2024 - 2025

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You become, what you think.

TAX GURJARI

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

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ACTIVITIES AT A GLANCE

ACTIVITIES AT A GLANCE

2024 - 2025

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Message from the President of AGFTC

CA Dr. Vishves Shah
FCA, LLB, M.Com. DISA (ICAI),
Ph.D. in Commerce
SOCIAL AUDITOR

Dear Readers,

It gives me immense pleasure to address the esteemed readers of Tax Gurjari, a publication that has continually served as a beacon of knowledge for tax professionals across Gujarat. As we progress through a rapidly evolving environment around taxation laws in India, it becomes imperative for each one of us to embrace learning as a lifelong pursuit. In the words of Albert Einstein, “Wisdom is not a product of schooling but of the lifelong attempt to acquire it.” These words resonate deeply with our journey as tax professionals, who must constantly adapt to the ever-changing laws and regulations.

Taxation, be it Income Tax, GST, or allied laws, is a field that demands continuous learning. In the current environment, where frequent amendments, updates, and judicial pronouncements reshape the tax framework, staying abreast with these changes is crucial. In a positive way, it is opening new areas to learn and practice for the tax professionals, which is now providing multiple opportunities.

The introduction of new rules, digitalization of compliance, and the growing complexity of tax planning make it essential for professionals to enhance their knowledge and expertise. Failing to stay updated not only risks non-compliance but also hampers the ability to provide accurate and efficient advice to clients. We act like an advisor and a shield, and clients rely upon us as the doctrine, “Ignorance of the law is no excuse” applies to even tax laws for which our clients at times blindly rely upon us. Therefore, a commitment to ongoing learning is not just a requirement, but an integral part of our professional duty.

At AGFTC, we have always believed in nurturing a learning-centric culture within the tax professional community and raising their voice. One of the core initiatives to support this vision has been the organization of Mofussil Seminars and multiple webinars. These knowledge sessions are specifically designed to cater to professionals practicing in districts beyond the major urban centres, ensuring that learning opportunities are available to everyone, regardless of location.

Our programs are a unique platform where tax practitioners can gain insights from leading experts in the field. These sessions are curated to address both the foundational principles and the latest developments in tax law, enabling participants to learn quickly and apply this knowledge effectively. Our focus is on interactive learning, where participants can discuss real-life case studies, ask questions, and engage with the experts on topics of current relevance.

Over the past year, we have conducted several such seminars in various districts across Gujarat, each receiving overwhelming participation and positive feedback. These sessions not only serve as a learning opportunity but also foster a sense of community among tax professionals, creating a network of peers who can support each other in own area of expertise.

As we move forward, AGFTC is committed to expanding the reach of these initiatives, ensuring that even more professionals in the mofussil areas have access to high-quality learning experiences even for those people who are unable to attend physically.

The larger the platform the better the benefits. It is my humble request to each one of you to ask your tax professional colleagues to join AGFTC as member. With a nominal fee of Rs. 2,200, it provides a lifetime membership of the apex body and lot of opportunities to grow. It's really an investment which can give return in terms of growth which may not be calculated in financial terms. Let's have each one bring one as focus before end of this financial year.

Together, through knowledge sharing and collective growth, we can continue to uphold the high standards of the tax profession.

Warm Regards,
CA (Dr.) Vishves Shah
President AGFTC
03rd January, 2025

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From The Table of Chairman

Bharat L. Sheth
Chairman

My Dear professional Brothers and Sisters,

I am delighted to publish this third issue of Tax Gurjary. This issue contains various articles on direct and indirect taxes. I want to express my deepest appreciation to all the authors for sparing time and sharing their valuable views for the benefit of members of readers. We have received very good responses and suggestions from readers of this publication. We are thankful to them for valuable feedback.

According to former Chief Justice of India S H Kapadia, to succeed as a lawyer, one must work like a horse and live like a hermit. A great legal practitioner is said to be a Jack of all trades, a master of none. As per "Seven Lamps of Advocacy" book authored by Justice Abbott Parry, following skill are essential for every legal professional.

HONESTY

1. Lawyers are often labeled as liars, but honesty is a crucial quality for a legal professional. Honesty should reflect in every aspect of their work.

COURAGE

2. The nexus between courage and honesty is irrefutable. Refined legal knowledge, skills and truthfulness enhance the ability to remain fearless under pressure and pain.

WIT

Wit lightens the darkness of advocacy and it is an essential quality for advocates to possess. It is pertinent to note that law is often compared to a spider web because it entangles and holds the poor and weak, while the rich and powerful break through them easily. An advocate must possess sufficient wit to bridge this gap.

INDUSTRY

An advocate should update themselves in compliance with the adage "There is no alternative to hard work." Law is like a language that develops with the life of people and as such, it grows and strengthens with the people. Thus, if the law gets amended in compliance with societal needs, lawyers should also be acquainted with the latest law.

ELOQUENCE

Eloquence is the art of speaking and plays a pivotal role in assessing the abilities of an advocate and determining their career success rate.

LEGAL JUDGMENT

The most important quality that an advocate should possess is a legal judgment. This skill involves the ability to analyze and evaluate the strengths and weaknesses of a case, anticipate potential counterarguments and identify the turning points of the case.

PROFESSIONAL FELLOWSHIP

While advocates may represent opposing sides in a legal dispute, they should not allow their professional differences to hinder their ability to maintain a cordial and respectful relationship.

I would request all my professional brothers and sisters to use the publication in the best possible manner and make their professional journey more effective and successful by taking advantage of the developments and information which have been published in this publication. I am sure that this publication will be very useful and will benefit our members.

Bharat L. Sheth

Chairman

AGFTC
03rd January, 2025

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From the Desk of Hon. Secretary

Mrudang H. Vakil
Hon. Secretary

My Dear Esteem Members,

As I pen this communiqué, we find ourselves on the threshold of yet another calendar year 2025. The dawn of the New Year brings with it an invigorating spirit of positivity, instilling a sense of hope and reassurance that goodness will always triumph in the face of adversity. There is a palpable atmosphere of celebration and optimism, where the familiar mantra of “All is Well” resonates in the hearts of many. This moment also serves as a perfect opportunity to reflect and set meaningful goals for the year ahead and beyond. With renewed determination, we embark on the journey of creating new and improved aspirations, fuelled by a positive mind-set and a commitment to hard work. As we share this collective enthusiasm, the air is infused with joy and anticipation for what lies ahead, embracing the promise of growth and accomplishment.

At the outset, let me once again convey our deepest gratitude to you for being a valuable part of the AGFTC family. As we welcome 2025 with great pleasure, your unwavering support and your trust in us that has helped us reach where we are today.

What an extraordinary year 2024 has been for India! We celebrated incredible victories, including a stunning performance at the Olympics, where our athletes showcased their dedication and talent on the world stage. Additionally, our cricket team triumphed in the T20 Cricket World Cup, bringing immense joy and pride to fans across the nation. This year also marked the emergence of a remarkable young chess prodigy, capturing the attention of enthusiasts and inspiring a new generation of players. On the technological front, we witnessed groundbreaking advancements, particularly in the realm of generative AI, with innovations like ChatGPT pushing the boundaries of what's possible and reshaping our interactions with technology.

In November and December of 2024, the AGFTC had the opportunity to engage in meaningful discussions with the Income Tax Department, marking a productive and interactive period. The month began with a significant meeting between the AGFTC team and the Honourable Principal Commissioner of Income Tax (PCIT) -1, where a range of vital topics were addressed. This initial meeting paved the way for further dialogue, allowing the team to offer constructive suggestions on various aspects of income tax provisions that could enhance clarity and compliance.Following this, the AGFTC was invited to contribute to discussions on the Project Integrated e-filing and the Centralized Processing Centre (CPC), specifically focusing on IEC 3.0. This initiative is crucial for streamlining the e-filing process and improving taxpayer experience, and the AGFTC's input was greatly valued.

In December, the engagement continued with another important meeting, this time with the Director General of Income Tax (Investigation) in Ahmedabad. During this session, the focus shifted to the critical issues surrounding the disclosure of foreign assets and foreign income in Income Tax Returns (ITRs), along with the implications of non-disclosure.
We express our sincere gratitude to the Income Tax Department for involving us in these discussions, which are instrumental in addressing and resolving various income tax-related challenges. The collaboration fosters a better understanding and helps create effective solutions for taxpayers.
As we usher in the New Year of 2025, excitement is building at AGFTC as we prepare for the highly anticipated 6th Consecutive Tax Conclave. The dedicated team at AGFTC, in collaboration with TEAM ITBA, has already begun the initial planning stages for this prestigious event. We aim to create an engaging and informative experience that fosters meaningful discussions on the latest trends and developments in tax. Details about the conclave will be shared soon, and I wholeheartedly encourage each of you to actively participate in Tax Conclave 2025. Your involvement will be invaluable to the success of this significant gathering. Stay tuned for updates!

Warm Regards,

Mrudang H. Vakil (Advocate)

Hon. Secretary

AGFTC
03rd January, 2025

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Things you should be aware of

CA Parag Raval

A. Income Tax benefits available to Ganpati Mandals:

The Festive season was on and so it would be great to analyse the income tax benefits available to Ganpati Mandals:

I. Section 11 – Exemption of Income from Property Held for Charitable or Religious Purposes.

1. Applicability:

Ganpati Mandals can avail tax exemption on income if they are constituted as a trust, society, or charitable institution and are engaged in religious or charitable purposes.

The income applied towards charitable or religious purposes within India is exempt from tax under Section 11.

If the mandal or temple receives anonymous donations (donations without the donor's identity), these can be taxed at 30%, except when such donations are exclusively for religious purposes.

2. Conditions:

At least 85% of the income must be applied for religious or charitable purposes during the year.

If the mandal fails to apply the full 85%, the shortfall must be spent within the next year or applied for exemption under Section 11(2) by submitting Form 10.

Income that is not applied within the specified time and not accumulated or invested according to the provisions will lose its tax-exempt status.

3. Accumulation of Income :

If the mandal wishes to accumulate the income for future use (up to a maximum of 5 years), it must file Form 10 and specify the purpose of accumulation. The accumulated income should be invested or deposited in prescribed modes (like government securities or bonds).

II. Section 12 – Eligibility for Exemption :

1. Section 12 treats the income of charitable and religious trusts registered under 12AB as exempt.

2. Ganpati Mandals must register under Section 12AB to claim exemption. Failure to register can lead to taxation of the entire income of the mandal.

3. 12AB registration needs to be renewed every five years.

III. Section 80G – Deduction for Donations to Mandals:

1. Donations made to Ganpati Mandals that have obtained Sec. 80G certification are eligible for deduction in the hands of the donor.

2. The donor can claim a deduction of 50% of the donation amount. However, the deduction is capped at 10% of the donor's adjusted gross total income.

3. A very important criteria is that the donation is not expressed to be for the benefit of any particular religious community or caste

4. The mandal must maintain proper records and issue receipts to donors in the prescribed format. These receipts must contain the 80G registration number and details about the donation.

5. Mandals must renew their 80G registration periodically, like Section 12AB registration.

IV. Audit Requirements :

1. Mandals whose income (before claiming exemption) exceeds the maximum amount not chargeable to tax (currently Rs. 2.5 lakh) must undergo a statutory audit.

2. The audit report is filed in Form 10B, and it must be submitted before the due date of filing the income tax return.

3. Non-compliance with audit requirements can lead to the mandal losing its tax-exempt status for that year.

V. Conclusion :

Failure to comply with any of these regulations can lead to a loss of tax exemptions and penalties from the Income Tax Department. Hence, regular financial oversight and professional assistance are highly recommended for Ganpati Mandals.

