THE KOLHAPUR BRANCH OF WIRC OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

E Newsletter
Nov 2021

INDEX

Branch Address
Kolhapur Branch of WIRC of ICAI, ICAI Bhawan, 321/1, E Ward,
Dabholkar Corner, New Shahupuri, Kolhapur - 416001
Tel.: (0231) 2665856 l Email : kopbr.icai@gmail.com
Visit Branch Blog : www.kolhapur-icai.blogspot.com

CA Tushar Anturkar
Chairman

Chairman's Communication

****** HAPPY DIWALI AND A PROSPEROUS NEW YEAR******

Dear Members,

Hope every body is in best of health and ready to enjoy the coming festive season.
Wish you all a very Happy and Healthy Diwali and a very Prosperous New Year.

With the grace of god, the pandemic situation is under control to a great extent and life has returned to normalcy so that we will be able to enjoy the upcoming festive season. Everyone is all set to have best of time for shopping, meeting friends and relatives and eating excellent festive foods. Let's all enjoy the atmosphere, but at the same time we need to take proper precaution so that we are again not compelled to face adverse situation as we witnessed some months back. Also, I would like to appeal to all of you that we need to think about environmental issues while enjoying.

This festive season is going to prove to be a boon to the economy as it will improve the economic situation of the entire Country. Most of the business are already witnessing this in the form of higher demands and orders on hand. GST Collection in the month of October 2021 stood at 1.30 Lakh Crores which is the second highest in the history of GST. This is one of the indicators that the overall demand in the Country is rapidly improving.

Friends, this month we will be getting the honour of having our Honourable President Shri Nihar Jambusariaji amongst us at our branch. He will be visiting our Branch on 12th November, 2021. On this day we have planned a small program of an interactive meeting with him for members and students. Our beloved President is continuously and tirelessly giving his best for the development and betterment of our profession. As a token of our appreciation, we are arranging a felicitation program at the time of his visit. I request all of you to attend the program without fail.
This year the three year term of the Central and Regional Councils and branch committees is ending. Elections are being held in the first week of December for the Central Council and Regional Council. I request all the members to exercise their voting right and to take out time and cast your votes in the upcoming elections. This time our Institute has given an option for the members to change their polling booth and cast their vote at any other convenient booth at place in the entire country. The procedure for the same is also very easy and can be done even through the mobile phones. So those members who are not residing in city of their polling booth should get the booth changes and cast their votes at another polling booth. Detailed procedure for the same is being circulated on WhatsApp groups.

During the month of October we had a very refreshing and energizing Residential Conference at Forest Escapes Resort, Koynanagar. It was a great experience and members got a chance to enjoy the natural beauty at the venue, excellent food and knowledge sharing. Members also enjoyed various other activities like trekking, sight-seeing, games, campfire, etc. Hope all the attending members had a memorable time together after a long time.

There were major updates in the GST during last month. To have an insight of these updates we had organised a physical seminar on the same along with the amendments in reassessment procedure under the Income Tax Act. I thank both the faculties CA Gangadhar Haldikar and CA Rajat Pawar for their excellent deliberations at the seminar.

Student activities have also been started in full swing. The library is now operational at full capacity and students are taking best of the advantage of the facility for their upcoming exam in December. Various student courses of MCS and ITT were also conducted for the benefit of students so that they are eligible for appearing in the upcoming exams.

On 12th November we are having a sub-regional conference along with Satara, Sangli and Ichalkaranji branches at Satara. Top most faculties in the Country will be delivering lectures on various academic topics at the conference. I request all the members to participate in large number and take benefit of the conference.

Besides this we will be arranging various seminars and events of interest for the benefit of members and students of the branch.

The institute has hosted the Multi-Purpose Empanelment form for 2021-22 on the website https://meficai.org. All are requested to submit the form well in advance so as to avoid last minute rush.

Once again, I wish you all a very Happy Diwali. May this festival of lights bring happiness, joy and prosperity to all of you.
Stay Safe and Take Care.

Best Wishes,
CA Tushar Anturkar
Chairman

KOLHAPUR BRANCH OF WIRC OF ICAI

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CA Rajat Powar
CA Vaijayanta Chaugule

Kolhapur Branch of WIRC of ICAI
Details of Programme Held in the Month of October,2021

	Date		Programme Name	Topic	Students/ Members	Speakers name	Venue	CPE Hours
	From	To						
1	02-10-2021	03-10-2021	12 Hours Residential CPE Seminar at Forest Escapes Koyna Resort	1. Deductions under 80P for Co-Op Societies 2. Recent Judgements in GST & jurisprudence 3. Yoga 4. Code of Ethics 5. Amendments in TDS & TCS	Members	1. CA Sanjay Pawar 2. CA Kushal Mishra 3. CA Nilesh Bhalkar 4. CA Sumit Biranje 5. CA Ajinkya Jagoje	Koyna Resort	12 Hrs.
2	09-10-2021	24-10-2021	ICITSS - ITT	Virtual KOP-ITT-126	Students	-	Google Meet App	-
3	13-10-2021	13-10-2021	Physical CPE Meeting on GST updates & Reopening of Assessment	GST updates & Reopening of Assessment	Members	1. CA Gangadhar Haldikar 2. CA Rajat Powar	ICAI Bhawan, Kolhapur	3 Hrs
4	16-10-2021	30-10-2021	AICITSS - MCS	Physical KOP-MCS-22	Students	-	ICAI Bhawan, Kolhapur	-
5	26-10-2021	26-10-2021	CA STUDENTS' TALENT SEARCH 2021	PPT Presentation Competition	Students	-	ICAI Bhawan, Kolhapur	-

Income Tax Update

Circulars and Notifications

(Compiled by **CA. Ajinkya Jagoje**)
(Email - ajinkya.jagoje@abmllp.com)

PRESS RELEASE, DATED 1-11-2021

SECTION 285BB OF THE INCOME-TAX ACT, 1961 - ANNUAL INFORMATION STATEMENT - ROLL OUT OF NEW ANNUAL INFORMATION STATEMENT (AIS)

The new AIS can be accessed by clicking on the link "Annual Information Statement (AIS)" under the "Services" tab on the new Income tax e-filing portal (https://www.incometax.gov.in) The display of Form 26AS on TRACES portal will also continue in parallel till the new AIS is validated and completely operational.

The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc.

If the taxpayer feels that the information is incorrect, relates to other person/year, duplicate etc., a facility has been provided to submit online feedback. The reported value and value after feedback will be shown separately in the AIS. In case the information is modified/denied, the information source may be contacted for confirmation.

