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EDITORIAL

Auditor's Role and Responsibilities – a true perspective



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The vast changes occurring in the economy of the country have been placing greater responsibilities on Chartered Accountants. One of the key roles played by Chartered Accountants in India is Auditing, a system of independently reviewing the internal control systems, books of accounts, supporting vouchers, agreements, audit evidences,

Fair view" and not "true and correct" financial statements.

The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. The Audit neither warranty nor Guarantee identification of fraud. The auditor is able to examine only a few sample out of the millions of transactions, identified on the basis of internal control systems in place and working as per sample verification of test of controls.

The primary role of preparation of business strategy, business plans, decision making, delegation of authority, approval of all decisions and contracts as well as financial transactions completely rest at different levels of the corporate management. The Management is responsible for designing and implementing internal controls systems in respect of operations suitable to business processes.

It is the responsibility of the Directors of the company for conducting the affairs and Governance of the Corporate in a highly professional manner, to take all decisions in the interest

and financial statements and expressing an opinion that financial statements are free from material misstatement or otherwise. The users of financial statements give utmost trust on audited Financial statements read with the Auditors' report thereon.

However, in all cases where there is a business failure or financial difficulties in any Company, a negative view is being taken by certain law enforcement agencies and regulators, even before the entire review process, assuming audit failure and misconduct on the part of auditors.

Since past few years, there can be seen a significant increase in the incidents where the statutory auditors have been called for, issued notice, sent summons, issued warrants, for the alleged malicious acts of the promoters or the company of which the statutory auditor has conducted audit. The Auditors are being summoned to personally appear before, provide information, evidence, vouch for, prove the company or itself guilty and colluding of malice in the accounts and financial affairs of the company.

It has to be understood that the Audit is not an investigation exercise and it is only providing a reasonable assurance that based on examination of controls and sample transactions, nothing adverse has come to the notice of the Auditors, which materially indicate that Financial statements are not free from misstatement either due to fraud or error and reflect a "true and

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of the Company, put in place adequate control, checks and balances against any kind of fraud, manipulation, restrict diversion of funds, misuse of funds and true and fair disclosure of facts to all stakeholders and follow business ethics. A fair and ethical Corporate Governance, correct and proper preparation and maintenance of the books of accounts and the preparation of financial statements of the company are responsibility of those Charged with governance including Board of Directors and Key managerial person. This fact is to be declared and evidenced by the directors in the 'Director's Responsibility Statement', in terms of the Companies act, 2013

The Auditors examine all material decisions taken by the management to ensure that the decisions and powers to take decisions are properly authorised and approved at an appropriate level. The Auditors have no access to third parties with whom the Corporate is dealing. The auditor must rely on the information brought on record and cannot be aware of actions or documents or details or transactions not brought on record. The audit is not an investigation, nor they are empowered to seek information from parties with whom the audit entity is dealing. The Auditors are however not required, nor expected to question the decisions of the management, audit Committee or the Board of Directors. The Auditors always keep a vigilant eye on proper recording of transactions, usage of funds, regulatory compliance, ethical conduct of management of the Company at different levels. The audit scope, coverage and purpose has to be understood and an investigative and forensic approach is not the role of Auditors as Chartered Accountants as per standards laid down by and for the profession of Chartered Accountants.

As per Standards on Auditing and generally accepted audit practices, the Auditors examine Audit evidence and do not keep a comprehensive copy or record of the vast and highly confidential audit evidence examined by the audit team. The Auditors are required to only document in their working papers a detailed noting of matters examined by them, nature of data and information gathered during the course of audit, copies of only some important papers and documents of the sample examined by the auditors and of course details of working papers in respect of analytical and substantive testing carried out by the auditors. The detailed audit evidence such as books of accounts, vouchers, supporting documents, Physical verification reports, workings, reconciliations, minutes, etc. are all available in Company records and such data and documents is neither permitted nor expected to be taken copies by the CA Auditors, to ensure business confidentiality

An auditor, not being a Key Managerial Personnel, not akin to the top management or Board, not an employee or officer of the company, not related party, not directly or indirectly anyways indebted, associated, related to the company, is nowhere to be blamed or caught for a fraud, which never came to his knowledge during the course of audit, which may have been committed by the company or company officials. The Auditor is not handling any day-to-day affairs of the company and cannot ordinarily be party to the fraud. The auditors are neither empowered nor expected to question the decisions of the management at different levels, within the powers delegated by the Board of Directors, in terms of law.