B. Even Married Daughter can be Karta of her Father's HUF

⇨ The Hon'ble Delhi High Court, in its elaborate judgement in Manu Gupta v. Sujarat Sharma & others, RFA (OS) 13/2016, Judgement dated 04.12.2023 has held that :

⇨ Birth in the joint Hindu family, seniority by age, and stuats of being a Coparcener are the necessery qualifications to become a karta.

⇨ The explicit language of section 6 post amendment by the Hindu Succession (Amendment) Act, 2005 confers an equal stauts of Coparcener on woman (daughter) equating her rights to be at par with a son.

⇨ The Court noted that the scope of the express words within the body of section 6 of the Act cannot be curlaied by making a reference to the Preamble which refers to 'inheritance' (viz. to amend and codify the law relating to intestate succession among Hindus). Placing reliance on judgement in R.Venkataswami Naidu vs. Narasram Naraindas (1966) 1SCR 110, it was observed that, though Preamble is a key to interpreting the staute, it cannot restrict the enacting part of the statute when it is clear, wide and unambiguous.

⇨ Referring to the Supreme Court judgement in Raichumatham Prabhakar vs. Rawatmal Dugar (2004) 4 Sec. 766, the court held that the heading or title of a provision (viz. section 6) plays a limited role in the construction of statues. In the event of a dispute between the plain language of the provision and the meaning of the heading or title, the interpretation that is clearly and obviously visible from the language of the provision thereudner, shall prevail.

⇨ Section 6 of the Act, 1956, post 2005 amendment, in clear and unambiguous words, confers equal rights as a coparcener to a daughter as well as the son.

⇨ The Amendment to section 6 of the Act, redefines the meaning of coparcenary as understood under the traditional Hindu Law. which is no longer limited to devoultion of interest in the coparcenary property alone but encompassess all other incidents of a Coparcener, including the right to be a Karta.

⇨ Interpreting the provision, in a manner that a woman can be a coparcener but not a Karta of HUF would not only be anomalous, but alos be against the stated Object of the introduction of the amendment.

⇨ Thus, it was held that, even a married daughter who has been accorded a stauts of coparcener in her father's HUF can be the Karta of the said HUF.

C. Valuation report by the DVO alone cannot form a basis for reopening of completed assessment: Delhi HC

Divine Infracon Private Limited Vs DCIT, Case Number: W.P.(C) 2516/2016

Facts:

1. The AO re-opened the assessment for impugned AYs based on the valuation report issued by Departmental Valuation Officer (DVO) estimating the value of investment made by Assessee at Rs. 211.99 Crore.

2. The AO stated that since the valuation report was not available at the time of original assessment, therefore the amount of Rs. 211.99 crores represents income of the assessee chargeable to tax which has escaped assessment even though the Assessee had declared the cost of property under the head "Fixed Assets and Capital WIP" at Rs. 592.13 Core.

Hon Delhi HC held as below :

1. The power of Income Tax Officer to reopen assessment though wide are not plenary, as the words of statute are "reason to believe" and not "reason to suspect".

2. The expression "reasons to believe" does not mean a purely subjective satisfaction on the part of the AO, the reason must be held in good faith and cannot be merely a pretence.

3. Valuation report received after assessment can constitute a valid basis for initiation of re-assessment proceedings provided the information is more than mere rumour, gossip or a hunch and there is some justified material for initiating action u/s. 147 of the Income Tax Act.

4. There is no statement or discussion by the AO as to what was the basis and why he should proceed on the valuation report, its contents and why he should rely on the same.

5. The reasons do not reflect that AO has applied his mind to the facts of the case to ascertain as to whether in fact the Assessee had already declared the value of the aforesaid property under "Fixed Assets and Capital WIP" or whether such valuation is correct and proper and not.

6. The notice issued u/s. 148 of the Income Tax Act is hereby quashed and set aside along with the proceedings initiated consequent to issuance of such notices.

D. Does Electricity Bills paid in cash to Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) attract disallowance u/s. 40A (3) of the Income Tax Act?

Section 40A (3) of the Act provides that, where an assessee incurs any expenditure in respect of which payment(s) made otherwise than by an account payee cheque/draft/electronic clearing system exceeds Rs. 10,000/- no deduction shall be allowed in respect of such expenditure Rule 600 carves out certain exceptions which interalia in clause (b) includes payment made to the 'Government' where under rules frame by it, such payment is required to be made in legal tender.

Quite often, a question arises whether cash payments made for electicity bills to MSEDCL or payments to various similarly placed Government Companies would be hit by disallowance under section 40A (3) of the Act?

Article 12 of the Constitution of India reads as under

"State includes the Government and Parliament of India and Government and Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

The term' Government' is much wide runder the Constitutional setup. However, the expression "other authorities" used in Article12 is neither defined in the Constitution of India nor in any other statute

The Supreme Court in Som Prakash Rekhi v. UOI, AIR 1981 SC 212, white interpreting the expression "Other authorities" laid down certain tests and has held that, if anybody or organization falls within the criteria it can be considered that it falls within the term "State" As held, the expression 'Other authority' is not confined only to statutory corporations alone, but also extends to a non-statutory body like government company, a registered society, or bodies which have nexus with the government.

In the context of Income Tax law, the term 'Government' used in Rule 600(b) includes even the autonomous bodies which partake the character of instrumentalities of the Government. Applying the core test of degree of control over management and policy decisions, the autonomous bodies like MSEDCL or MSRTC or the Warehousing Corporation etc. are held to be instrumentalities of the Govenrment.

Thus, on application of the above tests, once it is shown that MSEDCL or other similarly placed Government Companies fall within the ambit or "State" within the meaning of Article 12 of the Constitution, the payments cash made to them cannot be subjected to disallowance under section section 40A (3) read with Rule 600.

{-Ref. Sapna Sanjay Raisoni v ITO, No. 1267/Pun/2014, Narayan Rice Mills v. CIT, ITS No. 732/Kol/2015 Order dated 07.06.2017)

E.Intricacies of Sec 43CA:

Introduction :

1. Tax on real estate or property transactions typically gets covered under capital gains. However, there are certain exceptions, like when such real estate is held as stock-in-trade.

2. In this case, the taxation would then need to be evaluated as business income. Regardless of the mannerism of taxation, real estate is often associated with black money, which also directly results in the proliferation of taxes.

Sec 50C :

In order to check this proliferation of tax, section 50C was introduced in the Income-tax Act, by virtue of which the stamp duty value assessed or assessable by the Stamp Valuation Authority is deemed as the full value of sale consideration received/accrued on sale of a capital asset, being land or building or both.

Intricacies of Sec 43CA :

1. Section 43CA shall apply only to land or building or both, held as stock-in-trade (builders). In order to determine the undervaluation of land or building, if any, in the sale agreement, section 43CA uses the value adopted by the Stamp Valuation Authority(SVA) on which stamp duty is payable, as per the State Government rules.

2. If the sale consideration received or claimed to be received by the seller on the sale of the land or building or both is less than the adopted by SVA, then such value adopted by SVA would be considered as the actual sales price received or accruing to the seller.

3. If the stamp duty value adopted by the SVA does not exceed 110% of the actual consideration, such actual consideration received/receivable by the taxpayer would be considered as the full value of consideration, and the tax would be computed accordingly.

4. If the seller does not accept the value adopted by SVA and believes that the stamp duty value determined is higher than the fair market value as on the date of transfer, he has an option to present his claim before the tax officer and request him to obtain the valuation of the property as per a valuation officer ('VO'). In addition to the taxpayer requesting such reference to VO, another condition to be satisfied is that the value adopted by SVA has not been disputed in any revision or appeal before any Court or the High Court or any other authority.

F. Penalty for violation of section 269SS/269T cannot be levied for genuine transactions between sister/group concerns.

The Hon'ble Jaipur Tribunal after analyzing a plethora of judgement has held that, penalty under section 271D and section 271E of the Income tax Act for violation of section 269SS and section 269T cannot be levied, for transactios between the group companies or sister concerns, The Tribunal noted that,

Sec. 269SS and Sec. 269T is attracted when there is acceptance of loan or deposit in cash and repayment thereof in cash. Penality for violation thereof is leviable u/s. 271D and u/s. 271E respectively. Se. 273B provieds that penalty shall not be imposed if the assessee proves that there was a reasonable cause for failure.

2. The transfer of money from one company to another within the group, with a specific intention, is a mere book adjustment and cannot be considered as loan or deposit.

The transactions inter-se-between the sister concerns cannot partake the nature of either "deposit" or "loan" though interest might have been paid on the same in other words, such transactions cannot be constructed as loan or deposit but are only current account transactions within the sister (group) concerns.

As held by the Hon'ble AP High Court in Gururaj Mini Roller Flour Mills v. ACIT (2015) 118 OTR 218 making book adustment of funds by a firm vis-a-vis its sister concern, can by no means be said to be the one taken in violation or contravention of the said provisions.

The main intention of the provisions of sections 269SS and 269T is to check, the inflow of unaccounted money.

In these type of genuine and recorded transactions between sister concerns, it cannot be said that the assessee has entered into a transaction to avoid the payment of tax or to defraud the Revenue.

Bonafide belief coupted with the genuineness of the transactions will constitute a reasonable cause for not invoking the provisions of section 271D and section 271E.

Section 269SS/269T has to be necessarily read along with section 273B of the Act and it is essential to considerwhehter there was a reasonable cause for the failure as envisaged under the Act Resulantly the penalities levied u/s 271D and u/s. 271E were deleted.

[#Lok Vikas Housing Funds Ltd vs Additional CIT, ITANo.452/JP/1999, Orderdated 12.01.2023 (JaipurITAT)]

G. Reworking the value of investments held in a subsidiary by applying the DCF method is permitted, if correctness of valuation is proved: Delhi ITAT Leela Tourism and Heritage Pvt. Ltd. versus ACIT Case Number: ITA No.3685/Del/2023

Facts:

1. The assessee, a fully owned holding company holding of foreign subsidiary (through SPV), issued 10 lakh equity shares of Rs.10/- at a premium of Rs.70/- stated to be determined as per the valuation of asset and liabilities of the company.

2. The return filed by assessee was subjected to scrutiny, where the AO observed that the assessee has received large premium on issue of equity shares to M/s. Legacy Food Pvt Ltd.

3. The assessee has advanced a justification that the valuation of hotel asset proposed to be used as hotel building stood substantially converted to hotel apartment and this change in the building plan leading to high earning potential and revenue generation has led to higher valuations determined by using the Discounted Cash Flow (DCF) method. This has resulted into a valuation of shares at Rs.51.92 crore of subsidiary company as against Rs.21.24 crore reflected in its books.

4. The AO thus invoked the provisions of Sec. 56(2)(viib) of the Income Tax Act and held that consideration received by way of share premium on issue of equity shares is in excess of FMV and a sum to the extent of Rs.6,10,00,000/- collected by way of share premium falls within the ambit of deeming fiction and thus susceptible to tax.

ITAT Delhi held as below:

1. On perusal of extant provision of Section 56(2)(viib) r.w. Explanation thereto, the Bench noticed that for the purposes of the said provision, the FMV of the shares shall be the value as determined in accordance with such method as may be prescribed under Rule 11UA of the Income Tax Rules, which includes DCF method of valuation.

2. Coupled with this and in addition thereto, the assessee is also entitled to substantiate the FMV to the satisfaction of the AO based any rational basis.

3. The method adopted for reworking of the subsidiary company by applying the DCF method or any known method is permissible as long as the assessee is able to establish the correctness of the valuation in the light of the valuation report furnished.

4. The appeal is hereby allowed.

H. Some notable aspects of TDS obligation under section 195 of the Income Tax Act, 1961

All payments to non-resident, other than salaries, which are chargeable to tax under the Act, are covered for TDS obligation u/s. 195 of the Act.

