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EDITORIAL

India a Fully Developed Nation by 2047- Amrit Kaal: Role of Chartered Accountants



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In a landmark address on India's 75th Independence Day, Prime Minister Narendra Modi unveiled his visionary concept of Amrit Kaal, or 'The Era of Elixir'. This concept, slated to guide India's trajectory until its 100th year of independence in 2047, heralds a new dawn for the nation, promising to fulfil its long-cherished aspirations to be a fully developed nation,

through rapid economic growth, improved living standards, and technological advancement.

Central to the realization of this transformative vision are Chartered Accountants (CAs), whose indispensable role in ensuring economic growth, financial integrity, transparency, and compliance within the economic framework cannot be overstated. As guardians of fiscal probity, CAs serve as the bedrock of trust in the financial system, attracting investments and fostering fair competition, vital components for India's journey towards becoming a developed nation by 2047.

The first step is to develop the profession of Chartered Accountants by taking education, training and expertise to be best in the world by setting up residential National Schools of Accountants across India, with facilities better than IIT, IIMs, National Law schools and best International Universities. The CAs present and future generations to be fully competent as an expert in Management, Finance, Accounting, Assurance, Taxation, Economic Laws, besides science and technology as contemplated by New Education Policy suggesting a holistic mix of sciences, commerce, and Art.

The Chartered Accountants need to develop a very active role in handholding and guiding entrepreneurs, policy makers and Governments to:

- Plan and implement significant expansion and diversification of manufacturing, trading and service enterprise and innovate new products and services

beside robust infrastructure.

- Plan to set up and acquire industries, businesses, research Institutions, service set ups, large and mid-size corporate internationally across the globe in different countries.
- To substantially upgrade Indian educational and training institutions to enable Indian engineers, doctors, management graduates, Indian scientist, software engineers, high quality trained technicians, skilled workers and professionals in different streams.
- To actively strengthen Mid-size, small and micro enterprises to deliver goods and services.
- To develop a strong financial system, financial market, money market, currency and commodities market within India and internationally. The CA profession will devise strong rugged working methodology with necessary operational and financial controls to contain misuse and attached risk.
- To devise a growth strategy for agriculture and agro-processing by attracting large investment, latest techniques, development of national and international market effective framework focussed to benefit farmers and large gainful employment.
- To move rapidly towards low interest rates, low direct and indirect taxes, and Nil tax evasion
- To ensure a legal, judicial and regulatory system with least compliances, self-regulation, quick justice, and resolution of disputes and minimum fines, penalties, prosecutions.

However, amidst the pursuit of progress, ethical standards and professional integrity must remain sacrosanct. Upholding the highest ethical standards, CAs prioritize the public interest over personal gain, thereby fortifying trust and credibility in the profession.

The AICAS Team has set up it's
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Latest in Finance

RBI mandate clear disclosure of lending terms in KFS format by Banks, NBFCs

In cases of all retail and MSME term loan products extended by all regulated entities (REs) including **Banks and NBFCs**, REs shall provide a **KFS (Key Facts Statement and disclosure of Annual Percentage Rate)** to all prospective borrowers to help them take an informed view before executing the loan contract, as per the prescribed format. All new retail and MSME term loans sanctioned on or after October 1, 2024, including fresh loans to existing customers, shall comply with the guidelines in letter and spirit without any exceptions.

RBI mandates regulatory approval for non-bank physical payment aggregators (PA-P) and Payment Gateways

The Reserve Bank of India (RBI) has proposed that non-banks offering physical point of sale services (PoS) must notify the regulator of their intent to seek authorization within 60 days, and then submit their application by 31 May 2025, for approval to continue operations. The existing non-bank physical payment aggregators (PA-P) failing to meet the net worth requirements or not applying for authorization within the specified timeframe must cease operations by 31 July 2025. RBI directed banks to close the accounts associated with the PA activities of these non-banks by 31 October 2025, unless evidence of a submitted authorization application is provided.

RBI clarified that banks providing physical payment aggregator services as part of their normal banking operations do not need separate authorization but must ensure compliance with these new instructions within three months from the date of the circular. According to the draft circular, non-banks providing PA-P services as of the date of the circular must have a **minimum net worth of Rs15 crore** at the time of applying for authorization and must increase this to at least **Rs 25 crore by 31 March 2028**. This net worth of Rs 25 crore must be maintained at all times thereafter.