The Chartered Accountants as a community are committed to

truth, fairness, transparency, excellence and integrity and fully support all strict actions against exceptional cases, where an Auditor or a Chartered accountant are found guilty, of criminal negligence or abetment, beyond reasonable doubt. In no case, Ineffectiveness or professional negligence (which may not be grave in nature) cannot and should not be categorise as criminal in nature, unless proved as a criminal negligence before a judicial authority. A gross negligence or lack of due diligence may be construed as professional misconduct and are to be punished by a professional body, commensurate to the gravity of the misconduct, after examination by experts of the audit profession.

Latest in Finance

Investments in Alternative Investment Funds (AIFs) – restrictions on banks, NBFCs

SEBI found many violations where Alternative Investment Funds (Private Equity & Venture Capital Funds) acted as tools to evergreen sticky loans, circumvent foreign exchange laws & bankruptcy code. The REs (Banks, NBFCs) shall not make investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the respective RE. Legally, AIFs can be established in the form of Trust or Company or Limited Liability Partnership or a body Corporate. SEBI regulate more the 1200 AIFs, more of them are registered in trust form

RBI grants six payment aggregators licences

RBI grants its final approval for at least six payment aggregators licences on December 19, thus lifting the ban on entities such as RazorPay and Cashfree payments for acquiring new merchants. The final nod for the payment aggregators licence has come for Razorpay, Cashfree Payments, Open Financial, Enkash, Google Pay and Paymate India.

Export/Import

Duty, Tax remission scheme benefits to be extended to E-commerce exports

Government will extend the RoDTEP (Remission of duties and taxes on exported products) benefits for exports through e-commerce and the step will help small and medium scale sectors take advantage of government schemes, further pushing e-commerce exports and boosting overall export growth from the country to achieve the target of \$1 trillion merchandise exports by 2030. The scheme provides for refund of taxes, duties and levies that are incurred by exporters in the process of manufacturing and distribution of goods and which are not being refunded under any other mechanism.



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SEBI puts in place process for dematerialising units of Alternative Investment Funds (AIFs)

Capital market regulator specified the process to be followed for dematerializing the units issued, in cases where investors are yet to provide demat account details to Alternative Investment Funds. AIF units can be dematerialised by the investors as per SEBI specified process once enabled by the respective AIF. This will ease the transferability of units by one investor to another investor and will also act as evidence of holding investment units in AIFs.

SEBI revises norms on upstreaming of clients' funds by stock brokers

The Securities and Exchange Board of India (SEBI) has revised the framework for upstreaming of clients' funds to clearing corporations by stock brokers and clearing members. Stock brokers (SBs) or clearing members (CMs) will upstream all the clients' clear credit balances to clearing corporations (CCs) on the End of Day (EOD) basis. Such upstreaming will be done only in the form of either cash, lien on Fixed Deposit Receipts (FDRs) created out of clients' funds, or pledge of units of Mutual Fund Overnight Schemes (MFOS) created out of clients' funds.

SEBI streamlines criteria for grant of accreditation to investors

SEBI has streamlined the process of granting accreditation to investors. The circular states that the accreditation agencies will give their approval only on the basis of KYC and the financial information of applicants. Earlier, the agencies had to verify that the applicant is "fit and proper" to participate in the securities market, including the absence of any convictions or restraint orders, not being a wilful defaulter, etc. Accreditation agencies are also KYC Registration Agencies (KRAs) and accredited investors are usually high net worth and more financially sophisticated entities that are allowed to invest in securities that are not registered with the market regulator and that therefore may be high-risk instruments

SEBI extends deadline to add nominees in demat and MF accounts

Markets regulator SEBI extended the deadline to June 30, 2024 for demat and mutual fund account holders to provide a nomination. Earlier, the deadline to nominate a beneficiary or opt out of it by submitting a declaration form was December 31, 2023. The move is aimed at helping investors to secure their assets and pass them on to their legal heirs. The demat accounts and MF holdings may be frozen in case of non-compliance.