NOTIFICATION S.O. 4586(E) [NO. 124/2021/F. NO. 500/1/2014-APA-II], DATED 29-10-2021

SECTION 92C OF THE INCOME-TAX ACT, 1961, READ WITH RULE 10CA OF THE INCOME-TAX RULES, 962 - COMPUTATION OF ARM'S LENGTH PRICE - DEEMED ARM'S LENGTH PRICE FOR ASSESSMENT YEAR 2021-22

Central Government hereby notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent. of the latter in respect of wholesale trading and three per cent. of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2021-22.

CIRCULAR NO. 18/2021 [F.NO. 173/146/2021/ITA-I], DATED 25-10-2021

CLARIFICATION REGARDING SECTION 36(1)(xvii) OF THE INCOME-TAX ACT, 1961 INSERTED VIDE FINANCE ACT, 2015

The Finance Act, 2015 inserted the following clause (xvii) in sub-section (1) of section 36 of the Income-tax Act, 1961 (the Act) to provide for deduction on account of the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar—

"(xvii) the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government;"

This clause took effect from 1-4-2016 and accordingly applied to assessment year 2016-17 and subsequent assessment years.

The matter has been examined by the Board and in this regard, it is **clarified that the phrase 'price fixed or approved by the Government' in clause (xvii) in sub-section (1) of section 36 of the Act includes price fixation by State Governments through State-level Acts/Orders or other legal instruments that regulate the purchase price for sugarcane, including State Advised Price, which may be higher than the Statutory Minimum Price/Fair and Remunerative Price fixed by the Central Government.**

Supreme Court & High Court Tribunal Cases

Supreme Court Decision

Commissioner of Income-tax, Chennai v. Mohammed Meeran Shahul Hameed [2021] 131 taxmann.com 94 (SC)

Issue: Whether the order of Revision passed under section 263 within two years though served upon assessee beyond last date was within period of limitation?

Facts :

- The Assessing Officer passed assessment order for relevant assessment year on 30-12-2010.
- The Commissioner passed order under section 263 on 26-3-2012 for revision of assessment order passed by the Assessing Officer.
- On appeal to the Tribunal, the assessee contended that said order was received by him on 29-11-2012. The Tribunal held that the revision order was to be set aside as same was passed by the Commissioner beyond the period of limitation. It was confirmed by HC.

HELD: Hon'ble SC High Court, held -

- On a fair reading of sub-section (2) of section 263 it can be seen that as mandated by sub-section (2) of section 263 no order under section 263 shall be "made"after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Therefore the word used is "made"and not the order "received"by the assessee. Even the word "dispatch"is not mentioned in section 263(2). Therefore, once it is established that the order under section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under section 263 (2).
- **Thus, the order passed by the Commissioner under section 263 was within the period of limitation prescribed under sub-section (2) of section 263.**

Central Board Of Direct Taxes v. Lakshya Budhiraja [2021] 131 taxmann.com 51 (SC)

Issue: Commissioner (Appeals) - Procedure of (Faceless Appeal Scheme) under section 250 ?

HELD: Hon'ble SC High Court, held -

- Learned Additional Solicitor General submits that the Department **is having a second look at the matter on the issue of Faceless Appeal Scheme, 2020** and he may be granted a period of three months as it may require change of law.
- We defer the present matters for a period of three months as sought by learned Additional Solicitor General. We make it clear that we have neither transferred the matters as yet nor have we impeded the hearing in any matter.
- List on 10th January, 2022 for directions.

Income-tax Officer, Ward 1(2)(1). v. Bhupendra Bhikhalal Desai [2021]131 taxmann.com 288 (SC)

Issue: Validity of Notice issued upon dead person. Information of death given by legal heir upon receipt of Notice. Whether it can be contented by Revenue that no knowledge about death of assessee ?

Facts :

- Original assessee, namely 'B', passed away on 23-4-2017. Assessing Officer issued a notice under section 153C in name of 'B' on 29-3-2019.
- after receiving said notice legal heir informed Assessing Officer that his father B had passed away and requested to drop proceedings as notice was issued to a dead person.
- High Court by impugned order held that impugned notice under section 153C issued against dead person, was unenforceable in law and revenue could not contend that as they had no knowledge about death of assessee.

HELD: Hon'ble SC Court, dismissed the SLP

- "We are not inclined to interfere with the impugned order."

High Court Decision

Raman Krishna Kumar v. Deputy Commissioner of Income-tax [2021] 131 taxmann.com 341 (Madras)

Issue: Where petitioner failed to file timely return and prosecution was initiated under sections 276CC and 276C, then a presumption as to culpable mental status of assessee, can be drawn under section 278E ?

HELD: Hon'ble High Court, held -

- Petitioner received substantial income as salary in relevant assessment year and also indulged in high end transacations with respect to purchase and sale of mutual funds and with respect to credit card transactions, however failed to file return of income. The burden lies on the assessee to show that he had no wilful intention not to file the return.
- Filing of return within stipulated and mandatory period is a duty cast on assessee who had to declare the income, if the returns are not filed within stipulated period, then, a presumption as to the culpable mental status, can be drawn under section 278E.
- In prosecution offence like section 276CC, **there can be a presumption for existence of mens rea and it is for accused-petitioner to prove the contrary**

Commissioner of Income Tax v. Ceebros Hotels (P.) Ltd [2021] 131 taxmann.com 181 (Madras)

Issue: Whether Interest on Loan borrowed for acquisition of Land for starting new project was required to be capitalised ?

Facts :

- Original assessee, namely 'B', passed away on 23-4-2017. Assessing Officer issued a notice under section 153C in name of 'B' on 29-3-2019.
- after receiving said notice legal heir informed Assessing Officer that his father B had passed away and requested to drop proceedings as notice was issued to a dead person.
- High Court by impugned order held that impugned notice under section 153C issued against dead person, was unenforceable in law and revenue could not contend that as they had no knowledge about death of assessee.

HELD :

- From Revenue it is submitted that, no distinction under Section 36(1)(iii) of the Act could be made between the capital borrowed for revenue purpose and capital borrowed for the purpose of business.
- As per Director's Report submit that, in terms of the report, it has been stated that the MRC Nagar project had not commenced its operations during the relevant previous year. expenses claimed by the assessee cannot be treated as inventory and ought to be treated as pre-operative expenses, which are required to be capitalised.