There is no theshold limit for obligation to deduct TDS under section 195.

However, TDS obligation under section 195 does not apply if sums are not chargeable to tax in India. TDS obligation arises only when there is a sum chargeable under the Act. For Instance, TDS obligation under section 195(I) does not apply w.r. to payments exempt in hands of non-resident under section 10 of the Act or which are outside the scope of 'Income' of non-resident as defined under section 5 of the Act.

The words used in Section 195(1) are 'any person' responsible for paying to a non-resident. Thus, legal status of the payer is not irrelevant, everyone including an individiual or HUF not liable for audit is also covered.

Resident making payment to a non-resident even in NR has to consider section 195.

Section 195 doesn't apply on a Resident but Not Ordinarily Resident (RNOR)

Non-resident making payment to another non-resident is also covered, if payment is chargeable to tax in India.

For TDS under section195(1) the exchange Rate to be adopted shall be the TT buying rate of SBI, i.e. rate adopted by SBI for buying such currency.

TDS deduction shall be at the rates in force i.e. as per Income Tax Act or DTAA, whichever is more beneficial.

Application by the Payer under section 195(2) for determination of TDS deductible can be filed in Form No.15E (online) in terms of Rule 291BA of the Income Tax Rules, 1962.

Application by payee under section 195(3) for certificate for Nil TDS can be filed in Form No. 150 (online) in terms of Rule 298 of the Income Tax Rules 1962.

I. Carry forward of losses in the case of takeover of a company undergoing NCLT proceedings:

Introduction to Sec. 79 :

1. Section 79 of the Income Tax Act provides that carry forward and set off of business and capital losses shall be allowed only if there is continuity in the beneficial ownership of shares having 51% of the voting power.

2. Thus section 79 expressly prohibits carry forward of loss and depreciation by the Corporate Debtor after the takeover by a new successful bidder as the shareholding undergoes complete change and there is no continuity of 51% of beneficial ownership.

2018 amendment :

1. In order to overcome this and to allow the benefit of carry forward of losses as well as unabsorbed depreciation to the Corporate Debtor, pursuant to a resolution plan, Section 79 has been amended with effect from 1-4 2018 by adding a new proviso.

2. It is reproduced as follows :

"Provided also that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner."

3. A plain reading of the above proviso indicates that once the Resolution Order is passed by the NCLT, Section 79 will not be applicable on the Corporate Debtor.

Procedural Aspects :

1. The only condition is that the jurisdictional Principal Commissioner of Income Tax (PCIT) is afforded an opportunity of being heard, understandably in the Corporate Insolvency Resolution Process (CRIP) proceeding.

2. Some of the benches of the NCLT take this opportunity of being heard to the department as sufficient compliance under the amended second proviso of section 79 and accordingly give clear direction in the Resolution Order to allow past losses of the Corporate Debtor to be carried forward. (Antanium Holdings Pte Ltd vs Sujana Universal Industries … on 17 May, 2021 NCLAT, Chennai, Company Appeal (AT) (CH) (Ins) No.07 of 2021).

3. However, in many other cases, the NCLT bench gives a general observation that losses of the past years shall be carried forward as per law and the Corporate Debtor may approach the jurisdictional PCIT who will pass necessary order under section 79 to carry forward the losses.

"In business, it's not about the big wins;
it's about the small consistent gains."

Harry Brown

2024 - 2025

IMS-Way forward in Automation on GSTN

CA Tarang Kothari
B.Com./FCA/DIRN/DISA

The Goods and Services Tax Network (GSTN) has introduced a new feature on the GST portal—the Invoice Management System(IMS), Launched to streamline the process of Input Tax Credit (ITC) acceptance and rejection, This tool aims to provide tax payers way communication with supplier through the portal. Effective from its rollout, the IMS is designed to enhance efficiency while addressing and potentially unsettling the GSTR-2A/2B system, first introduced in September, 2018 for facilitating tax payer ITC reconciliation.

As per the original Scheme of the GSTAct,2017 Tax payers are required to file GSTR1, GSTR-2 and GSTR-3. However, due to technicall challenges, the GSTR-2 and GSTR-3 filings were eventually scrapped, leading to the introduction of alternate mechanisms like the GSTR-2A/2B system in 2018. Now, over seven years since the rollout of GST, GSTN authorities are revisiting the possibility of implementing GSTR-2 and GSTR-3 in form of IMS to enhance compliance and efficiency. With IMS, the groundwork is being laid for A smoother reconciliation process, potentially reshaping the ITC framework.

The GSTN has panned to introduce IMS in phased manner, Currently IMS is not mandatory, Tax payer may or may not take any action on IMS data reflected on the portal.

Whats is IMS ?

Invoice Management System (IMS) is real timefacility on which the invoices/records saved or furnished by the supplier in GSTR-1/1A/IFF are reflected. It is introduced from October 2024 on GST Portal through advisory on 3rd September, 2024.

Based on the action taken by the recipient on the IMS, system will generate the GSTR 2B of the receipient on or after 14th of subsequent month (source GSTN Advisory on 12th November, 2024). The IMS Dashboard is made effective from 14th November, 2024.

IMS Process Overview :

1. **Supplier Action :** Suppliers save or file invoices in GSTR-1/IFF/1A.
2. **Recipient Action :** Invoices are reflected in the IMS dashboard of the recipient, where Recipient, the IMS data can be downloaded in Excel for reconciliation with inward/accounting records. The sample screen shot of the Dashboard.

Actions Available in IMS and their Outcomes:

Action	Description
Accept	The invoice will move out of IMS and go to GSTR-2B as accepted.
Reject	The invoice will move out of IMS and will not be reflected in GSTR-2B.
Pending	The invoice will stay in IMS and will not be reflected in GSTR-2B.
No Action	The invoice will be treated as deemed accepted at the time of GSTR-2B generation.

What will not reflect in IMS?

The following transactions are not reflected in IMS, The below mentioned transactions are required to be taken into Accounts at the time of fling GSTR 3B :

Action	Description
RCM Transactions	Transactions under Reverse Charge Mechanism (RCM) Even if received from suppliers.
Time-Barred ITC	Transactions beyond November30 of the subsequent financial yearAs per Section 16(4)
Ineligible ITC	ITC not allowed Due to Place of Supply(POS) issues (e.g.,HotelITC).
GSTR-5	Transactions involving returns filed by Non-ResidentTaxable Persons(NRTP) Return filed by Input Service Distributor (ISD)
GSTR-6	Transactions involving returns filed by Input Service Distributors(ISD).
ICEGATE Documents	Bill of Entry documents not reflected in IMS.
ITC Reversed under Rule 37A	Reversal of ITC for non-payment of tax by the supplier and its re-availment

Which is mandatory action by the recipient?

The IMS is not mandatory for recipient of goods/services to take action(accept/reject/pending) except credit note Transaction.The following transactions, certain credit note transactions can not be kept pending ;

Transaction Type	Action
Original Credit Note	Mandatory action required on Original Credit Note
Upward Amendment of Credit Note	Action required regard less of the recipient's action on the Original Credit Note
Downward Amendment of Credit Note	Action required if the original credit note was rejected
Downward Amendment of Invoice/Debit Note	Action required if the orignal invoice/debit note was accepted and GSTR 3B filed

On Acceptance/rejection the invoices will be removed from the IMS system. Accepted invoices will reflect in GSTR-2B for period. The rejected invoice will be reflected in GSTR 2B of the recipient for view only and not flow to GSTR 3B. Rejected invoices are returned to the supplier for amendment or correction . Pending record will be carried forward in IMS until the due date to avail credit u/s 16(4) ie 30th November of the subsequent financial year.

During the initial implementation of IMS, taxpayers have faced various issues such as data mismatch…

1. IMS data shows the details prior to October 2024 and on accepting the data it is not flow to GSTR2B.
2. Nil GSTR2B Post Filing of GSTR3B: Credits are not reflected in GSTR2B despite GSTR-3B filing.
3. Action Dependency: If no action is taken on IMS,GSTR2B is not auto populated popup is flashed on **the GST portal "If you can't see your GSTR2B or thereis adifference between 2A and 2B, please compute your new GSTR2B from IMS dashboard after taking any action on the existing records".**

Conclusion:

The GSTN's introduction of the Invoice Matching System (IMS) is a pivotal step toward enhancing compliance and streamlining processes. While IMS is currently an optional facility, it is anticipated to become mandatory in the near future, akin to the evolution of GSTR-2A and 2B.

The IMS offers two perspectives on the GST portal: the recipient's view, which is already operational, and the supplier's view, which will be introduced in Phase2. Businesses should proactively prepare for these changes, as they signify a shift towards stricter compliance requirements.

Looking ahead, the GSTR-3Bfiling process is set to undergo significant changes, potentially being. It will eventually be locked("frozen")based on data submitted throughGSTR-1/1A/IFFandIMS.Tax payers are encouraged to stay informed and adapt their systems to align with these forthcoming developments.

2024 - 2025

Internal AID To Construction Marginal Heading

Bharat L. Sheth
Advocate

INTRODUCTION

An 'Aid' is a device that helps or assists. While performing the function of interpreting provision of a statute, the court can take help from within the statute or even outside the statute.

The internal aids include title, preamble, headings, marginal notes, illustrations, punctuations, proviso, definition or interpretation clauses, explanations, schedules and punctuation.

DEFINITION OF MARGINAL NOTES

1. According to LORD REID, marginal notes cannot be used as aid to construction. A side note is a poor guide to the scope of a section. It can do no more than to indicate the main object with which the section deals.

2. LORD UPJOHN observed that a side note is a very brief précis of the section and therefore forms as most unsure guide to construction of enacting section.

MARGINAL HEADING OR NOTES

Marginal notes, or side notes, are brief explanations placed at the side of sections within an Act. They express the section's effect but do not form a part of the statute. Drafters, rather than legislators, usually insert marginal notes.

In the olden times help used to be taken sometimes from the marginal notes when the clear meaning of enactment was in doubt. But the modern view of the courts is that marginal notes should have no role to play while interpreting a statute.

The basis of this view is that the marginal notes are not parts of a statute because they are not inserted by the legislators nor are they printed in margin under the instructions or authority of the legislature. These notes are inserted by the drafters and many times they may be inaccurate too.

However, there may be exceptional circumstances where marginal notes are inserted by the legislatures and, therefore, while interpreting such an enactment help can be taken from such marginal notes. The Constitution of India is such a case. The marginal notes were inserted by the Constituent Assembly and, therefore, while interpreting the Indian Constitution, it is always permissible to seek guidance and help from the marginal notes.

In **Bengal Immunity Company v. State of Bihar**, the Supreme Court held that the marginal notes to Article 286 of the Constitution were a part of the Constitution and therefore, it could be relied on for the interpretation of that Article.

In **Tara Prasad Singh v. Union of India,** it was held that marginal notes to a section of the statute cannot take away the effect of the provisions.

In **Union of India v. Dileep Kumar Singh AIR 2015 SC 1420** – the apex court held that marginal note appended to Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 makes it clear that idea of section 47 was not to discriminate against employees who acquire disability during service.

In **S.P. Gupta v. President of India** The Supreme Court held that if the relevant provisions in the body of a statute firmly point towards a construction which would conflict with the marginal note, the marginal note has to yield. If there is any ambiguity in the meaning of the provisions in the body of the statute, the marginal note may be looked into as an aid to construction.