SEBI notifies social stock exchange framework

Capital markets regulator SEBI has notified a framework for the social stock exchange to provide social enterprises with an additional avenue to raise funds. The framework for the Social Stock Exchange (SSE) has been developed on the basis of the recommendations of a working group and technical group constituted by the regulator. The social stock exchange is a novel concept in India and such a bourse is meant to serve the private and non-profit sectors by channelling greater capital to them.

Settlement of Running Account of Client's Funds lying with Trading Member (TM)

SEBI has accepted the recommendation, allowing TMs to settle client accounts on Friday and/or Saturday. Amendments made to Master Circular. The circular is effective from the quarterly settlement of Jan-Mar 2024 and monthly settlement of January 2024.

SEBI allows short-selling by all investors; F&O stocks also eligible

Investors across all categories will be allowed for short-selling, but naked short-selling will not be permitted. Further, all stocks that trade in the futures and options segment are eligible for short selling. Institutional investors will not be allowed to do day trading. SEBI may review the list of stocks that are eligible for short selling transactions from time to time.

SEBI Master Circular on KYC Norms

The Securities Exchange Board of India (SEBI) released Master Circular on KYC (Know Your Customer) rules for investors. The SEBI registered intermediaries must collect and verify client's Proof of Identity (POI) and Proof of Address (PoA) when starting an account-based relationship. Registered intermediaries cannot open or keep any anonymous or fictitious accounts. They must verify the identity of clients and adhere to SEBI's anti-money laundering guidelines.

SEBI Panel proposes price movement as criterion for rumour verification

The first proviso to regulation 30(11) of LODR (Listing Obligation and Disclosure Requirements) Regulation requires listed entities to verify and confirm, deny or clarify market rumours within 24 hours of it being reported in the mainstream media. This will now be required to be done within 24 hours of the material price movement. SEBI has extended the timeline for rumour verification to February 1 and August 1 of 2024 for top 100 and top 250 listed Companies.

Income Tax

ITR-U Enabled on Income Tax Portal for AY 2023-2024

The Income Tax Department has taken a significant step towards digital convenience by introducing e-filing options for ITR-U on the Income Tax Portal. This development applies to the Assessment Year 2023-2024, corresponding to the Financial Year 2022-2023. Taxpayers can now easily file their returns online, streamlining the process and enhancing accessibility for a hassle-free tax season.

IT dept sends advisory to taxpayers over mismatch in ITR, TDS/TCS deductions

Regarding mismatch in TDS/TCS deductions and ITR filing data, the department has sent communication to millions of taxpayers, where income tax returns actually filed do not match with information available with the I-T department.

CBDT Issues Guidelines u/s 194-O of the Income-tax Act, 1961

CBDT issued guidelines on issues of deduction of 1% income tax of the gross amount of sale of goods or services by e-commerce companies in a multiple operator model framework. Currently, Section 194-O provides that an e-commerce operator shall deduct income-tax at the rate of one per cent of the gross amount of sale of goods or provision of service, or both, facilitated through its digital or electronic facility or platform. For removal of difficulties and clarity has been provided on various issues pertaining to applicability of Act in multiple operator model framework such as Open Network for Digital Commerce.

CBDT Redefining Intra-Group Loan & outlines its 'Safe Harbour' transfer Pricing conditions

The Central Board of Direct Taxes (CBDT) has recently amended the Safe Harbour Rules for international transactions vide notification. These latest amendments are with respect to the definition of operating expense and operating revenue and the scope of intra-group loan transactions that will be covered within the ambit of the Safe Harbour Rules. The amendments will come into force from 1 April 2024. Safe harbour rules for intra-group transactions prescribe the minimum price or return for specific categories of transactions which, if opted by the taxpayer, is accepted by the tax authorities.

CBDT mandate disclosure of cash deposit and list of bank accounts for AY 2024-25

Central Board of Direct Taxes (CBDT) vide Notification introduced Income Tax Return (ITR) Forms ITR-1 (SAHAJ) and ITR-4 (SUGAM) for the Assessment Year (A.Y.) 2024-25. Taxpayers will now be required to provide information regarding cash receipts and list of all their bank accounts within the country. The updated income tax return forms also include a special section for deductions for Agniveers, the youth serving in the armed forces under the Agnipath scheme, as per Section 80CCH.