Hon'ble High Court, held -

- The assessee had furnished the ledger accounts for these expenses and also the facts that they carried on major work of demolition of the existing structure which was newly built by the previous owner for Hotel business and this demolition was done by the assessee.
- This factual position would go to show that the land was put to use in the Assessment Year under consideration.
- On this issue, the Tribunal had rightly noted that the term "put to use" in the proviso in Section 36(1)(iii) would be applied to capital asset/income earning apparatus/facilitating the business activity and therefore, the Statute envisages the importance of such capital asset should be put to use in the business in contra distinction to the inventory of the assessee.
- Further, the Tribunal noted that the **inventory in the business/holding of inventory in the business by itself is a business activity in the normal course and in continuation of business of construction pursued by the assessee. Therefore, it held that the attempt to apply the proviso to the case of the assessee would lead to wrong interpretation of law** and therefore, the reasons given by the Assessing Officer to disallow the interest expenditure by applying the provisions of Section 36(1)(iii) is not in accordance with law.
- Further, the Tribunal observed that the **purchase of inventory** in the course of carrying on business should be reckoned as continuation of same business activity in the normal course and **cannot be equated or termed as extension of business activity.**

Tribunal Decision

Rashesh Manhar Bhansali vs. Add. CIT [2021] 132 taxmann.com 20 (Mumbai - Trib.)

Issue: What is the relevant point of time for taxation under Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015, whether when such an asset come to notice of Government or whether it existed at point of time of taxation ?

HELD:

- Section 2(11) uses the undisclosed foreign assets as "**an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory".** There is no indication anywhere that the assessee must continue to hold the asset anywhere, and proviso to Section 3(1) on the contrary, specifically mentions about the assets held in the past inasmuch as it provides that "Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer". So if the BMA comes in force from 1st April 2016, and an asset held prior to 1st April 2016 comes to the notice of the Assessing Officer, the Assessing Officer is clearly within his powers to bring it to tax.
- An undisclosed foreign asset is point of time **when such an asset come to notice of Government** it is immaterial as to whether it existed at point of time of taxation, or, for that purpose, even at point of time when provisions of BMA came into existence.
- A bank account, in whatever way it is described, is an asset in sense that it gives you ownership of credit balance, in books of bank, in that account. Therefore, an undisclosed foreign bank account per se can indeed be treated as an asset under section 2(11) of Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015.
- **Thus, a bank account abroad or any unaccounted asset abroad, which did not exist as at point of time when BMA came in force, i.e. 1-7-2015, can be assessed under said legislation**

Jaico Automobile Engineering Company Pvt. Ltd. v. DCIT [2021] 131 taxmann.com 295 (Bangalore - Trib.)

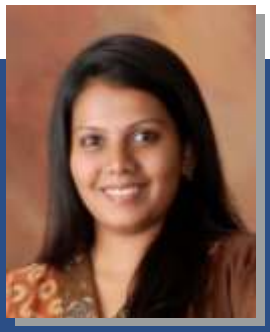
Issue: What is the point of Time of taxing Capital Gains in case of Joint Development Agreement where Consideration is to be received in form of Profit upon sale of built-up area receivable against transfer of land ?

Facts :

- Assessee executed registered JDA along with registered GPA which authorized developer a provisional permission to enter into land and authorizing them to develop, execute sale deed or other conveyance in respect of impugned property and authorized to sell constructed area of both assessee as well as developer.
- It was specifically agreed to between the parties that possession would be given to the developer only after receipt of full consideration by way of refundable security deposit which was on 30.11.2007

HELD :

- In these facts & circumstances the agreement between the assessee and IDEB remaining effective, the transactions entered by way of the JDA dated 30/03/2007 would undisputably constitute a "transfer" in terms of the section 2(47) of the I.T. Act r.w.s. 53A of the T.P. Act, 1982.
- Hon'ble Authority of Advance Rulings in the case of Jasbir Singh Sarkaria, In re [2007] 164 Taxman 108 (AAR - New Delhi), that the expression used in sec. 45 is "arising", which cannot be equated with the expression "received" or even with the expression "accrued" as being used in the statute. The point which deserves notice is that the amount or the consideration settled may not be fully received or may not technically accrue but if it arises from the agreement in question, then the deeming provisions shall come into operation.
- As such, there was a transfer in terms of section 45 read with section 2(47). Thus, since assessee had a right to receive profit in assessment year under consideration, it would be liable to pay capital gains tax on transfer of capital asset. Actual receipt of profit was not a relevant consideration.



New From 26AS : AIS

(Co-Authors: CA Vaijayanta Chaugule)

Project Insight, under this, the Income-tax Department plans to use the data available with itself as well as other government bodies, such as Registrar of companies (ROC),GST etc. Income tax Department initiated Project Insight to focus on three goals namely
(i) to promote voluntary compliance and deter noncompliance;
(ii) to impart confidence that all eligible persons pay appropriate tax; and
(iii) to promote fair and judicious tax administration.
Under this project, an integrated data warehousing and analytical platform has been rolled out.

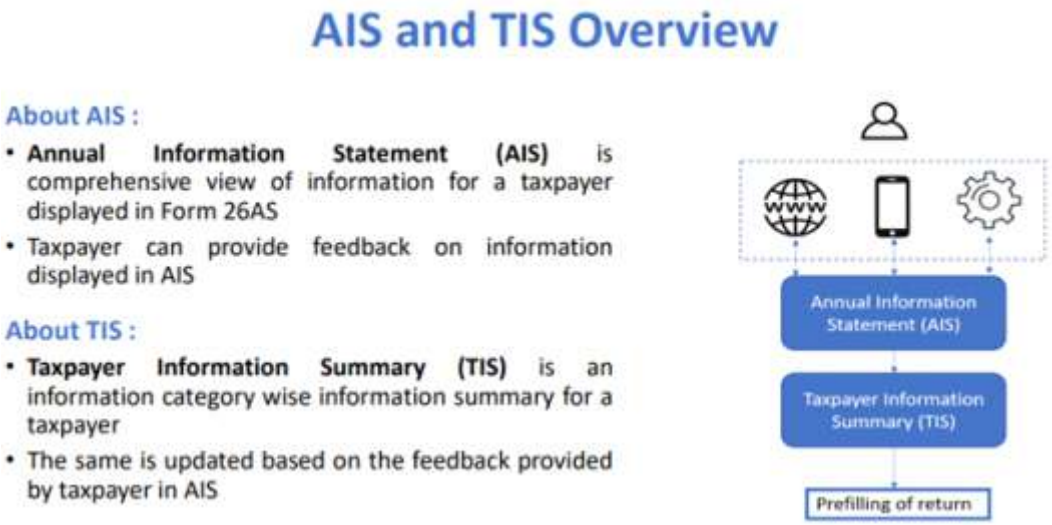
In this wake and In order to promote transparency and simplifying the tax return filing process, CBDT vide Notification dated May 28, 2020 has amended Form 26AS vide Sec 285BB of Income Tax Act, 1961 r.w.r.114-I of Income Tax Rules, 1962 w.e.f. 01.06.2020.