RBI issues Master Direction for Asset Restructuring Companies (ARC)

Reserve Bank of India issued Asset Reconstruction companies Directions, 2024, wherein, to commence the business of securitisation or asset reconstruction, an ARC is required to have a **minimum net owned fund (NOF) of Rs 300 crore** and thereafter, on an ongoing basis. Additionally, before commencing the business of securitisation or asset reconstruction, an ARC shall apply for registration and obtain a certificate of registration (CoR) from the RBI. No ARC shall invest in land or building, except for investment for its own use up to 10% of its owned funds. ARCs are prohibited from raising money by way of deposit. They are also mandated to maintain a **capital adequacy ratio of a minimum of 15%** of its total risk-weighted assets.

Moreover, ARCs are required to report to the Indian

Banks Association (IBA) the details of chartered accountants, advocates, and valuers who have committed serious irregularities in the course of rendering their professional services for inclusion in the IBA database of third-party entities involved in fraud.

Small Finance Bank can now deal in rupee interest rate derivative products

RBI allowed SFBs to use rupee derivative product to hedge interest risks. Earlier, small finance banks were permitted to use only interest rate futures for proprietary hedging.

Public Sector Banks (PSBs) can't issue Look Out Circular (LOCs) prohibiting international travel against defaulters, rules HC

The Bombay High Court held that PSBs do not have the power to recommend or request the central government for issuance of against default borrowers who are Indian citizens or foreigners under the office memoranda (OM) of the central government. The High Court quashed and set aside the LOCs issued to restrain people indebted to public sector banks from travelling abroad.

Overseas listing by Indian Companies: RBI notifies amended FEMA regulations

The Reserve Bank has notified amendments to the FEMA regulations related to purchases of shares of Indian companies on international exchanges. It inter alia provides the amount of consideration for purchase / subscription of equity shares of an Indian company listed on an International Exchange shall be paid, -

- through banking channels to a foreign currency account of the Indian company or
- as inward remittance from abroad through banking channels.

the funds so raised may, pending their utilisation or repatriation to India, be held in foreign currency accounts with a bank outside India.

Small Finance Banks can become universal banks under on-tap licensing

The Reserve Bank of India (RBI) announced that eligible small finance banks (SFBs) can apply to become universal banks under the on-tap licensing norms. To qualify, SFBs must have a minimum net worth of Rs 1,000 crore and meet prescribed Capital to Risk Weighted Assets Ratio (CRAR) requirements. Additionally, they should hold scheduled status, have shares listed on a recognized stock exchange, and demonstrate a satisfactory track record of performance for at least five years. The transition to a universal bank requires SFBs to maintain profitability and keep non-performing assets (NPAs) within stipulated limits. No new promoters or changes in promoters will be permitted during the transition. The RBI emphasized that SFBs with a diversified loan portfolio will be preferred.



Honesty

ईमानदारी के लिए हम प्रतिबद्ध हैं

RBI lens on 150 crores KYC fraud at M&M Fin Services

Mahindra & Mahindra Financial Services has reported a fraud at a branch in the North East region, which could have an impact of up to Rs 150 crore. The fraud involved forging customers' KYC documents in vehicle loans to embezzle company funds. The company has confirmed that the area business manager and other employees were involved, and investigations are underway.

Editors' comment: Unaudited Bank Branches suffer a big risk of KYC and other frauds similar to PNB fraud. It may be noted that PNB concerned branch was unaudited for more than 5 years. Currently 80 percent branches of banks are not being audited due to RBI guidelines mandating a minimum 70% advances to be audited. RBI is advised to consider a more holistic approach to cover all banking transactions and decide branches on such basis.

RBI's big action against Kotak Mahindra Bank, Lender stopped from issuing fresh credit cards, onboarding new customers digitally

Reserve Bank of India (RBI) has restricted the Kotak Mahindra bank from onboarding new customers through digital channels and issuing fresh credit cards, based on significant concerns arising out of Reserve Bank's IT Examination of the bank for the years 2022 and 2023 and the continued failure on part of the bank to address these concerns in a comprehensive and timely manner. Serious deficiencies and non-compliances were observed in the areas of IT inventory management, patch and change management, user access management, vendor risk management, data security and data leak prevention strategy, business continuity and disaster recovery rigour and drill, etc

NSE to launch derivative contracts on Nifty Next 50 index

Stock exchange NSE will launch derivative contracts on Nifty Next 50 index with effect from April 24, 2024. The NSE Exchange will offer a cycle of three serial monthly index futures and index options contracts. These cash-settled derivatives contracts will expire on the last Friday of the expiry month.

