VIRTUAL NATIONAL TAX CONFERENCE

17th & 18th February, 2021

All India Federation of Tax Practitioners (WZ)

The Goods And Services Tax Practitioners' Association of Maharashtra

Vidharbha Tax Practitioners' Association

Central Gujarat Chamber of Tax Consultants

VIRTUAL NATIONAL TAX CONFERENCE

17th & 18th February, 2021

All India Federation of Tax Practitioners (WZ)

The Goods And Services Tax Practitioners' Association of Maharashtra

Vidharbha Tax Practitioners' Association

Central Gujarat Chamber of Tax Consultants

Disclaimers

The opinions and views expressed in this Paper Book are those of the contributor. The Federation/ Association does not necessarily concur with the same.

This Paper Book is given with the understanding that neither the publisher, nor the contributor will be responsible for the result of any error or omission, to any person whether a buyer of this Paper Book or not.

Virtual National Tax Conference

17th & 18th February, 2021

All India Federation of Tax Practitioners (WZ)
The Goods And Services Tax Practitioners' Association of Maharashtra
Vidharbha Tax Practitioners' Association • Central Gujarat Chamber of Tax Consultants

CONFERENCE SCHEDULE

Day 1 – 17th February, 2021	
09.30 am to 10.30 am	**Inaugural Session** **Chief Guest : Hon'ble Justice Shri P. P. Bhatt, President, Income Tax Appellate Tribunal**
10.30 am to 01:00 pm	**1st Technical Session**
	Implications of Union Budget on Direct Taxes Speaker : CA. Pradip Kapasi, Mumbai Chairman : Dr. K. Shivaram, Sr. Adv., Mumbai
02:00 pm to 04:30 pm	**2nd Technical Session**
	Recent Changes and Budget Implications on GST Speaker : Mr. Pankaj Ghiya, Adv., Jaipur Chairperson : Mrs. Nikita R. Badheka, Adv., Mumbai
Day 2 – 18th February, 2021	
10:30 am to 01:00 pm	**3rd Technical Session**
	GST Audit and Annual Return for F.Y. 2019-20 Speaker : CA. Abhay Desai, Vadodara Chairman : CA. Deepak Thakkar, Mumbai
02.00 pm to 04.30 pm	**Brains' Trust Session**
	Chairman : Mr. P. C. Joshi, Adv., Mumbai **Direct Tax Trustees:** Mrs. Prem Lata Bansal, Sr. Adv., New Delhi CA. Dhinal Shah, Ahmedabad **Indirect Tax Trustees:** Mr. Jatin Harjai, Adv., Jaipur Mr. Uchit Sheth, Adv., Ahmedabad

National Executive Committee (NEC) 2021

National President	Imm. Past President	Dy. President	Secretary General	Treasurer
Mr. M. Srinivasa Rao Eluru	Mrs. Nikita Badheka Mumbai	Mr. D. K. Gandhi New Delhi	Mr. S. S. Satyanarayana Hyderabad	Mr. Vijay Narayan Kewalramani Thane

Vice-Presidents

Mr. S. B. Kabra Hyderabad (SZ)	Mr. O. P. Shukla Varanasi (NZ)	Mr. Rajesh Mehta Indore (CZ)	Mr. Anand Kumar Pasari Ranchi (EZ)	Mr. Janak K. Vaghani Mumbai (WZ)

Joint Secretaries

Mr. Siddeshwar Yelamali Bengaluru (SZ)	Mr. Arvind Kumar Mishra Prayagraj (NZ)	Mr. Deep Chand Mali Jodhpur (CZ)	Mr. Amit Goyal Guwahati (EZ)	Ms. Anagha Kulkarni Pune (WZ)

Members

Mr. Achintya Bhattacharjee Kolkata	Mr. Basudeb Chatterjee Jamshedpur	Mr. Dilip Kumar Agarwal Siliguri	Mr. Nitin Gautam Nagpur	Mr. Samir Jani Junagadh
Mrs. Anjana Singh Prayagraj	Mr. Bharat Swami Vadodara	Mr. G. Baskar Chennai	Mr. P. M. Chopra Jodhpur	CA. Sandeep Gadodia Ranchi
Mr. Anil Kumar Srivastava New Delhi	Mr. Bhaskar B. Patel Vadodara	Mrs. Gouri Chandnani Popat Ahmedabad	Mr. Pankaj Ghiya Jaipur	Mr. Santosh Gupta Nagpur
Mr. Arvind Shukla Varanasi	Mr. Bibekananda Mohanty Jajpur	Dr. Hemant S. Modh Jabalpur	Mr. Pradosh Pattnaik Bhubaneshwar	Mr. T. Chandramouli Tirupati
Mr. Bharat Sachdev Thane	Mr. C. Radhakrishnan Vellore	Mr. Hemendra V. Shah Hyderabad	Mr. R. D. Kakra Kolkata	Mr. V. P. Gupta New Delhi
Mr. B. S. Seethapathi Rao Kakinada	Mr. Chirag S. Parekh Mumbai	Mr. Kishor Vanjara Mumbai	Mr. Rajesh Joshi Indore	Mr. Vinayak Patkar Mumbai
	Mr. Deepak R. Shah Mumbai	Mr. Mitesh Kotecha Mumbai	Mr. Rahul Kaushik New Delhi	Mr. Vipul B. Joshi Mumbai
			Mr. Suresh Chandra Garg Kolkata	Mr. Vijay Kumar Navlakha Ujjain

Co-opted Members

Mr. A. V. S. Krishna Mohan Nellore	Mr. Hari Lal Patel Ranchi	Mr. Kishor Lulla Sangli	Mr. Rajendra Sodani Ujjain	Mr. Sanjay Kumar Prayagraj
Mr. Bhola Prasad Sinha Ranchi	Mr. H. Ramakrishnan Trivandrum	Mr. Nagesh Rangi Hyderabad	Mr. Rakesh Agrwal Ghaziabad	Mr. Siddharth J. Ranka Jaipur
	Mrs. Jamuna Shukla Varanasi	Mr. Nigam Shah Ahmedabad	Mr. S. Venkataramani Bengaluru	Mr. Vivek Agarwal Kolkata

Special Invitees

Mr. A. Retna Kumar Trivandrum	Mr. Girish J. Rathi Thane	Mr. K. C. Kaushik New Delhi	Mr. Nanda Dulal Saha Kolkata	Mrs. Ritu G. P. Das Kota
Mr. Ajit Tiwari Vadodara	Mr. H. L. Madan New Delhi	Mr. K. Gopal Mumbai	Mr. Narayan P. Jain Kolkata	Mr. S. Nanjunda Prasad Bangalore
Mr. Alok Jain Chandigarh	Mr. Hitesh R. Shah Mumbai	Mr. Kamlesh J. Rathod Jamnagar	Dr. P. Daniel Thane	Mr. S. R. Wadhwa New Delhi
Mr. B. Phani Raja Kumar Narasaraopet	Mr. K. A. S. V. Prasad Ongole	Mr. Manoj Moryani Nagpur	Mr. P. Lakshminarayana Palakol	Mr. Saurabh Soparkar Ahmedabad
Mr. C. Satyanarayana Gupta, Nellore	Mr. K. Bhima Shankar Visakhapatnam	Mr. Mukul Gupta Ghaziabad	Mr. P. V. Subba Rao Secunderabad	Mr. Y. N. Sharma Bengaluru

Advisor & Past Presidents

Dr. Ashok Saraf Guwahati	Mr. Ganesh Purohit Jabalpur	Dr. K. Shivaram Mumbai	Dr. M. V. K. Moorthy Hyderabad	Mrs. Premlata Bansal Delhi
Mr. Bharat Ji Agrawal Prayagraj	Mr. J. D. Nankani Mumbai	Mr. M. L. Patodi Kota	Mr. P. C. Joshi Mumbai	

Zonal Chairmen

Mr. M. Ganesan Malappuram (SZ)	Dr. Naveen Rattan, Amritsar (NZ)	Mr. Vinay Kumar Jolly, Jaipur (CZ)	Mr. Bibekanand Mohanti, Cuttack (EZ)	Mr. Pravin R. Shah, Mumbai (WZ)

Managing Committee (Western Zone) 2021

Chairman
Mr. Pravin R. Shah, Mumbai

Vice Chairman
Mr. Mitish S. Modi, Surat

Vice Chairman - Maharashtra State
Mr. Ashvin A. Acharya, Mumbai

Vice Chairman - Gujarat State
Mr. Bhavya D. Popat, Una

Secretary
Mr. Sachin Gandhi, Mumbai

Jt. Secretary
Mr. Hemant Parab, Mumbai
Mr. Kalpesh L. Ruparelia, Junagadh

Treasurer
Mr. Avinash B. Lalwani, Mumbai

Jt. Treasurer
Mr. Dipak Amin, Vadodara

Imm. Past Chairman
Mr. Bhaskar B. Patel, Vadodara

Members

Mr. Aditya Surte, Mumbai
Mr. Arun G. Baheti, Kolhapur
Mr. Ashok Bajaj, Mumbai
Mr. Atam S. Tekchandaney, Mumbai
Mr. Bhalchandra G. Joglekar, Pune
Mr. Chintan H. Joshi, Vadodara
Mr. Dilip Lohiya, Nagpur
Mr. Haresh T. Chhugani, Mumbai
Mr. Hari Dudani, Ulhasnagar
Mr. Ishaan V. Patkar, Mumbai
Mr. Kamlesh Saboo, Thane
Mr. Kuntal A. Parikh, Ahmedabad
Mr. Milind M. Bhonde, Pune
Mr. Parag M. Chitnis, Thane
Mr. Pranav M. Shah, Vadodara
Mr. Prashant A. Shah, Surat
Mr. Pravin N. Veera, Thane
Mr. Raj Pravin Shah, Mumbai
Mr. Rajeev Mundra, Thane
Mr. Rajesh H. Chawla, Mumbai
Mr. Rajkumar S. Bhambare, Parbhani
Mrs. Rupa M. Gami, Mumbai
Mr. Sunil D. Neve, Bharuch
Mr. Sunil G. Khushalani, Thane
Mr. Tushar P. Joshi, Mumbai
Mr. Umesh B. Angre, Thane
Mr. Vidyut Buch, Gandhidham
Mr. Vijaykumar J. Shah, Vadodara
Mr. Yatinkumar S. Shah, Kalyan

Co-opted Members

Mr. Aditya Seema Pradeep, Nashik
Mr. Aloke Singh, Aurangabad
Mr. Amit Soni, Nadiad
Mr. Himanshu Vaghela, Vadodara
Mr. Jatin Bhat, Rajkot
Mr. Jayesh Kanani, Jamnagar
Mr. Jayesh M. Shah, Vadodara
Mr. Narendra Sonawane, Pune
Mr. Parth Badheka, Mumbai
Mr. Ratan Samal, Mumbai

Special Invitees

Mr. Amit Lulla, Sangli
Mr. Dayaram Paliwal, Bhayander
Mr. Janak Mistry, Surat
Mr. Jayendrakumar B. Tanna, Junagadh
Mr. Mansukh Waghela, Thane
Mr. N. J. Prabhudesai, Panaji
Mr. Nishant C. Shukla, Ahmedabad
Mr. Pankaj Parekh, Thane
Mr. Pradip Kapadia, Mumbai
Mr. Pratik Satyuga, Mumbai
Mr. Sahebrao Patil, Jalgaon
Mr. Sarad M. Beria, Thane
Mr. Shashank Dhond, Mumbai

The Goods and Services Tax Practitioners' Association of Maharashtra

Managing Committee 2020-21

President
Raj P. Shah

Vice-President
Aalok K. Mehta

Hon. Treasurer
Sunil G.Khushalani

Hon. Jt. Secretaries
Pravin V. Shinde
Mahesh Madkholkar

Ex-Officio Member
Dinesh M. Tambde

Editor-GSTR
Dhaval Talati

Associate Editor
Dr. Shashank S. Dhond

Managing Committee Members
Aditya Seema Pradeep (Nashik)
Ajay Talreja (Ulhasnagar)
Amol T. Mane (Sangli)
Girish J. Rathi (Thane)
Haresh Thakur Chhugani
Ishaan V. Patkar
Jatin Navin Chheda
Narendra K Sonawane (Pune)
Pravin Jadhav
Premal Gandhi
Rahul Thakar
Sejal M. Shah
Sunil Talreja
Umang R. Talati
Vivekanand R. Rao

Co-Opted Members
Chirag Parekh
Pankaj Parekh
Sachin Gandhi

Invitees (Local)
Aditya S. Surte
Ashwin Shivnani
Hiral S. Shah
Monarch Bhatt
Parth R. Badheka
Pravin R. Shah
Tushar Joshi
Vinayak Patkar
Vinod K. Mhaske

Invitees (Outstation)
Abhijeet Berde (Ratnagiri)
Aloke Singh (Aurangabad)
Anvesh Vakharia (Pune)
Arun Baheti (Kolhapur)
M. P. Korulkar (Solapur)
R. S. Bhambre (Parbhani)
Sahebrao Patil (Jalgaon)
Santosh Gupta (Nagpur)

Vidarbha Tax Practitioners' Association

Executive Committee 2020-21

President
CA Shri Radheyshyam Paliwal, Nagpur

Vice President
Adv. Girish R. Dhabali, Akola

Secretary
CA. Shri Nitin S. Gandhi, Nagpur

Joint Secretary
Adv. Shri Jagdish N. Sharma, Amravati

Joint Secertary
CA. Shri Dilip P. Lohiya, Nagpur

Treasurer
CA. Shri Jai M. Poptani, Nagpur

Executive Members
CA Shri Shailendra G. Jain, Nagpur
Adv. Shri Suresh Tolani, Gondia
Adv. Shri Mukund N. Joshi, Nagpur
CA. Ajit A. Gokarn, Nagpur

Ex-Officio Member
Adv. Narendra K. Jha, Nagpur

DISTRICT REPRESENTATIVES

NAGPUR
CA. Shri Ritesh R. Mehta

AMRAVATI
CA. Shri Lalit Tambi

AKOLA/WASHIM
Adv. Shri Dhananjay V Patil

BULDHANA
Adv. Shri Vinayak V. Saoji

CHANDRAPUR/GADCHIROLI
CA. Shri Anand Deshpande

GONDIA
Adv. Shri Shyam Khodecha

WARDHA
CA. Shri Rajendra Bhutada

YAVATMAL
Adv. Shri Ajay Sawala

Central Gujarat Chamber of Tax Consultants

President
Kaushik M. Vaidya

Vice-President
Vijay J. Shah

Vice-President
Nakulesh K. Patel

Hon. Secretary
Himanshu M. Vaghela

Hon. Jt. Secretaries
Divyesh R. Patel
Nilesh N. Shah

Hon. Treasurer
Dipakchandra P. Amin

Hon. Jt. Treasurer
CA Chintan H. Joshi

Managing Committee Members
Pranav M. Shah (IPP)
Kalpeshkumar R. Patel
Pragnesh M. Bhagat
Dhananjay S. Dhadankar
Upendrasinh S. Chavda
Pravin S. Patil
Amrishkumar J. Shah
Sahdev K. Patel
Nirav D. Shah
Sanjay V. Patel

President Emeritus
Bhaskar B. Patel

Sp. Invitee Members
Riken B. Shah - Anand
Parimal V. Patel - Bharuch
Shashikant N. Shah - Halol
CA Rajesh V. Jain - Godhra
Maneshkumar C. Gandhi - Dahod
Amit G. Soni - Nadiad
Manishkumar R. Shah - Vadodara

Advisory Board
Krishnakant B. Shah
Manubhai B. Vaghela
Janak M. Shah
Lalit S. Shah
Vijay V. Athavale
Niranjanbhai M. vaidya
Vipul K. Shah
Bharat M. Swami
Jageshbhai M. Shah

Sub-Committees of Conference

Organising Committee

National President
M. Srinivasa Rao

Dy. President
D. K. Gandhi

Secretary General
S. S. Satyanarayana

Treasurer
Vijay N. Kewalramani

Imm. Past President
Nikita R. Badheka

Chairman (AIFTP-WZ)
Pravin R. Shah

President (GSTPAM)
Raj P. Shah

President (VTPA)
Radheshyam Paliwal

President (CGCTC)
Kaushik Vaidya

Vice President (AIFTP-WZ)
Janak K. Vaghani

Jt. Secretary (AIFTP-WZ)
Anagha Kulkarni

Vice Chairman (AIFTP-WZ)
Mitish Modi

Secretary (AIFTP-WZ)
Sachin Gandhi

Conference Chairman
Samir S. Jani

Conference Co-Chairman
Vinyak Patkar

Chief Co-ordinator
Aditya Seema Pradeep

Imm. Past Chairman
Bhaskar B. Patel

NEC Member
Kishor Vanjara

NEC Member
Chirag S. Parekh

NEC Member
Santosh Gupta

Chairman, Education Committee
Milind Bhonde

Co-Chairman, Education Committee
Tushar P. Joshi

Vice Chairman, Maharashtra State
Ashvin Acharya

Conference Committee

Chairman
Samir S. Jani

Co-Chairman
Vinayak Patkar

Co-ordinator
Aditya Seema Pradeep

Members

Ashvin Acharya
Janak Vaghani
Kaushik Vaidya
Kishor Vanjara
Milind Bhonde
Mitish Modi
Nikita R. Badheka
Pravin R. Shah
Raj P. Shah
Sachin Gandhi
Santosh Gupta

E Souvenir Committee

Chairman
Kishor Vanjara

Members
Ashvin Acharya
Janak Vaghani
Mitish Modi

Technical Committee

In-Charge
Sachin R. Gandhi

Members
Bhavya Popat
Pratik Satunga
Sejal Shah

About All India Federation of Tax Practitioners

Inspired by the ideology to have a common platform for all those who practice taxation laws, irrespective of their individual affiliations and to enable them to share the benefits of their learning and sharing of knowledge, eminent professionals from the fields of Direct and Indirect Taxes conceived the idea of establishing an All India body for the tax practitioners. It was at the opening ceremony of the National Conference held on 11-11-1976 organised by The Chamber of Income Tax Consultants Mumbai under Presidentship of Shri B. C. Joshi, that the doyens of the Professionals christened the Association in the presence of former Chief Justice of India, Hon'ble Justice J. C. Shah, distinguished Jurist Padma Vibhushan Dr. N. A. Palkhivala Senior Advocate and Shri Ram Rao Adik, Senior Advocate, Advocate General of Maharashtra. Shri N. C. Mehta, Chartered Accountant, Mumbai, was elected as Founder President of the All India Federation of Tax Practitioners (AIFTP) of and Shri P. C. Joshi was elected as Secretary General. The AIFTP has completed 44 glorious years of its existence.

The main object of AIFTP is to spread education in the matters relating to tax laws, other laws and Accountancy.

The AIFTP has a well-equipped registered Head Office at 215, Rewa Chambers, 31, New Marine Lines, Mumbai- 400 020. The total strength of National Executive Committee Members is 75 headed by a National President, with a Deputy President, five Vice-Presidents and five Joint Secretaries. Present the National President Mr. M. Srinivasa Rao, Tax Practitioner from Eluru (Vijaywada) and Mr. D. K. Gandhi, Advocate from Ghaziabad is the Deputy President. Our eminent Past National Presidents are Late Shri N. C. Mehta, Chartered Accountant, Mumbai (1978-83), Late Shri B. C. Joshi, Advocate, Mumbai (1984-90), Late Shri L. M. Mahurkar, Tax Practitioner, Nagpur (1991-93), Shri P. C. Joshi, Advocate, Mumbai (1994-96), Late Shri Sukumar Bhattacharya, Advocate, Kolkata (1997-99), Late Dr. N. M. Ranka, Senior Advocate, Jaipur (2000-02), Dr. K. Shivaram, Senior Advocate, Mumbai (2003-05), Late Shri V. Ramachandran, Senior Advocate, Chennai (2006-07), Shri Bharat Ji Agrawal, Sr. Advocate, Allahabad (2008-09), Shri M. L. Patodi, Advocate, Kota (2010-11), Late Shri S. K. Poddar, Advocate, Ranchi (2012-13) Shri J. D. Nankani, Advocate, Mumbai (2014-15), Dr. M. V. K. Moorthy, Advocate, Hyderabad (2016), Mrs Prem Lata Bansal, Senior Advocate, Delhi (2017) Shri Ganesh Purohit, Senior Advocate, Jabalpur (2018), Dr. Ashok Saraf, Senior Advocate, Guwahati (2019), Mrs. Nikita Badheka, Advocate, Mumbai (2020) and Mr. M. Srinivasa Rao has been elected as National President for the year 2021.

The membership of the AIFTP includes Senior Advocates, Advocates, Solicitors, Chartered Accountants and Tax Practitioners, Practicing Direct or Indirect Taxes, from all States in the Country. Its members enjoy a strong bond of fellowship leading to fraternal brotherhood amongst professionals. The AIFTP is the symbol and spirit of National Integration. As of today, the AIFTP is the only voluntary professional organisation of our country which has 138 Professional Associations as its affiliated members and more than 8800 individuals as life members from 27 States and 4 Union Territories.

For conducting regular educational activities, the AIFTP has various Sub-Committees such as Journal Committee, Law & Representation Committee (Direct & Indirect Taxes), ITAT Bar Associations' Co-ordination Committee, Membership Development & Public Relations and Times Committee.

The AIFTP publishes a monthly Journal covering the latest reported & unreported decisions of the Supreme Court, High Courts and Income Tax Appellate Tribunals including the articles, opinions and latest developments on direct and indirect taxes by experts in the field. The unique feature is that every quarter, it publishes the gist of Important Case Laws published in 33 Tax Magazines,

www.itatonline.org from across the country. Yearly digest of case laws from 2012 onwards are also available in the website www.aiftponline.org and www.itatonline.org which can be down loaded by the members and tax professionals.

AIFTP publishes a monthly newsletter called AIFTP TIMES which is sent to all the members free of charge. Newsletter contains important notifications, circulars and other topical information apart from various activities of the AIFTP. AIFTP website i.e. www.aiftponline.org, is an informative source for the members. The website is regularly updated by a team of dedicated professionals. The Journal and Times are available on the website.

AIFTP has been making representations for better tax law and tax administration. AIFTP and Associate members have filed more than 35 Public interest petitions before various Courts for better administration of tax laws and to up hold the independency of judicial forums. AIFTP regularly sends Pre and Post-Budget Memorandums. Many of the suggestions and the recommendations are accepted. It regularly publishes books in simple language and question-answer format at a low cost. It has published more than 43 publications till date. Its first e-publication on the subject of Direct Tax Vivad se Vishwas Scheme 2020 and the same was released on 22-04-2020.

AIFTP in association with Income Tax Appellate Tribunal Bar Association, Mumbai has published a publication named "Digest of Case Laws – Direct Taxes (including allied laws) (2003-2011)", to Commemorate the 150th Year anniversary of the Bombay High Court. In the year 2015, "Interpretation of Taxing Statutes – Frequently asked questions", which was dedicated to Honourable Mr. Justice S. H. Kapadia, former Chief Justice of India, (2017) Income tax Appellate Tribunal – A Fine Balance, Law Practice, procedure and conventions – Frequently asked questions – Dedicated to Padma Vibhushan Late Dr. N. A. Palkhivala, Senior Advocate AIFTP has published a publication titled (2018) "311 - Frequently asked questions on Survey – Direct taxes – Dedicated to Honourable Justice late Dr. B. P. Saraf, Former Chief Justice of Jammu and Kashmir High Court. (2020) "151 Land mark judgements of the Hon'ble Supreme Court of India - 151 years of Mahatma Gandhi" on the auspicious occasion of 151st birth anniversary of Father of the Nation Mahatma Gandhi. This publication dedicated to Honourable Justice late Dr. B. P. Saraf, former Chief Justice of Jammu and Kashmir High Court.

AIFTP jointly with the Association Members, organise National Seminars, Conferences and Conventions in various parts of the Country to update its members on Direct and Indirect Taxation. A unique feature of the AIFTP is that its faculties, chairmen, trustees, office bearers and members of the National Executive and Zonal Committees pay a registration fee and bear their own travel and stay expenses. From April 2020 to September 2020 during the period of Covid-19 Pandemic, the AIFTP has conducted more than 110 Webinars on various subjects and all webinars were without any charges. AIFTP as an association with the help of their members have contributed an amount of Rs. 11 lakhs to the Prime Minister Cares Fund. In the year, 1999 the AIFTP had published a publication titled "NRI - A Legal companion" which was dedicated to the War Heroes of Kargil and the entire surplus of the said publication was handed over to the Defence fund.

For the development of the Tax Bar, the "Nani Palkhivala Memorial National Tax Moot Court Competition" and "Research in Tax Laws" was started under the banner of "Palkhivala Foundation" at Mumbai, wherein every year students from more than 25 leading law colleges of India participate in the competition and more than 100 Law Colleges are participating in the Research Competition.

AIFTP has adopted the Code of Ethics to its members which is part of the constitution of the AIFTP.

As per an appeal made by the AIFTP, the Government of India has released Commemorative Postage Stamp in Memory of Padma Vibhushan Late Dr. N. A. Palkhivala, Senior Advocate on 16th

January, 2004. The then Hon'ble Prime Minister of India, Shri Atal Bihari Vajpayee released the Commemorative Postage Stamp at Mumbai.

Since 2004 AIFTP conducts regular International Study tours, in the first study tour a seminar was held at Law Society of England and Wales on 24-04-2004, wherein a publication titled "India-A Global Business Destination" was released at England. In the first International Tax Conference which was held on 19th to 21st November 2009 at Mumbai wherein heads of Professional Organisations from 16 Countries attended the International Tax Conference.

AIFTP is considered a National Integration of Tax Professionals of India. AIFTP have many eminent professionals as members, some have been elevated as Judges of the Supreme Court, High Courts, and Tribunals. Most of the leading Senior Advocates, Advocates who practice on Direct or Indirect Taxes, many past Presidents of Institute of Chartered Accountants of India, Chairman and member of Bar Councils of various States, leading Lawyers, Chartered Accountants and Tax Practitioners of our country are esteemed members. AIFTP is recognised globally as one of the vibrant Associations of Tax Practitioners of India.

On 11-11-2016, on the occasion of completion of 40 years of the AIFTP a publication and a short film titled "40 Years of Milestones and Beyond" was released by the AIFTP which contains the history of the AIFTP. The same is available in our website. The link for the same is https://youtu.be/jNOrF1bhgnI

With active support of the members of the AIFTP the flag of the AIFTP will fly high for the times to come.

About The Goods & Services Tax Practitioners' Association of Maharashtra

The Goods & Services Tax Practitioners' Association of Maharashtra (formerly known as The Sales Tax Practitioners' Association of Maharashtra / STPAM) is a State-level body of Sales Tax Practitioners' established in the year 1951. The Association has its membership spread all over the State of Maharashtra comprising of Tax Practitioners and other professionals such as Chartered Accountants, Cost Accountants, Company Secretaries and Advocates practising in VAT, Service tax and allied laws. The Association has Regional Centres at district places to cater to the needs of members practising in various districts of Maharashtra.

The STPAM now renamed as GSTPAM as all indirect taxes are subsumed in one law and that is Goods and Services Tax (GST), is governed by its own constitution and is registered with the Charity Commissioner and also under the Societies Act. The elected President, Officer Bearers and 15 members of the Managing Committee conduct the activities of the Association.

Its main object is to educate the public in general and the members in particular on Indirect Taxes operative in the State of Maharashtra and whole of India.

The STPAM has produced stalwarts like Late R. V. Patel, Late N. C. Mehta, Late B. C. Joshi, P. V. Surte, S. S. Gaitonde, P. C. Joshi, Late T. M. Chhatpar and Late J. K. Sheth, to name a few. The Association is marching ahead with full confidence under their guidance to achieve its objects and the young generation is taking over the leadership gradually from them and these stalwarts in turn have reposed their full confidence in the young leadership. With the advent of GST, the Association, now known as the GST Practitioners' Association of Maharashtra has started spreading awareness and knowledge on GST and has taken a big leap into the goods and service tax arena for educating its members.

Last but not the least, whenever our motherland faces natural calamities or neighbour's aggression, the association is always in the forefront to render monetary help.

The highlights of activities of STPAM (now known as GSTPAM)

1. Publication of its journal 'Sales Tax Review' on 25th of every month.

2. Maintaining up-to-date library with the latest and important books on Sales Tax, Allied Laws and all other books and e-library.

3. Holding Study Circle Meetings, Workshops, Seminars/Conferences, and Non-Residential and Residential Refresher Courses in India and abroad.

4. Holding 'Guidance Cell Meetings' at Mazgaon Library.

5. Circulation of Short Notes on Tribunal decisions and full text of important Tribunal decisions.

6. Conducting coaching classes, holding Mock Tribunals, Orientation Courses and Intensive Study Courses.

7. Circulation of Gazettes and Trade Circulars.

8. To bring out small booklets immediately after amendments to Sales Tax and Allied Laws, at a nominal price.

9. To hold meetings to educate the public on Sales Tax and other matters of public interest.

10. Make Representations to appropriate authorities in the interests of trade, commerce and industry.

11. To keep continuing the interaction and co-operation with other professional bodies for holding seminars and cultural/sports activities.

12. STPAM (now GSTPAM) is a member of Advisory Committee of the Government of Maharashtra which is formed to obtain suggestions and recommendations for proper administration in the interests of trade, commerce and industry.

13. Publication of STPAM (now GSTPAM) News Bulletin on 10th of every month to cover short notes on recent important decisions of the Maharashtra Sales Tax Tribunal and to provide the news to members about the activities of the STPAM and other relevant information.

14. Members can also login to the STPAM (now GSTPAM) website 'www.stpam.org'. It contains the Sales Tax Review, News Bulletin, Trade Circulars, Acts, Rules, Notifications, DDQs, Important Judgments etc. Members can also get information about forthcoming events of the Association & latest updates on the ever evolving law.

About Vidharbha Tax Practitioners' Association

Practitioners from the 11 Districts of Vidarbha felt the need of an organisation which could take up issues of common interest before the appropriate taxation and other authorities. Accordingly an ad hoc committee was formed on 11th February, 1989 to draft the constitution of the proposed Association. Finally, the Association was formally constituted on 22nd September, 1989 and was registered under the Societies Registration Act, 1860 and the Public Trusts Registration Act, 1950 on 18-10-1989 and 15-1-1990 respectively. Senior Chartered Accountant from Nagpur Shri G. D. Bagri was its first President.

Under the dynamic leadership of Shri Bagri, The Association took up the task of bringing together the Tax Practitioners from all over Vidarbha. The Association blossomed like a joint family, often taking up the cause of the practitioners in particular and the tax-payers in general, Great emphasis was laid on providing frequent opportunities for effective interaction between the members to bring solidarity and a feeling of oneness with each other. The Association was successful in its attempt as fellow members from all the districts of Vidarbha found numerous occasions to meet and develop fellowship.

Under the Presidentship of Shri Ashok Chandak, C.A. and Advocate S.S. Gandhi, C.A R.S. Paliwal, B.G. Bhangde, J.K. Gohokar, Jaydeep Shah, C.A. Shailendra Jain, the Association created a record of sorts in organising seminars, conferences, lecture and study meetings. The two Presidents laid great emphasis on the concept of continuing education and updating the knowledge of its members to enable them to render quality service to the tax-payers. The Association actively took up cudgel against the draconian laws proposed by the government time and again and made a large number of representations to various authorities pointing out to the administrative and other problems faced by the tax practitioners and the tax-payers.

The Association continued its activities with the same vigour and fervour under the present Presidentship of Shri R.S. Paliwal who is ably assisted by Shri. Nitin Gandhi as his secretary. The Two Day Virtual National Tax Conference being organised by the Association in association with the Goods and Service Tax Practitioners Association of Maharashtra & All India Federation of Tax Practitioners (Western Zone) is an ample testimony to the enthusiasm of the members of the Association in espousing the cause of the fellow brethrens in the profession.

A meeting to discuss the Union Budget has been the annual feature of the Association, largely appreciated not only by the members but also by the tax-payers of the region.

Every time there are Drastic Changes in the Direct And Indirect Tax Laws especially the Goods And Service Tax laws, the Association Holds Seminar / Webinars to Update and Educate the Members.

The one outstanding achievements of the Association is the publication of its mouthpiece the **"VTPA Newsletter"** which is being published uninterruptedly right from the inception of the Association; i.e., for the last more than 30 years, from 1989 the credit for which goes to Shri Jaiprakash Gupta, C.A. who had shouldered the responsibility of editing and publishing the periodical with dedication and devotion of a missionary upto 2007 now the same tradition is followed by C.A. Ajit Gokarn.

The present strength of the Association is about 400. The Association had the privilege of support and guidance from the parent Associations like G.S.T.P.A.M and AIFTP. The Association takes this occasion to rededicate itself to reach out for the lofty goals set by the past Presidents and the promoters of the Association.

About Central Gujarat Chamber of Tax Consultants

Central Gujarat Chamber of Tax Consultants (CGCTC), founded in the year 2011, is an organisation comprising of Advocates, Chartered Accountants, ITPs, STPs from Vadodara, Bharuch, Godhra, Dahod, Halol, Kheda (Nadiad), Anand, Narmada etc., with a strength of around 287 members. Our Chamber has been proactively supporting all the initiatives of the Government by creating awareness and disseminating knowledge among various stakeholders through organising conferences, seminars and study circle meetings. Also, we have been acting as a bridge between Income Tax, Value Added Tax (VAT), Excise & Custom (Service Tax) Departments, GST Departments, Tax Practitioners and assesses at large.

We, at CGCTC together with our institutional members and other professional Associations always strive for excellence in our educational activities, by arranging Study Circle Meetings, Seminars, Webinars, etc., so that we give our best in our day-to-day practice and thereby serve to the clients of our members and professional brothers beyond their expectations in Direct & Indirect Taxes.

जस्टिस प्रदीप पी. भट्ट
(पूर्व न्यायाधीश गुजरात एवं झारखंड उच्च न्यायलय)
अध्यक्ष
आय-कर अपीलीय अधिकरण
Justice Pradeep P. Bhatt
(Formerly Judge, High Court of Gujarat
& High Court of Jharkhand)
President
Income Tax Appellate Tribunal

भारत सरकार
विधि एवं न्याय मंत्रालय
Government of India
Ministry of Law & Justice
4th Floor, Pratishtha Bhawan,
101, Maharshi Karve Marg,
Mumbai - 400020
Tel: 22014556/22014957
Fax : 22036817

Message

I am very happy to learn that All India Federation of Tax Practitioners is hosting Virtual National Tax Conference on 17th and 18th February, 2021.

The tax reforms that India has witnessed in the last few years are unprecedented and all embracing. With such rapid changes in the field of direct taxes, indirect taxes as well as allied economic laws, the development and dissemination of knowledge relating to the new laws is of immense importance.

I find that the topics that are being covered in this Conference are very relevant and would help the tax professionals as well as the tax administrators in ensuring diligent compliance to the new laws with minimal hardships for the tax-payers. In order to ensure that tax practitioners are able to serve the society in a responsible manner, it is absolutely essential that their professional skills are up to date and the events like this conference will surely help them sharpen their skills and, thus, serve the society to the fullest.

I wish the conference all the success.

(Justice P. P. Bhatt)

February 10, 2021

Message

I am delighted that All India Federation of Tax Practitioners (WZ) is organizing its Virtual National Tax Conference jointly with The Goods and Services Tax Practitioners' Association of Maharashtra, Vidarbha Tax Practitioners Association and Central Gujarat Chamber of Tax Consultants. The subjects chosen for the conference reflect the recent controversies which require debate at National level by the legal luminaries from all over India to provide useful guidance to the taxpayers to discharge there legal obligation in a timely manner.

I am glad that Hon'ble Justice Shri P. P. Bhatt, President, Income Tax Appellate Tribunal has given his kind consent to be the Chief Guest of the Conference.

I thank Shri Samir Jani, Chairman of the Conference Committee and Shri Pravin Shah, Chairman, All India Federation of Tax Practitioners (WZ) and their entire team for all their painstaking efforts to make this Conference a grand success in a short span of time for organising first National Tax Conference for the year 2021. I am thankful to Mr. Kishor Vanjara, Chairman, E-Souvenir Committee and his team for bringing out this Souvenir covering papers for discussion besides articles on Direct and Indirect Taxes.

I also thank our Past Presidents Shri P. C. Joshi, Dr. K. Shivaram, Shri J. D. Nankani and Smt. Nikita Badheka for providing valuable guidance for organising of the conference.

I am sure that the participants would gain immensely out of learned faculties rich and vast experience and the deliberations made during the sessions.

I am sure National Tax Conference will add substantial value for the participants.

M. Srinivasa Rao
National President
All India Federation of Tax Practitioners

Date : 12-2-2021

Message

It is a matter of great pride for AIFTP (WZ) to open calendar year 2021 with the first Virtual NTC/ NEC for 2021 on 17th and 18th February, 2021. I congratulate the Chairman (WZ) and his entire team for the efforts put in by them for the success of the event.

The topics taken up for discussion and deliberation in very recent and participants would be enriched with the recent budgetary changes in Direct & Indirect Taxes. At AIFTP it has been a endeavour to impart knowledge to its constituent members and West Zone in order to achieve this objective has organised the National Tax Conference for 17th & 18th February, 2021.

As a chairman it was my experience that each member in the organising team was enthusiastic in delivering the goods. I also appreciate the support of co-organising associations being The Goods and Services Tax Practitioners Association of Maharashtra, Vidharbha Tax Practitioners Association and Central Gujarat Chamber of Tax Consultants for their active contribution in the event.

I believe, the participants will be benefited by their participation and would be able to clear their doubts on all issues.

I also thank the National Office Bearers of AIFTP, more particularly the National President Mr. M S Srinivasrao and Past President Madam Nikita Badheka for their support.

I thank all the constituents of AIFTP without whose support NTC would not have been possible.

Samir Jani
Chairman
Conference Committee

Message

On behalf of Western Zone of All India Federation of Tax Practitioners, I extend a warm welcome to all the delegates to this 2 – Day Virtual National Tax Conference.

I further extend heartfelt thanks to the co-organisers viz. The Goods & Services Tax Practitioners' Association of Maharashtra, Vidarbha Tax Practitioners' Association (VTPA) and Central Gujarat Chamber of Tax Consultants (CGCTC) for extending their support in jointly organising this Conference.

As a knowledge centred profession, with frequent changes in law and high expectations from the Society and Government, it is expected of the professional fraternity that we are updated with the information with respect to various enactments, its periodic amendments, regulations, rules, guidelines case-laws and recent trends.

The Western Zone of AIFTP jointly with other associations have structured, designed and selected topics for this Convention which are relevant in present time. This National Tax Conference will be a congregation of Intellectuals emphasising on recent topics in areas of Direct Tax and Indirect Tax, which will not only push our horizons further, but will help us learn and evolve new learning from discussions and deliberations on various subject areas of professional interest from the experts. I am sure with help of such Conferences we can prepare ourselves to play a pro-active role in overall growth.

The number of people who are responsible for making this conference a reality is endless. I thank our National President Mr. M. S. Rao and his team to give us an opportunity to hold first Virtual National Tax Conference of this year. I am thankful to Mr. Samir S. Jani, Chairman, Conference Committee and his team for making this Virtual National Tax Conference a grand success. I am thankful to the vibrant team who have strived relentlessly for success of this Conference. I acknowledge the efforts of each and every team member of various sub-committees, National Executive members from Western Zone, Managing Committee of Western Zone, and office bearers of other Associations who have joined hands, for their sincere efforts and sparing valuable time in organising this Conference.

I am thankful to all eminent Paper Writers, Chairmen/Chairperson and Brain Trustees for accepting our invitation and to share their knowledge and expert insights which will go a long way in providing clarity on plethora of issues.

I once again welcome all the delegates and wish you all happy, educative and refreshing time.

Pravin R. Shah
Chairman,
AIFTP (Western Zone)

Message

It gives me immense pleasure to welcome all the delegates at the 2 – Day Virtual National Tax Conference which is being organized by All India Federation of Tax Practitioners (AIFTP) (Western Zone) along with The Goods & Services Tax Practitioners Association of Maharashtra (GSTPAM), Vidarbha Tax Practitioners' Association (VTPA) and Central Gujarat Chamber of Tax Consultants (CGCTC) on 17th and 18th February, 2021.

We at GSTPAM are always happily ready to support AIFTP for any program organized by it in Maharashtra. We have special bond with AIFTP since it is founded and nurtured mainly by the members of GSTPAM (formerly known as STPAM). Therefore, we are happy to be part of this mega event along with AIFTP.

The mega events like the present National Tax Conference is the need of the hour as the Tax Practitioners are required to be guided by the learned and studied stalwarts in the profession.

The program structured and technical sessions are really going to help the delegates to 'Update to Upgrade' with quality of knowledge. The faculties are of immense knowledge and with vast practical experience in their respective areas. I am sure that interaction with knowledgeable and experienced faculties and deliberation on technical as well as legal issues would assist the delegates in resolving the issues faced by them in their day-to-day practice.

I am thankful to AIFTP for making us part of this mega event. I am also thankful to the chair persons, paper writers and brains' trustees of all technical sessions for sparing their valuable time for the fraternity. I am also thankful to the delegates for making this mega event successful.

I once again welcome all the delegates and wish you success.

Raj P. Shah
President
The Goods & Services Tax Practitioners' Association of Maharashtra

Message

We are happy and delighted to be one of the Organizer alongwith All India Federation of Tax Practitioners' (Western Zone), Goods and Services Tax Practitioners' Association of Maharashtra and Central Gujrat Chamber of Tax Consultants for organizing a two days Virtual National Tax Conference on 17-18 February, 2021.

We are very thankful to Senior Advocate Mr. K. Shivram, Advocate Nikita Badheka and CA Deepak Thakkar for accepting our request to chair the Technical Sessions.

We are further thankful to the Learned Speakers on the subjects "Implications of Union Budget on Direct Taxes, Recent changes and Budget Implications on Goods and Services Tax and Goods and Services Tax Audit and Annual Return for the Financial Year 2019-20.

