



All India Federation of Tax Practitioners

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AIFTP NEWSLETTER - ALLIED LAWS

Volume 1 | No. 2 | July 2023

FORTHCOMING PROGRAMMES		
Date & Month	Programme	Place
10th to 21st July, 2023	Certificate Course on GST (Advanced Level)	Virtual Platform
15th & 16th July, 2023	National Tax Conference (Northern Zone)	Amritsar
22nd July, 2023	One Day Conference (Eastern Zone)	Siliguri
4th August, 2023	National Executive Committee Meeting	Bengaluru
4th, 5th & 6th August, 2023	National Tax Conference (Southern Zone)	Bengaluru
12th, 13th & 14th August, 2023	Residential Refresher Course (Southern & Central Zone)	Rameswaram
15th August, 2023	Independence Day Celebrations	All Zones
21st August, 2023	National Executive Committee Meeting	Shirdi
21st & 22nd August, 2023	National Tax Conference (Western Zone)	Shirdi
26th & 27th August, 2023	National Tax Conference (Eastern Zone)	Rourkela
2nd & 3rd September, 2023	National Tax Conference (Northern Zone)	Vrindavan
7th & 8th October, 2023	AIFTP's Interzone Sports Meet, Chandigarh (Northern Zone)	Chandigarh
14th & 15th October, 2023	Residential Refresher Course (Central Zone)	Khajuraho
3rd & 4th November, 2023	RRC with spiritual experience of Chatt in Bodh Gaya & tour to Rahgir-Nalanda - Pawapuri (Eastern Zone)	Bodh Gaya
26th & 27th November, 2023	Dev Deepawali (Northern Zone)	Varanasi
22nd December, 2023	EOGM (Eastern Zone)	Kolkata
23rd & 24th December, 2023	National Convention (Eastern Zone)	Kolkata

NOTE: Detailed programmes will be uploaded on our website and will be circulated on WhatsApp and mail, as and when the same are announced.

FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS			
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CHAIRMAN COMMUNIQUE

Dear Fellow Readers

It is with great pleasure that we welcome you to the second issue of our flyer, focusing on the vital topic of allied laws. Building upon the success of our inaugural edition, we continue our journey to shed light on these often overlooked but crucial aspects of our legal system.

In our first issue, we highlighted the significance of these laws and their impact on our communities. Today, we carry this torch forward, delving deeper into recent developments and providing valuable insights into the evolving landscape of allied laws.

In this edition, we have curated case studies and notifications/circulars that shed light on the latest developments in allied laws. From legislative updates to landmark court rulings, we strive to provide you with a comprehensive overview of this dynamic field.

Moreover, we would invite your valuable suggestions, if any, for betterment of our flyer on allied laws.

Sincerely,

Sanjay Ghiya
Chairman, Committee of Allied Laws

A. K. Srivastava
Convenor, Committee of Allied Laws

BENAMI ACT

Case Laws

1. IN THE HIGH COURT AT CALCUTTA

Case Title: Sekhar Kr Roy v. Lila Roy & Anr (FA 109 of 2018) Dated :- 7th June' 2023.

Gist of case: The Calcutta High Court in the case Sri Sekhar Kumar Roy versus Smt. Lila Roy & Another observed and has held that the source of money is not a decisive factor for ascertaining benami transactions.

The bench observed and has stated that the burden of showing that a transfer is the benami transaction always lies upon the person who asserts it. Thus, if in the case the husband supplied the consideration money for acquiring of the property in the name of his wife and such a fact does not necessarily imply of with the benami transaction.

In the present case, petitioner or appellant, Sekhar, presented the plaint wherein it contended that his father, Sailendra Kumar Roy, since deceased, purchased the suit property by one registered deed of sale in the year 1969 in the name of his wife, Lila Roy. Lila, thus, who happened to be a housewife, being the mere name lender, and she did

not contribute any single farthing towards the consideration of money since she had no independent income at the relevant time for the purchase of the suit property.

