-35) and not Rs 40 Lakh.

5.2 The Assessment completed in case where no return has been filed. Section 270A(2)(b) r.w.t. Section 270A(3)(i)(b)

a) In case of firm/company/AOP/Local authority quantum of under reported income shall be income assessed.

b) In any other case the difference between the amount of income assessed and maximum amount not chargeable to tax.

For Example, Mr. X (Senior Citizen) has not furnished the return of income for AY 2017-18 and the assessment has been framed u/s 144 at ₹10 Lakh. In this case the under reporting income shall be ₹7 Lakh (i.e. ₹10 lakh – ₹ 3 Lakh Basic exemption limit).

However, the tax payable on the under reported income has been discussed in section 270A(10). As per the said section where the assessee has not furnished the return for the first time in that case the tax shall be calculated by increasing the under reporting income by exemption limit. Therefore, in the given case the tax payable on under reporting income shall be (Rs. 7 lakh + Rs. 3 Lakh) Rs. 123600/- The quantum of penalty will depend upon the nature i.e. under reporting income/misreporting income.

5.3 Under the earlier provisions of law penalty in search cases for non-specified years were covered u/s 271(1)(c). However, Section 271AAB deals with penalty for specified previous year being the year of search or the year which has ended before the date of search and the due date of filing of return of income u/s.139(1) has not expired. Section 271(1)(c) covered cases of penalty in search cases for the year prior to the specified years. These provisions are covered by Explanation (5A) of section 271(1)(c). However, it is interesting to note that the newly inserted section 270A, substituting the entire section 271(1)(c), there is no corresponding deeming fiction created for search cases for non-specified years. The specified years has duly been excluded in 270A(6) (e) therefore, the penalty for specified year of undisclosed income as referred in Section 271AAB in case of search will be covered by Section 271AAB and not by Section 270A.

For Example, if the search took place on 4th July 2019, the specified Assessment year will be AY 2019-20 and AY 2020-21. The assessee has not filed the return for AY 2017-18 and filed the return u/s 153A and has declared the income in his 153A return. Now the larger question arise that the said case will be covered in clause (a) or clause (b) of Section 270A(3)(i). It is important to note that the amendment was made ibid in Section 270A(3)(i)(b) and the word added was that where the return was filed u/s 148 for the first time in that case it will be covered in clause (b) and not under clause (a). In a case where return u/s 153A for non-specified year is filed for the first time is not covered in clause (b) and as such, the amount of underreported income in that case will be assessed income minus the returned income. In that case no penalty will be levied if income assessed is same as income declared in first ROI filed u/s 153A. However, the said position is not applicable from 01.04.2021 as the erstwhile section 153A has been abolished and search assessments will be framed under section 147 w.e.f. search initiated after 01.04.2021

5.4 Adjustment of brought forward loss with underreporting income. Section 270A(2)(g) r.w.t. explanation clause (b) of Section 270A(3).

It may a case where there is opening brought forward loss and the addition has been suggested by the AO during the current year. The interesting issue fall out would be if due to carry forward losses, despite of additions made during assessment year under consideration, income assessed remains Nil, nothing would get quantify as unreported income due to methodology prescribed u/s 270A(2).

5.5 The one more which has not been plugged u/s 270A(2) in that if the assessee addition is made and subsequently income is exempt due to deduction as referred in chapter VI(A) under heading C. If the addition has been made under normal provision and the same has been exempt due to deduction linked with heading C under chapter VI then despite of additions made during assessment year under consideration, income assessed remains Nil, nothing would get quantify as unreported income due to methodology prescribed u/s 270A(2).

6. Penalty in a situation where addition has been explained out of intangible addition made in earlier years. Section 270A(4) and section 270A(5) deals with such situation and the section is reproduced to understand the gravity of matter:-

Section 270(4)

Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

Section 270(5)

The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—(a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and(b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

6.1 This provision takes care of what is typically called “intangible additions in earlier years” i.e. any additions in earlier years, which have not been penalized then and now used to explain source of any receipt/deposit/investment etc. in any subsequent year.” This is akin to the provisions of Expl. 2 to sec. 271(1).

Example – The AO has found unexplained investment of Rs 30 lakh in AY 2019-20, which the Assessee explained to be made out of the earlier intangible additions of Rs 30 lakh as under: –

AY 2018-19 – Rs15 Lakh

AY 2017-18 – Rs 10 Lakh

AY 2016-17 – Rs 5 Lakh

Implications of above – No further addition can be made in AY 2019-20 towards unexplained investment as source of the same is duly explained out of the earlier intangible additions. However, Penalty will now be initiated on the earlier intangible additions in the chronological reverse manner starting from AY 2018-19 unless and until the amount of unexplained investment found in AY 2019-20 is fully covered up –

Penalty u/s 270A(5) in AY 2018-19 on – Rs15 Lakh

Penalty u/s 270A(5)in AY 2017-18 on – Rs 10 Lakh

Penalty u/s 271(1)(c)in AY 2016-17 on – Rs5 Lakh (Balance amount)

The Sub Section (4) and (5) of new provisions of Section 270A are completely in line with the earlier provisions of Explanation 2 of Section 271(1)(c) of the Act. However, It is important to know that parallel provision of Section 271(1A) is missing in the Section 270A and its implications can be identified only with test of judicial scrutiny. Therefore, the litigation will be as there is no section embedded in the section 270A which says that the penalty proceeding will be initiated for earlier years even if the earlier years assessment has been completed.

6.2 The Section 271AAC has been inserted by taxation law (Second Amendment) Act,2016 and is applicable from AY 2017-18. By virtue of this amendment the penalty u/s 270A cannot be imposed if income is taxable u/s 68 to 69D and the tax has been determined u/s115BBE. In the example mentioned in example under Para 6.1 the AO has not made any addition for AY 2019-20. Therefore, the question of applicability of Section 271AAC is not applicable here. But if AO has made addition u/s 68 to 69D then in that case the penalty u/s 270A cannot be invoked.

7. Section 270A(6)

The under-reported income, for the purposes of this section, shall not include the following, namely:—(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or 76a[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;(b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or 76b[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;(d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and(e) the amount of undisclosed income referred to in section 271AAB.7.1 Section 270A(6)(a)

The word Bona fide has been explained in GTO v. Gautam Sarabhai Ltd. [1989] 29 ITD 212 (Ahd.) the head notes of the said judgment is as under:-

'

a) The words "bona fide" used in the language of clause (c) are also required to be taken due note of. These words mean "in good faith", "genuinely" which are suggestive of honesty of purpose. They convey absence of intention to deceive and connote that the transaction in question is a true and genuine transaction and not a

colorable and sham one and there are no strings of any kind attached to that transaction and that there is no secret or covert arrangement.' In the case of Price Waterhouse Coopers (P.) Ltd. v. CIT [2012] 25 taxmann.com 400/348 ITR 307 Supreme Court held that disallowance not made though stated in Tax Audit Report could be regarded as bona fide mistake not liable to penalty.

b) The language used in the clause through onus on the assessee for establishing to the satisfaction of the authority that the explanation given by the assessee is bonafide.

c) The phrase 'is satisfied' means, in my view simply 'makes up its mind'; the court on the evidence comes to a conclusion which, in conjunction with other conclusions, will lead to the judicial decision and such mind should not be troubled by doubt or reach a clear conclusion on the basis of evidence before the authority.

