



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



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CA Sushant Gundale
Chairman

Chairman's Communication

Dear Professional Colleagues,

I am elated today and humble as I accept the post of The Chairman of the Kolhapur Branch of WIRC of ICAI. I assure I will stay active and committed in the year ahead. I thank all my professional colleagues for boosting my confidence and reposing trust in me to lead the Kolhapur branch along with my office bearers for the year 2022-23.

I am also grateful to my predecessor CA Tushar Anturkar Sir, other past Chairman's, Chairperson's for their warmth, support and fellowship extended during the previous years. At the same time, I look forward to continued guidance and support from all Past and present Office bearers.

On behalf of Kolhapur Branch, I would like to congratulate CA. (Dr) Debashis Mitra who has been elected as the President of ICAI and CA Aniket Talati for becoming Vice President of ICAI. I would further like to congratulate new team of WIRC, the Chairman CA Murtuza Kachwala, Vice Chairman CA Yashwant Kasar, Secretary CA Shweta Jain, Treasurer CA Piyush Chandak and WICASA Chairman CA Ketan Saiya. We pledge to work closely with our leaders and accelerate the growth of Kolhapur Branch under their esteemed guidance.

“Coming together is a beginning. Keeping together is progress. Working together is success”

The secret behind this word is just Team coordination. Great things are rarely achieved by just one person. Usually, they are accomplished by a group of people, and when everyone is committed to the overall goal, teams move faster, are more innovative and more successful.

We have planned many interesting and interactive sessions in the coming month of March. Which include:

1. Felicitations of Newly Cleared Chartered Accountants.
2. International Women's Day.
3. Bank Branch Audit Seminar.
4. Technical Analysis of Stock Market
5. How to Crack CA Exams.
6. Revision Batch for Students.

We will be announcing many Sub - Committee and Study Circles for the smooth functioning and administration of the branch activities. We will also be announcing WICSA Committee for the year 2022-23.

Thank You.



KOLHAPUR BRANCH OF WIRC OF ICAI

Managing Committee



CA SUSHANT GUNDALE
CHAIRMAN



CA Ashish Bhosale
VICE CHAIRMAN



CA Taslimarif Mullani
SECRETARY



CA Ashish Sevekari
TREASURER



CA Amit Hirave
WICASA CHAIRMAN



CA Nitin Hargude
MEMBER

Women's Empowerment Committee 2022-23

CA Prity Pochore
CA Saanvi Ahuja

CA Aditi Magar
CA Prajakta Joshi

WICASA Committee 2021-22

Mr. Digambar Patil
WICASA Vice-Chairman

Miss. Janhavi jadtap
WICASA SECRETARY

Miss. Sakshi Jathar
WICASA
Public Relations Head

Mr. Imran Pathan
WICASA Treasurer

Miss. Puja Revankar
WICASA Social Media
handling & Convener

Editorial Team 2022-23

CA Girish Kulkarni
CA Dipesh Gundesha
CA Gangadhar Haldikar

CA Sanjay Vhanbatte
CA Ajinkya Jagoje

CA Nitin Hargude
CA Rajat Powar
CA Vaijayanta Chaugule



Kolhapur Branch of WIRC of ICAI Details of Programme Held in the Month of February, 2022

	Date		Programme Name	Topic	Students/ Members	Speakers name	Venue	CPE Hours
	From	To						
1	05-02-2022	05-02-2022	Seminar on Impact on Taxation of Union Budget 2022	Impact on Taxation of Union Budget 2022	Members	1. CA Sanjay Vhanbatte 2. CA Girish Kulkarni	ICAI Bhawan, Kolhapur	3
2	16-02-2022	04-03-2022	ICITSS - ITTI	Virtual KOP-ITT-128	Students	-	Google Meet	-
3	21-02-2022	08-03-2022	AICITSS - MCS	Physical KOP-MCS-23	Students	-	ICAI Bhawan, Kolhapur	-
4	19-02-2022	19-02-2022	CA Family Get Together	Musical Programme, Spot Games, Dinner	Members	-	The Pavillion Hotel, Kolhapur	-





Supreme court High Court Tribunal Cases

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

Supreme Court Decision

■ Apex Laboratories (P.) Ltd v. DCIT [2022] 135 taxmann.com 286 (SC)

Issue: Whether 'freebies' given by pharma companies to doctors is hit by Explanation 1 to section 37(1) - "any purpose which is an offence or which is prohibited by law".?

