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## EDITORIAL SEEKING ESSENTIAL RIGHTS FOR CHARTERED ACCOUNTANTS



**CA Vinod Jain\***

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The profession of Chartered Accountants have been contributing to the success and growth of the Nation while ensuring that complex and ever changing laws and regulations get implemented in a seamless manner without disrupting the business environment. It is the profession of Chartered Accountants which has greatly eased the seamless collection

of an ever-rising government revenue in form of Direct and Indirect Taxes over years.

**The recent times have posed fresh challenges where multiple regulatory bodies and tax officials, without any specific requirement of any law, have started direct inquiries and issuing summons to Chartered Accountants in matters relating to their clients.** The Chartered Accountants are being pushed to share confidential information including documents and data of client in their possession including confidential agreements, manufacturing processes, information about cost, product mix, raw material and consumables, consumption pattern, inventory, vendors, customers, HR policies, cyber security controls, contracts, projects and proposals under consideration and all kind of financial and operational transactions of a business enterprise. The information communicated and shared with a Chartered Accountant by client is highly privileged client confidential information. CAs are also being questioned during investigations in matters relating to their clients or sometimes counterparties of their clients. This has caused great inconvenience and also harassment to the professionals at large.



**DISCIPLINE**  
अनुशासन के लिए हम प्रतिबद्ध हैं

### Legal Position

**The Chartered Accountants Act, 1949, Second Schedule provide that "A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force" or "being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer".**

**The Indian Evidence Act, 1872 provides in terms of Section 126 that "No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil." They are not "permitted to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment". A Chartered Accountant as an attorney (authorised agent), acting on behalf of client or its shareholders are accordingly prohibited to divulge such confidential information.**

**The privileged client communication is not protected in terms of proviso to Section 126 of Indian Evidence Act, 1872 when "any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment" or "any such communication made in furtherance of any illegal purpose"**

**In terms of Section 129 of the Indian Evidence Act, 1872, "No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness." Even the courts are barred to compel disclosure.**

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**...RIGHTS FOR CHARTERED ACCOUNTANTS**

**Bar on Arrest**

**The Civil Procedure Code, 1908, Section 135(2)** "Where any matter is pending before a tribunal" specifically "their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest". This clearly bar the arrest of any "Mukhtar" or " Agent" (Power of Attorney holder).

**Rule 7 of Bar Council of Indian Rules which provide:**

**"7. Not disclose the communications between client and himself**

*An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872"*

**Regulator and Tax Officials Rights**

The aforesaid provisions protecting client confidentiality are sacrosanct and no regulator or tax officials or law enforcing agencies can compel a Chartered Accountant to disclose client documents and information, except when there is a clear specific legal requirement. A direction by a regulator or tax official not supported by specific legal provision empowering him to seek confidential data or information is not permitted, being subject to aforesaid legal client confidentiality privilege.

Considering all that has been said herein before, we have clearly understood that the practice being followed by regulatory agencies to seek information from Chartered Accountants is against the provisions of law. To support legal rights of CAs, It is suggested that The Council of ICAI and/or Ministry of Corporate Affairs should consider clarifying the following matters as under: -

- **Immunity of Client Confidentiality:** Chartered Accountants cannot be asked to provide any information relating to their clients and immunity similar to advocates, solicitors and attorney is available to us.
- **Professional Conduct:** Any Regulatory authority or person who is of the opinion that the concerned Chartered Accountant could be responsible for Professional Negligence or Misconduct, may write to Disciplinary Directorate at ICAI, along with all evidence or supporting evidence to their allegation or apprehensions. It should be further the duty of Disciplinary Directorate to examine this further. No other regulator other than Disciplinary Directorate should be empowered to question a Chartered Accountant on matters where he is involved in professional capacity.



**EXCELLENCE**  
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**Latest in Finance**

**Gold Finance Companies - RBI Cash Advisory**

RBI reiterated Gold loan finance NBFCs to not disburse loan amounts more than 20,000 in cash and advised to adhere to the Income Tax Act.