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DCIT (ITAT Delhi); ITA No.7489/Del/2017 & 1598/Del/2020]

ITAT rejects Fees for technical services taxability on intra-group management support services

Income from provision of intra group management support services, such as HR support, marketing and operation support and administrative services, are not chargeable to tax as fees for technical services (FTS) in India as it does not satisfy the make available condition under Article 12(4)(b) of India-Singapore DTAA. [Global Schools Holdings Pte. Ltd [TS-719-ITAT-2023(DEL)]

Trust recycling post-consumer plastic waste contributes to preserving environment, allows Sec.80G registration

Mumbai ITAT allows Section 80G registration to a trust (Assessee) engaged in recycling post-consumer plastic waste, holds Assessee to be an entity eligible for approval under Section 80G. Assessee's activities of recycling the plastic waste falls under the category of preservation of environment, which is included within the definition of 'charitable purpose'. [Huhtamaki Foundation [TS-722-ITAT-2023(Mum)]

Addition to Capital Gains based on Valuation Report not justified

Delhi High Court held that where sale consideration received by assessee on transfer of capital asset was equal to circle rate, reference made to AO to Valuation Officer to find out fair market value of property was not justified. [Akash garg vs. Deputy Commissioner of Income Tax [2023] IT Appeal No. 313 (Delhi) Of 2023 [04-12-2023]

Disallowance under Section 14A cannot exceed exempt income: Delhi High Court

Delhi HC reinforces the principle that the disallowance under Section 14A of the Income-tax Act cannot exceed the actual exempt income earned by the assessee. This judgment provides clarity and guidance on the interpretation of Section 14A, ensuring a fair and consistent application of tax law. [PCIT Vs Devata Tradelink Ltd (Delhi High Court); ITA 163/2018]

ITAT Mumbai Validates Valuation Report by Certified Valuers

The Mumbai Tribunal has pronounced a ruling emphasizing the legitimacy of fair market valuation conducted under Section 56(2)(viib) of the Income-tax Act, 1961 (Angel-tax Provisions). The judgment establishes that where assessee-company issued shares at a premium which was determined by auditor on basis of DCF method, since share premium charged by assessee was lower than fair market value of shares determined by auditor, section 56(2)(viib) was not applicable to case of assessee as said section only brings to tax consideration in excess of fair market value. Where assessee-company had sufficient own funds for giving interest-free deposit, no disallowance of interest under section 36(1)(iii)(interest on borrowed capital) could be made. [PNP Maritime Services Pvt. Ltd. Vs DCIT (ITAT Mumbai); ITA no.317 & 668/Mum/2020]

Direct Taxation (Case Laws)

Estimated addition without pointing out specific defect in audited books unjustified

ITAT Delhi held that without pointing out any specific defect in the audited books of accounts, AO cannot and should not make any estimated addition. Accordingly, such estimated addition deleted. [Priyamda Media & Infotainment Private Limited Vs

Domain Name Registration Fees not Royalty

High Court of Delhi sided with the taxpayer, asserting that the fees received for facilitating the registration of domain names owned by third parties—its customers—cannot be treated as royalty. [Godaddy. Com LLC Vs ACIT (Delhi High Court), 11/12/2023; ITA 891/2018, ITA 261/2019, ITA 75/2023]

Order passed without granting video conference hearing is against principles of natural justice

Madras High Court held that order passed without granting video conference hearing as sought by the petitioner is unsustainable as it is clearly violation of principles of natural justice. [C. Chellamuthu Vs Principal Commissioner (Madras High Court); W.P.(MD)No.23385 of 2022 and W.M.P.(MD)No.17465 of 2022]

Cash Availability with Different Companies Sufficient to Explain Cash Found during Search

The ITAT concluded that the availability of cash with different companies within the group sufficiently explained the cash found during the search. [DCIT Vs Creamy Foods Ltd (ITAT Delhi), 06/12/2023; ITA No. 2179/DEL/2022, ITA No. 1911/DEL/2022].