In the said case, Sailendra got the building plan sanctioned in the name of Lila, and by spending money from his own fund and he conducted a two-story building. Thus, Sailendra died intestate, leaving behind his widow, Lila, the plaintiff, his son, and one daughter, namely Sumita Saha, who have inherited 1/3rd share each of the suit property as stated under section 8 of the Hindu Succession Act. Therefore, Sekhar stayed in the suit property till 11.05.2011 and then Shekar started leaving. The court in the case observed and has noted that the intention of the supplier for the consideration money is a vital fact which needs to be proved by the party who asserts benami. It has further been proved by the plaintiff that Sailendra really intended to enjoy the full benefit of the title alone.

Accordingly, the court held that Sekhar in the case has failed to discharge his burden to prove that the subject sale transaction being the benami transaction.

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COMPANIES ACT, 2013

NOTIFICATION & CIRCULARS

1. CG-DL-E-18042023-245244/No.237 Dated: 17th April 2023

The Central Government has introduced significant amendments to the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 via the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 which came into force on 01st May, 2023.

- **Revision of Rule 4 (1) Regarding Application for Company Name Removal:** Rule 4 (1) has undergone revision, specifying that companies seeking to remove their names under Section 248 (2) must now apply to the Registrar, Centre for Processing Accelerated Corporate Exit. This application is to be made in Form No. STK-2 requires a fee of Rs. 10,000.
- **Insertion of Rule 4 (3A) for Application Submission:** A new provision, Rule 4 (3A), has been inserted, addressing the application process for company name removal.
 - The Registrar, Centre for Processing Accelerated Corporate Exit, will be established under Section 396 (1) and will hold jurisdiction over the processing and disposal of applications made in Form No. STK-2, as well as all matters related to Section 248, across India.
- **Revised Form STK-2 for Company Name Removal Application:** Form No. STK-2, which pertains to the "Application by the company to Registrars of Companies (ROC) for removing its name from the register of companies," has been revised to align with the updated requirements.
- **Revisions made to Form STK-6 for Public Notice:** Form No. STK-6, used for publishing public notices regarding company name removal, has been updated to reflect the recent changes.
- **Amendments to Form STK-7 for Notice of Striking Off and Dissolution:** Form No. STK-7, which deals with the issuance of notices for striking off and dissolution, has been revised to accommodate the revised rules and procedure.

2. CG-DL-E-15052023-245885/295 Dated: 15th May 2023

The Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2023 have been recently issued by the Ministry of Corporate Affairs (MCA) to improve

the business environment and make it easier to conduct business activities.

Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2023, replace the existing sub-rules (5) and (6) of rule 25 in the Principal Rules. These Amendment Rules, which will come into effect on June 15, 2023

- **Changes in Sub-rule (5):**

Introduction of Time Limits for Objections and Suggestions

As per section 233 (2) and (3) of CA 2013, in conjunction with the substituted sub-rule 5, the registrar of companies and the official liquidator are now required to raise objections or provide suggestions to the central government (delegated to the regional director) within 30 days of receiving the merger scheme.

Empowerment of the Central Government for Confirmation Order

If the registrar and the official liquidator fail to submit objections or suggestions within these 30 days, and if the central government determines that the scheme is in the interest of the public or creditors, it is empowered to issue a confirmation order within 15 days after the expiration of the 30 days.

Deemed Approval Provision

Before this amendment, there were no specified time limits for the registrar and the official liquidator to submit objections or suggestions to the scheme. Now MCA has introduced a provision that if the central government fails to issue a confirmation order within 60 days of receiving the scheme then in that case, it will be deemed that the central government has no objection to the proposed scheme and will be obligated to issue the confirmation order. The confirmation order will be issued in Form No. CAA.12.

- **Changes in Sub-rule (6)**

Central Government's Assessment and Confirmation Order

The central government is of opinion that that the objections or suggestions from the registrar and official liquidator are invalid and that the scheme is in the public or creditors' interest. In that case, it will issue the confirmation order within 60 days of receiving the scheme.