**RBI cracks whip on co-lending deals**

The Reserve Bank of India (RBI) has expressed concerns regarding co-lending partnerships between banks and non-bank entities, cautioning banks to closely monitor such arrangements due to issues related to poor underwriting standards and potential asset quality issues.

**RBI diktat on loss guarantee by Peer-2-Peer (P2P) lenders**

Platforms that relied on the 10% first loss default guarantee (FLDG) earlier, have to tighten the belt. The RBI issued certain clarifications on the permissibility of default loss guarantee (LDG) in digital lending. Notably, the central bank barred P2P platforms from entering into DLG arrangements. In recent months, these platforms have voluntarily stopped offering liquid investment options after the RBI expressed displeasure over instant withdrawal products.

**RBI curbs on Edelweiss**

The Reserve Bank of India (RBI) has imposed stiff business curbs on two Edelweiss Group entities - ECL Finance (ECL) and Edelweiss Asset Reconstruction (EARCL) - for 'material' transgressions that allegedly involved 'evergreening of stressed assets'. The regulator has asked EARCL to stop acquiring financial assets, including security receipts (SRs), and to stop reorganizing existing SRs into different tranches.

**RBI comes down hard on dubious ARC Practices**

Asset reconstruction companies (ARCs) were at the receiving end of deputy Governor of the Reserve Bank of India (RBI) charging them with poor governance, dubious practices that concealed the true nature of assets, and a fee structure that raised questions. Issues are:

- Conduit to evergreen distressed assets.
- Lack of transparency and consistency in the issuance and periodical valuation of Security Receipts (SRs).
- Levy of management fee.
- Striking deals with defaulting promoters, effectively giving them a backdoor entry.
- Swiss challenge', which often goes unchallenged.
- Some ARCs are acquiring assets on their books but the selling bank does the recovery.
- Assets are sold to group entities without following the arms' length principle and without subjecting them to scrutiny under related party transactions.
- Using innovative ways to structure transactions in a manner to circumvent regulations.



**TRUTH**  
सत्य के लिए हम प्रतिबद्ध हैं

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## Payment Gateways i.e. Payment aggregator (PAs) shake up

Online PAs especially those for whom PA service is not a core business, may reconsider being in the trade owing to challenges of scale, profitability, and a high cost of compliance. Key challenges are:

- Non-fintech payment aggregators with online license bear regulatory burden
- Compliance requires capital-intensive data storage, KYC procedures
- Challenges of scale, profitability in presence of strong incumbents in the space
- There is whole new operating expenditure (opex) or recurring expense that gets created for compliance, managing banking integrations, reconciliation, operations team,
- reporting when it comes to being a regulated payment entity.
- It turns out that this additional cost is more than the third-party payments merchant discount rate (MDR) or commission cost saved.

In 2024, 21 firms have received final nod to operate as online payment aggregator. Food tech major Zomato said its subsidiary Zomato Payment Pvt Ltd (ZPPL) has decided to voluntarily surrender the certificate of authorisation to operate as an online payment aggregator.

## RBI warns against cryptocurrencies

The Reserve Bank of India reiterated its stand on cryptocurrencies, saying they are driven by speculators and that retail investors need to be careful. Calling them decentralized finance or DeFi, the central bank said, "Our findings suggest that the interests in cryptocurrencies are driven by speculative motives rather than a means of payment for real economic transactions".

## CBI insist Banks to re-examine fraud reported cases.

Last year, Supreme Court had ruled that a borrower must be given a hearing before labelling the account as 'fraud'. Now, CBI, which is probing many of these cases, insist that the SC verdict stands for all fraud accounts —new as well as old cases - but banks assert that the SC ruling cannot be given 'retrospective' effect to cover borrowers listed as frauds before the ruling. Many banks fear that seeking fresh response on past frauds from dodgy customers could mean treading a legal minefield.

## IIHL seeks RBI approval to pledge 100% of RCap's shares

Hinduja Group-linked IIHL BFSI (India) has sought the banking regulator's approval to pledge 100% shares of Anil Ambani-promoted Reliance Capital, the company it acquired in a bankruptcy resolution, to raise Rs.8,000 crore.