SEBI allows AIFs to pledge shares in companies that invest in infra sector

The market regulator has issued the framework for category I and category II alternative investment funds (AIFs) in the infrastructure sector to raise debt by pledging the equity of their investee companies by amending the AIF Regulations. Category I and Category II AIFs may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors given in the Harmonised Master List of Infrastructure, said the circular.

SEBI directs influencer to pay over Rs 12 crore for unlawful gains after false claims of 1000% returns

Influencer Ravindra Bharti has been instructed to transfer Rs12 crore to an interest-bearing Escrow Account in a nationalised bank to hold the funds for SEBI. The authority noted that claiming guaranteed returns up to 1000 percent is a clear case of abuse of investors' confidence. Investors were lured to take advisory services by the "false promise" of 25 to 1000 percent returns. After an investigation, SEBI said the parties would have to 'cease and desist from offering investment advisory services and acting as or holding themselves out to be investment advisors'.

Capital Market

Standardization of the Private Placement Memorandum (PPM)- Alternative Investment Funds (AIF) Audit Report

SEBI has issued standard reporting format for PPM Audit Report applicable to various categories of AIF has been prepared. The PPM audit reports shall be submitted to SEBI by AIFs online on the SEBI Intermediary Portal (SI Portal) as per the aforesaid format. Also, the reporting requirement shall be applicable for PPM audit reports to be filed for the financial year ending March 31, 2024 onwards.

SEBI extends cross margin benefit on offsetting positions having different expiry dates

SEBI has released a circular (effective three months from its date of issuance i.e., July 23, 2024) on extending cross margin benefits for offsetting positions having different expiry date.



EXCELLENCE
उत्कृष्टता के लिए हम प्रतिबद्ध हैं

IFSC

Foreign Entities permitted to directly trade as Remote Trading Participants on Stock Exchanges in the IFSC

International Financial Services Centres Authority has decided to permit foreign entities, not having a physical presence in IFSC, to trade directly on the Stock Exchanges, on a proprietary basis, without a Broker-Dealer. Such an entity shall be referred to as a Remote Trading Participant (RTP).

Fund Management Entities permitted to raise funds immediately after filing Private Placement Memorandum:

International Financial Services Centres Authority, to promote Ease of doing business, has launched Filing of Schemes or funds under IFSCA (Fund Management) Regulations 2022. The Fund Management Entity (FME) shall submit the Private Placement Memorandum (PPM) along with other documents ensuring minimum disclosures and other requirements to the Authority. After filing these documents, FMEs may launch the respective schemes. IFSCA will also, in due course establish a web-portal for filing of scheme documents before an offer is made.

Export Import

The interest equalisation scheme upfront reduction in interest rates on pre-shipment and post shipment credit by banks

The commerce ministry is expected to seek extension of the Interest Equalisation Scheme for exporters for a block of five years instead for a few months when the period of current extension expires on June 30. The interest equalisation scheme provides upfront reduction in interest rates on pre-shipment and post shipment credit by banks. The exporters from Micro Small and Medium Enterprises get a rebate of 3% on loans under the scheme. The merchant exporters who source goods for exports from other manufacturers and others get 2% benefit for exports of 410 identified products. The discount given by banks is reimbursed by the government.

Exporters seek relief from MSME payment rule

Exporters have asked for exemption from the new 45-day payment rule for micro, small and medium enterprises (MSMEs) saying that time taken for overseas shipments and payment realisation would make it difficult to adhere to it. If the complete exemption is not possible then exporters have asked for extension of time period for payment to MSME suppliers to 120 days from 45 days and keeping supplies to MSME exporters out of the scope of the provision.

Income Tax

CBDT Directs Reporting of transaction over Rs 50 lakh, share sale and purchase of above Rs 10 lakh and post office deposits and withdrawal of Rs 5 lakh by 30th June

The Central Board of Direct Taxes (CBDT) has asked SROs or self-reporting organisations to file details of all high-value transactions that were carried out in 2022-23 by June 30. The SROs include organisations such as banks, post offices, co-operatives, fintechs and mutual fund houses. Any transaction over Rs 50 lakh, share sale and purchase of above Rs 10 lakh and post office deposits and withdrawal of Rs 5 lakh has to be reported.