HELD: Hon'ble Court, held -

- Explanation 1, which was inserted in section 37(1) in 1998 with retrospective effect from 01.04.1962, restricts the application of such exemption for "any purpose which is an offence or which is prohibited by law". The IT Act does not provide a definition for these terms. Section 2(38) of the General Clauses Act, 1897 defines 'offence' as "any act or omission made punishable by any law for the time being in force". Under the IPC, Section 40 defines it as "a thing punishable by this Code", read with Section 43 which defines 'illegal' as being applicable to "everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action". It is therefore clear that Explanation 1 contains within its ambit all such activities which are illegal/prohibited by law and/or punishable
- When acceptance of freebies by medical practitioners is punishable by the MCI (the range of penalties and sanction extending to ban imposed on the medical practitioner), pharmaceutical companies cannot be granted the tax benefit for providing such freebies, and thereby (actively and with full knowledge) enabling the commission of the act which attracts such opprobrium.
- Even if assessee's contention were to be accepted - that it did not indulge in any illegal activity by committing an offence, as there was no corresponding penal provision in the 2002 Regulations applicable to it - there is no doubt that its actions fell within the purview of "prohibited by law" in Explanation 1 to Section 37(1).
- In the present case too, the incentives (or "freebies") given by pharmaceutical co. to the doctors had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally-binding effects. The conceded participation of the assessee- i.e., the provider or donor- was plainly prohibited, as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or "freebies" was no less a prohibition on the part of their giver, or donor, i.e., Apex.

High Court Decision

■ Pavan Morarka v. ACIT [2022] 136 taxmann.com 2 (Bombay)

Issue: Whether Time limits u/s 149 apply to reopening of assessment to give effect to HC's orders u/s 260A or Assessment can be reopened without any time limit u/s 150 to give effect to finding or direction in any appellate orders passed by any authority in proceedings under the Act?

HELD: Hon'ble High Court, held -

- Assessment can be reopened without any time limit u/s 150 only to give effect to finding or direction in any appellate orders passed by any authority in proceedings under the Act .Of all appellate forums under the Act, only CIT(A) is an "authority" under the Act as defined in section 116 of the Act.



- Therefore, section 150 will apply only to reopening assessment to give effect to finding or direction in appellate orders of CIT(A) and not to appellate orders of any High Court u/s 260A, as CIT(A) is an authority as defined under section 116 while the High Court is not an "authority" under the Act.
- The High Court held that loan given by closely held company to concern in which shareholder of the company is substantially interested, cannot be taxed as deemed dividends in the hands of the concern but left it open to Revenue to tax it in the hands of the shareholder. That does not amount to a "direction" for section 150 purposes as it leaves it to discretion of Revenue. It cannot be called "finding" as it is not essential to adjudicate whether concern can be taxed or not. Even if it be a direction or finding, it is not an order by an authority under the Act as HC is not an authority.

■ **S.P. Velayutham v. ACIT [2022] 135 taxmann.com 43 (Madras)**

Issue: Whether mere delayed payment of tax without an intention to evade tax will constitute offence as 'wilful attempt to evade tax' under Section 276(C)(2) of the Income Tax Act. ?

HELD: Hon'ble High Court, held -

- Assessee cannot be prosecuted under section 276C for wilful attempt to evade tax when he had paid Rs. 1.95 cr. out of Rs.2.03 cr. tax dues as per his ITR filed which has been accepted by Department. Assessee had made payments from time to time and had cleared most of his dues and explained that his failure to clear a small part of his dues was due to Department having provisionally attached his immovable property without making any effort to liquidate it. Very fact that he paid up Rs. 1.95 cr. out of Rs. 2.03 cr. dues would show there was no wilful attempt to evade payment of taxes.
- Mere failure to pay tax will not qualify as 'wilful attempt to evade tax' when assessee made no effort to suppress his income in ITR which was accepted as correct by Department and he made no attempt to alienate his property to evade tax liability.

Tribunal Decision

■ **Ada Cellworks Wireless Engg Pvt Ltd (ITA No.2151/Mum/2019 "A" BENCH, MUMBAI)**

Issue: Whether 'provision for trade receivables' though on actual basis doesn't amount to writing off the bad debts in the books but merely a provision of the same, and hence disallowable as per provisions of section 36(1)(vii)?

HELD:

- Hon'ble Tribunal held -
"Considered the rival submissions and material placed on record. We observe from the Profit & Loss Account submitted before us clearly indicate that the trade receivables which stood as on 31/03/2014 is substantially reduced as on 31/03/2015 which clearly indicates that assessee should have received the payment from the trade receivables or assessee must have written off the above said balances. From the P&L Account, the details submitted under the head 'Other expenses' which carried narration 'Provision for trade receivables.

However, when compared with the balance-sheet figure of trade receivables, it clearly indicate that assessee has actually wrote off the trade receivables and claimed bad debt. Just because the narration used by the assessee as 'provision for trade receivables, but in fact, it is only actual loss / expenditure claimed by the assessee which can be classified under the head 'bad debts' as per section 36(1)(vii) of the Act, we have to consider substance over the form and the intention of the assessee has to be appreciated and not the nomenclature noted to claim the expenses, it has merely mentioned the term 'provision' it does not mean that it becomes provision. Therefore, we direct the assessing officer to delete the addition as it actually pertains to bad debts written off in the books of account.



