



# NEWSLETTER



Dear Professional Colleagues,

I am sincerely obliged to be elected as the President of oldest association of Chartered Accountants not only in Eastern Region but also in India. It is indeed an honour for me to be serving as the 48th president of Accountant's Library and I thank all the committee members for reposing confidence in me and electing me as the President.

Friends just when India was showing signs of recovery in economic and financial sectors the second wave of Covid-19 which is more deadly than the first wave in 2020 has struck the country and struck very hard. But in these difficult times also we Chartered Accountants have stucked to our duty and helped the nation to make timely statutory compliances in the field of accountancy and taxation and support the decisions of the Government of India in best possible manner.

We at the Accountant's Library always endeavor to excel in professional development of not only its members but to everyone in the professional fraternity. We have various sub committees for resolving queries of the members, we organize seminars on regular intervals towards our common object of professional growth. We shall continue to meet the expectations of the government, business and society which they have from chartered accountants.

It brings immense pleasure for me to announce that in December 2021 our Accountant's Library will be entering into 75th year of its existence. With the support of our members we intend to make it a memorable year.

I look forward to our members to support the Accountant's Library in all possible manner and preserve the glory it carries since long time past.

With Warm Regards

**CA Manish Tiwari**

President, Accountants' Library  
26th April, 2021



Dear Members,

We all are now unwillingly riding the second wave of the pandemic and trying to surf through the pain it has brought to us. I wish that you all take extreme precaution and stay safe. I am sure this unwanted phase will also pass by but we need to remain calm and fight the situation with a positive attitude.

In the meantime, CA. Manish Tiwari has taken the charge as the President of our Library after CA. (Dr.) Debashis Mitra had resigned owing to his pre-occupation having been elected as the Vice President of the Institute of Chartered Accountants of India for the term 2021-2022.

It gives the whole team of the Accountants' Library pleasure to present this Newsletter in the electronic form which carries various updates on Income Tax, GST, Companies Act, IBC, Technology Updates relating to our Profession, Analysis of changes made in the Finance Bill, 2021 as passed by the Lok Sabha, IND AS 1 and Important Updates on Code of Ethics. I express my sincere gratitude to CA Ayush Goel, CA Sukanya Ghosh, CA Abhishek Tibrewal, CA Animesh Mukhopadhyay, CA Mohit Sareen and CA Sumantra Guha for their valued contribution. I must also mention that it would not have been possible to publish this e-Newsletter without the continuous support of my Co-Chairman in the Newsletter Sub-Committee CA Suman Chaudhury.

I am sure the Newsletter will help you to get updated with the various developments in our Profession.

I once again invite your feedback and suggestions at [acclibrary@yahoo.com](mailto:acclibrary@yahoo.com) so that we can continue with the endeavor of improving the Newsletters we publish in the future.

I would request you to contact the undersigned if you want to contribute to our future newsletters on topics that we are not already covering.

**CA Debayan Patra**

Vice President and Chairman of Newsletter Sub-Committee  
Accountants' Library  
26th April, 2021



Phone: 2213-6553



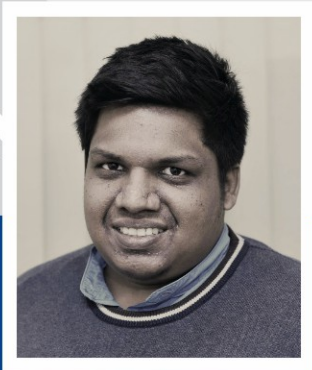
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# INCOME TAX UPDATES

- CA Ayush Goel



## NOTIFICATIONS

### NOTIFICATION NO. 10/2021, DATED: 27-02-2021

#### Extension of limitation dates

##### SECTION 3(1)

S.O. 966(E).—In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and in partial modification of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No.93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, the Central Government hereby specifies, for the purpose of sub-section (1) of section 3 of the said Act, that,—

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order—

(a) for imposition of penalty under Chapter XXI of the Income-tax Act, —

(i) the 29th day of June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Income-tax Act falls, for the completion of such action; and

(ii) the 30th day of June, 2021 shall be the end date to which the time limit for completion of such action shall stand extended;

(b) for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, —

(i) expires on the 31st day of March, 2021 due to its extension by the said notification, such time limit shall stand extended to the 30th day of April, 2021;

(ii) is not covered under (i) and expires on 31st day of March, 2021, such time limit shall stand extended to the 30th day of September, 2021;

(B) where the specified Act is the Prohibition of Benami Property Transaction Act, 1988, (45 of 1988) (hereinafter referred to as the Benami Act) and the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to issue of notice under sub-section (1) or passing of any order under sub-section (3) of section 26 of the Benami Act,—

(i) the 30th day of June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Benami Act falls, for the completion of such action; and

(ii) the 30th day of September, 2021 shall be the end date to which the time limit for completion of such action shall stand extended.



## **NOTIFICATION NO. 09/2021, DATED: 26-02-2021** **EXTENSION OF DUE DATES UNDER DIRECT TAX VIVAD SE VISHWAS ACT**

In exercise of the powers conferred by section 3 of the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Finance, (Department of Revenue), number 85/2020, dated the 27th October, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 3847(E), dated 27th October, 2020, namely:—

In the said notification,—

(i) in clause (a), for the figures, letters and words "28th day of February, 2021" the figures, letters and words "31st day of March, 2021" shall be substituted;

(ii) in clause (b), for the figures, letters and words "31st day of March, 2021" the figures, letters and words "30th day of April, 2021" shall be substituted; and

(iii) in clause (c), for the figures, letters and words "1st day of April, 2021" the figures, letters and words "1st day of May, 2021" shall be substituted.

## **NOTIFICATION NO. 08/2021, DATED: 22-02-2021** **HARYANA STATE POLLUTION CONTROL BOARD NOTIFIED FOR PURPOSE OF SECTION 10(46)**

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Haryana State Pollution Control Board' (PAN AAJH0446F), a Board constituted by the State Government of Haryana under the Water (Prevention and Control of Pollution) Act, 1974, in respect of the following specified income arising to the Board

## **NOTIFICATION NO. 07/2021, DATED: 17-02-2021** **AMENDMENT IN NOTIFICATION NO. 62/2019, DATED: 12-09-2019**

In exercise of the powers conferred by sub-section (3B) of section 143 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O 3265 (E), dated the 12th September, 2019

## **NOTIFICATION NO. 06/2021, DATED: 17-02-2021** **FACELESS ASSESSMENT (1ST AMENDMENT) SCHEME, 2021**

In exercise of the powers conferred by sub-section (3A) of section 143 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following further amendments in the Faceless Assessment Scheme, 2019

## **NOTIFICATION NO. 05/2021, DATED: 11-02-2021**

### **SECTION 138**

CHIEF EXECUTIVE OFFICER, CENTER FOR E-GOVERNANCE, GOVERNMENT OF KARNATAKA SPECIFIED FOR PURPOSE OF SECTION 138(1)(1)(A)(II)

S.O:-In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of Section 138 of the Income-tax Act, 1961, the Central Government hereby specifies 'Chief Executive Officer, Center for e-Governance, Government of Karnataka' for the purposes of the said clause in connection with sharing of information regarding income-tax assessee for identifying the eligible beneficiaries for implementing social security / public welfare schemes with the help of Entitlement Management System.

## **Case Laws**

### **ENGINEERING ANALYSIS CENTRE OF EXCELLENCE PRIVATE LIMITED VS THE COMMISSIONER OF INCOME TAX & ANR. SUPREME COURT OF INDIA, Mar 02, 2021**

The appeals in these cases are by both the assessee as well as the Department of Revenue, Ministry of Finance ["Revenue"]. Whereas the assessee has succeeded in the question that was posed before the High Court of Delhi,[1] the Revenue has succeeded insofar as the same question was posed before the High Court of Karnataka,[2] and in the ruling by the Authority for Advance Rulings ["AAR"], impugned in C.A. No. 8990/2018.

Given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Income Tax Act (section 9(1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessee, have no application in the facts of these cases.

The appeals from the impugned judgments of the High Court of Karnataka are allowed, and the aforesaid judgments are set aside. The ruling of the AAR in Citrix Systems (AAR)(supra) is set aside. The appeals from the impugned judgments of the High Court of Delhi are dismissed.



## DR. VANDANA GUPTA VS PRINCIPAL COMMISSIONER OF INCOME TAX

**SUPREME COURT OF INDIA, Feb 26, 2021**

1. The learned counsel for the petitioner states that the applicant has decided to take benefit of the Scheme called "Vivad Se Vishwas" and in this connection has filed an I.A. No. 117400 of 2020 seeking permission to withdraw the Special Leave Petition.
2. The application is allowed.
3. The Special Leave Petition is disposed of as withdrawn.

## SRF LTD. AND ANR. VS COMMISSIONER OF INCOME TAX AND ANR.

**SUPREME COURT OF INDIA, Feb 25, 2021**

### ORDER

1. Interlocutory applications are allowed.
2. The Civil Appeals are dismissed as withdrawn in terms of the Signed Order.

## INCOME TAX OFFICER VS M/S SHRI GANESH CEMENT PVT. LTD.

**KOLKATA TRIBUNAL, Feb 25, 2021**

### Decision in favour of : Assessee

AO was of opinion that assessee failed to satisfy identity, creditworthiness and source of funds of share subscriber company and also genuineness of share subscription of transaction, so he made an addition. CIT(A) deleted addition—Held, share applicant M/s SKJ had common directors and had made investment in M/s J and agreed to give control/management of M/s J to assessee company in lieu of allotment of five crore equity shares of face value of Rs 10/-each—Aforesaid mistake has been corrected by deed of agreement, wherein following has been added (corrected mistake in original agreement—From a perusal of agreement it is noted that assessee company issued/allotted on 28.11.2011 Rs. 50 crores worth equity shares of face value of Rs. 10/-each to M/s SKJ in lieu of tangible and intangible Assets of M/s J—From remand report it is noted that AO has taken note of audited accounts of M/s SKJ along with copy of scrutiny assessment order u/s 143(3) passed by DCIT—AO notes that copy of relevant ITR, copy of PAN was also brought to his notice—AO notes from audited accounts of M/s SKJ that H, S, A and N were share holders in said company having substantial share holdings in company, so it proves that it was arrangement within group—Based on aforesaid

remand report as well as documents produced before him CIT(A) has noted that promoters/directors of assessee company in order to substantiate their identities had submitted i) Aadhar Cards, ii) PAN Cards, iii) ITRs, iv) Balance Sheet and v) copy of relevant ledger showing investment in shares of M/s G; And also details were filed disclosing source of funds of payment of Rs 30 Lakhs which were subscribed by four directors of company—CIT(A) has made findings that all details as disclosed were corroborated/confirmed by him during appellate proceedings before him which are already available in assessment records—CIT(A) in light of aforesaid facts held that assessee had discharged its responsibility to prove identity, creditworthiness and genuineness of transaction—CIT(A) has rightly observed that AO could not have made addition only on reason that directors of assessee/share subscribing companies did not turn up before him—Both assessee company and share-subscribing company had common directors, and revenue failed to demonstrate that factual finding of CIT(A) in this respect is perverse. So action of CIT(A) is upheld—Revenue's appeal dismissed.

## TEJPAL CHAUDHARY VS COMMISSIONER OF INCOME TAX & ANR.

**SUPREME COURT OF INDIA, Feb 24, 2021**

### ORDER

1. I.A. for withdrawal of SLP(C) Nos. 14554/2019, 14555/2019, 14560/2019, 14567/2019 and 14570/2019 is allowed, as prayed.
2. SLP(C) Nos. 14554/2019, 14555/2019, 14560/2019, 14567/2019 and 14570/2019 are accordingly, dismissed as withdrawn.

## M/S. HERO CYCLES LTD. VS COMMISSIONER OF INCOME TAX, LUDHIANA & ANR.

**SUPREME COURT OF INDIA, Feb 23, 2021**

### ORDER

1. The Civil Appeal is dismissed in terms of the signed order.
2. Pending application(s), if any, shall stand disposed of.