The disclosure of all the material facts should be at the time of substantiating the explanation, pursuant to the notice received under the section giving an opportunity of being heard, and not earlier. The expression "material facts" refers only to primary facts and the duty of the assessee is only to disclose primary facts and he has not also to indicate what factual or legal inference should properly be drawn from these primary facts.

7.2 Section 270A(6)(b)

· If the underreported income is estimated and accounts are correct and complete but the method employed may not enabled proper determination. The addition is based on estimation of gross profit, as against the declared profits, without rejecting the books of account and/or without finding that the audited financial statements of the assessee are not true and correct. In such a case, the difference attributable to estimated amount of gross profit can be excluded from the underreported income.

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Facts of the case

Briefly stated, the return was filed declaring total income at Nil. Assessment was completed u/s 143(3) of the Act at total income of Rs.2,80,07,310 making an addition of equal amount u/s 43CA. The assessee had sold certain land on various dates at a price less than the stamp value. The AO proposed to make addition on the basis of stamp value. The assessee made a request for making a reference to the DVO. The AO completed the assessment by taking note of stamp value in certain other cases subject to rectification on the receipt of report of the DVO. Thereafter, the report was received, pursuant to which the rectification order was passed u/s 154 of the Act reducing the addition to Rs.7,05,000. The addition was computed by taking note of the value declared by the assessee at Rs.71,83,800 and the value determined by the DVO at Rs.78,88,800. On this basis, the AO rectified the original assessment and also imposed penalty u/s 270A of the Act at Rs.6,99,669.

Decision:

Where assessee sold land at a price less than stamp duty value and AO made additions on basis of difference between value declared by assessee and value determined by DVO, since value determined by DVO was an estimate based on value of other properties, said addition made on basis of estimation could not be foundation for under-reported income for purpose of imposition of penalty under section 270A

7.3 Section 270A(6)(c)

The personal expenditure is estimated on the certain amount and has been disallowed in the computation of income by the assessee himself and the AO during assessment proceeding has increased the said disallowance. In such a case the increase in disallowance may not be treated as a underreported income. The prima facie facts should have been disclosed during the assessment proceeding or during penalty proceeding.

7.4 Section 270A(6)(d)

· The first requirement is factual and it is based on the addition made in conformity with arm length price determined by TPO.

· The second requirement can be established based on the finding of the TPO about maintenance of information and documents and where there is no adverse remarks or comments, it can be inferred that the assessee has maintained the information and documents prescribed under section 92D of the Act.

· The third requirement can be established on the basis of the Transfer pricing Report furnished by the auditors and/or the finding by the TPO or the AO to the effect that all the transactions have been reported or absence of the finding by the TPO and/or the AO that the international transactions in question were not reported.

7.5 Section 270A(6)(e)

In respect of undisclosed income, in the Act, there is a separate provision for levy of penalty, namely, section 271AAB. The undisclosed income referred in the said provision should be excluded from the amount of under-reported income [determined in terms of the provisions of sub-section (3) and sub-section (6)].

Explanation (c) below section 271AAB defines 'undisclosed income' as follows:

'"undisclosed income" means—(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or(B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.'Thus, the above referred undisclosed income can be excluded in computing under-reported income.

8. Penalty in the case of Under Reporting other than 270A(6)of Income other than misreporting

Section 270(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.

The penalty in respect of underreported income is fifty percent of tax payable on underreported income. The tax payable has been discussed in detail in section 270(10).

9. Penalty in the case of Underreporting of Income as a consequence of Misreporting of Income

Section 270(8)

Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent. of the amount of tax payable on under-reported income.

· When the under reporting of the income is intentional or willful on the part of the Assessee, then such under reporting is to be considered to be Misreporting of the Income. For being misreporting of income, first it has to be underreporting of the income. Underreporting is a wider term and also includes misreporting of income.

· The Classification of underreported income as misreported income needs to be made notwithstanding the provisions of sub-section (6). Accordingly, in respect of different items of additions comprised in the underreported income, the matter can be examined and accordingly, regarded as misreported income. Thus, a part of underreported income may constitute misreported income. A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. The South India Corporation (P) Ltd. v. The Secretary, Board of Revenue, Trivandrum &Anr., AIR 1964 SC 207 at 215-[1964] 4 SCR 280.

For Example

The assessee had filed a return of income for Rs. 10 Lakh and the AO has made addition of Rs. 2 lakh by estimating the disallowance and similarly has also made addition of Rs. 5 lakh on the basis of misrepresentation or suppression of facts which is squally covered by Section 270A(9).Therefore, the assessee shall be entitled for the benefit of 270A(6) even if the penalty is levied u/s 270A(8) r.w.t. section 270A(9).

Section 270(9)

The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:-

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; and

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

The cases of misreporting have been listed out in sub section 9 of Section 270A. Out of total 6 cases designated as mis-reporting, 3 relate themselves with books of accounts and remaining 3 covers conduct during assessment.

9.1 The analysis of word misrepresentation or suppression of facts as dealt in Section 270A(9) clause (a) is as under:-

· The act of making a false or misleading assertion about something, is with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion. The statement so made; the declaration that does not accord with the facts is also termed false representation."

· The word suppression as used in 270A(9) clause (a) has also been dealt by various courts. State of Tamil Nadu v. Sri Swamy and Company [1977] 39 STC 85 (Mad.) followed in the State of Tamil Nadu v. R RRamachari and Sons [1977] 40 STC 542 (Mad.)

'The use of the word "Suppression" shows that what the assessing officer found was willful non-disclosure. If it was not a willful non-disclosure, the assessing officer would have state as merely omissions. The use of the word "suppression" clearly brings out the willful nature of the non-disclosure and, therefore, the tribunal was not right in setting aside the penalty merely on the ground that there was no finding of willful non-disclosure.

9.2 FAILURE TO RECORD INVESTMENTS IN THE BOOKS OF ACCOUNT

Section 2(12A) defines books of account inclusively and reads:

"Includes ledgers, the books, cash books, account books and other books, with their in the written form or as printouts of data stored in a floppy, disk, tape or any other form of electromagnetic data storage device".