■ Sling Media (P.) Ltd. V. DCIT [2022] 135 taxmann.com 164 (Bangalore - Trib.)

Issue: Whether donations made to certain eligible organizations as a part of its Corporate Social Responsibility (CSR) programme are eligible for deduction u/s 80G of the Act?

HELD:

- Hon'ble Tribunal held -
Relying upon *First American (India) (P.) Ltd. v. Asstt. CIT [IT Appeal No. 1762 (Bang.) of 2019, dated 29-4-2020]*-
“17. For claiming benefit under section 80G, deductions are considered at the stage of computing “Total taxable income”. Even if any payments under section 80G forms part of CSR payments(keeping in mind ineligible deduction expressly provided, the same would already stand excluded while computing, Income under the head, “Income form Business and Profession”. The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing “Total Taxable Income” cannot be denied to assessee, subject to fulfillment of necessary conditions therein.”





Due Dates for March 2022

Co-Authors: CA Prasanna Kamble and Shrushti Menkudle of Kunte & Chaugule

Sr.No	Particulars	Due Date
1	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of January, 2022	02-Mar-22
2	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of January, 2022	02-Mar-22
3	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of January, 2022	02-Mar-22
4	Due date for deposit of Tax deducted/collected for the month of February, 2022. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan	07-Mar-22
5	Fourth instalment of advance tax for the assessment year 2022-23	15-Mar-22
6	Due date for payment of whole amount of advance tax in respect of assessment year 2022-23 for assessee covered under presumptive scheme of section 44AD / 44ADA	15-Mar-22
7	Due date for filing of return of income for the assessment year 2021-22 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A apply	15-Mar-22
8	Return of income for the assessment year 2021-22 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)	15-Mar-22
9	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of January, 2022	17-Mar-22
10	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of January, 2022	17-Mar-22
11	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of January, 2022	17-Mar-22
12	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February, 2022	30-Mar-22
13	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of February, 2022	30-Mar-22



14	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of February, 2022	30-Mar-22
15	Due date for linking of Aadhaar number with PAN	31-Mar-22
16	Country-By-Country Report in Form No. 3CEAD for the previous year 2020-21 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group	31-Mar-22
17	Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2020 to March 31, 2021) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.	31-Mar-22
18	Filing of belated/revised return of income for the assessment year 2021-22 for all assessee (provided assessment has not been completed before March 31, 2021)	31-Mar-22
19	Filing of application in Form 10A for registration/provisional registration/intimation/approval/provisional approval of Trust, institutions or Research Associations, etc. (which was required to be filed on or before 30-06-2021)	31-Mar-22
20	Filing of application in Form 10AB for conversion of provisional registration into regular registration or renewal of registration/ approval after five year of registration/approval of Trust, institution, etc. (which was required to be filed on or before 28-02-2022)	31-Mar-22
21	Due date for payment of Provident Fund, ESI contribution for employers who have paid wages to their employees for February 2022.	15-Mar-22
22	Due date of PF filing return for month of February 2022.	25-Mar-22
23	Due date for payment of PT for the month of February where tax liability is more than Rs.100,000/-. (Monthly)	31-Mar-22
24	Due Date for payment and e-return of PT for FY 2021-22 (Annual)	31-Mar-22
25	GSTR-1 (For the month of Feb, 2022)	11-Mar-22
26	IFF (Optional) (For the month of Feb,2022)	13-Mar-22
27	GSTR-8 (For the month of Feb, 2022)	10-Mar-22
28	GSTR-7 (For the month of Feb, 2022)	10-Mar-22
29	GSTR-6 (For the month of Feb, 2022)	13-Mar-22
30	GSTR-3B (For the month of Feb, 2022)	20-Mar-22
31	GSTR-5 (For the month of Feb, 2022)	20-Mar-22
32	GSTR-5A (For the month of Feb, 2022)	20-Mar-22
33	Due date for submitting Letter of Undertaking (LUT) for FY 2022-23	31-Mar-22
34	Due date for filling AOC-4/ AOC- 4 CFS/ AOC-4 XBRL for FY 2020-21	15-Mar-22
35	Due date for filling MGT-7/MGT-7A for FY 2020-21	31-Mar-22



VALUATION OF SHARES UNDER INCOME TAX

[wrt: SHARES OF UNLISTED COMPANIES]

CA SANJAY VHANBATTE

Valuation of shares of unlisted companies under the Income Tax has been one of the most contentious issues for the assesses. Particularly in view of conflicting rules for valuation the assessee gets into dilemma as to what exactly needs to be done by him for proper tax compliance. The following discussion elaborates the dichotomy in the valuation rules for shares.