Calcutta HC explains tax treatment of sub-licensing income from shops & services

The Calcutta High Court held that the income arising from the sub-licensing of shops and establishment, along with services rendered to sub-licensed shopkeepers, is considered business income and not income from house property. [Oberoi Building & Investment (P) Limited Vs CIT – II (Calcutta High Court; ITA/168/2010)]

Assessing Officer Must Substantiate Bogus Creditor Claim: ITAT Delhi

Absence of reply from the creditors do not entitle the AO to treat creditors as bogus without bringing any evidence on record to prove the payable are not indeed not required to be paid.. ITAT emphasized the need for independent verification and evidence before treating creditors as non-genuine. [ACIT Vs Real Impact Pvt Ltd (ITAT Delhi), 08/12/2023; ITA No. 9459/Del/2019]

Bombay HC: Quashed 148 proceedings for AY 2013-14

Revenue could not issue any notice under Section 148 beyond 31st March 2021 and hence, even the relate back theory of the Revenue could not safeguard the reassessment proceedings initiated after 1st April 2021 for AY 2013-14. Thus, the reassessment notices issued in Jun.2021 for AY 2013-14 are patently barred by limitation as the 6 years limitation period as extended under Section 3 of Taxation and Other Laws Act, 2020 expired by Mar.31,2021 in view of non-applicability of Notification No.20/2021 under the Act. [The New India Assurance Co. Ltd. Vs. ACIT Mumbai; WP No.1945 of 2023]

GST

Extended Deadline for Reporting Opening Balance for ITC Reversal on GST Portal

In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Reclaimed Statement was introduced on the GST portal, starting from August return period. Further, opportunity to declare opening balance for ITC reversal in the statement has been extended till 31st January, 2024. Facility to amend declared opening balance for ITC reversal will be available till 29th February, 2024.

Time limit extended for issuance of SCN and passing of order in non-fraud cases for FY 2018-19 and 2019-20

CBIC has issued Notification to extend the time limit specified under Section 73(10) of the Central Goods and Services Tax Act. This extension pertains to the issuance of orders under Section 73(9) of the CGST Act, which involves the recovery of tax not paid, short paid, or input tax credit wrongly availed or utilized for the financial years 2018-19 and 2019-20. a) For the financial year 2018-19, the time limit for issuing orders is extended up to the 30th April 2024. b) For the financial year 2019-20, the time limit for issuing orders is extended up to the 31st August 2024.

GSTN Unveils Online Filing of Annexure-V for GTAs Opting for Forward Charge

The Goods and Services Tax Network (GSTN) has enabled online filing of Annexure-V on the GST Portal. This feature is specifically tailored for newly registered Goods Transport Agencies (GTAs) choosing to operate under Forward Charge. For Goods Transport Agencies providing services and opting to pay tax under Forward Charge for the current financial year and beyond, the declaration through Annexure V Form must be filed by January 28, 2024.

Telangana Commercial Taxes Dept unearthed Input Tax Credit fraud of Rs 138 cr

Telangana Commercial Taxes Department officials have unearthed Input Tax Credit Fraud wherein new methods were adopted by Mr. Chanda Sai Kumar, resident of Jagtial. Mr. Chandan stealthily obtained GST login credentials of unsuspecting cancelled taxpayers, who have closed their businesses long ago. Then he used their logins to generate fraudulent transactions to various businesses. This ITC was later used by these businesses to evade payment of taxes. Editor's comment: The tax payers need to deal with a supplier only after proper due diligence. Suppliers supplying in multiple names from different addresses could be a potential fraudster. Suppliers supplying a commodity different to goods may also be treated as bogus invoice.



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Overseas staff on deputation: CBIC alert over GST notices:

Central Board of Indirect Taxes and Customs (CBIC) has issued instructions urging officers to exercise caution in raising demands in secondment cases. The Supreme Court's ruling in the Northern Operating Systems case determined that secondment of employees by overseas group companies a taxable service of 'manpower supply,' making Service Tax applicable. The CBIC emphasized that the Supreme Court ruling in the Northern Operating Systems case should not be applied mechanically and instructed officials to invoke Section 74(1) of the GST Act only in cases involving genuine fraud or evasion of taxes.

Editor's comment: It is important that the overseas group employees are deputed to India by appointing them on the role of Indian Company and making all payments from Indian company about salary and Perks. GST as well as transfer pricing and PE taxation issues in India can be professionally planned as not leviable.