Income Tax Department Issues Clarification Regarding India-Mauritius Tax Treaty

The Income Tax department clarified that concerns raised regarding the bilateral Double Taxation Avoidance Agreement (DTAA) with Mauritius are premature as the protocol is yet to be ratified and notified under section 90 of the Income-tax Act, 1961. The amended DTAA includes a Principal Purpose Test (PPT) to prevent tax evasion or avoidance, denying treaty benefits if obtaining those benefits was the primary purpose of a transaction. The protocol is expected to come into effect from April 1, 2025, once notified by both countries, imposing stricter conditions for claiming treaty benefits. The Principal Purpose Test (PPT) under the amended DTAA imposes stringent criteria for investors based in Mauritius, requiring

a substantial commercial rationale for their presence there compared to the General Anti-Avoidance Rule (GAAR) provisions.

30 days -Time limit for verification of return of income after uploading

CBDT has clarified that failure to verify the return of income within 30 days from the date of uploading or by the due date for furnishing the return of income as per the Income-tax Act, 1961 - whichever is later - will render the return invalid due to non-verification.

Relief for TDS Deductors on PAN-Aadhar Linkage upto 31st May

No action will be taken for short deduction of TDS if PAN is linked with Aadhaar by May 31, 2024. If PAN is linked with Aadhaar and becomes operative by May 31, 2024, no liability for higher TDS under sections 206AA/206CC. This relief applies to transactions executed up to March 31, 2024.

CBDT extends due date for filing Form 10A/10AB upto 30th June, 2024

CBDT has extended the due date of filing Form 10A/ Form 10AB upto 30th June, 2024, in respect of certain provisions of section 10(23C)/ section 12A/ section 80G & section 35 of the Act

Direct Taxation (Case Laws)

Supreme Court Ruling: Assessments Cannot be Reopened, But Investigations Allowed

The Supreme Court ruled that while tax authorities can't reopen assessments, they can still take action if they have reason to. The court also said that just because they can't reopen assessments doesn't mean they can't take action if they find something wrong. So, the court allowed the tax authorities to continue with their investigations but told them not to reopen assessments that had already been completed. *[Delhi High Court - Anindita Sengupta vs. Assistant Commissioner of Income Tax, Circle 61(1) New Delhi & Ors., W.P.(C) 12542/2022]*

Period prior to IBC resolution plan, HC quashes assessment & demand of preceding period

The Gujarat High Court, in the case of Surya Exim Limited, ruled to quash the demand notice and assessment order for the period preceding the resolution plan (RP) approval, citing the extinguishment of dues not included in the RP. Noting that the reassessment proceedings for AY 2018-19 were initiated before the RP approval, the court clarified that no demand existed as of the approval date. Thus, it deemed the demand arising from the assessment order after RP approval invalid and liable to be quashed. *[Surya Exim Limited Union Of India & Ors, High Court Gujarat, R/SPECIAL CIVIL, APPLICATION NO. 1195 of 2023]*

HC: Incriminating material for one AY cannot trigger Sec.153C proceedings for other relevant AYs

The court emphasized that the discovery of incriminating material for a particular assessment year (AY) does not

automatically confer jurisdiction to invoke Section 153C for all the AYs mentioned in the search. The invocation of Section 153C should be based on a careful consideration of the material's impact on each AY, rather than a blanket application to all AYs mentioned in the search. [Saksham Commodities Limited Vs ITO and Anr, High Court Delhi, W.P.(C) 1459/2024 & CM APPL 6031/2024]

HC: Angel Tax valuation method 'solely' Assessee's choice; Allows independent FMV determination by Revenue

Delhi High Court ruled on the contentious issue of valuation of unquoted shares for tax purposes under Section 56(2)(viiib) of the Income Tax Act. The Assessee, Agra Portfolio Pvt. Ltd., had relied on a Discounted Cash Flow (DCF) method to value its shares, which the Revenue rejected in favor of its own valuation, resulting in a substantial disallowance. However, the HC held that while the Revenue has the authority to scrutinize the Assessee's valuation, it cannot unilaterally impose a different method. HC emphasized that the choice of valuation method rests solely with the Assessee. Consequently, the HC directed the Revenue to re-evaluate the shares using the DCF method, granting it the liberty to independently determine the fair market value (FMV) but within the framework of the Assessee's chosen method. [Agra Portfolio Pvt. Ltd Vs PCIT and Anr, High Court Delhi, ITA 1385/2018]