· It suggests that where an assessee keeps books of account and any investments made are not recorded deliberately in such books, it could be treated as a failure and accordingly the value of such investments (added to the total income) could constitute underreported income on account of misreporting.

· The clause (b)/(d) of section 270A(9) have no implication after the introduction of Section 271AAC. If the addition has been made by the AO u/s 68 to 69D in that case no penalty will be levied u/s 270A. The Section 271AAC has been inserted by taxation law (Second Amendment) Act,2016 and is applicable from AY 2017-18. By virtue of this amendment the penalty u/s 270A cannot be imposed if income is taxable u/s 68 to 69D and the tax has been determined u/s115BBE.

9.3:-CLAIM OF EXPENDITURE NOT SUBSTANTIATED BY ANY EVIDENCE [CLAUSE (c)]

- If claim of expenditure is not substantiated by evidence, it may lead to misreporting

· Usually, in respect of travelling and conveyance expenditure by an employee or otherwise incurred by an

assessee, the relevant ticket or acknowledgement may not be available or may not be furnished or submitted by the employee or the person concerned. However, it is also usual to record such expenditure and claim. In the assessment, usually, there is a remark by the AO to the effect that in absence of vouchers or adequacy thereof, an estimated addition is made to the total income.Can such addition and a remark result in treating the addition as under reported income on account of misreporting? The position may depend on facts and the extent and nature of evidence available.

Further, it may also be argued that the user of the language 'claim of expenditure' signifies such expenditure in respect of which, as such, there is no evidence, which could substantiate the actual fact of incurrence of expenditure. In other words, it seeks to cover 'bogus' or 'false' expenditure and not any and every expenditure in respect of which, possibly, direct evidence may not be insisted or kept or led to substantiate the claim of expenditure.

9.4 FAILURE TO RECORD ANY RECEIPT IN BOOKS OF ACCOUNT HAVING A BEARING ON TOTAL INCOME [CLAUSE (e)] - The circumstance specified is quite clear.

Suppose, an entry is made about a receipt for fees in the memorandum books of account or a rough cash book; but, not recorded in the books of account from which the financial statements are made and based on which the total income is computed. Can it be said that it may not be considered as underreported income on account of misreporting? In principle, it would depend on whether the failure could be considered as deliberate or not. If the failure could be considered as deliberate, it could be regarded as failure to record any receipt in books of account having a bearing on total income. If the failure cannot be regarded deliberate, it can be argued that it is not a case of failure to record any receipt in books of account having a bearing on total income.In support of the above, the reasoning could be on the following lines :

In the context of the provision of the clause, it could be argued by tax department that having regard to the provisions of section 44AA of the Act, books of account means such books of account used for the purposes of computing or ascertaining total income (and not a memorandum books of account used for compiling books of account). Accordingly, it could be regarded as a case of failure to record any receipt in books of account.

However, considering the fact that the entry is made in the memorandum books of account used for the purposes of maintaining books of account it could be said that it was only an omission and not a deliberate action of not including the receipt in the books of account.

In other words, it was not a wrong reporting but a mistake of not including the receipts in the final books of account.

10. Penalty u/s 270A was deleted where the AO has failed to apply his mind while initiating the notice u/s 274 and in the assessment proceedings by has failed to spell out as to how the assessee's case/additions falls within the ken of instances given in clause (a) to (f) of sub-section (9) of section 270A of the Act.

a) SALTWATER STUDIO LLP VERSUS NFAC, DELHI2023 (6) TMI 430 - ITAT MUMBAI

Since AO failed to bring the addition/disallowance he made in quantum assessment, under the ken of (a) to (f) of the sub-section(9) of section 270A of the Act, the penalty levied for misreporting @ 200% cannot be sustained because it is trite law that penalty provisions have to be strictly interpreted.

b) SCHNEIDER ELECTRIC SOUTH EAST ASIA (HQ) PTE LTD. VERSUS ASST. COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION CIRCLE 3 (1) (2) , NEW DELHI AND ORS.2022 (3) TMI 1295 - DELHI HIGH COURT

Penalty under section 270A - Penalty for under-reporting and misreporting of income - HELD THAT:- There is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.

This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting.

c) 2022 (6) TMI 130 - DELHI HIGH COURT PREM BROTHERS INFRASTRUCTURE LLP. VERSUS NATIONAL FACELESS ASSESSMENT CENTRE & ANR.

Penalty u/s 270A - immunity u/s 270AA - misreporting of income - non-specification of correct charge - HELD THAT:- This Court is of the opinion that the only addition in the assessment order framed by Respondent No.1 is in respect of disallowance u/s 14A - Petitioner has made a disallowance of Rs.3,20,14,010/- which was recomputed by the AO - Thus, this is a case where the amount of underreporting of income is consequent to increase in the disallowance voluntarily estimated by the assessee. This court is conscious of the fact that there can be cases where underreporting of income may result in misreporting of income, however, in peculiar facts of the present case, underreporting allegedly done by the assessee cannot amount to misreporting as the assessee had furnished all the details of the transactions relating to disallowance made under Section 14A of the Act and the AO as well as assessee has used the same details to arrive at different conclusions i.e. differing quantum of disallowances under Section 14A of the Act. This by no stretch of imagination can be held to be 'misreporting'.

This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the penalty order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.

11. The power for revision u/s 263 cannot be invoked where the AO in the assessment order has failed to give findings regarding underreporting or misreporting of income.

a) 2022 (6) TMI 1150 - ITAT CHENNAI MR. COIMBATORE VAIYAPURI MAATHESH VERSUS THE INCOME TAX OFFICER, CORPORATE WARD-2, COIMBATORE

The Hon'ble Madras High Court in the case of CIT v. Chennai Metro Rail Ltd. (2018 (3) TMI 1586 - MADRAS HIGH COURT] has taken a contrary view after considering the decision of the Hon'ble Allahabad High Court in the case of CIT v. Surendra Prasad Aggarwal(supra), and held that in the absence of any findings in the assessment order regarding underreporting or misreporting of income, the PCIT cannot revise the assessment order to initiate penalty proceedings.

Therefore, we are of the considered view that the PCIT has erred in invoking revisional powers u/s.263 of the Act, and set aside the assessment order to initiate penalty proceedings u/s.270A of the Act, because, the AO

has chosen not to initiate penalty proceedings. The PCIT cannot substitute his views and observed that, the AO has passed erroneous order which resulted in loss of Revenue to the Department.

We are of the considered view that the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue and thus, we are of the considered view that the PCIT is erred in revising the assessment order u/s.263 of the Act. Hence, we quashed the revision order passed by the PCIT u/s.263 of the Act. - Decided in favour of assessee.