## ANGIKA DEVELOPMENT SOCIETY VS ASSISTANT DIRECTOR OF INCOME TAX (EXEMPTION) INV.

**SUPREME COURT OF INDIA, Feb 21, 2021**

### ORDER

1. By way of I.A.No. 24562 of 2021, the learned counsel for the petitioner seeks leave to withdraw this Special Leave Petition.
2. The application is allowed.
3. The Special Leave Petition is, accordingly, dismissed as withdrawn.



## SUSHILA BIRLA MEMORIAL INSTITUTE VS INCOME TAX OFFICER

**KOLKATA TRIBUNAL, Feb 19, 2021**

**Decision in favour of: Assessee**

Assessee ("SBMI") is a Trust, registered u/s 12A running a speciality school for retarded children as well as providing medical aid and treatment—Assessee, claimed exemption u/s 10(23C)(iii)ae—AO held that B and V were running mobile medical unit and submitting bills monthly to assessee for reimbursement—This mobile medical van is a part and parcel of hospital of V or B and it was only funded by assessee and that assessee was merely reimbursing bills raised by them so financing other organisation does not fall within purview of any hospital or other institution of assessee of section 10(23C)(iii)ae—CIT upheld order of AO—Held, there is no dispute that assessee is running a number of mobile medical vans which are equipped with surgical equipments, x-ray machines, medicines and that they are staffed by qualified doctors, nurses and that these mobile medical units are providing reception and treatment of persons suffering from illness, mental defectiveness at remote rural areas—Expenditure is incurred by assessee for purpose of payment to doctors, nurses and other medical staffs as well as for medicine etc—Mobile medical vans are owned, equipped, maintained, run and controlled totally by assessee—If any organization has incurred expenditure on behalf of assessee, they claim reimbursement of such expenses from assessee.

On facts, assessee is an institution which undertakes reception and treatment of persons suffering from illness—On this fact also assessee's claim has to be upheld—On these facts and also keeping in view that Revenue has been granting exemption to assessee under this Section for earlier assessment years as well as for subsequent years, assessee is eligible for deduction u/s 10(23C)(iii)ae—Appeal of assessee is allowed.

## COMMISSIONER OF INCOME TAX VS M/S. APAR INDUSTRIES LTD.

**SUPREME COURT OF INDIA, Feb 19, 2021**

Ms. Kavita Jha, learned counsel appearing for the petitioner, submits that the petitioner has been advised to explore the remedy under the provisions of "Direct Tax Vivad Se Vishwas Act, 2020" for settlement of disputed tax involved in the present petition and has also filed application seeking permission to withdraw the special leave petition with liberty to revive the petition, if need arises.

8. Accordingly, this petition and pending applications are disposed of as withdrawn with aforesaid liberty.
9. All questions raised in this petition are left open.
10. I.A. No.120779 OF 2020 is allowed accordingly.

## KAMAL GUPTA VS COMMISSIONER OF INCOME TAX

**SUPREME COURT OF INDIA, Feb 19, 2021**

**ORDER**

The appeal is dismissed as not pressed in terms of the signed order.

1. The application (I.A. No.6775/2021) is filed seeking permission for withdrawal of civil appeal.
2. The appeal stands dismissed as learned counsel for the appellant does not wish to pursue this appeal. The appeal is dismissed as not pressed.

## PRINCIPAL COMMISSIONER OF INCOME TAX VS M/S RURAL ELECTRIFICATION CORPORATION LTD.

**SUPREME COURT OF INDIA, Feb 19, 2021**

**ORDER**

1. The Special Leave Petition is dismissed on the ground of delay.

## PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), PUNE VS ADAR CYRUS POONAWALLA

**SUPREME COURT OF INDIA, Feb 19, 2021**

**ORDER**

1. Heard Mr. K.M. Nataraj, learned ASG for the petitioner and Mr. Arvind P. Datar, learned Senior Advocate for the respondent.
2. Delay condoned.
3. We do not see any reason to interfere in these matters.
4. The Special Leave Petitions are, accordingly, dismissed.
5. Pending applications, if any, also stand disposed of.

## THE PRINCIPAL COMMISSIONER OF INCOME TAX VS M/S GUJARAT STATE FINANCIAL CORPORATION

**SUPREME COURT OF INDIA, Feb 19, 2021**

1. The Special Leave Petition is dismissed on the ground of delay.

## M/S TABLETS (INDIA) LTD. VS COMMISSIONER OF INCOME TAX NUNGAMBAKKAM

**SUPREME COURT OF INDIA, Feb 18, 2021**

The Civil appeals are dismissed in terms of the signed order. Pending application(s), if any, shall stand disposed of.

## VIJAY MITTAL VS INCOME TAX OFFICER

**KOLKATA TRIBUNAL, Feb 17, 2021**

**Decision in favour of: Assessee**

Assessee an individual and derived income from house property, income from partnership firm, interest income and income from capital gains filed his return of income—Assessing Officer completed best judgment assessment, making addition on account of unexplained cash credit and reworking long term capital gains on sale of



land by disallowing assessee's claim of, payment of commission on sale of land and also adding liabilities shown by assessee—CIT(A) confirmed addition as unexplained cash deposits in bank and disallowed claim of assessee of payment of development charges and commission on sale of land while computing long term capital gains on sale of land—Held, addition was sustained by CIT(A) for reason that compliance was not made during original assessment proceedings and at remand stage—This cannot be a ground of making addition for reasons that Assessing Officer had made addition on ground that deposits in bank accounts are not explained—Without a copy of bank account, Assessing Officer cannot come to a conclusion that deposits made in a bank account are unexplained—All details including copies of bank accounts were furnished by assessee—Evidence given by assessee is not disputed by revenue—Addition in question, is hereby deleted—CIT(A) had confirmed addition of disallowance of commission and development charges on ground that assessee was not able to justify payments made towards development charges as payments made were not supported with evidence—Assessee has furnished an agreement for development of above land—Developer had to strictly abide by ruler of Urban Development Authority for layout development and also obtain all permissions etc—Payments were made through cheques and relevant details were filed before Assessing Officer—Capital gains in question on land is on account of sale of various plots as recorded by Assessing Officer—When land is converted into plots by laying roads, building drains, developing common areas etc., as per norms of Urban Development Authority, and when plots are sold only after such development expenditure is bound to be incurred—Claim of assessee of having been incurred development expenditure is allowed—Assessee's appeal allowed.

## COMMISSIONER OF INCOME TAX VS M/S STAR INDIA PVT. LTD. (FORMERLY KNOWN AS NEWS TELEVISION (INDIA) LTD.)

**SUPREME COURT OF INDIA, Feb 16, 2021**

The Review Petition is dismissed on the ground of delay in terms of the signed order.

## ROLLS ROYCE PLC VS DEPUTY DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION)

**SUPREME COURT OF INDIA, Feb 15, 2021**

### ORDER

1. Learned counsel for the petitioner seeks permission to withdraw the Special Leave Petitions.
2. The Special Leave Petitions are permitted to be withdrawn with liberty to come back in the event of the

settlement not being accepted by the Revenue.

3. Accordingly, the Special Leave Petitions are dismissed as withdrawn.

## T.S. KUMARASWAMY VS THE DIRECTOR GENERAL OF INCOME TAX (INV) & ORS.

**SUPREME COURT OF INDIA, Feb 15, 2021**

Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the petitioner relied upon the contents of the affidavit which was filed by the petitioner on 27 January 2020 before the High Court (Annexure P10 to the paper book). Adverting to paragraph 16 of the affidavit, it has been submitted that the petitioner had applied for withdrawal of the writ petitions in view of the submission which was made in paragraph 13. Hence, it has been urged that the prayer for withdrawal was not unconditional, but was subject to what was averred in paragraph 13 of the affidavit. The High Court allowed the writ petitions to be withdrawn simpliciter.

2. Since the High Court, in paragraph 1 of the judgment, recorded that the learned counsel for the petitioner made an endorsement withdrawing the writ petitions seeking liberty to put forth all his contentions on merits or otherwise before the Assessing Authority in the course of assessment proceedings, we are of the view that any such submission as recorded above can only be made before the High Court by way of review. In view of what is stated in paragraph 1 of the impugned judgment, it would be inappropriate for this Court to decide on the merits of the aforesaid grievance.
3. We accordingly permit the petitioner to move the High Court by way of a review. No opinion is expressed on the merits of the above submission by this Court. The present order shall not affect the assessment proceedings.
4. Subject to the aforesaid, the Special Leave Petitions are disposed of.

## THE PRINCIPAL DIRECTOR OF INCOME TAX (INVESTIGATION) & ORS. VS VIPUL KUMAR PATEL

**SUPREME COURT OF INDIA, Feb 09, 2021**

### ORDER

1. Application seeking exemption from filing certified copy of the impugned order is allowed.
2. Issue notice.

## PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL VS M/S. KALYAN BUILD MART PVT. LTD.

**SUPREME COURT OF INDIA, Feb 08, 2021**

### ORDER

1. There is a delay of 433 days in filing this Special Leave Petition and we do not find any justifiable reason to condone this huge delay.
2. The Special Leave Petition is, accordingly, dismissed on the ground of delay.



### THE PRINCIPAL COMMISSIONER OF INCOME TAX VS M/S. VIBHADEEP INVESTMENT AND TRADING LTD.

**SUPREME COURT OF INDIA, Feb 08, 2021**

#### **ORDER**

1. The special leave petition is dismissed on the ground of delay.

### STHIRLAKSHMI MERCANTILE PVT. LTD. VS INCOME TAX OFFICER

**KOLKATA TRIBUNAL, Feb 05, 2021**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 10, Kolkata, passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 04/12/2019 for the Assessment Year 2012-13.

The assessee is a company and is in the business of share investment and finance. It filed its return of income on 04/12/2012, for the Assessment Year 2012-13, declaring total income of Rs.84,115/-. The Assessing Officer completed best judgment assessment u/s 144 of the Act and determined the total income of the company at Rs.10,00,30,420/- inter alia making addition of Rs.9,90,00,000/- u/s 68 of the Act being share capital received along with share premium and disallowance of Rs.9,46,300/- u/s 14A of the Act. The assessee carried the matter in appeal without success.

Further aggrieved the assessee is in appeal before us.

Keeping in view the totality of the facts and circumstances of the case and also the orders of the Co-ordinate Bench of the Tribunal in similar matters, we set aside this issue to the file of the AO for fresh adjudication in accordance with law, after giving the assessee adequate opportunity of being heard.

In the result, appeal of the assessee is allowed for statistical purposes.

### ASSISTANT COMMISSIONER OF INCOME TAX VS SREELEATHERS

**KOLKATA TRIBUNAL, Feb 05, 2021**

#### **Decision in favour of: Assessee**

Assessee had filed return of income—Case was selected for scrutiny—AO notes that assessee has received unsecured loans from various companies out of which according to AO, are paper companies—AO held that purported unsecured loans are nothing but assessee's own money introduced under garb of fresh unsecured loans—Therefore, AO treated Rs.4.50 cr. as unexplained cash credit and added back to total income of assessee—CIT(A) took note of fact that all lender companies were served with notice and pursuant to which all of them have complied directly to AO by furnishing their respective replies called for by AO—CIT(A) was of opinion that assessment order is bad for violation of natural justice also and therefore according to him additions cannot be sustained—Held, AO has framed assessment by relying on statement of A which was recorded u/s 133A in a third party case and thereafter made an addition and disallowed interest expenditure—Legal infirmities are found for this statement—Firstly survey statement has been

recorded by DDIT(Inv) in some third party case and not that of assessee—Secondly deponent has been administered oath before his statement was recorded, which is not in accordance to Section 133A and Supreme Court in CIT vs. S. Khader Khan Son in 352 ITR 480 (SC) has held that statement recorded u/s 133A is not given evidentiary value for reason that officer is not authorized to administer oath and to take any sworn statement in contra distinction to power vested in authorities to record statement under oath during search u/s 132—Therefore on sole statement recorded u/s 133A of A, no adverse view can be taken against assessee since there is no evidentiary value to be given to it—Moreover, if AO still felt that he needs to use A's statement against assessee, then in all fairness he should have given a copy of statement well in advance and called for explanation from assessee and thereafter if AO is not satisfied then he should have summoned and examined (A) and thereafter given an opportunity to assessee to cross-examine A—However these actions were not taken by AO—So statement of A cannot be relied upon against assessee—Fact that all lender companies are regular income tax assessee's & having PAN as well as their ROC details were brought to notice of AO & their respective balance sheet shows that all of them have enough creditworthiness to lend amounts in question to assessee and assessee had squared up loan transaction with all these lenders (except 15 Lakhs) and all payments/TDS were made & payments were made through banking channel, addition made by AO was untenable and therefore CIT(A) rightly deleted addition which action is confirmed—Revenue's appeal dismissed

### THE ASSISTANT COMMISSIONER OF INCOME TAX VS M/S NEYVELI LIGNITE CORP. LTD.

**SUPREME COURT OF INDIA, Feb 04, 2021**

The civil appeals are dismissed as withdrawn in terms of the signed order.