Annual Information Statement (AIS) and Taxpayer Information Summary (TIS):

Annual Information Statement (AIS) is comprehensive view of information for a taxpayer displayed in Form 26AS. Taxpayer can provide feedback on information displayed in AIS. AIS shows both reported value and modified value (i.e. value after considering taxpayer feedback) under each section (i.e. TDS, SFT, Other information)The AIS is rolled out to meet following objectives:

- Display complete information to the taxpayer
- Promote voluntary compliance and enable seamless prefiling of return
- Deter non-compliance

A simplified Taxpayer Information Summary (TIS) has also been generated for each taxpayer which shows aggregated value for the taxpayer for ease of filing return. TIS shows the processed value (i.e. the value generated after deduplication of information based on pre-defined rules) and derived value (i.e. the value derived after considering the taxpayer feedback and processed value). If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time. The derived information in TIS will be used for pre-filling of Return (pre-filling will be enabled in a phased manner).



Source: Annual Information Statement (AIS) Utility Presentation

The format of AIS

Part A:

Permanent Account Number, Aadhaar Number, Name, Date of Birth/ Incorporation/ Formation, Mobile No., Email Address, Address.

Part B:

1. Information relating to tax deducted or collected at source.
2. Information relating to specified financial transaction (SFT)
3. Information relating to payment of taxes
4. Information relating to demand and refund
5. Information relating to pending proceedings
6. Information relating to completed proceedings
7. Any other information in relation to sub-rule (2) of rule 114-

Salient Features of AIS

- Inclusion of new information (interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc.)
- Use of Data Analytics to populate PAN in non-PAN data for inclusion in AIS.
- Deduplication of information and generation of a simplified Taxpayer Information Summary (TIS) for ease of filing return (pre-filling will be enabled in a phased manner).
- Taxpayer will be able to submit online feedback on the information displayed in AIS and also download information in PDF, JSON, CSV formats.
- AIS Utility will enable taxpayer to view AIS and upload feedback in offline manner.
- AIS Mobile Application will enable taxpayer to view AIS and upload feedback on mobile.

AIS Feedback

The taxpayer will be able to view AIS information and submit following types of response on the information:

- Information is correct
- Information is not fully correct
- Information relates to other PAN/Year
- Information is duplicate / included in other information
- Information is denied
- Customized Feedback

The AIS Feedback processing approach is as under:

- The feedback provided by assessee will be captured in the Annual Information Statement (AIS) and reported value and modified value (i.e. value after feedback) will be shown separately.
- The feedback provided by assessee will be considered to update the derived value (value derived after considering the taxpayer feedback) in Taxpayer Information Summary (TIS).
- Information assigned to other PAN/Year in AIS will be processed and information will be shown in the AIS of the taxpayer using automated rules.
- In case the assigned information is modified/denied, the feedback will be processed in accordance with risk management rules and high risk feedback will be flagged for seeking confirmation from the information source.

AIS Information Categories

There are about 50 broad categories of Information in AIS summary view as under:

1. Salary
2. Rent received
3. Dividend
4. Interest from savings bank
5. Interest from deposit
6. Interest from others
7. Interest from income tax refund
8. Rent on plant & machinery
9. Winnings from lottery or crossword puzzle u/s 115BB
10. Winnings from horse race u/s 115BB
11. Receipt of accumulated balance of PF from employer u/s 111
12. Interest from infrastructure debt fund u/s 115A(1)(a)(iia)
13. Interest from specified company by a non-resident u/s 115A(1)(a)(iiaa)
14. Interest on bonds and government securities
15. Income in respect of units of non-resident u/s 115A(1)(a)(iiab)
16. Income and long-term capital gain from units by an offshore fund u/s 115AB(1)(b)
17. Income and long-term capital gain from foreign currency bonds or shares of Indian companies'u/s 115AC
18. Income of foreign institutional investors from securities u/s 115AD(1)(i)
19. Insurance commission
20. Receipts from life insurance policy
21. Withdrawal of deposits under national savings scheme
22. Receipt of commission etc. on sale of lottery tickets
23. Income from investment in securitization trust
24. Income on account of repurchase of units by MF/UTI
25. Interest or dividend or other sums payable to government
26. Sale of land or building
27. Receipts for transfer of immovable property
28. Sale of vehicle
29. Sale of securities and units of mutual fund
30. Off market debit transactions
31. Off market credit transactions
32. Business receipts
33. Business expenses
34. Rent payment
35. Miscellaneous payment
36. Cash deposits
37. Cash withdrawals
38. Cash payments
39. Outward foreign remittance/purchase of foreign currency
40. Receipt of foreign remittance
41. Payment to non-resident sportsmen or sports association u/s 115BBA
42. Foreign travel
43. Purchase of immovable property
44. Purchase of vehicle
45. Purchase of time deposits
46. Purchase of securities and units of mutual funds
47. Credit/Debit card
48. Balance in account
49. Income distributed by business trust
50. Income distributed by investment fund

The key information sources, approach for AIS processing and AIS summary preparation is explained in Annual Information Statement (AIS) - Handbook.
A sample extract for one of the Category "Miscellaneous Payments" is reproduced for reference as below:

4.36 Miscellaneous payments

The key information sources under this information category are as under:

#	Information	Information Description
1.	Payment made for a contract/ work (Section 194M)	Information is reported by person making payment in form 26QD. This information is provided by the deductor to the taxpayer in Form 16D.
2.	Purchase of bank drafts or pay orders (Form 60/61)	Purchase of bank drafts or pay orders may be reported in Form 61 if PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.
3.	Payment to hotel (Form 60/61)	Payment to a hotel may be reported in Form 61 if PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.
4.	Payment as life insurance premium (Form 60/61)	Payment for life insurance premium may be reported in Form 61 if PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.
5.	Payments made in respect of credit card (SFT-006)	Information pertaining to Payments made in respect of credit card is reported by reporting entity in form 61A.

The approach for AIS processing and information handling is as under:

i. Reporting entity reports information relating to credit card payment through form 61A. Similarly, Reporting entity reports non-PAN information relating to payments made towards purchase of bank drafts, hotels and life insurance premium through Form 61. Deductor reports information relating to payment made towards contract /work through TDS form 26QD.

ii. The AIS information level feedback can be used for providing following inputs:
   a. Information is correct
   b. Information is not fully correct
   c. Information relates to other PAN/Year
   d. Information is duplicate / included in other information
   e. Information is denied

iii. The feedback provided by taxpayer will be shown separately in AIS and will update the value in Taxpayer Information Summary (TIS).