**Editor:** RBI Master Circular prohibit pledging of more than 45% shares (in aggregate) of any company for obtaining credit facility.

## PSBs insert a new clause in fresh project loan Agreements

SBI & Canara Bank have already inserted a clause while making fresh sanctions. "Any extra cost arising out of regulatory requirement can be passed on," an official said. This is arising out of fresh proposal to require all infrastructure and Project funding to make a provision of 5 percent to meet the risk arising out of expected credit losses.

## Banks want to prohibit defaulter borrowers to travel by issue of issue lookout notices

State-owned banks will jointly move the government to regain their power to stop dodgy borrowers from fleeing the country. Last week, several high-street banks took a decision to make a joint representation to the finance ministry for obtaining a statutory backing to their ability to issue 'look-out circulars' (LOCs) that alert immigration authorities and restrain errant, unresponsive borrowers from crossing the borders and escaping the local law enforcement agencies. **In a recent judgement, Mumbai high court has decided that such powers only rest with law enforcement agencies of Government.**

## Allow NBFCs also to lend via UPI platform: FIDC to FinMin

The Finance Industry Development Council (FIDC) has suggested allowing non-banking finance companies (NBFCs) membership in the Unified Payment Interface (UPI) network so as to offer 'Credit on UPI' to their customers. Currently, credit on UPI, through credit cards and pre-approved credit lines, has been reserved only for banks.

## Pooled Investment: FPIs may be exempt from disclosures

Foreign portfolio investors (FPIs), which operate as pooled investment vehicles (PIVs), may be exempt from the additional disclosure mandated by the Securities and Exchange Board of India subject for several conditions to be met for PIVs to benefit from the exemptions granted. These include no segregated portfolios, independent investment manager, and investors having pari-passu (equal) rights in the entity. Pooled investment vehicles that do not meet the new conditions have time till August 20 to realign their portfolio before the mandate for granular disclosures on the ownership kicks in.

## More PE Firms gearing up for India Debut

Singapore-based private equity firm Growthem Capital Partners is set to officially open its office in Mumbai this July. At the same time, US PE firm Platinum Equity is exploring investments in a range of sectors. These moves underscore a broader trend of sharpening PE focus on the Indian market. The Alternative Investment Funds registered with SEBI in India are also actively funding startups as angel investors, venture investors as well as private equity funds.



**ETHICS**  
नीति के लिए हम प्रतिबद्ध हैं



## **GIFT City emerging as a game-changer for trade finance**

IFSC is progressively facilitating the on-shoring of Foreign Currency Borrowing (FCB). IFSCA developed a framework that enables on-shoring FCB, offering similar benefits of offshore credit to firms. The light regulations and simplified taxation regime combined with tax incentives at IFSC are far more advantageous for banks and corporates than from global centres. Creditors, including banks and financial institutions, are additionally benefitting from lower operational costs, affordable real estate, and human resources at GIFT city compared to other global finance centres. The 69% exposure of International Banking Units (IBU) to Indian entities indicates that GIFT City is fast growing as preferred destination for Indian Companies to avail trade finance. The IBUs have extended \$52 billion of loans as of December 2023, more than double the previous year's volume. Large Indian Companies are availing themselves of trade finance from the GIFT city.

## **Securitisation transactions growing rapidly- Safety in the system**

Securitisation volumes in financial year 2023-24 (FY24) are back to their record highs of 21.9 trillion, last seen in the two financial years before the pandemic. But a closer look at the numbers tells you that this is despite the fact that HDFC Ltd is no more in this market after merging with HDFC Bank. The housing finance company accounted for 23 per cent of the FY23 volumes, of 21.8 trillion; and adjusted for this, growth is 27 percent. In FY24, issuance diversity in securitisations was up at 165 originators logging 1,100 transactions in FY24 from 160 and 1,000 in FY23. Vehicle loan securitisation cornered the highest market share in FY24 (43 percent versus 31 percent in FY2023). Microfinance accounted for 16 percent (15 percent), the contribution of business loan securitisation more than doubled to 11 percent (5 percent) and personal loan securitisation was 5 percent (4 percent).