### SUNIL THOMAS VS THE INCOME TAX OFFICER & ANR.

**SUPREME COURT OF INDIA, Feb 01, 2021**

#### **ORDER**

1. There is delay of 1233 days in preferring the Special Leave Petition.
2. The explanation offered in the application seeking condonation thereof is far from being satisfactory.
3. We, therefore, refuse to condone the delay.
4. Consequently, this Special Leave Petition is dismissed on the ground of delay.



## Notification No. 11/2021 dated 05-03-2021 Income-tax (1st Amendment) Rules, 2021

In exercise of the powers conferred by sub-clause (vii-a) of clause (2) of section 17 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: -

In the Income-tax Rules, 1962, after the rule 3A, the following rule shall be inserted

**"3B. Annual accretion referred to in the sub-clause (vii-a) of clause (2) of section 17 of the Act.**

For the purposes of sub-clause (vii-a) of clause (2) of section 17 of the Act, annual accretion by way of interest, dividend or any other amount of similar nature during the previous year (hereinafter in this rule referred to as the current previous year) to balance to the credit of the fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act shall be the amount or aggregate of amounts computed in accordance with the following formula, namely:—

$$TP = (PC/2) \times R + (PC1 + TP1) \times R$$

## Notification No. 12/2021 dated 09-03-2021

In exercise of the powers conferred by clauses (ii) and (iii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (43 of 1961) read with rules 5C and 5E of the Income-tax Rules, 1962, the Central Government hereby approves M/s Bennett University, Greater Noida, Uttar Pradesh (PAN: AAAJB1388A) under the category of 'University, College or other institution' for Scientific Research and Research in Social Science and Statistical Research for the purposes of clauses (ii) and (iii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (43 of 1961) read with rules 5C and 5E of the Income-tax Rules, 1962. 2.

This Notification shall be deemed to have been applied for the assessment year 2020-2021 and shall apply with respect to the assessment years 2021-2022, 2022-2023, 2023-2024, 2024-2025.

## Notification No. 13/2021 dated 09-03-2021 Income-tax (2nd Amendment) Rules, 2021

In exercise of the powers conferred by clause (m) of sub-section (3) of section 9A read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

(1) These rules may be called the Income-tax (2nd Amendment) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

In the Income-tax Rules, 1962, in rule 10V, in sub-rule (12), after the second proviso and before the Explanation, the following provisos shall be inserted, namely:— "Provided also that the provisions of sub-rules (3) to (12) of rule 10VA shall, mutatis mutandis, apply to the application made

under the second proviso as they apply to application made under sub-rule (2) of the said rule: Provided also that the provisions of sub-rule (3) of rule 10VA shall not apply to an application made under the second proviso, if it is for the previous year beginning on the 1st day of April, 2021, and made on or before the 1st day of February, 2021."

## Notification No. 14/2021 dated 09-03-2021

In exercise of the powers conferred by sub-sections (1) and (2) of Section 120 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendment in the notification of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes no. 70 / 2014 dated the 13th November, 2014, published in Gazette of India, Extraordinary, Part II, Section 3, Subsection (ii) vide number S.O. 2915(E) dated 13th November, 2014.

## Notification No. 15/2021 dated 11-03-2021

In exercise of powers conferred by sections 200 and 203 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

**In the Income-tax Rules, 1962, in Appendix II, - (i) For Form No. 12BA, shall be substituted**

## Notification No. 16/2021 dated 12-03-2021

### Amendment of Rule 114E of the Income Tax Rules, 1962

In exercise of the powers conferred by section 285BA read with section 295 of the Income tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend Income-tax Rules, 1962, namely:—

1. Short title and commencement. - (1) These rules may be called the Income-tax (4th Amendment) Rules, 2021. (2) They shall come into force from the date of its publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in rule 114E,—

(A) in sub-rule (2), in the TABLE, in serial number 3, in column (3), in item (iv), for the brackets, figures and word —(6 of 1934), the brackets, figures and word —(2 of 1934) shall be substituted;

(B) after sub-rule (5), the following sub-rule shall be inserted, namely:— (5A) For the purposes of pre-filling the return of income, a statement of financial transaction under subsection (1) of section 285BA of the Act containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income mentioned in column (2) of Table below shall be furnished by the persons mentioned in column (3) of the said Table in such form, at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director General of Income Tax (Systems), as the case may be, with the approval of the Board.

## Notification No. 17/2021 dated 16-03-2021

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 120 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendment in the notification of the Government of India, Ministry of Finance, Central Board of Direct Taxes, No.66/2014 dated 13th November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide No. S.O. 2907(E), dated 13th



November, 2014, namely:- 2. In the said notification, in the Schedule, for serial number 10 and the entries relating thereto, the following serial number and entries shall be substituted.

## Notification No. 18/2021 dated 16-03-2021

In exercise of the powers conferred by section 195 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, hereby, makes the following rules further to amend the Income-tax Rules, 1962, namely:- 1. Short title and commencement.-

(1) These rules may be called the Income-tax (5th Amendment) Rules, 2021.

(2) They shall come into force with effect from the 1st day of April, 2021.

In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), after rule 29B, the following rule shall be inserted, namely, - **"29BA. Application for grant of certificate for determination of appropriate proportion of sum (other than Salary), payable to non-resident, chargeable in case of the recipients.**

## Notification No. 19/2021 dated 24-03-2021

In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), for rule 2C, the following rule shall be substituted, namely: - "2C. Application for the purpose of grant of approval of a fund or trust or institution or university or any hospital or other medical institution under clause (i) or clause (ii) or clause (iii) or clause (iv) of first proviso to clause (23C) of Section 10. (1) An application under clause (i) or clause (ii) or clause (iii) or clause (iv) of first proviso to clause (23C) of section 10 for the grant of approval of a fund or trust or institution, or university or other educational institution or any hospital or other medical institution (hereinafter referred to as 'the applicant') shall be made in the Form.

## Notification No. 20/2021 dated 31-03-2021

In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No.93/2020 dated the 31st December, 2020, published in the Gazette of India, dated the 31st December, 2020, the Central Government hereby specifies that,--

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and,

(a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to passing of an order under sub-section (13) of section 144C or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, --

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the said Act relates to sending an intimation under sub-section (1) of section 168 of the Finance Act, -- (i) the 31st day of March, 2021 shall be the end date of the period during which the time limit, specified in, or prescribed or notified under, the Finance Act falls for the completion of such action; and (ii) the 30th day of

April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

## Notification No. 21/2021 dated 31-03-2021

In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), in rule 12, in sub-rule (1), -- (a) in the opening portion, for the figure "2020", the figure "2021" shall be substituted; (b) in clause (a), in the proviso, -- (i) in sub-clause (v), the word "or" shall be omitted; (ii) after sub-clause (vi), the following sub-clauses shall be inserted, namely:-- "(VII) is a person in whose case tax has been deducted under section 194N; or (VIII) is a person in whose case payment or deduction of tax has been deferred under sub-section (2) of section 191 or sub-section (1C) of section 192;"; (c) in clause (ca), in the proviso, after sub-clause (V), the following sub-clause shall be inserted, namely:-- "(VI) has income of the nature specified in clause (vi) of sub-section (2) of section 17 on which tax is payable or deductible, as the case may be, under sub-section (2) of section 191 or sub-section (1C) of section 192;".

In the principal rules, in Appendix-II, for Forms SAHAJ ITR-1, ITR-2, ITR-3, SUGAM ITR-4, ITR-5, ITR-6, ITR-7 and ITR-V the following Forms shall, respectively, be substituted, namely:--

## Notification No. 22/2021 dated 31-03-2021

In exercise of the powers conferred by sub-sections (1), (2) and (5) of section 120 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), the Central Board of Direct Taxes hereby directs that the Income-tax Authorities of the National Faceless Assessment Centre (hereinafter referred to as the NaFAC) specified in Column (2) of the Schedule below, having its headquarters at the place mentioned in Column (3) of the said Schedule, shall exercise the powers and functions of Assessing Officer concurrently, to facilitate the conduct of Faceless Assessment proceedings under section 144B of the said Act, in respect of all persons or class of persons, or incomes or class of incomes, or cases or class of cases in the territory of India, excluding the persons or class of persons, or incomes or class of incomes, or cases or class of cases covered by the Notification No.57/2014 bearing S.O. 2814 (E) dated the 3rd November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) or by the Notification No. 70/2014 bearing S.O. 2915 (E) dated the 13th November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii):

## Notification No. 23/2021 dated 31-03-2021

In exercise of the powers conferred by sub-sections (1), (2) and (5) of section 120 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), the Central Board of Direct Taxes hereby directs that the Income-tax Authorities of Regional Faceless Assessment Centres (hereinafter referred to as the ReFACs) specified in Column (2) of the Schedule below, having their headquarters at the places mentioned in column (3) of the said Schedule, shall exercise the powers and functions of Assessing Officers concurrently, to facilitate the conduct of Faceless



Assessment proceedings under section 144B of the said Act, in respect of all persons or class of persons, or incomes or class of incomes, or cases or class of cases in the territory of India, excluding the persons or class of persons, or incomes or class of incomes, or cases or class of cases covered by the Notification No. 57/2014 bearing S.O. 2814 (E) dated the 3rd November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) or by the Notification No. 70/2014 bearing S.O. 2915 (E) dated the 13th November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii):

## Notification No. 24/2021 dated 31-03-2021

In exercise of the powers conferred by sub-sections (1), (2) and (5) of section 120 and section 133C of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), read with rule 12D of the Income-tax Rules, 1962, the Central Board of Direct Taxes hereby - (a) authorises that the Principal Commissioners of Income-tax (Regional Faceless Assessment Centre) (Verification Unit) [(hereinafter referred to as PCIT (ReFAC)(VU)] specified in Column (2) of the Schedule (hereinafter referred to as the said Schedule) annexed hereto, having headquarters at the places specified in the corresponding entry in Column (3) of the said Schedule, to exercise the concurrent powers along with any other authority under the said Act and to hold additional charge and act as Prescribed Authority, in respect of such territorial areas or such cases or class of cases or such persons or class of persons specified in the corresponding entry in Column (4) of the said Schedule and in respect of all income or class of income thereof; (b) authorises the Principal Commissioners of Income-tax (ReFAC)(VU) specified in Column (1) of the said Schedule to issue orders in writing for the exercise of powers and performance of functions by the Additional Commissioners of Income-tax (ReFAC) (VU) or Joint Commissioners of Income-tax (ReFAC) (VU), who are subordinate to them, in respect of such territorial areas or such persons or classes of persons or of such income or class of income or of such cases or class of cases specified in the corresponding entry in Column (4) of the said Schedule; (c) authorises the Additional Commissioners of Income-tax (ReFAC)(VU) or the Joint Commissioners of Income-tax (ReFAC)(VU) referred to in clause (b), to issue orders in writing for the exercise of powers and performance of functions by the Deputy Commissioners of Income-tax (ReFAC) (VU)/ Assistant Commissioners of Income-tax (ReFAC) (VU) / Income-tax Officers (ReFAC) (VU), who are subordinate to them, in respect of such territorial areas or such persons or classes of persons or of such income or class of income or of such cases or class of cases specified in the corresponding entry in Column (4) of the said Schedule in respect of which the Additional Commissioners or Joint Commissioners of Income-tax (ReFAC) (VU) are authorised by the Principal Commissioners of Income-tax (ReFAC) (VU) under the clause (b) above:

## Notification No. 25/2021 dated 31-03-2021

In exercise of powers conferred under sub-section (2) of section 143 of Income-tax Act, 1961 (43 of 1961) (the Act) read with Rule 12E of the Income-tax Rules, 1962, the Central Board of Direct Taxes hereby authorises the Assistant Commissioner of Income-tax/Deputy Commissioner of Income-tax (NaFAC) having her / his headquarters at Delhi, to act as the 'Prescribed Income-tax Authority' for the purpose of sub-section (2) of section 143 of the Act, in respect of returns furnished under section 139 or in response to a notice issued under sub-section (1) of section 142 of the said Act, or sub-section (1) of section 148 of the Act, for the purpose of issuance of notice under sub-section (2) of section 143 of the said Act. 2. This notification shall come into force from the 1st day of April, 2021.