We are also thankful to our trustees Advocate Premlata Bansal, Advocate Jatin Harjai and Advocate Uchit Seth.

Last but not least, we would like to thank all delegates whose whole hearted support made this conference a grand success.

With Warm Regards.

CA R. S. Paliwal,
President
Vidarbha Tax Practitioners' Association

Message

Being a president of Central Gujarat Chamber of Tax Consultants, I am very much happy to welcome you to all, Respected Senior Tax Advocates, Chartered Accountants and my Colleague Tax Professional Brothers to be a Part of 2Day Virtual National Tax Conference on Direct and Indirect Taxes, organised by All India Federation of Tax Practitioners (WZ), Mumbai, jointly with The Goods and Service Tax Practitioner Association of Maharashtra, Vidharbha Tax Practitioners' Association and Central Gujarat Chamber of Tax Consultants, Vadodara, Gujarat.

It is truly said that Knowledge sharing is Knowledge Generation. In present scenario of COVID 19, each individual is being affected and we all professionals cannot be out of the worsened effects. It is indeed, the need of the age, to work in a team with exchange views & experiences and create integrated approach among professionals.

I appreciate all the learned faculties on Direct and Indirect Taxes and also the Chairman of Respective Technical Sessions, Trustees of Brain Trust and all team members who have put their valuable efforts for success of the 2 Days Virtual National Tax Conference. I hope that the Knowledge shared by the all Learned Speakers, Chairmen and Trustees of Brain Trust will be useful to all participants, professionals in their Day to Day practice and at appellate stages also.

I take this opportunity to extend my best wishes and warm greetings to all the delegates, paper writers, Speakers, and Chairmen of all technical sessions, Trustees of Brain Trust and wish great success to this 2-Days Virtual National Tax Conference and best wishes to all the organizing associations.

My Heartiest Pray to God for Grand Success of 2-Days Virtual National Tax Conference.

I also wish one and all for good health and to have better path of progress in their Professional fields.

Thanks and Regards.

Kaushik M. Vaidya
President
Central Gujarat Chamber of Tax Consultants, Vadodara

Message

Dear Mr Samirbhai

West zone begin the year with virtual Tax Conference. Three main member Associations have extended their support to the Conference would ensure its success. The topics for consideration followed by popular Brain Trust Session will be of great help to one and all, especially because the well experienced faculties will share their views on the subject. I wish the Conference achieve its avowed object of keeping the members abreast with the latest developments in law.

P. C. Joshi
Advocate
Past President, AIFTP

Message

Dr. K. Shivaram
Senior Advocate

KSA Legal Chambers,
East-West Building, 2nd Floor,
49-55, Bombay Samachar Marg,
Opp. Bombay Stock Exchange Bldg.
Fort, Mumbai – 400 023. India.
Tel : +91 22 2269 8338 / +91 22 2265 8612
Telefax : +91 22 2263 1338
Email : ksalegal@gmail.com

I am pleased to know that the All India Federation of Tax Practitioners **(AIFTP)** (West Zone) under the leadership of chairman Mr. Pravin R. Shah and Conference Chairman Shri. Samir Jani, in association with Goods and Services Tax Practitioners Association of Maharashtra, Vidharbha Tax-Practitioners' Association and Central Gujarat Chamber of Tax Consultants have organized two days Virtual National Conference on 17th and 18th of February, 2021.

The subjects selected are in-depth discussion on the Finance Bill, 2021 by eminent professionals and there will be one session on Brain Trust where in the experts will answer some of the important issues on Direct and Indirect taxation.

The organizers are also proposing to publish a e-souvenir which will contain important articles on the subject of Direct and Indirect taxation.

I am very much sure that the two days deliberation on Finance Bill, 2021 will help the tax professionals and citizens across the Country to know in-dept the various amendments proposed in the Finance Bill, 2021. The various suggestions to be made by the Chairmen and speaker may help AIFTP to prepare an effective representation on Finance Bill, 2021

My good wishes to the organizers and greetings to all participants of this Virtual Tax Conference.

With warm regards

Dr. K. Shivaram
Senior Advocate
Past National President

Date: 11-2-2021

Message

I am immensely pleased to note that the Western Zone of the All India Federation of Tax Practitioners is organizing the first two day Virtual National Tax Conference for the year 2021 jointly with Goods and Service Tax Practitioners' Association, Vidharbha Tax Practitioners Association and Central Gujarat Chamber of Tax Consultants.

I appreciate the theme and the topics that have been appropriately chosen keeping in view the current trends and to update members on topics of current relevance. I am sure the delegates would benefit from their knowledge and expertise.

I am sure that at the end of the conference the delegates would immensely benefit in todays fast changing world of tax practice.

I wish the Conference team and the Western Zone team of Shri Pravin Shah, Chairman (WZ), Shri Samir Jani, Conference Chairman and other members of the organizing Committee a grand success

J. D. Nankani
Past President
AIFTP

Message

AIFTP First Virtual National Tax Conference by West Zone—NTC of Hope

I am happy to pen down my first message as Immediate Past President of this august Federation. West Zone was the last one to host the National Tax Conference in 2020. Those were the times of uncertainty. The fear of dreaded Corona was foremost in the mind. However, with 2021 there are rays of hopes with vaccine being made available to public at large. Yet we must be careful and cautious till we all get vaccinated to safeguard ourselves from Covid-19.

Therefore, the first National Tax Conference (NTC) for the year 2021 under the National Presidentship of Shri Srinivas Rao has to be kept virtual. Needless to say, soon we would be back to the physical NTC at Puri. So this virtual NTC may be the last in the series of virtual NTC so far. Therefore, this virtual NTC (VNTC) is the NTC of hope.

One more reason as to why this VNTC is unique is that the Chairman of the West Zone, Shri Praveen Shah is father of Shri Raj Shah who is the President of the Co-organizing Team i.e. The Good & Service Tax Practitioners Association (GSTPAM). The father and son duo with their hard working team has left no stone unturned to make this NTC a memorable event.

The dynamic and, drastic amendments made under the Direct and Indirect Tax by the Budget 2021 require threadbare discussion. GST audit has posed numerous challenges and there are various vital issues which are required to be discussed and resolved. This two-day virtual National Tax Conference aims at resolving all the issues which the Tax Practitioners are facing.

Wish all the delegates a happy learning and congratulations and Best Wishes to the team West zone 2021.

Nikita R. Badheka
Past President, AIFTP,

Biodata of Mr. Justice P. P. Bhatt

Born on 6th September, 1956. Had primary education in different districts of Gujarat. Graduated in Arts faculty with Political Science from H.K. Arts College, Ahmedabad & obtained degree of Law from Sir L.A. Shah Law College, Ahmedabad affiliated to Gujarat University. Enrolled as an Advocate with the Bar Council of Gujarat and started practice in the High Court of Gujarat in 1984.

As a lawyer, appeared in several matters relating to Constitutional Law, Service Law, Civil as well as Criminal Law. Represented semi-Government Corporations / Bodies, Local Self Government and other public as well as private companies such as Ahmedabad Electricity Company, Gujarat Water Supply and Sewage Board, Gujarat Housing Board. Represented Municipal Corporation and Panchayats. Also advanced issues involving public interest in the court of law.

Invited to join the judiciary and appointed as Judge, City Civil and Sessions Court on 10th July 1995 and dealt with numerous Civil as well as Criminal cases. Appointed as Member Secretary, Gujarat State Legal Service Authority on 25th May 2001. Took keen interest in furtherance of the objectives and activities of the Legal Service Authority and worked hard especially for the redressal of claims of the victims of the disastrous Earth Quake of Gujarat in 2001 through Alternative Disputes Resolution method.

On 26th May 2003 appointed as Registrar, High Court of Gujarat and on creation of the post of Registrar General, became the first Registrar General of High Court of Gujarat, played pro-active role to bring about administrative reforms in the field of infrastructure, creation of new posts, use of Information Technology in the High Court as well as the District Judiciary. Actively involved in the organization of various programmes and projects held during the Golden Jubilee Year including development of the History and Heritage Museum of Gujarat Judiciary in the Gujarat High Court. Had an opportunity to work with Director National Judicial Academy and Professors of I.I.M. for evolving Court Management Plan. Attended and participated in various State as well as National level Conferences and Seminars etc. On 22nd February 2007 repatriated and posted as Judge, City Civil & Sessions Court, Ahmedabad and again appointed as Registrar General, High Court of Gujarat on 1st February 2008. On 1st September 2010 repatriated and posted as Judge, City Civil & Sessions Court, Ahmedabad and worked as Special Judge, CBI Court.

Elevated as an Additional Judge, High Court of Gujarat on 17th February 2011. Transferred as an Additional Judge, Jharkhand high court at Ranchi on 27th June 2011, and re-transferred to High Court of Gujarat on 11th February, 2016. Retired from High Court of Gujarat on 6th September, 2018.

Assumed charge of Office of President, Income Tax Appellate Tribunal on 24th October, 2018.

Contents

Articles

1st Technical Session

Wednesday, 17th February, 2021

Time : 10.30 am to 1:00 pm

Implications of Union Budget on Direct Taxes

Chairman : Dr. K. Shivaram, Sr. Advocate, Mumbai

Speaker : CA. Pradip Kapasi, Mumbai

VIRTUAL
NATIONAL
TAX
CONFERENCE
17th & 18th February, 2021

Dr. K. Shivaram,
Sr. Advocate,
Mumbai
Chairman

- Designated Senior Advocate of Bombay High Court.
- Practicing as Counsel before Bombay High Court, Income Tax Appellate Tribunal since 1978.
- Past President of The Chamber of Tax Consultants, Mumbai (1990-1992).
- Past National President of the All India Federation of Tax Practitioners of India (2003-2006).
- Past President of the Income Tax Appellate Tribunal Bar Association Mumbai (2011-2012).

CA. Pradip
Kapasi,
Mumbai
Speaker

- He is a Chartered Accountant and a law graduate from Government Law College.
- He leads the Chartered Accountancy firm "Pradip Kapasi & Co.", located at Mumbai.
- He is the past-president of – The Bombay Chartered Accountants' Society (BCAS) and The Chamber of Tax Consultants (CTC).
- He has co-authored many professional books. The titles include-

  ◆ Taxation and Accounting of shares & securities; ◆ Fringe Benefits Tax; ◆ "Search, Seizure and Survey"; ◆ Stamp Duty; ◆ Digest of Case laws – A Tax Companion, published by AIFTP; ◆ Taxation of Firms and partners, AOP/ BOI and JV-FAQs; ◆ International Taxation – some important aspects; ◆ Wills and successions; ◆ Hindu Undivided Family – Law and Taxation; ◆ "Search & Seizure – Block Assessment Special I.T. Assessment Procedure"

- He is a regular contributor of Articles in professional magazines and various newspapers and magazines such as-

  ◆ Co-author of monthly feature 'Controversies' in BCA Journal; ◆ The Economic Times and such other leading newspapers; ◆ The Chambers' Journals; ◆ AIFTP Journal for Tax Professionals

- He is on the Editorial Board of The Chartered Accountant Journal of ICAI, The Chamber's Journal and discharged editorial functions for All India Federation of Tax Practitioner's Journal for Tax professionals and BCA Referencer – cum – diary.
- He has addressed conferences, seminars and, for professionals, tax officials and trade associations across the country on the subjects of Direct tax Laws, Stamp Duty and Allied Laws and has received several awards for his professional contribution.
- He was a lecturer and visiting faculty at the Jamnalal Bajaj Institute of Management Studies on the subject 'Taxation' for 12 years and at IIM on the subject "Corporate Taxation".
- He is a regular trekker and is fond of travelling and with his team engages in social and charitable works through a small initiative 'Prayas' through winter warmness drives in tribal areas of Maharashtra.


The Finance Bill, 2021: Conceptual issues & Constitutional Challenges

Dr. K. Shivaram, ***Senior Advocate*** **& Shashi Bekal,** ***Advocate***

Abstract

The Hon'ble Finance Minister, Smt. Nirmala Sitharaman, presented the Union Budget on February 1, 2021 ***(2021) 430 ITR 33 (St) & (2021) 430 ITR 54 (St)****. Several bold and unexpected amendments have been proposed in the Finance Bill 2021* ***(2021) 430 ITR 74 (St)*** *vis-à-vis the Income-tax Act, 1961(Act); The intention of these proposed amendments is better understood on perusing through the Notes on clauses of the Finance Bill (2021)* ***430 ITR 160 (St)*** *and Memorandum explaining the provisions in the Finance Bill, 2021* ***(2021) 430 ITR 214 (St)****. This Article has attempt to explain few key provisions of the Finance Bill, 2021, which may face the constitutional challenges and open a pandora's box of unintended litigation.*

This Article is divided into 8 parts

1. Introduction
2. Amendments proposed to overrule well settled judicial pronouncements
3. Income escaping assessment and search assessments
4. Interim Settlement Commission Board
5. Dispute Resolution Committee
6. Board for Advance Ruling
7. Faceless Income -tax Appellate Tribunal
8. Dénouement

1. Introduction

1.1. Six Pillars (2021) 430 ITR 33 (St) 36

The Hon'ble Finance Minister Mrs. Nirmala Sitharaman in her first digital budget which was presented on February 2021, shared her vision for the **"Amrut Mahotsav of 2022"** i.e., the 75th year of our Independence. India seeks to achieve the goal of **"AtamaNirbhar Bharat"** wherein six Pillars are referred to, they are:

i. Health and Well -being,

ii. Physical and Financial Capital and Infrastructure,

iii. Inclusive Development for Aspirational India,

iv. Reinvigorating Human Capital,

v. Innovation and R&D, and

vi. Minimum Government and, Maximum Governance,

For the overall development of the economy, the innovative vision of the Hon'ble Finance Minister, deserves to be appreciated. However, the judiciary is also one of the pillars of Democracy and deserves allocation of funds for infrastructure, modernization and digitalization.

The same was neglected in the Budget. All India Federation of Tax Practitioners (**AIFTP**) has made representations from time to time that every year a separate budget should be prepared for allocation of funds to the Judiciary. The infrastructure in lower judiciary is poor, and requires immediate attention

1.2. Judiciary

Hon'ble Attorney General of India Shri K.K. Venugopal, Senior Advocate - in his article titled **"Access to Justice the Indian Experience"** on the occasion of Golden Jubilee Souvenir of the Income tax Appellate Tribunal in the year 1991 is usefully extracted as under:

> *"Any number of laws may be passed by the legislatures for the welfare of the people but if non-implementation of the same or wrongful implementation cannot be remedied except 10 or 15 years, then surely the judicial system itself needs drastic overhaul.*
>
> *It is unfortunate that Governments have not been setting apart the necessary funds in the financial budgets for expanding the Court system to keep space with veritable litigation explosion. The advance planning that Governments do in regard to the economy generally, including the industries run by it for meeting the increasing demands for its products is absent when it comes to the area of litigation which, by and large, receives a step -motherly treatment at the hands of the Government."*

The most effective manner to convince the government on this issue should be made a matter of debate. Professional Organizations like AIFTP should make representation every year until the Government's attention is drawn towards this.

1.3. Amendments - The maddening instability of Income tax Law

There are 93 clauses in the Finance Bill 2021, **(2021) 430 ITR 74 (St)** some of the provisions proposed in the Bill will have far reaching implications.

Mr. N. A. Palkhivala, Senior Advocate in his article, published in the Souvenir of the ITAT in the year 1991 titled **"The maddening instability of Income tax Law"**, reads as under:

> *"To day the Income -tax Act, 1961, is a national disgrace. There is no other instance in Indian Jurisprudence of an Act mutilated by more than 3300 amendments in less than thirty years. Simple provisions like sections 11 to 13 (Which deals with exemption of charitable trusts) have suffered no less than fifty amendments."*
>
> *"A telling example of the total absence of a sense of time in our tax admiration is afforded by the Supreme Court's decision rendered last November in the case of Sutlej Cotton Mills Ltd v. CIT (1990) 2 SCALE 931. It was a case under Business Profits Tax Act, 1947. The accounting period was 1946 -47. The amount involved was a paltry sum of a few lakhs of rupees. The High Court's judgement was rendered in 1965. The Supreme Court sent the matter back to the Tribunal to re hear the appeal 44 years after the close of the accounting period. Is there any other civilized country where a tax payer would not know the quantum of his liability for 44 Years.?"*
>
> *"India is waiting for a Finance Minister who will have the courage, caliber and vision to put a stop to the maddening instability of our Income-tax law"*

Most of the amendments which proposed in the Finance Bill 2021 are to overturn the decisions of the Hon'ble Supreme Court or High Courts which are in favour of the Assesses, further some amendments have the retroactive implications. Former Hon'ble Finance Minister, Late Shri Arun Jaitley while addressing the Parliament on July 18, 2014 has stated that, India will not levy any tax with retrospective effect that creates additional burden and existing anomalies in this regard would be corrected, he stated ***"One thing we have made very clear: No retrospective tax creating fresh liabilities will be imposed". The Former Minister also stated that "At this juncture I would like to convey to this august house and also the investors community at large that we are committed to provide a stable and predictable taxation regime that would be investor friendly and spur growth".***

2. Amendments proposed to overturn settled judicial pronouncements

2.1. *Clause 3: seeks to amend section 2(11) of the Act, 'Block of assets' – Goodwill is proposed to be excluded from the Block of assets.*

As per the decision of the Hon'ble Supreme Court in the case of *CIT v. Smiff Securities Ltd. (2012) 348 ITR 302 (SC)* on merger Goodwill is valued and depreciation is provided as an intangible asset. The goodwill is merged with the block of intangible assets and loses its independent identity. However, on account of this amendment, taxpayers will have to remove the goodwill from the Block of assets, and not claim depreciation on the same. Working capital of the taxpayers may be affected and for this year the assessee's calculation of advance tax may lead to levy of interest. The amendment has been made applicable retrospectively with effect from assessment year 2021-22

In *CIT v. National Dairy Development Board [2017] 397 ITR 543/ 249 Taxman 61 / 83 taxmann. com 109 (Guj)(HC)* held that where there was no shortfall in advance tax payment when such liability arose, and advance tax liability arose later on only due to retrospective amendment in statute, no interest could be charged on advance tax.

The legislature could have stated no depreciation would be available on any goodwill acquired after April 1, 2021 the depreciation is not available.

Further, bifurcation on what constitutes as goodwill or an intangible asset will be a matter of litigation.

2.2. *Slump Exchange is held to be taxable*

Clause 3. The definition of the term Slump sale by amending the provision of clause (42C) of section 2 of the Act so that all types of transfer as defined in clause (47) of section 2 of the Act are included within its scope. The amendment has been made applicable retrospectively with effect from assessment year 2021-22

This has overruled the decision of the Hon'ble High Courts in the case of *CIT v. Bharat Bijlee Ltd. [2014] 365 ITR 258 (Bom.) (HC), Areva T & D India Ltd. v. CIT [2020] 428 ITR 1 (Mad)(HC).*

The intention of the legislature in providing clarity and plugging colourable transaction, is appreciated. However, the retrospective application of the law will lead to unintended litigation.

2.3. *Clause 6: Section 11 of the Act Charitable Trust carried forward of losses*

Carry forward of deficit of earlier year and its set off against the surplus of subsequent years is allowable.

The law laid down in the case of *CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 (Guj) (HC), CIT v. Institute of Banking Personnel Selection (IBPS) (2003) 264 ITR 110 (Bom.) (HC), and CIT (E) v. Subros Educational Society (2018) 303 CTR 1 / 166 DTR 257 (SC)* have been reversed.

As per new explanation to Section 12AB of the Act, no set off of or deduction or allowance of any excess application of any year preceding the previous year shall be allowed. For the purpose of this sub-section, it is hereby clarified that the calculation of income required to be applied or accumulated during the previous year shall me made without any set off or deduction or allowance of any excess application of any of the year preceding previous year. As per notes on clauses these amendments will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent years.

The issue for consideration is whether earlier years deficit if any cannot be set off from the AY 2022-23. One argument could be that any deficit of earlier years should be allowed and any deficit from the AY. 2022-23 will not be allowed to be carried forward. Debatable issues would give rise to litigations.

2.4. Clause 8 – Section 36 (1)(va) of the Act – No deduction on employee's contribution made after the due date

Notes on clauses suggests some courts have applied the provision of section 43B on employee contribution as well. By late deposit of employee contribution, the employee gets unjustly enriched by keeping the money belonging to employees, clause (va) of sub section (1) of Section 36 of the Act was inserted to the Act vide Finance Act, 1987 as a measure of penalizing employers who mis-utilize employee's contribution. Amendment is effect from Ist April 2021, will apply to the assessment years 2021-22.

There were around eight Courts in favour and around three against and some of the cases SLP of the revenue was dismissed

2.5. Clause 14 – Section 45 (4) Partnership firm reevaluation.

The Hon'ble Supreme Court in the case of *Addanki Narayanappa v. Bhaskar Krishnappa AIR SC 1300* held that share in the partnership firm is moveable property.

In *CIT v. Dynamic Enterprises (2013) 359 ITR 83 (Karn.)(HC)(FB)* held that where Cash towards the value of shares, there is no transfer of capital asset and, therefore, no profits or gains chargeable to tax in the hands of the assessee-firm.

In *D. S. Corporation v. ITO (TM) (Mum.)(Trib.) www.itatonline.org* held that the revaluation of asset being land held by the partnership firm which results into enhancement of value of asset and this enhanced amount credited in capital account of partners and when a retiring partner takes amount in his capital account including enhanced value of asset, it does not give rise to Capital gains.

In India most of the business is carried on through the mode of partnership.

Types of litigation that may arise is very difficult to imagine.

Whether mere change in the profit-sharing ratio in the amended provisions is applicable is debatable. Reference is drawn to the decision in the case of *S. Srinivasan v. CIT (1967) 63 ITR 273 (SC).*

Amendments will take effect from 1st April 2021 and will apply in relation to assessment year 2021-22

3. Income escaping assessment and search assessments (2021) 430 ITR 110 (St)

Clauses 35, 36, 37, 38, 39, 40, 41 42, 43

Memorandum explaining the provision (2021) 430 ITR 250 (St), states that due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285A of the Act (Statement of financial transaction or reportable account). Similarly, information is also shared with the tax payer through Annual Information Statement under section 285BB of the Act Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or those who have disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, as information-driven.

In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and search related cases.

The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to tax payers as there is reduction in time limit by which a notice for assessment or reassessment or re computation can be issued. The salient features of new procedure are as under:

(i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts,

other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.

(ii) Assessments or reassessments or in re -computation in cases where search is initiated under section 132 or requisition is made under section 132A, after 31st March 2021 shall be under the new procedure.

New Procedure

(i) Section 147 of the Act proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (Called revenant assessment year)

(ii) Before issue of notice u/s 148 when there is information the Assessing Officer has to get the prior approval of specified authority.

(iii) Information flagged is in accordance with risk management strategy formulated by the Board shall be considered as information. The flagging would largely done by the computer bases system

(iv) Objection raised by the Comptroller and Auditor General of India is also considered as information

(v) Search, survey or requisition cases initiated or conducted on or after 1st April 2021 shall be deemed that the Assessing Officer has the information.

(vi) Section 148A new provision before issue of notice under section 148 of the Act, Except search and requisitioned cases.

Further,

(i) Before issue of notice u/s 148 shall conduct enquiries, if required and provide an opportunity of being heard to the assessee.

(ii) Before Conducting an enquiry, the Assessing Officer has to obtain approval of specified person

(iii) After receiving the reply the assessing Officer shall pass an order and serve the order along with the notice to the assessee, with the approval of the Specified authority.

(iv) Thereafter the regular proceedings will be initiated.

(v) The specified Authority is Principal Commissioner or Principal Director or Commissioner or Director if three years or less than three years have elapsed

(vi) Principal Chief Commissioner or Principal Director General, if more than three years have elapsed from the end of relevant assessment years.

Limitation:

- In normal cases, no notice shall be issued if there years have elapsed from the end of the relevant assessment year
- Beyond three years but not exceeding 10 years from the end of relevant assessment years can be in a specified cases
- Where the Assessing Officer has in his possession evidence in the form of asset amounts to or likely to amount to fifty lakh rupees or more
- There are exceptions to the search initiated before 31st March 2021.
- Except search and Requisitioned cases mandate of section 148A has to be followed.

Issues for consideration:

- The concept of "borrowed satisfaction" or "Reason to believe" is done away with, and may not hold good in the future.
- Whether assessment is under section 143(1) of 143(3) of the Act assessment cannot be reopened beyond the period of three years, unless it falls in the exception clause. Which is a welcome provision
- Even for with in there years or beyond three years, mandate of section 148A has to be followed, except search and requisitioned cases. In built mechanism of sanction form the prescribed authority has to be obtained at three times.
- Guidelines prescribed in *GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC)* is prescribed in the provision of section 148A of the Act.
- Once the order on the basis of the notice u/s 148 is passed, the said order may be challenged before the High Court by writ if the sanction is not proper or the order is not speaking order
- Judicial pronouncement on the issue of sanction, not passing of speaking order will hold good.
- The ratio laid down by the High Courts that after passing the order disposing the objections the Assessing Officer may have to wait four weeks to proceed with regular assessments. *Allana Cold Storage Ltd v ITO 287 ITR 1 (Bom) (HC), Kamlesh Sharma (Smt) v. B.L. Meena, ITO (2006) 287 ITR 337 (Delhi) (HC)* should still hold good.
- Objections not properly dealt with as held in the case of *Scan Holding P Ltd v. ACIT (2018) 402 ITR 290 (Delhi) (HC), Ankita A.Chokssey v. ITO (2019) 402 ITR 207 (Bom) (HC), Swastic Safe Deposit and Investments Ltd (2019) 263 Taxman 303 (Bom) (HC) (SLP rejected (2020) 270 Taxman 8 (SC)* may still be good law.
- While giving the sanction the prescribed Authority has to apply their mind – Sanction granted by writing "Yes, I am satisfied" is not sufficient to comply with the requirement of section 151 of the Act will also hold good for the provision of section 148A of the Act.

  [Gernman Remedies Ltd v. Dy CIT (2006) 287 ITR 494 (Bom) (HC)

  CIT v. Suman Waman Chaduahry (2010) 321 ITR 495 (Bom) (HC)

  Central India Electricity Supply Co Ltd v. ITO (2011) 333 ITR 237 (Delhi) (HC)]
- The Hon'ble Bombay High Court in the case of *CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom)(HC)* held that if after issuing a notice under section 148, he accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income. This proposition should continue to hold good under the new law as well.
- Whether specific Survey for TDS will lead to deemed information for reassessment is another debatable issue

At present 80 % of Writs before the Bombay High Court on the issues relating to reassessment. If the tax administration follows the due process of the law, we are of the view that the tax litigation on the issue of reassessment may be minimised.

4. Interim Board - Settlement Commission

The Settlement Commission was set up with effect from 1-4-1976 as per the recommendation of the Direct Taxes Enquiry Committee headed by the Former Chief Justice of Supreme Court of India, Shri K.N. Wanchoo. In *CIT v. B. N. Bhattachargree (1979) 118 ITR 461 (SC),* the honourable Supreme Court discussed in detail the object and purpose of introducing the provision.

Section 245B (3) reads as under:

"The Chairman, Vice Chairman and others members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in problems relating to direct taxes and business accounts."

The AIFTP was making representation to the Honourable Finance Ministry from time to time that an ideal Forum of Settlement Commission should be one from the Department, One from the legal profession and One from the Accountancy profession. We have made representation that the follow the procedure of appointment as per the methodology adopted by the Government for appointment of Honourable Members of the ITAT, the Committee consists of Sitting Judge of Supreme Court, as Chairman and nominees from Ministry of law, Ministry of finance and a nominee from the Attorney General. By inviting applications, having interviews etc. However, the CBDT has appointed only the Commissioners from the Department as members, that is why now the Govt has abolished the institution itself.

Relevant clauses of the Bill, are, 54, 55, 56, 57,58, 59,60. All amendment will take effect retrospectively from Ist February 2021. Clauses 61, 62, 63, 64 of the Bill seeks to amend sections 245DD, 245F, 245G and 245H of the Act so as to provide that powers and functions of Settlement Commission under the said sections shall be exercised or performed by the Interim Board on or after 1st day of February 2021 and all the provisions of the said sections shall mutatis mutandis apply to interim Board as they applied to Settlement Commission.

The decision of the Hon'ble Supreme Court in the case of *UOI v. Star Television News Ltd. (2015) 373 ITR 528/231 Taxman 341 (SC)* affirmed the decision of the Hon'ble Bombay High Court in the case of *Star Television News Ltd. v. UOI [2009] 317 ITR 66 (Bom.) (HC)*

On petitions challenging the validity of sections 245HA(1)(iv) and (3) of the Income-tax Act, 1961, as amended by the Finance Act, 2007, provision for abatement of proceedings where no order passed by cut-off date-Discrimination likely among applicants for factors not under their control-Provisions arbitrary. High Court read down so that proceedings treated as abated only where failure owing to reasons attributable to applicant-Direction to proceed with applications as if not abated where delay not attributable to applicant the High Court found the provisions violative of Article 14 of the Constitution, but did not invalidate the provisions, and instead, read them down, in particular, the provisions of section 245HA(1)(iv), so that only where the application could not be disposed of for any reasons attributable on the part of the applicant would proceedings abate under section 245HA(1)(iv) of the Act. The court directed the Settlement Commission to consider whether the proceedings had been delayed on account of reasons attributable to the applicant and if they were not, to proceed with the application as if not abated. On appeal to the Supreme Court:

Held, affirming the decision of the High Court, that the judgment of the High Court was a well-considered one and did not call for any interference.

Clause 54 - Amendment is proposed to section 245A, there will be interim Board, Section 245AA member of the Interim Board.

Clause 55 - New Section 245AA only deciding pending application by the Interim Board

Clause 56 – Seeks to amendment section 245B so as to provide that the Settlement shall cease to operate on or after the Ist day of February 2021

Clause 57 – Seeks to amend section 245BC of the said Act shall not apply on or after the Ist day of February, 2021.

Clause 58 – Seeks to amend Section 245BD of the Act existing provisions shall not apply on or after the Ist day of February, 2021.

Clause 59 Seeks to amend Section 245C of the Act so as to provide that no application shall be made under this section on or after I st day of February, 2021.

Clause 60 seeks to amend section 245D of the Act saving clause for passing the pending orders rectifications etc. All amendments are procedural.

There could be some challenges on the provisions, how the taxpayers will gain the confidence of the tax payers, the time will decide the fate of the new forum.

- Some of the assesses might have paid the tax on the proposed application to be filed, the consequences of the same is not known, can they approach the High court stating that they may be allowed to approach the Interim Board
- Some of the assessee might have written to the Assessing Officers informing that they are approaching the Settlement Commission hence their matters to be kept in abeyance.
- Finance Bill has not became an Act hence restraining the Settlement Commission with effect from 1-2-2021 may not be constitutionally valid.

5. Dispute Resolution Committee (DRC) for Small and medium tax payers - Chapter XIX-AA (2021) 430 ITR 124 (St)

5.1. Background

The Honourable Supreme Court in the case of *National Co-Operative Development Corporation v. CIT (2020) 427 ITR 288 (SC)* observed as under:

"A number of litigations arise inter se the Government and its bodies. One of the main impediments to such a resolution, plainly speaking, is that bureaucrats are reluctant to accept responsibility of taking such decisions, apprehending that at some future date their decision may be called into question and they may face consequences post retirement. In order to make the system function effectively, it may be appropriate to have a committee of legal experts presided over by a retired judge to give their imprimatur to the settlement so that such apprehensions do not come in the way of arriving at a settlement. It is our pious hope that a serious thought would be given to the aspect of dispute resolution amicably, more so in the post-COVID period.

In so far as taxation matters are concerned, they are consistently sought to be carved out as a separate category of cases. A vibrant system of advance rulings can go a long way in reducing taxation litigation. Instead of first filing a return and then facing consequences from the Department because of a different perception which the Department may have, an advance ruling system can facilitate not only such a resolution, but also avoid the tiers of litigation which such cases go through as in the present case. In 2000 public sector companies were added to the definition of "applicant", and in 2014, it was made applicable to a resident who had undertaken one or more transactions of the value of Rs. 100 crores or more. In so far as a resident is concerned, the limit is so high that it cannot provide any solace to any individual, and it is time to reconsider and reduce the ceiling limit. The aim of any properly framed advance ruling system ought to be a dialogue between taxpayers and revenue authorities to fulfil the mutually beneficial purpose for taxpayers and revenue authorities of bolstering tax compliance and boosting tax morale. This mechanism should not become Anr. stage in the litigation process.

Thus, the Central Government must consider the efficacy of the advance tax ruling system and make it more comprehensive as a tool for settlement of disputes rather than battling it through different tiers, whether private or public sectors are involved. A council for advance tax rulings based on the Swedish model and the New Zealand system may be a possible way forward."

The Finance Bill, 2021 has proposed an amendment vide clause 66 to introduce a new section viz. section 245MA to the Act under Chapter XIX-AA. vide clause 54-65. It can be understood that DRC is constituted as the ITSC did not cater to the small and medium tax payers. The idea for DRC was envisaged in the Union Budget, 2020.

The DRC will be an alternative dispute mechanism, the taxpayer will be given an option to opt for or not out of this mechanism. The DRC will provide cost effective and easy access to justice than to be drawn into the rigorous appellate system. The DRC shall have the powers to reduce or waive any penalty imposable under the Act or grant immunity from prosecution for

any offence under the Act. Further, on account of early resolution of dispute, the interest costs would be relatively lesser.

Similar to the other faceless schemes that have leveraged technology and modern science, the Government shall introduce a scheme for DRC in a faceless manner and the same shall be issued on or before March 31, 2023.

5.2. The Proposed Law

For an in depth understanding of the proposed law, the amendment shall be explained clause-wise in light of the Memorandum explaining the Finance Bill, 2021.

Section 245MA (1) - Constitution: This sub-clause empowers the Central Government to constitute, one or more DRCs, as may be necessary, in accordance with the rules made under this Act. The DRC is empowered to entertain such persons or class of persons, as may be specified by the Board. Further, the tax payer has the option to opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

"Specified conditions" means the following:

- A person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
- A person, in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Transactions Act, 1988, the Prevention of Corruption Act, 1988 or the Prevention of Money Laundering Act, 2002 has been instituted and he has been convicted of any offence punishable under any of those Acts.
- A person in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of this Act or the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, or such person has been convicted of any such offence consequent upon the prosecution initiated by an Income-tax authority.
- A person who is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
- Any such conditions, as may be prescribed.

"Specified Order" means such order, including draft order, as may be specified by the Board, and:

- Aggregate sum of variations proposed or made in such order does not exceed ten lakh rupees.
- Such order is not based on search initiated under section 132 or requisition under section 132A in the case of assessee or any other person or survey under section 133A or information received under an agreement referred to in section 90 or section 90A i.e. the order is not emanating from a search & seizure action or information obtained from other countries under the DTAA.
- Where return has been filed by the assessee for the assessment year relevant to such order, total income as per such return does not exceed fifty lakh rupees.

Section 245MA (2) - Powers: The DRC shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence punishable under this Act in case of a person whose dispute is resolved under this Chapter.

Section 245MA (3) - Scheme: The Central Government may make a Scheme for the purpose of DRC so as to impart greater efficiency, transparency and accountability by:

- Introducing a Faceless procedure for the functioning of DRC
- Optimising utilisation of the resources through economies of scale and functional specialisation
- The DRC shall have a dynamic jurisdiction

Section 245MA (4) - Power to make changes: The Central Government may, for the purposes of giving effect to the scheme by notification direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification.

5.3. Challenges

Some of the challenges, or provisions that require clarification are as under:

a) **Appeal Mechanism:** From a reading of the proposed section 245MA to the Act, it appears that the eligible tax payer can approach the DRC after the receipt of the order of ld. AO/ Faceless Assessment.

It is yet to be understood whether, the assessee/ tax payer waives off his right of first appeal before the CIT(A) upon making an application before the DRC.

Further, if the assessee is aggrieved by the order of the DRC, does the assessee have the right to appeal against such order. Since section 253 of the Act, **"Appeals to the Appellate Tribunal"**, does not acknowledge an order passed under the proposed section 245MA of the Act. It appears that there is no prescribed appeal under the law.

In the event there is no alternative efficacious remedy in place, the small-medium assessee will have no choice but to exercise the extra ordinary jurisdiction of the Hon'ble High Court by way of a Writ Petition, this will be an expensive and cumbersome exercise which would defeat the intention of the legislature i.e., to reduce the tax litigation for the small & medium tax payers.

b) **Waiver of Interest:** The ITSC had the power to waive interest and penalty. However, the Hon'ble Supreme Court in the case of *Kakadia Builders (P.) Ltd. v. ITO ((2019) 412 ITR 128 /103 taxmann.com 53 (SC)* held that Settlement Commission in exercise of its power under section 245D(4) and (6) of the Act does not have power to reduce or waive interest statutorily payable under sections 234A, 234B and 234C of the Act.

On the other hand, as per section 6 of the Direct-tax Vivad se Vishwas Act, 2020, the designated authority shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrear.

Since the Memorandum explaining the Finance Bill, 2021 has emphasised on the indicative success of the Direct-tax Vivad se Vishwas Scheme while explaining the DRC. It would be imperative to understand the nature and powers of the DRC.

c) **Rectification Application:** A rectification application under section 154 of the Act is preferred when there is an apparent mistake or error on the face of the Order. It needs to be understood, whether the taxpayer-assessee would have the option to simultaneously avail the benefit of section 154 of the Act as well as the proceedings before the DRC. Ideally, as followed under the Direct tax Vivad Se Vishwas Scheme, a rectification application must be given effect and then the declarant was allowed to declare the rectified order under the Scheme. Similarly, a rectification application should be allowed before giving effect to the order of the DRC.

d) **Capitalisation:** Under the ITSC, the appellant would be granted the benefit of capitalisation of the undisclosed income offered before the ITSC, in the event its prayed for, and allowed. There is no clarity on such provisions before the DRC.

e) **Repetitive application before the DRC:** An application can be made by an assessee for settlement before the Commission only once in a lifetime. There is no such explicit mention of any such mention under the proposed section 245MA to the Act.

f) **Effect of DRC order on other years:** Under the Direct-tax Vivad Se Vishwas Scheme and before the ITSC, the adjustments had no effect on the other assessment years.

Section 8 of Direct-tax Vivad Se Vishwas Act is usefully extracted as under:

"Save as otherwise expressly provided in sub-section (3) of section 5 or section 6, ***nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made."***

Emphasis supplied

Similarly, the it would be expected from the Scheme to throw some light on this issue of.

g) **Departmental Appeal/ Writ:** Since DRC is akin to the ITSC. The purpose of ITSC was to avoid long drawn litigation in complicated matters and the order of the ITSC was binding on the tax payer and the Department. However, both the department and the tax payers have been approaching the High Courts in form of a Writ Petition against the order of the ITSC. The Hon'ble High Court of Kerala in the case of *CIT v. ITSC (2017) 391 ITR 374 (Ker) (HC)* wherein Writ Petition filed by the Commissioner of Income Tax against the Order of Settlement Commission was held Maintainable as the Settlement Commission had not properly considered issue of addition or genuineness of claim of advances from others, matter was remanded to Settlement Commission.

Would the DRC challenge the order of the DRC before an appropriate forum? The binding nature of the Order of the DRC on the department is not yet known.

h) **Settlement or Adjudicating:** Would the DRC be in the nature of a forum for settlement of disputes or would there be an element of adjudication involved? Further, in the event of adjudication, it is important that the DRC be bound by the Judicial pronouncements, Circulars, Notifications etc.

The Hon'ble Supreme Court in the case of *CIT v. B.N. Bhattacharjee [1979] 118 ITR 461 (SC)* held that settlement commissions are Tribunals and section 245l declares all proceedings before settlement commission to be judicial proceedings.

The decision of the Honourable Supreme Court is binding on all courts, Tribunals and tax authorities across the country as per the provisions of Article 141 of the Constitution of India. Reference is drawn to the decision of the Hon'ble Supreme Court in the case of *CWT v. Aluminium Corporation of India Ltd (1972) 85 ITR 167 (SC).*

Similarly, in respect of the High Courts, the High Courts has the power of superintendence over the Tribunals and authorities under Article 227 of the Constitution. The Hon'ble Supreme Court in the case of *East India Commercial Co Ltd v Collector of Customs AIR 1962 SC 1893* observed that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence and they cannot ignore it. Similar view was also expressed by the Honourable Supreme Court in the case of *Baradakant Mishra v. Bhimsen Dixit AIR 1972 SC 2466.*

Similarly, Circulars of CBDT explaining the Scheme of the Act have been held to be binding on the Department repeatedly by the Hon'ble Supreme Court in a series of

judgments including *Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC), Navnit Lal C. Jhaveri v. K.K. Sen IAC [1965] 56 ITR 198 (SC) and UCO Bank v. CIT [1999] 237 ITR 889 (SC).*

Therefore, the DRC should consider the prevailing law of the land and the biding instructions while adjudicating matters before it.

i) **Faceless Scheme:** It has been abundantly clarified that the DRC would perform in a faceless manner and with dynamic jurisdiction. This raises two important queries.

   i. Whether the tax-payer would be granted an opportunity of being heard in person i.e., via virtual mode?

   ii. Whether it would be possible for such small-medium tax payers to avail the required infrastructure to contest the matter in a faceless manner?

5.4. Conclusion

The constitution of DRC is a welcoming legislation. The administration should be effective in communicating to the tax payers the benefits of the DRC. As on date, a Scheme of DRC is awaited. Several questions viz. time limit for approaching the DRC, time limit for passing the Order, manner of providing additional evidence, issues emanating from TDS etc. cannot be evaluated at this stage.

Any conclusion at this premature stage would be myopic. However, the proposed amendment appears to be promising, and capable resolving & mitigating tax litigation.