12. The immunity u/s 270A should be provided where the petitioner has satisfied the conditions as provided in section 270AA. The assessee should not be penalised for the default on part of the revenue.

2022 (4) TMI 1086 - DELHI HIGH COURT ULTIMATE INFRATECH PRIVATE LIMITED VERSUS NATIONAL FACELESS ASSESSMENT CENTRE DELHI & ANR.

Penalty u/s 270A - "underreporting" of income - right to be granted immunity under Section 270AA - HELD THAT:- Petitioner cannot be prejudiced by the inaction of the Assessing Officer in passing an order under Section 270AA of the Act within the statutory time limit as it is settled law that no prejudice can be caused to any assessee on account of delay/default on the part of the Revenue.

In the present case, the petitioner has satisfied the aforesaid conditions, inasmuch as, (i) the tax has been paid on the additions; (ii) appeal has undisputedly not been filed; and (iii) penalty (as would be evident from the penalty notice) has been initiated on account of "underreporting" of income.

Consequently, this Court is of the view that the petitioner acquired a right to be granted immunity under Section 270AA of the Act. In fact, this Court, in Schneider Electric South East Asia (HQ) Pte Ltd [2022 (3) TMI 1295 - DELHI HIGH COURT] has held, "This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation."SS

RESTRICTIONS ON CASH TRANSACTIONS – MARCHING TOWARDS LESS CASH ECONOMY

Adv. Amit Goenka

Indian economy is getting digitized at a commendable pace and ultimately moving towards a cashless economy. Electronic transactions ensure a clear money trail and make it very difficult for tax evaders. Many of provisions are introduced from time to time in Income Tax Act and other fiscal laws, putting restrictions on cash transactions. The objective of imposing restrictions on cash transactions is to curb the flow of domestic black money which is not only adversely affecting the revenues of the Government but is also affecting the investment for productive purposes, because most of the black money is transacted in cash, it remains unaccounted and quite a sizable amount remains unproductive and is stored in the form of cash or remains invested in low priority investments such as gold, jewellery etc. The historical action of demonetization was also a step towards this direction. Now further, the restrictions on cash transactions are intended to move towards a less cash economy and to reduce generation and circulation of black money. In a bid to curb black money as well as to limit the number and amount of cash transactions, the government has come out with some new provisions and related rules and prohibited some types of cash payments in the Finance Acts. In this article an effort has been made to summarize the various provisions which restricts the cash transactions and is made available as a sort of ready reckoner so that a handy information must be available to all of us to incentivize better compliance.

Restriction u/s. 13A of the Income Tax Act, 1961 — Withdrawl of exemption on receipt of donation of ₹ 2000 or more in cash

Political parties which is registered with the Election Commissioner of India, are exempt from paying income tax subject to certain conditions. To avail exemption political parties are required to submit a report with Election Commissioner of India and furnish details of contribution received in excess of ₹ 20,000 from any person. In order to discourage cash transaction and to bring transparency in the source of funding to political parties, certain more conditions have been inserted to avail exemptions u/s. 13A, viz. :

- No donation of ₹ 2,000 or more is received otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through electoral bonds.
- Political parties keep and maintain such books of accounts to satisfy the Assessing Officer and such accounts to be audited by an Accountant as prescribed under Income Tax Act.

  In the case of CIT, Delhi-XI vs. Janata Party, **[(2016) 383 ITR 146],** Delhi High Court held that *"A political party which seeks to avail of the exemption cannot be heard to say that it is not possible for it to maintain its accounts on a consolidated basis. As long as a political party continues to avail the exemption from payment of income tax, there can be no excuse for not maintaining its account whether it has one or more state units. Where in any particular FY, a political party is unable to maintain its accounts for any reason whatsoever, or satisfy the pre-conditions set out in the proviso to*

Section 13A of the Act, an exemption cannot be possibly be granted from payment of income tax for that FY."

- Income tax return to be filed under section 139(4B) and within the time prescribed u/s. 139(1).

Consequently, the income to the extent it is received for ₹ 2,000 or more in cash will not be exempted. Further, if return of income as required u/s 139(4B) is not submitted within due date or if return is submitted belatedly that is after the due date, exemption u/s 13A will not be available to such political parties.

Further **deduction u/s. 80GGB and 80GGC** are not available to companies or any other person respectively, in respect of any sum contributed by way of cash. The limit of ₹ 2,000 is not applicable in the hands of donor or contributor.

Restriction u/s. 40A(3) and 40A(3A) of the Income Tax Act, 1961 — Disallowance of expenditure on payment exceeding ₹ 10000 in cash

As per the existing provision of sub-section (3) of section 40A of the Act, any expenditure in respect of which a payment or aggregate of payments made to a person in a day; otherwise than by an account payee cheque drawn on a bank or an account payee bank draft exceeding ₹ 10,000/- (₹ 35,000/- in case of payment for plying, hiring or leasing of goods carriage) is not allowed as deduction in computing his income from business or profession. However, various cases and circumstances have been enumerated in Rule 6DD under which no disallowance shall be made even if the payment is made in cash.

Hon'ble Supreme Court in the case of **Attar Singh Gurmukh Singh v. ITO [1991] 191 ITR 667** held that the provisions u/s. 40A(3) of the Act must not be read in isolation or to the exclusion of rule 6DD. Further, it was observed that the provisions u/s. 40A(3) of the Act are not intended to restrict the business activities. It is insisted only to enable the AO to ascertain whether the cash payments made are out of the income from disclosed sources. Further, it is held the terms of section 40A(3) of the Act are not absolute. **[Monika Chitrasen Patil Vs ITO (2023) 198 ITD 508 (ITAT Pune)]**.

Similarly ITAT, Delhi in a recent case of Raju Kashyap Vs. ACIT [(2023) 222 TTJ 269] held that no disallowance can be made u/s. 40A(3) where the payments are genuine and bona fide and made due to business expediency.

Sub-section (3A) of section 40A of the Act prohibits the deduction of expenditure incurred in a particular year in computing the income from business and profession but the payment of a sum exceeding ₹ 10,000/- is made in a single day in any subsequent year otherwise than by account payee cheque or bank draft, it will be chargeable to tax as the income of the subsequent year.