Some Practical Aspects:

- The display of Form 26AS on TRACES portal will also continue in parallel till the new AIS is validated and completely operational.
- As per the Press Release dated 1.11.21,the taxpayers are requested to view the information shown in Annual Information Statement (AIS) and provide feedback if the information needs modification. The value shown in Taxpayer Information Summary (TIS) may be considered while filing the ITR. In case the ITR has already been filed and some information has not been included in the ITR, the return may be revised to reflect the correct information.
- In case there is a variation between the TDS/TCS information or the details of tax paid as displayed in Form26AS on TRACES portal and the TDS/TCS information or the information relating to tax payment as displayed in AIS on Compliance Portal, the taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of ITR and for other tax compliance purposes.
- *Disclaimer: Annual Information Statement (AIS) includes information presently available with Income Tax Department. There may be other transactions relating to the taxpayer which are not presently displayed in Annual Information Statement (AIS). Taxpayer is expected to check all related information and report complete and accurate information in the Income Tax Return.*

Taxpayers may refer to the AIS documents (AIS Handbook, Presentation, User Guide and FAQs) provided in "Resources" section or connect with the helpdesk for any queries through “Help”section on the AIS Homepage.

Dilemma - Section 80P(2)(a)(I) OR 80P(2)(d) Deduction u/s 80P (2)(c)-Dangerous Trap laid....

CA Sanjay Vhanbatte (smvcok@gmail.com)

1.Co-operative Credit Societies (Patsanstha), being engaged in providing credit facilities to its members are eligible for deduction specifically provided under section 80P(2)(a)(i).

2.The societies are eligible for deduction u/s 80P(2)(a)(i) also in respect of the interest/dividend earned by them from other co-operative societies/Co-operative Banks. Co-operative Credit Societies keep certain portion of their investment with district Co-operative banks to fulfill the directives of the Co-operative Department in respect of mandatory investment criteria of the SLR.

3.Some credit societies, however, have claimed deduction u/s 80P(2)(d) in respect of such interest/dividend earned from other co-operative societies/banks. The provisions of section 80P(2)(d) are quite unambiguous in that sense and all co-operative societies are eligible for deduction on such income u/s 80P(2)(a)(d). The exact wording of section 80P(2)(a)(d) for ready reference is given here under:

Deduction in respect of income of co-operative societies.

80P. *(2) The sums referred to in sub-section (1) shall be the following, namely:*

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

4.However, in many of the faceless assessments, recently completed for A.Y.2018-19 and A.Y. 2019-20, it is observed that such deduction u/s 80P(2)(d) is denied relying on the observations of the Karnataka High Court in the case of Totagars Cooperative Sale Society 83 taxmann.com 140.

The relevant observations of the Karnataka High Court in this care are as under:

23. Thus, the aforesaid judgments supports the view taken by this Court that character of income depends upon the nature of activity for earning that income and though on the face of it, the same may appear to be falling in any of the specified Clauses of Section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under Section 80P(2) of the Act. The case in *Udaipur Sahakari Upbhokta Thok Bhandar Ltd. (supra)* was that of Section 80P(2)(e) of the Act, whereas in the present case, it is under Section 80P(2)(d) of the Act. Hence, the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus, clause (d) of Section 80P(2) of the Act would not apply in the facts and circumstances of the present case. The person or body corporate from which such interest income is received will not change its character, viz. interest income not arising from its business operations, which made it ineligible for deduction under Section 80P of the Act, as held by the Hon'ble Supreme Court.

(Emphasis is by author]

This decision of Karnataka High Court is given on 16.06.2017 and is for **AY 2007-08 to AY 2011-12.** Interestingly, the same Karnataka High Court in the case of same Assessee but for **AY 2012-13** in its decision just six months before (05.01.2017) reported at **78 taxmann.com 169** had held that the interest from co-operative banks is eligible for deduction u/s 80P(2)d).

Taking diametrically opposite view the Karnataka High Court in the later decision for AY 2007-08 to 2011-12 (other than AY 2012-13) and denying the deduction u/s 80P(2)(d) stated that Section 80P(4) specifically prohibits deduction u/s 80P for Co-operative Banks which per se a separate 'specie' as is sought to be created by the insertion of section 80(P0(4) in respect of 'Co-Operative Banks' which are not the same as Co-Operative Societies.

The argument that the co-operative banks are first co-operative societies, registered under the co-operative Law of the respective state and there after they are co-operative Banks in view of their such special recognition/licensing by Reserve Bank has not been accepted by the Karnataka High Court.

5.There is one more decision of the Karnataka High Court in **Tumkur Merchants Souharda Credit Cooperative Ltd. 55 taxmann.com 447** (2015) which has accepted the argument of the Assessee allowing the deduction u/s 80P(2)(a)(i) in respect of interest from co-operative banks. Though referred indirectly in the decision of Totagar's, no due cognizance of the same has been taken in the final analysis.

6.The Pune ITAT in **Sant Motiram Maharaj Sahakari Pat Sanstha Ltd [2020] 120 taxmann.com 10**, analyzing all these decisions has held the issue in favour of the assessee. This decision again is not being accepted by faceless assessing authorities even being by a jurisdictional ITAT.

7.Recently a new controversy has arisen on account of the 'narrow' interpretation of the decision of the Supreme court in the case of **Mavilayi Service Co-operative Bank Ltd. [2021] 123 taxmann.com 161 (SC).**

8.The following observations of the Supreme Court in para 34 of the said decision have now become a bone of contention-

> *34. Seventhly, section 80P(1)(C) also makes it clear that section 80P is concerned with the co-operative movement generally and, therefore, the moment a co-operative society is registered under the 1912 Act, or a State Act, and is engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). The reach of sub-clause (c) is extremely wide, and would include co-operative societies engaged in any activity, completely independent of the activities mentioned in sub-clauses (a) and (b), subject to the cap of INR 50,000/- to be found in sub-clause (c)(ii).* ***This puts paid to any argument that in order to avail of a benefit under section 80P, a cooperative society once classified as a particular type of society, must continue to fulfil those objects alone. If such objects are only partially carried out, and the society conducts any other legitimate type of activity, such co-operative society would only be entitled to a maximum deduction of Rs. 50,000/- under sub-clause (c).***
> (Emphasis is by author]

9.So- is it hazardous to claim deduction u/s 80P(2)(c) of just at maximum of Rs. 50,000 which otherwise puts the claim of deduction u/s 80P(2)(a)(i) [which is always much larger than the deduction u/s 80P(2)(c)] in jeopardy?