6. Board for Advance Rulings (2021) 430 ITR 126(St) (Authority for Advance Rulings)

Clauses, 67,68, 69, 70, 71, 72, 73, 74 75,76, all are procedural applicable with effect from 1st April 2021. Clause 77 of the Bill seeks to insert a new section 245W to the Income-tax Act relating to Appeal. According to the proposed amendment, any ruling pronounced or order passed by the Board for Advance Rulings; The appellant or the Assessing Officer, on the directions of the Principal Commissioner or Commissioner appeal to the High Court with in sixty days from the date of Communication of such ruling or order, in such form and manner as may be provided by the Rules.

In the case of *CIT v. Mohd. Farooq (2009) 184 Taxman 191 / 317 ITR 305 (FB)(All.)(HC) and CIT v. Grasim Industries Ltd. (2009) 319 ITR 154 (Bom.)(HC)* has held that the period of limitation prescribed for filing an appeal under section 260A(2) of the Income Tax Act, 1961, is not subject to the provisions contained in section 4 to 24 of the Limitation Act, 1963 as provided under section 29(2) of the Limitation Act, therefore, High Court has no power to condone the delay in filing the appeal. Section 260A(2A) was inserted by the Finance Act, 2010 w.r.e.f. 01.10.1998 to give the High Court the power to condone delay.

There is no clarity whether the receipt is relevant or not or published in the website of the Department is to be considered. Whereas Section 260A appeal to High Court against the order of the Appellate Tribunal refers order passed received by the assessee. In Bombay High Court appeal which was admitted in the year 2000 are still pending for final hearing. At present the Authority for Advance Ruling is chaired by the Retired Judge of the Hon'ble Supreme Court.

Ideally, the power should have been given to the ITAT, which has the infrastructure, highly experienced members who have the knowledge of the International taxation who are functioning under the Ministry of law and justice is most suited for discharging the function as members of the Board for Advance Ruling.

Right of appeal is given to the assessee as well as the Department. In Mumbai the appeal for admission it takes minimum three years and after admission for final hearing another minimum of 10 years. The appeals admitted in the year 2002 still pending for final hearing. The purpose of Advance ruling has lost its importance.

7. Faceless Income tax Appellate Tribunal (2030) 430 ITR 130(St)

Clause 78 of the Bill, seeks to amend the section 255 of the Income-tax Act, 1961 relating to procedure of the Tribunal – Provision for Faceless Proceedings before the Income-tax Appellate Tribunal (ITAT) in a jurisdictional less manner. (2021) 430 ITR 253 (St)

Relevant extracts of the speech of the Hon'ble Finance Minister **(2021) 430 ITR 55 (st)** is reproduced as follows:

Faceless ITAT

Para. 158. For ease of compliance and to reduce discretion, we are committed to make the taxation processes faceless. The Government has already introduced faceless assessment and appeal this year.

Para 159. The next level of income tax appeal is the Income Tax Appellate Tribunal. I now propose to make this Tribunal faceless. We shall establish a National Faceless Income Tax Appellate Tribunal Centre. All communication between the Tribunal and the appellant shall be electronic. Where personal hearing is needed, it shall be done through video-conferencing.

Provision for Faceless Proceedings before the Income-tax Appellate Tribunal (ITAT) in a jurisdiction less manner. Relevant extracts of the Memorandum to the Finance Bill are reproduced as follows follow (2021) 430 ITR 253 (St)

In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a new faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced. Further, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act that require a physical interface with the taxpayers.

In order to ensure that the reforms initiated by the Department to reduce human interface from the system reaches the next level, it is imperative that a faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme. This will not only reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution in different benches resulting in best utilisation of resources.

Therefore, it is proposed to insert new sub-sections in the section 255 of the Act so as to provide that the Central Government may notify a scheme for the purposes of disposal of appeal by the ITAT so as to impart greater efficiency, transparency and accountability by, –

(a) eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing an appellate system with dynamic jurisdiction. It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March, 2023. It is proposed that every notification issued shall, as 52 soon as may be after the notification is issued, be laid before each House of Parliament.

This amendment will take effect from Ist April, 2021

Clause. 78. Relevant extract of the proposed Amendment to the Income-tax Act, 1961, are reproduced as follows (2021) 430 ITR 130 (St)

"In section 255 of the Income-tax Act, after sub-section (6), the following sub-sections shall be inserted, namely: –– "(7) The Central Government may make a scheme, by notification in the

Official Gazette, for the purposes of disposal of appeals by the Appellate Tribunal so as to impart greater efficiency, transparency and accountability by – (a) eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible; (b) optimising utilisation of the resources through economies of scale and functional specialisation; (c) introducing an appellate system with dynamic jurisdiction. (8) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (7), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply to such scheme or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification: Provided that no such direction shall be issued after the 31st day of March, 2023. (9) Every notification issued under sub-section (7) and sub-section (8) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.".

According to us the proposed amendment may not be in the interest of tax payers, on following reasons:

a) Acceptance of the orders of the ITAT

ITAT has completed 80 years on January 25, 2021, total pendency as on January 1, 2021 in Mumbai is only 12,000 appeals whereas highest pendency in the year 1998-99 was 3,04,594. As per the data published in the Platinum Jubilee Souvenir of the ITAT on January 25, 2016, at Page No 37 it has shown that on an average 96.10 % of the Orders of the Tribunal are accepted.

Even after insertion of appeal provision under Section 260A of the Act with effect from October 1, 1998, 70% of the appeals from the order of the Tribunal were dismissed by the various High Courts at the stage of admission itself.

The figures clearly demonstrate that the ITAT is discharging its duty to the satisfaction of the tax payers as well as the Tax Department.

b) Final fact-finding Authority and transparency in hearing

Under the Act, the ITAT is the final fact-finding authority as per Section 254 (4) of the Act, except as provided in Section 260A where orders passed by the Appellate Tribunal are considered final. The assessee or the department can file an appeal before the High Court as per Section 260A (1) of the Act and this appeal can be entertained by the High Court only if the Court is satisfied that the case involves a substantial question of law. According to us more than 80% of matters which are argued before the ITAT on facts. There are instances where for ascertaining facts, the ITAT has had to requisition the original record of recorded reasons, the sanctions given by the tax authorities, and in some of the instances, the Hon'ble Members have visited the actual fields to verify whether the agricultural activities are carried on or not! In some cases, the Hon'ble members have summoned witnesses and examined them in the witness box. Often, the paper-books filed before the Tribunal are of more than 1000 pages, and an appreciation of most of the pages if not all, may be required to ascertain the correct facts. At present the arguments of opposing representatives are made in open court. When the argument of the appellant is over, the respondent gives their reply and the appellant has right to bring correct facts or positions of law on record in rejoinder. In the course of hearing, the case laws cited by the both the sides are discussed often intricately about the provisions of law and the interpretation to be given to them.

The present system is working very smoothly following the honour, dignity and convention of the open Court, which is so integral to the common law system. There is complete transparency in the proceedings of the ITAT. The assessee as well as the public can watch proceedings as then happen. The tax payers have reposed their confidence in the institution for over 80 years due to continuous efforts on the part of the institution to improve the justice delivery system. The times have evolved and so has the Tribunal.

Recent decision of the Hon'ble Supreme Court in the case of *Pradyuman Bisht v. UOI & Ors. (2020) 1 SCC 443*. The Hon'ble Court was observing the question of closed-circuit television cameras to be put up in courts. The Court specifically brought out that the installation of CCTV cameras would be in the interest of justice and specifically asked the learned Additional Solicitor General as to why the Union of India had not installed CCTV cameras in Tribunals where open hearing takes place like Court such as ITAT, CESTAT, etc. as the Tribunals stand on the same footing as far as object of CCTV camera is concerned. It was further observed that recordings would help the constitutional authorities and the High Courts exercising jurisdiction under Articles 226 and 227 of the Constitution over such Tribunals if required. The bench directed that this aspect be taken up by the then learned Additional Solicitor General with the authorities concerned so that an appropriate direction is issued by the authority concerned for installation of CCTV cameras in Tribunals in same manner as in courts and an affidavit filed in this Court.

c) ITAT was established by continuous study and considering the various reports.

The idea of setting up the Income -tax Appellate Tribunal was first mooted in the Income-tax Enquiry Report 1936, which was submitted to the Government of India. The select committee was appointed to consider the Bill to amend the Indian Income-tax Act 1922. The report was presented to the Legislature Assembly on 10th November 1938. In pursuance of these recommendations, Section 5A was introduced in the Income-tax Act, 1922 and on 25-1-1941 was notified as the appointed date from which that section came in to force. The section remained unchanged in its essentials till the repeal of the Income-tax Act 1922, with effect from April 1, 1962. In the Income-tax Act, 1961, the Constitution and functions of the Tribunal have been set out in sections 252 to 255 of the Act. There is no fundamental change either in the constitution or functions of the Tribunal due to enactment of the new Income tax Act, 1961.

d) Opportunity of Hearing – Tribunal has the trapping of court.

Section 254(1) of the Income -tax Act,1961 reads as under:

> *"The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit."*

Further, Rule 33 of ITAT Rules, 1963, clearly states that the proceedings before the Tribunal shall be open to the public. Relevant portion of the rule is usefully extracted as under:

"Proceedings before the Tribunal.

33. Except in cases to which the provisions of section 54 of the Indian Income-tax Act, 1922, and/or section 137 of the Act are applicable and cases in respect of which the Central Government has issued a notification under sub-section (2) of section 138 of the Act, the proceedings before the Tribunal shall be open to the public. However, the Tribunal may, in its discretion, direct that proceedings before it in a particular case will not be open to the public."

In the case of *Ajay Gandhi v. B. Singh (2004) 265 ITR 451 (456)* the Supreme Court observed that the Income tax Appellate Tribunal exercises judicial functions and has the trapping of a court.

In the case of *ITAT v. V. K. Agarwal (1999) 235 ITR 175 (SC)*, before the Court the counsel for Union of India conceded that the Income Tax Appellate Tribunal performs judicial functions and was a court subordinate to the High Court. The Court held that the Tribunal is competent to initiate contempt proceedings under Contempt of Courts Act, 1971.

The Hon'ble Supreme Court in the case of *Rajesh Kumar v. DCIT [2006] 287 ITR 91 (SC)* has re-iterated based on Section 136 of the Income-tax Act, 1961, that proceedings before

Income-tax Authorities are judicial proceedings. Section 255(6) states that "The Appellate Tribunal shall, for the purposes of discharging its functions, have all of the powers that are vested in the Income-tax authorities referred to in Section 131". It continues to state that "any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 and for the purpose of Section 196 of the Indian Penal Code and the Tribunal proceedings shall be deemed to be a civil court for all the purposes of Chapter XXXV of the Code of Criminal Procedure, 1898". The language employed in the latter part of Section 255(6) is virtually identical to that used in Section 136 of the Act. Section 293 of the Act provides for a specific bar of suits in the civil court. An extension of the logic seems to make it clear that the Court exercises at least 'quasi-judicial' function. It is therefore important that the independence of the Tribunal is zealously preserved. Section 254 (1) of the Income -tax Act 1961 states that Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

In the case of *Nareshbhai Bhagubhai & Ors v. UOI (2019) 15 SCC 1*, The Hon'ble Supreme Court has held that the right to be heard even in an administrative decision-making process is not mere formality. The right of hearing is mandatory and substantive right and must be strictly followed and not following the same is violative of principle of natural justice.

When an assessee approaches the ITAT Justice must not only be done but also be seen to be done. The current open court system is in consonance with the said principles said down by the Hon'ble Supreme Court from time to time.

e) Functioning of the ITAT cannot be compared with the functioning of the Commissioner (Appeals).

The proceedings before the Commissioner (Appeals) are a continuation of assessment proceedings, whereas appeal before the ITAT is an independent adjudicating body. The former proceedings are internal proceedings in as far as the Income tax Department is concerned. The Tribunal is the first truly independent body free from pressures of the Income tax Department in the process of adjudication of tax disputes, allowing them to be empowered to administer justice.

In *Automotive Tyre Manufacturers Association v. Designated Authority (2011) 2 SCC 258* the court held that written arguments are not substitute for oral hearing. In *G. N. Rao v. Andhra Pradesh State Road Transport Corporation AIR 1959 SC 138* the Honourable observed that oral hearing enables a party appearing at such hearing to persuade the authority concerned by reasoned arguments to accept his point of view by removing the authority's doubt and by answering the authority's question.

Not providing an opportunity of personal hearing before the Tribunal is a violation of principles of natural justice and contrary to the safe guard guaranteed by the Constitution of India under Articles 14, 19 and 21 of the Constitution of India.

f) Proposed amendment of faceless hearing without deliberation and without taking in to feedback from the stake holders.

The proposed amendment to face less hearing is proposed without consulting various stake holders. Now, while the ITAT is hearing the Virtual hearing of matters, a number of technical problems, such as poor internet connectivity and other technological and technical difficulties are often encountered. The filing of appeal by email is not implemented even as of today. The assesses must first be made aware of the use of technology, development of software etc in order for them to have confidence in the system. Both the faceless assessment and faceless appeals [before the Commissioner of Income tax (Appeals)] are yet to be tested and stand the trial of time. When Virtual

hearing themselves have not proven to be confidence inspiring, the proposed Faceless functioning of the ITAT may prove to be a step that does not benefit the taxpayers.

g) Power to constitute the Bench with Honourable President of the ITAT

As per section 255(5) of the Income-tax Act, 1961 it is the Appellate Tribunal that shall have the power to regulate its own procedure and procedure of the Benches thereof, in all matters arising out of the exercise of its powers or in the discharge of its functions, including the places at which the Benches shall hold their sittings. The ITAT functions under the Ministry of Finance whereas the ITAT functions under the Ministry of law and Justice. The Income tax department is always one of the parties before the ITAT either as appellant or respondent. If at all any scheme is to be framed it should be by the Ministry of law and Justice and not by the Ministry of Finance headed by the CBDT. In the case of *Madras Bar Association v. UOI (2014) 109 DTR 273/ 227 Taxman 151*, the Court held that the dispensation of justice by the Tribunals can be effective only when they function independent of any executive control. The Court also observed that the Parliament must ensure new Tribunal conforms to salient characteristics and standards of court sought to be substituted. A failure to do so will be violative of "Basic structure" of Constitution of India and the said ratio is also applicable to the Income tax Appellate Tribunal. We are of the opinion that the dispensation of justice an open court hearing is a must in before the ITAT.

Suggestions

1. The proposed amendment may be dropped.
2. In case the Government is keen to introduce the faceless ITAT, the following procedures may be followed:
   (a) The law commission may be requested to prepare the report on the Virtual and face less hearing of the ITAT, after interacting with the stake holders across the country.
   (b) After receipt of the report the proposed amendment may be referred to a select committee.
   (c) After receipt of the report from the Parliament committee the suitable amendment if any desired may be introduced.

We make an appeal to all the stakeholders to write to the Hon'ble Finance Ministry to drop the proposal.

8. Dénouement

Ease of doing business cannot be achieved by increasing the compliances. When the TDS provision was introduced only three types of payments were covered i.e., Section 192 - Salary, Section 193 - Interest on Securities and Section 194 - Dividends provisions; now there are more than 30 sections where the assessee is required to deduct tax at source. As per the Proposed provision 194Q of the Act the assessee has to deduct the tax even on purchases. The failure to deduct tax at source or delay in depositing the tax at source, the assessee is made liable to pay interest penalty and some offences may lead to prosecution. Once the prosecution is launched for reaching finality it will take more than two decades. Unless the procedure compliance is reduced the investors may not get the confidence to invest in India. The legislature is trying to implement new provisions pertaining to commercial laws and labour legislation that is the reason the Income-tax Act is becoming more complications which lead to unintended litigation. We hope the Government will also interact with the professional organisations and consider their views. The readers are requested to send their objective suggestions to the aiftpho@gmail.com which will enable to them their suggestions to the CBDT.

Implications of Union Budget on Direct Taxes

Wednesday, 17th February, 2021
Virtual National Tax Conference, 2021

AIFTP
GSTPAM
VTPA
CGCTC

Synopsis

- Rates of Tax
- Exemptions & Institutions & Associations
- Profits & Gains from Business & Profession
- Capital Gains
- Admissible Deductions
- Procedures, Taxes and Appeals
- TDS & TCS
- Miscellaneous – VSVA - PBPTA – IDS

Rates of Taxes

Rates of Tax
cl. 2

- **A.Y. 2021-22**
  - No change in rates of tax, SC and EC prescribed by FA, 2020.
- **A.Y. 2022-23**
  - No change in tax structure which was prescribed for A.Y. 2021-22
    - For Individual & HUF (optional – possible to shift to s.115BAC)
    - For Co-operative society (optional to shift to s.115BAD)
    - For Other Non-corporate assessees
    - For Domestic Company (optional to shift to s.115BAA/115BAB)
    - For Foreign Company
    - For Firm & LLP
    - No change in Surcharge
    - No change in Health & Education Cess

Exemptions & Institutions & Associations

Exemption for Leave Travel Concession - I

s. 10(5), cl.5

- A.Y. 2021-22 only
- Exemption for Cash Allowance in lieu of LTC
- Conditional exemption
  - Allowance to be Spent on specified goods or services
  - Liable to GST @ 12% or more
  - Expenditure during 12.10.2020 to 31.03.2021
  - Payment as per Rule 6BBA by Banking channels
  - Tax Invoice mandatory
  - Exercise option in block period 2018-2021
- Exemption lower of Rs. 36,000 p.p or 1/3rd of expenditure
  - permits partial exemption

Exemption for Leave Travel Concession - II

s. 10(5), cl.5

- No deduction for prescribed expenditure to any other person
- As per terms of employment
- Specified expenditure such as payment of insurance premium
  - allowed as a deduction u/s. 80C
  - Not a case of double deduction
- Not applicable to assessee opting for s.115BAC
- Tax on residual allowance?

ULIP - I

s. 2(14),10(10D) & 45(1B), cl.5 & 14

- A.Y. 2021-22 onwards
- ULIP to be a Capital Asset (where not exempt) – s.2(14)
  - Redemption to be transfer – s.2(47)
- Capital Gain on redemption – s. 45(1B)
  - Taxation in the year of receipt
- Concessional rate of tax u/s 111A and 112A
  - ULIP on par with Equity Oriented Fund
- ULIP to be Life Insurance Policy – Explanation 3 to s.10(10D)
- Conditional exemption for policies issued on or after 01.02.2021
- Yearly Premium payable to be less than Rs. 2,50,001
  - Aggregate premium limit of Rs. 2,50,000
- Receipt on death fully exempt

ULIP - II

s. 2(14),10(10D) & 45(1B), cl.5 & 14

- Inequitous outcome on aggregation
  - may disqualify all policies
- Definition of Equity oriented fund amended
- levy of STT @ 0.001%
  - on maturity or partial withdrawal
- Insurance Companies to deduct Tax at source – s.194DA
- ULIP with premium > 10%; status on redemption
- Status of renewed policy
- Whole policy to qualify or not
- Premium may include GST and other components
- Assignment of ULIP to another person
  - taxable as Capital Gains
- S.80C(5) treats premium paid as income in year of termination
- S.45(1B) taxes CG in year of receipt

Interest on Provident Fund - I

s. 10(11) & 10(12), cl.5

- A.Y. 2022-23 onwards
- Interest on EPF and RPF
- Denial of exemption for interest
  - On annual contribution exceeding Rs. 2,50,000
- Partial disallowance of interest on excess contribution
  - Computation as prescribed
- Head of Income
- Possible liability of TDS
- Income subject to Advance Tax

Interest on Provident Fund - II

s. 10(11) & 10(12), cl.5

- Complex computation on maturity
  - Tax and Non-tax receipts
- Possible relief u/s. 89(1) on withdrawal
- Year of taxation – accrual or withdrawal/ cessation
- Accretion on past excess contribution (para 15 of FM speech)
- Contribution to PPF not to exceed Rs. 1,50,000 per year
  - S.O. 2430 dt. 02.07.1968

Educational Institutions & Hospitals

s. 10(23C)(3ad)(3ae), cl.5

- A.Y. 2022-23 onwards
- Exemption from tax
  - Where aggregate annual receipts does not exceed Rs. 1 crore
  - Rule 2BC
- Limit of Annual Average Receipts increased to Rs. 5 crores
- Limit of Rs. 5 crs to apply entity wise on aggregate basis
- Amendment to overcome the decision
  - Children's Education Society, 358 ITR 373 (Karn)

Charitable Trusts & Institutions - I

s. 10(23C) & s. 11, cl.5

- A.Y 2022-23 onwards
- Amendments to avoid 'double counting'
  - In 'calculating' Application or Accumulation
- Corpus donations to be invested as per s. 11(5)
  - present s.13(1)(d) regiments
  - new investment to be separately maintained
  - Corpus donation in kind
    - liquidation in 1 year as per Proviso to s.13(1)(d)
  - time for investment u/s. 11(5)

Charitable Trusts & Institutions - II

s. 10(23C) & s. 11, cl.5

- Application out of corpus donation not an 'Application'
  - 'Application' on reinvestment as per s. 11(5)
- Applications from loans/borrowings not to be 'Application'
  - Repayment to be an 'Application' – Circular No. 100 dt. 24.01.1973
- No set-off or deduction or allowance of excess Application
  - Not to be carried forward
    - Rajasthan & Gujarati Charitable Foundation (SC), CA 7186 of 2014
    - Institute of Banking Personnel Selection, 264 ITR 110 (Bom.)

Profits and Gains of Business & Profession

Block Of Assets
s.2(11), cl.3

- W.e.f. A.Y. 2021-22
- Block of Asset – Intangible Asset
  - 'any other business or commercial right of similar nature '
  - included goodwill
    - Smiff Securities Limited , 348 ITR 302 (SC)
      - Goodwill on Amalgamation
- Amendment to exclude Goodwill of Business or Profession

Depreciation on Goodwill - I

s. 2, 3, 32, 48, 49, 50, 55 cl. 7,8,20

- A.Y. 2021-22 onwards
- Goodwill of a business or profession
- Not an asset in Block of Asset ; purchased or otherwise
- Depreciation denied from A.Y. 2021-22
- s. 43(1) & (6),48, 50 & s.55
- Retroactive amendment
  - Adjustment in W.D.V. & Actual cost
    - for depreciation claimed and allowed
- Impact of s.57 Depreciation

Pradip N. Kapasi
Chartered Accountant

17

Depreciation on Goodwill - II

s. 2, 3, 32, 48, 49, 50, 55 cl. 7,8,20

- No parallel amendment in s.43(6)(c) unlike s.50
  - S.43(6)(c) applies on sale, etc.
- DTA/ DTL may get impacted
  - if goodwill appearing in books is depreciated
- Can Goodwill be part of networth calculation for s.50B
- Neutral to calculation as per Rule 11UA
- Status of UAD on Goodwill
- 'Goodwill' undefined
- Valuation of other intangible assets

Pradip N. Kapasi
Chartered Accountant

18

Employees' Contributions - I

s. 36(1)(va) & 43B, cl. 8 & 9

- A.Y. 2021-22 onwards
- Denial of deduction for delayed payment of employee contribution by employer
- Late deposit of employees' contribution to any;
  - provident fund or
  - superannuation fund or
  - gratuity fund or
  - any other fund for the welfare of employees
- S. 43B shall not apply to determine the due date

Employees' Contributions - II

s. 36(1)(va) & 43B, cl. 8 & 9

- Whether amendment can be considered as retrospective
- AIMIL Ltd., 321 ITR 508 (Del.)
- Alom Extrusions, 319 ITR 306 (SC)
- Ghatge Patil Transport Ltd., 386 ITR 749 (Bom)
- Kichha Sugars Co-op Ltd., 356 taxmann.com 351 (Uttrakhand)
- Gujarat State Road Transport Corporation, 41 taxmann.com 100 (Guj)
- Popular Vehicles and Services Pvt. Ltd., TS-378-HC-2018 (Ker)

Safe Harbour Limit

s. 43CA & 56(2)(x) , cl. 10 & 21

- A.Y. 2021-22 & 2022-23
- Increase in Safe Harbour Threshold Limit
  - 10% to 20% subject to certain conditions;
    - Transfer to take place between 12.11.2020 to 30.06.2021.
    - Transfer is by way of first time allotment
    - Consideration does not exceed Rs. 2 Crore
    - Restricted to sale & purchase of residential units
    - No Safe Harbour benefit where exceeds 20 %
      - Conflicting views on beneficial treatment for excess
- "Residential Unit" defined to be an Independent housing unit
  - Case of joint ownership

Tax Audit

s. 44AB, cl. 11, Para 161

- A.Y. 2021-22 onwards
- Exemption from Tax Audit and TAR
- For Business with $\leq$ 5% Cash receipts and payments
- Increase in limit of turnover, sales, etc
  - To Rs. 10 crore from Rs. 5 crore
  - subject to cumulative compliance of twin conditions of;
    - Aggregate of all receipts in cash to be $\leq$ 5%
      - Receipts to include receipts for sales etc
    - Aggregate of all payments in cash to be $\leq$ 5% of the payment
      - Payments to include amount "incurred" for expenditure

Presumptive Taxation
s.44ADA(1), cl. 12

- A.Y. 2021-22 onwards
- Assessee engaged in specified profession
- Eligible Assessee to include;
  - Individual
  - HUF
  - Partnership Firm
- Clarification to exclude LLP

Capital Gains

Slump Sale
s.2(42C), cl.3

- W.e.f. A.Y. 2021-22
- Slump sale shall include transfer by any means
- Slump Sale v. Slump exchange
  - CIT v. Bharat Bijlee Limited [TS-270-HC-2014(BOM)]
- Change to activate application of s. 50B
- Taxation of slump exchange
  - likely to be at FMV of asset
  - not at agreed value
- COA of assets received in slump exchange
  - FMV of asset given up or assets received
- Amendment can impact slump exchange prior to 01.04.2021

Receipt of capital asset on Dissolution & Reconstitution - I
s.45(4) , cl.14

- A.Y. 2021-22 onwards
- Overriding s. 45(1)
- Profit or Gains on receipt of Capital Asset (CA)
- On Receipt by a specified person of CA during the year
- At the time of Dissolution /Reconstitution
  - of Firm/AOP/BOI - Specified Entity (SE)
    - Reconstitution not defined
- Representing the balance in his capital account
  - In Books Of Account of SE
  - At the time of dissolution or reconstitution
- Chargeable to tax as income of SE under head CG
- Deemed Income in the year of receipt by SP

Receipt of capital asset on Dissolution & Reconstitution - II

s.45(4) , cl.14

- Computation of CG as per s. 48
  - FMV received or accrued of CA to be FVC
  - As a result of transfer of CA
- Determination of COA as per this Chapter IV - D
- Calculation of balance in account of SP
  - By ignoring revaluation and self generated goodwill / assets
- Computation of CG – Possibilities
- Indexation of COA / COI
- Period of holding – STCG or LTCG
- Possible double taxation

Pradip N. Kapasi
Chartered Accountant 27

Receipt of money/ other asset on Dissolution & Reconstitution - I

s.45(4A) , cl.14

- A.Y. 2021-22 onwards
- Overriding s. 45(1)
- Profit or Gains on receipt of money / other assets
- On Receipt by a SP of money / other asset during the year
- Representing in excess of the balance in his capital account
  - In Books Of Account of SE
- At the time of Dissolution /Reconstitution of SE
- Chargeable to tax as income of SE under head CG
- Income in the year of receipt by SP

Pradip N. Kapasi
Chartered Accountant 28

Receipt of money/ other asset on Dissolution & Reconstitution - II

s.45(4A) , cl.14

- Computation of CG as per s. 48
  - Value of money / FMV of other asset to be FVC
  - As a result of transfer of money / other asset
- Balance in capital account to be deemed COA
- Calculation of balance in account of SP
  - By ignoring revaluation and self generated goodwill / assets
- Deduction u/s. 48(iii)
  - Attributed to 'CA'
    - Calculated in prescribed manner
- Final Computation of CG - Possibilities
- COA / COI & indexation of 'other assets'
- Period of Holding -STCG/LTCG

Capital gain on transfer of residential property & Start –ups

s.54GB, 80-IAC, cl. 19, 25

- A.Y. 2021-22 onwards
- Time for sale of residential premises
  - Extended by one year to 31.03.2022
- Exemption for Capital Gains on transfer of Residential House
  - On re-investment in equity shares of Start-up Company
- Deduction @ 100% of profits & gains from eligible start-up
  - Extension of period for incorporation by one year to 31.03.2022

Admissible Deductions

Deduction for interest on loan for house property
S. 80EEA, cl. 24

- A.Y. 2022-23 onwards.
- Deduction in respect of Interest on loan for a residential property
- Period for availing loan extended by one year
  - Extended to 31.03.2022.

Deductions for Housing Projects

S. 80-IBA(2)(a) , cl. 26

- A.Y. 2022-23 onwards
- Extension for date of approval of project to 01.04.2022
- New deduction for Rental Housing Projects
- To be notified by CG
  - On or before 31.03.2022
- On satisfaction of specified condition
- Quantum of deduction to be 100% of profits

Procedures, Taxes & Appeals

Due Dates – Return of Income

s. 139 , cl. 32

- A.Y. 2021-22 onwards **- 1**
- Due date for filing ROI
  - Spouse of a partner of firm whose accounts are required to be audited
  - governed by s. 5A of ITA – Portuguese Civil Code
  - Due date is 31st October of the AY.
- Due date for filing ROI **- 2**
  - partner of firm required to furnish report u/s. 92E
  - Due date is 30th November of the AY.
- Due date for filing returns u/s 139(4) & 139(5) **- 3**
  - Three months prior to end of assessment year or
  - Before completion of assessment
    - whichever is earlier
- Position for AY 2020-2021

Time limits for Belated / Revised ITRs

S. 139, cl. 32

Particular	Existing	Proposed
Last date for filing of belated or revised returns of income by the end of the assessment year or before the completion of the assessment, whichever is earlier.	by end of AY	3 months prior to end of AY
Income Tax Return for A.Y. 2021-22	31-Mar-2022	31-Dec-2021

Defective Returns

s. 139(9) , cl. 32

- A.Y. 2021-22 onwards
- Defective ROI u/s. 139(9)
- Conditions stated in clause (a) to (f)
  - not to apply to class of assessee
  - apply with modifications
    - Board to notify cases

Inquiry before assessment

s. 142(1) , cl. 33

- W.e.f. 01.04.2021
- Empower prescribed IT authority besides AO
  - to issue notice u/s. 142(1).
- Prescribed Income Tax Authority
  - not defined

Intimation

s. 143(1)(a) , cl. 34

- W.e.f. 01.04.2021
- Scope of adjustments under clause (a) expanded
- Sub-clause (iv)
  - adjustment on account of 'increase in income'
  - indicated in Tax-audit report
  - not taken in computing total income
- Sub-clause (v)
  - scope of adjustment for allowance of deduction expanded
  - 'u/s. 10AA or Chp. VI-A Heading 'C'
    - only if ROI filed on or before due date u/s. 139(1)
- Reduced time limit for sending intimation
  - from 1 year to 9 months from end of FY in which ROI filed
- Applicability to pending returns

Assessment

s. 143(2) & s.153 , cl. 34 & 41

- W.e.f. 01.04.2021
- Reduced time limit for serving notice u/s. 143(2)
  - From 6 months to 3 months from end of FY in which ROI filed
  - Applicability to pending cases
- Reduced time limit for passing of order
- Order u/s. 143 or 144
  - reduced from 12 months to 9 months
  - A.Y. 2021-22 onwards

Time limits for Intimation / Notice

S. 143(1)&(2), cl. 34

Particular	Existing	Proposed
• Time limit for sending intimation u/s 143(1) ^ from the end of the financial year in which return was furnished	12 Month^	9 Month^
Income Tax Return for A.Y. 2022-23	31-Mar-2024	31-Dec-2023
• Time limit for issue of scrutiny notice u/s 143(2) * from the end of the financial year in which return is furnished	6 Months*	3 Months*
Income Tax Return for A.Y. 2022-23	30-Sep-2023	30-June-2023

Pradip N. Kapasi
Chartered Accountant

41

Time limits for Assessment

S. 153, cl. 41

- A.Y. 2021-22 onwards

Particular	Existing	Proposed
Last date for passing assessment order u/s. 143 / 144 from the end of the assessment year.	after 12 Months	after 9 Months
Income Tax Return for A.Y. 2021-22	31-Mar-2023	31-Dec-2022

Pradip N. Kapasi
Chartered Accountant

42

New scheme of Re-assessment

s. 147 to 153C, cl. 34 to 43

- W.e.f. 01.04.2021 with saving clauses
- S. 147 to 149 and 151 & 151A substituted/inserted/ overhauled
- "Income has escaped assessment' redefined – **s.148**
  - 'renewed stress on information'
- "Reason to believe ' & "recording of reasons' dispensed with
- Issue & service of notice u/s. 148 Subject to s.148A
- S.148A newly inserted
  - Inquiry and passing of order before issue of notice u/s. 148
- Time limits for issue of notice u/s. 148 changed – **s.149**
  - within 3 or 10 years (escaped income Rs. 50 Lakh or more)
- Specified Authority redefined – **s.151**
- Faceless Assessment – **s.151A**
- No Special Assessment u/s 153A & s.153C
  - for search/ requisition w.e.f. 01st April, 2021
  - Automatic reopening for 3 preceding assessment years

Income escaping assessment - I

s. 147 , cl. 35

- S. 147 substituted w.e.f. 01.04.2021
- Power of AO to reopen
- Income has escaped assessment
- Escapement of Income to be ascertained w.r.t. s.148
- 'Reason to believe' & 'Recording of reasons' dispensed with
- AO to assess or reassess or re-compute income/ loss
- Reopening and Reassessment subject to s. 148 to s. 153
- Subsequent notice of escapement by AO possible
- Applicability to pending cases?

Income escaping assessment - II

s. 147 , cl. 35

- Omissions & Additions
  - disclosure of material facts
  - application of mind in assessment
  - failure to identify failure of assessee to disclose
  - failure to file ROI
  - failure to respond to notices
  - escapement of foreign income
  - income disputed in Appeal / Revision
  - production of BOA
  - discovery by AO
  - failure to furnish report u/s. 92E
  - Cases of;
    - under assessment
    - taxed at lower rate
    - excessive relief, loss, depreciation

Issue of notice u/s. 148 - I

s. 148 , cl. 36

- S. 148 substituted w.e.f. 01.04.2021
- Notice for filing fresh ROI
- Notice subjected to provisions of s.148A
- Order u/s. 148A to be annexed
- Conditions for issue
  - information in possession of AO
    - Suggestive of escapement of income
  - prior approval of SA
- Information suggesting escapement;
  - flagged by risk management strategy of Board
  - final objection of C&AG
  - cases of deemed information

Issue of notice u/s. 148 - II

s. 148 , cl. 36

- Deemed information where
  - search u/s. 132 after 31.03.2021
  - requisition u/s. 132A after 31.03.2021
  - Survey u/s. 133A after 31.03.2021
  - third party seizure/ requisition of money, etc. and BOA, etc.
    - Satisfaction of AO
      - belongs to OR pertains to the assessee
      - Prior approval of PCIT/ CI
      - after 31.03.2021
  - Valid for 3 preceding AY

Inquiry u/s. 148A - I

s. 148A , cl. 37

- W.e.f. 01.04.2021
- New provision
- AO 'shall' before issue of notice u/s. 148
  - conduct inquiry, if required
    - prior approval of specified authority
  - provide opportunity of being heard
    - prior approval of specified authority
    - service of SCN
    - not less than 7 days, not exceeding 30 days
  - consider the reply of assessee
  - decide by passing an order – fit to issue notice u/s. 148
    - prior approval of specified authority
    - within 1 month from the end of month in which reply received

Inquiry u/s. 148A - II

s. 148A , cl. 37

- S.148A 'shall not apply' in cases where
  - search u/s. 132 after 31.03.2021
  - requisition u/s. 132A after 31.03.2021
  - third party seizure/ requisition of money, etc. and BOA, etc.
    - Satisfaction of AO
      - belongs to OR pertains to the assessee
      - Prior approval of PCIT/ CI
      - after 31.03.2021
- Not applicable to survey u/s. 133A
- Issue of SCN, objection and disposal of objection
  - GKN Driveshafts (India) Ltd, 259 ITR 19 (SC)

Time limit for notice u/s. 148 - I

s. 149, cl. 38, Para 153 & 154

- W.e.f. 01.04.2021
- Notice u/s. 148 within
  - 3 years from end of AY
  - 3 to 10 years from end of AY subject to'
    - AO in possession of Books, documents, evidence
    - revealing escapement
    - Rs. 50 lakhs or more
    - represented in the form of asset.
- Cases of Search, seizure, survey, requisition?
- Cases of loss, deduction, allowance, expenditure?