Jurisdiction of Tax Authorities in Insolvency Cases: Delhi High Court Ruling

The Delhi High Court addressed the jurisdiction of reopening or assessing income of a dissolved or insolvent company prior to the approval of the Resolution Plan under the Insolvency and Bankruptcy Code. Relying on legal precedents, including Supreme Court judgments, the court concluded that the IBC does not differentiate between voluntary and involuntary insolvency, quashing the impugned notices issued by the Income Tax department.

HC: New regime mandates reassessment basis 'audit objection'; Rejects 'change of opinion' plea

Kerala HC holds that under the new reassessment regime, assessment can be re-opened based on audit objection; observes, if the revenue audit raises an objection that the assessment was not completed in accordance with the provisions of the Act, it cannot be treated as a change of opinion because this is the statutory prescription and statutory ground/reason for re-opening the assessment. [Principal Commissioner of Income Tax Vs Dr. Karan Singh, High Court Jammu & Kashmir, ITA No.1/2022]

Impact of Delhi High Court Judgment on Assessment Periods in Search Cases

The Delhi High Court, in a recent judgment on April 3, 2024, addressed the computation of assessment periods in cases of searches carried out after April 1, 2017. It reiterated the Supreme Court's ruling in Jasjit Singh, stating that for assessments under Section 153C involving persons other than those searched, the relevant date is when the satisfaction is recorded or documents are handed over, not

the date of the actual search. Additionally, the High Court clarified that assessments in search cases, including those of both the searched and non-searched persons, should be limited to 10 years (1+6+3 years), contrary to the 11 years (1+6+4 years) previously applied by Assessing Officers (AOs). This period is calculated from the end of the assessment year of the search year, not the preceding assessment year, aligning with the Explanation below the fourth proviso to Section 153A. [PCIT Vs Ojjus Medicare Pvt. Ltd. & Others, High Court Delhi, ITA 52/2024]

ITAT: Receipts from licensing 'object code version' of proprietary software not royalty

The Delhi ITAT ruled in favor of Assessee, holding that receipts from software licensing to its Indian Associate Enterprise (AE) were not taxable as royalty in India. The ITAT observed that the license granted to the Assessee by Microsoft did not involve the transfer of 'use' or 'right to use' of any copyright, as it was a non-exclusive, non-sublicensable, and non-transferable license solely for internal business purposes. The ITAT stated that for a receipt to qualify as royalty, there must be a transfer of copyright, as specified in the Copyright Act, 1957. Consequently, the ITAT allowed the Assessee's appeal, affirming that the mere deduction of tax does not automatically render the receipt taxable as royalty. [Saxo Bank A/S; TS-265-ITAT-2024(DEL)]

GST

Central & State GST Officials to conduct Joint Audits of Firms

Central and state goods and services tax (GST) officials will jointly conduct audits of businesses under the indirect tax regime from this financial year, a relief for taxpayers as it will weed out duplicate notices and dual investigations. Central GST officers will participate in State GST team audits to bolster auditing skills and facilitate compliance information sharing. Additionally, CBIC officers have been instructed to refrain from investigating offences already under state GST scrutiny or subject to issued notifications, further streamlining enforcement efforts.

CBIC waives Interest for Late GSTR-3B filers amid technical issues

The Central Board of Indirect Taxes and Customs (CBIC) has announced the waiver of interest for late filers of GSTR-3B returns due to technical glitches on the portal. The Board has specified that the rate of interest per annum will be 'Nil' for registered persons who were required to file the return for various periods but failed to do so by the due date, including June 2018, October 2018, July 2017, August 2017, and July 2017 to February 2018. The waiver applies to registered persons who had sufficient balance in their electronic cash ledger or electronic credit ledger or had deposited the required amount through challan but couldn't file the return due to portal issues.