LIMITATIONS OF MARGINAL NOTES AS INTERNAL AID TO CONSTRUCTION

- Marginal notes are very rarely used for interpretation as they are not considered to be a good aid to construction.
- Only those marginal notes can be used for construing a provision which have been inserted with assent of the legislature.
- Marginal notes cannot be resorted to for construing a provision if the word of that provision are sufficiently clear, plain and precise and give out only one meaning.
- Marginal notes can be called in aid only when language suffers from ambiguity and more than one construction is possible.
- Marginal notes can not control the plain meaning of words of the enactment.
- Marginal notes can be used for interpretation of that section only to which they are appended. In other words, the Marginal Notes of one section cannot be used to interpret another section.
- Marginal notes cannot frustrate the effect of a clear provision.

SUMMING UP

Recently by The Finance (NO.2) Act, 2024, marginal heading of Section 73 and Section 74 of The Central Goods and Services Act, 2017 were amended. As Section 74 A was inserted in The Central Goods and Services Act, 2017 by The Finance (NO.2) Act, 2024 w.e.f. Financial Year 2024-25 onwards, the words and figures "pertaining to the period up to Financial Year 2023-24". As discussed earlier, marginal Note has limitation as internal aid of construction, Sub-section (11) and Sub-section (12) were inserted in Section 73 and Section 74 respectively. Section 73(11) and Section 73(12) as inserted are "The provisions of this section shall be applicable for determination of tax pertaining to the period up to financial year 2023-24".

SPARK

A law is valuable not because it is law, but because there is right in it.
Henry Ward Beecher.

2024 - 2025

One more Opportunity to Settle Disputes

CA Kamlesh Parikh

With increasing pendency of appeals under Direct Tax, VSVS 2024 is introduced with objectives of "reducing pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process". The scheme applies to pending appeals as on July 22,2024 which is the specified date under the scheme.

VSVS2024 is one more opportunity to settle long pending disputes under Income Tax Act. VSVS 2024 (VSV 2.0) is a second edition of VSVS 2020 (VSV 1.0)., with two notable Changes. One key distinction is the treatment of old appellants versus new appellants, with a higher payment obligation placed on the former. Old appellant refers to a declarant who became an appellant on or before 31 January 2020, in respect of any tax arrears and continues to be an appellant at the same appellate forum on the specified date in respect of such tax arrears. New appellant is one whose appeal is pending on the specified date. (22.07.2024)

In VSV 1.0, Cases where orders were passed and appeal was not filed, but time to file an appeal had not elapsed were also eligible. However, in VSV 2.0, Cases where appeals are filed on or before specified date i.e. 22 July, 2024 are only eligible.In VSV 1.0, Search cases with disputed tax involved up to 5.00 crores were covered, but in VSV 2.0 only non search cases are covered.Pending prosecution and conviction under IPC barred a litigant from availing benefits under VSV 1.0. however, VSV 2.0 bars pending prosecution and conviction under Bhartiy Nyaya Sanhita 2023 (BNS 2023).

The DTVSV Scheme, 2024 was enacted vide Finance (No. 2) Act, 2024. Sec. 88 to 99 are inserted in Finance (No 2) Act 2024. Further, the Rules and Forms for enabling the Scheme have also been notified vide Notification No. 104/2024 in G.S.R 584(E) dated 20.09.2024. Guidance note 1/2024 in form of FAQ is published on 15th October 2024. The scheme has come in to force from 1.10.2024 and from this date onwards declarations can be filed.The last date for making declaration is yet not notified. The scheme provides for resolution of Income Tax Disputes only and does not cover disputes under Black Money Act, Wealth Tax, Securities Transaction Tax, Commodity Transaction Tax and Equalization Levy.

An assessee, otherwise not ineligible as per VSV 2.0 and whose disputes/appeals, including writs, filed by either the taxpayer or the tax authorities which are pending as on 22 July, 2024 with The Supreme Court, High Court, Income Tax Appellate Tribunal, Commissioners/Joint Commissioners (Appeals) can file declaration in form 1 and get benefit as per VSV 2. In addition to this, objections filed before Dispute Resolution Panel (DRP) u/s 144C of the Act and pending for issue of Directions on or before 22 July, 2024 Or where DRP has issued orders but A.O. has not passed final assessment order on or before 22 July, 2024 are also eligible disputes. Revision Application filed under section 264 of the Income Tax Act, 1961 with CIT on or before 22 July 2024 is also defined as dispute eligible under the scheme.

However, followings are not pending disputes as per VSV 2.0 and hence not eligible for benefit under the scheme.

- Pending applications for waiver of interest
- Pending applications for advance ruling before AAR
- Pending WP where assessment/reassessment proceedings have been stayed and as a result assessment not made and income not determined
- Tax arrears covered by Sec. 96(a) of the Scheme i.e. relating to an assessment year in respect of which an assessment has been made under section 143(3)/144/147/153A/153C of the Act on the basis of search initiated under section 132/132A of the Act or

relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration OR relating to any undisclosed income from a source located outside India or undisclosed asset located outside India OR relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Act, if it relates to any tax arrears.

Thus, to be eligible under VSV 2.0,Declarant should be a person and not Government. Declarant should be Appellant i.e. his dispute under Income Tax Act should be pending as on 22/07/2024. Here Pending means Filed and pending and not "Admitted and Pending". However, pending WP for stay of assessment/reassessment are not pending disputes. Further, there is no bar from declaration under VSV 2.0 if declarant had earlier availed Kar Vivad Samadhan Scheme1998 or VSV 1.0. There is no bar from declaring under VSV 2.0 if declarant had earlier availed Direct Tax Dispute Resolution scheme, 2016. Further, there is no bar from declaring under VSV 2.0 if declarant had earlier availed VDIS 1997, Income disclosure scheme 2016 or Pradhan Mantri Garib Kalyan Yojana scheme 2016.

However, any person in respect of whom an order of detention has been made under COFEPOSA, 1974 on or before the date of filing of the declaration in not eligible to file declaration under the scheme. Further any person in respect of whom prosecution has been initiated under Unlawful Activities (Prevention) Act, (UAPA), The Narcotic Drugs Act (NDPS), Prevention of Corruption Act (PA), Prevention of Money Laundering Act(PMLA) or Prohibition of Benami Property Transactions Act (PBPT) on or before filing of the declaration are also not eligible. Any person convicted under UAPA, NDPS, PA, PMLA or PBPT is also barred by the Scheme to file declaration. Further, any person in respect whom prosecution has been initiated by Income Tax Authority under BNS 2023 or for enforcement of any civil liability under any law for time being in force on or before filing of the declaration or any person convicted consequent to such proceedings is also ineligible to file declaration.

The eligible person on filing declaration in form 1 will be issued Form 2 by designated authority and the person has to pay amounts as per following table within period of 15 days from receiving Form 2. This table is as provided in guidance note 1/2024.

S. No.	Nature of tax arrears	Amount payable where declaration made on or before 31.12.2024	Amount payable where declaration made on or after 1.1.2025 & before last date
1	Tax arrears include disputed tax, interest, penalty **(New appellant)**	**100%** of disputed tax	**110%** of disputed tax
2	Tax arrears include disputed tax, interest, penalty **(Old appellant)**	**110%** of disputed tax	**120%** of disputed tax
3	Tax arrears related to disputed interest/ penalty/ fee **(New appellant)**	**25%** of disputed interest/ penalty/ fee	**30%** of disputed interest/ penalty/ fee
4	Tax arrears related to disputed interest/ penalty/ fee **(Old appellant)**	**30%** of disputed interest/ penalty/ fee	**35%** of disputed interest/ penalty/ fee

However, table given in Sec. 90 of Finance (No. 2) Act 2024 refers to amount payable on or before 31/12/2024 and amount payable on or after 01/01/2025, table given inFAQ 3 in guidance note no. 1/2024 issued by CBDT on 15/11/2024 only refers to declaration filed on or before 31/12/2024 and declaration filed on or after 01/01/2025. Thus, there is anomaly in language of Sec. 90 and guidance note. In view of author, language used in guidance note seems to be more relational. Otherwise issues like Form 2 issued on or before 31/12/2024 where time of 15 days is available for payment as per VSV 2.0 and payments made within permitted time of 15 days but on or after 01/01/2025 will create confusion. Hence CBDT should remove this difficulty by virtue of power given by Sec. 98 of Finance (No. 2) Act 2024.

The steps for getting benefits under VSV 2.0 are:

Step 1 Filing declaration in Form 1, giving details of dispute along with an undertaking waiving right to pursue any remedy. Form 1 can be rectified any number of times before Form 2 is issued.

Step 2 The Designated Authority to issue certificate within 15 days from receipt of declaration in Form 2 determining the amount payable

Step 3 The Declarant to pay determined amount within 15 days of date of receipt of certificate and file an intimation in Form 3 giving details of payment along with proof of withdrawal of appeal

Step 4 The designated authority to issue order in Form 4 for full and final settlement

The benefits under VSV 2.0 is order passed by the designated authority will be conclusive as to matters mentioned therein and such matters cannot be reopened in any other proceeding. There will not be institution of any proceedings in respect of an offence (prosecution), penalty or Settlement under

the scheme cannot be treated as a precedent by either party i.e. assessee or Department and either party can litigate similar matter for other assessment years. One should keep in mind that amount paid under the scheme is not refundable and If amount is not paid within period of 15 days of receiving form no. 2, there is no provision of making payment after the permitted period of 15 days and the declarant will not be eligible to get any benefit under VSV 2.0. If payment is made after 15 days of receiving form 2, there is no provision of refund of such amount and hence declarant will lose money as well as benefits under the Scheme. The only option that may remain is approach the High Court for proper relief. One should note that order in form 4 does not decide any judicial issue and it is only settlement of dispute under VSV 2.0.

The benefits of VSV 2.0 are:

- ⇨ If substantive addition is covered under the scheme, AO to pass rectification order deleting protective addition relating to same issue in case of assessee or in any other case
- ⇨ In case of TDS appeal as deductor, credit of TDS will be given to Deductee on settlement of dispute
- ⇨ When assessee settles his own appeal under VSV 2.0, deductor will not be Deductor in default.
- ⇨ Where assessee settles TDS liability and issue was with reference to expenditure disallowed u/s 40(a)(i)(ia), on setting TDS appeal under VSVS, assessee will get consequential relief of deduction u/s 40(a)(i)(ia). If assessee is also in apple against assessment order and there are issues other than Disallowance 40(a)(i)(ia), for calculating disputed tax, tax on disallowance 40(a)(i)(ia) will be ignored.

- ⇨ Waiver of interest and Penalty/prosecution –If declarant is company/LLP/Firm- immunity from prosecution with respect to that dispute also extends to Directors/Partners

- ⇨ In case of reduction of loss/MAT Credits….by paying tax without interest…benefit of carryforward and set off in subsequent years.

One should note that if there are two appeal pending, one for quantum addition and other for penalty. Declarant cannot settleonly penalty appeal under VSV 2.0 and continue to litigate the quantum appeal. He has to settle the quantum appeal and by virtue of scheme, penalty will be dropped. If JCIT(A)/CIT(A) has given SCN for enhancement, tax arrears is to be calculated including tax on amount of proposed addition as per SCN.

As per FAQ 8 of guidance note 1/2024, if an apple that was pending as on specified date and is decided before the declaration is filed, there is no pending dispute. Thus declaration in form 1 cannot be filed. However, the same FAQ further provides as “Unless the assesse or the Department again prefers an appeal.” Understanding of author is that in a case where appeal was pending as on 22/07/2024 and the same is decided, if assessee or department prefers appeal before the higher forum, a person can still file declaration once appeal is pending before higher forum. However, such benefit will not be available to old litigant i.e. assessee whose appeal was pending as on 31/01/2020 since as per VSV2.0, in such cases, appeal should be pending before the same authority as on the date of filing of declaration.