Time limit for notice u/s. 148- II

s. 149, cl. 38

- Savings clause for AY 2020-21 and earlier years
- No notice
  - Where search conducted up to 31.03.2021
- Exclusion from period of limitation where
  - time allowed to assessee for response to show cause notice as per s.148A
  - Proceedings stayed

Time limits for Reopening

S. 149, cl. 38, Para 153 & 154

- W.e.f. 01.04.2021

Particular	Existing	Proposed
Time limit for Reopening of Assessment:	4/6/16 years from the end of relevant assessment year	3 / 10/ BMA years from the end of relevant assessment year

Sanction for issue of notice
s. 151 , cl. 39

- W.e.f. 01.04.2021
- 'Specified Authority' (SA) – For s. 148 & s. 148A
  - PCIT or PDIT or Commissioner or Director
    - ≤ 3 Years have elapsed from end of relevant AY
  - Pr. CCIT or Pr. DGIT or Chief Commissioner or Director General
    - > 3 years have elapsed from end of relevant AY

Assessment in case of search or requisition & Assessment of income of any other person
s. 153A, 153C , cl. 42 & 43

- W.e.f. 01.04.2021
- Provisions not applicable
  - Search and Requisition cases on or after 01.04.2021
- Covered under new procedure for reassessment

Faceless Re-assessment

s. 151A, cl. 40

- W.e.f. 01.04.2021
- Introduction of Faceless Assessment - TLA, 2020
- C.G. notify a scheme for purpose
  - assessment, reassessment or re-computation u/s. 147
  - by issuance of notice u/s. 148
  - Dynamic jurisdiction
- Extension of scope, to cover s.148A;
  - conduct of enquiries
  - issue of SCN
  - passing of order u/s. 148A

TDS & TCS

TDS on Dividends

s. 194 cl. 44, Para 162

- W.e.f. 01.04.2020
- Exemption from TDS to SPV on payment of dividend
- On dividend to Business Trust u/s. 2(13A)
  - REIT and Invit

Zero Coupon Bond

s.2(48), 194A(3)(x), cl.3 & 45, Para 163 & 164

- A.Y. 2022-23 onwards
- Zero Coupon Bond
  - Infrastructure Debt Fund issued on or after 01.06.2005
- Rule 2F and Rule 8B to be amended
- Usually issued at discount or redeemed at premium
- No TDS on payment by Infrastructure Debt Fund

TDS in case of Specified Senior Citizen-I

s. 194P, cl. 47, Para 151 & 152

- A.Y. 2021-22 onwards
- Applicable to Specified Senior Citizens
- Specified Bank shall compute Total Income
  - after giving effect to Ch. VI-A Deductions, and
  - rebate u/s. 87A
- Deduct TDS at rates in force
- Specified Senior Citizen exempted from filing ROI
- Specified Senior Citizens
  - resident Individual of age $\geq$ 75 Years
  - pension income and interest income from same bank in which he receives pension
  - required to file a declaration to the specified bank

TDS in case of Specified Senior Citizen – II

s. 194P, cl. 47, Para 151 & 152

- Specified Bank
  - Will be notified by Government
- Pension not defined
- TDS on Pension?
- Time for TDS on Pension
- Bank to file Return
  - at option of the assessee
- Recourse where wrong TDS/ return is filed by bank
- Prescribed form?
- Provision for refund

TDS in case of Specified Senior Citizen – III

s. 194P, cl. 47, Para 151 & 152

- Concerns relating to revision of ROI, notice, intimation and assessment
- Difficulty in opting for s.115BAC
- Time for filing declaration with Bank
- Cases of exempt income
- Interest on tax refund?
- No provision for set-off of brought forward losses

Income of FII from Securities

s. 196D, cl. 49

- W.e.f. 01.04.2021
- A.Y. 2021-22 onwards
- Agreement u/s. 90(1) or 90A(1) applies to payee
  - Payee furnishes certificate u/s. 90(4) or 90A(4)
- TDS rate is lower of
  - 20%, or
  - Rate provided in such agreement for such income

TDS in case of Purchase of Goods - I

s. 194Q, cl. 48 & 50

- W.e.f. 01.07.2021
- Buyer to deduct TDS @ 0.1% for purchase of any goods
  - on payment to any resident
  - on value of purchase exceeding Rs. 50 lakhs
- Twin Conditions
  - Buyers T/O of PPY > Rs. 10 crores
  - Buyers purchase from seller to exceed Rs. 50 lakhs for the year
- Provisions not to apply where
  - Tax deducted under any other provisions
  - Tax collected u/s. 206C other than s.206C(1H)
- Consequential amendments to s. 206AA, where TDS at 5%
- Overlapping jurisdiction
  - S.206C(1H) v/s 194Q

TDS in case of Purchase of Goods - II

s. 194Q, cl. 48 & 50

- Certain Issues
  - Trade discount, rebate, cash discount
  - GST net or gross
  - Stock and commodity exchange transactions
  - Transitional year
  - Higher TDS where 206AA/ AB applies

TDS / TCS on non Filer at Higher Rate - I

s. 206AB & 206CCA, cl. 46, 51 & 52

- W.e.f. 01.07.2021
- S.206AB - higher rate for TDS for the Non-Filers of ITR
  - any sum or income or amount paid, or payable or credited, by a person
  - TDS rate is higher of
    - twice the rate specified in the relevant provision of the Act; or
    - twice the rate or rates in force; or
    - 5%
  - shall not apply where the tax is required to be deducted u/s.192, 192A, 194B, 194BB, 194LBC or 194N
- Where s.206AA is applicable for no PAN
  - in addition to this section
    - tax to be collected at higher of two rates

TDS / TCS on Non Filer at Higher Rate - II

s. 206AB & 206CCA, cl. 46, 51 & 52

- S. 206CCA - higher rate of TCS for Non-Filers of ITR
  - any sum or amount received by a person
  - TCS rate is higher of
    - twice the rate specified in the relevant provision of the Act; or
    - 5%
  - S. 206CC where is applicable for no PAN,
    - in addition to this section,
    - tax to be collected at higher of two rates

TDS / TCS on Non Filer at Higher Rate - III

s. 206AB & 206CCA, cl. 46, 51 & 52

- Specified Person
  - A person who has not filed the ROI for both the two PPY's
  - time limit for filing tax return u/s. 139(1) has expired for both AY
  - aggregate of TDS and TCS is ≥ Rs. 50,000 in each of 2 PPY's
  - not a non-resident not having a permanent establishment in India
- Questions to be asked to payer/ payee
  - Resident or Non-Resident
  - PE exists or not
  - ROI for 2 years filed or not
  - Time limit for filing ROI expired or not
  - Aggregate of TDS and TCS for both the years exceeds Rs. 50,000 or not

Interest for Deferment of Advance Tax

s. 234C, cl. 53

- W.e.f. 01.04.2021
- No interest u/s. 234C
  - For shortfall in payment of Advance Tax
  - On account of Dividend Income
    - Other than Deemed Dividend u/s. 2(22)(e)
- Difficulties arising for non-payment of first 3 installments
  - proposed amendments for AY 2021-22

Provisional attachment and fake invoice

S. 281B, cl. 79

- W.e.f 01.04.2021
- Present power of provisional attachment
  - Power to provisionally attach property of assessee
  - Protection of interest on revenue
  - AO with approval of PCIT, etc.
  - Attachment valid for 6 months
  - Possible to furnish bank guarantee
- Penalty u/s. 271AAD for false entry fake invoice etc
- Amendment to authorise AO u/s. 281B
  - Provisional attachment of properties
  - Of persons against whom penalty proceedings are initiated
  - Aggregate penalty to exceed Rs. 2 crore

Miscellaneous

Vivad se Vishwas

- The due date to file declaration under the said scheme has been extended from 31.01.2021 to 28.02.2021.
  - Notification No. 04/2021/F.No. IT(A)/01/2020 - TPL

Benami Property Law
cl. 142 to 147

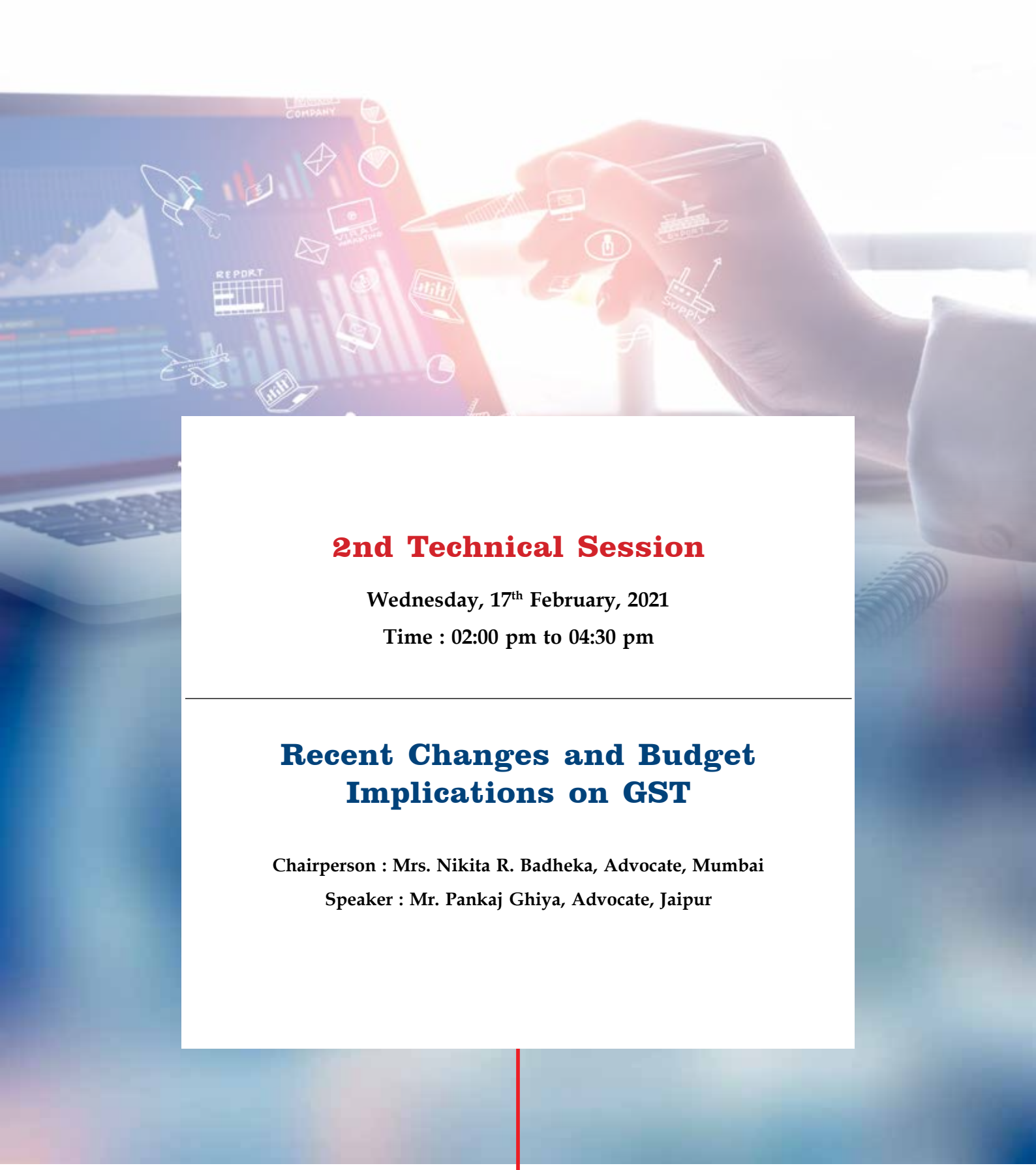
- W.e.f 01.07.2021
- Present jurisdiction of adjudicating authority and appellate tribunal with authorities appointed under PMLA
- Proposal to appoint authorities under SAFEMA as AA
- Consequential amendments for extending time limits

Income Declaration Scheme – 2016
cl. 159

- W.r.e.f 01.06.2016
- Refund of taxes not possible
- Amendments of 2019 to permit refund in specified cases
- Further amendment to provide refund without interest

Pradip N. Kapasi
Chartered Accountant
73

Pradip N. Kapasi
Chartered Accountant
74



2nd Technical Session

Wednesday, 17th February, 2021

Time : 02:00 pm to 04:30 pm

Recent Changes and Budget Implications on GST

Chairperson : Mrs. Nikita R. Badheka, Advocate, Mumbai

Speaker : Mr. Pankaj Ghiya, Advocate, Jaipur

VIRTUAL
NATIONAL
TAX
CONFERENCE
17th & 18th February, 2021

Nikita R. Badheka, Advocate, Mumbai
Chairperson

Smt. Nikita Rajen Badheka -- Advocate and Notary-Mumbai

She completed her LLB in the year 1980 from Government Law College, Bombay University. She is also holding a Diploma in Business Management (IMC). She is appointed Notary on 15th May 1993

Mentored by her father late Advocate Shri. B.C. Joshi, the Authority in Sales Tax Laws (Founder and past National President of AIFTP), she specializes mainly in - Sales Tax, VAT & Allied Laws and deals mainly in Investigation matters, Appeals, Tribunal and Writs, Appeals and references in the High Court.

Presently, she is a Member of National Executive Committee - AIFTP and a part of various Committees of AIFTP (WZ). She is a regular column writer in The Chamber's Journal (VAT Update) and Sales Tax Review (Laws update). Along with that she is member in various committees, of The Chamber of Tax Consultants, Mumbai and also of The Sales Tax Practitioners' Association of Maharashtra, Mumbai.

She has many firsts to her credit, namely – (1) First Lady Chairperson of AIFTP (West Zone 2008 and 2009). (2) First Lady President of STPAM (1997-98), (3) First Lady President of The Sales Tax Tribunal Bar Association, (4) First Lady Editor of Sales Tax Review. She has also been National Treasurer (AIFTP 2010-11),

She has written various papers on burning complex issues. The papers were presented in Conferences & Seminars organized in different parts of India as well as in remote places in Maharashtra.

She has Chaired various Seminars and been a regular Trustee in Brain Trust Sessions in various seminars on subject of Sales Tax, Central Sales Tax, VAT, Works Contract Tax, VAT Audit, Profession Tax, etc.

She has also given lectures in Sales Tax Officer Training Courses.

Pankaj Ghiya, Advocate, Jaipur
Speaker

Pankaj Ghiya, Advocate is having professional experience of over 32 years in the fields of Indirect Taxes, Corporate Litigation and support with specialization in Sales Tax, VAT, Service Tax, GST & other Indirect Tax matters. He is also working in FSSAI, IPR and Arbitration matters He is currently engaged in handling litigation, opinion, Compliance, retainer ship along with advising clients, structuring transactions and conducting Due Diligence in given fields of taxation. He is appearing regularly before the Rajasthan High Court and various other High Courts, Rajasthan Tax Board and other Appellate Authorities

He is the Founder & Owner of GHIYA LEGAL. It is a firm providing complete Legal and Tax solutions. The team consist of Chartered Accountants, Advocates and MBA's working in the field of Legal Support, Tax Matters and other Miscellaneous matters

He has been the Secretary General of the AII India Federation of Tax Practitioners (AIFTP) for term 2018 and the National Vice President of AIFTP in 2019. He is Immediate Past President of Rajasthan Tax Consultants Association, Past President of Tax Consultant Association of, Jaipur, Member of the GST Committee constituted by the Government of Rajasthan, Member of a PAN India Network of like-minded Indirect Tax professionals named "GST World". He is on panel of various trade associations as GST Advisor for Trade & Industry Members and has representing various Advisory Committee in Rajasthan. He is presently also the Additional General Secretary of FORTI

He has having deep understanding, interest in academic discussions, upgradations and training. He has delivered more than 2000 lectures over most of cities in India and is also a regular attendee of various Study Courses on Sale tax, VAT, CST and GST conducted by AIFTP, FICCI, Chamber of commerce, ICAI, RTCA, TCA and other forums as Group Leader and Coordinator.

He has written various books on Rajasthan VAT and also written 5 books on GST.

Other Activities :

1. Secretary General – All India Federation of Tax Practitioners (AIFTP) - 2018
2. Immediate Past President – Rajasthan Tax Consultants Association
3. Member- Tax Advisory Committee constituted by State Government
4. Past President - Tax Consultants Association, Jaipur
5. Addl General Secretary - FORTI – Federation of Rajasthan Trade and Industry
6. Chief Editor – AIFTP Indirect Tax & Corporate Laws Journal
7. Secretary- Tax Consultants Association, Jaipur (1995-1997).
8. President - Jaipur Junior Chamber, (1993).
9. Dy. Chief Editor - "Tax World", a monthly Tax Journal (2002-2007).
10. General Secretary - Rajasthan Tax Consultants Association. (2005-2007)

GHIYA LEGAL

PANKAJ GHIYA, ADV
DEEPAK GARG, ADV
RIBHAV GHIYA, CA
MEENAL GHIYA, ADV

10 Ganesh Colony Bhairav Path, JLN, Jaipur, Rajasthan 302004
Mob: +91-98289013626 Ph: 0141-2622644
Email- pankaj.ghiya@hotmail.com

Amendment in GST Act

Amendment in Section 7

After	*"(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or viceversa, for cash, deferred payment or other valuable consideration.* *Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another*
Comments	A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. **This amendment shall take effect retrospectively from July 1, 2017.**
Effect	**All Clubs and Association etc will be taxable under GST and all decisions namely of Rotary Club / Calcutta Club / Apsara Co-operative stands reversed.**

Amendment in CST Act

Amendment in Section 8 Subsection 3 Clause b

Before	(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing *of goods for sale or [in the tele-communications network or] in mining or in the generation or distribution of electricity or any other form of power;*
After	(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing *for sale of goods specified under clause (d) of section 2*
Comments	***Use of C- Form Denied for or [in the tele-communications network or] in mining or in the generation or distribution of electricity or any other form of power***

Amendment in GST Act

Amendment in Section 16

After	*"(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37."*
Comments	**A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.**
Effect	**Effect – GSTR 2A / 2B gets legal backing including Rule 36(4). All defenses of genuine tax-payers BLOCKED. Decisions of Arise India & others, Other Decisions checkmate.**

Amendment in GST Act

- Amendment in Section 35

Before *"S. 35 (5): Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed."*

After ~~*Omitted*~~

Comments Sub-section (5) of section 35 of the CGST Act is being omitted so as to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional.
However Self Certified reconciliation statement to be submitted. Date to be Notified.

Amendment in GST Act

- Amendment in Section 44

After *"44. Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return* ***which may include a self certified reconciliation statement,*** *reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:*
Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Comments **Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.**

Amendment in GST Act

Amendment in Section 50

Before	*"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger."*
After	*"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be* ***payable on that portion of the tax which is paid by debiting the electronic cash ledger."***
Comments	**Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge [103] 100 interest on net cash liability with effect from the 1st July, 2017. However, for unpaid tax amount and tax being paid later even by ITC would not get benefit.**

Amendment in GST Act

Amendment in Section 74

Before	*"(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.*
After	*"(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded."*
Comments	**Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.**

Amendment in GST Act

Amendment in Section 75

After	*"Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39."*
Comments	**An explanation to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.** **GSTR 1 Liability would be considered as self – assessed tax. Difference in GSTR 3B and GSTR 1 would be reconciled.**

Amendment in GST Act

Amendment in Section 83

Before	*"(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed."*
After	*"(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed."*
Comments	**Section 83 of the CGST Act is being amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII (Assessment), Chapter XIV (Search) or Chapter XV (Demand) till the expiry of a period of one year from the date of order made thereunder.**

Amendment in GST Act

Amendment in Section 107

After	In Section 107(6), inserted following proviso: *"Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to **twenty-five per cent**. of the penalty has been paid by the appellant"*
Comments	**A proviso to sub-section (6) of section 107 of the CGST Act is being inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant.**

Amendment in GST Act

Amendment in Section 129 (1) (A)

Before	*"(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;"*
After	*"(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty."*
Comments	Seeks to **increase the payment of penalty (previously penalty and tax) from 100% to 200%** for releasing of detained or seized goods and conveyance. Previously, tax and penalty equal to 100% were to be paid for release of detained or seized goods and conveyance.

Amendment in GST Act

Amendment in Section 129 (1) (B)

Before	*On payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;*
After	*on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;*
Comments	Seeks to **change options for release of detained or seized goods and conveyance for taxable goods where owner does not come forward**: Penalty equal to 50% of value of goods; or 200% of tax payable on such goods Whichever is higher.

Amendment in GST Act

Amendment in Section 129 (2)

Before	*"The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances."*
After	**Section 129(2) shall be omitted** ~~*"The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances*~~
Comments	Seeks to provide that **goods seized shall not be released on provisional basis** upon execution of a bond and furnishing of a security, in such manner and of such quantum. **This means that the penalty imposed by the officer will have to be paid in cash by the taxpayer.**

Amendment in GST Act

Amendment in Section 129 (3)

Before	*The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c)."*
After	*The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)"*
Comments	Seeks to amend Section 129(3) of the CGST Act to provide **time limit of 7 days' notice of such detention or seizure**, specifying the penalty payable for issuance of MOV 07 and for passing an order in MOV 09 within a period of 7 days from the date of service of such MOV 07 under 129 (a) and (b) of the CGST Act.

Amendment in GST Act

Amendment in Section 129 (4)

Before	*"No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard."*
After	**Section 129(4):** *"No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard."*
Comments	Seeks to amend Section 129(4) of the CGST Act to provide that no penalty shall be determined without opportunity of hearing where penalty is payable on detention or seizure of goods and conveyance. It is to be noted that tax and interest shall not be demanded after the amendment in law for release of goods and conveyance.

Amendment in GST Act

Amendment in Section 129 (6)

Before

Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:
Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

After

Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):
Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:
Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen ays may be reduced by the proper officer."

Comments

Seeks to amend Section 129(6) of the CGST Act to **delink the proceedings** under the section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under Section 130 of the CGST Act for confiscation of goods or conveyances and levy of penalty.

Comments: Earlier the provision was if person does not pay tax and penalty within 14 days of seizure, the conveyance and goods detained were liable for confiscation as per Section 130. But, after this amendment, the goods or conveyance detained or seized shall become liable to be sold or disposed off in the manner prescribed in case the payment of imposed penalty is not made within 15 days from the date of receipt of copy of the order imposing such penalty.

Amendment in GST Act

Section 129 : Detention, seizure and release of goods and conveyances in transit.

Penalty for release of such detained goods & conveyance

- Owner comes forward
  - If goods taxable → Penalty equal to 200% of tax payable on such goods
  - If goods exempted → 2% of value of goods or Rs. 25000/- w.e. is Less
- Owner does not comes forward
  - If goods taxable → Penalty equal to 50% of value of goods Or 200% of the tax payable on such goods, whichever is higher,
  - If goods exempted → 5% of value of goods or Rs. 25000/- w.e. Less

Amendment in GST Act

Amendment in Section 130 (1)

Before	*Notwithstanding anything contained in this Act, if any person-* ……..”
After	*“(1) Where, if any person-* ……..”
Comments	Seeks to amend Section 130 of the CGST Act to **delink the proceedings** under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under Section 129 of the CGST Act relating to detention, seizure and release of goods and conveyances in transit.

Amendment in GST Act

Amendment in Section 130 (2)

Before	*“Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129”*
After	*“Provided further that the aggregate of such fine and penalty leviable shall not be less than the penalty equal to hundred per cent. of the tax payable on such goods”*
Comments	Penalty of 100% of tax payable will become applicable

Amendment in GST Act

Amendment in Section 130 (3)

Before

"Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance."

After

~~*"Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance."*~~

Comments

Penalty under Section 129 Delinked from Section 130.

Amendment in GST Act

Amendment in Section 151 – Power to collect Statistics

Before

"(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.
(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected."

After

"The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein."

Comments

Section 151 of the CGST Act is being substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

Amendment in GST Act

Amendment in Section 152 – Bar on Disclosure of Information

Before

"(1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.
(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151."

After

"(1) No information ~~of any individual return or part thereof~~ with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act without giving an opportunity of being heard to the person concerned."

Comments

Section 152 of the CGST Act is being amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned

Amendment in GST Act

Amendment in Section 168 – Power to issue Instruction or Direction

Before

"The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 44, sub-sections (4) and (5) of section 52, sub-section (1) of section 143, except the second proviso thereof, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board."

After

"The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, section 44, sub-sections (4) and (5) of section 52, sub-section (1) of section 143, except the second proviso thereof, ~~sub-section (1) of section 151,~~ clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board."

Comments

Section 168 of the CGST Act is being amended to enable the jurisdictional commissioner to exercise powers under section 101 151 to call for information.

Amendment in GST Act

Amendment in Paragraph 7 of Schedule II

Before

The following shall be treated as supply of goods, namely:-
Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

After

Paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.
~~***"Supply of Goods:***~~
~~*The following shall be treated as supply of goods, namely:-*~~
~~*Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."*~~

Comments

Consequent to the insertion of sub-clause (aa) in Section 7(1) of the CGST Act (supra), paragraph 7 of Schedule II to the CGST Act is being omitted.
Therefore, **supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration will be treated as supply of goods**.
This deletion was made to clarify that there is levy of taxes on activities or transactions of supply of goods or services or both by any person, other than an individual, to its members or constituents or vice-versa for cash, deferred payment or other valuable consideration.
This amendment shall take effect retrospectively from July 1, 2017.

Amendment in IGST Act

Amendment in Section 16 (1) (b)

Before

"Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit."

After

"Supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit."

Comments

Seemingly, now only notified class of taxpayer or notified class of goods/services will be eligible for claiming refund of IGST paid on zero-rated supplies, unlike present provision which allows both the options to all persons subject to Rule 96(10) of the CGST Rules.
Other option left will be to claim refund of unutilized ITC.

Amendment in IGST Act

Amendment in Section (3) of Section 16

Before

"(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied"

Amendment in IGST Act

Amendment in Section (3) of Section 16

After

"(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid."

Amendment in IGST Act

Amendment in Section (3) of Section 16

Comments

Rule 96 B scope widened as the word used now are ' ZERO RATED' in place of "Exports".

Refund to be recovered with interest if payment is not received within the time limit according to FEMA (Foreign Exchange Management Act)

Refund in case of export with IGST Payment will be restricted to notified persons

3rd Technical Session

Thursday, 18th February, 2021

Time : 10:30 am to 01:00 pm

GST Audit and Annual Return for F.Y. 2019-20

Chairman : CA. Deepak Thakkar, Mumbai

Speaker : CA. Abhay Desai, Vadodara

VIRTUAL
NATIONAL
TAX
CONFERENCE
17th & 18th February, 2021

CA. Deepak Thakkar, Mumbai
Chairman

QUALIFICATION
Qualification : B.Com., FCA. Practicing since 1984, focusing on Indirect Taxes.
Firm Name: Deepak H Thakkar & Associates, CAs at Mumbai.

ACHIEVEMENTS
Since 1984 : Rendering a range of services in the fields of Indirect Taxes, Assurance, Transaction & Risk Advisory; Retainer & Consultant to Corporates & MNCs
2004-05 : Editor of "Sales Tax Review" (Monthly Magazine published by STP Association of Maharashtra)
2002-2003 : President of the STP Association of Maharashtra, Mumbai Now known as GSTPAM (Consisting approx 3200 Members - CA, Advocates & Practitioners)
1991-1995 : Part time lecturer at Chinai College of Comm. & Eco., Mumbai
1981 : Stood 1st in B.Com, from N. M. College, Mumbai

CO-AUTHORED PUBLICATIONS
"Guide to GST Annual Returns & GST Audit" published by WIRC/ICAI, in 2020 "Guide to MVAT Audit" published by WIRC/ICAI in 2006, 2009 & 2014; "Study Material on VAT Laws in Mah. for Beginners" published by STPAM; "Short Publications" on various subjects, published by STPAM

PRESENTED PAPERS ON
Taxation of Intangible Property Rights, in 1999 & 2004; Impact of CST Amendments, in 2003; Written Articles on varied subjects in GST Review, CTC & BCAS Journal

WEBINARS, LECTURES & PRESENTATIONS ON VARIOUS SUBJECTS AT
WIRC of ICAI (The Institute of Chartered Accountants of India); Bombay Chartered Accountant's Society (BCAS); Chamber of Tax Consultants (CTC); The GST Practitioners' Association of Mah. (GSTPAM); All India Federation of Tax Practitioners. (AIFTP); Industry and Trade Associations

VISITING FACULTY AT
The GST Department of Maharashtra State; The Revenue Audit Department of Central Government; Government Law College, Mumbai

---

CA. Abhay Desai, Vadodara
Speaker

- All India Rank Holder at CA examinations. Done LL.B. as well as DISA qualified.
- Stared practice right after qualification with Yagnesh Desai & Co.
- Has recently authored the book on Sabka Vishwas Legacy Dispute Resolution Scheme, 2019 published by the Chamber of Tax Consultants, Mumbai.
- Has also authored the book "Get ready for GST".
- Has been co-opted as member of Indirect Tax Committee of ICAI.
- Member of the GST Group formed by ICAI to make recommendations to State/ Central Government.
- Has addressed more than 400 seminars on indirect taxation till date.
- Has made representations before the Finance Minister of India as well as Deputy Finance Minister of India on various issues under GST.
- Presented papers at Delhi, Bangalore, Ahmedabad, Vadodara, Surat, Mumbai, Nagpur, Vapi, Gandhidham, Bharuch, Anand, Nadiad, Rajkot, Daman and many more cities on various issues in indirect taxation
- Has published more than 250 articles. Articles are regularly published in
  ◆ GST Law Times by CENTAX, ◆ GST journal by TAXMANN, ◆ Taxguru, ◆ VST journal, ◆ Sales Tax Journal by Bar Association
- Board member of an NGO based in New-Delhi
- Advisor to fortune 500 companies as well as large number of listed companies in the field of indirect taxation
- Winner of All Gujarat Elocution Competition held by Bar Association
- Awarded as best column writer by The Gujarat Sales Tax Bar Association
- A brain trustee in All Gujarat Seminar by Bar Association
- Treatise on *"Recovery & Attachment proceedings under GVAT law"* has been published in International Research Journal of Management and Commerce published by Associated Asia Research Foundation.
- He can be contacted at Abhay.desai@ydco.in

AUDIT UNDER GST
FY 2019-20 PERSPECTIVE

ABHAY DESAI
B. COM., C.A., L.L.B., D.I.S.A.

Independence

- The Devil's Financial Dictionary – Jason Zweig
- **AUDITOR,** *n* In Latin, "one who hears"; in English, also one who obeys. All too often, accountants approve a company's financial statements exactly as the company's management wishes them to be presented.

It is well to remember that **annual reports nowadays are generally designed to build up stockholder goodwill.**

It is important to **go beyond them to the underlying facts**. Like any other sales tool, they are prone to put a corporation's **"best foot forward"**. They seldom present balanced and complete discussions of the **real problems and difficulties** of the business.

Often they are too optimistic.

PHILIP FISHER

Agenda

- Legal provisions
- Basic structure of the FORM GSTR – 9C
- Intricacies of the FORM GSTR – 9C
- Certification - issues & solutions
- Workflow
- Documentation

LEGAL PROVISIONS

Important changes applicable from FY 2019-20

- Rule 36(4)
- Sec. 16(4) read with Rule 61(5)
- ITC 04
- RCM
- Real Estate

ITC - Approach

- Approach (pre-GST)
  - Godrej and Boyce Mfg. Co. Pvt. Ltd. and Others v. CST (1992) 3 SCC 624
  - Eicher Motors Ltd. v. UOI (1999) 106 ELT 3 (SC)
  - CCE v. Dai Ichi Karkaria Ltd. (1999) 112 ELT 353 (SC)
  - Ichalkaranji Machine Centre Pvt. Ltd. v. CCE (2004) 174 ELT 417 (SC)
  - Jayam and Company v. Asst. Comm. (2016) 15 SCC 125
  - State of Karnataka v. M.K. Agro Tech.(P) Ltd., (2017) 16 SCC 210
  - ALD Automotive Pvt. Ltd. v. CTO 2018 (364) ELT 3 (SC)

ITC - Approach

- GST
  - Statement of objects and reasons while introducing CGST Bill, 2017
    - Consumption tax
    - Seamless transfer of credit in the chain of value addition
  - Transitional credits
    - Siddharth Enterprises v. Nodal officer 2019 (29) G.S.T.L. 664 (Guj.)
    - Brand Equity Treaties Ltd. & SKH Sheet Metal Components (Del.)
  - ITC
    - Safari Retreats Private Limited v CC 2019 (25) G.S.T.L. 341 (Ori.) (notice issued by SC)

Rule 36(4)

- Rule 36(4)
  - Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility], shall not exceed [5 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility.

Issues

- Issues:-
  - Legal
    - Sec. 16(1) and Rule 36(4)
    - Sec. 16(2) and Rule 36(4)
      - Bharti Telemedia Ltd (Del) & LGW Industries Ltd (Kol) – Both pending
      - 39th GSTCM
    - Sec. 39 and Rule 36(4)
    - Sec. 43A (yet to be notified) and Rule 36(4)
    - Principle of natural justice – arbitrary and unreasonable
      - Arise India Ltd. WP(C) 2106/2015 & R. S. Infra Transmission Ltd. (CWP No. 12445/2016)
    - Principle of supervening impossibility
    - Challenge to Rule 36(4)
      - Gr Infraprojects Limited vs. UOI [D.B. Civil Writ Petition No. 6337/2020] (Raj.) and several others

Issues

- Operational
  - Manner of computation - Circular No. 123/42/2019-GST
  - Date of computation
  - GSTR 2A/2B
  - Meaning of term "eligible credit"
  - Aggregate or transaction-level
  - Invoice furnishing facility
  - Attribution of missed invoices
  - Availment of restricted ITC

Sec. 16(4)

- Sec. 16(4) of the CGST Act, 2017
  - A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [* * *] debit note pertains or furnishing of the relevant annual return, whichever is earlier

Rule 61

- Rule 61(1) – prior to 01.01.2021
  - Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- Rule 61(5) – upto 31.12.2020 – substituted vide Notf. 49/2019 – CT dt. 09.10.2019 w.r.e.f. 01.07.2017
  - (5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 or in FORM GSTR-2 under section 38 has been extended, the return specified in sub-section (1) of section 39 shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner :
  - Provided that where a return in FORM GSTR-3B is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in FORM GSTR-3
- Rule 61(1) – from 01.01.2021
  - Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in FORM GSTR-3B, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under
- Rule 61(5)/(6) – omitted w.e.f. 01.01.2021

Issues

- Sec. 16(2) (non-obstante clause) vs. Sec. 16(4)
- Rationale for the Rule in GSTR 3B regime
  - GSTR 3 and apportionment of revenue
- "Taking the credit" vs. "crediting the amount"
- ITC taken under incorrect head

ITC 04

- Notification No. 38/2019 – Central Tax dt. 31.08.2019
  - FORM ITC-04 not required to be filed for the period July, 2017 to March, 2019.
  - Details of all the challans to be furnished in respect of goods dispatched to a job worker in the period July, 2017 to March, 2019 but not received from a job worker or not supplied from the place of business of the job worker as on the 31st March, 2019, in serial number 4 of FORM ITC-04 for the quarter April-June, 2019.

RCM

- Notification No. 29/2019- Central Tax (Rate)
  - Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.
  - Supplier - Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient
    - Before amendment: Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business
  - Recipient - Any body corporate located in the taxable territory.
- Inserted vide notification No. 22/2019 – Central Tax (Rate) dt 30.09.2019.
  - Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.
  - Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub -section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.

Real Estate

Sl.	Notification No.	Brief Description of changes brought in
1	03/2019-CT(R)	Changes in Rate for Residential Real Estate, prescribes conditions for changes in rates
2	04/2019-CT(R)	TDR/FSI/ Long Term Lease Premium – Taxability and Exemption
3	05/2019-CT(R)	Prescribes Promoter as responsible for payment of RCM in case of TDR/ FSI/Long Term lease premium -9(3) notification
4	06/2019-CT(R)	Prescribes time of payment of RCM liability in case of TDR/ FSI/Long Term lease premium etc.
5	07/2019-CT(R)	Prescribes Promoter as responsible for payment of RCM for 80% Criteria - 9(4) notification
6	08/2019-CT(R)	Prescribes RCM Rate for Inputs purchased from URD for 80% Criteria
7	09/2019-CT(R)	Opting new scheme is like switching over to composition and therefore ITC in respect of stock will lapse. [Sec 18(4)]
8	16/2019-CT	Changes in ITC Credit Reversal Rule 42 and 43 (For ongoing project under old scheme)
9	4/2019(RODO)	Credit for ITC reversal to be determined based on Carpet Area of Project.

Self-assessment regime

- Sec. 59 of the CGST Act, 2017
  - Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.
- Sec. 44 of the CGST Act, 2017
  - (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year :
  - (2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.
  - Notification No. 47/2019 – Central Tax dt. 09.10.2019 read with Notification No. 77/2020 – Central Tax dt. 15.10.2020 – option to file GSTR 9 with deemed filing upto aggregate turnover not exceeding INR 2 crores. – Applicable for FY 2019-20

GSTR – 9C related provisions

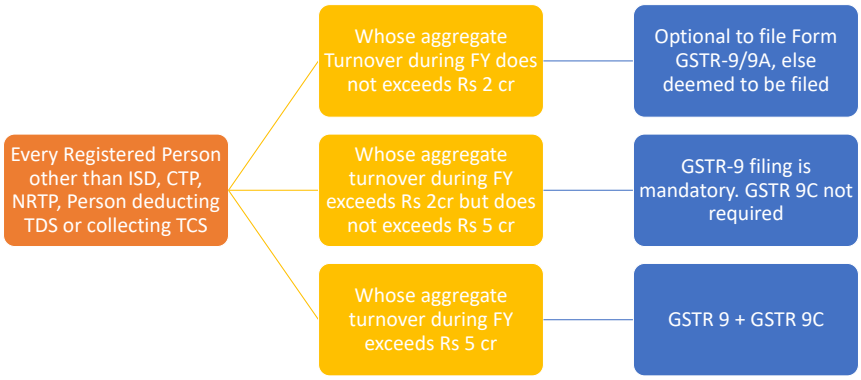
Sec. 35(5)

- Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (*2*) of section 44 and such other documents in such form and manner as may be prescribed

Rule 80(3)

- Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner. (Notf. 79/2020)

GSTR – 9 & GSTR – 9C



Scope of GSTR – 9C

- Sec. 2(13)
  - "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;
- Whether the said definition will apply to GSTR-9C ?

Scope as per press release

h) **Role of chartered accountant or a cost accountant in certifying reconciliation statement**: There are apprehensions that the chartered accountant or cost accountant may go beyond the books of account in their recommendations under **FORM GSTR-9C**. The GST Act is clear in this regard. With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (**FORM GSTR-9**) with the audited annual accounts of the taxpayer.

Role of GSTR – 9 vis-à-vis GSTR – 9C

- GSTR – 9
  - Outward side – based on actuals
  - Inward side – based on GSTR – 3B
- GSTR – 9C
  - A bridge between the books and GSTR - 9

New instruction in GSTR 9

- 2A. In the Table, against serial numbers 4, 5, 6 and 7, the taxpayers shall report the values pertaining to the financial year only. The value pertaining to the preceding financial year shall not be reported here

Importance

Sec. 73(10)

- The proper officer shall issue the order under sub-section (*9*) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

Sec. 74(10)

- The proper officer shall issue the order under sub-section (*9*) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

Importance

- Explanation 2 to Section 74 —
- For the purposes of this Act, the expression "suppression" shall mean
- non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder,
- or failure to furnish any information on being asked for, in writing, by the proper officer.

Due date

- For FY 2019-20 extended till 28th February 2021 (ref. Notification No. 95/2020 – Central Tax dt. 30.12.2020)

Exception

- Exemption to foreign airlines from furnishing reconciliation statement in Form GSTR-9C (ref. Notification No. 9/2020-C.T., dated 16-3-2020)
- However a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India is to be submitted for each GSTIN by the 30th September of the year succeeding the financial year.

Penalty/Late fees for non-filing

- Late fees not separately provided.
- Residual penalty u/s 125 (upto INR 25,000).
- Issuance of notice ??
- What if no additional tax is found payable ?

BASIC STRUCTURE OF GSTR – 9C

Basic structure

Part A – Reconciliation Statement with recommendation of additional liability on account of non-reconciliation	Is your total turnover correct ? Is your taxable turnover correct ? Is your output tax payable correct ? Is your input tax credit correct as compared to the ledgers ? Is your input tax credit correct as compared to heads of expenditure ?
Part B – Certification sub-divided into I. & II.	Record keeping Particulars in GSTR – 9C are "true and fair" – Scope ??

INTRICACIES OF FORM GSTR-9C

Relaxations

- Notification No. 74/2018 – Central Tax dt. 31.12.2018 – FORM 9 & 9C substituted
- Notification No 56/2019 - Central Tax dated 14.11.2019
  - Reporting about "True and Fair" to be done instead of "True and Correct"
  - Cash Flow Statement made Optional
  - Consolidated reporting of all adjustments from 5B to 5N can be done in Row 5O
  - Reporting in Table 12 (B & C) & 14 made Optional
- Notification No. 79/2020 – Central Tax dt. 15.10.2020 – changes made in the FORM 9 & 9C for FY 2019-20
  - For GSTR 9C – all relaxations for FY 2017-18 & 2018-19 made applicable to FY 2019-20

PART - I

Pt. I	Basic Details	
1	Financial Year	
2	GSTIN	
3A	Legal Name	< Auto>
3B	Trade Name (if any)	<Auto>
4	Are you liable to audit under any Act?	<<Please specify>>

- To be filed GSTIN-wise.
- What if the taxpayer is not liable for audit under any Act but is still required to file GSTR-9C ??

PART – II TABLE 5

5	Reconciliation of Gross Turnover			
A	Turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)			Whether revenue from operations or total income ?? Multi-state entities ??
B	Unbilled revenue at the beginning of Financial Year	(+)		Unbilled/unadjusted advance whether as on 01.04.17 0r 01.07.17 ??
C	Unadjusted advances at the end of the Financial Year	(+)		
D	Deemed Supply under Schedule I	(+)		Schedule – I ??
E	Credit Notes issued after the end of the financial year but reflected in the annual return	(+)		Is it possible ??
F	Trade Discounts accounted for in the audited Annual Financial Statement but are not permissible under GST	(+)		Difference between trade discounts and CN referred in J ??
G	Turnover from April 2017 to June 2017	(-)		How to verify ??
H	Unbilled revenue at the end of Financial Year	(-)		
I	Unadjusted Advances at the beginning of the Financial Year	(-)		
J	Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST	(-)		Financial credit notes as well as ineligible credit notes ??

PART – II TABLE 5

K	Adjustments on account of supply of goods by SEZ units to DTA Units	(-)		Tax payable only by DTA ??
L	Turnover for the period under composition scheme	(-)		GSTR-9A ??
M	Adjustments in turnover under section 15 and rules thereunder	(+/-)		Sec. 15 read with Rules 27 to 33.
N	Adjustments in turnover due to foreign exchange fluctuations	(+/-)		Rule 34
O	Adjustments in turnover due to reasons not listed above	(+/-)		Residual adjustments vs. un-reconciled turnover in R ??
P	Annual turnover after adjustments as above		<Auto>	
Q	Turnover as declared in Annual Return (GSTR 9)			Can be derived from 5N, 10 & 11 of GSTR-9
R	Un-Reconciled turnover (Q - P)		AT1	

PART – II TABLE 6

6	Reasons for Un - Reconciled difference in Annual Gross Turnover	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

PART – II TABLE 7 & 8

7	Reconciliation of Taxable Turnover		
A	Annual turnover after adjustments (from 5P above)		<Auto>
B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply turnover		
C	Zero rated supplies without payment of tax		
D	Supplies on which tax is to be paid by the recipient on reverse charge basis		
E	Taxable turnover as per adjustments above (A-B-C-D)		<Auto>
F	Taxable turnover as per liability declared in Annual Return (GSTR 9)		
G	Unreconciled taxable turnover (F-E)		AT 2
8	Reasons for Un - Reconciled difference in taxable turnover		
A	Reason 1	<<Text>>	
B	Reason 2	<<Text>>	
C	Reason 3	<<Text>>	

Table (4N – 4G) + (10-11) of GSTR 9 shall be declared here

PART – III TABLE 9

9	Reconciliation of rate wise liability and amount payable thereon					
			Tax payable			
	Description	Taxable Value	Central tax	State tax / UT tax	Integrated Tax	Cess, if applicabl e
	1	2	3	4	5	6
A	5%					
B	5% (RC)					
C	12%					
D	12% (RC)					
E	18%					
F	18% (RC)					
G	28%					
H	28% (RC)					
I	3%					
J	0.25%					
K	0.10%					
L	Interest					
M	Late Fee					
N	Penalty					
O	Others					
P	Total amount to be paid as per tables above		<Auto>	<Auto>	<Auto>	<Auto>
Q	Total amount paid as declared in Annual Return (GSTR 9)					
R	Un-reconciled payment of Amount				PT 1	

What to report here ??

Table 9, 10 & 11

PART – III TABLE 10

10	Reasons for un-reconciled payment of amount	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

PART – III TABLE 11

11	Additional amount payable but not paid (due to reasons specified under Tables 6, 8 and 10 above)					
			To be paid through Cash			
	Description	Taxable Value	Central tax	State tax / UT tax	Integrated tax	Cess, if applicable
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					
	Interest					
	Late Fee					
	Penalty					
	Others (please specify)					

PART – IV TABLE 12 & 13

Pt.	Reconciliation of Input Tax Credit (ITC)		
IV			
12	Reconciliation of Net Input Tax Credit (ITC)		
A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)		
B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)	
C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)	
D	ITC availed as per audited financial statements or books of account		<Auto>
E	ITC claimed in Annual Return (GSTR 9)		
F	Un-reconciled ITC		ITC 1
13	Reasons for un-reconciled difference in ITC		
A	Reason 1	<<Text>>	
B	Reason 2	<<Text>>	
C	Reason 3	<<Text>>	

ITC declared in Table 7J of GSTR-9

PART – IV TABLE 14

14	Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account			
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
	1	2	3	4
A	Purchases			
B	Freight / Carriage			
C	Power and Fuel			
D	Imported goods (Including received from SEZs)			
E	Rent and Insurance			
F	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			
G	Royalties			
H	Employees' Cost (Salaries, wages, Bonus etc.)			
I	Conveyance charges			
J	Bank Charges			
K	Entertainment charges			
L	Stationery Expenses (including postage etc.)			
M	Repair and Maintenance			
N	Other Miscellaneous expenses			
O	Capital goods			
P	Any other expense 1			
Q	Any other expense 2			
R	Total amount of eligible ITC availed			<<Auto>>
S	ITC claimed in Annual Return (GSTR9)			
T	Un-reconciled ITC			ITC 2

Table 7J may be used.

PART – IV TABLE 15 & 16

15	Reasons for un - reconciled difference in ITC	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>
16	Tax payable on un-reconciled difference in ITC (due to reasons specified in 13 and 15 above)	
	Description	Amount Payable
	Central Tax	
	State/UT Tax	
	Integrated Tax	
	Cess	
	Interest	
	Penalty	

PART - V

Pt. V	Auditor's recommendation on additional Liability due to non-reconciliation					
			To be paid through Cash			
	Description	Value	Central tax	State tax / UT tax	Integrated tax	Cess, if applicable
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					
	Input Tax Credit					
	Interest					
	Late Fee					
	Penalty					
	Any other amount paid for supplies not included in Annual Return (GSTR 9)					
	Erroneous refund to be paid back					
	Outstanding demands to be settled					
	Other (Pl. specify)					

What is the scope of auditor for the said headings ??