The Hon'ble Supreme Court of India in the case of Rajmoti Industries vs. Asstt. Commissioner of Income Tax [(2017) 245 Taxman 338 (SC)] granted SLP against the order of High Court of Gujarat which had held that there is clear distinction between a crossed cheque and an account payee cheque and, thus, crossed cheque is violative of section 40A(3)**.**

Restriction u/s. 35AD of the Income Tax Act, 1961 — Disallowance of deduction oncapital expenditure on payment exceeding ₹ 10000 in cash

As per the existing provisions of Section 35AD, if certain conditions are satisfied, the assessee engaged in the specified business are eligible for deduction @ 100% (in few cases weighted deduction @ 150%) of the capital expenditure incurred wholly and exclusively for the purpose of such specified business carried on. As per proviso to Section 35AD in case the expenditure is incurred prior to the commencement of its operations and the amount is capitalized in the books of account of the assessee on the date of commencement of its operations shall also be allowed as deduction during the previous year in which he commences operations of his specified business.

Earlier there was no restriction on deduction of capital expenditure as to mode of payment. In order to discourage cash transactions even for capital expenditure, no deduction u/s. 35AD shall be allowed in respect of payment or aggregate of payments in a day made to a person against such expenditure otherwise than an account payee cheque/draft/use of electronic clearing system through a bank account exceeds ₹ 10,000/- from assessment year 2018-19.

Restriction u/ss. 32 and 32AD read with s. 43(1) of the Income Tax Act, 1961 — Disallowance of depreciation and investment allowance on payment exceeding ₹ 10000 in cash

As per section 43(1) where an assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account exceeds ₹ 10,000/-, such expenditure shall be ignored for the purposes of determination of actual cost.

Consequent to above amendment, the depreciation u/s. 32 and investment allowance u/s. 32AD pertaining to such payment cannot be claimed.

Restriction u/s. 80D of the Income Tax Act, 1961 — Disallowance of deduction on payment of medical insurance premia in cash

No deduction shall be allowed u/s. 80D from gross total income, if health insurance premium is paid by the tax payer in mode of cash. However, payment on account of preventive health check-up can be made by any mode (including cash).

Restriction u/s. 80G of the Income Tax Act, 1961 — Disallowance of deduction on payment of donation exceeding ₹ 2000 in cash

The deduction u/s. 80G is available to any tax payer in respect of donations to certain funds, charitable institutions etc. However, no deduction shall be allowed u/s. 80G from gross total income in respect of donation in cash of an amount exceeding Rs. ₹ 2000.

Hon'ble High Court of Punjab & Haryana in the case of Nahar Spinning Mills Ltd. Vs. CIT, Ludhiana [(2017) 395 ITR 12 (P&H)] has held that the assessee could not claim deduction under Section 80G of the Act in respect of donations by way of goods, the same being in kind and not in cash, cheque or draft. In view of the express provision contained in Explanation 5 to Section 80G of the Act, once it was goods, no deduction was admissible.

Restriction u/s. 80GGA of the Income Tax Act, 1961 — Disallowance of deduction on payment of donation for scientific research or rural development exceeding ₹ 2000 in cash

An assessee (other than an assessee whose Gross Total Income includes income chargeable under the head 'profits and gains of business or profession') is entitled to deduction in respect of certain donations for scientific, social or statistical research or rural development program or for carrying out an eligible project or National Urban Poverty Eradication Fund. 100% of donations or contribution made under specified projects

or schemes are allowed as deduction from Gross Total Income.

However, no deduction shall be allowed under section 80GGA in respect of cash contribution exceeding ₹ 2,000.

Even a person who has business loss under the head "Profits and gains of business or profession" cannot claim deduction under section 80GGA [K. Anil Reddy v. CIT (2013) 59 SOT 92 (Hyd.)]

Restriction u/s. 269SS of the Income Tax Act, 1961 — Prohibition on acceptance of cash loans, deposits etc of ₹ 20000 or more in cash

As per provisions of section 269SS, a person shall not accept any loan or deposit or "specified sum" from any other person otherwise than by an account payee cheque or account payee bank draft (or use of electronic clearing system through a bank account) if,

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit ; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid and the amount or the aggregate amount remaining unpaid ; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is ₹ 20,000 or more:

The limit of ₹ 20,000 will also apply to a case even if on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from such depositor is remaining unpaid and such unpaid amount along with the loan or deposit to be accepted, exceeds the aforesaid limit.

"Specified Sum" means any sum of money receivable whether as advance or otherwise, in relation to transfer of an immovable property, whether or not transfer takes place.

The object of introducing Section 269-SS of the IT Act has been succinctly set out by the Hon'ble Supreme Court in Asstt. Director of Inspection Investigation v. A.B. Shanthi[2002] 255 ITR 258/122 Taxman 574 wherein it was observed as under:—

> "8. The object of introducing Section 269-SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false entries in his accounts, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main objection of Section 269-SS was to curb this menace."

Further Bombay High Court in the case of CIT v. Triumph International Finance (I) Ltd. [2012] 22 taxmann.com 138/208 Taxman 299/345 ITR 270 (Bom.) has held that receipt of any advance/loan by way of journal entries is in breach of Section 269SS of the Act.

Section 271D of Income Tax Act 1961 provides that if a loan or deposit is accepted in contravention of the provisions of section 269SS, then a penalty equivalent to the amount of such loan or deposit, so taken or accepted, may be levied by the Joint commissioner. However by virtue of section 273, the above penalty is not leviable if the assessee proves that there was a reasonable cause for the failure in compliance of the provisions. The Bombay High Court in the case of CIT, Central-IV v. Ajitnath Hi-tech Builders (P.) Ltd. [(Bom-HC) 2018 ITL 867] held that the issue of there being reasonable cause or not, is a question of fact and unless it is shown to be perverse.

Restriction u/s. 269T of the Income Tax Act, 1961 — Prohibition on repayment of loans or deposits etc of ₹ 20000 or more in cash

Section 269T provides that any branch of a banking company or a cooperative society, firm or other person shall not repay any loan or deposit made with it or any specified advance (any sum in nature of advance, by whatever name called in relation to transfer of an immovable property, whether or not such transfer takes place) received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account] if

(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

is twenty thousand rupees or more :

Section 271E provides that if a loan or deposit is repaid in contravention of the provisions of section 269T then a penalty equivalent to such repayment may be levied by the Joint commissioner. However by virtue of section 273, the above penalty is not leviable if the assessee proves that there was a reasonable cause for the failure in compliance of the provisions. ITAT Chandigarh in the case of Baldev Singh v. ACIT [(Chandigarh-Trib.) 2018 ITL 1120] held that in order to exercise power of levy of penalty under section/s 271D and 271E, primary condition is that proceedings in respect of assessee for relevant assessment year should be pending before Assessing Officer to come to conclusion that given set of facts and circumstances merit initiation of penalty proceedings

The Finance Act, 2015 amended Section 269SS and Section 269T to include transactions in immovable property in order to curb black money circulation.