## Notification No. 26/2021 dated 31-03-2021

### Faceless Appeal Scheme

In exercise of the powers conferred by sub-section (6B) of section 250 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendments in the Faceless Appeal Scheme, 2020, namely: – 1. Short title and commencement. – (1) The Scheme may be called the Faceless Appeal (Amendment) Scheme, 2021. (2) It shall come into force on the 1st day of April, 2021. 2. In the Faceless Appeal Scheme, 2020, – (i) in paragraph (2), in sub-paragraph (1), for clause (xviii), the following clause shall be substituted, namely: – '(xviii) "National Faceless Assessment Centre" shall mean the National e-Assessment Centre set up under the scheme notified under sub-section (3A) of section 143 of the Act or the National Faceless Assessment Centre referred to in section 144B of the Act, as the case may be;'; (ii) for the expression "National e-Assessment Centre", wherever it occurs, the expression "National Faceless Assessment Centre" shall be substituted

## Notification No. 27/2021 dated 31-03-2021

In exercise of the powers conferred by sub-section (6C) of section 250 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby amends the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O. 3297 (E) dated the 25th September, 2020, namely: - In the said notification, for the expression, "National e-Assessment Centre", wherever it occurs, the expression "National Faceless Assessment Centre" shall be substituted. 2. This notification shall come into force with effect from the 1st day of April, 2021.

## Notification No. 28/2021 dated 01-04-2021

In the Income-tax Rules, 1962, - (a) in rule 6G, after sub-rule (2), the following sub-rule shall be inserted, namely: - (3) The report of audit furnished under this rule may be revised by the person by getting revised report of audit from an accountant, duly signed and verified by such accountant, and furnish it before the end of the relevant assessment year for which the report pertains, if there is payment by such person after furnishing of report under subrule (1) and (2) which necessitates recalculation of disallowance under section 40 or section 43B. ; (b) in Appendix II, in Form 3CD, - (i) in PART – A for clause 8A, the following clause shall be substituted, namely: - –8A Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/ 115BAC/115BAD?. ; (ii) in PART-B, for clause 17, the following clause shall be substituted,



### Notification No. 28/2021 dated 01-04-2021

Whereas, an Agreement between the Government of the Republic of India and the Government of the Islamic Republic of Iran for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income was signed at New Delhi on the 17th February, 2018 as set out in the Annexure to this notification (hereinafter referred to as the „Agreement“); And whereas, the said Agreement entered into force on the 29th day of September, 2020, being the date of the later of the notifications of the completion of the procedures required by the respective laws for entry into force of the said Agreement, in accordance with paragraph 2 of Article 30 of the said Agreement;

### Case Laws

#### DEPUTY COMMISSIONER OF INCOME TAX & ANR. VS SUDARSHAN PAPER & BOARD PVT. LTD. & ANR.

**KOLKATA TRIBUNAL, Apr 01, 2021**

This appeal is preferred by the Revenue against the order of Ld. CIT(A) - 2, Kolkata dated 07.11.2017 and the same is being disposed of along with the Cross-Objection filed by the assessee being C.O. No. 32/Kol/2018.

The assessee in the present case is a company which is engaged in the business of trading in paper and paper board. The return of income for the year under consideration was filed by it on 26.09.2011 declaring a total income of Rs. 66,90,718/-. In the assessment originally completed u/s 143(3) vide an order dated 25.03.2014, the total income of the assessee was determined by the AO at Rs. 1,91,58,490/-. The said assessment was subsequently reopened by the AO and a notice u/s 148 was issued by him on 30.06.2014 after recording the reasons. In reply, a letter was filed by the assessee on 09.07.2014 stating that the return originally filed by it on 26.09.2011 may be treated as the return filed in response to notice issued u/s

In the result, the appeal of the revenue and cross-objection of the assessee both are dismissed.

#### DEPUTY COMMISSIONER OF INCOME TAX VS EMAMI AGROTECH LIMITED

**KOLKATA TRIBUNAL, Mar 26, 2021**

This is an appeal preferred by the Revenue against the separate order of the Ld. Commissioner of Income Tax (Appeals)-4, Kolkata dated 19.09.2019 and 20.09.2019 respectively for assessment year 2013-14 and 2014-15 respectively.

2. Ground nos.1 and 2 are as under:

1. "That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in allowing government subsidy by treating the same as capital in nature Rs.43,08,97,000/- under normal provision of the Act.

2. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in allowing government subsidy by treating the same as capital in nature Rs.43,08,97,000/- under provision of section 115JB of the Act."

#### HARYANA WAREHOUSING CORPORATION VS CHIEF COMMISSIONER OF INCOME TAX & ANR.

**SUPREME COURT OF INDIA, Mar 25, 2021**

In this appeal against the order of the Commissioner (Appeals), Shimla dated 28-11-1997, for the assessment year 1992-93, the grounds taken by the assessee run as under :

"1. (i) That the order of the learned Commissioner (Appeals) upholding the charge of interest under section 234B amounting to Rs. 2,82,59,843 is wholly unjustified and against law.

(ii) That the learned Commissioner (Appeals) has passed a perfunctory order, without in any manner discussing the written arguments filed by the appellant.

(iii) That the case of the appellant is squarely covered by the judgment of the Hon'ble Supreme Court in J.K. Synthetics cases followed by Patna High Court. The order of the learned Commissioner (Appeals) in not following the said judgments is totally arbitrary. It is, therefore, prayed that interest charged by the assessing officer and upheld by the Commissioner (Appeals) be quashed."

The matter will now go before the regular Bench for deciding the appeal in accordance with the opinion of the majority.

#### M/S. HOOGHLY MILLS CO. LTD. VS COMMISSIONER OF INCOME TAX, KOLKATA

**SUPREME COURT OF INDIA, Mar 25, 2021**

Learned counsel for the appellant has filed application seeking withdrawal of the civil appeal as the appellant desires to avail the benefit of "Direct Tax Vivad Se Vishwas Act, 2020".

The application is allowed.

Accordingly, the civil appeal is dismissed as withdrawn.

#### DEPUTY COMMISSIONER OF INCOME TAX & ANR. VS M/S PEPSI FOODS LTD. (now PepsiCo India Holdings Pvt. Ltd.)

**SUPREME COURT OF INDIA, Mar 17, 2021**

Legislation Referred To : Section 254(2A)

In Favour Of : Assessee

Where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases.

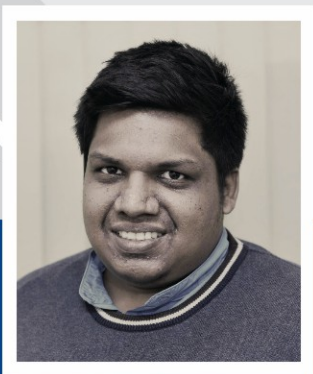
#### ASSISTANT COMMISSIONER OF INCOME TAX VS SIMPLEX INFRASTRUCTURES LTD.

**KOLKATA TRIBUNAL, Mar 10, 2021**

This appeal preferred by the Revenue is against the order of Ld. CIT(A)-4, Kolkata dated 16.09.2019 for Assessment year 2016-17. 2. The sole issue raised by the Revenue is against the action of the Ld. CIT(A) in allowing the deduction of Rs. 27,31,67,167/- u/s 80IA(4) of the Income Tax Act, 1961 (hereinafter referred to as the Act) claimed by the assessee.

In the result, the appeal of the revenue is dismissed. Order is pronounced in the open court on 10th March, 2021.





# ANALYSIS OF CHANGES MADE IN THE FINANCE BILL, 2021 AS PASSED BY THE LOK SABHA

- CA Ayush Goel



The Lok Sabha has passed the Finance Bill, 2021 on March 23, 2021. More than 100 changes have been made in the Finance Bill, 2021 as passed by the Lok Sabha [hereinafter referred to as Finance Bill (Lok Sabha)].

A snippet of all changes made in the Finance Bill, 2021 as passed by the Lok Sabha viz- a-viz the Finance Bill, 2021 are presented hereunder:

## **1. Tax on transfer of money or property by a firm/AOP/BOI to its partners /members [Section 9B, Section 45(4) and Section 48]**

*[Assessment Year 2021-22]*

Where any partner receives any amount or property on account of dissolution or reconstitution of the firm, the income-tax implications in such cases in the hands of partner or the firm has always been a controversial matter. Some of them are discussed below:

- Whether the expression "dissolution of the firm or otherwise" includes reconstitution of the firm?
- Whether consideration (in money or in kind) received by a partner from the firm could be said to be received on account of transfer of his interest in the partnership firm?
- Whether transfer of property (stock-in-trade and capital asset) by a firm to its partners be treated as transfer for Income-tax purposes? If yes, whether income from such transfer be chargeable to tax in the hands of firm?
- What shall be the mechanism to compute income in such cases?
- Where a firm does the re-valuation of the property or record self-generated asset in the books of account and credit the corresponding gain to the capital accounts of the partners, what should be the tax treatment of the amount received by partner in excess of his capital contribution made on account of such revaluation or self-generated asset?

The Finance Bill (Lok Sabha) has addressed the aforesaid issues by inserting Section 9B, substituting Section 45(4) and inserting Section 48(iii).

### **Income on receipt of capital asset or stock in trade by a partner from a firm [Section 9B]**

Section 9B provides that where a partner receives during the previous year any capital asset or stock-in-trade or both from a firm in connection with the dissolution or reconstitution of such firm, then the firm shall be deemed to have transferred such capital asset or stock-in-trade or both, as the case may be, to the partner in the year in which such capital asset or stock in trade or both are received by that partner.

Further, it provides that any profits and gains arising from such deemed transfer of capital asset or stock in trade or both, as the case may be, by the firm shall be deemed to be the income of the firm of the previous year in which stock or capital asset were received by the partner and chargeable to income-tax under the head 'business or profession' or 'capital gain in accordance with the provisions



## ANALYSIS OF CHANGES MADE IN THE FINANCE BILL, 2021 AS PASSED BY THE LOK SABHA

of the Act.

Furthermore, the fair market value of the capital asset or stock on the date of its receipt by the partner shall be deemed to be the full value of consideration while computing profit and gains arising from deemed transfer of such stock or capital asset by the firm.

The computation of capital gain under section 9B read with section 48(iii) shall be as follows:

Particular	Amount
Full value of consideration received or accrued (FMV of capital asset) Less:	xxx (xxx)
Expenditure incurred wholly and exclusively in connection with transfer;	xxx
Cost of Acquisition/Indexed cost of acquisition; Cost of improvement/ Indexed cost of improvement; or	xxx
The amount chargeable to tax as income of firm under Section 45(4) which is attributable to capital asset being transferred by the firm	xxx
Exemption under Sections 54 to 54GB to the be extent of net result of above calculation	xxx
Income taxable under the head capital gains	xxx

The rate at which such capital gain shall be charged to tax will be depend on the nature of capital asset transferred and period for which such asset is held by the specified entity.