VERIFICATION CLAUSE - AUDITOR

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Interplay between GSTR-9 and 9C

VERIFICATION CLAUSE - SUPPLIER

- I hereby solemnly affirm and declare that I am uploading the reconciliation statement in **FORM GSTR-9C** prepared and duly signed by the Auditor and nothing has been tampered or altered by me in the statement. I am also uploading other statements, as applicable, including financial statement, profit and loss account and balance sheet etc.

PART-B - CERTIFICATION

- Sub-part – I
  - Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by the person who had conducted the audit.
- Sub-part – II
  - Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by a person other than the person who had conducted the audit of the accounts.

Basic structure of Part – B (sub-part I)

Para No.	Content
1	I/we have examined the— (a) balance sheet as on ..... (b) the *profit and loss account/income and expenditure account for the period beginning from .....to ending on ....., and (c) the cash flow statement for the period beginning from .....to ending on ....., — attached herewith, of M/s ..... (Name), ... (Address), ...(GSTIN).
2	Based on our audit I/we report that the said registered person— *has maintained the books of accounts, records and documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder *has not maintained the following accounts/records/documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder: 1. 2. 3.

Basic structure of Part – B (sub-part I)

Para No.	Content
3	(a) *I/we report the following observations/ comments / discrepancies / inconsistencies; if any: .... (b) *I/we further report that, - (A) *I/we have obtained all the information and explanations which, to the best of *my/our knowledge and belief, were necessary for the purpose of the audit/ information and explanations which, to the best of *my/our knowledge and belief, were necessary for the purpose of the audit were not provided/partially provided to us. (B) In *my/our opinion, proper books of account *have/have not been kept by the registered person so far as appears from*my/our examination of the books. (C) I/we certify that the balance sheet, the *profit and loss/income and expenditure account and the cash flow Statement are *in agreement/not in agreement with the books of account maintained at the Principal place of business at .....and ** .....additional place of business within the State.
4	The documents required to be furnished under section 35 (5) of the CGST Act/SGST Act and Reconciliation Statement required to be furnished under section 44(2) of the CGST Act/SGST Act is annexed herewith in Form No. GSTR-9C.

Basic structure of Part – B (sub-part I)

Para No.	Content
5	In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, the particulars given in the said Form No.GSTR-9C are true and fair subject to following observations/qualifications, if any: (a)..... (b)..... (c).....

Basic structure of Part – B (sub-part II)

Para No.	Content
1	*I/we report that the audit of the books of accounts and the financial statements of M/s. ..... (Name and address of the assessee with GSTIN) was conducted by M/s. ..... (full name and address of auditor along with status), bearing membership number in pursuance of the provisions of the .....Act, and *I/we annex hereto a copy of their audit report dated ..... along with a copy of each of :- (a) balance sheet as on ..... (b) the *profit and loss account/income and expenditure account for the period beginning from .....to ending on ....., (c) the cash flow statement for the period beginning from .....to ending on ....., and (d) documents declared by the said Act to be part of, or annexed to, the *profit and loss account/income and expenditure account and balance sheet.
2/4/5	Same as that in sub-part I.
3	Not contained

Observations, qualifications & remarks

- Related to:
  - Scope
  - Books of accounts, records and documents
  - Reconciliation aspects
  - Other issues

Observations, qualifications & remarks – related to scope

- Advisable to put the scope as understood.
- Illustrative –
  - "Based on the provisions of law as contained u/s 35(5) of the CGST Act, 2017 read with Sec. 44(2) of the said Act along with the press note dated 03.07.2019, the scope of certification is limited to the reconciliation of values as declared in the annual return with the audited financial statements."

Observations, qualifications & remarks – related to books of accounts, records and documents

- What are 'books of accounts' ?
- What are 'records' ?
- What are 'documents' ?

Observations, qualifications & remarks – related to books of accounts, records and documents

- 'Books of accounts' not defined in the Act
- Meaning of 'books of accounts' & 'records' to be deciphered from Chapter VIII
  - Chapter VIII of the CGST Act, 2017 contains provisions related to accounts and records
    - SECTION 35 - Accounts and other records
    - SECTION 36 - Period of retention of accounts

Observations, qualifications & remarks – related to books of accounts, records and documents

- Sec. 35(1) - Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of —
  - (a) production or manufacture of goods;
  - (b) inward and outward supply of goods or services or both;
  - (c) stock of goods;
  - (d) input tax credit availed;
  - (e) output tax payable and paid; and
  - (f) such other particulars as may be prescribed
  - Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business :
  - Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed

Observations, qualifications & remarks – related to books of accounts, records and documents

- CHAPTER VII of CGST Rules, 2017
  - Rule 56 - Maintenance of accounts by registered persons
  - Rule 57 - Generation and maintenance of electronic records

Observations, qualifications & remarks – related to books of accounts, records and documents

- Rule 56 – True and correct account to be maintained of (illustrative) –
  - Goods or services imported or exported
  - Supplies attracting payment of tax on reverse charge
  - Goods received and supplied – containing particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof
  - Separate account of advances received, paid and adjustments
  - Details of tax payable, tax collected and paid, input tax, input tax credit claimed
  - Names and complete addresses of suppliers
  - Names and complete addresses of the persons to whom he has supplied
  - Complete address of the premises where goods are stored
  - Monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.
  - Quantitative details of goods used in the provision of services, details of input services utilised and the services supplied
  - Works contractor to maintain separate accounts related to the works contract
  - Agent to maintained records of goods and services received/supplied
  - Carrier and C & F agent to maintain records of goods handled

Observations, qualifications & remarks – related to books of accounts, records and documents

- Rule 56(8)
  - Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter, the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained
- Rule 56(15)
  - The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

Observations, qualifications & remarks – related to books of accounts, records and documents

- Rule 57 – Deals with:
  - Electronic back-up of records

Observations, qualifications & remarks – related to books of accounts, records and documents

- Sec. 35(2)
  - Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed
- Rule 58 - Records to be maintained by owner or operator of godown or warehouse and transporters
  - Requirement of obtaining unique enrolment number
  - Records related to goods transported, delivered and stored in transit to be maintained by transporter.
  - Records related to receipt, dispatch, movement and disposal of goods to be maintained by the owner or operator of a warehouse or godown.
  - Identified storage of goods item-wise and owner-wise.

Observations, qualifications & remarks – related to books of accounts, records and documents

- Sec. 36
  - Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records :
  - Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Observations, qualifications & remarks – related to books of accounts, records and documents

- What are the 'documents' ?
- Tax invoice – Sec. 31(1)/(2) read with Rule 46
  - Time limits – Sec. 31 read with Rule 47
  - Manner of issuing the invoice – Rule 48
  - Special cases – Rule 54 (e.g. GTA)
- Bill of supply – Sec. 31(3)(c) read with Rule 49
  - Invoice-cum-bill of supply – Rule 46A
- Receipt voucher – Sec. 31(3)(d) read with Rule 50
- Refund voucher – Sec. 31(3)(e) read with Rule 51
- Invoice under RCM – Sec. 31(3)(f)
- Payment voucher under RCM – Sec. 31(3)(g) read with Rule 52
- Credit notes/debit notes – Sec. 34 read with Rule 53
- Delivery challan – Rule 55
- E-way bill – Sec. 68 read with Rule 138

Observations, qualifications & remarks – related to books of accounts, records and documents

- Nature of observations (illustrative) –
  - "Maintenance of books of accounts, records and documents is the primary responsibility of the management. Our responsibility is to express an opinion on the sufficiency of the same to draw the reconciliation statement. As per the information and explanation given to us and on the basis of our examination of records of the taxpayer, the taxpayer has maintained books of accounts, records and documents as required by the IGST/CGST/<<>>GST Act, 2017 except ……."
  - "On an overall basis the taxpayer has maintained books of accounts, records and documents which in our opinion are sufficient to draw true and fair reconciliation statement."
  - "The books of accounts, records and documents not maintained are in our opinion not material to the reconciliation statement."
  - "Additional place not declared but the supplies received/made from the said place are taken into consideration in the reconciliation statement."

Observations, qualifications & remarks – related to books of accounts, records and documents

- Nature of qualifications (illustrative) –
  - "Maintenance of books of accounts, records and documents is the primary responsibility of the management. Our responsibility is to express an opinion on the sufficiency of the same to draw the reconciliation statement. As per the information and explanation given to us and on the basis of our examination of records of the taxpayer, the taxpayer has maintained books of accounts, records and documents as required by the IGST/CGST/<<>>GST Act, 2017 except ……."
  - "We have therefore refrained from stating and certifying the details under Table _____ on account of the non-maintenance of the referred records and documents."

Observations, qualifications & remarks – related to reconciliation

- Relaxations for FY 2017-18, 18-19 & 19-20
- Notification No. 56/2019 – Central Tax dt. 14.11.2019

Table	Relaxation
5B to 5N	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this table. If there are any adjustments required to be reported then the same may be reported in Table 5O
12B & 12C	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table.
14	For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table.

- "True & fair" in Part B vis-à-vis "True & correct" in Part A.

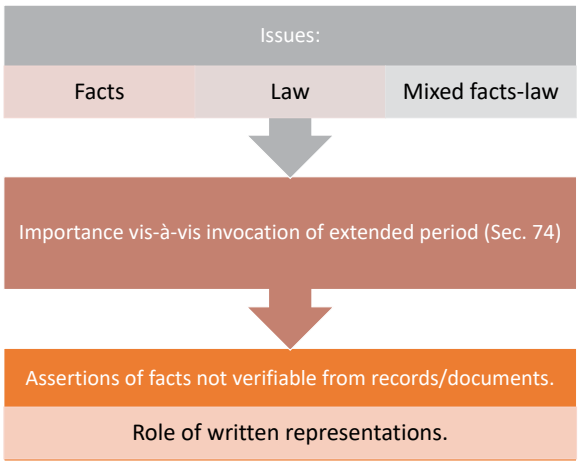
Observations, qualifications & remarks – related to reconciliation

- In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, the particulars given in the said Form No.9C are true and fair subject to the following observations/qualifications, if any:

Observations, qualifications & remarks – related to reconciliation

Part A	Table	Type of reconciliation
II - Reconciliation of turnover declared in audited Annual Financial Statement with turnover declared in Annual Return (GSTR9)	5	Reconciliation of Gross Turnover
	7	Reconciliation of Taxable Turnover
III - Reconciliation of tax paid	9	Reconciliation of rate wise liability and amount payable thereon
IV - Reconciliation of Net Input Tax Credit (ITC)	12	Reconciliation of ITC declared in GSTR – 9 with ITC availed as per audited Annual Financial Statement
	14	Reconciliation of ITC declared in GSTR – 9 with ITC availed on expenses as per audited Annual Financial Statement or books of account

Observations, qualifications & remarks – related to reconciliation



Observations, qualifications & remarks – related to reconciliation

- SA 580 - Written Representations as Audit Evidence
- Written representations – A written statement by management provided to the auditor to confirm certain matters or to support other audit evidence. Written representations in this context do not include financial statements, the assertions therein, or supporting books and records.
- Audit evidence is all the information used by the auditor in arriving at the conclusions on which the audit opinion is based.
- Although written representations provide necessary audit evidence, they do not provide sufficient appropriate audit evidence on their own about any of the matters with which they deal. Furthermore, the fact that management has provided reliable written representations does not affect the nature or extent of other audit evidence that the auditor obtains about the fulfillment of management's responsibilities, or about specific assertions.

Observations, qualifications & remarks – related to reconciliation

- Basic written representations required –
- It has provided the auditor with all relevant information and access as agreed in the terms of the audit engagement.
  - GSTR – 9C engagement to clearly specify the scope.
- All transactions have been recorded and are reflected in the financial statements/records maintained as per law.
- Management's responsibilities shall be described in the written representations.
- The written representations shall be in the form of a representation letter addressed to the auditor.
- If written representations are inconsistent with other audit evidence, the auditor shall perform audit procedures to attempt to resolve the matter.
- If management does not provide one or more of the requested written representations, the auditor shall discuss with the management and take appropriate action by way of observation/qualification.

Observations, qualifications & remarks – related to reconciliation

Table	Particulars	Remarks
5A	Turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)	Process of internal derivation. Management representation on the internal derivation. Management representation on the State-wise trial balance/separate records.
5B	Unbilled revenue at the beginning of Financial Year	Management representation on the completion of supply (especially of services).
5C	Unadjusted advances at the end of the Financial Year	Management representation on whether the receipt is in nature of advance or deposit.
5D	Deemed Supply under Schedule I	Management representation on the records maintained for intra-entity transactions and transactions with related parties.
5F	Trade Discounts accounted for in the audited Annual Financial Statement but are not permissible under GST	Management representation on the discount policy (especially oral) pursuant to which the discounts are granted.
5M	Adjustments in turnover under section 15 and rules thereunder	Management representation on barter/related party transactions/open market value.

Observations, qualifications & remarks – related to reconciliation

Table	Particulars	Remarks
7B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply turnover	Management representation for supplies where exemption is based on end-use (pure services to Govt./Local Authority/Govt. entity, residential dwelling for use as residence, declared tariff, road transportation other than GTA, etc.).
7C	Zero rated supplies without payment of tax	Management representation related to services supplied to SEZ/exports.
9	Reconciliation of rate wise liability and amount payable thereon	Management representation on end-use based classifications.

Observations, qualifications & remarks – related to reconciliation

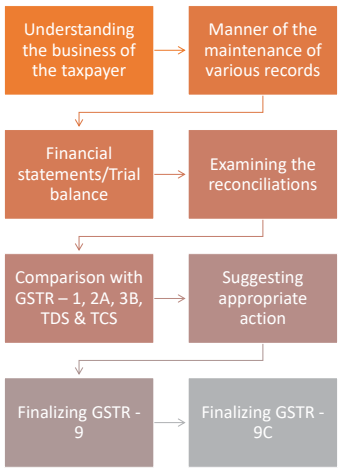
Table	Particulars	Remarks
12A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)	Process of internal derivation. Management representation on the internal derivation. Management representation on the State-wise trial balance/separate records.
14	Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account	Management representations related to "eligible ITC" (e.g. Sec. 17(5) - foundation, Rule 42/43)

Observations, qualifications & remarks – related to reconciliation

- General observation –
  - Reconciliation statement verified as true & fair based on sampling.
- Specific observations/qualifications/remarks –
  - Law points (e.g. Sec. 50 (interest), Sec. 16 (180-days, time limits, wrong heads, RCM))?
  - Bogus transactions ?
  - Recasting of the books ?
  - Retrospective amendments ?
  - Court rulings ?
  - Revision of the GSTR – 9C ?

WORKFLOW

Workflow



DOCUMENTATION

DOCUMENTATION

- Engagement letter
- Reconciliation working with all supporting's
- Comparison working of GSTR – 9 with GSTR – 1, 2A & 3B
- Management representations

Truth Is Always Like Oil In Water; No Matter How Much Of Water You Add, It Always Floats On Top..!

THANKS !!

Abhay.desai@ydco.in

NOTES

4th Technical Session

Thursday, 18th February, 2021

Time : 02.00 pm to 04.30 pm

Brains' Trust Session

Chairman : Mr. P. C. Joshi, Adv., Mumbai

Direct Tax Trustees: Mrs. Prem Lata Bansal, Sr. Adv., New Delhi
CA. Dhinal Shah, Ahmedabad

Indirect Tax Trustees: Mr. Jatin Harjai, Adv., Jaipur
Mr. Uchit Sheth, Adv., Ahmedabad

VIRTUAL
NATIONAL
TAX
CONFERENCE
17th & 18th February, 2021

P. C. Joshi, Adv., Mumbai
Chairman

Shri P. C. Joshi, Advocate started practice in 1959 and enrolled as an advocate in 1962.

He has been the President of Sales Tax Practitioners' Association of Maharashtra, Sales Tax Tribunal Bar Association, All India Federation of Tax Practitioners and The Chamber of Tax Consultants.

He has also been National President of Giants International Federation. Presently he is a member of its Central Committee.

He was honoured as 'Man of the Millennium' at the National Convention of the All India Federation of Tax Practitioners in 1999.

In May 2004, he was invited by the 'Law Society of England and Wales' as a speaker on VAT. He has attended various International Conferences all over world.

In November 2005, he represented AIFTP at the International Conference at Manila (Philippines) whereat he was honoured by the Internationally known Journal 'Newsweek' by publishing his photograph on the front coverpage of the special edition covering the proceedings of the Manila Conference.

He has been an Editor of 'Sales Tax Review' and 'Income Tax Review'.

He has contributed number of papers on Sales Tax, acted as Chairman of various seminars on Sales Tax and delivered lectures on Sales Tax all over India.

Prem Lata Bansal, Sr. Adv., New Delhi
Direct Tax Trustee

Mrs. Prem Lata Bansal is a Senior Advocate designated by the Delhi High Court.

She is a rank holder in Gujarat Senior Secondary School Examination, passed First Year B.Sc from Gujrat University and then MBBS for two years till 1968. After the gap of 12 years, resumed studies at Delhi in 1980, passed B.Com (Hons) form Delhi University in 1983, LL.B from Delhi University in 1986 and qualified as Chartered Accountant in 1989.

Started practice in Delhi, was appointed as Standing Counsel by the Income Tax Department in 1994, as Senior Standing Counsel in 2002 and was designated as Senior Advocate by Delhi High Court in January 2011.

She had been President Delhi Tax Bar Association twice in the year 2005-06 and 2007-08, she has been instrumental for constructing the Chamber for Lawyers in her tenure as President. She had been President of All India Federation of Tax Practitioners for the year 2017. She was a Chairperson of All India Federation of Tax Practitioners, Northern Zone in the year 2010-11 and National Vice President of the Federation for the year 2012-13.

She has addressed various conferences and seminars all over India. In her leadership as vice president, a delegation of DTBA visited Lahore (Pakistan) in the year 2005 an addressed Lahore High Court Bar Association and other Tax Bar Associations.

Worked extensively in the filed of taxation particularly Income Tax Laws, written various articles for various Journals.

CA. Dhinal Shah, Ahmedabad
Direct Tax Trustee

Dhinal is a partner of EY's Indian Member firm. He is a Chartered Accountant and Lawyer by qualification and has more than 25 years of experience in advising clients on taxation, exchange control and regulatory issues.

Dhinal has been extensively involved in advising Indian corporate and multinationals on issues relating to double tax treaties (PE exposures, optimizing tax credits etc), due diligence, transfer pricing, foreign tax systems implications, corporate tax and accounting standards including IFRS, Insolvency Professional.

Dhinal is a Executive Committee Member of International Fiscal Association and Secretary of ITAT Bar Association, Ahmedabad.

Dhinal was a Central Council Member of The Institute of Chartered Accountants of India, Director of IPA and RVO formed by ICAI and was Chairman of Direct Tax Committee of Gujarat Chamber of Commerce and Industries.

He has also addressed and presented papers at various seminars and conferences on international taxation, non resident taxation, transfer pricing, domestic taxation, Accounting Standards, Insolvency and Bankruptcy Code, Valuation Standards etc. He is also a regular contributor of articles to Institute and other professional journals. He has also co-authored book.

Jatin Harjai, Adv., Jaipur
Direct Tax Trustee

Introduction

Mr. Jatin Harjai is practicing advocate. He practiced as chartered accountant for more than fifteen years before starting legal practice. In short span of time he has become recognized for his contribution and expertise as a knowledgeable professional, advisor and consultant in the field of financial consultancy and tax advisory.

With a core expertise in Indirect Taxes he has been serving entrepreneurs and various corporates in varied areas like compliance, consulting, structuring and litigation. There are many landmark judgments to his credit, many are published in leading Tax Journals. He is having vast industry experience including that of Infrastructure, Mining, Real Estate, Construction, Hospitality, Online Gaming, Broadcasting, Manufacturing, E-Commerce, Distribution, Logistics, FMCG, Automobile, Exim Trade etc. Mr. Harjai served as consultant in the world bank project for GST Implementation for Govt. of Rajasthan.

He is also guest faculty on various educational, professional & Industrial platforms and shared his views on VAT, CST, Entry Tax, Works Tax & GST. As a matter of GST awareness and preparedness, before and after implementation of the biggest Indian tax reform, he has vastly addressed to professionals, industry and government officers. He has addressed more than six hundred seminars/ workshops as faculty/ speaker on Indirect taxes in almost all regions of the India. Apart from India he shared his knowledge in international seminars/ workshops at UAE, Thailand and Tashkent. He authored many articles on Indirect taxes which were published in leading tax journals and contributed in many publications of ICAI on GST and UAE VAT.

Mr. Harjai is actively engaged in representing Industry before department at various levels. He has represented in the 'Tax Advisory Committee' before Chief Minister of Rajasthan for giving recommendation and suggestion before state budget(s). Apart from TAC he has represented Institute of Chartered Accountants of India, Rajasthan Tax Consultants Association, Tax Consultants Association Jaipur before Commercial Taxes Department at various levels in relation to modification in VAT laws of the state and development of GST.

Professional Attributes

Jatin is accredited trainer of **NACIN** (National Academy of Customs & Indirect Taxes, Government of India) for GST Training to be provided to Trade and Industry as well as GST Officers of the Central Govt's. Apart from Central Tax Officers, he has given extensive training of GST to State Tax officers

of Rajasthan, West Bengal, Assam, New Delhi & Telangana. Further he is on the panel of NSIC, an undertaking established by Ministry of MSME Govt of India, for imparting training on Indirect Taxes.

Apart from being Panelled GST Trainer of ICAI, Jatin was part of 'Faculty Identification' & 'Train the Trainer' Programs of Indian GST as well as UAE VAT. Whereby he selected members of the institute, from various parts of the country, and provided them training of Indian GST & UAE VAT for being a Trainer.

Jatin is keen learner and is having deep interest in all academic activities. He is actively participating and contributing in study groups and workshops and is regular contributor in so many academic and professional bodies in different capacities such as:

- Special invitee member of National Indirect Tax Committee of ICAI (2017-18, 2018-19 & 2019-20)
- Co-opted member of national Indirect Tax Committee of PHD Chamber of Commerce & Industries (2018-19 & 2019-20).
- Member of 'Penal of GST Experts' maintained by CIRC of ICAI.
- Member of 'Penal of GST Experts' maintained by EIRC of ICAI.
- Chairman of Technical Research (Indirect Taxes) Committee of Tax Consultants Association of Jaipur (2018-19 & 2019-20).
- Founder Convener of the Study Group framed by the ICAI for study, research and recommendations on GST (2016-17)
- Co-opted member of Direct Tax Committee of ICSI for the year 2018.
- Member, All India Federation of Tax Practitioners
- Member, The Chamber of Tax Consultants, Mumbai
- Member, Rajasthan Tax Consultants Association
- Member, Bombay Chartered Accountants Society
- Member, Tax Consultants Association Jaipur
- Member, Confederation of GST Professionals & Industry, Mumbai

Qualification

- Articles Training from Kalani & Co., Jaipur.
- Bachelor of Commerce in 2001 from RU.
- Chartered Accountancy in Nov 2003.
- Diploma in Information System Auditing from ICAI.
- Certification Course on Indirect Taxes & FTP by ICAI.
- LL.B. from University of Rajasthan

Uchit Sheth, Adv., Ahmedabad
Direct Tax Trustee

Educational Qualifications : B.Com, A.C.A., LLB (Advocate)

Academic Achievements : 14th in India in C.A. Final Examination held by ICAI with Gold medal in Indirect Taxes and 2nd in University in 3rd LL.B Examination conducted by Gujarat University

Professional Pursuits : Worked as junior to Mr. V.Sridharan, Senior Advocate in the Bombay High Court.

Currently practicing in the Gujarat High Court, the Supreme Court and Tribunal on taxation matters with Mr. Nayan Sheth, Advocate in Ahmedabad.

Has appeared in various cases involving important issues of interpretation of tax laws as well as constitutional vires of various provisions of tax laws.

Important illustrative judgements of Hon. Gujarat High Court in which appearance made by him are as follows:

(1) Filco Trade Centre Pvt. Ltd. v/s Union of India (2018) 57 GSTR 204 (Guj.): Clause (iv) of Section 140(3) of the CGST Act struck down as unconstitutional by Hon. High Court.

(2) Tractors and Farm Equipment Ltd. v/s State of Gujarat SCA No. 1560 of 2018 decided on 16.12.2016: Levy of entry tax on tractors struck down as violating Article 304(a) of the Constitution of India.

(3) West Coast Waterbase Pvt. Ltd. v/s State of Gujarat (2016) 95 VST 370 (Guj.) Assessment order passed taking different view on classification than view adopted in determination order passed under earlier law quashed as being without jurisdiction.

(4) Reliance Industries Ltd. v/s State of Gujarat (2018) 58 GSTR 366 (Guj.) Revision notices issued under Section 75 of the Gujarat Vat Act on the basis of a Supreme Court judgement quashed and set aside as being without jurisdiction.

(5) Torrent Power Ltd. v/s Union of India (2019) 61 GSTR 454 (Guj.) Para 4(1) of Circular issued by CBIC under the GST Acts and summons issued on the basis of such circular quashed on the ground of such circular being contrary to the legal provisions of the GST Acts regarding composite supply.

Awarded best article writer in the sales tax journal published by the Gujarat Sales Tax Bar Association for the years 2013-14 and 2014-15 and best column writer for the year 2015-16

Gave services as Editor of the Sales Tax Journal for the years 2017-18 and 2018-19.

Delivered lectures and presented papers on sales tax /Vat / Goods and Service Tax at seminars and Refresher Courses conducted by different associations as well as by the Institute of Chartered Accountants of India. Participated as trustee of the brain trust in various seminars

Brains' Trust Session

Direct Tax Trustees:
Mrs. Prem Lata Bansal, Sr. Adv., New Delhi • CA. Dhinal Shah, Ahmedabad

(1) The assessee individual is agriculturist. For the Asstt.Year: 2017–18, the assessee has filed his return of income u/s 139(1) of the Act showing his gross agriculture income as well bank interest income. However, in the return of income, the assessee has not shown net agriculture income (i.e. after deducting the agriculture expenses incurred exclusively from agriculture income) under the bonafide impression that ultimately, the agriculture income, either gross or net, is the exempt income u/s 10(1) of the Act.

The case has been selected under Limited Scrutiny Scheme with a criteria "to verify agriculture income". During the course of assessment proceedings, the assessee explained with evidences to prove the sources of income from agriculture as also the evidences for various agriculture expenses incurred. Instead of appreciating the explanations with evidences furnished during the course of assessment proceedings, the AO took a view that the agriculture expenses incurred are the unexplained expenditures and thus, invoked the provisions of Section 69C r.w.s. 115BBE of the Act and passed the order u/s 143(3) of the Act accordingly.

The querist will be pleased if the following queries are answered:

i) Is it mandatory under the law to show net agriculture income in the return of income filed?

ii) Since the assessee has proved with the evidences that the agriculture expenses incurred (though not claimed in the ITR filed), is there any jurisdiction with the AO to treat the agriculture expenses as unexplained expenditure invoking the deeming provisions of Section 69C of the Act?

iii) Since the detailed explanations for the agriculture expenses incurred has been given and the said agriculture expenses had been incurred exclusively from his agriculture income shown in the ITR filed for the year under assessment, is there any jurisdiction with the AO to invoke the provisions of Section 115BBE of the Act? **(PLB)**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

(2) The assessee is the urban Co.operative Bank **"Under Liquidation"**. The license to carry out the banking business has been cancelled/withdrawn by the Reserve Bank of India in 2004. However, the assessee bank, even though under liquidation, is still the registered co.operative society under the State Co.op. Societies Act. The assessee has filed its return of income u/s 139(1) of the Act for the Asstt.Year: 2012–13 claiming deduction u/s 80P(2)(d) of the Act on the amount of interest and dividend earned from investments with other co.operative banks. In the return of income, since there is no permission for doing any banking business, there is no activity of taking of deposits/borrowings neither any activity of advancing any loans during the relevant year and thus, no deduction claimed u/s 80P(2)(a)(i) of the Act. However, the assessee has also earned interest income on term deposits with the nationalized banks. In the preceding years, the AO has allowed the deductions claimed u/s 80P(2)(d) of the Act.

The case of the assessee has been reopened u/s 147 of the Act for the Asstt.Year: 2012–13, with the reasons that the assessee being the Urban Co.op. Bank, is not eligible for deduction u/s 80P(2)(d) of the Act. During the course of reassessment proceedings, the detailed explanations with corroborative evidences offered that the assessee is the Bank under liquidation and not permitted to carry any business of banking neither permitted to provide credit facilities to its members since the RBI has already cancelled the license of business of banking in 2004. However, the AO passed the order treating the assessee has co.operative Bank as defined u/s 80P(4) of the Act and denied the deduction claimed u/s 80P(2)(d) of the Act.

The querist requests the trustees to clarify:

(i) Is the AO having valid and legal jurisdiction u/s 147 r.w.s. 143(3) of the Act to treat the assessee as the co.operative Bank within the meaning and definition given in Explanation (a) below Section 80P(4) of the Act?

(ii) Can the assessee being under liquidation, but enjoying the status as "Registered Co.op. Society", claim the deduction u/s 80P(2)(d) of the Act for the income earned by way of interest or dividend on investments with other co.operative banks?

(iii) Can the order passed by the AO be treated as pure violation of "Rule of Consistency" and offending the law laid down by the Supreme Court in CIT Vs. Excel Industries Ltd. – (2013) 358 ITR 295 holding that Revenue must be consistent and not flip-flop on the same issue in different assessment years? **(PLB)**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

(3) The assessee firm has filed the appeal before the ITAT simultaneously with the Stay Petition seeking the stay for huge demand of tax, interest, etc. arising out of order appealed against (i.e. order u/s 153A r.w.s. 143(3) of the Act). The stay has been granted by the ITAT for six months with a direction to the assessee firm to pay 30% of the total demand of tax as determined u/s 156 of the Act. The appeal has not been heard within the period of stay and being remained pending for disposed off, the assessee firm filed the stay petition again seeking the stay till the disposal of appeal. The DR raised the objections for the further stay.

The query is : Is the ITAT empowered to grant the stay for the period more than 365 days as provided u/s 254(2A) of the Act? **(PLB)**

.....

.....

.....

.....

.....

.....

.....

(4) The assessee is the partnership firm. The assessee firm has filed the return of income for the Asstt.Year: 2017–18 u/s 139(1) of the Act, wherein the firm claimed the depreciation as per books of accounts and not as per the provisions of Section 32 of the Act. The case has been selected under CASS. During the assessment proceedings, the AO raised the query as to the claim of depreciation in the ITR filed. The assessee firm has requested the AO to accept the revised return of income (even though belated), but the AO denied. With no alternative, the assessee firm ultimately furnished the revised/corrected computation of total income, wherein the depreciation u/s 32 of the Act has been claimed. However, the AO disregarded the same and passed the assessment order denying the claim of depreciation u/s 32 of the Act neither allowed the depreciation claimed as per books of accounts.

The queries are:

i) Is the AO empowered to deny the claim of depreciation as per the provisions of Section 32 of the Act merely on the ground that the assessee firm has failed to claim depreciation u/s 32 of the Act in the return of income filed?

ii) If yes, then what is the remedy available under the law to the assessee firm to claim depreciation u/s 32 of the Act?

iii) Can the assessee firm claim the depreciation u/s 32 of the Act before the appellate authorities? **(DS)**

.....

.....

.....

.....

.....

.....

.....

(5) The assessee is the individual engaged in the business as Civil Contractor. For the Asstt. Year: 2018–19, the assessee filed his return of income showing the tax payable u/s 140A of the Act computed at ₹ 15,00,000/–. However, the amount of self assessment tax as computed at ₹ 15,00,000/– has not been paid at the time of filing of return of income. The ITR has been processed u/s 143(1) of the Act by the CPC, Bangaluru raising the demand of tax with interest for the aggregate amount of ₹ 16,00,000/–. Due to financial stringency, the assessee is not in a position to pay the assessed tax liability as computed u/s 143(1) of the Act. In the alternative, the assessee requested the jurisdictional AO to adjust the amount of refund of ₹ 18,00,000/– as claimed and due for the Asstt.Year: 2017–18 and further requested not to treat his case as defaulter. No positive response from the AO to the assessee for his request to adjust the refund of the earlier year against the demand raised for the Asstt.Year: 2018–19.

The querist seeks the opinion as to what are the remedy available under the law available to the assessee and what are the consequential legal action to be taken by the department against the assessee in the circumstances of non payment of self assessment tax u/s 140A of the Act as assessed u/s 143(1) of the Act. **(DS)**

(6) The assessee is the Private Limited Company, regularly being assessed to income tax. The business of the assessee Company is that of manufacturing and selling of grey cloth. Recently, in the month of January-2021, the authorized officers of the income tax department took action u/s 133A of the Act and surveyed the business premises of the assessee Company. The books of accounts and other relevant records are impounded, the inventory of cash and stock of goods has been taken. No major discrepancies have been found in the business transactions of manufacturing and selling of grey cloth, duly recorded in the books of accounts neither any difference in the stock of goods as physically inventoried and that of recorded in the stock register. However, the authorized officers of the department recorded the statement on oath of the CEO of the Company and obtained the disclosure of ₹ 2 Crores for the alleged excess stock of goods. Immediately, thereafter, the CEO has been summoned by the jurisdictional AO and directed the Company to pay the amount of tax on the alleged disclosed income of ₹ 2 Crores.

The Querist Company has the following queries:

i) Are the authorized officers of the department conducing the survey 133A of the Act empowered to obtain the statement on oath of the CEO of the Company?

ii) In the absence of any incriminating materials found during the survey of the business premises, is the assessee Company legally duty bound to pay the tax on such alleged disclosure of ₹ 2 Crores moresowhen, there is no discrepancies or mismatch in the stock records with that of physically inventoried?

iii) Can the assessee Company raise objection against such survey action and further, the summons issued upon the CEO of the Company? **(DS)**

(7) The assessee is the Public and Charitable Trust, duly registered under the Bombay Public Trusts Act, 1950 as also u/s 12A of the I.T. Act. For the Asstt.Year: 2017–18 the ITR has been filed u/s 139(1) of the Act. However, the audit report in form 10B has not been filed along with the ITR filed. Even, the assessee trust could not filed Form No.10 along with the resolution of Board of Trustees with reference to the accumulation of income for the succeeding five years to be accumulated for the purposes of specific object of construction of trust building.

The querist wishes to clarify position under the law and the guidance/suggestions for the unintentional defaults in making compliance in so far as filing of Form No.10 and 10B are concerned **(PLB)**

.....

.....

.....

.....

.....

.....

.....

(8) For the Asstt.Year: 2008–09, the assessee-individual has filed his return of income showing therein income under the head "Capital Gain" on sale of agriculture land offering the actual sale consideration. The agriculture land in question has been purchased jointly with other co.owner with 50% share of ownership by the assessee five years back. The case of the assessee-individual has been reopened u/s 147 of the Act on the basis of the information received from the Stamp Duty Valuation Authority of the State Government and thus, for the alleged understatement of income invoking the deeming provisions of Section 50C of the Act.

During the course of reassessment proceedings, the assessee has furnished all the evidences such as registered purchase and sale deeds, the income tax records of the co.owner for the relevant year offering the income under the head "Capital Gains" on sale of the said agriculture land for the actual sale consideration received (50%). The AO has accepted the returned income in the case of joint co.owner and not initiating proceedings u/s 147 of the Act. However, in the case of the assessee, the AO passed the order u/s 147 r.w.s. 143(3) of the Act, wherein the Capital Gain has been computed applying the provisions of Section 50C of the Act i.e. substituting the Circle rate/jantri value taken by the SDVA for the levy of the Stamp Duty and accordingly, raised the huge demand of tax, interest, etc.

The querist wants a valuable opinion as to whether the action of the AO justifiable in passing the assessment order u/s 147 r.w.s. 143(3) of the Act, on the basis of the deemed Capital Gain u/s 50C of the Act, whereas, on the other hand, the actual sale consideration of the land in question shown in the ITR filed by the joint co.owner has been accepted/assessed by the jurisdictional AO and moreso, well with the records of the AO of the assessee? **(DS)**

.....

.....

.....

.....

.....

.....

(9) In case of depreciable assets though Capital Gain is assessable as Short Term Capital Gain in view of various judgment if asset was held for more than 3 years, it is long term capital asset and reinvestment u/s. 54EC is possible. Issue for your kind consideration is, if gain is taxable at what rate tax will be leviable? Can assessee contend tax rate of 20% as applicable to Long Term Capital Gain be applied? Please cite case law (**DS)**

.....

.....

.....

.....

.....

.....

.....

(10) VSV scheme - In FAQs dated 4th December 2020, in reply to Q. No. 70, wherein Q is "If the assessment order has been framed in the case of taxpayer u/s. 143(3)/144 of the Act based on search executed in some other taxpayer case, Whether it is to be considered as a search case or non-search case under VSV Answer given by the Dept. is such case is to be considered as search case and accordingly tax is calculated at 125%. What is your view in the matters? **(PLB)**

.....

.....

.....

.....

.....

.....

(11) a) Section 50C is applicable to a Capital Asset being land or building or both. Does it apply to Development Rights?

b) Mr. A has sold Residential house and land and sale proceeds are invested in purchase of residential house. Sale consideration of Residential house is 1.50 crores and land ₹ 3 Crores. Ready Reckoner value of Residential house is 2 crores and that of land 3.50 crores Mr. A is investing the whole amount in purchase of another Residential house. Issue for your kind consideration is whether Capital Gains is to be worked out after taking ready reckoner rate, that is to say whether Sec. 50C is to be considered while working out exemption u/s. 54 & 54F of Income-tax Act **(DS)**

.....

.....

.....

.....

.....

.....

.....

(12) Is Management fees paid to Portfolio Manager is deductible expenses? **(PLB)**

Brains' Trust Session

Indirect Tax Trustees:
Mr. Jatin Harjai, Adv., Jaipur • Mr. Uchit Sheth, Adv., Ahmedabad

1) ITC

We had received goods in March 2020 and bill was not recorded as we did not agree to the price mentioned in the bill. No entry in books was passed. The bill was settled by accepting delivery and amount in January 2021 and we asked the vendor to prepare fresh bill of current date. He refused as he already entered the bill in his R1 and cannot change it.

Can he cancel his bill and give fresh invoice?

Can we claim ITC based on his original invoice in the month of January 2021 since the delivery of goods accepted in that month? **(JH)**

.....

.....

.....

.....

.....

.....

2) Time of Payment of Tax

We as a land owner entered in to agreement for redevelopment of property in March 2009. The development agreement was registered and as per the agreement we were supposed to get area of flats and shops duly constructed. Due to some disputes the matter was in arbitration. Meanwhile the construction was various buildings completed from time to time and possession was given to flats and shops to the purchasers. OC of buildings is obtained now in December 2020.

Now the developer is preparing agreement and possession letter for flats and shops to us and he demands GST @ 12% on it.

We say that the development right was given prior to GST law and at that time no tax was payable. Further the construction is completed and possession is also given to the flat buyers. In some case the society is also formed prior to GST law. Son GST is payable.

Whether any GST is payable on allotment of flats and shops in the month of January 2021 in respect of development agreement entered in to March 2009?

If, yes then on which value? **(US)**

.....

.....

.....

.....

.....

.....

3) Classification of Service

We are providing transport services of goods by road. Some transporters are charging tax @ 18% and some are charging 12%. Some are not charging any tax.

What is the classification of service of transportation of goods by road and rate of tax thereof?

Can we claim that we are providing GTA services ? **(US)**

.....

.....

.....

.....

.....

.....

4) Show Cause Notice

We received show cause notice from service tax department for payment of tax on the basis of income tax return and 26AS statement without giving any details.

At the time of GST law the Hon'ble PM had said that we will not asked any details of tax payment under the service tax and other laws. We took registration under GST law .

Now the issue of notice by service tax department asking to pay tax under the service tax law merely on the basis of income tax return is justified?

What is the legal remedy? **(JH)**

.....

.....

.....

.....

.....

.....

5) Intermediary Services

We are providing ship management services which includes services for recruitment of employees, calling for application, taking their interview and arranging their transport for that we get remuneration cost plus fixed percentage in $.

Is this service is considered as export of service and to be treated as zero rated? **(JH)**

.....

.....

.....

.....

.....

.....

6) Rule 86 is inserted from 1st day of January 2021. Whether this rule will apply from return of January 2021 or will apply to returns, filed after 1 January 2021? **(US)**

.....

.....

.....

.....

.....

.....

7) Whether Rule 86 will apply to cess? Or will only apply to CGST, SGST, IGST. **(US)**

.....

.....

.....

.....

.....

.....

8) In rule 86 proviso is inserted as (Please see last two lines) "Provided further that the commissioner or an officer authorized by him in this behalf may remove the said restriction after such verification and such safeguards as he may deem fit."- To remove the restriction where the dealer has to apply? To Commissioner or any sub-ordinate AC, DC or JC? **(JH)**

.....

.....

.....

.....

.....

.....

9) Exporter has exported goods against LUT. He has claimed refund in RFD-01 and has received refund. After receiving refund he has received SCN to return some part of refund wrongly claimed. He is ready to return the refund wrongly claimed through DRC-03. Can he return through Credit ledger? Or he has to return through Cash ledger only. **(JH)**

.....

.....

.....

.....

.....

.....

10) In F.Y. 2019-20 dealer has claimed Input Tax Credit in 3B in wrong head i.e. instead of IGST, it is claimed as CGST, SGST. Now the dealer comes to know at the time of filing 9 and 9C. Can he rectify and can claim in correct head? Or he will not be able to claim and his ITC will be lapsed? **(US)**

.....

.....

.....

.....

.....

.....

11) A sweet-meat dealer manufactures sweets and sells them from his shop. He has opted composition U/s. 10 of CGST Act. Whether the dealer has to pay tax U/s 10 (1) (a) 0.5+0.5%= 1% or U/s 10 (1)(b) 2.5+2.5%= 5% ? **(JH)**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

12) Sec 17(5)(ab) of CGST Act restricts ITC on *"services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):"*

Can it be argued that the above restriction applies only in cases of services as listed above and not on inward supplies of goods like tyres, etc for vehicles? **(US)**

.....