## **Currency derivatives volumes plunge on RBI exposure norms**

The volumes of exchange-traded currency derivatives fell significantly in April as retail investors wound up their positions ahead of the central bank's May 3 deadline on mandatory underlying exposure. The average daily turnover for currency futures and options in April on the National Stock Exchange (NSE) was at 20,646 crore, down 87 percent, from 1.56 trillion in March.

## **UPI Providers seek intervention to make services financially viable**

The UPI payment ecosystem is currently under the sway of two major players - Google Pay, commanding a substantial 47% market share, and Valmart subsidiary PhonePe holding a significant 37% share. Smaller players in UPI ecosystem have proposed to the Banking regulator that they should be permitted to charge a transaction fee to larger shops. They emphasised a need for revenue model stating. The absence of merchant discount charges is not financially viable for small players. Amazon, Cred, Slice, Fampay, Zomato,

Groww, and Flipkart are among India's other 25 UPI service providers.

## **RBI start Digital Currency - CBDC**

The Reserve Bank of India may start a pilot programme for the wholesale segment of Central Bank Digital Currency (CBDC) in Commercial Papers (CPs) and Certificates of Deposits (CDs). Gov. Shaktikanta Das said that the daily retail transaction volume of CBDC via interoperability with United Payments Interface (UPI) had reached a million per day but retail users showed a strong preference for UPI. RBI Governor said that permanent deletion of transactions can help make the e-rupee or CBDC anonymous and place it on a par with paper currency.

## **FPIs domiciled at GIFT City allowed to issue P-notes**

Foreign portfolio investors (FPIs) domiciled at the GIFT International Financial Services Centre (IFSC) and registered with the Securities and Exchange Board of India (SEBI) have been allowed to issue offshore derivative instruments (ODIs) i.e. participatory notes (P-notes). P-notes are financial instruments that let foreign investors indirectly invest in Indian Market without registering with SEBI. Previously, only banks registered with GIFT city could issue P-notes. Now, foreign funds registered with Sebi and operating in GIFT city can also issue them.

## **Regulator proposes to cut trading lot size of privately placed InvITs**

Markets regulator SEBI proposed to drastically reduce the trading lot size of privately placed infrastructure investment trusts (InvITs) to Rs. 25 lakhs. The current trading lot for secondary market trading for privately placed InvITs is set at Rs. 1 crore. Further, if the InvIT invests at least 80 percent of its asset value in completed and revenue generating assets, then the trading lot is Rs. 2 crores.

## **SBI becomes first trading clearing member bank at IIBX**

State Bank of India (SBI) was the first bank to become a trading-cum-clearing (TCM) member at India International Bullion Exchange (UBX) which deals with trading in precious metals.

## **REIT, InvIT managers can be paid in units**

InvITS and REITS will now be allowed to reward their investment manager with units (of the InvITs and REITS) in lieu of management fees for the purpose of providing unit-based employee benefits. Such units shall be allotted directly to the Employee Benefit Trust so that these units are used exclusively for the Unit-based Employee Benefit Scheme (UBEB) scheme.

## **FEMA**

## **Non-residents allowed to open margins Accounts for derivative contracts**

The Reserve Bank of India permitted non-residents to open accounts through authorised dealers for collecting margin money for derivative contracts. They can open accounts in both foreign currencies and the rupee.

### **RBI issues norms to prevent idle forex stock with money changers effective from Jul.0 1,2024**

The Reserve Bank of India has directed full-fledged money changers to ensure that the value of foreign currency notes sold by them to the public should not be less than 75% of the value of such notes bought from other money changers on a quarterly basis.

## **Capital Market**

### **Facilitating collective oversight of distributors for Portfolio Management Services (PMS) through APMI**

SEBI provided that any person or entity involved in the distribution of PMS shall obtain registration with Association of Portfolio Managers in India (APMI), in accordance with the criteria laid down by APMI, effective from January 01, 2025. APMI are shall issue the criteria for registration of distributors by July 01, 2024.