Tax on receipt of money or capital asset by partner in connection with reconstitution of firm [Section 45(4)]

The Finance Bill (Lok Sabha), has substituted sub-section (4) as proposed to be substituted by the Finance Bill, 2021. This provision provides that where a partner receives during the previous year any capital asset or money or both from a firm in connection with the reconstitution then any profit and gains arising from such receipt of money by specified person shall be deemed to be the income of the specified entity under the head "Capital Gains" of the previous year in which such capital asset or money or both were received by the specified person. Further, it also prescribes the formula to compute the profit and gains arising to the partner from such receipt of money or capital asset from the firm.

The profit and gains shall be computed in accordance with the following formulae:

$$A = B + C - D$$

A = Income chargeable to income-tax under this provision as income of the firm under the head capital gains;

B = Value of money received by partner on the date of such receipt;

C = Fair market value of the capital asset received by the partner on the date of such receipt; and

D = Balance in the capital account (represented in any manner) of the partner in the books of accounts of the firm at the time of reconstitution.

Mode of computation of capital gain [Section 48]

Section 45(4) deals with the income which arises to the partner on receipt of a capital asset in connection with the reconstitution. However, tax in respect of such receipt is charged in the hands of firm only. Thus, in case of reconstitution double taxability will arise once under section 45(1) read with section 9B and second under section 45(4). To remove the impact of such double taxation, Section 48 is amended. This section provides for reduction of cost of acquisition, improvement and expenditure incurred in connection with transfer

from full value of consideration of capital asset while computing income chargeable under the head capital gains.

An additional deduction is allowed under Section 48(iii) in respect of the capital gains charged to tax under section 45(4) which is attributable to capital asset being transferred by the firm.

**2. Goodwill forming part of existing block of assets to be reduced from WDV**

[Applicable from Assessment Year 2021-22]

The Finance Bill 2021 proposes to prohibit the depreciation on the goodwill. The following amendments have been proposed to various provisions of the Act:

**2.2-1. Amendment to Section 2(11)**

It has been proposed that 'block of asset' as defined under section 2(11) shall not include the goodwill of a business or profession'.

**2.2-2. Amendment to Section 32(1)**

Clause (ii) to section 32(1) has been proposed to be amended to provide that 'goodwill of a business or profession' shall not be eligible for depreciation. Further, an amendment has been proposed to Explanation 3 to Section 32(1) which defines the expression 'asset'. It has been proposed that 'goodwill of a business or profession' shall not be treated as an 'intangible asset' for Section 32(1).

**2.2-3. Amendment to Section 50**

A new proviso has been proposed to be inserted to Section 50(2) that the CBDT may prescribe a manner to determine the WDV of the block of asset and short-term capital gain if goodwill is forming part of the block of asset and depreciation has been claimed on it.

**2.2-4. Amendment to Section 55**

Section 55 provides the meaning of various terms including 'cost of acquisition' for computation of capital gains. The Finance Bill also proposes amendment to Section 55.

The Finance Bill, 2021, as passed by the Lok Sabha, makes the necessary amendments to Section 43(6)(c) to provide that WDV of block of assets shall be reduced by the actual cost of goodwill falling within such block of assets. However, the actual cost of goodwill shall be first decreased by the:

(a) Amount of depreciation actually allowed to the assessee for such goodwill before the Assessment Year 1988-89, and

(b) Amount of depreciation that would have been allowable to the assessee from the Assessment Year 1988-89 as if the goodwill was the only asset in the relevant block of assets.

It should be noted that while computing the WDV for the assessment year 2021-22, if the depreciation was claimed on the goodwill forming part of the block of assets in the immediately preceding previous year, the amount of reduction calculated above shall not exceeds the WDV of the block of assets.

**3. FMV of capital assets transferred under slump sale to be calculated in prescribed manner**

[Applicable from Assessment Year 2021-22]

The Finance Bill (Lok Sabha) has amended Section 50B(2) to provide that the fair market value (FMV) of the capital assets (being an undertaking or division transferred by way of slump sale) as on the date of transfer shall be calculated in the prescribed manner. Such FMV shall be deemed to be full value of the consideration received or accruing as a result of transfer of such capital asset.



## ANALYSIS OF CHANGES MADE IN THE FINANCE BILL, 2021 AS PASSED BY THE LOK SABHA

Further, a new clause in Explanation 2 has been inserted to provide that the value of capital asset being goodwill, which has not been acquired by the assessee by purchase from previous owner, shall be taken as nil while computing net worth.

### **Amendment by the Finance Bill (Lok Sabha)**

The existing Section 50B does not contain any provision for the computation of the full value of consideration in relation to the transfer of the undertaking under a slump sale. The Finance Bill (Lok Sabha) has amended Section 50B(2) to provide that the fair market value (FMV) of the capital assets (being an undertaking or division transferred by way of slump sale) as on the date of transfer shall be calculated in the prescribed manner. Such FMV shall be deemed to be full value of the consideration received or accruing as a result of transfer of such capital asset. Further, a new clause in Explanation 2 has been inserted to provide that the value of capital asset being goodwill, which has not been acquired by the assessee by purchase from previous owner, shall be taken as nil while computing net worth.

### **4. Tax on Interest earned on PF contribution exceeding Rs. 2.50 Lakhs or Rs. 5 Lakhs**

The Finance Bill, 2021 proposed that no exemption shall be available for the interest income accrued during the previous year in the recognised and statutory provident fund to the extent it relates to the contribution made by the employees over Rs. 2,50,000 in the previous year. This amendment is applicable from the assessment year 2022-23. This amendment has been proposed as the Government noticed that some employees have been contributing a huge amount to these funds and earning interest free income. Thus, to curb this practice, the Government has proposed such amendment to Section 10(11) and Section 10(12). The amendment proposed that the taxable component shall be computed in such manner as may be provided by rules.

The Finance Bill (Lok Sabha) has added a second proviso to Section 10(11) and Section 10(12) that if an employee is contributing to the fund but there is no contribution to such fund by the employer, then the interest income accrued during the previous year shall be taxable to the extent it relates to the contribution made by the employee to that fund in excess of Rs. 5,00,000 in a financial year.

### **5. Tax Audit: Transaction settled by way of a non-account payee cheque/draft is a cash transaction**

[Applicable from Assessment Year 2021-22]

The Finance Bill, 2021 has proposed to further increase this threshold limit from Rs. 5 crores to Rs. 10 crores. The Finance Bill (Lok Sabha) inserts a new proviso that for computation of the threshold limit of Rs. 10 crores, the payment or receipt settled through a non-account payee cheque or non-account payee bank draft shall be deemed to be cash payment or cash receipt respectively. Thus, the same shall be included while computing 5% cash transaction limit under section 44AB.

### **6. HUF is also not eligible for presumptive taxation scheme under section 44ADA**

[Applicable from Assessment Year 2021-22]

Finance Bill 2021 first time proposed to expressly limit the provisions of Section 44ADA to a resident assessee being an Individual, Hindu Undivided Family (HUF) or a partnership firm (other than an LLP). The Finance Bill (Lok Sabha) has further restricted the scope of section 44ADA. Now an HUF

shall also not be eligible for presumptive taxation scheme under section 44ADA.

Consequently, w.e.f. Assessment Year 2021-22, only a resident Individual and a resident partnership firm shall be eligible to compute the income under the said presumptive taxation scheme. An LLP, HUF, Company, AOP, BOI, etc. shall not be eligible to claim the benefit of Section 44ADA.

### **7. Fee for default in furnishing return of income**

The Finance Bill, 2021 has proposed to reduce the time-limit to file belated or revised returns of income, as the case may be, by 3 months. Therefore, the last date to file the revised or belated return shall be 31st December of the relevant Assessment Year.

As the last date cannot exceed 31st December, the higher late filing fees of Rs. 10,000 cannot be levied in any situation. The Finance Bill (Lok Sabha) has made a consequential amendment to Section 234F that the late-filing fee shall be Rs. 5,000.

However, where the total income of a person does not exceed Rs. 5 Lakhs, the fee payable shall not exceed Rs. 1,000.

After, the amendment, the late-filing fee shall be leviable in the following manner:

Amount of total income	Date of filing of Income-tax return	Fees (in Rs.)
Not liable to file return of income	Any time	Nil
Any amount of Income	On or before the due date	Nil
Up to Rs. 500,000	After the due date	1,000
Above Rs. 500,000	After the due date	5,000

### **8. Fee for default in linking Aadhaar and PAN**

The Finance Bill (Lok Sabha) has inserted a new Section 234H to levy a fee for default in intimating the Aadhaar Number. If a person is required to intimate his Aadhaar under Section 139AA(2) and such person fails to do so, he shall be liable to pay a fee, as may be prescribed, not exceeding Rs. 1,000 at the time of making such intimation.

### **9. No re-computation of past year's book profit if MAT credit has been utilized**

[Applicable from Assessment Year 2021-22]

The Finance Bill (Lok Sabha) has inserted two provisos to the proposed sub-section (2D) to Section 115JB. The first proviso provides that the benefit of re-computation of book profit under section 115(2D) shall be available only if the assessee has not utilised the MAT credit in any subsequent Assessment Year. In other words, if such assessee has utilised the MAT credit for payment of tax liability of any subsequent assessment year, he shall not be eligible to claim the benefit of Section 115(2D).

In the second proviso, it is provided that the assessee can make an application for re-computation of book profit only for the past years beginning on or before Assessment Year 2020-21. Further, the assessee shall not be eligible to claim the interest on the refund, if any, arising to him on account of reduction in tax payable due to re-computation of profit of past years.

### **3. Tax on ULIPs**

Finance Bill, 2021 has proposed to insert Fourth and Fifth Proviso to Section 10(10D) that no exemption shall be available under this provision in respect of ULIPs issued on or after the 01-02-2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds Rs. 2,50,000 ('high premium ULIPs'). Further, if the premium is payable by a person for more than one ULIPs,



## ANALYSIS OF CHANGES MADE IN THE FINANCE BILL, 2021 AS PASSED BY THE LOK SABHA

the exemption shall be available only for those policies whose aggregate premium does not exceed Rs. 2,50,000, for any of the previous years during the term of any of the policy.

The income arising from such high-premium ULIPs are proposed to be taxed under Section 112A. Consequently, the Finance Bill, 2021 has proposed to amend the definition of equity-oriented fund to cover the high premium ULIPs. Thus, the equity-oriented fund to cover the ULIPs if such fund invests minimum 90% (in case of investments in other units listed on a recognised stock exchange) or 65% (in any other case) in equity shares of a domestic company.

### 11. Definition of 'Liable to tax' rephrased

The proposed definition provides that "liable to tax", in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided

New Definition as per Finance Bill (Lok Sabha)

"Liable to tax", in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country.

Two major changes have been made in the Finance Bill (Lok Sabha) vis-à-vis Finance Bill, 2021. First, the liability shall be with reference to a country and second, there should be an income-tax liability.

However, it has yet not been defined whether the comprehensive liability shall be considered for the purpose of this definition or even in case of source-based taxability, such person shall be considered as liable to tax in such country.

### 12. No tax on income of 'DFI' and 'Institution' established for financing infrastructure and development

[Applicable from Assessment Year 2022-23]

Exemption to Financial Institution [Section 10(48D)]

Section 10(48D) has been inserted to grant exemption for any income accruing or arising to an institution established for financing the infrastructure and development. The institution shall be set up under an Act of Parliament and later would be notified by the Central Government. The exemption shall be available for a period of 10 consecutive assessment year beginning from the assessment year relevant to the previous year in which such institution is set up.

Exemption to DFI [Section 10(48E)]

Section 10(48E) is inserted to provide the exemption to any income accruing or arising to a DFI licensed by the Reserve Bank of India. The exemption shall be available for 5 consecutive assessment years beginning from the assessment year relevant to the previous year in which the DFI is set up.

### 13. Due date to file return of income by the spouse of a partner

Finance Bill 2021 proposed that the due date for the filing of original return of income shall be extended to 31st October in case of spouse of a partner of a firm whose accounts are required to be audited under the Income-tax Act or under any other law for the time being in force, if the provisions of section 5A apply to them.

The Finance Bill, 2021 also proposes that the due date for filing of return of income by the partners of a firm, which is required to furnish report under Section 92E, shall be 30th November of the assessment year.