As per proviso of section 269SS and section 269T, section is not applicable on any loan or deposit taken or accepted from:- (a) Government (b) any banking company, post office savings bank or co-operative bank (c) any corporation established by a Central, State or Provincial Act. (d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Restriction u/s. 269ST of the Income Tax Act, 1961 — Prohibition on receipt of an amount of ₹ 2,00,000 or more in cash

With a view to promote digital economy and create a disincentive against cash economy, a new section 269ST has been inserted in the Income Tax Act, 1961 vide Finance Act, 2017. The said section inter-alia prohibits receipt of an amount of two lakh rupees or more by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. It is applicable whether the recipient person is a seller of goods or provider of service or transferor of capital assets or any other person. It prohibits receipt of an amount of ₹ 2 lakh or more by a person,

(i) In aggregate from a person in a day (Example: if a person receives ₹ 2.25 lakhs in cash against two different invoices raised for the service provided/goods supplied amounting to ₹ 1 lakhs and ₹ 1.25 lakhs). or

(ii) In respect of a single transaction. (Example: If there is a single invoice for service provided/goods supplied amounting to ₹ 2.90 lakhs against which cash has been received on different days for ₹ 1.6 lakhs and ₹ 1.30 lakhs) or

(iii) In respect of transactions relating to one event or occasion from a person. (Example: If birthday celebration is one occasion and a person receives amount of ₹ 2.50 lakhs)

(iv) Otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

Provisions of this section shall not apply to any receipt by

(i) Government, any banking company, post office savings bank or co-operative bank;

(ii) Transactions of the nature referred to in section 269SS – i.e. acceptance of Loan, deposits etc,

(iii) Such other persons or class of persons or receipts etc. that may be notified by the Central Government.

It is further clarified that the receipt of one installment of loan repayment in respect of a loan shall constitute a 'SINGLE TRANSACTION' as specified in clause (b) of section 269ST of the Act and all the installments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

Implications of section 269ST of the Act

As stated above, three kinds of restrictions on receipt of cash of ₹ 2 lakhs or more have been prescribed. They relate to:

(i) Receipts from one person

(ii) Receipts in relation to a single transaction even though payments are made on different dates and

(iii) Transactions relating to one event or occasion from a person.

Thus cases which may be covered within the ambit of section 269ST include :

- Cash sales of goods/ provision of services
- Cash receipt as part payment/ advance of a bill
- Gifts received in cash
- Donations received in cash
- Capital introduction in a partnership firm or issue of share capital in a company
- Withdrawl from capital in partnership firm
- Withdrawl from bank
- Receipts 'from' Government as only receipt 'by' Government have been excluded
- Receipts or deposits other than saving account by Post Office

The cash restrictions are independent of the nature of transaction. It may represent the transaction of sale of goods on trading account or capital account or it may even be a loan transaction and is in addition to the provisions of section 269SS that deals with acceptance of loans, deposits or specified sum in cash exceeding ₹ 20,000/- which will be treated as the undisclosed income and subjected to tax.

In the first category, receipts from different persons in a day, of an amount which is less than ₹ 2 lakhs, will be permissible. However, if they relate to a single transaction, say, purchase of an expensive diamond or luxury durables, the total value of the transaction will be the determining factor and if it is of ₹ 2 lakhs or more, it will be hit by section 269ST even if the payments are made through more than one person or they are made on different dates of individual amounts of less than ₹ 2 lakhs.

Likewise, the transactions relating to one event, say marriage or birthday, the aggregate of all the transactions like say, rent of tents, decoration, cost of food and beverages will be aggregated to determine the threshold limit of ₹ 2 lakhs beyond which, the restriction of cash transaction will be applicable. This provision is likely to adversely affect the sale of luxury goods and consumer durables. It will also affect adversely the marriage market by restricting the sale of gems and jewellery, designer apparels etc. However, it will reduce the size of the grey market as well as the size of the unorganised sectors of the economy. The sellers of goods and services will look for buyers who can make the payments by modes other than cash.

Some important issues may also arise concerning the compliance with section 269ST vis-à-vis the Sale of Goods Act, 1930, under which, most of the business transactions are made. Section 4 of the Sale of Goods Act, 1930 defines the contract of sale as a contract whereby a seller transfers or agrees to transfer the property in goods to the buyer for a price. Where the transfer of the property in the goods has to take place at a future date or is subject to some conditions thereafter to be fulfilled, the contract will be an Agreement to Sell. The contract of sale or agreement to sell may provide for the immediate delivery of the goods or immediate payment of the price or both. It may also provide for the delivery or payment by installments, or that the delivery or payment or both shall be postponed. The goods which form the subject of a contract of sale or agreement to sell may be either existing goods, owned or possessed by the seller, or future goods. The payment may be made in advance even where the transaction is not final, in that the price is required to be settled in future when the goods would come into existence.

There may also be situations where the price is settled but quantity and time of the delivery is uncertain. For example, when a person agrees to buy the steel rods for the construction of his house, the price may be settled but the quantity depending upon the requirement of steel may be uncertain and the delivery may also depend upon the requirements of the buyer. The price may be payable when delivery of the required lot is taken.

In such situations, record would be to keep of the aggregate value of the transaction and if it exceeds ₹ 2 lakhs or more, each payment, even if it is less than ₹ 2 lakhs, would need to be made other than cash.

Penalty u/s. 271DA of the Act

Under the newly inserted section 271DA, contravention of section 269ST prohibiting cash receipt of ₹ 2 lacs and above is punishable with penalty which is equal to the amount of such cash receipt. The penalty is required to be imposed by the Joint Commissioner of Income Tax. No penalty will, however, be levied if the person concerned proves that there were good and sufficient reasons for the contravention. By use of the words "good and sufficient reasons" in contra-distinction to a 'reasonable cause', a greater burden of proof has been cast on the assessee to show that the reasons for contravention would not only be good but also sufficient. The absence of the bank account of the payer, say an agriculturist, may not qualify to be a good and sufficient reason for accepting the payment in contravention of section 269ST particularly because the Government has been laying great emphasis on opening of Jan Dhan accounts in banks by every person even though there was to be a no deposit in that account. In pursuance of the policy of the Government, several crores of such Jan Dhan bank accounts have been opened by villagers including farmers and as such, the absence of a bank account may not provide good and sufficient reason for the payee to accept the cash of ₹2 lakhs or more.

Promotion of digital payment to an eligible assesse covered in section 44AD:

The existing provisions of section 44AD of income tax act, inter-alia, provides for a presumptive income scheme in case of eligible assesses (individuals, HUFs and firms excepting LLPs) carrying out eligible businesses. As per provisions under above scheme, in case of an eligible assessee engaged in eligible business having total turnover or gross receipts not exceeding two crore rupees in a previous year, a sum equal to eight per cent of the total turnover or gross receipts deemed to be his business income chargeable to tax under the head "profits and gains of business or profession". Amendment provisions in Finance Act provides for lower presumptive profit rate of 6% on turnover realized in account payee cheque or DD or electronic clearing system through a bank account on or before due date for filing Income Tax Return.