Essentially the issue of valuation of shares comes at two different scenarios. One for issue of shares by the companies where provisions of section 56(2)(viib) are to be looked into. On the other hand if the shares are to be transferred from one person to another then the provisions of section 50CA (from the perspective of the transferor) and section 56(2)(x) (from the perspective of transferee) have to be referred to.

Provisions of section 56(2)(viib)

a. In terms of provisions of this section when an unlisted company (company in which public is not substantially interested) issues share capital, then the share subscription received by it from the shareholders which is in excess of the fair market value of the shares by Rs. 50,000 will be taxable as the income of the company from other sources.

b. The section gives exemption to startup companies, non-resident companies and venture capital undertakings.

c. The question is how the FMV is to be determined for the purpose of section 56(2) (viib).

d. The assessee company is given option to compute the FMV by either of the following two methods in terms of Rule 11UA(2).

i. $FMV = (A-L) \times PV/PE$

Where A = Book value of all assets as reduced by income tax and fictitious assets e.g. deferred revenue expenditure etc.

L = Book values of Liabilities other than contingent and Unascertained liabilities.

OR

ii. Valuation as per DCF method by merchant Banker (Valuation done by Chartered Accountants w.e.f. 24.05.2018 not permitted)

e. The important aspect to be noted here is that for computing FMV for this clause, the values of all assets (and liabilities) are to be taken at **BOOK VALUES**.

Valuation for Section 50CA-Seller's Perspective

a. Section 50CA-

In terms of this section when the consideration for transfer of unlisted shares is less than FMV of such shares (as determined in a prescribed manner) then the value so determined shall be deemed to be the full value of consideration.

Here the method of computing of FMV is as per Rule 11UA(1)(c)(b) as discussed here under.



Valuation for Section 56(2)(x)

a. Section 56(2)(x)- Purchaser's perspective-

Section 56(2)(x) deals with receipt of money, immovable property or property for no or inadequate consideration.

'share' are listed in the section as one of the properties.

Inadequate consideration is the difference between FMV of the shares and consideration received.

Here again the FMV is to be computed according to the method prescribed which is as per Rule 11UA(1)(c)(b).

b. Thus, for both, section 50CA as well as section 56(2)(x) the computation of FMV has to be as per rule 11UA(1)(c)(b). This rule provides the mechanism of computing FMV as per the formulae:
FMV= (A+B+C+D-L) (x) PV/PE.

Where

A = Book value of all assets other than Jewellery, Artistic work, Shares and immovable properties.

B = Jewelry and artistic work - values of these items to be taken as per Regd. Valuer's Report which will be the price that would fetch if sold in the open market.

C = FMV of shares determined as per these rules.

D = Stamp Duty value of immovable properties.

L = Liabilities at book values other than contingent and ascertained liabilities.

c. A discerning reader, thus would realize that for both section 50CA (from seller's perspective) and S.56(2)(x) (from buyer's perspective) the FMV is to be computed by taking **stamp duty value of immovable properties** and FMV of jewelry, artistic work etc.

This is in contrast to the FMV prescribed under Rule 11UA(2) for the purpose of section 56(2)(viib) where the immovable properties are to be taken at BOOK VALUES

Interplay between section 56(2)(viib) and section 56(2)(x)

The above discussion makes it clear that while for section 56(2)(viib)- at the time of issue of shares, the company has to work out the FMV taking book value of all assets in its balance sheet.

This, seen from the perspective of the subscriber of the share capital may pose a great problem since for him, not S.56(2)(viib) but provisions of S.56(2)(x) are applicable. It needs to be seen in his hands, whether the shares acquired by him are for adequate consideration or not. In case of a company with substantial immovable properties (Particularly acquired long back) the FMV for S.56(2)(x) computed by taking stamp duty value of the immovable properties would be [as per Rule 11UA(1)(c)(b)] much higher than the FMV computed for S.56(2)(viib) taking book value of such assets [as per Rule 11UA(2)]. Thus, it may be always arguable that the subscriber received the shares from the company without adequate consideration.

Consider the following facts of a hypothetical case:

Sr.No	Assets	Book Value in Lakhs	Stamp Duty Value in Lakhs
1	Immovable Properties	20	100
2	Other Current Assets	30	
3	Liabilities	15	
4	No of Shares	1,00,000	



The FMV would wrack act as under these two sections as under :

Assets	S.56(2)(viib) Rule 11UA(2)	S.56(2)(X) Rule 11UA(1)(c)(b)
Immovable Property	20	100
Other Assets	30	30
Total	50	130
Liabilities	15	15
Net	35	115
No of Shares	50000	50000
FMV	70	230

In the above example the company has to issue shares, at the most at Rs.70 since any excess is liable to tax as income from other sources in its hand.