There is no last date notified under VSV 2.0. One can file declaration in form 1 even after December 31,2024 with higher obligation of payment as per scheme. Sec.98(2) empowers Central Government to issue order within period of two years from 1st Day of October, 2024.

FAQ's issued under VSV1.0 may be a good guide in case of any doubt for VSV2.0

Since the objective is to reduce litigation, CBDT should come out with further guidelines and clarifications and benefits as were available in VSV 1.0 should also be extended in VSV 2.0

Note: Every effort is made to avoid errors or omissions. In spite of this, errors may creep in. Author requests readers to bring any error, mistake or omission to his notice. This should not be taken as profession advice and readers are advised to cross check with provisions of applicable law and rules.

2024 - 2025

Penalty for Under-reporting and Misreporting of Income under Section 270A of the Income Tax Act

CA Ketul Soni

The Indian Income Tax Act, 1961, contains several provisions aimed at ensuring accurate and transparent reporting of income by taxpayers. One such provision, introduced through the Finance Act of 2017, is Section 270A, which prescribes penalties for the under-reporting and misreporting of income. These penalties aim to curb tax evasion and promote compliance by discouraging discrepancies in income reporting.

For tax professionals, a deep understanding of Section 270A is crucial, as it affects the assessment process and the calculation of penalties. This article aims to provide an in-depth analysis of under reporting and misreporting of income as per this section, the circumstances under which penalties are levied, and the key concepts that should be considered when advising clients.

1. What is Under-reporting of Income?

Under Section 270A, a taxpayer is considered to have under-reported their income if certain conditions are met. The most common scenario involves the income assessed being greater than the income determined in the taxpayer's return of income. This can occur in the following circumstances:

- ⇨ Return Processed Under Section 143(1): If the income assessed by the tax authorities is greater than the income reported in the return processed under Section 143(1)(a).
- ⇨ Failure to File a Return or Under-assessment: If no return is filed, or if the taxpayer has filed their return under Section 148 (assessment after the issuance of a notice), and the assessed income exceeds the maximum amount not chargeable to tax.
- ⇨ Reassessment of Income: When the income reassessed is higher than the income assessed or reassessed in a prior order.
- ⇨ Deemed Total Income: The provisions of Section 115JB (minimum alternate tax) or Section 115JC (tax on alternate minimum tax) can also trigger penalties if the assessed or reassessed deemed total income is greater than the return processed under Section 143(1)(a).
- ⇨ Loss Conversion: If the income reassessed leads to a reduction in a previously declared loss or converts the loss into income, it is considered under-reported.

These provisions highlight that under-reporting is not just about failing to declare income but also includes cases where the taxpayer's declared income is less than what is deemed correct according to the tax authorities' assessment.

2. Determination of Under-reported Income

The calculation of under-reported income varies depending on the nature of the assessment.
Following different situations covers where income is deemed underreported if the income in Column A is greater than income shown in Column B

Situation	A	B
The return is filed	Income assessed	Income processed under Section 143(1)(a)
No return is filed or return filed first time U/s 148	Income assessed	Basic exemption limit
Income Reassessment	Income reassessed	Income assessed or previously reassessed
Return filed and income assessed under the provision of Minimum Alternate Tax/ Alternate Minimum Tax (MAT/AMT)	Deemed income according to section 115JB/115JC	Deemed income processed u/s 143(1)(a)
No return filed or return filed for the first time u/s 148 and assessed under MAT/AMT	Deemed income according to section 115JB/115JC	Basic exemption limit
Reassessment of income assessed under MAT/ AMT	Deemed income according to section 115JB/115JC	Deemed income assessed or income reassessed previously

Furthermore, it will be deemed underreporting of income if the assessed or evaluated income minimises the loss or turns the loss into revenue. The technique of underreported computing income is mentioned in Section 270A(3).

If under-reported income arises from previous years' discrepancies, it is addressed based on a formula that takes into account adjustments across prior years, ensuring that under-reported income is captured for penalty purposes. The detailed formula used to compute such income is outlined in Sub-section (3) of Section 270A.

3. Penalty for Under-reporting of Income

Under Section 270A(7), the penalty for under-reporting of income is 50% of the tax payable on the under-reported income. This penalty applies when the taxpayer has under-reported their income due to reasons such as negligence, error, or omission in reporting, but not with fraudulent intent.

For example, if the assessed under-reported income is INR 10 lakh and the tax payable on it is INR 2 lakh, the penalty for under-reporting will be 50% of INR 2 lakh, or INR 1 lakh.

4. What is Misreporting of Income?

Misreporting of income is considered to be a more severe violation, involving deliberate actions such as:

- Misrepresentation or suppression of facts.
- Failure to record investments in books of account.
- Claims for expenditure without substantiation.
- Recording false entries in the books of account.
- Failure to report any receipt in the books of account that affects total income.
- Non-disclosure of international transactions or transactions deemed to be international or specified domestic transactions under Chapter X of the Income Tax Act.

Section 270A(9) provides a comprehensive list of actions that are categorized as misreporting. These actions are considered willful attempts to evade tax, making them subject to higher penalties.

5. Penalty for Misreporting of Income

If under-reported income arises due to misreporting, the penalty increases significantly. According to Section 270A(8), the penalty for misreporting is 200% of the tax payable on the under-reported income. This penalty is intended to deter deliberate falsification of financial statements, misrepresentation, and failure to report income accurately.

For instance, if the misreported income results in a tax liability of INR 2 lakh, the penalty would be 200% of INR 2 lakh, which equals INR 4 lakh.

6. Exceptions and Exemptions to Penalty

Section 270A provides certain exceptions where under-reported income may not attract penalties. These include:

⇨ Bona fide Explanation: If the taxpayer offers a satisfactory explanation for the under-reported income and the tax authorities are convinced that the explanation is genuine, the penalty may be waived under Section 270A(6)(a).

⇨ Correct and Complete Books: If the under-reported income is based on an estimate but the taxpayer's books of account are complete and accurate, penalties may be reduced or waived under Section 270A(6)(b).

⇨ Voluntary Disclosure: In cases where the taxpayer voluntarily discloses under-reported income and rectifies the return before proceedings are initiated, the tax authorities may show leniency in levying penalties.

⇨ Transfer Pricing Compliance: If the taxpayer has maintained proper documentation and disclosed all relevant facts concerning international transactions, the under-reported income related to transfer pricing may not attract penalties under Section 270A(6)(d).

7. Procedure for Imposition of Penalty

The penalty under Section 270A is imposed by an order in writing issued by the Assessing Officer (AO) or the relevant tax authority, such as the Joint Commissioner (Appeals), Commissioner (Appeals), or Principal Commissioner, as per Section 270A(12). The penalty is imposed after the assessment is completed and the tax authorities are satisfied that under-reporting or misreporting has occurred.

8. Calculating the Tax Payable on Under-Reported Income

The tax payable on under-reported income is determined based on a formula provided in Section 270A(10), which takes into account the amount of income that should have been reported in the original return, along with adjustments for previous assessments or reassessments. This ensures that the penalty is computed accurately and reflects the true tax liability.

Conclusion

Section 270A serves as a strong deterrent against under-reporting and misreporting of income, with penalties designed to discourage willful tax evasion. Tax professionals need to be vigilant in advising their clients on proper tax reporting, emphasizing the importance of full disclosure, accurate accounting, and timely rectifications in case of errors. Furthermore, understanding the nuances of under-reporting and misreporting penalties can help in minimizing exposure to unnecessary penalties and ensuring compliance with the Income Tax Act.

GST on Additional FSI Purchased by Builders

CA Punit Prajapati

1. Recently, some enquiries are initiated or Show Cause Notices (SCN) are issued for payment of Goods and Services Tax (GST) on additional Floor Space Index (FSI) purchased from a municipality/other local authority. FSI is the term which is not common for public, however, it is a common term in the construction industry. In simple language, FSI is a unit of measure for the construction area allowed on a plot based on total area of the said plot. For example, area of a particular plot is 10,000 m² and construction area allowed thereon is 18,000 m², it is referred as FSI 1.8 derived by 18,000÷10,000. Further up to certain limit additional construction is allowed subject to payment of certain fees to the municipality. For example, in Ahmedabad 0.9 FSI can be purchased from Ahmedabad Municipal Corporation on payment of additional charges to Ahmedabad Municipal Corporation (AMC). This 0.9 FSI is called additional FSI. If a promoter of a real estate project purchases additional FSI of 0.9 from AMC, he can construct up to 27,000 m² of constructed area,instead of 18000 m², on plot of 10,000 m² making total FSI of 2.7 (1.8+0.9).

2. Recently, GST authorities have started demanding GST on additional FSI purchased from municipalities/ other authorities. Mostly such demands are on promoters. However, in certain cases, additional FSI purchased by business houses for their own building is also under the investigation. Central GST Audit Commissionerate, Ahmedabad is also taking this issue as an Audit Para and hence notices are being issued. Tax is being demanded from the taxpayer under reverse Charge Mechanism (RCM).

3. Here, it is important to note that in terms of the Notification No. 14/2017 – Central Tax (Rate) dated 28 June 2017 [as amended bythe Notification No. 16/2018 – Central Tax (Rate) dated 26 July2018], activities or transactions undertaken by the Central Government or State Government or any local authority in which they are engaged as a public authority shall be treated neither as a supply of goods nor a supply of service if such activity is in relation to a function entrusted to a municipality under the Article 243W of the Constitution. In terms of the Entry No. (1) and the Entry No. (2) of the Twelfth Scheduleto the Constitution, read with the Article 243W, urban planning, including town planning and regulation of land use and construction of buildings are functions entrusted to municipality. Thus, in terms of above provisions, it can be argued that granting additional FSI by municipality isneither supply of goods nor supply of service as notified under the Section 7(2) of the CGST Act, 2017 and hence GST cannot be levied thereon.

4. Functions entrusted to a municipality under the Article 243W of the Constitution was inserted into the Notification 14/2017 – Central Tax (Rate)w.e.f. 26 July 2018. However, before that such a service was exempt by the Entry No. 4 of the Notification No. 12/2017 – Central Tax (Rate). Hence, for the period 1 July 2017 to 25 July 2018, such a service was exempt and there after supply of such a service is neither supply of goods nor supply of service under Section 7 and hence not subject to tax at all.

5. Gujarat State GST Department at Rajkot had issued show cause notices earlier for similar demands, however, such demand sare already dropped by them. Recently Central GST Ahmedabad Audit Commissionerate has also started issuing show cause notices for this issue.

6. Although dropping of demand by the Gujarat State Department is not binding on theCentral GST or any other GST department or officer, dropping of demand by the Gujarat State GST Department shows that there is doubts prevailing, not only in the industry but also among the government itself and at least there will be a good case for not imposing any penalty for suppression of facts.

7. In some of the show cause notices, demand is made only on additional FSI purchased from the municipality and no demand is made on base FSI (like 1.8 FSI at Ahmedabad) or other charges, collected by the municipality for plan, approval etc. Thus, department itself believes that base FSI and other charges are not taxable. It will be difficult to accept that base FSI is covered under the Article 243W of the Constitution and additional FSI is not covered under the Article 243W of the Constitution.

8. Working effect from 1 April 2019, entry number 5B is inserted into the notification number 13/2017 – Central Tax (Rate) to effect that a promoter is required to pay GST under reverse charge mechanism for FSI purchased from the municipality, including additional FSI. However, it is worth noting that RCM is applicable for any service which is purchased from the municipality i.e. local authorityfrom 1 July 2017 itself. It means that if tax is payable, it is payable under RCM, not only from 1 April 2019 only but also for the period prior to that.