Exemption from Reverse Charge Mechanism on Legal Services Availed by SEZ Unit

The Authority for Advance Rulings, Gujarat, ruled that a SEZ (Special Economic Zone) unit, involved in holding securities and assets of trusts, funds, and similar financial entities, availed services from an advocate for executing a lease agreement for premises in Gift City, was not required to pay GST under the Reverse Charge Mechanism (RCM) for the services received from the advocate, in accordance with Notification 10/2017-Integrated Tax (Rate). **According to the ruling, as per the FAQs on GST, all supplies made to SEZs are zero-rated.** However, this exemption was conditional upon furnishing a Letter of Undertaking (LUT) or a bond as specified in condition (i) of paragraph 1 of Notification 37/2017-Central Tax. [AAR - Gujarat Advance Ruling No. GUJ/GAAR/R/2024/08 In Application No. Advance Ruling/SGST&CGST/2023/AR/20 April 16, 2024]

Classification of Yoga Training Services Provided by Trust under Taxable Category of "Health and Fitness Service": SC

Yoga training provided by the trust to various residential and non-residential camps falls under the taxable category of "health and fitness service" as defined under Section 65(52) of the Finance Act, 1994. The court affirmed that yoga, whether for physical well-being or therapeutic purposes, is included in the definition of health and fitness service. Additionally, it was established that Patanjali Yog Peeth Trust qualifies as a health club and fitness center.

The entry fee collected by the trust for events organized as yoga camps, disguised as donations, was deemed as consideration for the provision of taxable services. The court also upheld the decision regarding the recomputation of the demand for a specific period and the imposition of penalties under the Finance Act, 1994, for failure to pay service tax and register as required. Interest on delayed payment of service tax was deemed justified. The appeal was dismissed. [(SC) Patanjali Yogpeeth Trust v. Commissioner of Central Excise]. CIVIL APPEAL DIARY NO. 11256 OF 2024]

Automatic Interest Liability under Section 50(1) of the CGST Act inspite of credit available in Electronic cash ledger

The petitioner-assessee failed to pay interest on delayed payments through DRC-3 in the financial years 2017-18 and 2018-19. Revenue issued a recovery order demanding payment of interest. The court held that as per Section 50(1) of the Central Goods and Services Tax Act, 2017/Bihar Goods and Services Tax Act, 2017, interest liability arises automatically on delayed filing of returns, regardless of whether payment is made from the Electronic Credit Ledger. It clarified that interest liability was not dependent on the availability of credit in the Electronic Credit Ledger, as tax payment occurs only upon filing returns. Consequently, the writ petition was dismissed, affirming the applicability of interest liability even if there was credit

available in the Electronic Credit Ledger. [Sincon Infrastructure (P.) Ltd. v. Union of India CIVIL WRIT JURISDICTION CASE NOS. 11621 AND 3592 OF 2023]

Other Important Laws

IRDAI scraps age limit for Health Insurance

The Insurance Regulatory and Development Authority of India (IRDAI) has eliminated the age limit of 65 years for purchasing health insurance policies, aiming to broaden the market and offer comprehensive coverage. This change, effective from April 1, makes health insurance more inclusive and accessible to individuals of all ages. Insurers are now required to offer policies to all age groups and cover pre-existing medical conditions.

Special Courts with sessions judges can try offences under IBC: SC

The Supreme Court said special courts with sessions judges can try offences under the Insolvency and Bankruptcy Code (IBC), thus overturning the Bombay High Court order which said that only special courts consisting of metropolitan or judicial magistrates are empowered to hear complaints under the IBC. The High Court had observed that the objective of the legislature was not to burden a special court comprising a sessions judge with trials under the IBC.

Exceptions and Guidelines for Entertaining Writ Petitions under Article 226: Insights from Judicial Precedent

High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person. However, it is subject to certain exceptions. Some of them are thus:

- where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- it has acted in defiance of the fundamental principles of judicial procedure;
- it has resorted to invoke the provisions which are repealed; and
- when an order has been passed in total violation of the principles of natural justice.

Further it was clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. [PHR Invent Educational Society v. UCO Bank and Others; (Arising out of SLP(C) No. 8867 of 2022; Supreme Court)]

SC: Exclusion of Time Spent in Wrong Forum from Period of Limitation

The Supreme Court clarified that time spent by a litigant in pursuing bona fide litigation in a wrong forum should be excluded when calculating limitation period under section 14(2) of Limitation Act. In this case, the appellant execution application was rejected by trial court due to time spent in a

forum lacking jurisdiction. The Court ruled in favour of the appellant citing section 14(2) which allows exclusion of such time. . [Special Leave Petition (Civil) No.17665 of 2018) PURNI DEVI & ANR. VERSUS BABU RAM & ANR.]