On the other hand the subscriber gets the shares at Rs.70 whose FMV is Rs.230. Difference of Rs. 160 is liable to tax in the hands of the subscriber u/s 56(2)(x) being shares received without adequate consideration.

There apparently is no answer to this dichotomy in the income tax rules. Therefore it is very difficult for an unlisted company (in which public is not substantially interested) to make the balancing act, so that neither the company nor the subscriber would have any issue on such share subscription.

At present the only answer seems to be that the issuer company needs to get the FMV computed through a category I merchant banker under DCF method where by the FMV is nearby to the one computed as per Rule 11UA(1)(c)(b) by taking **Stamp Duty Values of the immovable properties**.

Rights Issue

Private companies, mostly raise capital by rights issue. They certainly need to comply with the requirements of S.56(2)(viib) by determining issue price of such rights issue as per rule 11UA(2).

An interesting issue came up for discussion in the case of **Sudhir Menon HUF vs ACIT 148 ITD 260** as to whether provisions of s.56(2)(x) would be applicable in case of rights issue which is made at lesser value if compared to the value as determined under the relevant rules mandated under the said sections (read Rule 11UA(1)(c)(b)). The Bombay ITAT in this case, after detailed discussion, held the matter in favor of the assessee ruling that provisions of S.56(2)(x) would not apply to rights issue of shares.

The conclusion drawn by the ITAT was quite logical which stated that:

- a. In Rights Issue shares are allotted pro-rata to the shareholders, based on their existing holdings. Therefore, there is no scope for any property being received by them on the said allotment of shares there being only an apportionment of the value of their existing holding over a large number of shares.
- b. The ITAT also held that non-uniform allotment of shares would attract the rigors of S.56(2)(x).
- c. But issue of bonus shares would not to attract them.

Conclusion:

The discussion above explains the practitioner's dilemma in advising the client as to the price at which the shares can be issued in case of an unlisted company. The balancing act is really difficult when immovable properties are involved in valuation exercise. A clarification from CBDT is well deserved in such a scenario to clear the clouds of doubts which can certainly help in avoiding unnecessary litigation.

Till the time such clarification is available it would be advisable for all of us to be very cautious on this part.





Compendium on Top Judicial Pronouncements (Year 2022)

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 Courts and and pronouncements under of Advance Rulings in the year 2022 which can't be ignored.



1. Once an assessee has executed a bond to the satisfaction of the authority, there is no requirement for giving the Bank Guarantee.

(AB Traders V. State of Gujarat, 2022-VIL-79-GUJ)

FACTS:

The petitioner is a proprietorship concern having the business place at Karnataka. The petitioner received an order of arecanut from a buyer in New Delhi for which they appointed a transporter for such transportation. The transporter being in a hurry to complete the task assigned and for the reason that goods have already been loaded to the vehicle, commenced movement of goods without waiting for the e-way bill to be generated and provided by the petitioner.

Thereafter, the goods were intercepted by the authorities and detained since e-way bill was not available with the driver. The authorities permitted provisional release of goods on payment of tax/penalty and on furnishing Bank Guarantee for the value of goods.

The petitioner by way of present petition has challenged the validity of insistence for the Bank Guarantee once the assessee has executed a bond to the satisfaction of the authority and made payment of tax and penalty.

HELD:

The Hon'ble High Court held as follows:
Section 67(6) of the GST Act provides for two options for the taxable person for securing provisional release, first is execution of bond and furnishing security and other, payment of applicable tax, interest and penalty.

2. In respect of search and seizure, the Authority has to adhere to the procedure provided under Section 74 of the CGST Act, 2017

(M/s Dhariwal Products V. UOI, 2022-VIL-103-RAJ)

FACTS:

The Authority conducted a search and seizure on the premises of the Petitioner and during the course of search and seizure the petitioner made to deposit a huge amount of Rs. 11.5 crores under coercion. The petitioner filed a Write Petition challenging the search and seizure along with the amount deposited under protest.

HELD:

The Hon'ble High Court held as follows:
The GST Authority with its action has not adhered to the procedure under Section 74 of the CGST Act, 2017.

The amount deposited during the search and seizure has not been a voluntary deposit as the petitioner disputes the liability.

When the procedure under Section 74 of the CGST Act is adopted, the authorities would be required to refund the amount collected under protest as the same was collected by naming it as a voluntary deposit.

The court has ordered that no coercive steps shall be taken against the petitioner or its representatives in respect of the search and seizure.

The petitioner shall not be forced to deposit any amount towards GST without adhering to the procedure laid under Section 74 of the CGST Act 2017.