10.The Supreme Court, in para 34 of the decision lays down that if the Co-operative Society is engaged partly in any other legitimate activity than those provided in section 80P(2)(a) or section 80P(2)(b) then such society will be eligible only for deduction u/s 80P(2)(c) of just Rs. 50,000/- and nothing more? **Highly dangerous !**

11.Hence, once you are tempted to claim deduction u/s 80P(2)(c) in addition to your deduction u/s 80P(2)(a) then, admittedly you are engaged in carrying on activity other than those given in section 80P (2)(a) and 80P(2)(b). Hence you are partly engaged in other activity and therefore your deduction u/s 80P is just Rs. 50,000/-. You lay down a trap for yourself which is very risky and dangerous for you to come out of!

12.A society earning house properly income on renting additional/ excess space- Can it be called to have been engaged in any other activity, income from which is taxable under the head "PGBP"? Certainly not. But instances have come to notice that the huge deduction claimed u/s 80P(2)(a)(i) is sought to be denied on this pretext!

13.One needs to be, therefore, very careful while filing the return of a co-operative credit society. Particularly one must think ten times, if not more, before claiming the deduction u/s 80P(2)(c) along with deduction u/s 80P(2)(a)(i). Otherwise you are laying a trap for yourself to get locked into.

14.The decision of the Supreme Court in the case of **Mavilayi** (supra) is very useful for co-operative credit society and lays down to rest many other controversies such as:

a.Deduction u/s 80P(2)(a)(i) is also to be allowed in respect of business with 'Nominal Members'.

b.If the society has carried out any business with 'Non-Members" then 'NOT' the entire deduction u/s 80P(2)(a)(i) "BUT' only proportionate deduction is to be denied. Providing credit facilities to Non-Members does not altogether disentitle the society from calming deduction u/s 80P.

c.AO need not just stop at the registration certificate granted to a co-operative society to accept the claim of deduction u/s 80P. He can certainly look into the actual activities carried on by the society while considering its claim for deduction u/s 80P.

d.Interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled for deduction of the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole.

e.The limited object of section 80P (4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public.

f.Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee.

Conclusion

1.It appears that, in respect of interest from co-operative banks, claiming deduction u/s 80P(2)(a)(i) is better that u/s 80P(2)(d), particularly in view of the controversy created by the decision of the Karnataka High Court in Totagars 83 taxmann.com 140.

It is brought to the notice of the readers that the Pune ITAT in its decision in Vikas Sahakari Sakhar Karkhana (ITAT-Pune) 2020 ITL 2939 has upheld the decision of the Karnataka High Court in Totagars (supra). This decision of the Pune ITAT is of 24.09.2020. Whereas the favourable one in Sant Motiram Maharaj Sahakari Patsanstha Ltd (Supra) is dated 23.09.2020 which is on the same issue.

If claimed u/s 80P(2)(d)-one can certainly argue his case based on the observations of the Supreme Court in the case of Mavilayi (supra) given in para 14.d. above (Kindly refer para 35 of the decision).

2.One needs to give a careful thought before making a simultaneous claim of deduction u/s 80P(2)(c) along with deduction u/s 80P(2)(a)(i) the particularly when your stake in deduction u/s 80P(2)(a)(i) is much higher.

Compendium on

Top 10 GST Judgments by Courts in the year 2021

Girish Kamalakant Kulkarni
[C.A., LL.B. Gen]

Introduction: There are more than 1.25 Crore Tax Payers registered under GST with estimated tax collections of around Rs. 10.71 Lac Crores. With that enormous volume of transactions and operations, comes 'difference of interpretation and viewpoints' and its pertinent to note the facts that Tribunals under GST are not yet operational.

As per Economic Survey 2018, there were more than two lakh tax cases, including direct and indirect taxes, which were pending at various appellate legal forums at all levels of judiciary across the country which amounting to nearly 4.7% of the total Indian GDP, which is substantial in quantum.

Though there have been a lot of efforts for reductions in the litigations by Ministry of Finance, such as Tweets, E-Fillers, FAQs, Press Releases etc. the binding nature of such material on tax authorities and tax payer is always in question.

On this note we are going to look into 10 very important judgements by Honourable Supreme Court and State High courts in the year 2021 which can't be ignored. On the occasion of Diwali 2021 let's celebrate by cracking 10 noisy crackers in the field of Goods & Services Tax Litigation:

1. Proceedings under Section 129 cannot be initiated after the goods have reached their destination

State Of Karnataka vs. M/s Hemanth Motors [2021-VIL-758-KAR]

FACTS:	HELD:
Respondent was transporting certain consignment from Hosur, Tamil Nadu to Doddaballapur Road, Yelahanka, after generating E-way bill which was valid from 31.12.2018 to 1.1.2019. The conveyance carrying the vehicles reached the place of destination on 1.1.2019, before expiry of the validity of the E-way Bills. However, the unloading of the vehicles could not take place before 2.1.2019. The Commercial Tax Officer, Vigilance-1, Bengaluru visited the spot on 2.1.2019 and issued an order for physical verification culminating in issuance of notice under sub-clause (3) of Section 129. Respondent preferred a writ petition (W.P.3337/2020) before the Hon'ble Karnataka High Court and managed to get order in his favour. The State filed writ appeal assailing the correctness of the order made in W.P.3337/2020.	The Hon'ble High Court observed as under: There was a categorical finding by the learned Judge in W.P.3337/2020 that the conveyance had reached the destination on 1.1.2019 at 11.00 p.m. which was well within the prescribed validity period under the E-way bill The appellant-authorities contention that the consignment was being delivered on 2.1.2019 and therefore, the goods cannot be transported cannot be acceded to The materials on record clearly indicates that the action by the authorities was taken at the destination and not during transit and therefore, an inference has to be drawn that the conveyance had reached the destination well within the subsistence of the valid period stipulated under the E-way bill Writ appeal was dismissed

2. Registration of the purchasing dealer cannot be cancelled for any fraud committed by the selling dealer

M/s Bright Star Plastic Industries Vs. Addl. Commr. [ST 2021-VIL-687-MAD]

FACTS:	HELD:
The Petitioner is carrying on the business of manufacturing and trade of Poly Vinyl Chloride (PVC) pipes, high-density polyethylene etc. The Central Tax and GST officer issued a show cause notice to the petitioner in Form GST REG-17 under Rule 22(1) of the CGST Rules, 2017 for cancellation of petitioner's registration. Further, on the very same day, another show cause notice was issued for cancellation of registration on the ground that "the petitioner had claimed Input Tax Credit(ITC) against fake invoices issued by non-existent supplier". The petitioner has filed the present writ petition against the order passed by the Additional Commissioner of CT & GST, rejecting the Petitioner's application for revocation of cancellation of his registration on 7th January, 2021 under Section 30(2) of the OGST Act,2017	In light of above background, the Hon'ble High Court observed as follows: On a collective reading of Section 16 of the CGST Act, 2017 with Rule 21 of the CGST Rules 2017, there is no provision that enables the cancellation of the registration of the purchasing dealer for any fraud committed by the selling dealer In case any fraud is committed by the sealing dealer, which resulted in cancellation of registration of selling dealer, there cannot be an automatic cancellation of the registration of the purchasing dealer To attribute fraud by purchasing dealer, the Dept. would have to satisfy a high threshold of showing that the purchaser indulged in the transactions with the full knowledge that the selling dealer was non-existent.