### 14. Due date for filing of belated and revised ITR

Pursuant to the amendment, a belated and revised return in respect of assessment year 2021-22 and subsequent assessment years can be filed up to 31st December of that assessment year.

### 15. New scheme of Re-Assessment

The Finance Bill, 2021 proposes a new re-assessment procedure for an income which has escaped the assessment and in search and seizure cases. The Explanatory Memorandum stated that the new scheme of assessment would result in less litigation and would provide ease of doing business to the taxpayers. The Finance Bill substituted existing Sections 147, 148, 149 and 151 and inserted a new section 148A making a complete change in the assessment proceedings relating to income escaping assessment and search-related cases. Consequential amendments have also been proposed to Section 151A, 153A and 153C.

Finance Bill (Lok Sabha) covers the word Re-computation. Certain Surveys excluded from mandatory coverage under provisions of Section 148

### 16. Pending Applications before AAR

The Finance Bill, 2021 proposed that the Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette. The Central Government has been empowered to constitute one or more Board for Advance Rulings for giving advance rulings on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner

### 17. Scope of investment extended for exemption under Section 10(23FE)

The Finance Bill (Lok Sabha) has extended the relaxation with respect to further investment by the Category I or II AIF in any of the following entities:

- A domestic holding company registered on or after 01-04-2021 having a minimum 75% investments in one or more infrastructure companies; or
- A NBFC-IDF/IFC having minimum 90% lending to one or more infrastructure entities.

Further, the amendment has been made to provide that exemption under this clause shall be calculated proportionately if the aggregate investment of holding company in Infrastructure Company or companies or NBFC-IDF/IFC is less than 100%.

### 18. Income of a non-resident from leasing of aircraft to a unit of an IFSC [Section 10(4F)]

[Applicable from Assessment Year 2022-23]

The Finance Bill, 2021 has proposed to insert Section 10(4F) to provide exemption in respect of income of a non-resident by way of royalty on account of leasing of an aircraft to a unit located in an International Financial Services Centre (IFSC). The exemption is proposed to be allowed only when the following conditions are satisfied:

- The unit of IFSC should be eligible for deduction under Section 80LA for the previous year in which aircraft is leased; and
- The operations of the unit of IFSC must be commenced on or before 31-03-2024.

The Finance Bill (Lok Sabha) has made the following changes to the said section:

- Exemption shall be available for both operating and finance lease charges
- Condition of 'Unit of IFSC to be eligible for deduction under section 80LA' is removed



## ANALYSIS OF CHANGES MADE IN THE FINANCE BILL, 2021 AS PASSED BY THE LOK SABHA

### 19. Exemption to be available to non-resident investors and Category-III AIF [Section 10(23FF)]

[Applicable from Assessment Year 2022-23]

The Finance Bill, 2021 proposes to insert two new clauses (viiac) and (viiaa) to Section 47. Clause (viiac) provides that any transfer of capital asset by a foreign investment fund ('original fund') to a fund located in IFSC ('resultant fund') in pursuance of its relocation to such IFSC, is not regarded as transfer for the purpose of computing capital gain. Similarly, clause (viiaa) provides that transfer of shares, unit or interest held by an investor in original fund in consideration of share, unit or interest in resultant fund is also not regarded as transfer.

Section 56(2)(x) provides for the taxability under the head other sources if any property is received by any person without or for inadequate consideration. This provision has also been proposed to be amended to exclude the transfer of property made in relation to relocation of foreign investment fund to IFSC. Thus, no taxability shall arise even in the hands of resultant fund on receipt of capital asset from the original fund.

Here, it is to be noted that the relocation of foreign investment fund to IFSC is treated as a tax neutral transaction. However, when the resultant fund subsequently transfers the capital asset received from the original fund, it shall be regarded as transfer unless provided otherwise and, accordingly, capital gain arising from such transfer shall be chargeable to tax.

The exemption under section 10(23FF) is proposed to be provided to non-resident investors of the resultant fund and not to the resultant fund itself. Thus, where the resultant fund is registered as category-III AIF, the taxability may arise in its hands because Category-III AIF is not recognized as pass-through entity under the Income-tax Act. Considering this fact, the Finance Bill (Lok Sabha) has made changes to Section 10(23FF) to provide exemption to Category-III AIF as well. However, Category-III AIF shall be entitled for the exemption only when it falls under the definition of specified fund as defined under clause (c) of the

### 20. Taxation of Income from GDRs issued by Overseas Depository Bank situated outside India or IFSC [Section 115ACA]

[Applicable from Assessment Year 2022-23]

The Finance Bill (Lok Sabha) has amended the definition of GDRs to provide that they can be created by the Overseas Depository Bank in an International Financial Services Centre (IFSC) as well. Further, GDRs can also be issued against the issue of ordinary shares of issuing company, being a company incorporated outside India, if such depository receipt or certificate is listed and traded on any IFSC.

IFSC is also defined to provide that it shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zone Act, 2005.

### 21. Regulations applicable in case of Category-I and Category-II AIFs [Section 115UB]

[Applicable from Assessment Year 2022-23]

Category-I and Category-II Alternative Investment Funds (AIFs) are provided pass-through status under the Income-tax Act as per Section 115UB read with Section 10(23FBA) and Section 10(23FBB). The pass-through entitles pass their income (except income chargeable under the head business or profession) to their investors without paying tax thereon and, consequently, such income is chargeable to tax in the

hands of the investors. Currently, section 115UB provides that AIFs should be registered with SEBI and regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012.

However, where AIF is located in an International Financial Services Centre (IFSC), it is regulated under the International Financial Services Centres Authority Act, 2019. Thus, considering the same, the Finance Bill (Lok Sabha) has made an amendment to Section 115UB to provide that Category-I and Category-II AIF can also be regulated under the said Act.

### 22. Transaction not regarded as transfer

Transfer of capital asset by Indian Infra Finance Co. to an Institution established for financing infrastructure and development (Section 47(viiaa))

The Finance Bill (Lok Sabha) has inserted a new clause (viiaa) to Section 47 to provide that any transfer of a capital asset by Indian Infrastructure Finance Company Limited to institution established for financing infrastructure and development, set up under an Act of Parliament and notified by the Central Government, shall not be regarded as transfer.

The consequential amendments have also been made to Section 49 to provide that the cost of a capital asset in the hands of the transferee shall be the same as in the hands of the transferor. Further, Section 56(2)(x) is also amended that this provision shall not apply in respect of transfer referred to in Section 47(viiaa).

Transfer of capital asset under a plan approved by Central government (Section 47(viiaf))

The Finance Bill (Lok Sabha) has inserted a new clause (viiaf) to Section 47 to provide that any transfer of a capital asset by a public sector company to another notified public sector company, Central Government or State Government shall not be regarded as transfer. Such transfer must be under a plan approved by the Central Government. The consequential amendments have also been made to Section 49 to provide that the cost of a capital asset in the hands of the transferee shall be the same as in the hands of the transferor. Further, Section 56(2)(x) is also amended that this provision shall not apply in respect of transfer referred to in Section 47(viiaf).

### 23. Performance of functions of Verification Unit

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 inserted a new Section 144B, to provide the manner in which faceless assessment under Section 143(3) and best judgment assessment under Section 144 shall be conducted.

The Finance Bill 2021 (Lok Sabha) has provided that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act. The request for verification may also be assigned by the National Faceless assessment centre to such verification unit.

### 24. Investment division of offshore banking unit to be registered as Category-I FPI and not as category-III AIF [Section 10(4D) and 115AD]

[Applicable from Assessment Year 2022-23]

The Finance Bill, 2021, has proposed to amend the definition of specified fund as provided under section 10(4D) to extend the benefit of exemption of this section to the investment division of offshore banking unit.

Corresponding amendment has also been proposed to Section 115AD for extending the benefit of concessional tax rate prescribed under that section to investment division of offshore banking unit. However, said unit was defined under Section 115AD as a unit registered as Category-III FPI under the SEBI (FPI) Regulations, 2019 made under the SEBI Act, 1992.



## ANALYSIS OF CHANGES MADE IN THE FINANCE BILL, 2021 AS PASSED BY THE LOK SABHA

Under the SEBI (FPI) Regulations, 2019, FPIs can be registered under 2 categories only

- Category-I FPIs and Category-II FPIs. Thus, reference of Category-III FPI under section 115AD was inadvertently made.

Now, the Finance Bill (Lok Sabha) has amended the definition of 'investment division of offshore banking unit' to provide that it should be granted registration as a Category-I Foreign Portfolio Investor under the SEBI (FPI) Regulations, 2019.

Further, specified funds as defined under Section 10(4D) include a fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate:

- (a) Which has been granted a certificate of registration as a Category III AIF and is regulated under the SEBI (AIF) Regulations, 2012, made under the SEBI Act, 1992;
- (b) Which is located in any International Financial Services Centre (IFSC);
- (c) Entire units of which are held by non-residents other than unit held by a sponsor or manager.

The Finance Bill (Lok Sabha) has amended the aforesaid definition to provide that such fund can also be regulated under International Financial Service Centres Authority Act, 2019.

### 25. Curative amendments under section 115AD

The Finance Bill, 2021, has proposed to amend the definition of specified fund provided under Section 10(4D) to include Investment division of offshore banking unit within its ambit. Consequently, Section 115AD has also been proposed to be amended to extend the benefit of concessional tax rates prescribed therein to such investment division of offshore banking unit. The proposed amendment has specifically inserted words "investment division of an offshore banking unit" after specified fund, whereas such investment unit were already covered within the meaning of specified fund by virtue of amendment proposed to Section 10(4D). To remove this error, the Finance Bill (Lok Sabha) has removed the reference of the 'investment division of offshore banking unit' wherever provided before the expression 'specified fund' under 115AD.

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('Amendment Act, 2020') substituted clause (i) of section 115AD(1) which provides for concessional tax rates on income from securities held by FPIs with effect from Assessment Year 2021-22 to provide tax rate in case of specified fund as defined under Section 10(4D). Before the said amendment, clause (i) of section 115AD(1) used to have a Proviso which provides for further concessional tax rate of 5% in respect of securities covered under section 194LD. But, in the clause (i) (as substituted by the Amendment Act, 2020), the said proviso was missing. Thus, there was no clarity whether such proviso would continue to be applicable or not after substitution of clause (i).

To clarify this issue, the CBDT issued a press release dated 17-03-2021 and provided that such proviso shall continue to be applicable. Consequentially, the Finance Bill (Lok Sabha) has now made necessary amendment under the Amendment Act, 2020 and inserted the said proviso under the substituted clause (i) itself with effect from Assessment Year 2021-22.

### 26. Changes to Indian Stamp Act

The Finance Bill (Lok Sabha) has amended the Indian Stamp Act, 1899 to extend the waiver of the stamp duty even if transfer is made to the development financial institution established by any law made by the parliament.

Further, the Stamp duty will not be charged under the Act if the Government companies under the following stages are transferred to another Government Company or to the Central Govt. or the State Govt.:

- (a) Winding up;
- (b) Closing;
- (c) Striking-off;
- (d) Liquidation; or
- (e) Shut down.







# PRESENTATION OF FINANCIAL STATEMENTS (IND AS 1)

- CA Sukanya Ghosh



**Ind AS 1** describes the framework for the presentation of the financial statements. This standard lays down the principles for presentation of General Purpose Financial Statements, the structure/formats, contents of these financial statements, guidelines of specific disclosure etc to be read with Schedule III to the Companies Act, 2013.