3. Taxpayer cannot be detained for indefinite period for alleged tax evasion where investigation is pending

(Paresh Nathala Chauhan V. The State of Gujarat, 2022-VIL-11-SC)

<p>FACTS:</p> <p>The appellant has been in the custody for 25 months out of the total period of years for which he has been sentenced and the investigation is still pending though the complaint has been filed.</p> <p>The Appellant states that the officers are doing so to teach him a lesson for initiating a proceeding which resulted in adverse order against the officer.</p> <p>The Appellant has filed the appeal to seek bail before this Hon'ble Court.</p>	<p>HELD:</p> <p>The Hon'ble Supreme Court held as follows: The Appellant cannot be detained in custody indefinitely and he has undergone a period of 25 months of custody which almost 50% of the sentence.</p> <p>The proceedings against the conduct of officers in regard to the proceedings against the appellant has been taken out by the family members/ appellant has led to adverse consequences though the same proceedings are still pending.</p> <p>The appellant has been granted bail on terms and conditions to the satisfaction of the trial court and advised that the Appellant not to indulge in any similar activities again in future</p>
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4. The authority may serve the notice of assessment and communications through registered post or speed post or courier with acknowledgment till the technical glitches will be resolved

(Pushpam Reality V. State Tax Officer, 2022-VIL-146-MAD)

<p>FACTS:</p> <p>By way of present Writ Petition, the petitioner has challenged the impugned assessments orders and the impugned recovery proceedings issued consequent to the assessment orders on the ground that assessments orders have been passed either without proper service of Show cause notices or without giving adequate opportunity to reply to the Show cause notice.</p> <p>On the other hand, the department contends that the notices were uploaded in the web portal of the State Government and same are auto populated in the GST portal.</p>	<p>HELD:</p> <p>The Hon'ble High Court held as follows: The GST portal has faced problems on several occasions and steps were taken for correcting the technical glitches and even as on date, there are problems arising out of inter-communication between the State GST and Central GST web portal which has to be resolved. Till all problems are resolved on the technical side, the authority may simultaneously serve the notice of assessment and communications under the Act and Rules both through registered post or speed post or courier with acknowledgment as is contemplated Section 169(1)(b) of the CGST Act and through web portal.</p> <p>Further, once all technical problems are resolved, the practice of sending physical copy through registered post or speed post or courier with acknowledgment may be dispensed with.</p> <p>Therefore, the impugned assessment orders are set aside and the petitioners are directed to file a reply to the respected Show cause notice</p>
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5. Rejection of refund application merely for the reason that the same has been filed manually and not electronically is beyond the provisions of law

(C.P Ravindranath Menon V. UOI, 2022-VIL-150-BOM)

FACTS:

The Petitioner entered into a registered Agreement for sale with Godrej Redevelopers (Mumbai) Pvt. Ltd. and an invoice was raised to the Petitioner but the loan applied was not sanctioned to the petitioner resulting into termination of the said agreement. The Petitioner filed a refund application manually before the department but the same was rejected for not complying with the Circular No. 125/44/2019-GST dated 18th November 2019 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing which was made mandatory with effect from 26th September 2019. Hence, the petitioner has filed this petition seeking direction for immediate sanction of refund of GST paid.

HELD:

The Hon'ble High Court held as follows: The Petitioner filed the refund application before the department and the same was filed as per the provisions of Rule 97A of the CGST Rules which allows any person to file a refund application manually and electronically.

Reference has been made to the decision of Laxmi Organic Industries Ltd (Supra) wherein it was held that the plain and simple constructive of Rule 97A is that despite Rule 89 providing for electronic filing of applications for refund shall include manual filing of the said application.

In the instant case, the petitioner even otherwise could not have filed application electronically, not having registered under the CGST Act.

Further, the Hon'ble High court quashed and set aside the impugned order dated 18.02.2021 wherein the department rejected the refund application on the basis of the applicability of the Circular No. 125/44/2019-GST dated 18th November 2019 and directed the department to consider the refund application on merits and decide on the same within 8 weeks from the date of order

6. Refund of unutilised input tax credit is to be claimed under Rule 89(4B) of the CGST Act (Messers Filatex India Ltd V. UOI, 2022-VIL-133-GUJ)

FACTS:

The writ applicant is a company engaged into the business of manufacturing of textile yarns. The applicant is engaged in domestic supplies as well as export supplies and claimed refund of accumulated refund tax attributable to export under Rule 89(4) of the CGST Rules. The department rejected the refund of claim on the ground that the applicant was required to file a claim for refund of the unutilized credit under Rule 89(4B) of the CGST Rules instead of on the basis of formula under Rule 89(4) of the CGST Rules as Rule 89(4B) lays down that refund of unutilized ITC availed on all inputs other than the inputs procured under Notification No. 40/2017, 41/2017, 78/2018 or 79/2017, would be available.