	The Department has failed to show that the petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence. Therefore, the impugned orders are set aside and the Department is directed to restore the Petitioner's registration.

3. Refund of IGST paid on exports cannot be denied based on suspicion of genuineness of suppliers of exporter

Bhagyanagar Copper Private Limited v/s CBIC [2021-VIL-762-TEL]

FACTS:	HELD:
During the period Feb 2021 to May 2021, the petitioner exported Copper Billets to China on payment of IGST. On this basis it has been contended that petitioner is entitled for refund in IGST paid on goods exported out of India. Vide CBIC CircularNo.16/2019-Customs dt.17.06.2019, wherever exporters are identified as risky, alerts shall be inserted in the system and 100% mandatory examination of export consignment would be followed. The said circular also provided for suspension of IGST refund and a report to the respective Chief Commissioner of Central Tax is to be furnished within 30 days specifying clearly whether the amount of IGST paid and claimed as refund was in accordance with law or not.	The Hon'ble High Court observed as under: Inasmuch as no discrepancy has been found with regard to the suppliers of the petitioner, the refund claim by the petitioner cannot be denied to be processed on the ground that verification of the suppliers of the petitioner's supplier is pending Further, the non-committal stand of the department in the counter indicating a time frame for completion of the verification of suppliers also cannot be tolerated, since it is not the duty of the petitioner(exporter) to get such verification done. There is clear violation of time limit prescribed under the said circular (supra) i.e. 30 days. Moreover, 3 month has passed by In view of the above, the action of department in non-granting of refund of IGST paid cannot be sustained as the actions of department as in the present case would make the exports from the country unviable due to non-flow of funds in the form of refund assured under the Act

4. Non filing of charge sheet by DGGI, not being a police officer, within prescribed time cannot be the ground to grant default bail to Petitioners

Paritosh Kumar Singh and Ors. Vs State of Chhattisgarh [2021-VIL-700-CHG]

FACTS:	HELD:
Petitioners had been arrested for alleged violation of CGST Act, 2017 for offence committed under Sections 132(1)(b) and (c) and produced before the Judicial Magistrate, from where they were sent to judicial custody.	In light of above background, the Hon'ble High Court observed as follows: The contention of the Petitioner that 'it was responsibility of the respective authority to submit charge sheet within 60 days, however, in the present case, no charge-sheet had been filed' was rejected by the Hon'ble High Court on that ground that GST officers are not police officers

The petitioners have filed for writ petition under Article 226 of the Constitution of India to grant default bail under Section 167(2) of Criminal Procedure Code, 1973 (Cr.P.C.), on account that charge sheet has not been filed within 60 days of their arrest.	They were not required to submit final report as envisaged in Section 173 of Cr.P.C Moreover, the complaint by Director General of GST Intelligence had been filed within 60 days of their arrest which was within the time prescribed for filing of complaint to entitle or disentitle the accused persons for default bail As the complaint had been filed within 60 days, therefore, on this count the Petitioners were not entitled to get default bail

5. The Refund of the amount of IGST paid in respect of export of goods cannot be denied due to non-transmission of shipping data from GSTN to ICEGATE

M/s SRC Chemicals Pvt Ltd vs. Cent. Board of IT & Cus. [2021-VIL-742-BOM]

FACTS:	HELD:
The petitioner exported certain goods on 28/06/2017 and formalities pertaining to printing of shipping bill etc. were undertaken at the port. But, since Goods and Services tax (GST) was applicable with effect from 1/7/2017, the shipping bill got printed on 1/7/2017 with levy of IGST albiet with the date of 29/6/2017. Thereafter, the petitioner paid and claimed IGST refund which was denied by the department on account of non-transmission of shipping data from GSTN to ICEGATE. The department stated that unless the export data was transmitted from GSTN to ICEGATE, the Customs Department would not be able to process the refund. Hence, the petitioner has approached this Court seeking direction to refund the amount of IGST paid in respect of export of goods.	In light of above background, the Hon'ble High Court observed as follows: There is no dispute that petitioner is entitled to refund but petitioner is made to run from pillar to post only because data of IGST refund is not transmitted from GSTN to ICEGATE It was the responsibility of the respondents, in particular Joint Director, Directorate General of Systems and Management to ensure that petitioner got its refund who never attempted to resolve the problem of the petitioner and no reply has been filed and directions of this court have not complied with Therefore, the Hon'ble High Court directed the department to refund the amount to the petitioner along with interest thereon @9% p.a from the date of the petition together with the costs in the sum of Rs. 25,000/-.

6. Electronic Credit Ledger cannot be debited for making payment of pre-deposit at the time of filing of the appeal in terms of Section 107 (6) of the OGST Act

M/s JYOTI CONSTRUCTION vs. DEPUTY COMM. OF CT & GST [2021-VIL-715-ORI]

FACTS:	HELD:
The Petitioner is a firm engaged in the business of execution of works contract including civil, electrical and mechanical. A demand was raised by the authority demanding IGST, CGST and OGST inclusive of interest. In terms of Section 107(6) of the OGST Act, the Petitioner was required to make payment equivalent to 10% of the disputed amount of tax arising from the order against which the appeal is filed.	In light of above background, the Hon'ble High Court observed as follows: It is not possible to accept the plea of the Petitioner that "Output Tax", as defined under Section 2(82) of the OGST Act could be equated to the pre-deposit required to be made in terms of Section 107 (6) of the OGST Act

This payment was required to be made by the Petitioner by debiting its Electronic Cash Ledger as provided under Section 49(3) read with Rule 85(4) of the OGST Rules. However, it was noticed that the Petitioner sought to make payment of the pre-deposit by debiting the Electronic Credit Ledger. Consequently, a show cause notice.	Electronic Credit Ledger cannot be debited for making payment of pre-deposit at the time of filing of the appeal in terms of Section 107(6) of the OGST Act The proviso to Section 41(2) of the OGST Act sets out the purposes for which the input tax credit (ITC) can be utilized. It can be utilized for payment of self-assessed output tax as per the return and for nothing else

7. Payment made during investigation without issuance of SCN is not self-ascertained tax and is liable to refund

M/s Bundl Technologies Private Limited Vs UOI [2021-VIL-741-KAR]