GSTN introduces Two-factor Authentication for Taxpayers

GSTN is introducing two-factor authentication (2FA) for taxpayers to strengthen the login security in GST portal. The pilot rollout done for Haryana and working seamlessly. Currently, 2FA will be rolled out for Punjab, Chandigarh, Uttarakhand, Rajasthan and Delhi in 1st phase in Dec.2023. In 2nd phase, it is planned to be rolled out all states across India.

6 Digit HSN Code mandate in E-Invoices

A minimum 6-digit HSN code for each item in e-invoices is compulsory for taxpayers with an Annual Aggregate Turnover (AATO) of Rs. 5 crores and above from Dec.15, 2023. This finer granularity is expected to facilitate more precise identification and categorization of goods and services. Editor's comment: This will further track mismatch in purchase and supply bills.

Centre notifies creation of principal bench of GST Appellate Tribunal

Centre on Monday notified the creation of the principal bench of Goods and Services Tax Appellate Tribunal (GSTAT). Last month the Parliament passed the CGST Bill, 2023 which seeks to raise age limits for the president and members of the Goods and Services tax Tribunal (GSTAT) from 67 and 65 years, respectively, to 70 years, against 67 years and 65 years specified earlier..

GST (Case Laws)

10% Pre-Deposit Applies to Contested GST Tax Amount, Excluding Penalty, Fee & Interest:

Karnataka HC

The key issue centered around whether the 10% pre-deposit requirement applied to the entire disputed amount or only the contested tax. The Court interpreted the legislative intent behind Section 107(6) and concluded that the 10% pre-deposit obligation is confined to the contested tax amount, excluding penalty, fee, and interest. [Tejas Arecanut Traders Vs Joint Commissioner of Commercial Taxes (Karnataka High Court); Writ Petition No. 104505 of 2023(T-Res)].

Detention of goods and conveyance in transit

Where goods of assessee were detained on ground that both consignor and consignee were declared as non-existent, however, goods were found with proper tax invoice and E-way bill belonging to assessee, in such a case, assessee would be deemed to be owner of goods and, thus, goods would have to be released. [Halder Enterprises v. State of U.P. - [2023] 157 taxmann.com 231 (Allahabad)]

Distribution Companies Not Authorized to Collect GST on Electricity & Related Services

Gujarat High Court directed that Electricity distribution companies were not entitled to collect GST from their customers and charges for metering equipment, testing fee for meter, labour charges from customers for shifting of meters, charges for bills and application for releasing connection of electricity were all integral part of services of distribution of electricity. Any GST collected by assessee-company after 08.11.2023, be refunded to customers from whom the said GST had been collected. [Bses Rajdhani Power Ltd & Anr Vs Union of India & Ors (Delhi High Court); W.P.(C) 9455/2018 & CM APPL. 62085/2023].

GST Registration cannot be retrospectively Cancelled Arbitrarily: Delhi HC

The Delhi High Court delivered a significant judgment on the retrospective cancellation of GST registration. The court addressed the arbitrary nature of such cancellations and emphasized the importance of providing valid reasons. [Sanchit Jain Vs. Avato Ward-46 Stae Goods & Service Tax; W.P.(C) No. 16211 Of 2023, C.M. Appl. No. 65181 Of 2023]

ITC claimed by the Recipient cannot be denied without conducting due diligence of Supplier

The Hon'ble Supreme Court reaffirmed on Dec.14,2023 the order wherein the Court set aside the order of reversing excess credit availed in Form GSTR-3B as compared to Form GSTR-2A and held that the demand notice issued to the assessee for reversing the ITC could not be sustained without proper inquiry into the supplier's actions[Assistant Commissioner Of State Tax Vs Suncraft Energy Private Limited & Ors. (Supreme Court of India); Special Leave to Appeal (C) No(s).27827-27828/2023] Editor's comment: The GST law has undergone a shift now and GST credit is now legally restricted to what is reflected in GSTR 2 A. The judgement is very important and relevant for earlier tax periods.