Application to the Tribunal in Certain Cases

The central government believes that the scheme is not in the interest of the public or creditors (based on the objections or otherwise). In that case, it can apply with the

Tribunal within 60 days of receiving the scheme, requesting that it be processed under section 232 of CA 2013 instead of section 233. Furthermore, the MCA has introduced a deemed approval mechanism in the substituted sub-rule (6).

Deemed Approval Mechanism

The MCA has introduced a deemed approval mechanism in the substituted sub-rule (6). According to this provision, if the central government fails to provide a confirmation order or submit an application to the Tribunal within 60 days of receiving the scheme, it will be considered that it has no objection to the scheme. Consequently, the central government will be obligated to issue the confirmation order.

3. CG-DL-E-03062023-246273/ No. 337 Dated :- 2nd June 2023

With the introduction of the LLP (Amendment) Rules, 2023, the Ministry of Corporate Affairs (MCA) has imposed additional disclosure requirements in Form No.3 (Information with regard to Limited Liability Partnership Agreement and changes).

In the new version of Form 3, Table 19(a) provide comprehensive information about the partner or nominee, their contribution, profit sharing, and any changes related to their involvement in the LLP.



FEMA

Notifications

NOTIFICATION NO. RBI/2023-24/13 Dated 6th April, 2023

The Reserve Bank of India (RBI) has introduced an online application called AP Connect for Full Fledged Money Changers (FFMCs) and non-bank Authorized Dealers (AD) Category-II. The application allows for licensing, renewal, and approval processes, as well as for submission of statements and returns along with a prescribed list of facilities which are being provided by the application. Existing entities must register on AP Connect within three months and comply with RBI instructions. Any eligible entities may apply for fresh license applications through this application only. These directions are issued under the under Section 10(4) and 11(1) Foreign Exchange Management Act, 1999.

NOTIFICATION NO. RBI/2023-24/21 Dated 26th April, 2023

The circular notifies that Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS. Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt

is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the aforesaid Master Direction on LRS.

The circular is issued under the Foreign Exchange Management Act, 1999.

NOTIFICATION NO. RBI/2023-24/45 Dated 22nd June, 2023

Presently, remittances to IFSCs under LRS can be made only for making investments in securities in terms of A.P. (DIR Series) Circular No. 11 dated February 16, 2021. In view of the gazette notification no. SO 2374(E) dated May 23, 2022 issued by the Central Government, it is directed that Authorized Persons may facilitate remittances by resident individuals under purpose 'studies abroad' as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign institutions in IFSCs for pursuing courses mentioned in the gazette notification ibid. The circular is issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999.



INSOLVENCY AND BANKRUPTCY CODE OF INDIA

Notifications

Notification No. S.O. 2660(E) Dated 14th June, 2023

In exercise of the powers conferred by clause (a) of sub-section (3) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies that the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), shall not apply where the corporate debtor has entered into any of the following transactions, arrangements or agreements, namely: -

- (i) the Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oil fields (Regulation and Development) Act, 1948 (53 of 1948) and rules made thereunder; and
- (ii) any transactions, arrangements or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements referred to in clause(i).



PREVENTION OF MONEY-LAUNDERING ACT

Notifications

Notification No. S.O. 2036(E) Dated 3rd May, 2023

In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby notifies that the financial transactions carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the following activities-

- (i) buying and selling of any immovable property;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organization of contributions for the creation, operation or management of companies;
- (v) creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities,

shall be an activity for the purposes of said sub-section.

Explanation 1.- For the purposes of this notification 'relevant person' includes –

- (i) an individual who obtained a certificate of practice under section 6 of the Chartered Accountants Act, 1949 (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;
- (ii) an individual who obtained a certificate of practice under section 6 of the Company Secretaries Act, 1980 (56 of 1980) and practicing individually or through a firm, in whatever manner it has been constituted;
- (iii) an individual who has obtained a certificate of practice under section 6 of the Cost and Works Accountants Act, 1959 (23 of 1959) and practicing individually or through a firm, in whatever manner it has been constituted.