### **SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024**

The amended regulations provides that Entities within the promoter group and non-individual shareholders holding over 5% of the post-offer equity share capital can now contribute to the minimum promoters' contribution without being designated as promoters. The requirement for a 1% security deposit in public or rights issues of equity shares has been eliminated. Also, flexibility has been introduced to extend bid/offer closing dates due to force majeure events by a minimum of one day, reducing the previous requirement of three days.

### **Certification requirement for key investment team of manager of AIF**

The SEBI necessitates that the key investment team of an Alternative Investment Fund (AIF) Manager must include at least one key personnel who holds a relevant certification from the National Institute of Securities Market. Existing schemes and schemes with pending launch applications must comply with this requirement by May 9, 2025.

### **SEBI eases delisting norms for small companies**

Under the new norms, small listed firms where trading has been less than 10% of the total shares in the last 12 months can opt for delisting from the stock exchanges, compared to the previous requirement where delisting was only allowed for companies whose shares had not been traded for the preceding one year. The exit price for delisting should not be lower than the floor price determined through the reverse book building process.

### **SEBI brings in audio-visual disclosures for public issues**

SEBI decided to introduce audio visual (AV) representation of disclosures made by companies in their offer documents for public issues. The AV will be placed in the public domain for all main board public issues and will initially be in bilingual format, in English and Hindi. This framework will be applicable to all DRHPs filed with SEBI on or after July 1 on a voluntary basis, and from October 1 on a mandatory basis.

### **SEBI issues framework for subordinate units in InvITs**

The Securities and Exchange Board of India has introduced amendments to the Infrastructure Investment Trust (InvIT) regulations, permitting privately placed InvITs to issue subordinate units. These units, limited to 10% of the acquisition price of an infrastructure project, can only be issued to sponsors, their associates, and the group. The overall number of subordinate units must also not exceed 10% of the total ordinary units. Unlike ordinary units, subordinate units will not carry voting or distribution rights. They can be converted into ordinary units after meeting specific performance benchmarks and a minimum holding period of three years, following which they must be listed on recognized stock exchanges. Investment managers are required to monitor and report the progress towards these performance benchmarks annually.

### **SEBI mulls tweaks to buyback norms**

For maintaining skin in the game, the regulator mandates a 20% Minimum Promoter Contribution (MPC). SEBI proposed tweaks to the buyback norms, which includes allowing issue of ESOPs during buyback period, removing the concept 'record date' for open market buyback and providing the manner of calculating the entitlement ratio. The market regulator has permitted promoter group entities and non-individual shareholders to contribute to the mandated promoters' contribution in the case of a shortfall without being identified as a promoter. However, these non-individual shareholders must hold more than 5 percent of the post-offer equity share capital. Equity shares from the conversion of compulsorily convertible securities held by foreign ventures, alternative investment funds for a year before filling the documents for IPO can also be considered towards the MPC.

### **Framework issued to shield stock price impact from market rumours**

SEBI detailed out a framework around "unaffected price" to calculate pricing for takeovers, buybacks, preferential issue and other such trans-actions. The framework is part of the new rumour verification norms that kick in from June. The market regulator has said the "unaffected price" rule will be applicable only if the listed entity has confirmed the rumour pertaining to the transaction within 24 hours from the trigger of material price movement. Unaffected price applicable for 60 days or 180 days after confirmation, depending on the stage of transaction.

### **SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2024**

Effective from May.17, 2024, SEBI has amended the definition of "generally available information" and provides that generally available information means information that is accessible to the public on a non-discriminatory basis and shall not include unverified event or information reported in print or electronic media.

## Small Window ad option for financial results

Entities with only listed non-convertible securities will have the option to give an intimation in the form of a window advertisement, in the newspapers, regarding the financial results of the listed entity, instead of disclosure of full financial results. There will be a reference to a QR code and a link of website of the listed entity and stock exchange. This will reduce the cost of compliance.

## SEBI proposes 20% Indian equity cap for foreign FoF

SEBI proposed allowing investments by mutual fund houses in overseas fund of funds (FoF) that hold up to 20% of their corpus in Indian securities.