.....

.....

.....

.....

13) Sec 15(1) mandates that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are ***not related*** and the price is the sole consideration for the supply. Also, as per Sec 15(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed. The explanation to Sec 15 defines "related persons" which does not include the term distinct persons. However, when we see Rule 28, it intends to cover the cases of Value of supply of goods or services or both between distinct or related persons, other than through an agent.

Can it be said that the rule is ultravires the Act as there is no provision to refer the rules in case of transactions between distinct persons? **(US)**

.....

.....

.....

.....

.....

14) Sec 65(4) mandates that the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

As per the explanation to the section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

It has been observed that the Department officers keep asking fresh information after every few dates. When can the said "commencement" be deemed to have started in such cases? **(US)**

.....

.....

.....

.....

.....

.....

15) Sec 67 empowers the Joint Commissioner to authorize any officer to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place if ***"he has reasons to believe"***.

Are these reasons required to be recorded in writing and/or disclosed to the taxpayer when asked for? **(JH)**

.....

.....

.....

.....

.....

.....

16) The powers conferred under Sec 67(4) are to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

Whether the officers can also seal the whole place of business and/or godown till the proceedings are not concluded using these powers? **(JH)**

.....

.....

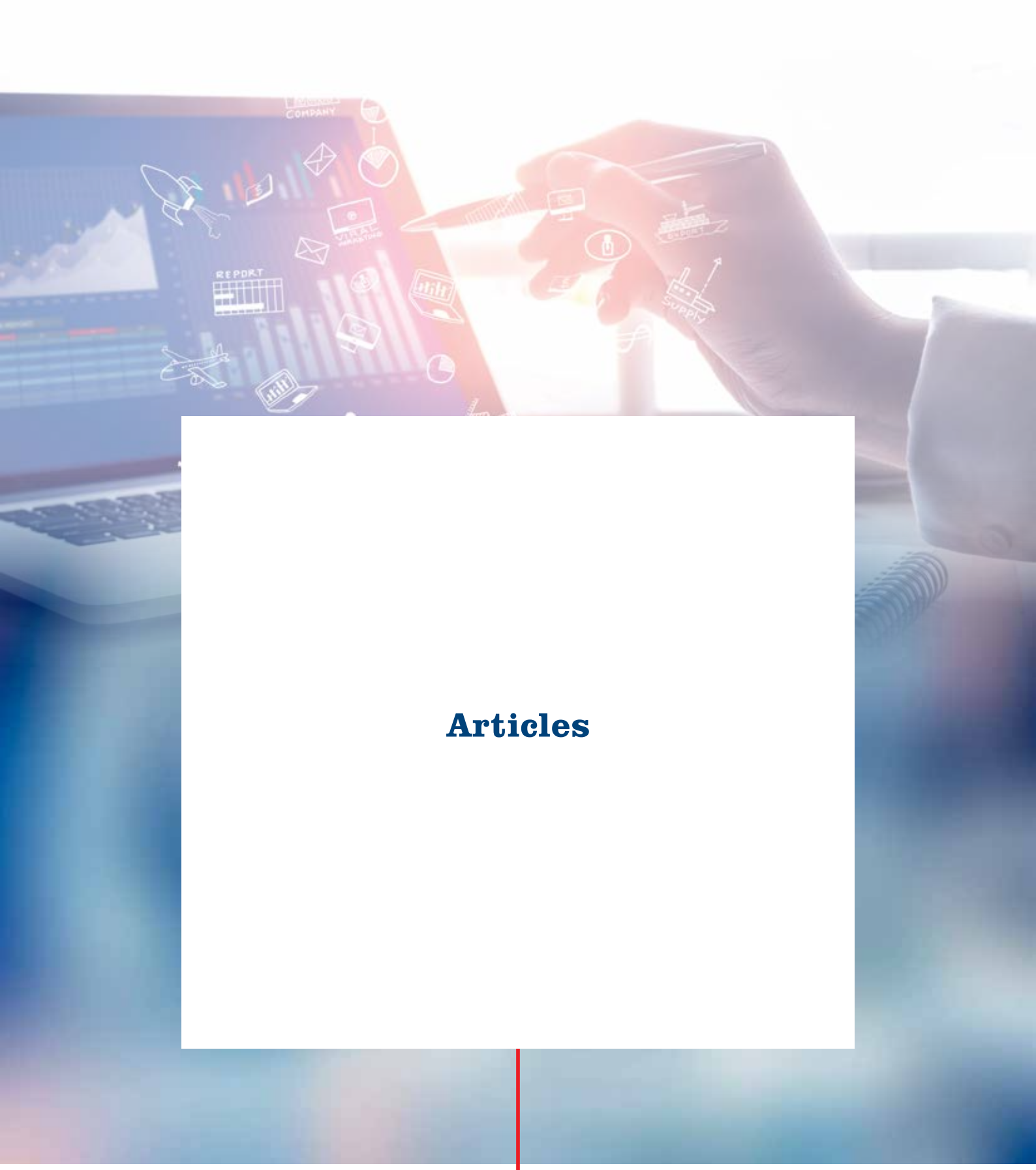
.....

.....

.....

.....

NOTES



Articles

VIRTUAL
NATIONAL
TAX
CONFERENCE
17th & 18th February, 2021

Faceless ITAT - Whether Denial of Oral Hearing is in Violation of Principles of Natural Justice

Dr. Ashok Saraf, ***Senior Advocate***

Natural justice demands that the person who is directly affected by an administrative action should be given prior notice of what is proposed so as to enable him to make a representation on his behalf, to appear at a hearing or enquiry if it is to be held and to meet effectively the points raised. The requirement of audi alteram partem has two elements:

1. An opportunity to make a representation must be given.
2. Such an opportunity must be adequate.

Thus people likely to be affected by action or inaction of any authority should have opportunity to have their say. Lord Hewart of Bury once said, "essential to the proper administration of justice is that every party should have an opportunity of being heard, so that he may put forward his own views and support them by argument, and answer the views put forward by his opponents." In *Charan Lal Sahu v. Union of India, (1990 1 SCC 613*, the Apex Court observed that justice, it ought to be noted, is a psychological yearning in which men seek acceptance of their viewpoint before the forum or the authority enjoined or obliged to take a decision before affecting their right.

The importance of audi alteram partem in a judicial system was reiterated by the Apex Court in *P.N. Eswara Iyer v. Registrar, Supreme Court of India, (1980) 4 SCC 680*, by holding as under:

"We must make it perfectly plain, right at the outset, that audi alteram partem is a basic value of our judicial system. Hearing the party affected is too deeply embedded in the consciousness of our constitutional order."

In the context of fair hearing, it is of interest to note that the requirements of natural justice are met only if opportunity to represent is given in view of the proposed action and to make opportunity of representation effective, materials relied upon by an authority should be furnished to an aggrieved person. When an order is not "appealable" or "revisable" under any statute, it casts even a greater responsibility and obligation on the authorities exercising powers under the statute at least to give a hearing to the party likely to be adversely affected by the order. The denial of opportunity of hearing in such a case offends seriously against fair play of action.

Fair hearing has two justiciable elements. The first is that an opportunity of hearing must be given; and the second is that the opportunity must be reasonable. In *Mineral Development Ltd. v. The State of Bihar, AIR 1960 SC 468,* the Apex Court held that the concept of "reasonable opportunity", is an elastic one and is not susceptible of easy and precise definition. The Apex Court further held that what is reasonable opportunity under one set of circumstances need not be reasonable under different circumstances. A realistic view has to be taken while determining whether the opportunity given was reasonable or not.

When the word "hearing" or the words "opportunity to be heard" are used in legislation, it normally always denotes a hearing at which oral submissions and evidence may be tendered. In the absence of a clear statutory guidance on the matter, it is to be noted that the one who is entitled to the protection of the audi alteram partem rule is prima facie entitled to put his case orally, but in a number of contexts, the Courts have held natural justice to have been satisfied by an opportunity to make written representations to the deciding body.

Recently in the Finance Bill, 2021, it has been proposed to make the Income Tax Appellate Tribunal (ITAT) to be faceless by amending section 255 of the Income Tax Act, 1961. As per section 255 (5) of the Income Tax Act, 1961, it is the Appellate Tribunal that has the power to regulate its own procedure and the procedure of benches thereof in all the matters arising out of the exercise of its powers or discharge of its functions including places at where benches shall hold their sittings.

After the proposed amendment by the Finance Bill, 2021 to make the ITAT faceless, a debate is going on as to whether not giving an opportunity of personal hearing before the Tribunal is a violation of the principles of natural justice and contrary to the safeguards guaranteed by the Constitution of India in Article 14 to 21. In this context, it has become imperative to examine as to whether oral hearing is necessary in every case and as to whether denial of oral hearing shall result in the violation of the principles of natural justice.

Speaking with reference to the quasi judicial tribunal, the Apex Court in *MP Industries v. Union of India, AIR 1966 SC 671*, held as under:

> *"It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed Rule 55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal."*

Oral hearing is not necessary in every case. Whether an oral hearing would be necessary would depend upon the nature of the enquiry, nature of facts involved, circumstances of a case and the nature of deciding authority. There is no right to an oral hearing unless such a hearing is expressly prescribed or unless the context indicates that without such a hearing, the person cannot adequately present his case. The question of personal hearing is one of discretion and not of jurisdiction. Where matters are complicated and fresh materials are brought on record, personal hearing should be given. In *Assam v. Gauhati Municipal Board, Gauhati, AIR 1967 13928*, where under the Assam Municipalities Act, 1957, the State Government could supersede a municipal board if in its opinion it was not competent, it was held that it was enough that the government issued a notice and gave an opportunity to the board to explain and there was no necessity to give a personal hearing. In the Court's opinion, the Board had been given adequate opportunity of being heard and the absence of an oral hearing did not vitiate the Government's decision.

No doubt oral hearing does not always constitute the Doctrine of natural Justice, and cannot be claimed as a matter of right in all matters but the requirement of oral hearing must be insisted upon as a matter of public policy, namely, to prevent not only a perverse decision but also to secure a decision which is not vitiated by well meaning ignorance or carelessness due to absence of oral hearing. Personal hearing, as held by the Apex Court in *GN Rao v. Andhra Pradesh State Road Transport Corporation, AIR 1959 SC 308*, enables a party appearing at such hearing to persuade the authority concerned by reasoned arguments to accept his point of view by removing the authority's doubt and by answering the authority's question.

The Apex Court in *P.N. Eswara Iyer (Supra)* held that the normal rule of judicial process is oral hearing and its elimination an unusual exception. The Apex Court further held that justicing is an art even as advocacy is an art. It was held that no judicial "emergency" can jettison the vital breath of spoken advocacy in an open forum and there is no judicial cry for extinguishment of oral argument altogether. The Apex Court, in the said judgment, held as under:

> *"The possible impression that we are debunking the value of oral advocacy in open court must be erased. Experience has shown that, at all levels, the bar, through the spoken word and the written brief, has aided the process of judicial justice. Justicing is an art even as advocacy is an art. Happy interaction between the two makes for the functional fulfilment of the court system. No judicial "emergency" can jettison the*

> *vital breath of spoken advocacy in an open forum. Indeed, there is no judicial cry for extinguishment of oral argument altogether."*

Justice Harlan of the United States Supreme Court has insisted that oral argument should play a leading part. It is not "a traditionally tolerated part of the appellate process" but a decisively effective instrument of appellate advocacy. He rightly stresses that there are many Judges "who are more receptive to the spoken than the written word". He hits the nail on the head when he states:

> *"For my part, there is no substitute, even within the time-limits afforded by the busy calendars of modern appellate courts, for the Socratic method of procedure in getting at the real heart of an issue and in finding out where the truth lies.*

The Apex Court in **P.N. Eswara Iyer** (Supra) endorsed the conclusion of Justice Harlan of the United States Supreme Court on oral arguments which was as under:

> *"Oral argument is exciting and will return rich dividends if it is done well. And I think it will be a sorry day for the American Bar if the place of the oral argument in our appellate courts is depreciated and oral advocacy becomes looked upon as a proforma exercise which, because of tradition or because of the insistence of his client, a lawyer has to go through."*

In the aforesaid landmark judgment of the Apex Court in **P.N. Eswara Iyer (Supra)**, the Apex Court held that among the methods of persuasion, the power of the spoken word cannot be sacrificed without paying too high a price in the quality of justice especially in the Supreme Court litigation. Maybe, that the brief is valuable; indeed, a well prepared brief gives the detailed story of the case; the oral argument gives the high spots. The Apex Court referred to the observation of George Rossman in American Bar Association Journal, January 1959, Vol. 45, No. 1, P. 676, wherein it was held as under:

> *"The oral argument can portray the case as a human experience which engulfed the parties but which they could not solve. Thus, the oral argument can help to keep the law human and adapted to the needs of life. It typifes the Bar at its best."*

The Apex Court in **P.N. Eswara Iyer** (Supra), held that the value of oral submission need not be under-rated nor written briefs over-rated. In the aforesaid case, the Apex Court was dealing with the denial of oral hearing while considering a review petition before the same Court and in that context, the Apex Court held that in the dynamics of hearing, orality does play a role at the first round, but at the second round in the same Court is partly expendable. The Court held that romance with oral hearing must terminate at some point and nor can it be made a sacred cow of the judicial process. While emphasising that oral advocacy is a decisive art in promoting justice, the Apex Court made a distinction between the first hearing and the review petition before the same Court. While the necessity of oral hearing at first hearing was emphasised by the Apex Court, the Apex Court held that in view of practical differences and ever increasing work load, in case of second opportunity by way of review petition before the same Court, oral hearing may be avoided.

The aforesaid decision of the Apex Court can therefore be understood that in first hearing before any Court, oral hearing is a must but in case of second hearing like a review petition before the same Court, oral hearing may be avoided.

"The opportunity to be heard", observed the U.S. Supreme Court, "must be tailored to the capacities and circumstances of those who are to be heard. Written submissions are an unrealistic option for most recipients who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipients to mould his arguments to the issues the decision makers appear to regard as important. Particularly, when credibility and veracity are at issue, as they must be, in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision."

It is well known in modern times that increasingly greater powers have been conferred upon the statutory authorities in administrative or quasi judicial functioning. With such greater powers being conferred, decisions are being taken which largely affect citizens in every sphere of life. A decision on a

question without an oral hearing, whether such hearing is demanded or not, will be an unfair decision. The *Queen's Bench Division decision in R. v. Immigration Appeal Tribunal, (1977) 2 All ER 602*, quashed a deportation order on the ground that there was no oral hearing given to the affected person and observed that if the applicant had had an oral hearing before the Tribunal, on the hearing of his appeal, further matter could have been advanced on his behalf and thereby the applicant has been deprived of the said opportunity. Judicial justice, with the procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise.

The ITAT is a final fact finding authority. Being the final fact finding authority, it becomes more important and necessary that oral hearing is allowed to the parties. The first appeal before the Commissioner of Income Tax has already been made faceless and no oral hearing is allowed. In case the ITAT is made faceless and no oral hearing is allowed, the assessee shall have no opportunity to contradict any factual things by making oral submission before the Tribunal. In our own legal jurisprudence, both pleadings and oral submissions have got equal importance and one cannot take place of another. The entire legal system depends on the art of pleading and of advocacy. For taking a fair decision, it becomes all necessary to give an oral hearing to the party affected by the decision in question and as such a requirement of oral hearing is implicit in the concept of fairness in quasi judicial functioning and administration. Deciding of an appeal by the ITAT on the basis of written submission without offering an opportunity of oral hearing will certainly suffer from the vice of unfairness.

The cry 'That isn't fair' is to be found from the earliest days on any action not based on fairness. The common expectation of mankind would be that a decision should be reached and a power should be exercised fairly in accordance with the principles of natural justice. Whenever an authority acts contrary to this fundamental expectation, it acts unfairly and in derogation of common and universal expectation.

The desire for speedy disposal cannot be at the cost of fairness. Speedy disposal of cases does not mean that one should decide the cases in violation of principles of natural justice and fairness. After all, the motto is that justice is not only to be done but also must be seen to have been done. In case an aggrieved person is not given an opportunity to fully explain his case by denying him oral hearing, he shall always have a feeling that justice has not been done to him as he was not given adequate an fair opportunity to explain his case.

In view of the above, the decision to deny oral hearing at the income tax appellate stage needs to be reconsidered as otherwise the same shall not only be in violation of the principles of natural justice but the same shall also suffer from the vice of unfairness.

.

❍❍

Penalty for False Entry in Books of Account or Fake Invoices under the Income Tax Act and the GST Act

Narayan Jain, LL.M., Advocate

1. Introduction :

The Finance Act, 2020 has introduced new penalty provision under section 271AAD to curb malpractices of issuing fake invoice. Section 271AAD shall apply with effect from 1st April, 2020.

2. Object

The Explanatory Memorandum to the Finance Bill, 2020 has stated that in the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent claims of Input Tax Credit (ITC) have been caught by the GST authorities. It has been revealed in these cases that fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

The penalty provision has been inserted to discourage taxpayers to manipulate their books and claim wrong input credit under GST.

3. Penalty in what circumstances

The new provision has been inserted to provide for levy of penalty on a person, if it is found during any proceeding under the Act that in the books of account maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability.

Thus the new section 271AAD has been inserted to penalise person maintaining books of account in case of a false entry or omission of an entry relevant for computing total income.

4. Quantum of Penalty under section 271AAD

The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It has also been provided that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry.

5. What will be considered "false entries" for the purpose of penalty under section 271AAD

What is false entry is explained vide explanation below the said section 271AAD. The false entries will include use or intention to use –

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

Therefore false entries will include forged or falsified documents, false invoices, receipt of goods or services without actual supply or receipt of such goods or invoices using fake IDs.

Thus we may summarise that False entry include use or intention to use:

(i) forged documents or falsified documents (such as false or fake invoices)

(ii) invoice in respect of supply or receipt of goods or services or both without actual supply or receipt thereof

(iii) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist

It may be noted that in case of false entry in books of account, it is immaterial whether it has impact on computation of income or not. If there is false entry in books of account, penalty shall be levied.

However in case of omission of entry in books of account, it must have impact on computation of income in order to attract penalty provision under section 271AAD.

6. Penalty shall also be levied on any other person who causes any false entry etc.

In view of section 271AAD (2), the Penalty shall also be levied on any other person who causes the person required to maintain books of account to make or causes to make any false entry or omit or cause to omit any entry in books of account. For the purpose of this section such other person may cover an accountant or book keeper, consultant or advisors etc.

7. Section 271AAD of the Income tax Act : Provisions

For ready reference the newly inserted section 271AAD reads as under :

Sub section (1) "Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is –

(i) a false entry; or

(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry."

Sub- section (2) of section 271AAD reads as under :

"Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry."

8. Important Points relating to section 271AAD

This section 271AAD begins with "without prejudice to any other provision…", hence penalty under this section shall be in addition to any other penalty under the Income-tax Act.

a) The penalty can be imposed if during any proceeding under this Act, it is found that in the books of account maintained by any person there is either a false entry; or an omission of any entry, to evade tax liability.

b) Penalty how much : a sum equal to aggregate of amount of false entries or omitted entries

c) Power to levy penalty is with Assessing Officer

d) There must be books of account maintained by a person. That implies that in case of person who is not required to maintain books of account then in such case penalty may not be levied under section 271AAD. Further a question will arise whether this penalty can be levied in case of person who is required to maintain books of account but such person had not maintained books of account

e) Penalty shall be levied on "any person". The word used by legislature is any person and not any assessee.

f) To levy penalty there must be either of following two conditions should be satisfied (i) false entry in books of account; or (ii) omission of any entry in books of account which is relevant for/ has impact on computation of total income, to evade tax liability.

9. Definition of books of account under section 2(12A) of the Income tax Act

It is quite important to refer to the definition of Books of account which is provided in section 2(12A) of the Income tax Act.

"***books or books of account***" *includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device.*

10. Onus to prove

To levy penalty, element of mens rea must be an essential ingredient. That means intention is paramount. It is important to note that false entry or omission of entry re the basic ingredients and onus to prove the same is on the Revenue/ department.

11. Benefit of section 273B

As per section 273B, penalty shall not be imposed if assessee can prove that there was reasonable cause for the failure. However, **section 271AAD** is not included in section 273B.

12. Penalty provisions under the GST Act

The Finance Bill 2020 vide Clause 124 has amended section 122 of the GST Act to make the mediator/ beneficiary liable with the same degree of penalty as a taxable person i.e. supplier or transporter etc. when the question of fake invoicing comes. Sub-section (1A) has been inserted in **section 122 of the GST Act. It may be noted that the GST Act provides, vide its Section 122, provisions for levy of penalty for various offences**, which are not covered in section 73 and 74 of the GST Act. The concerned person shall be liable to penalty of an amount specified in the said section 122.

Relevant provisions of said section 122 of the GST Act are mentioned here.

122 (1) Where a taxable person who--

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

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

Such person shall be liable to pay a penalty of ₹10,000 or an amount equivalent to the tax evaded or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Sec 122 (1A) : *Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. [Inserted by the Finance Act, 2020*]

Sec 122 (3) : *Any person who aids or abets any of the offences specified in sub-section (1); shall be liable to a penalty which may extend to ₹25,000.*

It is important to note that on going through the above provisions, it is evident that for any of the defaults mentioned above both the beneficiary as well as the wrongdoer will be liable for penalty for an amount equal to the tax evaded or Input Tax Credit availed.

On a conjoint reading of both the sections 271AAD of Income tax Act and section 122(1A) of the GST Act, we will find that there may be situations that can lead to imposition of penalty under both the sections for the assessee.

The provisions applicable in various circumstances vis a vis relevant sections of the Income Tax Act and GST Act are analysed here below.

Sl.	Circumstance	GST Act, 2017 Section 122(1A)	Income Tax Act Section 271AAD
1.	Supply of any goods or services or both without issue of an invoice	The person can be treated as beneficiary of a transaction covered under Clause (i) of Section 122(1) and thus liable for penalty equivalent to the amount of tax evaded under sec 122(1A) of GST Act	Supply without Invoice will lead to lower Turnover and hence lower income declaration by assessee resulting in omission of entry necessary for computation of total income. The Assessing Officer may levy penalty under sec 271AAD(1)(ii).
2.	Issue of Invoice, by the person or any other person without actual supply or receipt of such goods or services or both	The person can be treated as beneficiary of a transaction covered under Section 122(1) (ii) and thus liable for penalty equivalent to the amount of tax evaded under sec 122(1A) of GST Act	Under sec 271AAD(1)(i) the Assessing officer may classify the transaction as a False Entry and may direct such person to pay by way of penalty a sum equal to the aggregate amount of such false entry.
3.	Taking or utilising input tax credit (ITC) without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of the relevant Act or the Rules made thereunder	The person can be treated as beneficiary of a transaction covered under sec 122(1) (vii) and hence liable u/s 122(1A) for penalty equivalent to the amount of input tax credit (ITC) availed	Under sec 271AAD(1)(i) the Assessing Officer may classify the transaction as a False Entry and may direct such person to pay by way of penalty a sum equal to the aggregate amount of such false entry

Sl.	Circumstance	GST Act, 2017 Section 122(1A)	Income Tax Act Section 271AAD
4.	Forging or falsifying of documents such as a false invoice or, in general, a false piece of documentary evidence	The person can be treated as beneficiary of a transaction covered under section 122(1)(i) and hence liable for penalty equivalent to the amount of tax evaded under sec 122(1A) of GST Act	Under sec 271AAD(1)(i) the Assessing Officer may classify the transaction as a false entry and may direct such person to pay by way of penalty a sum equal to the aggregate amount of such false entry

In addition to above instances, there can be many more situations where the assessee may get covered in both the sections. In both the sections the onus for default has been placed on the beneficiary as well as the initiator of the transaction.

13. Penalty against other person(s)

Section 271AAD(2)of the Income Tax Act states that any person who causes the person referred to in sub-section (1) [hereafter referred to as "other person"] to make a false entry or omits or causes to omit any entry then such other person shall also be liable to pay penalty equal to aggregate amount of such false or omitted entry. Hence, provision has been made for imposing penalty on the assessee as well as any other person involved in making the false entry or causing omission of any entry in books of assessee.

Similarly, section 122(1A) of GST Act states that "Any person who retains the benefit of a transaction covered under clauses (i),(ii),(vii) or clause (ix) of sub-section(1) of Section 122 and at whose instance such transaction is conducted shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit (ITC) availed of or passed on." Here also, the objective of this amendment is to penalise the beneficiary and the wrongdoer of the transactions specified in clause (i),(ii),(vii) or clause (ix) of section 122(1) liable for penalty.

14. Prosecution provisions under sec. 132 of the GST Act

The Finance Act, 2020 vide its Clause 125 has also amended section 132 of the GST Act, which provides for Punishment for certain offences related to Fake Invoicing. The purpose is to extend punishment under this section to a person who causes to commit such offence and also to a person who retains benefit of such offences mentioned in section 132. It further makes the offence of availing ITC without lawful invoice a cognizable and non bailable offence.

Provisions of Section 132(1) of the GST Act as substituted by the Finance Act, 2020 are discussed below.

Sec 132(1) provides : Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely:-

…..

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

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill; [as substituted by the Finance Act, 2020].

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d); [as substituted by the Finance Act, 2020].

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

(j) tampers with or destroys any material evidence or documents;

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of section 132 of the GST Act.

Such person shall be punishable as below in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken:

a) if the amount exceeds ₹ 5 Crore, with imprisonment for a term which may extend to 5 years and with fine;

b) if the amount exceeds ₹2 Crore but does not exceed ₹ 5 Crore, with imprisonment for a term which may extend to 3 years and with fine;

c) if the amount exceeds ₹1 Crore but does not exceed ₹ 2 Crore, with imprisonment for a term which may extend to one year and with fine.

15. Imprisonment not less than 6 months and the Offence is cognizable and non-bailable under the GST Act

Section 132 of the GST Act also provides that the imprisonment referred to above shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, **be for a term not less than 6 months.** Further notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences specified in clause (a)/(b)/(c) or (d) of sec. 132(1) of the GST Act, shall be **cognizable and non-bailable.**

16. Scope of the term "tax" under the GST Act

It may be noted that for the purposes of prosecution under section 132 of the GST Act, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

17. Conclusion

From the above discussion, we can make out that accounting and book keeping needs to be done by keeping above points in mind. Proper reconciliation of books for the purpose of Income tax as well as for the purpose of GST and the Returns filed (Income tax and GST Returns) is vital in order to avoid any inconvenience. Any negligence or error or mistake on the part of the assessee can expose him to imposition of penalties under the Income tax as well as GST. It is important to periodically check and make cross verification of vendors as well as customers/ clients.

Advocate Narayan Jain is author of famous books "How Handle Income Tax Problems" and "Income Tax Pleading & Practice". He is Hony Co-ordinating Editor of Taxman and a Life Member of AIFTP.

Prosecution under Income Tax Act, 1961

Ajay R. Singh, *Advocate*

I. Introduction

Law without provisions for punishment is like lion without teeth

The word 'offence' has not been defined under the Act. Wilful attempt to evade tax is an offence. The word 'offence' has to be understood in the context of an offence generally under the Act.

The Income Tax Act, 1922 provided for the prosecution of taxpayers who were guilty of the offences mentioned in section 51 and section 52 of the Act.

Under the Income-tax Act, 1961 there are various provisions for compliance with taxing provisions and the collection of taxes. The Income-tax Act seeks to enforce tax compliance in a three fold manner; namely :-

1. Imposition of interests.
2. Imposition of penalties and,
3. Prosecutions

The genesis for the need of stringent imposition of prosecutions find its roots in the Wanchoo Committee Report. The said Committee in their final report recommended as under:-

"Need for vigorous prosecution policy:

283. In the fight against tax evasion, monetary penalties are not enough. Many a calculating tax dodger finds it a profitable proposition to carry on evading taxes over the years, if the only risk to which he is exposed is a monetary penalty in the year in which he happens to be caught. The public in general also tends to lose faith and confidence in tax administration once it knows that even when a tax evader is caught, the administration lets him get away lightly after paying only a monetary penalty when money is no longer a major consideration with him if it serves his business interests…."

The *law Commission in its 47th report dt. 28-2-1972* also, after elaborate discussion on the subject recommended the changes to be made in the Income-tax Act, 1961 for incorporating provisions relating to offences and prosecutions. The Comptroller & Auditor General of India in *the report No 28 of 2013 for the year ended March, 2012* which was presented to the Parliament has carried out a comprehensive audit of all the aspects of the law relating to prosecution and procedure of the said Act, which can act as an eye opener for the tax administration. A few instances stated in the report are as follows:- (a) CBDT did not utilise the prosecution mechanism for ensuring compliance u/s. 276CC of the Act, (b) there were inadequate measure to monitoring the cases, (c) compounding of offences was not used as an alternative mechanism effectively to reduce litigation and realise the due revenue (d) prosecution mechanism was not working effectively and efficiently, (e) Central economic intelligence bureau established for gathering, collation and dissemination of information among the tax gathering agencies like CBDT, CBEC etc. had not worked in the manner as intended to arrest tax evasion by prosecution etc.; (f) Pending of cases as on March, 2012 was 2,603 cases of which 1,530 are more than 15 years old etc.

During FY 2017-18 (upto the end of November, 2017), the Department filed Prosecution complaints for various offences in 2225 cases compared to 784 for the corresponding period in the immediately preceding year. The number of complaints compounded by the Department during the FY (upto the end of November, 2017) stands at 1052 as against 575 in the corresponding period of the immediately preceding year, registering a rise of 83%. In subsequent years these numbers are gradually increasing.

Besides, 48 persons were convicted for various offences during the said period as compared to 13 convictions for the corresponding eight months of 2016.

A general take away from the various studies can be that even though assessee in general may not be worried by levy of interest or penalties which they can afford to pay, the idea of undergoing imprisonment if convicted of offences can be a strong deterrent from brazen tax evasion and non-compliance.

Recently it has been observed that a department has issued several show cause notices for launching of prosecution to a large number of assessees, therefore it has became very important to be aware of the laws relating to prosecutions under direct taxes which may help tax consultants in guiding the assessees not only (a) to file an appropriate replies, (b) to make an application for waiver of penalties, , (c) Compounding of Offences, (d) proceedings before the Magistrate Court or (e) approach the Central Govt. for immunity but also to effectively attempt to quash wrongful prosecutions that may have been initiated.

An attempt has been made to give an overview of the provisions relating to offences and Prosecutions under the Income-tax Act which shall help the assessee's and their representatives to file appropriate replies in response to a show cause notice.

II. Offences and prosecutions under Income tax Act, 1961

The sections dealing with offences and prosecution proceedings are included in Chapter XXII of the Income tax Act, 1961 i.e. S. 275A to S. 280D of the Act. However, the provisions contained in said Chapter XXII of the Act do not inter se deal with the procedures regulating the prosecution itself, which is governed by the provisions of the Criminal Procedure Code, 1973. The provisions of the said Code are to be followed relating to all offences under the Income-tax Act, unless the contrary is specially provided for by the Act. An appropriate example would be S. 292A of the Act that prescribes that S. 360 of the Code of Criminal Procedure, 1973 (Order to release on probation of good conduct or after admonition) and the Probation of Offenders Act, 1958, would not apply to a person convicted of an offence under the Income–tax Act, unless the accused is under eighteen of age.

The Finance Act, 2012, w.e.f. 1-7-2012 has inserted S. 280A to 280D, wherein the Central Government has been given the power to constitute Special Courts in consultation with the Chief Justices of the respective jurisdictional High Courts. Normally, the Magistrate Court in whose territorial jurisdiction an offence is committed tries the offence. For direct tax cases, the offence is said to committed at the place where a false return of income is submitted, even though it is completely possible that the return has be prepared elsewhere or that accounts have been fabricated at some other place.

A. In ***J. K. Synthetics Ltd. v. ITO (1987) 168 ITR 467 (Delhi) (HC)***, the Court held that the offence u/s. 277 of the Act can be tried only at the place where false statement is delivered (SLP was rejected (1988) 173 ITR 98 (st). also refer *Babita Lila v. UOI (2016) 387 ITR 305 (SC)*. A First Class Magistrate or a Metropolitan Magistrate, should try the prosecution case under the direct taxes. If a Special Economic Offences Court with specified jurisdiction is notified, the complaint is to be filed before the respective court.

As per the provisions of **section 279A**, the offences punishable u/s 276B, 276C, 276CC, 277, or 278 are **deemed to be non-cognizable offence.**

II. S. 278E : Presumption as to culpable mental state :

The concept of *mens rea* is integral to criminal jurisprudence. An offence cannot be committed unintentionally. Generally a guilty mind is a sine qua non for an offence to be committed. The rule in general criminal jurisprudence established over the years has evolved into the concept of 'Innocent until proven guilty' which effectively places the burden of proving the guilt of the accused beyond reasonable doubt squarely on the prosecution. However, The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, inserted S. 278E with effect from 10th September, 1986 has carved out an exception to this rule. ***The said Section places the burden of proving the absence of mens rea upon the accused and also provides that such absence needs to be proved not only to the basic threshold of 'preponderance of probability' but 'beyond reasonable doubt'. The scope and effect of this provision has been explained by the Board in Circular No. 469 dt. 23-9-1986 (1986) 162 ITR 21(St) (39).***

Section 278E of the Act, which is analogous to S. 138A of the Customs, Act, 1962, S.92C of the Central Excise and Salt Act, 1944, S.98B of the Gold (Control) Act, 1968; sec 135 of GST Act and S.59 of the Foreign Exchange Regulation Act, 1973. Similar provision was introduced under Wealth-tax Act, 1957, i.e. S. 35-0 and Gift–tax Act, S.35D.

Constitutional validity of the said provision was upheld in *Selvi J. Jayalalitha v. UOI and Ors. (2007) 288 ITR 225 (Mad) (HC), Selvi J. Jayalalitha v. ACIT (2007) 290 ITR 55 (Mad) (HC) which was affirmed by Apex court in Sasi Enterprises v. ACIT (2014) 361 ITR 163 (SC).* **The Apex Court in the afore mentioned decision observed that where ever specifically provided, in every prosecution case, the Court shall always presume culpable mental state and it is for the accused to prove the contrary beyond reasonable doubt.** This is a drastic provision which makes far reaching changes in the concept of mens rea in as much it shifts the burden of proof to show the absence of the necessary ingredients of the intent to commit the crime upon the accused and is radical departure from the concept of traditional criminal jurisprudence. According to this section, wherever mens rea is a necessary ingredient in an offence under the Act, the Court shall presume its existence. **No doubt, this presumption is a rebuttable one.** The Explanation to the section provides for an inclusive definition of culpable mental state which is broad enough in its field so as to include intention, motive, knowledge of a fact and belief in or a reason to believe a fact. The presumption arising under sub-section (1) may be rebutted by the accused, but the burden that is cast upon the accused to displace the presumption is very heavy. The accused has to prove absence of culpable mental state not by mere preponderance of probability.

In *Prakash Nath Khanna v. CIT (2004) 266 ITR 1 (SC) (12)*, the Court observed that the Court has to presume the existence of culpable mental state, and the absence of such mental state can be pleaded by an accused as a defence in respect of the Act charged as an offence in the prosecution. It is therefore open to the appellants to plead absence of a culpable mental state when the matter is taken up for trial.

In *J. Tewari v. UOI (1997) 225 ITR 858 (Cal.) (HC) (861)* the court observed that the rule of evidence regarding presumptions of culpability on the part of the accused does not differentiate between a natural person and a juristic person and the court will presume the existence of culpable state of mind unless the accused proves contrary.

In *ACIT v. Nilofar Currimbhoy (2013) 219 Taxman 102 (Mag.) (Delhi) (HC)*, prosecution was launched u/s. 276CC for a failure to file the return of income, the court held that the onus was on the assessee to prove that delay was not wilful and not on the department (SLP of assessee is admitted in the case of *Nilofar Currimbhoy v. ACIT (2015) 228 Taxman 57 (SC).*

S. 278E (is prospective) being penal in nature is not applicable for those offences that have been committed on or before 9-9-1986 even if the prosecution proceedings are launched after the said date.

III. Reasonable Cause: sec. 278AA

Before the amendment to S. 276A, 276B, 276B, 276D and 276E, the onus was on the prosecution to prove beyond a reasonable doubt that the accused had no reasonable cause or excuse to commit any of the offences as envisaged by the aforesaid sections. ***However, in the light of the amendment by the Taxation Laws (Amendment and Misc. Provisions) Act, 1986 to the aforesaid, sections wherein the word "without reasonable cause or excuse" have been deleted and with the insertion of S. 278AA, the onus of proving the existence of reasonable cause has shifted on to the accused. However reasonable cause can be proved in cases related to offence 276A , 276AB or 276B (see 278AA).***

No person is punishable for any failure under section 276A, 276AB or 276B if he proves that there was **reasonable cause for such failure (vide section 278AA).**

Instances of Reasonable cause accepted/rejected by courts:

A. In *UOI v. Bhavecha Machinery & Ors. (2009) 320 ITR 263 (MP)(High Court)*, Where the delay in filing the return was explained by the accused firm due to the illness of the old part time accountant of the accused firm, the cause shown by the accused firm was held to be a reasonable cause for delay in filing the return of its income.

B. In *Sonali Autos P. Ltd. v. State of Bihar (2017) 396 ITR 636 (Patna) (HC)*, Allowing the petition the Court held that; continuance of criminal proceeding under section 276B of the Act against the assessee was mere harassment and abuse of process of court. The assessee had been able to prove reasonable cause for not depositing the amount of tax deducted at source within the prescribed time limit. Oversight on the part of the accountant, who was appointed to deal with the accounts and tax matters, could be presumed to be a reasonable cause for not depositing such amount within the prescribed time limit. The assessee immediately after noticing the defects by its auditors had deposited the amount along with the interest as required under section 201 (1A) for the delayed payment in the year 2010 itself. Prosecution had been launched against the assessee after a lapse of about three years from the date of deposit of the due amount of tax deducted at source along with interest and that was contrary to the instruction, F No. 255/339/79-IT (Inv.), dated May 28, 1980 issued by the Central Board of Direct Taxes in that regard. Moreover, according to the provisions of section 278AA, no person for any failure referred to under section 276B should be punished under the provisions if he had proved that there was reasonable cause for such failure. Accordingly, the order passed by the Special Judge, Economic Offences taking cognizance of the offence under section 276B of the 1961 Act, along with the entire criminal proceedings against the assessee were quashed.

C. In *Shaw Wallace & Co. Ltd. v. CIT (TDS) (No. 2) (2003) 264 ITR 243 (Cal.)(High Court)* held that it is for appellant to produce sufficient evidence for non-deposit of tax deducted at source during criminal trial to avail of benefit of section 278AA.

D. In *ITO v. Firoz Abdul Gafar Nadiadwala (ACMM) COURT CASE NO.95/SW/2014. Dt 25.04.2019* it was held S. 276B Prosecution for delay in payment of TDS: Pleas of financial problem, incompetent staff, accountant's negligence, unawareness about law etc are not acceptable as a defence [Madhumilan Syntex AIR 2007 SC (148) followed]

E. In *ITO vs. VCI Hospitality Ltd - CC No.536182/16 (Chief Metropoliton Magistrate) dated 28.08.2018(Delhi Court)* a case of prosecution for non-deduction of TDS - the Chief Metropoliton Magistrate held that in the case of default, Mens rea has to be presumed to exist and it is for the accused to prove the contrary and that too beyond reasonable doubt. ***It rejected assessee's plea that default in payment of TDS occurred due to delay by department in refunding excess TDS*** due to the assessee, holding that amount deducted by way of TDS has to be deposited within prescribed time irrespective of any counter claim of the assessee.

F. In *Karan Luthra v. ITO (2018) 98 taxmann.com 455 (Delhi)- CRL M.C no 3385,3390 of 2016 dated 14.09.2018* ; The Court held that where prosecution under section 276CC was launched against assessee on account of his failure to furnish return of income in response to notice issued u/s 142(1), the offence under section 276CC, prima facie, stood constituted as there was evident failure on part of assessee to not furnish return of income for relevant AY within period prescribed as per law. *Thus, the mere fact that the assessee had subsequently furnished return of income for relevant AY and no amount of tax was due, would not exempt the assessee from liability of prosecution.* Thus, the criminal revision petition filed by assessee was dismissed and the prosecution proceedings would continue in light of the above order.

IV. Procedure governing prosecution proceedings :

The procedure governing prosecution proceedings under the Act can be divided into two parts i.e.

I. Procedure to be followed by the Department while launching prosecution proceedings, and

II. The procedure before the Court.

I. Procedure followed by the department while launching the prosecution

Though there is no specific procedure provided under the Act or Rules, the Department has framed their own guidelines and instructions for initiating prosecution proceedings. The latest in time are circular no 24/2019 & 25/2019 dt 9/9/2019 .

The earlier instructions are referred in the following cases while quashing the prosecutions under S. 271C(1) read with Ss. 277 and 276CC of the Act.

Madan Lal v. ITO (1998) 98 Taxman 395 (Raj.) (HC), PatnaGuinea House v. CIT (2000) 243 ITR 274 (Pat.) (HC), Satya Narain Dalmia v. State of Bihar (2000) 110 Taxman 28 (Pat.) (HC), K. Inba Sagaran v. ACIT (2000) 247 ITR 528 (Mad.) (HC).

The Income-tax department's manual deals with various guidelines to be followed before launching prosecution proceedings and the broad parameters as laid down are as follows:

1. The Assessing Officer on the basis of the records of the assessee sends the proposal to the respective Pr. Commissioner /approval of Collegium. The collegium of two Chief Commissioner of Income-tax (CCIT)/ Director General of Income-tax (DGIT) rank officers.
2. The Pr. Commissioner issues the show cause notice to the assessees.
3. If Pr. Commissioner is satisfied with the reply of the assessee he may not grant sanction to the Assessing Officer to file complaint before the Court. The Pr. Commissioner has to apply his mind to the reply and material produce before him.
4. Time limit and monetary limits are provided for certain classes of offences

CBDT by circular dated 09.09.2019 titled *'Procedure for identification and processing of cases for prosecution under direct tax laws'*, has eased norms for prosecution for TDS and defaults in filing IT returns. The circular lays down limits and time period for proceeding with prosecution in cases where norm – payment of TDS is rupees 25 lakhs or below and delay in deposit is less than 60 days. The punishment for certain acts under the Direct Tax have been reduced, so that honest taxpayers are not harassed, and those who commit minor or procedural violations are not subjected to disproportionate or coercive action. For the first time a "collegium" comprising of two senior ranking officers is established.