Jurisdiction of NCLT in Releasing Attached Properties: Bombay HC

The case revolves around whether the National Company Law Tribunal (NCLT) had jurisdiction to order the Enforcement Directorate (ED) to release attached properties under Section 32A of the Insolvency and Bankruptcy Code (IBC), 2016. The Bombay High Court ruled that Section 32A(2) of the IBC shields corporate debtor properties from attachment in pre-insolvency offense proceedings. Once a resolution plan is approved and control changes, immunity extends to further prosecution. The court clarified that "action against the property" includes attachment under laws like the Prevention of Money Laundering Act, 2002 (PMLA). NCLT, as the IBC Adjudicating Authority, merely interpreted Section 32A, stating attachments must cease. Although conflicts with other laws may arise, the court affirmed Section 32A's supremacy, dismissing concerns about legislative clashes.

[Mr. Shiv Charan & Ors vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 & Ors Bombay High Court Writ Petition (L) No.9943 of 2023 along With Writ Petition (L) No.29111 of 2023]

SC: Employee cannot dictate terms of his employment; Allows Bharti Airtel's appeal

The Supreme Court, in a significant ruling, allowed Bharti Airtel's appeal, emphasizing that an employee cannot dictate the terms of their employment. The decision underscores the principle that employment agreements are subject to negotiation and agreement between the employer and the employee, rather than being unilaterally dictated by the employee. [In The Supreme Court of India Civil Appellate Jurisdiction Civil Appeal No.5187 Of 2023 M/S Bharti Airtel Limited Versus A.S. Raghavendra]

Audit & Accountancy

NFRA debar two CAs and slaps fine of Rs 4.5 cr for Reliance Capital audit lapses

National Financial Reporting Authority (NFRA), has taken decisive action against Pathak HD & Associates, the joint auditors of Reliance Capital, following a series of failures flagged by the former auditor, Price Waterhouse (PW), which resigned amidst suspicion of fraud amounting to Rs 12,571 crore by the company. Key violations included failure to independently assess potential fraud, misleading disclosures in the audit report, inadequate evaluation of loan provisions and several non-compliances with the Act, Standards of Auditing (SA), and Code of Ethics. Consequently, the two chartered accountants have been banned from conducting audit work for durations of 10 years and five years, respectively. Additionally, the firm faces a penalty of Rs 3 crore, with the two CAs individually directed to pay fines of Rs 1 crore and Rs 50 lakh.

NFRA debar auditors, imposes Rs 50 lakh penalties for lapses in Brightcom, CMIL cases

National Financial Reporting Authority (NFRA) has barred auditors of M/s Brightcom Group for up to ten years, citing professional misconduct. While the audit firm, M/s PCN & Associates, has been prohibited from taking up any audit work for two years, CA Gopala Krishna Kandula has been barred for ten years. The regulator has imposed a penalty of Rs 50 lakh on the audit firm and another Rs 30 lakh on Kandula. NFRA flagged that the audit firm and the engagement partner (auditor) didn't co-operate with it in its investigation, despite repeated calls for the submission of relevant documents and information and opportunities for personal hearing. Kandula, it said, submitted a false affidavit to avoid submitting information and attending personal hearings.

In a separate order, NFRA has imposed a penalty of Rs 50 lakh on audit firm M/s Krishna Neeraj & Associates and another Rs 10 lakh on its partner citing professional misconduct in the audit of electrical company CMIL. The regulator also barred the partner, Krishna Neeraj, from taking up any audit work for two years. As per order, the auditors failed to demonstrate sufficiency and appropriateness of audit work in several critical aspects of the audit of the Financial Statements, that is, determining materiality, evaluation of the going concern assumption, verification of inventories and trade receivables, verification of reported revenue and evaluating the audit results. Further, the auditors failed to report the non-recognition of liabilities of the interest accrued on loans classified as non-performing assets, which resulted in the understatement of the interest cost, current liabilities, and the reported loss by the company.