Hence, the applicant by way of present writ application has raised an issue whether the applicant is entitled to claim the refund in accordance with the formula as provided under Rule 89(4) of the CGST Rules or whether it is Rule 89(4B)

HELD:

The Hon'ble High Court observed as follows: According to Rule 89(4B) of CGST Rules, the refund of input credit availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted and therefore the refund is applicable on the accumulated ITC that have gone into the making of export of goods.

Since the department is not in possession of all the records and details of ITC credit availed and related matters the case is remanded back to the adjudicating authority with the mandate of considering the claim of refund of the ITC by the appellant afresh under Rule 89(4B) of the CGST Rules.

The Principal Commissioner has stated that each and every manufacturer / exporter is believed to be aware of the input / output ratio of the inputs / raw materials used in such manufacturing of the exported goods and the ITC availed against such input supplies received.



<p>of the CGST Rules which should be made applicable for the purpose of determining the refund claim.</p>	<p>The Assistant Commissioner shall proceed in accordance with the remand directions issued by the Appellate Authority and adjudicate the claim of the applicants in accordance with Sub-Rule (4B) of Rule 89 of the CGST Rules, but keeping in mind the formula of input/ output ratio of the inputs/ raw material used in the manufacturing of the exported goods.</p>
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7. Activities along with sale of food in respect of central kitchen/eating joints by way of dine-in, take away and delivery is covered under supply of 'restaurant service' which attracts 5% GST without ITC
(M/s Shrivika Foodcraft, 2022-VIL-50-AAR)

<p>FACTS: The Applicant is setting up restaurants in the form of central kitchen/eating joints for sale of food items along with various modes of services like Dine In, Take Away and Delivery. The applicant approached the Authority for Advance Ruling (AAR) to determine: Whether supply of food and beverages by eating joints by way of Dine In, Take Away and Delivery should be treated as supply of goods or supply of services Whether the Applicant can avail the ITC.</p>	<p>HELD: The Authority for Advance Ruling held as follows: The Applicant supply supply of food and beverages by eating joints by way of Dine In, Take Away and Delivery should be treated as supply of goods or supply of services would be covered under 'restaurant service' as per Section 7 of the Act and liable to tax as per Section 9 of the Act as clarified in Circular No.164/20/2021. The supply made by the Applicant is classifiable under Heading 9963 under Sl.No.7(ii) of Notification No.11/2017-CT (Rate) dated 28-6-2017 and attract 5% GST but the Applicant is not entitled to take ITC as per the conditions of the said notifications.</p>
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8. 18% GST on reimbursement of basic salary, ESIC, EPF, bonus
(M/s Broadcast Engineering Consultants India Ltd., 2022-VIL-42-AAR)

<p>FACTS: The Applicant is a Central Public Sector Enterprise with 100% equity share capital held by Government of India. The applicant was awarded a contract from Madhya Pradesh Paschim Keshetra Vidyut Vitaran Company (Govt. Entity) for providing "skilled, semi-skilled and unskilled" manpower. As per the Applicant their primary work is the distribution of electricity in the rural areas for which manpower is provided and the above activity falls under the article of 243G of the Constitution of India which a NIL rated supply. As a result, the applicant only charged GST on consultancy part and is not required to charge any GST on taking</p>	<p>HELD: The Authority for Advance Ruling (AAR) observed as under: The Applicant has been raising the invoices wherein it has mentioned cost of employees and the commission and there is no mention of EPF/ESIC/WC contribution on the invoice. The rural electrification includes distribution of electricity is covered in function entrusted to a Panchayat but the invoices issued to the Executive Engineer, MPPKVCL or GM, MPMKVCL by the applicant with description of supply of manpower (Rural) is not a sufficient document to conclude that the manpower will be actually used for distribution of electricity in rural area as a sub-station supplying electricity covers large area which include rural as well as urban area. The Applicant is not entitled for the exemption contained in the Sl. No. 3 of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 as the service recipients were not Govt. or its Entity and the</p>
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<p>reimbursement of expenses i.e. Basic salary, ESIC, EPF and Bonus due to the same is considered as Nil rated supply The applicant approached the Authority for Advance Ruling (AAR) to determine:</p> <ul style="list-style-type: none"> • Whether the Appellant should charge GST @18% on reimbursement of expenses like Basic Salary, ESIC, EPF, Bonus with service charge only on service charge for providing pure service by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution? • Whether taking reimbursement of expenses for the manpower deployed is a NIL rated supply under GST? 	<p>services were not in the nature under article 243G of the Constitution.</p> <p>The section 2(31) of CGST Act, 2017 defines 'consideration' to include any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.</p> <p>In the present matter, the entire payment received by the Applicant against the manpower supply the GST shall be payable on the entire amount collected which would include the salary amount /wages to be paid to the labours as well as the reimbursement of PF and ESI contribution.</p> <ul style="list-style-type: none"> • Hence, the GST is liable to be paid @18% (IGST) on the reimbursement of expenses i.e. Basic salary, ESIC, EPF, Bonus with service charge.
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9. GST shall be applicable on the amount received as liquidated damages from a person which would be considered to be a toleration on Act as per the entry in 5(e) of Schedule II to the CGST Act, 2017
(M/s Achampet Solar Pvt Ltd, 2022-VIL-34-AAR)