Refund of accumulated ITC permissible when rate of certain inputs are higher than rate on output supply

Delhi High Court held that refund of accumulated Input Tax Credit (ITC) permissible as rate of taxes on certain inputs being higher than tax chargeable on the output supply. [Indian Oil Corporation Limited Vs Commissioner of Central Goods & Services Tax & Ors. (Delhi High Court); W.P.(C) 10222/2023 & CM No. 39561/2023]

Editor's comment: This is applicable only in case of input of Supply of Goods and not to input on services.

Refund of Tax paid on export is not barred by period of Limitation: Delhi HC

Delhi high court held that the petitioner would be entitled to refund of tax paid (IGST paid either under the RCM on inputs or the IGST on exports). The revenue's contention that any claim for refund of ITC would be barred is also not persuasive. [Grapes Digital pvt. Ltd. Vs Principal Commissioner & Anr (Delhi High Court); W.P.(C) No. 2918/2021]

Kerala HC directs department to consider GSTR 3B rectification

Assessee sought rectification of mistake in Form GSTR-3B by accounting input tax credit as IGST instead of SGST and CGST credit and also to refund IGST ITC and thereafter, adjust same towards SGST and CGST liability; Revenue authorities should consider instant representation as a rectification application filed by assessee and should pass necessary order [Chukkath Krishnan Praveen Vs State of Kerala (Kerala High Court); WP(C) No. 41219 of 2023]

Same rate of tax applicable on Mobile Phone & Charger sold together as one unit under Karnataka VAT Act

The Hon'ble Supreme Court held that, same rate of tax would be applicable on both Mobile Phone and Mobile Phone Charger sold together as one unit under Karnataka VAT Act. [State Of Karnataka & Anr. Vs Micromax Informatics Ltd. (Supreme Court of India)] Special Leave Petition (Civil) Diary No(S). 40320/2023]

Appellate Authority cannot dismiss appeal for non-prosecution due to non-appearance of Assessee or authorised representative

The Hon'ble Patna High Court held that appellate authority is not empowered to dismiss the appeal for non-prosecution due to non-appearance of Assessee or authorised representative as appellate authority has a duty and obligation to take into consideration the merits of the matter, examine the grounds raised by the appellant even if the appellant or authorised representative presence is not recorded; and decide the issue on merits. [Nav Nirman Construction Vs Union of India (Patna High Court) Civil Writ Jurisdiction Case No.16940 of 2023]

Other Important Laws

Nominee of Shares: SC Ruling on Absolute Ownership vs Succession Laws

The Supreme Court of India in this case was considering the rights of a nominee of shares which was challenged by other legal heirs as according to them, the shares should be distributed as per the Indian Succession Act. While the nominee of shares argued that in view of non-obstacle clause in Section 109A and 109B of the Companies Act, 1956 (now Section 72 of the companies Act 2013), he was the sole owner of these shares. However, the other legal heirs argued that Companies Act cannot determine and/or override the law of succession. SC ruled that the claim over financial instruments such as share and debenture certificates should be with the successor by law or by will of the original owner, and not with the nominee, the Supreme Court has ruled. [Shakti Yezdani vs. Jayanand Jayant Salgaonkar & Others; Civil Appeal No. 7107 of 2017]

Govt to notify new criminal laws by January 26

The government will notify the three new criminal laws - Bharatiya Nyaya Sanhita, 2023 (BNS) replacing Indian Penal Code, Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replacing Criminal Procedure Code and Bharatiya Sakshya Adhiniyam, 2023 (BSA) replacing Indian Evidence Act. by January 26. The Government is initiating integration of e-courts, e-jail and e-forensics and Crime and Criminal Tracking Network and Systems (CCTNs), crime-related data has to be fed into the system.

Govt. amends Advocates Act, 1961; introduces power to frame and publish lists of touts

The Central Govt. has notified Advocates (Amendment) Act, 2023. A new section 45A i.e., power to frame and publish lists of touts, has been introduced. Now, every High Court, District Judge, Sessions Judge, District Magistrate, and every Revenue-officer, not being below the rank of a Collector may frame and publish lists of persons proved to their or his satisfaction, or to the satisfaction of any subordinate Court by evidence of general repute, habitually to act as touts.