The amendment is made in Finance 2017 (effective from assessment year 2017-18) in order to promote digital transactions and to encourage small unorganized business to accept digital payments by reducing the existing rate of deemed total income of 8% to 6% in respect of the amount of such total turnover or gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. However, the existing rate of deemed profit of 8% referred to in section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in any other mode. Assesses availing presumptive scheme under section 44AD must keep in view the provisions of section 269ST (as stated above) as also provisions of section 206C(TCS) while accepting cash payments/advances from customers.

CONCLUSION :

To conclude, the restriction of cash transaction, though harsh and difficult to comply, will go, in the long run, bring about great benefits to country by curbing the use of black money and other attendant evils associated with it. It will not only improve tax compliances but in the long run, accelerate economic growth by larger utilisation of money through banking and other verifiable channels unlike at present where quite a large proposition of cash representing black money stays idle or is invested in unproductive assets like gold jewellery or other precious metals.

Corporate Governance in India: Importance and Challenges

CS Anjum Goyal

INTRODUCTION

Corporate Governance is the mechanism, system of rules, practices and processes by which companies are controlled and directed. Corporate Governance comprises of the rules & procedures for making decisions in the corporate world and the processes through which companies carry out their functions under social, legal, regulatory and market environment. Governance mechanisms consist of, controlling and monitoring the policies, practices, and decisions of corporations, their agents, and other stakeholders. Governance structures and principles identify the distribution of rights and responsibilities among different participants in the companies (such as the board of directors, key managerial personnel, shareholders, creditors, auditors, regulators, and other stakeholders). Corporate governance is fully based on the four fundamental principles of fairness, transparency, accountability and responsibility. Ethics are essential in every sphere as they extend beyond corporate law. Different countries have different models of corporate governance. The corporate governance structure in a given country is determined by many factors viz. the legal and regulatory environment, the corporate environment in the country, and each company's articles of association. In each country, the corporate governance structure has certain characteristics which distinguish it from structures in other countries. Researchers have identified three models of corporate governance in developed capital markets. These are the (i) Anglo-US model, (ii) the Japanese model and (iii) the German model. Each model identifies the following constituent elements: the share ownership pattern in the given country, the composition of the board of directors, key players in the corporate environment, the regulatory framework, legal environment, corporate actions requiring shareholders approval, disclosure etc. Corporate governance practices are affected by attempts to align the interests of a particular stakeholder. In India corporate governance practices received due importance only after the collapses of a huge number of large companies during 2001–2002 and most of which involved corrupt accounting practices and fraud; and then again after the financial crisis in 2008-09.

PRINCIPLES OF CORPORATE GOVERNANCE

The five basic principles of corporate governance are accountability, responsibility, impartiality, transparency and risk management.

1. Accountability

Corporate accountability involves being answerable to an organization's stakeholders for all actions and results. Corporate accountability implies that an organization must be answerable for any deviations from its stated goals and values, which might be documented and made publicly available through a mission statement or vision statement. Beyond that, the concept of corporate accountability is often extended to imply a requirement for businesses to follow ethical, responsible and sustainable practices. Accountability and transparency are generally considered the two main pillars of good corporate governance.

2. Responsibility

The 'board of directors is responsible for taking care of stakeholders interests and fulfilling shareholders wishes. Every organizations should be aware of that they have legal, social, and market driven obligations to stakeholders and non-shareholder stakeholders i.e. employees, creditors, suppliers, customers etc. and fulfilling of these obligations is must for the good corporate governance.

3. Impartiality

The Board of directors must strike a careful balance between their various responsibilities, the people who answer to them, and the people they answer to.

They should approach every decision with an independent mindset, ensuring no personal interests or those of their related parties and the correct business decision to be implemented.

While impartiality is easy to agree to in principle, it's easy to slip out of practice. A board must know how this can happen and they should take care to ensure it doesn't influence their decisions.

4. Transparency

Transparency is a critical component of corporate governance because it ensures that all of a company's actions can be checked at any given time by an outside observer. Transparency helps in to make companies more responsible and fixes the management with a level of accountability.

5. Risk Management

Good Corporate Governance practices play an essential role in helping companies to identify and manage risks. Companies can help protect themselves from financial, operational, and reputational risks by implementing effective governance policies and procedures. By implementing good governance practices such as accountability, transparency, and setting clear objectives, everyone is better able to assess potential risks before they occur and take necessary steps to avoid them. Risk levels can be drastically reduced when all stakeholders access the same information.

WHY CORPORATE GOVERNANCE IS IMPORTANT

1. Changing ownership and business structure:

In recent years, the ownership structure of companies has changed a lot. Now Public financial institutions, mutual funds, etc. are the single largest shareholders in most of the large companies. They have effective control on the management of the companies. They force the management to become more efficient, transparent, accountable, etc. They also ask the management to make consumer-friendly policies, to protect all social groups and to protect the environment. That is how the changing ownership structure has resulted in corporate governance. Scale of business activities has grown in manifolds. For obtain the economies of growth many takeovers and mergers takes place in the business world. And corporate governance is required to protect the interest of all the parties during that takeovers and mergers.

2. Increased importance of corporate social responsibility:

In current scenario corporate social responsibility is given a lot of importance. As businesses gain everything from society so society also has some expectation from businesses. And responsibility for fulfilling these expectation by corporate is called corporate social responsibility. Social responsibility requires from the board to protect the rights of the every related party i.e. customers, employees, shareholders, suppliers, local communities, etc. For fulfilling all these liabilities they need corporate governance.

3. Increased corrupt practices in business:

In recent years, many scams, frauds and corrupt practices have come into light. Misuse and misappropriation of public funds are happening in the stock market, banks, financial institutions, companies and government offices at large scale. For the purpose to avoid these financial irregularities, many companies have started corporate governance.

4. Inactiveness of shareholders:

Shareholders only attend the Annual general meeting of their companies. They are generally inactive in the management. Shareholders associations are also not strong. Directors generally make the profit of this situation and misuse their power. So, there is a imperative need for corporate governance to protect all the stakeholders of the company.

5. Globalised era:

As now Indian economy had become globalised, most big companies are selling their goods in the global market. For maintaining and growing they have to attract foreign investor and foreign customers and they also have to follow foreign rules and regulations. All this requires corporate governance. Without Corporate governance, it is impossible to enter, survive in the global market.

6. Legal bindings:

Practice of corporate governance is also required by the law. In India SEBI and Indian companies Act define the scope and process of corporate governance. SEBI has made corporate governance compulsory for certain companies. This is done to protect the interest of the investors and other stakeholders.