## Components of financial statements

Indian Accounting Standard 1 defines a complete set of Financial Statements to include the following:

- a Balance Sheet as at the end of the period;
- a Statement of Profit and Loss for the period;
- a statement of changes in equity for the period;
- a statement of cash flows for the period; (earlier referred to as cash flow statement)
- notes, comprising significant accounting policies and other explanatory information; and comparative information in respect of the preceding period;
- a Balance Sheet as at the beginning of the earliest comparative period when an entity applies an accounting policy retrospectively or makes a

retrospective restatement of items in its financial statements

## Structure and Content

### Statement of profit and loss

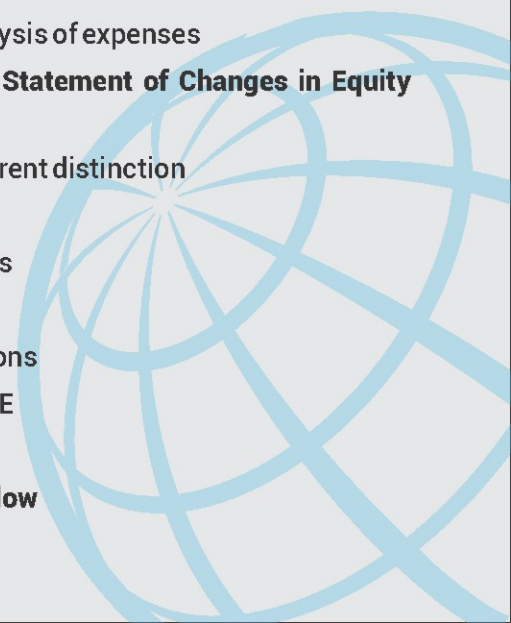
- Single statement of profit and loss
- Line items
- Other comprehensive income
- Material items
- Nature wise analysis of expenses

### Balance sheet and Statement of Changes in Equity (SOCIE)

- Current/non-current distinction
- Current assets
- Current Liabilities
- Line items
- Sub-classifications
- Meaning of SOCIE
- Format of SOCIE

### Statement of cash flow

- As per IND AS 7





## General features of the financial statements



### Disclosure

1. Disclosure of accounting policies
2. An entity shall disclose information about the assumptions it makes about the future, and other major sources of estimation uncertainty at the end of the reporting period, that have a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year. In respect of those assets and liabilities, the notes shall include details of:
  - (a) their nature, and
  - (b) their carrying amount as at the end of the reporting period.
3. An entity shall disclose information that enables users of its financial statements to evaluate the entity's objectives, policies and processes for managing capital.





# NOTIFICATIONS ISSUED UNDER GST IN THE MONTH OF FEBRUARY & MARCH, 2021

- CA Abhisek Tibrewal



**03/2021 – CT dated 23/02/21** : Government hereby notifies that the provisions of Aadhar authentication under sub-section (6B) or sub-section (6C) of section 25 of CGST Act shall not apply to a person who is:

- a) Not a citizen of India; or
- b) a Department or establishment of the Central Government or State Government; or
- c) a local authority; or
- d) a statutory body; or
- e) a Public Sector Undertaking; or a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

**04/2021 – CT dated 28/02/2021** : Due date for furnishing of Annual Return specified under Section 44 of the CGST Act for the financial year 2019-20 extended to 31.03.2021.

**04/2021 – CT dated 28/02/2021** : Due date for furnishing of Annual Return specified under Section 44 of the CGST Act for the financial year 2019-20 extended to 31.03.2021.

## CIRCULARS ISSUED UNDER GST IN THE MONTH OF FEBRUARY, 2021

**145/01/2021 - GST dated 11/02/2021** : Standard Operating Procedure (SOP) issued for implementation of the provision of suspension of Registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.

**146/02/2021 - GST dated 23/02/2021** : Clarification issued in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020 – Central Tax dated 21st March, 2020.



## MARCH, 2021

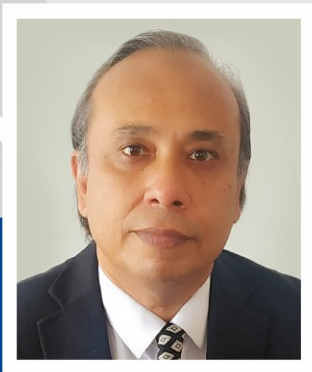
**05/2021 – CT dated 08/03/2021** : W.e.f 01.04.2021, the provisions of e-invoicing shall be applicable to registered persons having turnover exceeding 50 crore rupees instead of current limit of 100 crore rupees.

**06/2021 – CT dated 30/03/2021** : Penalty for Non-compliance with QR Code on B2C transactions waived from 1st December, 2020 till 30th June, 2021 subject to the compliance of the said provisions from 1st July, 2021.

**147/03/2021 - GST dated 12/03/2021** : Clarification on refund related issues:

1. Clarification in respect of refund claim by recipient of Deemed Export Supply: the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Para 41 of Circular No. 125/44/2019 – GST dated 18/11/2019 had placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. This created difficulty in claiming refund and therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient.
2. Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a): Para 26 of Circular No. 125/44/2019-GST dated 18th November 2019 gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B of the relevant period and were unable to claim refund of the integrated tax paid on the same through FORM GST RFD-01A. The said Circular clarified that for the tax periods from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the tables 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period. The said relaxation has been extended for filing refund claims till 31.03.2021.
3. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017: It is clarified that for the purpose of Rule 89(4), the value of export/ zerorated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule.





# SNIPPETS ON THE RECENT DEVELOPMENTS IN COMPANIES ACT AND IBC

- CA Animesh Mukhopadhyay



## **Insolvency and Bankruptcy Code (Amendment) Ordinance 2021 on Pre-Packaged insolvency process**

This Plan allows creditors and debtors to work on an informal plan and then submitting the same for approval. This scheme contains a provision that disallows to avail the benefit of the scheme if the majority of the shareholders of such scheme is an undischarged insolvent or wilful defaulter. This scheme allows the corporate debtor to remain in possession of the operation of the business. It will be initiated by the corporate debtor after obtaining approval from its financial creditors representing not less than 66% of the value of financial debt due to such creditor. Businesses can voluntarily file for initiation of the pre-pack scheme by passing a special resolution by the board of directors.

The central government has specified Rs 10 lakh as the minimum amount and maximum amount of Rs 1 crore of default for the matters relating to the pre-packaged insolvency resolution process of the corporate debtor.

The most significant feature of a pre-pack insolvency resolution plan is that, unlike the CIRP, it allows the promoters or directors that the management of defaulting business to continue to be in control of the operation of the business.

CIRP has a provision that allows the resolution professional to control the business of the corporate debtor in consultation with the financial creditor.

As per section 7 of IBC, 2016 which states that CIRP can be initiated by the corporate debtor, financial creditor, and operational creditor but a pre-pack scheme can only be initiated by the corporate debtor. And as a result, it is cost-effective and less time taking exclusively for MSME in comparison to CIRP.

Pre-packaged insolvency resolution process to be completed within 120 days out of which 90 days has been given to the resolution professional for submission of resolution plan and NCLT will have a period of 30 days from such submission to

approve the same (moratorium). And comparatively, this is far less than from CIRP as the time frame for completion of CIRP is 270 days.

## **Changes in Schedule III Under Companies Act 2013**

MCA has issued Notification GSR 207 (E) dated 24th March 2021 and made the amendments in Schedule III with effect from 1st Day of April 2021. Key points are stated hereunder. Members are requested to refer the Notification and other relevant and appropriate documents for detailed discussions on the issue:

- a. Shareholding of Promoter: The note on Share Capital in the Financial Statements shall mention details of the Shareholding of the Promoters along with changes, if any, during the Financial Year.
- b. Trade Payable (Creditors) ageing Schedule: Companies henceforth be required to provide ageing schedule for trade payables due for the periodicity of 1 year, 1-2-year, 2-3 year & more than 3 years. These include trade payables to MSMEs, disputed dues to MSMEs, and other dues and disputed dues. Similarly, disclosures shall also be made where no due date of payment is specified.
- c. Trade receivables (Debtors) ageing Schedule: Companies will be required to disclose the ageing schedule of its trade receivables i.e. including undisputed and disputed trade receivables considered good and doubtful with ageing classified as less than 6 months, 6 months to 1 year, 1-2 years, 2-3 years and 3 years or more along with disclosures separate disclosure for information of unbilled dues. These undisputed and disputed trade receivables which are further categorized into good and doubtful.
- d. Title deeds of Immovable Property not held in name of the



## SNIPPETS ON THE RECENT DEVELOPMENTS IN COMPANIES ACT AND IBC

Company: The Company shall provide the details of the immovable property (other than properties where the Company is the lessee and the lease agreements are duly executed in favour of the lessee) whose title deeds are not held in the name of the Company.

- e. Disclosure on revaluation of Assets: Where the Company has revalued its Property, Plant and Equipment, the company shall disclose as to whether the revaluation is based on the valuation by a registered valuer as defined under rule 2 of the Companies (Registered Valuers and Valuation) Rules, 2017.
- f. Disclosure on Loans/ Advance to Directors/ KMP/ Related parties: disclosures shall be made where Loans or Advances in the nature of loans are granted to promoters, directors, KMPs and the related parties (as defined under Companies Act, 2013,) either severally or jointly with any other person, that are:
  - (a) repayable on demand or
  - (b) without specifying any terms or period of repayment;
- g. Details of Benami Property held: In case, any proceedings have been initiated or pending against the entity under the Benami Transactions (Prohibitions) Act, 1988, the corresponding disclosures shall be provided in the financial statements. The Company shall disclose the followings:
  - i. Details of such property, including year of acquisition,
  - ii. Amount thereof,
  - iii. Details of Beneficiaries,
  - iv. If property is in the books, then reference to the item in the Balance Sheet,
  - v. If property is not in the books, then the fact shall be stated with reasons,
  - vi. Where there are proceedings against the company under this law as an abettor of the transaction or as the transferor then the details shall be provided,
  - vii. Nature of proceedings, status of same and company's view on same.
- h. Details of Borrowing: Where the Company has borrowings from banks or financial institutions on the basis of security of current assets, it shall disclose the following:-
  - a) whether quarterly returns or statements of current assets filed by the Company with banks or financial institutions are in agreement with the books of accounts.
  - b) if not, summary of reconciliation and reasons of material discrepancies, if any to be adequately disclosed.
  - i.. Wilful Defaulter: Where a company is a declared wilful defaulter by any bank or financial Institution or other lender, following details shall be given:
    - a. Date of declaration as wilful defaulter,
    - b. Details of defaults (amount and nature of defaults), "wilful defaulter" here means a person or an issuer who or which is categorized as a wilful defaulter by any bank or financial institution (as defined under the Act) or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India.
- j. Relationship with Struck off Companies: Where the company has any transactions with companies struck

off under section 248 of the Companies Act, 2013 or section 560 of Companies Act, 1956, then the details of the same.

- k. Registration of charges or satisfaction with Registrar of Companies: Where any charges or satisfaction yet to be registered with Registrar of Companies beyond the statutory period, details and reasons thereof shall be disclosed.
- l. Compliance with number of layers of companies Where the company has not complied with the number of layers prescribed under clause (87) of section 2 of the Act read with Companies (Restriction on number of Layers) Rules, 2017, the name and CIN of the companies beyond the specified layers and the relationship/extent of holding of the company in such downstream companies shall be disclosed.
- m. Disclosure of Ratios  
The amendment requires the companies covered under division I and II of schedule III to disclose the following ratios:
  - a. Current Ratio,
  - b. Debt-Equity Ratio,
  - c. Debt Service Coverage Ratio,
  - d. Return on Equity Ratio,
  - e. Inventory turnover ratio,
  - f. Trade Receivables turnover ratio,
  - g. Trade payables turnover ratio,
  - h. Net capital turnover ratio,
  - i. Net profit ratio,
  - j. Return on Capital employed,
  - k. Return on investment.

Necessary explanation needs to be provided for any change in the ratio by more than 25% as compared to the preceding year.