New Ruling on Benami Law may Unearth old deals

Even if a benami transaction had happened before November 2016, when the new, amended statute came into force, the parties would face the wrath of the law today if the property or asset in question is still being 'held', according to a recent ruling. If somebody is 'holding' a Benami property subsequent to the amendment, it would come in the sweep of benami transaction(s). The ruling may rattle many who were under the belief that old deals would not come under glare following the apex court verdict that the law would not have retrospective effect.

Vivo Siphoned off Rs.1 Lakh Cr: ED in first charge sheet

Enforcement Directorate filed its first charge sheet in the Prevention of Money Laundering Act Case against Vivo India and others. It is said to have alleged vivo India siphoned off Rs.1 Lakh crore from India between 2014 and 2021 with the aid of shell companies.

Telecommunications Act, 2023 passed

The Act comprehensively rewrites the telecommunications law consolidating spectrum, right of way, and dispute resolution, among other aspects, into one fresh statute. It has replaced the Telegraph Act of 1885. Instead of the licensing regime of the past, the new Act refers only to 'authorisations' that will have to be obtained by telecom operators and other providers of telecom services

Court ruling: Daughter can be Karta of HUF

Daughter can be Karta of HUF since recognition of daughter as coparcener by section 6 of Hindu Succession Act encompasses all incidents of a Coparcener including right to become Karta of HUF. The concept of coparcenary is derived from the joint ownership of a common pool of assets held by a family and the necessary corollary was that who owns the property, would have a right to manage it. [Manu Gupta v. Sujata Sharma - [2023] (Delhi)] Cm Appeal No. 6041 Of 2016 December 4, 2023]

Other Important Laws

PMLA accused Corporate to given copy of grounds of detention within 24 hours

In opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e. as early as possible and within reasonably convenient and requisite time of 24 hours of his arrest, that would be sufficient compliance of not only section 19 of the PMLA but also of Article 22(1).

Audit & Accountancy

NCLAT upholds NFRA's Powers to Punish CAs for Past Audit Misconducts

National Company Law Appellate Tribunal (NCLAT) ruled that the National Financial Reporting Authority (NFRA) has power to probe cases of professional misconduct that had occurred before the audit regulator was set up in 2018. NFRA has superior and overriding powers over the Institute of Chartered Accountants of India (ICAI) in matters relating to professional misconduct of Chartered Accountants (CAs), NCLAT has ruled in a judgment while affirming the punishment imposed on four auditors, who conducted the audit of the 17 branches of the scam-hit Dewan Housing Finance Limited (DHFL) between 2014 and 2018. NCLAT said that SAs (Standards of Auditing) are part of the law of the land and are required to be mandatorily complied with from the date of their respective applicability, while conducting statutory audits and therefore, the NFRA shall have the authority to retrospectively initiate its investigation. Comp. App. No. 68,87,90&91 of 2023

Editor's comment: This ruling is not in accordance with a judgement of Telangana High Court (WP. NO. 20212 of 2023) which had recently decided that NFRA can not take up matters before their own Constitution on 21st March 2018, empowerment to investigate on 24th October 2018 and Punishment powers revised on 15th August 2019. The matter is under consideration of Honourable Supreme Court. Delhi High Court and several other High Courts have stayed the notices of NFRA on similar grounds in many cases.

NFRA Penalizes CA Rs 50 Lakhs for profession Misconduct in issue of Section 80JJA Report

The National Financial Reporting Authority (NFRA) has issued penalty order pertains to CA and CA Firm, involving their issuance of reports under section 80 JJA of the Income Tax Act for the financial years 2018-19, 2019-20, and 2020-21 for lapses in due diligence and information verification.

Editor's comment: The lawyers are examining NFRA jurisdiction in the matter of certificates issued by Chartered Accountants in terms of Income Tax act, as the Section 132 of Companies Act, 2013 is focussed on accounting standards and Audit of Companies of notified class of bodies corporate or persons.

Police arrest CA for issuing certificates without adequate verification:

Thane Cyber Crime branch has apprehended a Chartered Accountant (CA) for exploiting his expertise to generate a staggering 365 instances of 15CB certificates (issued under the Income Tax Act by CAs for making payments to non-residents or foreign companies). However, the probe revealed that the CA did not adhere to the necessary requirements while issuing these certificates, effectively aiding the primary accused in the illicit financial transactions.



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