FACTS:	HELD:
The petitioner operates an e-commerce platform to deliver food under the trade name 'Swiggy' and is registered under the CGST Act. It was submitted by the petitioner that delivery was done through delivery partner, however, due to spike in the order, Petitioner engaged third-party service providers who charge consideration for delivery and supply of food along-with Goods and Services Tax ("GST") and the GST paid by the Petitioner to the third party service providers is availed as Input Tax Credit ("ITC") by the Petitioner. On Investigation by DGGI it was found that third-party service provider was a non-existent entity, therefore, the ITC availed was fraudulent. Resultantly, the Petitioner was forced to make payment of certain amount under the threat of arrest, without issuance of a SCN. The Petitioner was also denied the refund of the amount so paid.	The Hon'ble High Court observed as under; The procedure of self-ascertainment under of Section 74(5) contains a scheme that is concluded after following the procedure under sub-sections (6), (7) and (8) of Section 74 of the CGST Act. In the present case, it must be noted that though there is payment of tax and even if it is accepted that payment of tax is also followed by requisite Challan DRC-03, the mere payment of tax cannot be construed to be a payment towards self-ascertainment as contemplated under Section 74 (5) of CGST Act. Therefore, right of refund in the present factual matrix would be independent of the process of investigation and the two cannot be linked together. Additionally, the court has observed that right of a bona fide taxpayer to be treated with appropriate dignity as enshrined under Article 21 of the Constitution of India would not be kept in abeyance However, the court refrained itself from adjudication relating to the constitutional validity of Section 16(2)(C) of the Act.

8. Difference in GSTR-3B and GSTR-2A is not sufficient ground for issuance of show cause notice under Section 74 of CGST Act

M/s Nkas Services Private Limited vs State of Jharkhand [2021-VIL-732-JHR]

FACTS:	HELD:
Show cause notice was issued under Section 74 of CGST/SGST Act by Deputy Commissioner of State Taxes to the petitioner for the difference in the GSTR-2A and GSTR-3B returns filed by the Petitioner.	The Hon'ble High Court observed as under; The mismatch between GSTR-3B and 2A is not sufficient as the foundational allegation for issuance of notice under Section 74 is missing. In this case SCN was issued without scrutiny notice in Form ASMT-10.

The said notice has been challenged by the Petitioner along with the summary of the show cause notice in the form DRC-01 for violation of Principles of Natural Justice.	Show cause notice issued u/s 74 in mechanical manner without striking out irrelevant portions of charges u/s 74 and without stating the contraventions committed by the petitioner i.e. whether its actuated by reason of fraud or any willful misstatement or suppression of facts in order to evade tax. In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself. High Court quoted the Hon'ble Supreme Court's decision in Oryx Fisheries P. Ltd. Vs. Union of India (2010) 13 SCC 427 to state that concept of reasonable opportunity includes an opportunity to deny one's guilt and establish his innocence which he can only do if he is told what the charges against him are and the allegations on which such charges are based.

9. Statutory scheme for refund under section 54 of the CGST Act admits applications including the Special Economic Zone

M/s Platinum Holdings Pvt Ltd Vs. Addl.Commr. of GST [2021-VIL-719-MAD]

FACTS:	HELD:
The Petitioner, as a Special Economic Zone (SEZ), effected purchases from several suppliers for the development of the SEZ. The supplies effected to the petitioner under invoices that included components of SGST, CGST and IGST. Hence, the petitioner filed applications for refund of the taxes erroneously remitted which was denied by the revenue on the ground that as per Section 54 of the CGST Act, 2017, only a supplier of service would be entitled to refund and not the recipient of supplies i.e. SEZ itself. Subsequently, an appeal against the rejection order was also rejected. Hence, the petitioner has approached the High Court in writ jurisdiction.	In light of above background, the Hon'ble High Court observed as follows: The statutory scheme for refund admits of applications to be filed by any entity that believes that it is so entitled, including the petitioner SEZ A conjoint reading of Section 54 of the CGST Act and Rule 89 of the CGST Rules reveals that the restriction imposed by the Revenue that only a supplier to the SEZ can claim refund is misplaced. Although the second proviso, as well as Rule 89(2)(f) of the CGST Rules refers to an application filed by a supplier to a SEZ, Rule 89(1) of CGST Rules does not envisage any such restriction and applies to any entity. The statutory scheme for refund under the CGST and SGST Acts, permits any entity to seek a refund of taxes or other amounts paid under the provisions of the Act, subject to satisfaction that is it so entitled, and that there is no double claim as against the same amount Ordinarily, though zero rated supplies are not subject to the levy of taxes, the petitioner, in this case has remitted the same as raised in the invoice, albeit erroneously Hence, the petitioner is liable to get refund

10. No refund allowed for the payment of tax made through cash ledger due to non-reflection of ITC in portal for non- operationalization of GSTR-2A

Union of India V/s Bharti Airtel Ltd. and Ors. [2021-VIL-87-SC]

FACTS:	HELD:
At the time of discharging the GST liability for the relevant period, the details of ITC available to the respondent (Bharti Airtel) were not known due to not reflection of data in the system and the respondent was compelled to discharge its tax liability in cash. The exact ITC available for the relevant period was discovered only later in the month October 2018. Resultantly, amount of tax paid through cash ledger i.e. Rs. 923 Cr. was sought as refund. The present appeal has been filed against the order of the Delhi High Court, wherein, Delhi High Court had allowed the respondent to rectify Form GSTR-3B for the period in which error had occurred, i.e., from July to September 2017 and directed the Government that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim set forth by respondent and give effect to the same once verified.	Hon'ble Supreme Court while adopting the strict interpretation of law, observed as follows: Non operationalization of GSTR-2A during the relevant period cannot be a ground to allow revision of the returns pertaining to such period. The High Court did not examine whether taxpayer was required to be fully dependent on auto-generated information for which "the answer is - an emphatic No" The respondent were under a legal obligation to maintain books of accounts and records as per CGST Act and Rules framed thereunder, regarding the transactions in respect of which the output tax liability would occur Taxpayer is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of output liability including the balance amount lying in cash or credit ledger primarily on the basis of their office record and books of accounts required to be statutorily preserved and updated from time to time GST portal is only a facilitator to feed or retrieve information and need not be the primary source for self-assessment and there has been no change in the position between pre-GST and GST regimes on this issue Therefore, the order of Delhi High Court has been overruled and refund granted earlier has been denied

Girish Kamalakant Kulkarni
[C.A., LL.B. Gen]
Expert Faculty on GST, Indirect Taxes Committee (IDTC), Institute of Chartered Accountants of India (ICAI)
E-mail: EasyGST4u@gmail.com , Contact: 0231-2693575, 8237072627

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