- n. Details in respect of Utilization of Borrowed funds and share premium shall be provided in respect of:
  - a. Transactions where an entity has provided any advance, loan, or invested funds to any other person (s) or entity/ entities, including foreign entities.
  - b. Transactions where an entity has received any fund from any person (s) or entity/ entities, including foreign entity.
  - o. Compliance with approved Scheme(s) of Arrangements: Where any Scheme of Arrangements has been approved by the Competent Authority in terms of sections 230 to 237 of the Companies Act, 2013, the Company shall disclose that the effect of such Scheme of Arrangements have been accounted for in the books of account of the Company 'in accordance with the Scheme' and 'in accordance with accounting standards' and deviation in this regard shall be explained of holding of the company in such downstream companies shall be disclosed.
- p. Undisclosed Income (Reconciliation of Income Tax and Companies Act): The Company shall give details of any transaction not recorded in the books of accounts that has been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961, unless there is immunity for disclosure under any scheme and also shall state whether the previously unrecorded income and related assets have been properly recorded in the books
- q. CSR Disclosure: Where the company covered under section 135 of the Companies Act, the following shall be disclosed with regard to CSR activities: –
  - a. amount required to be spent by the company during the year,
  - b. amount of expenditure incurred,
  - c. shortfall at the end of the year,



- d. total of previous years shortfall,
- e. reason for shortfall,
- f. nature of CSR activities,
- g. details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per relevant Accounting Standard,
- h. where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.
- r. Details of Crypto Currency or Virtual Currency:
- i) Where the Company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed: –
  - a. profit or loss on transactions involving Crypto currency or Virtual Currency
  - b. amount of currency held as at the reporting date,
  - c. deposits or advances from any person for the purpose of trading or investing in Crypto Currency/ virtual currency.

**Companies (Audit and Auditors) Amendment Rules 2021**

In terms of Notification No: G.S.R. 206(E) dated 24th March 2021, under sections 139, 143, 147 and 148 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely: –

After clause 2(d) under Rule 11 of the Companies (Audit and Auditors) Rules 2014, the following clauses 2 (e) shall be inserted, namely: – “(i) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities (“Intermediaries”), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity (ies), including foreign entities (“Funding Parties”), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

Clause 2 (f): Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

Clause 2 (g): Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory

requirements for record retention.

The above notification shall be effective from 1st April 2022 vide Notification No: GSR 248 (E) dated 1st April 2021.

**Companies (Accounts) Amendment Rules 2014**

G.S.R. 205(E). – Under Sec 134 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:– These rules may be called the Companies (Accounts) Amendment Rules, 2021 and shall be effective from the 1st day of April, 2021.

In the Companies (Accounts) Rules, 2014,– (1) in rule 3, in sub-rule (1), the following proviso shall be inserted, namely:– “Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.” (2) in rule 8, in sub-rule (5), after clause (x), the following clauses shall be inserted namely:– “(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year along with their status as at the end of the financial year. (xii) the details of difference between amount of the valuation done at the time of onetime settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

The above notification shall be effective from 1st April 2022 vide Notification No: GSR 247 (E) dated 1st April 2021.

**Changes to Schedule V – Remuneration**

S.O. 1256 (E) dated 18th March 2021

(a) in Section I, in the first para, after the words “managerial person or persons”, the words “or other director or directors” shall be inserted;

(b) in Section II,--

(i) after the words “managerial person”, wherever occurred, the words “or other director” shall be inserted;

(ii) for Table (A);, the following shall be substituted, namely: –

Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director
Negative to 5 cr	60 lacs	12 lacs
> 5Cr to less than 100 cr	84 lacs	17 lacs
> 100 cr less than 250 cr	120 lacs	24lacs
> 250 cr	120 lacs + 0.01% of the Effective cap in excess of 250 cr	24 lacs +0.01% of the effective capital in excess of 250 cr.





## TECHNOLOGY UPDATES (JANUARY - MARCH, 2021)

- CA Mohit Sareen



The Institute of Chartered Accountants of India issued **"GUIDANCE NOTE ON ACCOUNTING BY E-COMMERCE ENTITIES"** on 16th February 2021

<https://resource.cdn.icai.org/63093research51049gnecomm.pdf>

The Institute of Chartered Accountants of India published research paper on **"IMPACT OF DIGITAL TRANSFORMATION STRATEGIES ON PERFORMANCE OF MANUFACTURING COMPANIES IN INDIA"** on 16th February 2021

<https://resource.cdn.icai.org/63095research51050b.pdf>

The Institute of Chartered Accountants of India published research paper on **"MONEY LAUNDERING AND SCAMS "THROUGH" MULTI-STATE URBAN COOPERATIVE CREDIT SOCIETIES IN INDIA - CASH DEPOSITS"** on 16th February 2021

<https://resource.cdn.icai.org/63098research51050e.pdf>

The Institute of Chartered Accountants of India published research paper on **"MONEY LAUNDERING AND SCAMS "THROUGH" MULTI-STATE URBAN COOPERATIVE CREDIT SOCIETIES, ANGADIA'S & BANKS IN INDIA/ABROAD – GEMS & JEWELLERY INDUSTRY"** on 16th February 2021

<https://resource.cdn.icai.org/63099research51050f.pdf>





The Research Committee of The Institute of Chartered Accountants of India announced the "ICAI Research Project Scheme 2021" on 30.03.2021. The primary objective of ICAI Research Project Scheme 2021 is to undertake research in the field of accounting and other affiliated areas with a view to enhance the value of services rendered by the profession. The permissible amount of grant per research project is Rs. 10 Lakhs. For more details, please visit the following link:

<https://resource.cdn.icai.org/64169research51506.pdf>

Government of India has established Central Scrutiny Centre (CSC) for carrying out scrutiny of Straight Through Processes (STP) e-forms filed by the Companies under the Act w.e.f. 23rd March 2021. The notification can be downloaded from the following link:

<http://egazette.nic.in/WriteReadData/2021/225985.pdf>

The Institute of Chartered Accountants of India has called for "Preliminary Expression of Interest for Practice Management Software" on 11.03.2021.

<https://resource.cdn.icai.org/63469cmp51258.pdf>

The Institute of Chartered Accountants of India has called for "Preliminary Expression of Interest for Audit Tool" on 10.03.2021.

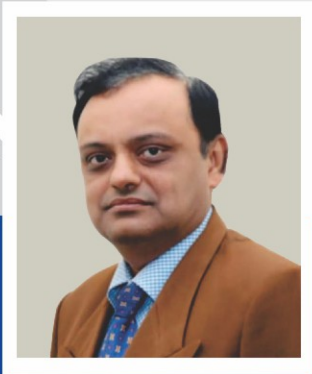
<https://resource.cdn.icai.org/63465cmp-audittool.pdf>

The Institute of Chartered Accountants of India has called for "Preliminary Expression of Interest for Digital Library" on 10.03.2021.

<https://resource.cdn.icai.org/63466cmp-digitallibrary.pdf>







# IMPORTANT UPDATES ON CODE OF ETHICS

- CA Sumantra Guha



## Extracts of the First Schedule, Part I, Clause 10 of the Code of Ethics, Volume II

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he:-

Clause (10): charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;

(i) What distinguishes a profession from a business is that professional service is not rendered with the sole purpose of a profit motive. Personal gain is one but not the main or the only objective. Professional opinion, therefore, frowns upon methods where payment is made to depend on the basis of results. It is obvious that a person who is to receive payment in direct proportion to the benefit received by his client, may be tempted to exaggerate the advantage of his service or may adopt means which are not ethical. It will have the effect of undermining his integrity and impairing his independence. Therefore, the members are prohibited from charging or accepting any remuneration based on a percentage of the profits or on the happening of a particular contingency such as, the successful outcome of an appeal in revenue proceedings.

(ii) Professional services should not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is obtained or where the fee is otherwise contingent upon the findings or results of such services. However, fee should not be regarded as being contingent if fixed by a Court or other public authority.

(iii) The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this Clause in certain professional services. The said Regulation 192 is reproduced below:-

### 192. Restriction on fees

No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings, or results of such work:

Provided that:

- (a) In the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement of the assets;
  - (b) In the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; and
  - (c) In the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.
  - (d) In the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work; as Inserted by Notification No. 1-CA (7)/145/2012 published in Part III, Section 4 of the Gazette of India, Extraordinary, dated 1st Aug., 2012
  - (e) In the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
  - (f) In the case of debt recovery services, the fees may be based on a percentage of the debt recovered;
  - (g) In the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and
  - (h) Any other service or audit as may be decided by the Council
- Note: Following activities have been decided by the Council under "h" above:-
- (i) Acting as Insolvency Professional as decided by the Council at its 362nd Meeting held on 6th - 8th Feb., 2017
  - (ii) Non-Assurance Services to Non-Audit Clients as decided by the Council at its 379th Meeting held on 17th - 18th Dec., 2018



## Procedure in Inquiries for Disciplinary Matters relating to misconduct of the members of the Institute

The Chartered Accountants (Amendment) Act, 2006, has for the first time added the provisions for imposition of fine as a punishment for the misconduct.

Sections 21, 21A, 21B, 21C, 22-A and 22-G of the Act read with The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007 have laid down the following procedure in regard to the investigation of misconduct of members which has been summarized as under:-

(a) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) will process the same for its registration and shall form a prima facie opinion on the alleged misconduct.

(b) After the prima facie opinion is formed, the Director (Discipline) shall place the matter before the Board of Discipline or Disciplinary Committee in respect of the cases relating to the First Schedule or the Second Schedule to the Act as the case may be. Where the matter relates to both the Schedules, it shall be placed before the Disciplinary Committee only. Where the Director (Discipline) is of the opinion that there is no prima facie case the Board of Discipline may, if agrees with the opinion of the Director (Discipline) close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Director (Discipline) is of the opinion that there is a prima facie case, further action will be taken by the Board of Discipline or Disciplinary Committee, as the case may be.

(c) The Board of Discipline (in respect of matters relating to First Schedule) has been empowered to pass the following orders:-

- (i) reprimand the member
- (ii) remove the name of the member from Register upto a period of three months
- (iii) impose such fine which may extend to rupees one lakh.

(d) The Discipline Committee (in respect of matters relating to Second Schedule or Both Schedules when the misconducts are related to both the Schedules) has been empowered to pass the following orders:-

- (i) reprimand the member
- (ii) remove the name of the member from the Register permanently or for such period as it may think fit.
- (iii) impose such fine which may extend to rupees five lakhs.

(e) The Director (Discipline), Board of Discipline and the Disciplinary Committee have powers of Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely,

- (i) summoning and enforcing attendance of any person and examining him on oath;
- (ii) discovery and production of any document; and
- (iii) receiving evidence on affidavit.

(f) Any member of the Institute aggrieved of any order of the Board of Discipline or the Disciplinary Committee may prefer an appeal under Section 22G to the Appellate authority constituted under the provisions of Section 22A – 22D of the Act. Such appeal has to be filed within 90 days from the date of communication of the order of Board of Discipline or the Disciplinary Committee, as the case maybe. It is also open to the Director (Discipline) to file appeal with the Appellate Authority against the order of the Board of Discipline or the Disciplinary Committee within 90 days after obtaining authorization of the Council.

(g) The Appellate Authority while hearing an appeal against the order of the Board of Discipline or the Disciplinary Committee has the power to:

- (i) confirm, modify or set aside the order;
  - (ii) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
  - (iii) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
  - (iv) pass such other order as the Authority thinks fit.
- (h) The Appellate Authority shall give an opportunity of being heard to the parties concerned before passing any order.

### Conduct of the Members in any other Circumstances:

Professional or other Misconduct defined

For the purposes of this Act, the expression "Professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to enquire into conduct of any member of the Institute under any other circumstances.

A member is liable to disciplinary action under Section 21 of the Chartered Accountants Act, if he is found guilty of any professional or "other misconduct". This provision empowers the Director (Discipline) to enquire into any conduct of a member under any other circumstance. This is considered necessary because a Chartered Accountant is expected to maintain the highest standards and integrity even in his/her personal affairs and any deviation from these standards, would expose him/ her to disciplinary action. For example, a member who is found to have forged the will of a

relative, may be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty.

The question whether a particular act or omission constitutes "misconduct in any other circumstances" has to be decided on the facts and circumstances of each case. The judgement dated 10th September, 1957 of the Supreme Court in "Council of the Institute of Chartered Accountants of India and another vs. B. Mukherjea" (AIR 1958 SC 72) is also relevant. After examining the nature, scope and extent of the disciplinary jurisdiction, which can be exercised under the provisions of the Act, the Supreme Court observed as under:-

"We, therefore, take the view that, if a member of the Institute is found, prima facie, guilty of conduct, which, in the opinion of the Council renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the Schedule, it would still be open to the Council to hold an enquiry against the member in respect of such conduct and a finding against him, in such an enquiry, would justify appropriate action being taken by the High Court."





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