ISSUES & CHALLENGES IN CORPORATE GOVERNANCE

1. Selection procedure and term of Board: Selection procedure adopted in Indian corporations is biggest challenge for good corporate governance. Law requires a healthy mix of executive and non-executive directors, independent directors and woman director. Most companies' in India tend to only comply on paper; board appointments are still by way of "word of mouth" or fellow board member recommendations. It is common for friends and family of promoters and management to be appointed as board members. Life-term board members can pose many problems to business say fixed beliefs, power gaining etc. so no business prefers to appoint board members for life-term. And if the board is very short then they will not take long term decisions with full of their efficiency because in long run they will be changed or relieved from their duties. So the term of board must be fixed with due attention. Typically in a board of directors, directors sit for a brief term say 2 to 5 years and it is good practice to switch some of directors at a fixed time interval instead of changing whole board at a single time.
2. Removal of Independent Directors: Under law, an independent director can be easily removed by promoters or majority shareholders. When an independent director doesn't take the side with promoter's decisions, they are removed from their position by promoters. So to save their post directors have to work for the interest of promoters. To resolve this issue SEBI's International Advisory Board had proposed an increase in transparency for the appointment and removal of directors.
3. Performance Evaluation of Directors: SEBI, India's capital markets regulator, has released a 'Guidance Note on Board Evaluation' in January 2017. Which cover all major aspects of Board Evaluation including the Subject & Process of Evaluation, Feedback to the persons being evaluated, Action Plan based on the results of the evaluation process, Disclosure to stakeholders, Frequency & Responsibility of Board Evaluation. But for achieving the desired objectives from performance evaluation, they need to make the evaluation result public and these disclosures may put the corporate in big trouble.
4. Missing Independence of Directors: Independent directors' appointment was supposed to be the biggest corporate governance reform by Kumar Mangalam committee on corporate governance in 1999.

However in reality independent directors have hardly been able to make the desired impact. Till now the appointment of directors in most of companies is made at the discretion of promoters, so it is still questionable. For providing the true success it is necessary to limit the promoter's powers in matters relating to independent directors.

5. Liability toward Stakeholders: Indian Companies Act, 2013 mandates that directors owe duties not only towards the company and shareholders but also towards the other stakeholders and for the protection of environment. But generally board tries to limit and escape from these kinds of accountability. For this it may be agood idea to require the entire board to be present at general meetings to give stakeholders an opportunity to pose questions to board.
6. Founder/Promoter's extensive Role: In India, instead of separate entity of businesses, promoters or founders continuously influence the business decisions Family owned Indian companies suffer an inherent inhibition to let go of control. They affect the decisions by influencing the board and management. This is done because they had the significant portion of company's share. So to remove this issue it will be good idea to amplify the shareholder base and reduce the shareholding of founders.
7. Transparency and Data Protection: Corporate governance is based on the principle of transparency but it cannot be defined what information is to be disclosed or not. In today's cut throat environment of competition it can be very dangerous if wrong information be disclosed. In digitalization Privacy and data protection is a central governance issue. For this the board must be capable of handling data and to ensure the protection of such data from potential misuse. And by looking at the importance of data and the potential cost if data be misused, we can say that organization must invest a reasonable amount of resources to protect the data.
8. Business Structure and internal conflicts: Business structures also put hindrance on the way to good governance as they require many layers of management, executives and other officers. This makes it very difficult for the company leaders to receive accurate, important data from the lower levels and to command orders to lower level of the company as the data may be distorted at any point of chain. Board of executives can make much good decisions and policies. But if the internal relationship in organization say between board and managers is not good then the implementation of decisions and policies also get affected. Rebellious managers can sabotage corporate decisions and policies at many levels of the business.
9. Environment of mistrust: In recent years, many scams, frauds, misappropriation of public money and corrupt practices have taken place and because of the doubtful practices of key executives and board members, confidence of investors and society has diminished. It is happening in the stock market, banks, financial institutions, companies and government offices. This has made the business environment distrustful.

CONCLUSION

In the process of good corporate governance organizations may have to face some problems in short run, but in long run it will be advantageous and investors would be promoted to act like owners rather than just traders. Directors are appointed by the promoters and then they influence the decisions of directors for their personal interest. These issues can be tackled by regulating the size, selection criteria and procedure of appointment of independent directors. And also regulating the role of promoters or founders in corporate so that directors can take their unbiased decision. There is also a need for having the credit rating agencies need to rate corporate governance practices of different corporations. This will create competition for having best governance practice. Although India has achieved a good rank in corporate governance regulation but being a developing country has a long way to go on the path of corporate governance.

Message

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It is an extreme privilege in presenting the Souvenir published for the National Tax Conference, Amritsar 2023 of All India Federation of Tax Practitioners. The host city Amritsar is not only famous for its religious places and authentic food but also a hallmark for its tradition of civility, respect and humility.

The Theme selected for this Conference, "Amrit Kalash" "Engaging Minds to Empower Knowledge" signifies the Amrit Vidya Kalash, an Ocean of Knowledge which is so appropriate for this mega function, wherein the Dignitaries across India are gathering and pouring their knowledge for the benefit of one and all through their Versatile writings and fruitful sessions.

In the words of Chanakya "One whose knowledge is confined to books and whose wealth is in the possession of others can use neither knowledge nor wealth when the need for them arises." So, I believe, such conferences provide platform for knowledge dissemination and souvenir is like a memoir, a kind of compilation which broadcasts the outlook, theme, thoughts, and ideas behind the conference. I hope the souvenir would be of great help to the attendees as well as those who could not be a part of it due to any reason.

An endeavour has been made through this compilation to gather exquisite and resourceful material on versatile subjects covering Direct Taxes, Indirect Taxes, Corporate Laws, Money Laundering Laws, Technological Impacts and International issues with Well Curated Messages from the luminaires in Judiciary and Profession.

Further, I would like to congratulate Conference Chairman Adv Ranjit Sharma and Conference Co-Chairperson Adv Simmi Rattan for organising such a Grand National Tax Conference under the able leadership and guidance of NVP (AIFTP-NZ) Adv. (Dr.) Naveen Rattan and Chairman (AIFTP-NZ) Adv O.P. Shukla and giving me opportunity to Chair the Souvenir Editorial Committee. Last, yet importantly, I am indebted to eminent team members Advocate Sachin Sharma (Co-Chairman), Advocate Jain Roop Jain, Advocate Amit Goenka and TP Shaminder Arora for their efforts and time in compiling articles contributed by all esteemed members on technical subjects.

Wish all our readers an enjoyable read.

Thanks and Regards

With Best Compliments