9. Even if it is assumed that GST is payable under RCM by the promoter, it should be noted that additional FSI purchased for residential projects are exempt from GST to the extent it is used for residential units sold before receipt of building usage permission. Refer entry number 41A of the Notification No. 12/2017 – Central Tax (Rate) as inserted working effect from 1 April 2019.

10. Further, it is worth noting that in terms of the Notification No. 6/2019 – Central Tax (Rate),if additional FSI is purchased from the municipality, even against the consideration in cash, GST is not payable until the PU permission is received or first occupation, whichever is earlier.

11. Reading both the above together, it can be understood that if additional FSI is taxable and tax is payable under RCM, a promoter is not required to pay tax on additional FSI used for the construction of residential units until Building Usage Permission is received andtax is payable only to the extent such an additional FSI is used for construction of residential unitnot booked till the time of receipt of BU permission.

12. Hence, in case of demand raised on the promoters of residential scheme, demand maybe reduced substantially and promoter may decide to pay GST to avoid the exorbitant interest of 18% and penalty of hundred percent and cost of litigation, if the amount is not substantial after above mentioned exemption and deferred time for payment of GST.

13. However, it is worth noting that neither such exemption is providednor time for payment is delayed forFSI is sued for construction of commercial units.

"The greatest wealth in business comes from disciplined spending and calculated investing"

Emily Black

Understanding Taxation of Mergers: Laws and Implications

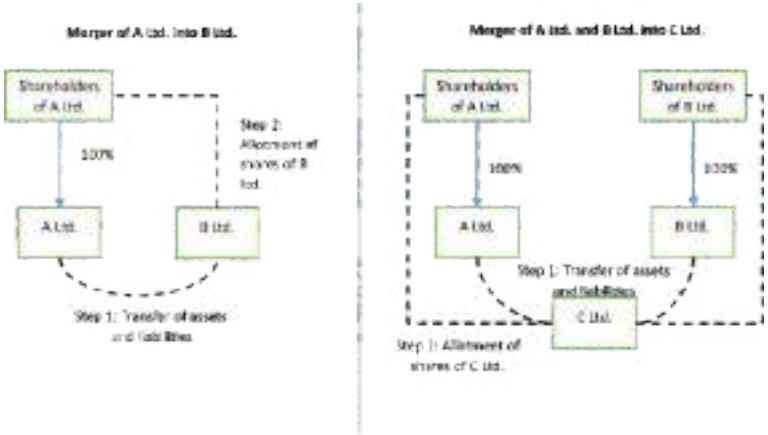
CA Rushi Shah

In the recent times post Covid-19, the Indian capital market has seen major uptick. Riding on waves of strong demand and low base, the promising quarterly and annual results of the companies, the companies have offered lucrative investment opportunity for the investors. At the same time, the companies are looking for organic as well as inorganic growth such as acquisitions, mergers, etc. In cut-throat competition, inorganic growth not only provides synergies to the companies, it also help to achieve cost optimization, elimination of competitions, achieving economies of scale, etc. It helps the companies to foster their business by leveraging valuable resources such as loyal customers, brand name, intellectual property rights, supply chain, etc. The recent key merger includes Reliance-Disney Star, HDFC Bank-HDFC Ltd, Zomato-Blinkit, etc.

As a Chartered Accountant, often we are engaged to provide services for due diligence, transaction restructuring, etc. This provides us an opportunity to structure the transaction in a tax efficient manner. Let's dive into the regulatory and taxation aspects of mergers.

Introduction to Merger/Acquisition

A merger or **amalgamation** refers to the combination of two or more companies into an entirely new entity. It entails the legal process in which the transferor entities (also referred to as 'amalgamating company') lose their existence to form a new entity (hereinafter referred as 'amalgamated company'). All the assets and liabilities of the amalgamating company are transferred to the amalgamated company pursuant to legal vesting. In return, the amalgamated company issue shares to the shareholders of amalgamating company. The process of amalgamation of two or more companies is governed by the provisions of Companies Act, 2013.



Quick look at provisions of Companies Act, 2013

The Companies Act does not directly define "amalgamation" but addresses it under the framework for compromises, arrangements, and amalgamations in Sections 230 to 240. The approval process for mergers and amalgamations requires several key steps to ensure compliance with legal and regulatory frameworks. Firstly, the scheme must be sanctioned by the **National Company Law Tribunal (NCLT)** under Sections 230-232 of the Companies Act, 2013. This sanction ensures the scheme is fair, equitable, and in accordance with the law. Additionally, approval from creditors and shareholders is mandatory, achieved through meetings convened as directed by the NCLT. The scheme must be approved by at least 75% in value of creditors or shareholders present and voting in these meetings. Furthermore, compliance with regulatory authorities such as the **Securities and Exchange Board of India (SEBI)** for listed companies, the **Reserve Bank of India (RBI)** for entities with foreign investments or NBFCs, and the **Competition Commission of India** for large business combinations, the **Ministry of Corporate Affairs (MCA)** is essential. These approvals ensure that the merger or amalgamation adheres to the applicable financial, legal, and corporate governance standards. During the process, the NCLT invites objections/comments from stakeholders including tax authorities, etc. Many a time, a scheme is rejected, if it is short of commercial rationale and framed only for tax avoidance purposes.

The scheme of amalgamation generally specifies the 'appointed date' i.e. the date from which the scheme comes

into force. Such 'appointed date' can be retrospective (even prior to the date of filing the scheme before the NCLT) or prospective in nature. On the other hand, the date on which the amalgamation/merger process is completed in all aspects,i.e. filing necessary documents post NCLT approval, is referred to as Effective date.Once the scheme is effective, it is presumed that all the assets and liabilities of the amalgamating companies stand vested in the name of the amalgamated company from the appointed date.

The Hon'ble Supreme Court in the case of **Marshall Sons & Co. India Limited v. ITO (223 ITR 809)** and the Hon'ble Madras High Court in **Equitas Housing Finance Limited and Equitas Micro Finance Limited with Equitas Finance Limited in C.P. Nos. 119 to 121 of 2016** held that the amalgamating company deemed to merger with effect from the appointed date. In other words, all the income arising on or after the appointed date shall be taxed in the hands of amalgamating company.

The Ministry of Corporate Affairs (MCA) issued Circular no. 09/2019 dated August 21, 2019, clarifying that companies have flexibility to determine the appointed date as either a specific calendar date or one based on the occurrence of a trigger event. This appointed date, once defined in the scheme, will be considered the "acquisition date" for accounting purposes, aligning with accounting standards such as Ind AS 103. If the appointed date is significantly ante-dated beyond a year from the date of filing the scheme, justification for the same needs to be provided in the scheme and it should not be against public interest.

Key provisions of Income-tax Act, 1961 ('the Act')

As per section 2(1B) of the Act defines "amalgamation", in relation to companies, to mean the merger of one or more companies with another company or the merger of two or more companies to form one company. In the process of amalgamation, all the property and liabilities of amalgamating company become the property/liability of the amalgamated company. The shareholders holding not less than three-fourth in the value of the shares in the amalgamating company become shareholders of the amalgamated company by virtue of the amalgamation. The Act provides tax neutrality in the hands of parties to the amalgamation.

Tax Implications for the Amalgamating Company

As per Section 45(1) of the Income Tax Act, any profits or gains arising from the transfer of a capital asset in the previous year are chargeable to income tax under the head “Capital Gains.” This means that the income will be taxed in the year the transfer occurs.However, there are important exceptions provided under Section 47(vi). It states that if a capital asset is transferred in a scheme of amalgamation, the transfer will not be subject to tax under Section 45, provided the amalgamated company is an Indian company. This exemption ensures that the transfer of assets during an amalgamation is not taxed in the hands of the amalgamating company.

Similarly, section 32 of the Act envisages and deals with a situation of amalgamation. As per sixth proviso to section 32(1), in the year of amalgamation, the depreciation claim is apportioned between the transferor and transferee companies based on the number of days each company uses the asset. The transferor company can claim depreciation for the period up to the date of the amalgamation.

Tax Implications for the Amalgamated Company in Mergers

When a company undergoes a merger, the tax implications for the amalgamated company can be complex, especially with regard to the treatment of capital assets and depreciation. The Act provides enough clarity with respect to cost of acquisition of capital asset, written down value of depreciable asset, transfer of set off of losses, etc.

For the purpose of computation of 'depreciation', computation of actual cost and written down value of depreciable asset is important. Under section 43(1) of the Act, the "actual cost" of assets refers to the original cost of an asset to the assessee, reduced by any portion of the cost met by other persons or authorities. This definition becomes important when assets are transferred during a merger.

Explanation 7 of section 43(1) specifies that in a scheme of amalgamation, when a capital asset is transferred from the amalgamating company to the amalgamated company, and the amalgamated company is an Indian company, the actual cost of the transferred capital asset shall be allowed in the hands of amalgamated company. This ensures that the amalgamated company inherits the asset's value for depreciation purposes.

Similarly, Explanation 2(b) of Section 43(6) addresses the written down value (WDV) of assets in the case of a block of assets being transferred during a merger. If a block of assets is transferred from the amalgamating company to the amalgamated company, the WDV for the amalgamated company will be the same as the actual cost in the hands of the amalgamating company for the preceding year, reduced by the depreciation actually allowed in that year.

In the year of amalgamation, the depreciation allowance is apportioned between the transferor and transferee companies based on the number of days each company used the asset. The transferor company can claim depreciation for the days based on how long it has used the asset. Post amalgamation, the transferee company shall claim depreciation.

For calculating capital gains, section 49(1) provides guidance on the cost of acquisition of the asset. It states that the cost of acquisition of an asset for calculating capital gains is deemed to be the cost at which the previous owner acquired it. Along with the cost, the period of holding also travels to amalgamated company. As per section 2(42A) of the Act, in the case of an asset that becomes the property of the assessee through a merger, the period of holding shall include the period for which the asset was held by the previous owner. This helps determine whether the asset qualifies for short-term or long-term capital gains, based on the total period of holding by both the amalgamating and amalgamated companies.

These provisions ensure that the amalgamated company is not unduly burdened with taxes following the merger and that the transfer of assets is handled in a tax-efficient manner, particularly with respect to depreciation and capital gains. However, the condition that the amalgamated company should be Indian company, makes only amalgamation between two companies or inbound amalgamation tax neutral. In the case of outbound amalgamation, if the amalgamated company becomes resident in India pursuant to Place of Effective Management ('POEM') rules, determination of cost in the hands of amalgamated company would pose questions.

Section 72A of the Act provides a significant benefit for companies involved in an amalgamation. It allows for the carry-forward and set-off of accumulated business losses and unabsorbed depreciation. The amalgamating company owning 'industrial undertaking' can bequeath the accumulated losses and depreciation, provided certain conditions are met. Such a transfer of loss to amalgamated company encourages revival of the sick business of industrial undertaking owned in amalgamating companies.

Rule 9C of the Income-tax Rules, 1962, outlines the specific conditions for carrying forward accumulated losses and unabsorbed depreciation. In the case of an industrial undertaking being transferred, the amalgamated company must achieve at least 50% of the installed production capacity within four years from the date of amalgamation and maintain this level for the next year. The company must submit a certificate in Form No. 62, signed by the principal officer and verified by an accountant, confirming that the production targets have been met. In genuine case, the amalgamated company may approach authorities for condonation of failure to achieve 50% of installed capacity. However, the restrictions on transfer of loss of non-industrial undertaking may require rationalization.

Tax implications for shareholders

Under section 45(1) of the Act, any profits or gains arising from the transfer of a capital asset during the previous year are generally chargeable to income tax under the head "Capital Gains." Such income is taxed in the year the transfer takes place. However, section 47(vii) of the Act provides relief from tax liability on extinguishment of shares in amalgamating company. Accordingly, any transfer of shares by a shareholder pursuant to scheme of amalgamation, shall not be taxable if the shareholder receives shares in Indian amalgamated company in consideration.