Explanation 2.- For the purposes of this notification 'firm' shall have the same meaning assigned to it in sub-clause (i) of clause (23) of section 2 of the Income-tax Act, 1961 (43 of 1961).

Notification No. S.O. 2119(E) Dated 4th May, 2023

Gist: The Central Government being satisfied that the reporting entities other than banking companies mentioned in the notification below shall comply with the standards of privacy and security under the Aadhaar Act, 2016. Reserve bank of India, hereby permits the said Reporting Entities to perform authentication under the Aadhaar Act for the purposes of section 11A of the Money Laundering Act.

Notification No. S.O. 2135(E) Dated 9th May, 2023

The Central Government has issued a notification regarding the activities that are considered as money-laundering under sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002. The notification

specifies that certain activities, when carried out on behalf of or for another person in the course of business, will be regarded as activities for the purposes of said sub-clause.

The activities that fall under this sub-clause include acting as a formation agent of companies and limited liability partnerships, acting as a director or secretary of a company, partner of a firm or similar position in relation to other companies and limited liability partnerships, providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust, acting as a trustee of an express trust or performing the equivalent function for another type of trust, and acting as a nominee shareholder for another person.

However, the notification also provides clarification that certain activities will not be regarded as activities for the purposes of sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Act. These activities include any activity that is carried out as part of any agreement of lease, sub-lease, tenancy, or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961, any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment, any activity that is carried out by an advocate, a chartered accountant, cost accountant, or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013, and any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002.

Case Law

1. IN THE SUPREME COURT OF INDIA Sanjay Raghunath Agarwal vs. The Directorate Of Enforcement Dated 20 April, 2023

Gist of the case: In this case, FIR was registered against six persons, including the appellant for offences under Sections 406, 407, 415 to 420, 120B read with Section 34 of the Indian Penal Code, 1860 (IPC). The FIR was registered based on a complaint lodged by one M. Srinivas Reddy, who was the Managing Director of a Company by name M/s Farmax India Limited (Farmax). The appellant was arrested, and Enforcement Directorate filed a prosecution complaint under Sections 44 and 45 of PMLA.

The Supreme Court has granted bail to Sanjay Raghunath Agarwal, Chartered Accountant, suspected of committing fraud of Global Depository Receipts to the tune of Rs. 318 Crores. The Bench directed the appellant-CA to be enlarged on bail while observing that no final report has been filed in the FIR for the predicate offense, for the past nine years.

REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016

NOTIFICATION & CIRCULARS

KERELA REAL ESTATE REGULATORY AUTHORITY

1. Order Dated: 18.05.2023

Gist: Authority has issued clarification, with respect to the provision for exemption from registration, provided under Section 3(2)(a) of the Act 2016, to ensure that all real estate projects where the area of land proposed to be developed exceed 500 Square Meters or the number of apartments proposed to be developed exceed 8 inclusive of all phases are registered with the Authority under Section 3 of the Act, 2016.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

1. No. MahaRERA / Secy / File No. 46/ 894 /2023 Dated: 29.05.2023

Gist: MahaRERA has introduced QR Code for each MahaRERA Project to assist Homebuyer to get Project related information easily. In view of the same, certain directions are being issued by Maharashtra Real Estate Regulatory Authority.

2. No. MahaRERA / Secy / Advisory/ 900 /2023 Dated: 02.06.2023

Gist: The project wise listing of promoters against whom Corporate Insolvency Resolution Process (CIRP) has been initiated under the Insolvency and Bankruptcy Code, 2016 has been put up by MahaRERA on its website for public information.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

1. No. F.1(174)RJ/RERA/LC/2020/2046 Dated: 06.06.2023

Gist: Directions issued by Rajasthan Real Estate Regulatory Authority under section 37 of the Real Estate (Regulation and Development) Act, 2016 regarding provision of adequate parking in housing and plotting projects.