## Income Tax

### CBDT issues Guidelines and Procedure for Compulsory Selection of Income Tax Returns for Complete Scrutiny for FY 2024-2025

The guideline describe parameters for compulsory selection, including cases related to surveys under section 133A, search and seizure actions, instances where notices under section 142(1) have been issued with no returns furnished, cases involving specific tax evasion information, and instances of recurring issues of fact or law leading to significant additions in earlier AYs.

### CBDT releases new functionality in AIS for addressing taxpayers' feedback

Central Board of Direct Taxes announced the release of a new functionality in the Annual Information Statement (AIS), accessible through the Income Tax Department's compliance portal. The new feature also enables taxpayers to track the status of their feedback.

### CBDT notified Cost of Inflation Index for FY 2024-25

The Central Government has notified Cost Inflation Index (CII) of 363 for the financial year 2024-25. This change will be effective from April 1, 2025, and will apply to the assessment year 2025-26 and subsequent years.

### Black Money Law's Invoked: Esops from Foreign Cos

A brush with the harsh Black Money law can sometimes be an unwanted consequence of employee stock ownership plan (ESOP) offered by overseas companies. A number of resident individuals working in Indian subsidiaries and arms of offshore parents have recently received notices from the Income Tax (I-T) department which has pointed out amounts including dividend that either went undisclosed or untaxed or both.

## Direct Tax (Case Laws)

### Settlement may not attract tax

The courts have held that the transfer of shares pursuant to a family settlement would not attract any capital gains tax. The courts have held that members of a family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement and if the arrangement is bona fide, then no capital gains tax will apply. A family settlement is defined as an arrangement

between members of the family with the intent to avoid disputes, settle rival claims, maintain peace, or to maintain the reputation of the family wherein the various constituents with rights in the business or property take a mutually agreed share in the assets owned by the family.

### Penalty Proceedings against Deceased's Legal Representatives Limited to Estate Succession

ITAT, Nagpur concluded that penalty proceedings for defaults committed by a deceased could be initiated or continued against the legal representatives. However, the recovery of penalty is restricted to the extent of the estate succeeded by the legal representative. [ITAT Nagpur - Beantkaur Avtarsingh Juneja v. Income Tax Officer Ward-4(2), Nagpur-ITA No. 018/NAG/2023]

### Delhi High Court Limits Duration of Bank Account Freezing in Income Tax Cases

Delhi High Court addressed the issue of the legality of freezing the bank accounts of petitioners beyond a sixty-day period under Sections 132(3) and 132(8-A) of the Income Tax Act. In this case, the accounts were frozen due to suspected involvement in hawala transactions following a search and seizure operation. Despite summons for explanation, the petitioners did not respond. The court found the Revenue's failure to justify the prolonged freezing of accounts unacceptable. Consequently, it declared the freezing orders unenforceable beyond sixty days from issuance and directed the immediate defreezing of the petitioners' bank accounts. [M/S. Pooja Trading Co. and Rama Trading Co. Versus Deputy Director of Income Tax (INV) & Anr., - W. P. (C) 735/2024 and W. P. (C) 1026/2024]

### ITAT: Property possession date relevant for Sec.54 deduction

The Assessee claimed the deduction against capital gains from selling a residential property and booked an under-construction flat in 2009, with possession received in 2011. The Revenue denied the deduction, considering the date of allotment as the date of acquisition. The Mumbai Income Tax Appellate Tribunal (ITAT) held the Assessee eligible for deduction under Section 54 by considering the date of possession of the new property as the date of acquisition. [Sunil Amritlal Shah Vs the Income Tax Officer (IT), ITA No. 4069/MUM/2023, 2024-05-13]