It may be noted that earlier there was a CBDT Instruction dated 28-5-1980, which had instructed IT officials not to launch prosecution where delay in depositing TDS was less than 1 year. This circular was withdrawn in August 2013.

By Circular dated 09.09.2019, CBDT has also relaxed prosecution norms for offences relating to under reporting of income. Where the amount sought to be evaded or tax on under – reported income is ₹ 25 lakhs or below prosecution can only be launched after approval of the Collegium.

The circular comes in to immediate effect and shall apply to all pending cases where prosecution complaint is in process to be filed in court.

Under existing provision, failure to deposit TDS u/s 276B attracts rigorous imprisonment from 3 months to 7 years and a fine. Now, under the new procedure, no prosecution would be initiated if the amount not deposited is ₹ 25 lakhs or less or delay in depositing TDS is less than 60 days.

Under section 276C(1), for offence of under reporting of income of an amount of ₹ 25 lakhs or less, there is rigorous imprisonment for a period of 3 months up to maximum of 2 years and fine, whereas under the new norms, where evaded amount or tax is ₹ 25 lakhs or less, prior approval of the Collegium would be required before initiating prosecution.

If there is failure to file Income-tax return then, as per section 276CC the person is liable for rigorous imprisonments for term of 3 months up to 7 years and fine.

The Income-tax Act provides a low threshold of rupees ₹10,000 for launching prosecution for non – filing of IT returns as per section 276CC w.e.f. 01.04.2020, which can result in even rigorous imprisonment starting from 3 months and extending up to 7 years. As per the new circular, limit on the evaded amount of tax for non-filing is ₹ 25 lakhs or less, where prior approval of Collegium is required to initiate prosecution.

This circular allows the field officers to focus on deserving cases, and only prosecute if the offences are grave and can be proved beyond doubt. It also has laid down a transparent approval mechanism to identify these cases.

The Gujarat High Court in the case of ***Supernova System Private Limited v. CCIT (www.itatonline.org)*** has also held that the wordings 'amount sought to be evaded' means the amount of 'tax' sought to be evaded.

Old age 70 Years :

CBDT instruction No. 5051 of 1991 dated 07/02/1991 para 4 states "Prosecution need not normally be initiated against a person who has attained the age of 70 years at the time of commission of the offence". In *Pradip Burman S. v. ITO 382 ITR 418 (Delhi)* the Court laid down that the person should have reached the age of 70 at the time of commission of the offence. The case of the petitioner was that the complaint filed is liable to be quashed on the ground that at the time of filing of the criminal complaint, the petitioner had attained the age of 70 years and thus no prosecution can be initiated against him. Instruction number 5051 of 1991 dated February 7 1991 mandated that no prosecution could be initiated against a person who is above 70 years, "at the time of commission of offence". Further the said instructions do not mandate or make it compulsory since the words "need not normally" used in para 4 do not provide an absolute bar on initiation of prosecution. Thus the emphasis is on time of commission of the offence.

II. Procedure before Court :

On the basis of complaint filed before a court, the court sends summons to the accused along with the copy of complaint, to attend before the court on a particular date. The

complaint being criminal complaint, the accused must be present before the court, unless the court gives a specific exemption.

If the accused is not present on such particular date, the court can issue a warrant against the accused. If the warrant is issued, unless the accused secures bail, he may be arrested and produced before the court.

In normal Course Complainant and his witnesses are required to be examined on oath by the Magistrate before the accused can be summoned u/s 200 of Cr.Pc

But as the Complainant in the cases under Income Tax Act are "Public Servants" the Magistrate need not examine him on oath before summoning the accused. If the opinion of the magistrate there is sufficient ground for proceeding:

If it is a "Summons Cases" – Issue summons

If it is a "Warrant Cases" – Issue summons or Warrants

Before the trial itself is underway and regular hearings start in a matter, the court has to frame charge against the accused. Framing of the charge means that on the basis of the complaint and on seeing the primary evidence after hearing the accused, the court charges the accused of the offences purported to be committed by him. If on hearing the accused, the court feels that there is no apparent case against the said accused the court will dismiss the complaint.

However, if the court feels that there is substance in the complaint the charges will be framed and the proceedings shall continues as per the Criminal Procedure Code. Many of the Assessing Officers may not be aware that Assessing Officer who has filed the complaint may have to be examined before the final decision is taken. Considering the government intention prosecution cases are been taken up on priority basis . Even though the officer who has launched the prosecution might have been transferred or retired, he may still have to attend the proceedings. Therefore, it is very essential that before launching the prosecution the officer concerned may have to examine the consequences, especially the possibility of the matter being tried several years after the prosecution has been initiated.

If the trial results in a conviction, then an appeal to the court of session will lie under S. 374(3) of the Criminal Procedure Code. The said appeal will be heard under S.381 of the CrPC, either by the a Sessions Judge or by an Additional Sessions Judge. The petition of appeal is to be presented in the form prescribed filed by the appellant or by his pleader accompanied by a copy of the Judgment appealed against within a period of 30 days from the date of order, as per the Limitation Act.

V. Certain aspects to be kept in mind relating to launching of prosecution, proceedings are:

1. *Sanction for launching of prosecutions*

Under S. 279, the competent authority to grant sanction for prosecution is Pr. Commissioner, Commissioner (Appeals), Chief Commissioner or the Director General. Prosecution, without a requisite sanction shall make the entire proceedings void ab initio. The sanction must be in respect of each of the offences in respect of which the accused is to be prosecuted. Where the authority has held that an assessee had made a return containing false entries and gave sanction for prosecution for an offence under S. 277, and the accused was found guilty of an offence under S. 276CC, and not under S. 277, it was held in revision that an offence under S. 276CC was of a different nature from that under S. 277, and as there was no sanction for prosecution for an offence under S. 276CC, the conviction was illegal *(Champalal Girdharlal v. Emperior (1933) 1 ITR 384 (Nag) (HC))*

If sanction is not proper and offence is not made out only on jurisdictional point initiation of process can be challenged.

2. Opportunity of being heard

When an Assessing Officer takes a decision to initiate proceedings or a Pr. Commissioner grants sanction for such proceedings. He has to apply his mind and on the basis of the circumstances and the facts on record, he has to come to the conclusion whether prosecution is necessary and advisable in a particulars case or not. The said Act does not provide that the Pr. Commissioner has to necessarily afford the assessee an opportunity to be heard before deciding to initiate proceedings. The absence of an opportunity to be heard will not make the order of sanction void or illegal as held in *CIT v. Velliappa Textiles Ltd. (2003) 263 ITR 550 (SC) (567 to 569)*. However, it is being observed that the commissioners are issuing a show cause notice before sanctioning the Sanction for prosecution based on the internal manual. This has to be taken as a good opportunity to represent the case and request to drop the proceeding.

The Supreme court in *UOI v. Banwari Lal Agarwal 147 Taxation 743 (SC)* held that it is not necessary to give show cause notice or an opportunity to assessee before sanction is issued and no offer for compounding is required. Also see *UOI v. Gupta Builders Pvt Ltd (2008) 297 ITR 310 (Bom)*

3. Circumstances under which the Pr. Commissioner cannot initiate proceedings

S. 279(1A) has provided for the exception to the Power of Pr. Commissioner to initiate proceedings. Therefore, if a particular case falls and is established u/s. 276C or 277 of the said Act and if an order u/s. 273A has been passed by the Pr. Commissioner, by using the phrase "has been reduced or waived by an order under S. 273A" in S. 279(1A),the legislature has made it clear that the order referred to in S. 279(1A) is the order of the Pr. Commissioner waiving or reducing the penalty u/s. 273A and not the order of non imposition of penalty by the ITO or the order of cancellation of penalty for lack of ingredients as required by S. 271 by Appellate Authorities. This is relevant because in the cases where the penalty is waived partly u/s. 273A, the Pr. Commissioner is precluded from granting sanction u/s. 279 of the Act.

Therefore, the non-existence of the circumstances enumerated in S. 273A is a precondition for the initiation of proceedings for prosecution u/s. 276C or 277. Accordingly, the Pr. CIT should ascertain by himself that the circumstances prescribed in section 273A do not exist. A complaint filed for prosecution u/s. 276C or 277 would be illegal and invalid if the circumstances as provided in S. 273A exist.

FEW CASE LAWS:

A. **Failure to produce accounts or documents-Accounts had been submitted when criminal complaint was issued-Sanction for prosecution was held to be not valid [S. 279, Criminal Procedure Code, 1973, S. 482.]**

In *Shravan Gupta v. ACIT (2015) 378 ITR 95 (Delhi)(HC)* held that criminal complaint was issued under section 276D of the Income-tax Act, 1961, for the assessment year 2006-07 and on February 10, 2015 the authorisation was granted under section 279(1). On a petition under section 482 of the Criminal Procedure Code, 1973, quash the sanction. Held, that it was submitted by the petitioner that all details of his bank account had been furnished to the Income-tax Department in a letter dated February 11, 2015. It was an admitted position that the complaint was filed on February 12, 2015, when the letter dated February 11, 2015, was admittedly received by the Department. The factum of receipt of the letter was not mentioned in the complaint. The complaint was not valid and was liable to be quashed

b. Similarly in *N R Agarwal Industries Ltd vs. JCIT (2019) 173 DTR 145 (Guj)* it was observed that none of the authorities gave clear finding about evading tax wilfully. Under 482 CRPC proceeding were quashed to avoid undue hardship to assessee

4. ***Whether prosecution can be initiated before completion of assessment or when the matter is pending in appeal***

The assessment proceedings and criminal proceedings are independent proceedings. The assessment proceedings are conducted by the Income Tax Authorities and are civil proceedings in nature, whereas prosecution for offences committed are tried before a competent court. The provisions of the Law of evidence that do not bind assessment proceedings, are to be strictly followed in criminal proceedings. In *P. Jayappan v. ITO (1984) 149 ITR 696 (SC)*, the court held that the two types of proceedings could run simultaneously and that one need not wait for the other. In *Kalluri Krishan Pushkar v Dy. CIT(2016) 236 Taxman 27 (AP& T) (HC)*, the court held that, existence of other mode of recovery cannot act as a bar to the initiation of prosecution proceedings. In that particular case the prosecution was initiated u/s. 276C, for non-payment of admitted tax and interest.

In P. Jayappan case, the court held that, there is no bar on continuation of prosecution just because a proceeding which may ultimately affect the prosecution or is likely to favour the assessee has been initiated or is pending. This can't be a ground for stay or adjournment of prosecution proceeding.

In *Vijay Kumar Mallik v. CIT (2017) 397 ITR 130 (Patna) (HC)*, Held, dismissing the writ petition, that it was apparent that the assessee had not been exonerated by the Income-tax Department in the adjudication proceedings till date. According to the assessee, the special leave petition filed by him was still pending in the Supreme Court. In such circumstances, there was no illegality in the order passed by the criminal court taking cognizance against the assessee under section 276C (1) and (2). [Also see *Radheshyam Kejriwal v. State of West Bengal (2011) 333 ITR 58 (SC)*]

In *V. Sadasiva Chetty (HUF) v. ITO (2003) 264 ITR 527 (Mad.)(High Court)* held that because of the pendency of reassessment, the prosecution cannot be whittled down and original assessment alone is to be considered for prosecution.

In *Kingfisher Airlines Ltd. v. ACIT (2014) 265 CTR 240(Karn.)(HC)* held that Criminal proceedings are not dependent on the recovery proceedings. Therefore, the pendency of proceedings initiated u/s. 201(1) and s. 201(1A) is not a legal impediment to continue the criminal prosecution against the petitioner. Proviso to s. 279(1) is not a condition precedent for issue of an order of sanction by the CIT or the CIT(A) u/s. 279(1). Subsequent treatment of an individual as the principal officer of the petitioner company will not result in quashing of the proceedings against the individual who was treated as principal officer while initiating the proceedings. Proceedings are allowed to be continued by trail court.

In *CIT v. Bhupen Champak Lal Dalal & Anr (2001) 167 CTR 283 (SC),*

This was a case where the assessee asked for stay of criminal proceedings in view of same question being pending before the ITAT. All court starting with sessions, High Court & Supreme Court concurred with the order of the Magistrate staying the prosecution to await the decision of ITAT. The Supreme court Held:

"The prosecution in criminal law and proceedings arising under the Act are undoubtedly independent proceedings and, therefore, there is no impediment in law for the criminal proceeding to proceed even during the pendency of the proceedings under the Act.

However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority"

This judgement has been followed by many High Courts including *Delhi High Court in Income Tax Officer v Giggles(p) Ltd. And Ors.(2007) 301 ITR 32*

In *Naresh Prasad v. UOI (2005) 276 ITR 633 (Patna)(High Court)*, If appeal is pending against assessment order, prosecution proceedings should not be launched

In *Gauri Shankar Prasad v. UOI (2003) 261 ITR 522 (Patna)(High Court)* held that during pendency of appeal before Commissioner (Appeals), interim stay of criminal proceedings is to be granted.

S. 276(C)(1) Prosecution for bogus transaction: If a stay application is filed before the CIT(A) to seek a stay of the assessment order, during the pendency of such application, the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceed. *Ramchandran Ananthan Pothi v. UOI, W.P NO.761 OF 2018, dtd: 04/09/2018 (Bombay High Court)*

In *Suresh & Co Pvt Ltd N/M no. 84 of 2019 dt 25/1/2019 (In Income tax Appeal No 738 of 2016)* the Hon Court observed that pending the appeal before HC against levy of penalty u/s. 271(1)(c) launching of prosecution be stayed.

Similar view have been taken in *Deepak Fertilizer & Petro Chemical corporation Ltd v. Addl CIT [ITA No . 785 /2017 dt 21/8/2017*

In *Sayarmull Surana v. ITO, Business Ward XII (3), Chennai- [2019] 101 taxmann.com 228 (Madras)-CRL. R.C. No. 111 of 2011-CRL.M.P. No. 1 of 2011 dated December 14, 2018 ;* Where during pendency of assessee's appeal before Tribunal, his stay petition was dismissed and thereupon AO initiated prosecution proceedings under section 276C for non-payment of determined tax, in view of fact that assessee was agitating his case before Tribunal, which was final fact-finding body, the Court held that there was no necessity to launch prosecution hurriedly because law of limitation under section 468 Cr. P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974.

5. Findings of the Appellate Tribunal

The Appellate Tribunal is the final fact finding authority under the Act. Hence, the findings and the orders of the Appellate Tribunal are binding on the Commissioner of Income tax. On the aforesaid proposition, the two important questions that may arise are:

(1) If there is a finding of the Appellate Tribunal that there is no concealment and no false statement, etc., then whether or not the Commissioner of Income tax would be stopped from initiating proceedings under S. 277? and

(2) How far are the findings of the Appellate Tribunal in the assessment proceedings binding upon the trial court in respect of the proceedings for prosecution u/s. 277?

The Supreme Court, in *Uttam Chand v. ITO (1982) 133 ITR 909 (SC),*

Prosecution u/s 277 was for filing of false return because the registration of the firm was cancelled on the ground that it was not genuine The Appellate Tribunal reversed the finding and held the registration of the firm to be genuine and consequently the return as valid. The Supreme Court held that once the ITAT had held that the firm was genuine & returns valid, the prosecution under IT Act could not continue.

The *P & H Court, in ITO v. Janta Trading Co. (2003) 263 ITR 24(P&H)(High Court)* held that Where no prima facie case was made out that assessee willfully concealed sale of bags of cement, prosecution of assessee under section 276C / 277 was unsustainable.

If the penalty for concealment is quashed on technical grounds due to limitation or due to violation of the due process of law, as the penalty is not quashed on merits it

cannot be said that there should not be any prosecution. Similarly, when the Appellate Tribunal holds that the assessee is liable for penalty, the conviction is not automatic. The concerned court has to examine the witnesses and has to come to an independent finding as to whether the accused is guilty of the offences by following the due process of law.

6. ***Charge in complaint under one section can it be shifted to another section***

The complaint filed is in respect of each of the offence for which the accused is prosecuted under a specific section. At the time of trial, it is felt that the accused is guilty under another section charge on which the complaint was filed. Thus what is sought to introduce is a charge of a different nature under a different provision and section, in such a case the entire complaint is bad and the prosecution fails since the accused cannot be charged under different section which is different in nature and the offence is specifically different. It may further be noted that while sanctioning prosecution under section 279 the Pr. CIT had applied his mind to the provisions of a particular section and offence in respect of which the section contemplates prosecution to change the complaint to a different charge is not permissible. In such a case the complaint is bad and vitiated in law.

VI. Penalty and prosecution – S. 271(1)(c)/270A and S. 277

Simultaneous action for imposing a penalty and launching prosecution for the same offence is not barred under the income Tax Act, 1961. For the new Act does not contain any provision analogous to section 28(4) of the old Act. The omission of this provision from the 1961 act enables the Income Tax Officer to launch prosecution for false verification, concealment of particular of income, abetment etc. Under section 277 and 278 even where penalty proceedings have been initiated under section 271(1)(c) etc.

The recent **circular no. 24/2019 dt 9/9/2019** provides that for the offence u/s. 276C(1) prosecution shall be launched only after confirmation of the order imposing penalty by the ITAT .

In *S.P. Sales Corporation v. S. R. Sikdar (1993) 113 Taxation 203 (SC)* and *G. L. Didwania v. ITO (1995) 224 ITR 687 (SC)*, the Hon'ble Apex Court laid down the principle that "The Criminal Court no doubt has to give due regard to the result of any proceedings under the Act having bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act."

In *K. C. Builder v. ACIT (2004) 265 ITR 562 (SC)*, the court held that when the penalty is cancelled, the prosecution for an offence u/s 276C for wilful evasion of tax cannot be proceeded with thereafter. Following this principle the courts have quashed prosecution proceedings on the basis of the cancellation of penalty by the Appellate Authority (*Shashichand Jain & Ors. v UOI (1995) 213 ITR 184 (Bom) (HC)*.

When Tribunal decides against the assessee in quantum proceedings and if there is possibility of department launching prosecution proceedings, it may be desirable for the assessee to file an appeal before the High Court. Various courts have held that, when the substantial question of law is admitted by a High Court, it is not a fit case for the levy of penalty for concealment of Income (*CIT v. Nayan Builders and Developers (2014) 368 ITR 722 (Bom.) (HC), CIT v. Advaita Estate Development Pvt. Ltd. (ITA No. 1498 of 2014 dt. 17/2/2017) (Bom.)(HC), (www.itatonline.org) CIT v. Dr. Harsha N. Biliangady (2015) 379 ITR 529 (Karn.) (HC)*. A harmonious reading of the various ratios it can be contended that if penalty cannot be levied upon the admission of a substantial question of law by the Jurisdictional High Court, it cannot be a fit case for prosecution.

In *V. Gopal v. ACIT (2005) 279 ITR 510 (SC)*, the court held that when the penalty order was set-aside, the Magistrate should decide the matter accordingly and quash the prosecution.

In *ITO v. Nandlal and Co. (2012) 341 ITR 646 (Bom.) (HC),* the court held that, when the order for levy of penalty is set aside, prosecution for wilful attempt to evade tax does not survive.

Non-initiation of penalty proceedings does not lead to a presumption that the prosecution cannot be initiated as held in *Universal Supply Corporation v. State of Rajasthan (1994) 206 ITR 222 (Raj) (HC) (235), A.Y. Prabhakar (Kartha) HUF v. ACIT (2003) 262 ITR 287 (Mad.) (288).* However, if penalty proceedings are initiated and after considering the reply, the proceedings are dropped, it will not be a case for initiating prosecution proceedings.

CBDT guidelines had instructed that where quantum additions or penalty have been deleted by the departmental appellate authorities, then steps must be taken to withdraw prosecution (Guidelines F. No. 285/16/90-IT (Inv) 43 dated 14-5-1996).

- where penalty have been deleted by the departmental appellate authorities, then steps must be taken to withdraw prosecution :

If the penalty is quashed on "technical grounds such as "Limitation" or "Violation of the due process of law" penalty not quashed on merits as such it does not impact the prosecution proceedings.

In *Radheshyam Kejriwal v. State of West Bengal (2011) 333 ITR 58 (SC)*

The following principles were laid down by the Supreme court:

1) Adjudication proceeding and criminal prosecution can be launched simultaneously.

2) Decision in adjudication proceeding is not necessary before initiating criminal prosecution.

3) Adjudication proceeding and criminal proceeding are independent in nature to each other.

4) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution.

5) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue and

6) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue underlying principle being the higher standard of proof in criminal cases.

In *ITO v. Rajan and Co. And Ors (2007) 291 ITR 345 (Del)(HC)* Question before Delhi High Court was where ITAT had quashed the penalty leived and confirmed by the lower authorities on the ground that same was without recording satisfaction as contemplated u/s. 271(1)(c)

Whether a prosecution u/s 276C of the said Act can be allowed to be continued in such a case holding that the penalty proceeding u/s 271(1)(c) of the said Act were terminated merely on the ground of some technicality and not on merits?

High Court said it was not a mere technicality and penalty was quashed on merits.

VII. Monetary Limit

Old Circular - In term of circular dated February 7th 1991, if there is evade tax of less than ₹ 25,000/-, no prosecution could be lunched u/s. 276C(1) and 277.

In the case of *Magdum Dundappa Lokappa v. Income tax Dept. (rep by its Income tax Officer, Angad Kumar) / Suresh Sholapurmath v. Income tax Dept (rep by its Income tax Officer, Angad (Kumar) (2017) 397 ITR 145 (SC)*

Supreme Court held:

Allowing the appeals; as the amount involved was small, and had been paid with interest long ago, the Circular dated February 7, 1991 squarely applied and no proceedings should have been filed as the amount was below ₹ 25,000. Proceedings against the appellants were to be quashed.

The **new monetary limits** have been provided by the latest *circular no 24/2019 dt 9/9/2019* for cases following under sec 276B, 276BB, 276C(1) & 276 CC. This is to ensure that only in deserving cases prosecution should be launched.

Our PM has also remarked in his speech that honest taxpayers are not harassed and those who commit minor or procedural violations are not subjected to disproportionate or excessive action.

VIII. Abetment

S. 278 of the said Act deals with the offence of abetment in the matter of delivering any accounts or a statement or a declaration relating to income chargeable to tax. Though abetment has not been defined in the Income-tax Act the provisions relating to abetment of an offence are dealt with in Chapter V of the Indian Penal Code. In particular S. 107, 108, 108A and 110 of IPC are important. On the perusal of S. 107, it is seen that the offence of abetment is committed in three ways, namely –

(a) by instigation;

(b) by conspiracy; or

(c) by intentional aid.

In order to constitute abetment, the abettor must be shown to have intentionally aided in the commission of a crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough to fulfil the ingredients of the offence as envisaged by S.107. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional adding and active complicity is the gist of the offence of abetment. (*Shri Ram v. State of Uttar Pradesh 1975 (SC) (Cr. 87), 1975 AIR 175, 1975 SCC (3) 495*). For an offence of abetment, it is not necessary that the offence should have been committed. A man may be guilty as an abettor, whether the offence is committed or not. (*Faunga Kanata Nath v. State of Uttar Pradesh, AIR 1959 SC 673*). Further, a person can be convicted of abetting an offence, even when the person alleged to have committed that offence in consequence of abetment, has been acquitted. (*Jamuna Singh v. State of Bihar, AIR 1967 SC 553, 1967 SCR (1) 469*). In *Smt. Sheela Gupta v. IAC (2002) 253 ITR 551 (Delhi) (HC) (552)*, the Court held that, when the Tribunal has set aside the order of the Assessing Officer, the complaint filed for abetment does not survive hence the complaint was quashed.

1. Liability of an advocate or a chartered accountant for abetment

S. 278 of the said Act, imposes a criminal liability on the abettor for abetment of false return etc. Circular No. 179 dt. 30/1975 (1975) 102 ITR 9 (St.)(25) explain the provision. Under this section, if a person abets or induces in any manner, another person to make or deliver an account, statement, declaration which is false and which he either knows to be false or does not believe to be true, he shall be punishable with rigorous imprisonment of not less than three months. The section casts an onerous duty on the advocates, Chartered Accountants and Income Tax Practitioners to be cautious and careful. The legal profession is a noble one and legal practitioners owe not only a duty towards his client but also towards the court. It would be highly unprofessional if a legal practitioner is to encourage dishonesty or to file such returns knowing or having reason to believe that the returns or declarations so made are false.

In *P. D. Patel v. Emperor, (1933) 1 ITR 363 (Rangoon) (HC)*, a warning has been given of which every legal practitioner has to take a serious notice. In this case, an advocate

deliberately omitted in a return submitted by him a certain amount of money and persisted in taking up false defences. The Government lost a huge amount because of the exclusion of the said amount in the return filed by the advocate on behalf of his client. A fine for the said offence was levied by the trial court on an appeal, the High Court took a serious view, of the offence and held that in a case like this, the punishment should be deterrent and exemplary and the assessee was ordered to be kept in simple imprisonment for one month. In *Navrathna & Co. v. State (1987) 168 ITR 788 (Mad.)(HC) (790)*. The court held that, merely preparing returns and statement on the basis of the accounts placed before the Chartered Accountant, the question of abetment or conspiracy cannot arise.

The Supreme Court in the case of *Jamuna Singh v. State of Bihar, AIR 1967 SC 553 (Supra)*, has held that a person can be convicted of abetting an offence even when the person alleged to have committed that offence in consequence of abetment has been acquitted.

In *T.D. Gandhi, ITO v. Sudesh Sharma (2015) 230 Taxman 572 (P&H)(HC)* Respondent-accused, an advocate, was a tax practitioner. Main assessee, a Railway contractor, had engaged him for purpose of submission of his returns and supplied him requisite documents, including TDS certificates. Respondent filed return on behalf of main assessee and claimed a refund on basis of TDS certificates. Complainant-ITO opined that TDS certificates were not genuine and refund was wrongly claimed. He thus filed complaint against respondent-accused for commission of offences punishable under sections 418, 465, 468 and 471 of IPC. Trial Court dismissed said complaint . On appeal to High Court dismissing the appeal of revenue the Court held that ; since complainant ITO had miserably failed to point out that respondent was liable for preparing false documents which were rather supplied to him by main assessee, Trial court was justified in dismissing complaint filed against him. (AY. 1988-89)

IX. Offences by Companies, etc.

S.278B makes certain provisions with regard to offence committed by companies, firms, association of person and bodies of individuals, whether incorporated or not. Where an offence has been committed by a company, a firm, association of persons, or body of individuals, the person, who was in charge of and was responsible for the conduct of its business at the time when the offence was committed will be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence. Further, if in the case of a company it is proved that the offence bad been committed with the consent or connivance of or is attributable to any neglect on the part of the company, such director, manager, secretary or others will be deemed to be guilty of the offence and will be liable to be prosecuted and punished accordingly. This provision will also apply in relation to *mutatis mutandis* committed by a firm, association of persons or body of individuals.

Under sub-section (1) to sec 278B, the essential ingredient for implicating a person is his being "in charge of" and "responsible to" the company for the conduct of the business of the company. The term responsible is defined in Blacks Law dictionary to mean accountable. Hence, it is necessary that persons at the time when the offence was committed were "in charge of" and "was responsible" to the company for its business and only when the same is proved then persons are required to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Both the ingredients "in charge of" and "was responsible to" have to be satisfied as the word used is "and" [*Subramanyam v. ITO (1993) 199 ITR 723 (Mad.)*].

In *Madhumilan Syntex Ltd & Ors v. UOI (2007) 290 ITR 199 (SC)* it has been held that company can be prosecuted, only the substantive sentence cannot be imposed other consequences like payment of fine etc would ensue.

In *Onkar Chand & Co. & Ors. v. Income-tax Department (2009) 237 CTR 530 (HP) (High Court)* held that complaints for offences under sections 276C, 277 and 278B was filed against the firm and all the partners. In absence of any specific allegation against the partners of the firm other than those who had verified the return of the firm that they were responsible for the conduct of the business of the firm, prosecution against these partners was held to be not sustainable.

In *Homi Phiroze Ranina v. State of Maharashtra (2003) 131 Taxman 100 / 263 ITR 636 (Bom.)(High Court)* held that unless complaint disclosed a prima facie case against applicant-directors of their liability and obligation as principal officers in the day-to-day affairs of company as directors of the company under section 278B, the applicants could not be prosecuted for offences committed by the company.

In case of *Kalanithi Maran v UOI - [2018] 92 taxmann.com 308 (Madras) W.P. NO. 34010 OF 2014 dated MARCH 28, 2018*; Where there was no material to establish that assessee, a Non-Executive Director of the company, was in-charge of day-to-day affairs, management, and administration of his company, the Court held that the AO could not have named him as Principal Officer and prosecute him under section 276B for TDS default committed by his company.

In *Dhrupadi Devi (Smt.) v. State of Rajasthan (2001) 106 Comp. Cas 90 (Raj.) (HC)(93)*, the court held that criminal liability of partner cannot be thrust upon his legal heirs .

In *ITO v Kamra Trading Co. (2004) 267 ITR 170 (P&H) (HC)* the court held that launching of prosecution against sleeping partner was held to be bad in law for failure to pay the tax.

In case of *Sujatha Venkateshwaran (Mrs) v. ACIT (2018) 408 ITR 545/ 257 Taxman 195 (Mad)(HC)* : A company, of which the assessee was an MD, had claimed bogus expenses/ deduction / loss. Accordingly, ACIT filed a complaint inter alia against the assessee for offence under Indian Penal Code (IPC) and u/s 276C(1), 277, 278 and 278B of the Act treating assessee as Principal Officer of the company. The assessee contended that she was not in-charge and responsible for carrying on day-to-day affairs of company and thus without issuance of notice u/s 2(35) by the ACIT to treat her as Principal Officer, the complaint filed against her was not maintainable. The Court dismissed the petition filed by the assessee holding that since the assessee had subscribed her signature in P&L A/c and balance sheet for relevant assessment year which were filed alongwith returns, ACIT was justified in naming her as principal officer and accordingly she could not be exonerated for offence u/s 277. Further, it held that for filing a complaint u/s 276(C)(1), 277 and 278B, determination of a Principal Officer was not necessary and non issuance of individual notice before filing of complain would be of no consequence.

In case of *Jamshedpur Engg. & Machine Mfg. Co. Ltd.v.Union of India [1995] 214 ITR 556 (PAT.)* it was held

"that every director or person associated with the company will not be held liable for the offence. It is only the person who was entrusted with the business of the company and was responsible to the company for the conduct of its business who will be liable for the offence alleged."

The Supreme Court in the case of *Girdharilal Gupta vs. D. N. Mehta, AIR 1971 S.C. 2162*, has held that since the provision makes a person who was in charge of and responsible to the company for the conduct of its business vicariously liable for an offence committed by the company. The provision should be strictly construed.

X. Offences by HUF

S. 278C provides for criminal liability of the Karta, or members of a HUF in respect of offences committed by the Hindu Undivided Family. Under this provision, when an offence has been committed by HUF, will be deemed to be liable to be prosecuted and punished accordingly, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the offence. If the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any other member of the family, such other member shall be deemed to be guilty of the offence and shall be liable to

be prosecuted and punished accordingly. In *Roshan Lal v. Special Chief Magistrate (2010) 322 ITR 353 (All.) (HC)*, the Court held that a member of HUF cannot be held liable for delay in filing of return of HUF though he has participated in the assessment proceedings.

XI. Limitation for Initiation of Proceedings

Chapter XXXVI of the Code of Criminal Procedure, 1973 lays down the period of limitation beyond which no Court can take cognizance of an offence which is punishable with fine only or with imprisonment not exceeding three years. But, for Economic Offences (In respect of applicability of Limitation Act, 1974) it is provided that nothing in the aforesaid chapter XXXVI of the Code of Criminal Procedure, 1973, shall apply to any offence punishable under any of the enactment specified in the Schedule. The Schedule referred to includes Income tax, Wealth tax, etc.

In *Friends Oil Mills & Ors. v. ITO (1977) 106 ITR 571 (Ker.) (HC)*, dealing with S.277 of the Act, the Hon'ble Kerala High Court held that the bar of limitation specified in section 468 of the Code of Criminal Procedure, 1973 would not apply to a prosecution, under the Income-tax Act (also refer *Nirmal Kapur v. CIT (1980) 122 ITR 473 (P&H) (HC)*. In view of this, as there is no fixed period of limitation for initiation of proceedings under the Act, the sword of prosecution can be said to be perpetually hanging on the head of the assessee for the offences said to have been committed by him.

It may be noted that this may result in injustice to the assessee because a person who is in a better position to explain the issue or things in the initial stage, may not be able to do so later, if he is confronted with the act of commission of an offence under a lapse of time. In *Gajanand v. State (1986) 159 ITR 101 (Pat) (HC))*, the Hon'ble High Court held that where the Criminal Proceedings had proceeded for 12 years and the Income tax department failed to produce the evidence, the prosecution was to be quashed. In *State of Maharashtra v. Natwarlal Damodardas Soni AIR 1980 SC 593, 1980 SCR (2) 340*, the Court held that a long delay along with other circumstances be taken in to consideration in the mitigation of the sentence.

Where there is inordinate delay in initiating prosecution proceedings, the complaint is liable to be dismissed as in the case of *Rakoor Industries P.Ltd v. R.L. Ball, ITO (2011) 332 ITR 56(Del)*

In *Narain Dev Dhablania v. ITO (2003) 262 ITR 206 (P&H)(High Court)* held that though the cause of action for initiating prosecution is furnished on the date when income is concealed or on date when concealment becomes known to the Department, once proceedings are finalised, the prosecution has to be commenced within a reasonable period. (A.Y. 1975-76)

XII. Whether the Courts have the power to reduce punishment

S.275A to 278A provide for punishment in terms of imprisonment but section 276D provides for fine as an alternative for imprisonment. Since the legislature has used the phrase "shall be punishable" in each of the sections, the question that arises whether the Court can interpret the phrase "shall be punishable" to mean "may be punishable" and whether the Court will have discretion to award the imprisonment or not, or to award only fine and not imprisonment.

The Supreme Court in *State of Maharashtra v. Jaymanderalal, AIR 1966 SC 940*, while interpreting section 3(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, held that by using the expression shall be punishable, the legislature has made it clear that the offender shall not escape the penal consequences". In *Modi Industries Ltd v. B.C. Goel, (1983) 144 ITR 496(All) (HC)*, has taken the view that Courts have no power to reduce the punishment prescribed by the statute.

XIII. Compounding of Offences

S. 279(2) empowers the Chief Commissioner or Director General to compound an offence under the Act, either before or after the initiation of proceedings. The Department has issued new set of guidelines for compounding of offences under direct taxes vide notification F.No.

285/08/2014 IT (Inv.V)/147 dated 14th June, 2019 (www.itatonline.org). (Also read circular no. 25/2019 dt 9/9/2019.

These guidelines replace the earlier guidelines issued vide F.No 285/35/2013, dated 23rd Dec 2014, with effect from 17/06/2019. However, cases that have been filed before this date shall continue to be governed by earlier guidelines.

Central Board of Direct Taxes, CBDT, in an attempt to limit initiation of prosecution to deserving cases and also to provide an opportunity to the assessees to file a compounding application beyond the period of limitation as a one-time measure till 31.12.2019, issued circulars on 09.09.2019. Under S.279(2), an offence can be compounded at any stage and not only when the offence is proved to have been committed. Once compounding is effected, the assessee cannot claim a refund of the composition amount paid on the ground that he had not committed any of said offences (*Shamrao Bhagwantrao Deshmukh v. The Dominion of India (1995) 27 ITR 30 (SC)*). The requirement under S.279(2) is that the person applying for a composition must have allegedly committed an offence. The compounding charges might be paid even before a formal show cause notice has been issued. On the other hand, even if the accused is convicted of an offence and an appeal has been preferred against the same, there seems to be no particular bar to give effect to a compounding during the pendency of such appeal and the accused shall not have to undergo the sentence awarded if he pays the money to be paid for compounding. Prosecution initiated under Indian Penal Code, if any, cannot be compounded under the provisions of the Income-tax Act. However, S. 321 of the Criminal Procedure Code, 1973, provides for withdrawal of such offences.

Notwithstanding anything contained in the guidelines, the Finance Minister may relax restrictions for compounding of an offence in a deserving case on consideration of a report from the board on the petition of an appellant.

As per Clause 7(ii) of the ***GUIDELINES FOR COMPOUNDING OF OFFENCES UNDER DIRECT TAX LAWS, 2019 CIRCULAR F. NO. 285/08/2014-IT(INV.V)/147,DATED 14-6-2019*** no application of compounding can be filed after the end of 12 months from the end of the month in which prosecution complaint, if any, has been filed in the court of law in respect of the offence for which compounding is sought.

Further, as per Clause 9 of the Guidelines , the restrictions imposed in Para 7(ii) of these Guidelines for compounding of an offence in a deserving case may be relaxed, where application is filed beyond 12 months but before completion of 24 months from the end of month in which complaint was filed. Thus, the extended time limit is provided

Further, as per Section 3 (1) of the THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020 where, any time-limit has been specified in, or prescribed or notified under, the Income Tax Act for completion or compliance of any action under the Income Tax Act, which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020 then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021.

As per Circular No. 9 of 2020 (2020) 422 ITR 131 (St) if the compounding Application is accepted then Assessee is eligible to opt for the Vivaad Se Vishwas Scheme. The time limit for filing declaration under the VSV scheme has been extended till 28th February, 2021. Hence, benefit of the same can be availed by assessee.

Procedure for compounding

The accused has to approach the Pr. CCIT /CCIT/Pr. DG/DG with a proposal for compounding. A hearing has to be given to the assessee by the Pr. CCIT on the proposal for compounding made by him and thereafter the compounding fees are finally determined. The ultimate decision as to the acceptance or refusal of the compounding proposal lies with the

Pr. CCIT. If the Pr. CCIT accepts the proposal for compounding, the same would have to be recommended by him to the Central Board of Direct Taxes. It may be noted that offences under Indian Penal Code cannot be compounded by the competent authority under the Income-tax Act. However, generally when the alleged offences under direct tax laws are compounded, the prosecution launched for the corresponding alleged offences under IPC are also withdrawn.

In *V.A. Haseeb and Co. (Firm) v. CCIT (2017) 152 DTR 306 (Mad.) (HC)*, the Court held that, application for compounding cannot be rejected merely because of the conviction of assessee in the Criminal Court.

In *Punjab Rice Mills v. CBDT (2011) 337 ITR 251 (P& H) (HC)*, it was held that the Court will not compel the Commissioner to compound the offence or interfere unless the exercise of discretionary statutory power was held to be perverse or against the due process of law.

In *S Anil Batra v. CCIT (2011) 337 ITR 251 (Delhi)(HC)*, The Court held that where three complaints had already been filed against petitioner for offence under section 276B and in two of those, petitioner stood convicted by Court, competent authority was not bound to effect compounding in violation of mandatory prohibitions prescribed, therefore, offence could not be said to be compoundable at instant stage. The Court up held the rejection order of Commissioner for not compounding the offences. Writ petition of assessee was dismissed.

In the case of *Government of India, Ministry of Finance, Department of Revenue (CBDT) v. R. Inbavalli (2018) 400 ITR 352/301 CTR 225 (Mad.) (HC)*, Allowing the petition the Court held that; When High Court has given direction to consider the application for compounding, pendency of appeal against conviction could no longer be a reason for refusing consideration for compounding of offence ,with in meaning of clause 4.4 (f) of Guidelines dated 16-5-2008 (F.No. 285/90/2008 - IT (Inv) dt. 16 th May, 2008) (AY. 1996-97 to 1998-99)

In the case of *Sports Infratech P. Ltd. v.Dy. CIT (2017) 391 ITR 98 (Delhi) (HC)*, allowing the petition the Court held that ;failure by assessee to deposit amount deducted as tax at source was beyond its control, Order rejecting application for compounding not sustainable - Guidelines issued by CBDT do not bar for consideration of application of offence having regard to facts of the case.

In the case of *Vikram Singh v. UOI (2017) 394 ITR 746 (Delhi) (HC)* Allowing the petition ;the Court held that; As, there is no time limit prescribed for filing an application for compounding of an offense, the CBDT is not entitled to reject an application on the ground of 'inordinate delay'. The CBDT has no jurisdiction to demand that the assessee pay a 'pre-deposit' as a pre-condition to considering the compounding application. The larger question as whether in the garb of a Circular the CBDT can prescribe the compounding fee in the absence of such fee being provided for either in the statute or prescribed under the rules is left open .

It further held that Explanation to section 279 of the Act vests CBDT with powers to issue circulars, orders, instructions or directions for proper composition of offences and CBDT Guidelines on Compounding of Offences, 2019, issued under such power were exhaustive in nature and did not reflect any exercise of power which was arbitrary or illegal.

XIII. Quashing Petition under Sec. 482 of The CR.P.C.

One of the most resorted to and sought after remedy in prosecutions under Chapter XXII of the I.T. Act, is filing of a quashing petition under Sec. 482 of the Cr.P.C. However, one has to understand that for each and every case, quashing petition under Sec.482 of the Cr.C.P.C., may not be an effective remedy.

The general and consistent law is that the inherent power of the High Court under Sec. 482 of Cr.P.C. for quashing has to be exercised sparingly with circumspection and in the rarest of rare cases.

The Supreme Court in *Som Mittal v. Govt. Of Karnataka AIR 2008 SC 1528*, has held that the power under Sec. 482 Cr.P.C. must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Sec. 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal.