As per section 49(2) of the Act, the cost of acquisition of shares in amalgamating company shall be available as cost of acquisition of shares in amalgamated company. Further, the period of holding of shares in amalgamated company shall reckon from the acquisition date of shares in amalgamating company. This ensures tax neutrality of the amalgamation transaction. It facilitates smoother transactions and encourages corporate restructuring without imposing an undue tax burden on the shareholders involved.

Conclusion

Indian tax laws for mergers and amalgamations aim to encourage corporate restructuring without leading to adverse tax implications in the hands of parties to amalgamation. The Act eases out the complexity on the taxation front for amalgamation transactions. Tax neutral transition encourages companies to focus on inorganic growth and provides immense opportunity to the finance professionals.

Congratulations for Appointed as Authorized Notary

ADV. (DR.)DHRUVEN SHAH

Very warm congratulations onAppointed as Authorized Notary.

We (AGFTC Family) are happy to share with our members that Our Esteem Memberas well as Past. President of the our Associationhas been appointed as Authorized Notary in Ahmedabad from Central Government.

On behalf of our whole committee, we wish you a greatsuccess and prosper in future as well. May your journey be filled with continued success and happiness!

Congratulations for Re-Electing as a Central Council Member of ICAI

CA PURUSHOTTAM KHANDELWAL

Very warm congratulations on being Re-Elected as a Central Council Member of ICAI and best wishes for your success.

We (AGFTC Family) are happy to share with our members that Our Esteem Member is Re – Elected as CCM.

On behalf of our whole Family, we wish you a great success and prosper in future as well. Your determination and hard work have paid off in a big way. Congratulations on your excellent success!

From: (AGFTC Family)

"Don't watch the clock; do what it does. Keep going."

Sam Levenson

These Matters

CA Ravi Shah

A. Fair Tax Regime where no Assessee is harassed is equally crucial:Bombay HC imposes cost on SGST officers

- In a case before the Hon'ble Bombay High Court, Assessment orders under MVAT Act for the F.Y.2013-14 and F.Y. 2014-15 were passed and served on the Assessee without any statutory notice for assessment and also without any show cause notice in terms of first proviso to section 23(2) of the MVAT Act and Rule 21 of the MVAT Rules, which provides for the issue of a notice followed by a reasonable opportunity to be heard, before assessing any assessee based on best judgment of the AO.

- On closer scrutiny of the assessment order, the Court noted that the assessment orders were verbatim and appeared to be replicating assessment order of some unrelated entity thus indicating mechanical (copy paste) orders without any application of mind. The Court also observed the attempt of the AO of back dating the orders to make them appear as passed within the statutory limitation period.

- The Court held that, though the interest of revenue is vital, such interest cannot override considerations of probity and fairness in tax governance.

- A fair tax regime where no assessee is harassed was equally crucial.

- The Court observed that department cannot ask for remand back with a direction for denovo assessment as a matter of right, for granting such prayer would be akin to granting premium to the AO for its failure to act in accordance with the law.

- The Court observed that, any indulgence by way of remand would only embolden unscrupulous tax officials to manipulate orders or otherwise mistreat the assessees. In such cases, if the tax quantum is huge as alleged, steps can always be taken to recover such amounts from the officials due to whose lapse such taxability, if any, remained to be determined and recovered following the due process of law.

- Resultantly, the assessment order was quashed, the request for remand back by the department was declined, and cost of Rs.50,000/ - was imposed on the officers their misdoings .

[Soremartec S. A. Luxembourg v. State of Maharashtra, Writ Petition No.11929/2023, Judgement dated 17.10.2024 (Bombay HC)]

B. SC on liability of banker for allowing operation of locker restrained by Income Tax Department

HDFC Bank Ltd. Vs State of Bihar & Ors. (Supreme Court of India) Criminal Appeal of 2024 Arising out of Special Leave Petition (Criminal) No.8906 of 2022

Facts :

1. A peculiar situation arose in this case when HDFC Bank Gandhi Maidan Patna Branch allowed bank locker to be operated by Khemka family on whom a search was earlier conducted and their bank account and lockers were restrained by Director of Income-tax(INV).

2. However, subsequently the said restrain order was revoked though only in relation to Bank account. However, the bank officials interpreted that the revocation is applicable for lockers also, allowed locker to be operated.

3. When this came to light, IT Department filed FIR against bank officials as well as Khemka family which was upheld by Single Bench of Patna High Court.

Hon SC held as follows:

1. For bringing out the offence under the ambit of Section 420 IPC, the FIR must disclose the following ingredients: (a) That the appellant-bank had induced anyone since inception; (b) That the said inducement was fraudulent or dishonest; and (c) That mens rea existed at the time of such inducement.

2. The appellant-bank is a juristic person and as such, a question of mens rea does not arise.

3. However, even reading the FIR and the complaint at their face value, there is nothing to show that the appellant-bank or its staff members had dishonestly induced someone deceived to deliver any property to any person, and that the mens rea existed at the time of such inducement.

4. As such, the ingredients to attract the offence under Section 420 IPC would not be available.

C. Can exemption u/s.548 be allowed if new agricultural land was purchased in the name of wife?

- In a case before the Punjab & Haryana High Court, the Appellant had sold his jointly owned agricultural land in which he held 1/4th share and had purchased another agricultural land in name of his wife and claimed exemption u/s.548, which was denied by the AO.

- On Appeal, the assessee relied on the judgement in CIT v. Gurnam Singh (2010) 327ITR 278 (P&H) wherein it was held that, as the new agricultural land was purchased from the sale proceeds of the old land and the new land was being used by the assessee only for agricultural purposes, merely because in the sale deed his only son was also shown as co-owner, the assessee could not be denied deduction u/s.548.

- However, the Hon'ble High Court distinguishing the decision in Gurnam Singh (supra) and relying on its earlier judgement in CIT v. Dinesh Verma (2015) 233 Taxman 409 (P&H) held that, exemption would not be allowable when the newly purchased land was solely held in the name of the assessee's wife and the assessee was not even a co-owner therein.

- The Court observed that section 548 requires the assessee to purchase the property from out of the sale consideration of the capital asset. It does not entitle the assessee to the benefit conferred therein if the subsequent property is purchased by a person other than the assessee including a close relative even such as his wife or children. If the legislature intended conferring such a benefit, it would have provided for the same expressly.

- It was observed that, in interpreting the words contained in a statute, the Court has not only to look at the words but also to look at the context and the object of such words relating to such matter and interpret the meaning Intended to be conveyed by the use of the words under the circumstances.

- The purchase of agricultural land by the assessee in his close relative's name, therefore, cannot be held entitled to exemption under section 548 of the Act.

- The SLP filed by the Assessee before the Hon'ble Supreme Court was dismissed confirming the judgement of the High Court holding that the purchase of agricultural land in the name of his wife would not entitle exemption under section 548 to the assessee.

[Bahadur Singh v. CIT (2023) 154 taxmann.com 457 (SC)]

D. CBDT notifies Monetary Limits for Interest Waiver under Section 220(2):

1. CBDT has issued a Circular No. 15/2024 on November 4, 2024, establishing monetary limits for income-tax authorities concerning the reduction or waiver of interest under Section 220(2) of the Income Tax Act, 1961.

2. This section imposes interest on taxpayers for delayed payment of tax as per demand notices issued under Section 156, at a rate of 1% per month.

3. However, under Section 220(2A), certain authorities are empowered to reduce or waive this interest if specific conditions are met.

4. To qualify for a waiver or reduction, taxpayers must demonstrate genuine hardship, circumstances beyond their control that led to the delay, and cooperation with any inquiries or recovery proceedings

5. Central Board of Direct Taxes, vide the aforesaid

circular, for the proper administration of the Act, has specified the following monetary limits as under:

I. Principal Commissioner of Income Tax (Pr.CIT) or Commissioner of Income Tax (CIT) can waive interest for amounts up to Rs. 50 lakh.
II. Chief Commissioner of Income Tax (CCIT) or Director General of Income Tax (DGIT) can handle amounts exceeding Rs. 50 lakh but not exceeding Rs. 1.5 crore.
III. The Principal Chief Commissioner of Income Tax (Pr.CCIT) has authority for amounts above Rs. 1.5 crore.

E. Principle of Consistency to be taken into Consideration While Selecting the Most Appropriate Method: Delhi HC

THE PR. COMMISSIONER OF INCOME TAX versus SABIC INDIA PVT LTD. (ITA 514/2024 & CM APPL. 59663/2024)

Facts:

1. The assessee, a part of the Sabic group, during the relevant previous year was engaged in provision of marketing support services to the associated enterprise. During the relevant year, the assessee received consideration from associated enterprises for provision of marketing support services.

2. The said transaction was benchmarked applying Transactional Net Margin Method ('TNMM') as the most appropriate method, using Operating Profit / Value added expenses ('OP/VAE') as the Profit Level Indicator ('PLI'). The assessee also undertook an alternate benchmarking analysis. There was no dispute regarding the functional profile of the assessee and it was accepted by the TPO that the assessee was only a marketing support service provider and not a trader or a buy-sell entity.

3. The TPO, however, discarded TNMM applied by the assessee and instead, applied Other Method for the purpose of benchmarking analysis. For applying the Other Method, the TPO selected 7 uncontrolled agreements and held that median rate of commission charged / paid under the said agreements represents the arm's length price for the marketing support services provided by the assessee.

4. The TPO, thereafter, applied the said commission rate on the sales made by the associated enterprises in India and arrived at the arm's length compensation for the services provided by the assessee to the associated enterprises. Accordingly, transfer pricing adjustment was made by the TPO in respect of the international transaction of provision of marketing support services.

Hon Delhi HC held as below:

1. Even though the principle of res judicata does not strictly apply to tax matters, inconsistencies in the approach in assessment of tax on annual basis, would be debilitating to a conducive commercial environment.

2. A change in the approach of assessment of tax, absent any statutory change, leads to uncertainty as to the cash flow/fund flow, which are the lifelines of commercial enterprises. Thus, unless there are cogent reasons to discard the method for transfer pricing adopted in the earlier assessment years, the TPO was required to follow the method consistently adopted for determining the ALP in prior years.

F. Would the non-domiciled visitors in India be required to obtain a tax clearance certificate (TCC)?

What is 'domicile'?

1. The term 'domicile' is not defined in the Income-tax Act, 1961 or other ancillary laws.

2. Ordinarily, it means a permanent home or place where a person resides with the intention of remaining there for a prolonged/ indefinite period. i.e the domicile of a person is in that country in which he either has or is deemed by law to have his permanent home.

3. The Indian Succession Act, 1925 provides various definitions relating to the term 'domicile'.

Sec 230:

1. Sec 230 of the Income Tax Act provides guidance on issuing a TCC to foreign nationals and non-resident Indians (NRIs) leaving India.

2. TCC is not required for most visitors and travellers leaving India, including tourists, business visitors, and short-term residents.

Criteria:

Persons not domiciled in India must obtain NOC if they meet the following criteria:

i. They are not domiciled in India.
ii. They have come to India, in connection with business, profession or employment.
iii. They have earned income from any Indian source.

Relevant forms:

1. If a person is not domiciled in India, Form 30A needs to be furnished by employer or a person through whom the income is received declaring their responsibility for any tax liabilities that might arise after he/she leaves the country.

2. After reviewing the application, the tax officer will issue the No Objection certificate i.e. TCC in Form 30B. This certificate will contain the detail of the validity and confirm that he/she have met all tax obligations up to that point.