2. No. F.1(146)RJ/RERA/2020/2055 Dated: 08.06.2023

Gist: In exercise of the powers conferred on the Authority under section 6 and section 37 of the Act and all other powers enabling it in this behalf till the Mahapadav with mass leave/absence of ministerial staff continuous, it is hereby ordered that once an agreement for sale is executed on a stamp paper of appropriate value, the promoter and the allottee will, pending registration of the said agreement, be allowed to proceed with the said agreement, provided the said agreement is subsequently got registered by the promoter and the buyer, preferably within 4 months, otherwise within 8 months, of execution. Accordingly, the allottees are allowed to deposit installments and the banks/

financiers of the allottees are allowed to sanction housing loan for the sold unit and disburse the due amount of loan on the basis of such executed agreement for sale. However, after registration of such agreement within the time stipulated under the Registration Act, 1908, the registered document shall be deposited with the concerned bank/ financial institution.

These directions shall come into force at once and shall continue to be in force upto the calling off mass leave/ absence or 30.06.2023 whichever is earlier.

GOA REAL ESTATE REGULATORY AUTHORITY

1. F. No: 1/RERA/Circulars/2019/453 Dated: 02.06.2023

Gist: The Goa Real Estate Regulatory Authority (Goa RERA) has noted few instances of mortgaging or creating a charge on apartment, plot or building after executing Agreement for sale. Therefore, all promoters of real estate projects are hereby directed not to mortgage or create a charge on apartment, or plot or building after executing Agreement for sale in the first instance.

REPORTING OF CASE LAWS

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

1. Pawan Joshi vs. Parth Infratech Pvt Ltd Dated: 02.05.2023

Gist of Case: The issue of regular maintenance and transfer of residual amount of security deposit are not within the domain of this forum but governed by Apartment Act.

2. Harsha Channa vs. Sepset Real Estate Ltd Dated: 03.05.2023

Gist of case: Arbitration clause in any agreement does not preclude the jurisdiction of this forum nor it can be said that parties must first invoke arbitration clause and then approach the Authority/ A.O.

3. Gaurav Kumar Khandelwal vs. Arihant Dream Infra Projects Ltd Dated: 11.05.2023

Gist of case: Non approval by the authority with regard to completion certificate does not tantamount that project is not completed.

ASSAM REAL ESTATE APPELLATE TRIBUNAL

1. D.S Realtors vs. Real Estate Regulatory Authority, Assam Dated: 29.05.2023

Gist of Case: If an order made by the Authority or Adjudicating Officer is challenged before the Tribunal, then 30% of the penalty, or higher amount, as determined by the Tribunal must first be deposited by the promoter.

2. M/s ABG Infratech Pvt. Ltd. V/s Smt. Manta Nareda
Gist of Case: Any decision passed by the authority is baseless if it was not pleaded by the complainant. Moreover, if society is not a part of proceedings than decisions regarding society will also be set aside.

TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

1. M.S Foundation Pvt Ltd V/s G.K Vijay Dated: 26.04.2023

Gist of Case: Appellant/Promoter misallocated public space, prompting the allottee to seek refund with interest; RERA granted the refund, and the appeal was dismissed for lacking merit.



PUBLICATIONS FOR SALE

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			Members	Non-Members	Courier Charges per copy
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3.	Handbook on Taxation of Partnership Firms & Limited Liability Partnerships: Frequently Asked Questions	Dec., 2021	725.00	945.00	-
4.	Reassessment Law, Procedure & Practice (Practical Guide)	Dec., 2020	Free	Available on website	100.00
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Northern	0	1512	21	1	1534
Southern	1	2348	23	2	2374
Western	5	2921	38	3	2967
Total	12	10330	144	6	10492

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