### ITAT: Holds loss on forward contracts & forward premium account non speculative

The Delhi ITAT dismissed Revenue's appeal against the CIT(A)'s decision to delete additions/disallowances related to mark-to-market loss, loss on forward contracts, and loss on forward premium account for the assessment year 2009-10. The ITAT held that the losses incurred by the Assessee were not speculative but allowable under the mercantile system of accounting, as they were part of regular business activities. ITAT emphasized that the forward contracts were entered into to safeguard the Assessee's business interests, not for speculative purposes. [DCIT Vs J. K. Techno soft Ltd, Income tax Appellate Tribunal Delhi, ITA No. 6160/Del/2016]



## HC: No time-limit prescribed for filing compounding application

Delhi High Court held that there is no specific time-limit prescribed for filing a compounding application under Section 279(2) of the Income Tax Act. The court emphasized that circulars cannot impose limitation periods for compounding applications and that any grounds for rejection should be within the scope of the Act's provisions.

## Other Important Laws

### Private property takeover cannot be arbitrary; SC

The Supreme Court took a significant step to protect private property from arbitrary State takeover for a "public purpose", holding that compulsory acquisition without following mandatory procedures followed by a grant of compensation to the owners will not make the accession constitutional. Article 300A, inserted into the Constitution provided that "no person shall be deprived of his property save by authority of law." These include the duty of the state to inform the person; the duty of the state to hear the objections; the right of the citizen to a reasoned decisions or the duty of the state to inform the person of its decision to acquire property; the duty of the state to demonstrate that the acquisition is exclusively for public purpose; the right to fair compensation, and the duty of the state to conduct the process of acquisition efficiently within prescribed timelines.

### Lawyers cannot be sued for 'deficiency in service': SC

The Supreme Court held the lawyers do not come within the purview of Consumer Protection Act and cannot be sued for "deficiency in service" before the consumer courts. Since considerable amount of direct control is exercised by the client over the manner in which an advocate renders his services during the course of his employment. The services hired or availed of an advocate would be that of a contract "of personal service" and stand excluded from the definition of "service". [SC, Bar of Indian Lawyers V. D. K. Gandhi Ps National Institute of Communicable Diseases, Civil Appeal Nos. 2646 To 2649 Of 2009]

## Audit & Accountancy

### MCA fills vacancies in Appellate Authority for CA, CS, Cost Accountants

Justice Suresh Kumar Gupta, a retired judge of the Allahabad High Court, has been appointed as Chairperson of this Appellate Authority, which was set up to hear appeals against the orders issued by the Disciplinary Committees of the three professional institutes. MCA has also appointed Sh. Rakesh Mohan, Sh. Sandip Garg, Whole time Member, IBBI and Sh. Amit Anand Apte as Members (government nominees) of the Appellate Authority.

### ICAI issues orders against seven domestic affiliate firms of PwC

The Institute of Chartered Accountants of India (ICAI) has found that seven affiliates of PricewaterhouseCoopers (PwC) were in violation of local laws and provisions of the

Chartered Accountants Act, 1949. The ICAI noted instances of close association with the international entity, control exerted by PwC over affiliate firms, and payments made by affiliates to PwC. **As per the CA Act, foreign audit firms cannot register and operate in India**, leading the ICAI to demand an end to existing arrangements with multinational entities. Additionally, fines have been imposed on two partners, with their removal from the Register of Members for three years. Similar actions have been initiated against EY, Deloitte, KPMG and are subjudice. The ICAI's action stemmed from concerns over the use of global affiliates' names in email addresses and visiting cards, deemed a violation of the Chartered Accountants Act. The statement referenced a Supreme Court judgment from 2018, directing the ICAI to examine issues regarding multinational accounting firms operating in India.