In the case of *Central Bureau of Investigation v. Ravi Shankar Srivastava 2006 Cri LJ 4050*, the Supreme Court was of the opinion that, the High Court in exercise of its jurisdiction under Sec. 482 of the Code does not function either as a court of appeal or revision, and held and envisaged that three circumstances under which the inherent jurisdiction may be exercised, namely,

1. to give effect to an order under the Code,
2. to prevent abuse of the process of the Court, and
3. to otherwise secure the ends of justice.

The Supreme Court further held that while exercising powers under Sec. 482 of the Cr.P.C., the court does not function as a court of appeal or revision. Inherent jurisdiction under Sec. 482 of the Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in Sec. 482 of the Cr.P.C., itself. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of the court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

In another case, *State of Haryana and others v. Ch. BhajanLal & Ors AIR 1992 SC 604*, the Supreme Court laid down the categories of cases in which the High Court may, in exercise of powers under Sec. 226 of the Constitution of India or under Sec. 482 Cr.P.C., interfere in proceedings to prevent abuse of process of the Court or otherwise to secure the ends of justice.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Sec. 156(1) of the Code except under an order of a Magistrate within the purview of Sec. 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Sec. 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

It has been held by the Apex Court that "when the allegations made in the complaint even if taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or where allegations made in the complaint and the evidence produced in support of the same do not disclose the commission of any offence and make out a case against the accused, it is open to the High Court in the exercise of extra ordinary inherent powers to quash the complaint or the FIR."

In the case of Pepsi Foods Ltd. v. Special Judicial Magistrate 1998 Cri LJ 1, wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Sec. 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

Conclusion :

Assessee's as well as Tax Practitioners must be ever of prosecution provision before deciding their tax affairs. As once prosecution is launched the whole procedure is very cumbersome and involves heavy cost.

Faceless Penalty May Leave Taxpayers Without Face

CA Anish M. Thacker

Justice A.K. Sikri, began his judgment in *Justice K. S. Puttaswamy (Retd) v. UOI [2018] 97 taxmann.com 585 (SC)* with ***"It is better to be unique rather than the best. Because, being the best makes you number one but being unique makes you the only one"***. The Government seems to have taken these words very seriously and has embarked on the path to be unique, the only one to make income-tax proceedings completely 'faceless'. It was assessments that first became faceless with the faceless assessment scheme being notified on 13th August 2020, followed by the faceless appeals scheme being notified on 25th September 2020 and now, the scheme for faceless penalty has been notified on 12th January 2021. The icing on the cake appears to be that even the proceedings before the Income-tax Appellate Tribunal are to be conducted in a faceless manner as has been proposed in the Finance Bill, 2021.

The end goal of making the income-tax proceedings faceless as stated, appears to be noble, that is to reduce the interaction and interface between a taxpayer and a tax gatherer, so as to minimise the chances of undue influence as well as to save the time of both the taxpayer and the tax administration and to effectively make use of resources of the Government using technology. Also, decision making by a unit, as opposed to an individual, is stated to reduce inconsistency in the assessment and stated to reduce instances of assessments being high pitched.

The 'faceless' approach may not work in many cases, though. In fact, for a small taxpayer, the faceless proceedings can become onerous and expensive. Consider a case where a honest, middle class salary earner, say a retired schoolteacher, files his/her tax return and gets assessed at a higher income, though he/she has correctly and properly shown his/her income in the tax return. In the 'good old days', such a taxpayer, rather than engaging the services of a Chartered Accountant or a Tax Practitioner, would visit the tax office, explain the facts to the officer who had jurisdiction over the tax return, and come back smiling after having a cup of tea, where no consideration other than humane behaviour prompted the tax officer to offer the cup of tea to the honest taxpayer.. That in my view was a true citation of 'Honouring the Honest'. The schoolteacher could also well end up with offering free tuition to the officer's child for a session or two, to resolve particular difficulties that the child may have in a particular subject in his/her curriculum and that would be out of pure humane instinct rather than any kind of expectation to return a favour the tax officer may appear to have done. Au contraire, today, this very same taxpayer, not having the resources to know how to upload a tax return or even a response to a notice, will need to engage a Chartered Accountant or a Tax Practitioner to help him/her submit the response. The team looking at the response, does not necessarily see who the taxpayer is, what are the circumstances behind the filing of the return and based on written communication, the quality and clarity of which, could be suspect, take a decision to accept or reject the taxpayer's explanation.

Another aspect that we may need to remember in this regard is that the last two decades in particular, have shown us an assessment order with at an upward adjustment to the income returned, is invariably accompanied by a notice to show cause why penalty ought not to be levied for concealment of income or furnishing inaccurate particulars thereof. If this happens, the retired schoolteacher in our example, has to again go to the Chartered Accountant, get a response filed, and hope and pray for benevolence, not of the Almighty but of the team at the Regional Penalty Centre. A honest taxpayer, and there are several of them, feels condemned if he is visited with a penalty. Is he to be condemned without even hearing him in person, is the question we need to ask ourselves.

The circumstances in which a personal hearing to be given to the taxpayers are yet to be notified. The Supreme Court in *Hindustan Steel v. State of Orissa [1972] 83 ITR 26,* decided almost half a century ago, held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. It further held that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

To an honest taxpayer, the fact that penalty proceedings are quasi criminal or not, is probably not the issue. The issue for him, is that when his conduct has been blameless, even an allegation of contumacious conduct is prone to give him distress. If indeed a determination of the conduct of such a taxpayer i.e. whether he is honest or has displayed some kind of dishonest behaviour, is to be made, the least that a taxpayer deserves, is to be able to present its case, orally. Another observation that has come to light for many that have practiced for long enough is that in many cases where penalty is levied, prosecution follows, at times without due consideration of a taxpayer's' circumstances, which is likely to cause additional hardship. Therefore, the imposition of a penalty in a faceless manner without a hearing is given to the person to be penalised, needs to be seriously reconsidered.

A possible half way solution, which is clearly less than ideal, can be thought of if indeed the use of technology and the faceless nature of the proceedings cannot be dispensed with, is where the hearing can happen over a video conference and there will be a blanking out of the taxpayer's and the penalty imposing officer's on the video screen (I am told this is possible with the use of technology) and at least hearing out the taxpayer. In my view, this again, is a via media and not an optimum solution. A proceeding may be 'faceless' but may still be interactive where a taxpayer is 'heard' if not 'seen'.

The principles of natural justice are enshrined in the tax law of our country and both the taxpayer and the tax administration are well aware of these principles. A scheme of levy of a 'faceless penalty' where one may not always be able to put one's hand on the heart and vouch for these being truly followed, needs a relook.

The author is the President of The Chamber of Tax Consultants. Views expressed herein are personal.


Disincentivizing Education, The GST Way

Santosh Gupta & Shantanu Gupta, *Advocates*

The 2021 Union budget makes a provision of ₹ 93,224 Crore for the education sector. This is ₹ 6,000 Crore less than the allocation in the previous budget. We leave it to the educationists and economists to comment on adequacy or otherwise of this outlay for a population of 130 Crore. We will limit our essay on the issue of levy of Goods and Services Tax [GST for short] especially on the membership fees and the educational activities undertaken by the professional bodies like the All India Federation of Tax Practitioners [AIFTP for short], the GST Practitioners' Association of Maharashtra [GSTPAM for short], the Chamber of Tax Consultants [The Chamber for short] and others.

The Issue:

Section 7 of the CGST Act: (Clause 99 of the Finance Bill)

A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1'st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. It has also inserted an explanation stating that the person and its members or constituents will be treated as two distinct persons and hence, any activities or transactions between them will be deemed as supply between two separate persons. This amendment is brought in view of the Hon'ble Supreme Court judgment in the case of State of West Bengal & Ors. v Calcutta Club Limited [Judgment dated 3.10.2019 in Civil Appeal No.4184 of 2009] (2019(29) G.S.T.L 545 (S.C.)) for erstwhile Service tax regime wherein it was held that there cannot be sale of goods or provision of services between the unincorporated private club / associations and its members owing to the principle of mutuality which treats such clubs / associations and its members as the same person. It was thought that this ratio could be applicable to GST as well and the clubs and similar other organizations might take this judgment as a precedent and stop paying tax and there could be a spate of claims by these organizations for refund of GST already collected from them.

The Discussion:

"Every government has a right to levy taxes. But no government has the right, in the process of extracting tax, to cause misery and harassment to the taxpayer and the gnawing feeling that he is made a victim of palpable injustice." -Nani Palkhivala

Retrospective levy of Tax:

On September 25, the Singapore seat of the Permanent Court of Arbitration had unanimously decided that India's retrospective demand of Rs 22,100 Crore as capital gains and withholding tax imposed on British telecommunication company Vodafone Plc for a 2007 deal was "in breach of the guarantee of fair and equitable treatment". The latest Cairn ruling is the second arbitral setback to India over its position on retrospective taxation. In its judgment in the Cairn case, the three-member arbitration panel said: "Tax demand against the claimants (Cairn Energy Plc and Cairn UK Holdings Limited) in respect of AY (assessment year) 2007-08 is inconsistent with the treaty and the claimants are relieved from any obligation to pay it and orders the respondent (Indian government) to neutralize the continuing effect of the demand by permanently withdrawing the demand."(Source- Google)

A retrospective tax is more often introduced in order to rescind judicial decisions against the Revenue. Article 141 of the Constitution ordains that the law declared by the Hon'ble Supreme Court shall be binding on all the courts and authorities within the territory of India. This Article recognizes the role

of the Hon'ble Supreme Court to alter the law, in course of its function to interpret legislation, ***in order to bring the law in harmony with social changes. [P.L.O. Corporation v. Labour Court] (1990) 3 SCC 632 (CB) paragraphs 59,81.*** It is normally assumed that no amendment is introduced by the legislature in order to negate the principle (ratio decidendi) laid down by the Hon'ble Supreme Court. If such an eventuality arises the apex Court could declare such negative amendment as ultra vires the Constitution. Such may me the case with the present amendment. Moreover, this amendment sets at naught the age-old doctrine of '*Mutuality*' so scrupulously and consistently accepted and followed by the Courts. The Income Tax law of the country still accepts it. In any case a tax with retrospective effect is not a fair proposition in a welfare State.

Knowledge/Education - Whether goods or service:

"Education" is not defined in the CGST Act but as per Apex Court decision in *Loka Shikshana Trust vs [CIT 1976 AIR 10, 1976 SCR (1) 461*] dated 28 August, 1975, education is process of training and developing knowledge, skill and character of students by normal schooling. However, this judgment was rendered in the backdrop of Section 2(15) of the Income Tax Act and is as old as 45 years. The GST Council has adopted this definition without taking into account the all round advancement in the field of education, and more so when Google spreading free scholarly education and providing a wealth of knowledge and information, was not on the horizon and voluntary bodies imparting education through Conferences, seminars, workshops, lectures and magazines were not much in vogue. As they say, law and its interpretation are not static concepts. They keep evolving themselves with the changing times. The Wikipedia now defines education in a much wider term: 'Education is the process of facilitating learning, or the acquisition of knowledge, skills, values, morals, beliefs, and habits. Education can take place in formal or informal settings and any experience that has a formative effect on the way one thinks, feels, or acts may be considered educational.' Seen from any angle, the education that disseminates knowledge gratis is neither goods nor a service.

Imparting knowledge through lectures and Write-ups whether a Taxable service:

The professional guilds as above organize conferences, seminars, webinars, workshops, lectures and publish magazines full of learned articles for the benefits of their members. At these programs, the enlightened ones in the profession share their knowledge, expertise and experience with the rest in an attempt to bring them at par with the best. At individual level, these stalwarts charge fees for their advice perhaps in lakhs. The delegate fees paid by the participants, a chicken feed as it is, barely covers the seating arrangement, sound, catering, literature and sundry expenses for convenience of the delegates to these educative sessions. This fee is but a reimbursement of the basic facilities made available to them. The knowledge imparted by the faculty and gained by the attendees is absolutely free. Can this activity, by any remote chance, be said to be covered by the definition of the term 'Business' obtaining in the CGST Act?

There is no contract between the association and its members to provide any specific service since there is neither an offer nor acceptance of any service. Membership is only a privilege, not an entitlement.

The eminent speakers and authors do not sell or exchange their knowledge or expertise at the conferences and Seminars. They only share it for free. There is no consideration between the giver and taker. The delegate fees and membership fees are towards sharing the administrative expenses and not towards the value of educational activities. The opinion by the eminent speakers is worth lakhs of rupees. The meager delegate fees cannot, by any stretch of the imagination could be called a consideration for the supply of their services as defined below:

The charging provision in Section 7(1)(a) reads as follows:

> "7. Scope of Supply:
>
> (1) For the purposes of this Act, the expression "supply" includes –
>
> (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of

business." Thus, only a supply which is made in the course or furtherance of "business" falls within the charging provision. The definition of "business" is contained in Section 2(17)(e)

"2. Definitions:

(17) "business" Section 2(17)(e) is similar to Article 366(29A)(e) which has been interpreted by the Hon'ble Supreme Court in State of West Bengal v Calcutta Club Ltd. [Judgment dated 3.10.2019 in Civil Appeal No.4184 of 2009] to not apply to an association of members where the principle of mutuality means that the members and the association are one and the same.

Standard Objects of the Associations:

It is pertinent to go through the vision statement of The Chamber of Tax Consultants to understand the real objective of forming such organisations:

'The Chamber shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognized by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.'

Do we, by any stretch of imagination, find an iota of any commercial or business angle in these objects? The answer is an emphatic No.

Discriminatory Legislation:

Services provided by an educational institution to students, faculty and staff are GST exempt. Educational Institution is defined to mean 'an institution providing services by way of: (i) Pre-school education and education up to higher secondary school or equivalent; (ii) Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; (iii) Education as a part of an approved vocational education course. Further the services provided – (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of, - (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or housekeeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; up to higher secondary: Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.'

Seen against the backdrop of the exemption granted to educational institutes as above, the professional Institutes provide education to their members in exactly on the same terms. While the teachers of these institutions are paid salaries and the taught pay tuition fees, the education imparted by the voluntary institutions is free. It is to be noted here that the Professional institutions are materially different from the Coaching classes run as commercial ventures. Thus taxing these voluntary organizations is downright discriminatory. In the circumstances, the proposed amendment needs to be withdrawn.

Conclusion:

When it comes to taxation, it is not the money involved but the hassles of complying with the complex GST law that worries the voluntary organizations and dampens the enthusiasm of the honoraries managing their affairs. Again, the number of professional associations discussed above falling in the net of the GST law would not be more than a couple of hundred in the country. The tax recovered there from would be a pittance. The government could well forego this revenue in the interest of 'Kaushal Vikas' of the tax consultants.

Provisions of Advance Ruling under The GST Act

Kaushik M. Vaidya, *Tax Consultant*

Preliminary and Importance:

Goods and Service Tax (GST) being an entirely new tax, law on it is not settled by any Judicial Pronouncements. In view on this, the role of Advance Ruling becomes Important. As per GST law, the Advance Ruling is a written decision given by the tax authorities to an applicant on questions relating to the Supply of Goods/Services. Thus the Advance Ruling mechanism is an effective one in bid to reduce confusion and promote transparency in the tax environment. It also has the effect of reducing the risk of litigation. **Section 95 to 106 of CGST/SGST Acts 2017** deal with Advance Ruling. **Rules 103 to 107A of CGST/SGST** Rules have been framed for its procedures and functioning.

Definitions and Constitution (Sec. 95):

An important definitions given under section 95 of CGST Act relevant to the Advance Ruling are mentioned as under:-

(1) **"Advance Ruling"** means the determination, by the authority of a question in an application regarding the liability of an applicant to pay tax in relation to the supply of goods or services or both proposed to be under taken or being undertaken by the applicant.

(2) **"Applicant"** means any person registered or desirous of obtaining registration under the CGST Act.

(3) **"Application"** means an application made under these provisions.

(4) **"Authority"** means the authority for Advance Ruling constituted under the CGST Act.

(5) **"Appellate authority"** means the appellate authority for Advance Ruling referred to in section 99 of CGST Act.

Authority for Advance Ruling (Sec. 96):

Authority for Advance Ruling **(AAR)** shall comprise one member from **CGST** administration and one member from **SGST/UTGST** administration.

Qualification and Appointment of Members (Rule 103):

The Central Govt. and the State Govt. shall appoint an officer having the experience of not less than **three years** in the rank of **Joint Commissioner as the Member of Authority for Advance Ruling.**

Which Type of Question Can be Sought (Sec. 97(2)):

As per sec 97 (2) of CGST/SGST Acts following questions can be sought under Advance Ruling.

(a) Classification of any goods or services or both;

(b) Applicability of a notification issued under the provisions of **CGST/SGST** Act having a bearing on the rate of tax.

(c) Determination of time and value of supply of goods or services or both;

(d) Admissibility of Input tax credit of tax paid or deemed to have been paid.

(e) Determination of the liability to pay tax on any supply of goods or services or both.

(f) Whether applicant is required to be registered; and

(g) Whether any particular thing is done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

Prescribed Application Form and Fees for Advance Ruling (Rule 104):

An applicant desirous of obtaining an Advance Ruling may make an application on common portal of **GSTN** in **Form of GST ARA-01** starting the question on which the advance ruling is sought. **A Fee of ₹ 5,000/-** has to be paid in the same manner of tax and other dues are paid.

Procedure on receipt of an Application (Sec. 98):

After seeking comments of concerned officer and examining relevant records and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, the authority will take a decision on admission. After admission, final hearing shall be held and authority shall pronounce its Advance Ruling.

Time limit for passing Advance Ruling (Sec. 98(6)):

The entire exercise is to be completed within 90 days from the date of receipt of an application.

Certification of Copies of Advance Rulings (Rule 105)

A copies of the advance ruling shall be certified to be a true copy of its original by any member of the authority of advance ruling.

Appeal to Appellate Authority and its Time Limit (Sec.100 and Rule 106):

If the applicant or jurisdictional officers are not satisfied with the order of Advance Ruling, an appeal can be filed before the appellate authority i.e. **Appellate Tribunal** for Advance Ruling in **Form GST ARA-02** within **30 Days** from the date of communication of Advance Ruling order to the concerned officer and the concerned applicant. This period can be **extended for further 30 days** by the appellate authority.

An Appeal against the order of advance ruling shall be made by the concerned officer or the jurisdictional officer referred to in **Sec.100** on the common portal in **Form GST ARA-03 within 30 days** from the date of communication of advance ruling order to the concerned officer and no fees shall be payable by the said officer or filing the appeal.

Fees for filling an appeal (Rule 106):

For Filing an appeal, fees of **₹ 10,000/-** has to be paid in the same manner as tax and other dues are paid.

Order of Appellate Authority (Sec.101):

The appellate authority within **90 days** may pass such order as it thinks fit, confirming or modifying the Advance Ruling appealed against or referred to. The parties to the appeal are to be given an opportunity of being heard.

Rectification of Advance Ruling (Sec. 102):

The order can also be rectified on any mistake apparent on record. However no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Applicability of Advance Ruling (Sec. 103):

The advance ruling pronounced by the authority or the appellate authority shall be binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer. However, if

facts or circumstances supporting the Original Advance Ruling have changed, then the said Advance Ruling shall not be binding.

Further if it is found that Advance Ruling was obtained by Fraud or Suppression of material facts or misrepresentation of facts, the said Advance Ruling can be declared *void ab initio.*

Last but not the least but an important point is to note that before applying for Advance Ruling it should be applied with necessary related documents and evidences, notifications or co-related judgment of the said authority or any **Appellate Tribunal or any Hon'ble. High Court or Hon'ble Supreme Court** along with proper and perfect representation before the authority to get the proper order of Advance Ruling.

Submission of Required Documents and other Evidences at the Time of First Hearing.

First paragraph must be in respect of name and address and GSTIN and in respect of Nature of Business and brief summary of Business Profile. Moreover following documents and other evidences are to be required to submit as under for getting an Advance Ruling from the Authority.

(1) Copy of Tax Invoice of outward supply of goods or services.

(2) Copy of Tax invoice of inward supply of goods or services.

(3) Copy of Trade Literature or Product Literature of the goods. So supplied or manufactured along with use and Basic Characteristics of Goods or Products.

(4) Copy of Related Notification.

(5) Copy of Certificate Issued by the Respective Authority along with mentioning the use of product or Services which has been Supplied by the Applicant.

(6) Copy of co Related Chapter Heading and Sub Heading under GST Tariff.

(7) Copy of co related order of Advance Ruling or Copy of Judgment given by the Appellate Tribunal Hon'ble High Court or the Hon'ble Supreme Court.

Circumstances for non admission of an application for Advance Ruling (Sec.104).

The authority shall not admit the application for Advance Ruling. Where the application is:

(i) already pending in the applicant's case before any Appellate authority, the appellate tribunal or any Court;

(ii) the same as in a matter already decided by the Appellate Tribunal or any Court;

(iii) the same as in a matter already pending in any proceedings in the applicant's case under the provision of the Bill.

(iv) the same as in a matter in the applicant's case already decided by the adjudication authority or assessing authority, whichever is applicable.

Thus no Application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard. If the application is rejected, reasons for such rejection shall be given in the Advance Ruling the order. A copy of every Order made **rejecting/admitting** the application shall be sent to the applicant and to the prescribed officers. Where the members of the Authority differ on any question on which the Advance Ruling is sought, they shall make reference to the Appellate Authority for Hearing and decision on such question.

Where even the Appellate Authority members differ on any point or points referred to it under the above provisions, it shall be deemed that no Advance Ruling can be issued in respect of the question covered by the reference application.

Power of Authority and Appellate Authority (Sec.105):

The Authority of Advance Ruling or the Appellate Authority for Advance Ruling shall, for the purpose of exercising its power regarding following three aspects.

(a) Discovery and Inspection.

(b) Enforcing the attendance of any person and examining him on oath.

(c) Issuing Commissions and Compelling Production of books of account and other records.

Thus the Authority or the Appellate Authority have all the powers of a civil court under the code of civil procedure, 1908 **(5 of 1908).**

So the Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of **Sec. 195** and every proceeding before the authority or the appellate and every proceeding before the authority or the appellate authority shall be deemed to be a judicial proceedings within the meaning of **Sec.193 and 228** and for the purpose of **Sec. 196** of the **Indian Penal Code (45 of 1860)**.

Certification of Copies of the Advance Rulings Pronounced by the Appellate Authority (Rule 107):

A Copy of Advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the members shall be sent to

(a) The Applicant and the Appellant

(b) The Concern officer of the Central Tax and State of Union Territory Tax.

(c) The Jurisdictional Office of Central Tax and State or Union Territory Tax.

(d) The Authority in accordance with the provisions of **Sub-Section (4) of Sec.101 of the Act.**

Recent Changes in GST Registration and Input Tax Credit (ITC) Provisions

CA R. V. Shah

Biometric Based Authentication:

Rule 8 introduces Biometric based Aadhar authentification and taking of recent photograph for issue of new registration and goods and Service Tax Act, 2017.

Time Limit for granting New Registration:

Rule 9 lays down the time limit of grant of new registration. New registration will be issued or granted within 7 days time in place of three days.

Rule 21A(2) under old laws:

Cancellation of Registration under certain circumstances:

The GST Law provides two circumstances under which cancellation of registration can take place.

(1) The taxable person no more requires registration it can apply for voluntary cancellation, and

(2) The proper officer considers that the registration issued be cancelled in view of certain specified defaults, i.e., suo moto cancellation. The proper officer is of the view that the dealer is not doing business or issues tax invoice without making the supply of goods or services.

The taxable person desirous of cancellation of registration will apply on the common portal within 30 days of even warranting cancellation.

The dealer applying voluntary cancellation has to declare in the application the stock held on the date with effect from which he seeks cancellation. The dealer applying for voluntary contribution has to work out the quantum of dues payable, reversal of input credit (ITC) and the particulars of payments made towards discharge of such liabilities. In case of voluntary registration, no cancellation is allowed until the expiry one year form the effective date of registration.

The proper officer on being satisfied he will cancel the registration within 30 days from the date of application or the date of reply to the notice.

Revocation of cancellation:

In a case where the registration is cancelled suo moto by the Proper Officer, the taxable person can apply the said officer within 30 days of the service of cancellation order for revocation.

However, before so applying, the dealer concerned has to make good the defaults, i.e. by filing all pending returns, making payment of all dues and complying with the grounds on which the registration was cancelled. The Proper Officer on being satisfied that all requirements have been compiled with, he will revoke the cancellation of registration earlier ordered by him. However, if the Proper Officer concludes to reject the request for cancellation, he will first observe the principles of natural justice by giving an opportunity of being heard. For this purpose, he will issue the notice to the concerned dealer and he will be heard on the issue cancellation of registration. He has the power of physical to be resorted to only when it is found necessary in order to reach subjective satisfaction. If at all, it is felt necessary, it will be undertaken only after granting registration and the verification report along with the supporting documents and recent photographs shall have to be uploaded on the common portal within fifteen working days.

Suspension of GST on violation Rule 21:

Rules 21A(2) provides that at least suspension of GST registration may be made in case of violation of Rule 21. The suspension can take place without any hearing. However, this cannot save the vires of Rule 21A(2) with Article 14 being challenged. Thus Rule 21A(2) can now be challenged under Article 14 of the Constitution in the time to come.

The New Rule 21A(2A):

Rule 21A of CGST Rules, 2017 deals with the suspension of registration and the sub-rule (2) provides that where the Proper Officer has reason to believe that the registration of a person is liable to be cancelled under Section 29 or Rule 21. The reason to believe must be based on proper appreciation of facts objectively. It should not be based on whims and fanciness of the concerned officer. The proper officer may after affording the said person a reasonable opportunity of being heard, suspend registration pending completion of proceedings. During the period of such suspension, the said person cannot make any taxable supply. The activity of the said person comes to standstill. His activities are disrupted.

Notification No. 94/2020-CT was introduced recently to amend the Rule 21A to omit the requirement of reasonable opportunity of being heard. This violates law. The Rule must be consistent with the provisions of law.

Further, the scope of suspension is expanded by ramming in Rule, a new sub-rule 2(A) by which outward supplies in Form GSTR-1 and details of inward supplies furnished by his suppliers in Form GSTR-1 are compared. Further, it does not stop here but it goes on to include such other analysis that may be carried out on the recommendations of the Council that reveals significant differences or anamolies indicating contravention of Act or Rules leading to cancellation. As a result of this exercise goes on continuing unnecessary hardship and activities of suspension goes on unended. The activities of the dealer should not come to an end. The powers of suspension should be based on willful default committed by the dealer. The taxpayer is intimated about the differences call him to explain within 30 days as to why his registration should not be cancelled.

The Rule 21A(3A)/138E:

Rule 21A(3A) is in addition to earlier Rules whereby in case of suspension of GST Registration, the dealer, i.e. taxpayer would not be eligible to get any refund. Similarly under Rule 138E, way bills will be blocked and his activities will be affected and will come to standstill. The questions and eye-brows are raised on the following:

1. Why a flurry of changes and so sudden.
2. When the so called matching system of GSTR-1, GSTR-2 and GSTR-3 is not properly working and GSTR-2 and GSTR-3 have not kicked in, why so hurry in cancelling the registration.

Amendment of Rule 36(4):

The restriction of input tax credit (ITC) to 105% of GSTR-2A would be a hardship. However, it seems that the intention of revenue in the time to come is just to allow only input tax credit (ITC) on the basis of GSTR 2A figures.

However, with the inception of GSTR 2B, there would be another headache of reconciliation requirement of GSTR 2A vis-à-vis GSTR-2B wherein there would be following points of differences.

1. Amendments made in the current period reflecting in 2A in the period of the invoice and 2B in the month of amendment.
2. Timing difference

Rule 86B:

The said new Rule has been introduced with the intention of dealing with unscrupulous dealers who are now required to pay some tax. However, it remains to be seen how an increase in cost by one percent (1%) would be deterrent to the parties. For honest taxpayers clause (d) of Rule 86B is important.

It gives cumulation facility Rule 86B would be a hardship for every large and genuine taxpayers. It is to be noted that Section 21(9) requires invocation of cancelation in case of non-compliance would be a challenge for professionals. However, this Rule would not affect large taxpayers who have paid more than Rupee 1 lakh in income-tax in the earlier financial year and would have turned over easily ₹ 50 lakhs in a month. It is to be noted that personal hearing would be granted at the discretion of the officer before cancellation of GSTIN. The cancellation of GSTIN will not happen for clerical errors and only fraudulent cases would suffer. Rule 21A(2A)/(3A), 36(4), 86B and 138E will not help.

Conclusion:

Suspension of registration without hearing a violation of Article 14 of the constitution. Suspension of registration pending completion of proceedings would lead to standstill of economic activity. The Notification 94/2020–CT introduced recently omitting the requirement of reasonable opportunity of being heard is violation of law. It is prayed that law should be allowed to settle rather than hefty amendment affecting large number of traders.

❍❍

Analysis of Rule 42 for Real Estate Industry

Tanmay Mody, *GST Practitioner*

1. Real Estate industry has always had a bone of contention with the indirect taxation laws of our country. The very premise of classifying the supplies as goods or services remains under contention to this day. Although the Goods and Services Tax Act ("GST Act") tried to put these discussions to rest when it was introduced, I believe it tried to over-simplify the provisions and the lawmakers may have failed to anticipate or appreciate the nitty-gritties of the industry fully.

1.1. In fact, the biggest contentious issue after classification of the supplies was the input tax credit ("ITC") on goods and services consumed by the developers / builders and the eligibility thereof. Under the erstwhile VAT laws, most States had covered builders / developers under a composition scheme which restricted the ITC availment to almost next to nothing, while the Service Tax law also restricted the ITC to a great extent under various taxation schemes. Even this was sought to be simplified by introducing standard provisions for availment of ITC for all kinds of supplies.

1.2. Come 2019, the lawmakers realised the ground realities of the industry and the falling demand for housing became one of the areas of prime focus for the elected Government. With various housing schemes introduced in the Budget for affordable housing, the Government also decided to make substantial changes in the GST laws to reduce the overall cost to the ultimate consumer by reducing the GST rates substantially with the rider of total restriction on ITC. A slew of notifications was issued dated 29th March, 2019 for bringing about the changes in the GST law for taxation of the residential real estate industry with effect from 1st April, 2019. All residential housing projects beginning after 1st April, 2019 would have to compulsory follow the revised taxation structure, whereas a choice to opt for the new structure or continue with the existing structure was given to the suppliers in case of ongoing residential projects as on the cut-off date. An over-complicated scheme for calculation of one-time reversal of ITC was introduced for such suppliers opting to continue with the old scheme, which warrants a separate discussion of its own. However, consequent amendments were also introduced in Rule 42 and 43 of the Central GST ("CGST") Rules read with Section 17 of the CGST Act for residential projects as well as other construction projects. Through this article, I will discuss these provisions along with a practical example to understand the calculations better.

1.3. On the output side, GST is applicable on the sale of under-construction residential / commercial units by virtue of Section 7 read with Para 5(b) of Schedule II to the CGST Act. The supplier is required to pay GST on the supplies of under-construction properties, unless the entire consideration is received from the buyer after the issuance of completion certificate or the first occupation of the premises. Once the completion certificate is issued by any of the specified competent authorities or any person occupies the premises, the supply ceases to be a taxable event under GST and is, subsequently, covered under Para 5 of Schedule III to the CGST Act. Schedule III covers transactions that are neither classified as supply of goods nor as supply of services, thereby bringing them out of the purview of the GST law.

1.4. Moving on to ITC, Section 17 of the CGST Act lays down the provisions for apportionment and blocking of ITC, once the eligibility of such ITC is determined under Section 16. Sub-section (2) to Section 17 provides for restriction on availment of eligible ITC only to the extent it is attributable to taxable supplies, including zero-rated supplies. Therefore, ITC that is attributable

to exempt supplies is not available to the recipient, to maintain the interest of the Revenue. Also, sub-section (3) specifies that exempt supplies shall include sale of land or building, other than those covered under para 5(b) of Schedule II. This can be interpreted as inclusion of supplies of residential or commercial property after issue of completion certificate or first occupation.

2. Rules 42 and 43 of the CGST Rules have been notified for the practical calculation of the restrictions prescribed by Section 17(2) read with 17(3). These Rules were amended vide Notification No. 16/2019-CT dated 29th March, 2019, to incorporate a revised calculation structure specifically for the real estate industry, in view of the new taxation scheme made applicable from 1st April, 2019. Let's have a step-by-step look at this revised calculation of Rule 42 applicable to commercial projects or projects other than residential projects. The summarised calculation is also provided at the end of the step-by-step explanation. Please note, all calculations are done assuming input goods and services are procured for construction projects for other than residential purposes.

2.1. The first step starts with calculation of the gross ITC available during the relevant period (return month), on input goods or services or both received by the taxpayer. This shall be denoted as "T" as in "Total".

For our practical example, let's assume "T" to be ₹ 5.00 Crores

2.2. Next, the Rule suggests calculation of ITC which relates directly and exclusively to non-business purposes, which shall be denoted by "T_1". In a practical business environment, "T_1" shall ideally be nil, since non-business expenses are not usually recorded in the books of accounts.

Therefore, in our example, "T_1" to be ₹ 0.00.

2.3. The Rule now suggests that the ITC on input goods or services or both, which are intended to be or used exclusively for exempt outward supplies should be identified and denoted as "T_2". This would include ITC which can be directly attributable to property sold after receipt of completion certificate or first occupation.

In our case, "T_2" is deemed to be ₹ 0.50 Crores

2.4. The total of ineligible ITC under Section 17(5) of the CGST Act, also referred to as the Negative List, shall be denoted as "T_3".

There is a possibility of overlap in "T_2" and "T_3" in case of real estate industry, owing to the framing of Section 17(5) provisions, but the thumb rule for distinction should be eligible vs. ineligible ITC. If ITC is eligible and does not fall under Section 17(5) but is directly attributable to exempt supplies, it should be classified as "T_2" whereas if it is ineligible by its nature itself under Section 17(5), it should be classified as "T_3".

For the instant example, I am considering "T_3" to be ₹ 0.25 Crores.

2.5. If we remove "T_1", "T_2", and "T_3" from total "T", we would arrive at the ITC which shall be credited to the Electronic Credit Ledger of the taxpayer. Rule 42 dictates that this remained ITC shall be denoted as "C_1" where "C" may be deemed to mean "Common" for easy recollection.

Hence, in the present scenario, "C_1" would be $T - (T_1 + T_2 + T_3)$ i.e., 5.00 – (0.00 + 0.50 + 0.25) = ₹ 4.25 Crores.

2.6. Clause (f) of Rule 42(1) provides for calculation of "T_4" which is the ITC directly attributable to taxable and zero-rated supplies, as the ITC on such supplies shall be available fully to the taxpayer. However, the Explanation added after the clause specifically for real estate sector, states that "T_4" shall always be nil in case of under-

construction units, since the inputs and input services shall be used commonly for units booked before completion certificate or first occupation, and after completion certificate or first occupation.

Therefore, "T_4" = ₹ 0.00.

2.7. Since "T_4" shall always be nil, "C_2" as per clause (h) of Rule 42(1) shall always be equal to C_1 determined above, since $C_2 = (C_1 - T_4)$

In our example, $C_2 = C_1$ = ₹ 4.25 Crores.

2.8. Post this starts the complicated calculation of actual proportionate reversal of ITC. Generally, the formula to be applied as per clause (i) of Rule 42(1) would be

"D_1" = ("E" / "F") * C_2;

where,

D_1 = ITC attributable to exempt supplies,

E = Aggregate value of exempt supplies and

F = Total turnover in the State of registration.

However, for the purpose of the real estate industry, the values of "E" and "F" have been separately provided as below –

E = Aggregate carpet area of the apartments which are exempt from GST by virtue of Schedule II read with Schedule III and aggregate carpet area of apartments which are identified by the builder / developer to be sold after receipt of completion certificate or first occupation of the premises, whichever is earlier; and

F = Aggregate carpet area of all the apartments in the project

The Explanations to the above clause also emphasize that the value of "E" shall include the carpet area of flats that remain not booked as on date of completion certificate or first occupation and the carpet areas of flats covered by the reduced rates of GST of 1.5% and 7.5% as per Notification No. 11/2017-CT(R) as amended.

Very important to note here that the value of (E/F) shall have to be calculated separately for each project by the builder / developer, as stated in the first proviso to clause (i). Whether this entails that all the above calculations of the T series and C series shall be done on a project-to-project basis is still unclear, albeit, that seems to be the only practical solution. Sub-rule (6) does try to provide some clarity on common inputs and input services for multiple projects, but it points towards calculation as per sub-rule (3) and not sub-rule (2).

For the purpose of our practical example, I am assuming the values of E and F as below–

E = Aggregate carpet area of exempt units = 40,000 sq. ft.

F = Aggregate carpet area of all units in the project = 1,00,000 sq. ft.

Therefore, D1 in our case would be (40,000/1,00,000) * 4.25 Crores = ₹ 1.7 Crores.

2.9. Clause (j) to Rule 42(1) provides for determination of "D_2", which is the amount of common ITC attributable to non-business purposes. This is automatically deemed to be 5% of C_2, irrespective of the business to non-business ratio.

Thus, D_2 = (4.25 * 5%) = ₹ 0.21 Crores

2.10. Finally, "C_3" shall be the denotation of the remainder of the eligible ITC, after reducing all ITC that is attributable to exempted supplies and non-business supplies, as calculated above. Clause (k) provides that $C_3 = C_2 - (D_1 + D_2)$.

For our discussion, C_3 = 4.25 – (1.7 + 0.21) = ₹ 2.34 Crores

This amount of C_3 shall be the final eligible ITC available for utilisation to the builder / developer of under-construction properties. The amount determined as T_1, T_2, T_3, T_4, D_1 and D_2 shall be declared separately in GSTR-2 at the invoice level (which is non-existent and expected to remain non-existent) and also in GSTR-3B at a summary level. Currently, the total of these amounts is to be declared in Table 4B(1) of GSTR-3B.

3. The clause-wise representation of the calculations as per Rule 42 above shall be as below –

Clause	Explanation	Denotation	Amount (in crores) / Area
(a)	Total ITC of inputs and input services	"T"	5.00
(b)	ITC attributable to non-business purposes	"T_1"	0.00
(c)	ITC attributable exclusively to exempt supplies	"T_2"	0.50
(d)	ITC covered by Section 17(5) as ineligible	"T_3"	0.25
(e)	Eligible ITC = T – (T_1 + T_2 + T_3)	"C_1"	4.25
(f)	ITC attributable exclusively to taxable supplies (other than real estate industry)	"T_4"	0.00
(h)	Common ITC = C_1 – T_4	"C_2"	4.25
(i)	Aggregate carpet area of exempt units and units which are expected to be booked / sold after receipt of completion certificate or first occupation	"E"	40,000 sq. ft.
	Aggregate carpet area of all the units in the project	"F"	1,00,000 sq. ft.
	Common ITC attributable to exempt supplies = (E / F) * C_2	"D_1"	1.70
(j)	Common ITC attributable to non-business purposes = 5% of C_2	"D_2"	0.21
(k)	Remainder of Common ITC to be claimed in GSTR 3B = C_2 – (D_1 + D_2)	"C_3"	2.34
(g)	Ineligible ITC to be reversed in GSTR 3B = T_1 + T_2 + T_3	-	0.75
(m)	Common ITC to be reversed in GSTR 3B = D_1 + D_2	-	1.91
-	Total ITC to be declared in Table 4B(1) of 3B	-	2.66

3.1 As is apparent from the above, the above calculation may become complicated, especially when it is to be calculated on a monthly basis for multiple projects, and also separately for CGST / SGST and IGST. Further, it is also dependent on calculation of expected bookings to be determined by the builder / developer and continuous identification of expenses.

3.2 To further complicate this calculation, sub-rule (3) has been added in Rule 42 with effect from 1st April, 2019. This sub-rule provides for the final calculation of ITC as per the above format at the time of completion of the project as a whole or its first occupation, whichever is earlier. This entails that all the figures considered above for the respective months shall once again have to be calculated for the entire project as a whole, and the difference between the total ITC calculated at the time of filing the returns and the ITC calculated for the project as a whole, shall be claimed or reversed. This claim or reversal shall be disclosed in any return before the due date for the month of September following

the financial year in which the project is completed or occupied. In case of additional reversal, interest shall be payable @ 18% as per Section 50 of the CGST Act.

3.3 For example, if the project receives the completion certificate in the month of January, 2021, the taxpayer shall be liable to calculate the overall final ITC reversal required to be done as per Rule 42(3) on the entire project, and the difference between the reversal already done in the returns up to January, 2021 and the final computation done as per Rule 42(3) shall be claimed or reversed, with interest at the rate of 18%, in any return up to the return for the month of September, 2021. The values of "E" and "F" for the purpose of this sub-rule shall be calculated at actuals instead of expected, at the entire project level.

4. Sub-rules (4) and (5) to Rule 42 are not discussed in this article, as they relate to the transitional residential projects as on 1st April, 2019 and as stated earlier, would require a whole separate discussion. Further, discussion on Rule 43 and its implications is also reserved for a separate discussion, as the provisions overlap with the calculations made under Rules 42(4) and 42(5).

5. All in all, builders / developers have their tasks cut out for them. Not only do they have to comply with the burgeoning changes to the GST law and maintain records in ways they would not have expected, they also have to ensure that the calculations made under this Rule over the construction phase of the project is accurate, to avoid department action. Additionally, they would be liable for interest on any additional reversal, which can be directly attributable to the limitations of the formula prescribed by the Rule itself. And yet, the Government insists that they have simplified the GST law for all!

6. This Rule warrants a relook to streamline the provisions, and, at the very least, abolishing the interest on additional reversal. A rethink is warranted not only on the specific arrangements for the real estate industry, but the general rule for all taxpayers as well.

❍❍

VIRTUAL NATIONAL TAX CONFERENCE

17th & 18th February, 2021

All India Federation of Tax Practitioners (WZ)

Regd. Office : 215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020.
Tel.: 022-2200 6342 / 63 / 4970 6343
E-mail: aiftpho@gmail.com • **Website:** www.aiftponline.org

ETHICS EDUCATION EXCELLENCE