NFRA slaps Rs 5 lakh penalty on audit firm for lapses in Vikas WSP audit case

The National Financial Reporting Authority (NFRA) imposed a Rs 5 lakh penalty on audit firm S Prakash Aggarwal & Co for professional misconduct and lapses in auditing Vikas WSP Ltd for FY20. NFRA took action following information from Sebi, revealing that Vikas WSP Ltd didn't recognize interest expenses on borrowings from banks in its FY20 financial statements, leading to profit overstatement. NFRA stated that the audit firm failed to establish and maintain a system of quality control to comply with professional standards and regulatory requirements, leading to inappropriate reports issuance and failure to implement quality control policies and procedures. NFRA penalized the audit firm for failing to meet relevant Companies Act requirements, Standards on Quality Control (SQC 12), auditing standards, and exhibiting gross negligence and lack of professional skepticism.



TRUTH
सत्य के लिए हम प्रतिबद्ध हैं

Safeguards to substantiate Genuineness of Transactions under GST



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In both pre and post GST eras, the onus of validating the authenticity/genuineness of Input Tax Credit lies with the taxpayer. In all instances, taxpayers are mandated to substantiate the legitimacy of their ITC claims convincingly. In the backdrop of departmental action on several registered persons across the country followed by disallowance of ITC, levy of penalty, recovery, prosecution and other cohesive actions like cancellation of

registrations, etc. multiple parties across the nation represented in front of various judicial authorities and Various judicial pronouncements were received, including the landmark ruling by the Honourable Supreme Court of India in the case of **The State of Karnataka v. Ecom Gill Coffee Trading (P.) Ltd.**, emphasize:

- Mere assertions of being a bona fide purchaser by a dealer are insufficient to claim credit, accordingly dealer must substantiate the accuracy of credit.
- Merely presenting invoices or cheque payments does not discharge the burden of proof (Sec 70 KVAT).
- The dealer has to prove beyond doubt actual transaction, along with evidences such as name, address, vehicle details, payment of freight charges, proof or acknowledgment of delivery, tax invoices and payment particulars, etc.

While this judgement pertains to the VAT regime, it establishes principles for verifying transaction authenticity. **Section 155 of the Central Goods and Services Tax Act, 2017 ("CGST Act") similarly places the burden of proving eligibility for input tax credit on the claimant, akin to Section 70 of the KVAT Act. Hence, the Supreme Court's decision in Ecom Gill is poised to influence future litigations concerning credit eligibility across regimes.**

The Supreme Court's differentiation in the case of **On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi**, where Section 9(2)(g) of the Delhi VAT Act was deemed violative of Article 14 of the Constitution for blocking credit to recipients when suppliers defaulted on tax payments, ensures

Ecom Gill does not negate the relief in this Judgement of claiming credit in case supplier hasn't remitted tax.

Our Learnings:

Maintaining meticulous records and evidence to validate transaction authenticity under the GST regime is imperative for businesses. To ensure compliance and pre-empt potential disputes with tax authorities, businesses can adopt the following safeguards:

- Proper due diligence of vendors including KYC, visit to premises, dealing only with vendor physical presence indicate genuine party.
 - Secure possession of original genuine Tax Invoices as mandated in Sec 31 r/w Rule 46
 - Document proof of Goods or Services Delivery/Receipt-Purchase Entry in stock register, subsequent outward entry on sale or consumption in manufacturing, input output ratio in manufacturing within standards/budget norms comparable with third parties in same line of business, physical verification of stock by independent experts including auditors are some more examples to testify genuine purchase.
 - Utilize E-way bills for goods movement, along with warehouse receipts
 - Maintain bank statements, payment vouchers, or any pertinent payment evidence
 - Keep accurate stock and inventory records
 - Ensure valid contracts or agreements are in place for goods or services supply
 - Preserve correspondence and communication records, including emails or letters with suppliers
 - Digitize and electronically store all relevant documents for easy retrieval and access.
 - Third Party Evidence have biggest value, hence any external evidences of goods movement must be retained. Even a video record of material being unloaded, goods weigh bridge slip of filled and empty vehicle could be kept.
- The most important aspect is to get invoice of what you actually buy and sell or consume, from a person actually dealing in these goods.**

It is important to advise clients that times have changed, and it is most important to be genuinely compliant. Do not hesitate to legally challenge ingenuine opinion of tax officials with solid maintainable evidence.

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