**Recent investigations by the ICAI into affiliates of EY, Deloitte, PwC, and KPMG have resulted in court stays against disciplinary proceedings. Despite ICAI regulations legally prohibiting various practices like advertisements, payments for referral fees to global entities, and sharing of profits with global entities, multinational audit firms have reportedly circumvented these rules.**

### NFRA Imposes Rs.2.5 Cr Fine on two auditors In Reliance Commercial Finance Case

The National Financial Reporting Authority (NFRA) has slapped penalties totalling Rs 2.5 crore on two auditors of Shridhar & Associates for professional misconduct and auditing lapses in the Reliance Commercial Finance case for FY2018-19. Additionally, engagement partner barred for 5 years from undertaking any audit of any company. The order came after the corporate affairs ministry informed NFRA that Price Waterhouse resigned as the auditor of RCFL, without issuing an audit report for FY 2018-19. Further, Shridhar & Associates was appointed by the board of directors of RCFL in June 2019 as the statutory auditor of the company. Despite being aware of the report of suspected fraud by the previous auditor, the engagement partner (Vastani) stated in the audit report that there were no matters falling. **The auditors also failed to adequately examine the end-use of loans, indications of siphoning of funds from RCFL, management override of controls, and the business rationale of sanctioning and disbursing loans by the company.**

### SC quashes proceedings limit of 60 tax audits:

The Supreme Court directed the Institute of Chartered Accountants of India's (ICAI) to re consider the limit of 60 tax audits per Chartered Accountant (CA), effective from April 1, 2024. The Court quashed all ongoing proceedings against CAs. [Supreme Court of India, Shaji Poullose V. Institute of Chartered Accountants of India, Writ Petition Nos. 267 & 272 Of 2021].



## Honesty

ईमानदारी के लिए हम प्रतिबद्ध हैं

## GST



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### GST Appellate Tribunals may be functional by year end, early 2025

Goods and Services Tax (GST) Appellate Tribunal appears to be operational within next few months. FM recently administered the oath to Justice (Retd) Sanjaya Kumar Mishra as the President of the GST Appellate Tribunal. The government is also in the process of appointing judicial and technical members for the tribunal, for a total of 96 posts.

The tribunal will consist of one principal bench in Delhi and 31 state benches across various locations, with some states having multiple benches to handle GST-related appeals efficiently.

## GST (Case Laws)

### SC asks Centre to not to use "threat and coercion" in GST recovery operations

The Supreme Court directed the Centre to persuade traders to clear GST dues voluntarily without using force during search and seizure operations. The bench emphasized the need for payment to be voluntary and without coercion, allowing individuals time to seek advice and settle liabilities.

### HC stays circular on taxing corporate guarantee between related persons

The Punjab & Haryana High court stayed a circular on taxability of corporate guarantee between related-persons, taking loans from banks or financial institutions [Acme Cleantech Solutions (P.) Ltd. v. Union of India CWP NO. 10249 OF 2024]

### SC asks centre to furnish data on notices, arrests done under GST Act

The Supreme Court has asked the Centre to furnish details of issuance of notices and arrests done under the provisions of the Goods and Services Tax, saying it may interpret the law and lay down appropriate guidelines to avoid any harassment of citizens by depriving their liberty.

There can be harassment of people and we won't permit that. If we find there is ambiguity in the provision, we will set it right. **Second, people can't be sent behind bars in all the cases.**

### SEZ unit is not liable to pay GST under reverse charge: Authority for Advance Ruling

The Gujarat Authority for Advance Ruling (AAR) clarified that Special Economic Zone (SEZ) units aren't obligated to pay Goods and Services Tax (GST) under Reverse Charge Mechanism (RCM) for services obtained from suppliers in the Domestic Traffic Area (DTA) if they furnish a Letter of Undertaking (LUT).

### Denial of Input Tax Credit for Bogus Inward Supplies from Non-Existent Firms

The petitioner, claimed input tax credit (ITC) based on invoices from three supplier firms. Upon investigation, revenue authorities found these firms to be non-existent and bogus, with no actual supply of goods. The petitioner had fraudulently claimed ITC benefit without any genuine receipt of goods. The High Court upheld the revenue's action, ruling that the mere registration of supplier firms, even if initially valid, does not suffice if the firms are non-existent. Despite the petitioner's submission of documents, including invoices, GR, e-way bills, and bank statements, the court found them dubious and lacking credibility. The court emphasized that the condition of 'actual receipt of goods' under Section 16(2)(b) of the GST Act was not met, justifying the denial of ITC. [Allahabad, Rajshi Processors, V. State of U.P.\*, Writ Tax No. 128 Of 2024]

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