<p>FACTS:</p> <p>The applicant is engaged in production and distribution of electricity obtained from solar energy. The Appellant has engaged M/s. Belectric India (P) Ltd for construction of solar power project and has mentioned clauses with respect to the recovery of the liquidated damages. First being the delay in delivery and other being non-performance of the plant. The applicant approached the Authority for Advance Ruling (AAR) to determine: Whether liquidated damages recoverable by the applicant from M/s. Belectric India on account of delay in commissioning, qualify as a 'supply' under the GST law, thereby attracting the levy of GST? What would be the time of supply if the if GST is applicable or leviable?</p>	<p>HELD:</p> <p>The Authority for Advance Ruling (AAR) observed as under:</p> <p>The Appellant demanded the liquidated damages from the contractor due to the delay in commissioning of the project and the postponement in taking over the date beyond the milestones from completion of the project. • As per the provisions 1 and 3 of the Section 55 of the Indian Contract Act, 1872 discuss that the failure to perform an act as per the contract makes it voidable at the option of the opposite party and can recover compensation for such a loss for non-performance. Hence, the recovery of liquidated damages by the applicant from the contractor due to the delay in commissioning of the project would amount to toleration of an act as a contractual obligation as per the entry in 5(e) of Schedule II to the CGST Act, 2017 and further, read with the Section 2(31)(b) of the CGST Act, 2017.</p> <p>Further, the consideration received for such an act would be taxable under the CGST and SGST @9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017- Central/State tax rate. And the date on which the liquidated damages shall be determined as per the clause 6 of the contract between the respective parties.</p>
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10. GST payable on membership/subscription fee received from members of a club
(M/s The Poona Club Limited, 2022-VIL-24-AAR)

<p>FACTS:</p> <p>The applicant is an association with non-profit motive. It provides life time membership wherein the members are exempted from annual payment charges and annual subscription based membership.</p> <p>Further, the applicant charges annual games fee which is payable by both the above membership holders. The appellant approached the Authority for Advance Ruling (AAR) to determine:</p> <p>a. Whether membership fee collected from members at the time of giving membership is liable to tax under CGST/SGST Act?</p> <p>b. Whether the annual subscription and annual games fee collected from members of club is liable to tax under CGST/SGST Act?</p>	<p>HELD:</p> <p>The Authority for Advance Ruling held as follows: The applicant has two objectives one being the administration and maintenance of club and the second being providing facilities and services to members for which members are charged as when they use it</p> <p>The applicant stated that the member and the club have same entity because of the principle of mutuality by citing the decision of the Hon'ble Supreme Court in State of West Bengal v Calcutta Club [(2019) 19 SCC 107 - 2019-VIL-34-SC-ST]</p> <p>Earlier the membership fees received by the applicant did not qualify as supply but after the amendment in CGST Act which was proposed in budget 2021 vide clause 99, in sub-section (1) of section 7, after clause (a), the clause (aa) was to be inserted and deemed to be inserted w.e.f. 1st day of July, 2017 which got assent from the president in 28th March, 2021 and clearly specifies that the membership fees from the members to the clubs is a 'Supply'</p> <p>Further the services and the facilities provided by the applicant falls under the definition of business as per Section 2(17) irrespective of the intent of the applicant to earn profit or not</p> <p>Thus, the membership fee collected from members at the time of giving membership, the annual subscription and annual games fee collected from members of club is liable to GST</p>
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Bibliography: The contents of the compendium are collection of views from various Courts & Tribunal Judgements, AAR-AAAR pronouncements, Online News Channels' Articles and other Online Published Articles including circulated through the social media platforms compiled for the benefit of reader.



Newly Form Committee 2022-23



Committee members
2022-23

Women Empowerment Committee 2022-23





Kolhapur Branch of WIRC of ICAI Activity for the month of February, 2022

CA Family Get Together







CA Sanjay Vhanbatte addressing at Seminar on Union Budget



Felicitation of Speakers



CA Girish Kulkarni addressing at Seminar on Union Budget



Felicitation of Speakers