G. DGGI has no powers to transfer cases pending before SGST authorities to itself

- The Hon'ble Punjab & Haryana High Court in Stalwart Alloys IndiaPvt. Ltd. v. UOI, Civil WP No.7411/2023, Judgement dated 28.08.2024,has held that:

- State and Central Governments have the same powers under the GST law. In a federal structure, the Central Government authorities and the State authorities would be required to act in tandem and not to operate in exclusion with one another.

- The powers of Inspection, Search, Seizure and Arrest as provided under Chapter XIV of the CGST Act, 2017 reflect that the power which is being exercised by the proper officer in terms of sections 69, 70, 71 and 72 of the CGST Act are purely judicial in nature. In terms of section 70(2) of the Act, every inquiry shall be deemed to be a judicial proceeding. In law, such judicial proceedings cannot be transferred by administrative actions.

- IIn terms of section 6(2)(b) of the CGST Act, once a proper officer has initiated any proceedings on a subject matter, no proceedings can be initiated by another proper officer on the same subject matter.

- The scheme of the CGST Act nowhere provides for transferring the proceedings from one proper officer to another. On the other hand, it debars the same.

- Thus, neither any authority has the power to transfer the case from its own jurisdiction to another nor any other authority can direct for transferring an investigation/proceeding already undergoing before the proper officer in terms of section 6(2)(b).

- Merely because there may be other firm(s) also against whom proceedings are initiated consequent to investigation or enforcement action, there cannot be a transfer of ongoing proceedings as there is no concept of joint proceedings under the scheme of GST law.

- Thus, it was held that, after the record having been seized by the SGST authorities, the record so seized cannot be transferred to the Director General of Goods and Services Tax intelligence (DGG) functioning under the Central Tax for continuation of the proceedings, nor can DGGI usurp the power of the officer under SGST Act, he being the proper officer. Consequently, the transfer of proceedings was quashed.

H. In case of genuine hardship, delay in filing of ITR may be condoned by the CBDT: Bombay HC

Smita Dilip Ghule Versus The Central Board of Direct Taxes (WP No. 2348 of 2024)

Facts:

1. The Petitioner made an Application dated 31st March, 2021 to the Central Board of Direct Taxes (the CBDT), requesting it to condone the delay in filing the Income Tax Return and allowing the claim of carry forward of long term capital loss of Rs.99,88,535/- by exercising power under Section 119 (2)(b) of the Income Tax Act.

2. In the application for condonation of delay in filing of returns, the petitioner had indicated that due to the Covid-19 pandemic lock down being announced, the Petitioner, being a doctor, was rendering services to Covid-19 patients. Further, due to various Covid-19 restrictions and the nature of

occupation of the Petitioner, she was unable to approach her tax consultant in advance in respect of computation of long term capital gain.

3. She also said that the consultant advised her to carry out a valuation for determining the cost of acquisition of properties for computation of capital gains. However, the valuer was required to physically visit the site to provide the valuation report but the valuer himself was a senior citizen, aged 75 years, having respiratory issues. So the valuation itself could not be completed before the due date of filing of return of income.

Hon Bombay HC held as below:

1. A perusal of Sec 119(2) shows that the power conferred therein upon CBDT is for the purpose of "avoiding genuine hardship". In our view, the Petitioner would be put to genuine hardship, if the delay in filing the Return of Income is not condoned.

2. In our view, this finding of Respondent No.1 (CBDT) is clearly wrong because, as stated in detail hereinabove, the Petitioner had given various justifiable reasons for condoning the delay in filing the return of income.

3. So, the impugned order dated 20th October, 2023 passed by Respondent No.1 is hereby quashed and set aside. The delay of 80 days in filing of the Return of Income for Assessment Year 2020-2021 by the Petitioner is hereby condoned. The Respondents are directed to permit the Petitioner to file the Return of Income without penalty, fees and interest within a period of two weeks from the date of uploading of this order;

I. Rules of Consistency, Res judicata & Estoppel in Tax matters

- Res judicata (in latin meaning a 'thing adjudged (decided) literally means 'a thing or matter that the has been finally juridically decided on its merits and cannot be litigated again between the same parties.' The purpose of the doctrine is to provide finality to litigation and to protect parties from beings vaxed by the same matter twice.

- The Doctrine of, Res judicata, however has no application in taxation matters pertaining to different assessment years, because res judicata applies to debar courts from entertaining issues on the same cause of action, whereas the cause of action for each assessment year In taxation matters is distinct.

- As held by the Hon'ble Supreme Court in Radhasaoim Satsang193 ITR 321 "where a fundamental aspect permeating through the different assessment years has been found as a fact way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

- The court observed that, in absence of any material change justifying the Revenue to take a different view of the matter and, if there was no change, ordinarily there should have been no reason for the Revenue to take altogether a different and contradictory stand than earlier.

- As held by the Delhi High Court in CIT v. ARJ Security Printers(2003) 246 ITR 276, althoug each assessment year being independent of the other, the principle of res judicata or estoppel by record which applies to civil courts does not apply to income-tax proceedings, yet for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of fiscal statutes, earlier decisions on the same question should not be reopened unless some fresh facts are found in the subsequent year.

- The principle of consistency is a principle of equity and cannot override the clear provisions of law.

- Further, this rule of consistency has a limited application in tax matters.

- As held by the Hon'ble Delhi High Court in Honey Enterprises v. C T (2016) 381 ITR 258, the principle of consistency is a principle of equity and would not override the clear provisions of law. It is well accepted that each assessment year is separate and the fact that a particular accounting treatment followed by the assessee under the prceding year was not objected to, would not fetter the Assessing Officer from correcting the mistake in a subsequent year as the principles of res judicata are not applicable to tax matters.

- As held by the Hon'ble Supreme Court in Raja Bahadur Visheshwara Singh v. CIT (1961) 41 TR 685 (SC) there is no such thing as res judicata in income-tax matters.

- Further, an erroneous or mistaken view taken earlier does not operate as an estoppel against the authorities from correcting the same for the simple reason that, being an equitable principle, it has to yield to the mandate of law.

- The Court observed that, in absence of any material change justifying the Revenue to take a different view of the matter and, if there was no change, ordinarily there should have been no reason for the Revenue to take altogether a different and contradictory stand than earlier.

- As observed in BSNL v. UOI(2006) 282 ITR 273 (SC), in tax matters even if the same issue recurs in the subsequent year, the court can take a different view if the case is distinguishable or where the earlier decision is per incuriam.

- Estoppel normally means estopped from re-agitating the same issue again. However, it is settled position in law that, there cannot be an estoppel against a statute. As held by the Supreme Court UOI v. Banwari Lal Agarwal (1999) 238 TR 461,there is no provision in the Income Tax statute which permits a compromise assessment. The tax matters ought to be decided in accordance with the law.

Criteria under the Companies Act,2013 triggering certain compliances – at a Glance

Sr. No.	Particulars	Section No.	Rule No.	Applicability to		
				Listed Co	Unlisted public Co with following criteria	Private co with following criteria
1.	Annual return to be certified by a CS in practice	S. 92(2)	R.11(2) of Co (MGT) Rules	Yes	Paid-up Sh Cap >Rs. 10 crores, OR Turnover > Rs. 50 crores	
2.	File FS in XBRL (except NBFC,HFC,Banking Co, Insurance Co)		R.3(1) of Co (XBRL) Rules	Yes	- If Subsidiaries of Cos listed with SE in india - Paid-up Sh Cap Rs. 5 crores OR - Cos required to prepare their FS as per Ind AS	
3.	Corporate Social Responsibility	S.135(1)	R. 3(1) of Co (CSR) Rules	Networth≥ Rs. 500 crores OR Turnover ≥ Rs. 1000 crores OR Net Profit ≥ Rs. 5 crores During immediately preceding FY		
4.	Internal Audit	S.138(1)	R.13(1) of Co (Accounts) Rules	Yes	- Paid-up Sh Cap ≥ 50 crores, OR - Turnover ≥ 200 crores , OR - Outstanding loans/borrowings from banks/PFIS > Rs. 100 crore at any point of time, OR - Outstanding deposits ≥Rs 25 crore at any point of time During preceding FY	- Turnover ≥ Rs. 200 crores. OR, - Outstanding loans/ borrowings from banks/ PFIS > Rs. 100 crore, at any point of time during preceding FY
5.	Rotation of Auditor	S.139(2)	R.5 of Co (Audit) Rules	Yes	- Paid-up Sh Cap ≥ Rs.10 crore	Paid-up Sh Cap ≥ Rs. 50 crore,
					- Cos having paid up Sh Cap below the aforesaid threshold, but having Public borrowings from FIS, banks or public deposits≥ Rs. 50 crore	
6.	Woman Director	S.149(1)	R.3 of Co (DIR) Rules	Yes	- Paid-up ShCap≥ Rs 100 crore OR	N.A.
7.	Independent Directors Audit Committee Nomination & Remuneration Committee	S 149(4) S 177(1) S 178(1)	R. 4 of Co. (DIR) Rules R. 6 of Co (BM) Rules	Every Listed Public Co. For ID, Composition and other details of AC and NRC Please refer to XI (5) (A) & (B) Above	Unlisted Public Co. Having: - Paid up sh Cap Rs 10 crore OR - Turnover ≥ Rs 100 Crore, OR - Outstanding Loans, Debentures and Deposits ≥ Rs. 50 Crores Not Applicable to: JV, WOS, Dormant Co. For ID, Composition and other details of AC and NRC, Please refer to XI (5) (A) &(B) above	N.A.

8.	Stakeholders Relationship Committee	S.178(5)		>1000 SH, debenture-holders, deposit-holders and any other security holders at any during a FY		
9.	Vigil Mechanism	S.177(9)	R.7 of Co (BM) Rules	Yes	- Accepting deposits from public, OR, - Has borrowed money from banks and PFIs > Rs. 50 crores	
10.	Related Party Transactions requiring prior (Ordinary) resolution (at GM)	S.188(1)	R.15(3)of Co (BM) Rules	Limits for one or more transactions in a FY		
				Sale, purchase or supply of any goods or materials directly or through appointment of agents (S.188(1)(a),(e))		≥ 10% of turnover
				Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents (S.188(1)(b), (e))		≥ 10% of Net Worth
				Leasing of property of any kind(S. 188(1)(c))		≥ 10% of turnover
11.	Appointment of whole-time KMP (MD/CEO/WTD, CFO, CS)	S 203	R. 8 of Co. (MR) Rules	Yes	- Paid up Sh Cap Rs. 10 Crore	N.A.
	Appointment of Whole-time CS	S 203	R. 8A of Co. (MR) Rules	Covered Above		A Pvt Co Having Paid up Sh Cap Rs. 10 Crore (effective 01/04/2020)
12	Secretarial Audit	S. 204(1)	R. 9 of Co. (MR) Rules	Yes	- Paid up Share capital Rs 50 Crores, or - Turnover Rs. 200 Crores or	N.A,
					- Every Co. having Outstanding loand or borrowing from banks or PFIs Rs. 100 Crores (effective 01/04/2020) - Existing on the last date of latest audited FS	

"Accounting is the silent Engine driving every Business forward."

Natalie Green

ACTIVITIES AT A GLANCE

ACTIVITIES AT A GLANCE

ગુજરાતમિત્ર

ગતિવિધિ

બરોડા ટેક્સબાર એસો. અને ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્સે.ના સંયુક્ત સેમિનાર

આવક વેરા અને જીએસટી ફેડરેશનના સમાધાન-સુધારા માટે સેમિનાર યોજાયો

IT : જૂના કેસોમાં વિવાદ સે વિશ્વાસમાં 'મુદ્રા' ભેરી થતા લાભની સમજ અપાઈ

વ્યાજ રેમ્યુનરેશનમાં ટીડીએસના આવેલા સુધારાની માહિતી આ