

## CA DAY CELEBRATION FLAG HOISTING



INDORE BRANCH OF CIRC OF ICAI



# NEWSLETTER

JULY, 2021 ▶ Price ₹ 20

# Chairman's Communique

Happy CA Day to all the members. It is always a special day in all our life and Indore branch celebrated CA week by organising a star studded line up of Stalwart speakers like –

- **Shri Om Prakash Saklecha**, Minister, MSME, Madhya Pradesh
- **Shri Manish Singh**, IAS
- **Ms. Pratibha Pal**, Commissioner – Indore municipal corporation
- **Shri D.C. Sahi**, Director MSME
- **Shri Raj Mohanani**, Asst. Director MSME
- **Shri Montek Singh Ahluwalia**, (Former Deputy Chairman, Planning Comm. of India)
- **Shri Tanutejas Saraswat**, CEO & Co-Founder Shop Kirana (Fastest Growing Start-up)
- **Shri Shankar Lalwani**, M.P. Indore
- **Shri Kailash Vijayvargiya**, National General Secretary, BJP
- **Shri Girish Agrawal**, Director, Danik Bhaskar
- **Swami Shree Gyanvatsaldasji**

This year as our honourable PM Narendra Modi said in Mann Ki Baat - "Friends, along with Doctors Day, Chartered Accountants Day is also celebrated on the 1st of July. A few years ago, I had asked for global level Indian audit firms as a gift from Chartered Accountants of the country. Today I want to remind them of that. Chartered Accountants can play a very worthy and positive role in bringing transparency to the economy. I extend my best wishes to all Chartered Accountants and their family members." Let's work together towards achieving Transparent Economy.

Indore branch believes in the saying **"An Investment in Knowledge pays the best Interest"**. Hence Indore branch is working continuously for increasing the investment of our members through organising various seminars and study circle meetings. Indore branch had organised various virtual courses and seminars in the past month, namely

1. MSME funding and Management
2. Real Estate & Self Leadership CA
3. Important topic of Issues in Taxation of Partnership firms with special reference to Dissolution and Reconstitution of Partnership in view of latest amendments in IT act.
4. Overview of FEMA, LRS and common issues

"The most important thing in the **Olympic Games is not winning but taking part**; the essential thing in **life is not conquering but fighting well**." We request you all to support the athletes of our nation in the on-going Olympics 2020. Also, we request you to take part in the CA Olympics organised by the Indore branch of ICAI during 30<sup>th</sup> July to 1<sup>st</sup> August 2021.

**CA Kirti Joshi**  
(Chairman)



## MANAGING COMMITTEE

**CA. Samkit Bhandari** (Vice-Chairman), **CA. Ankush Jain** (Secretary)  
**CA. Gaurav Maheshwari** (CICASA Chairman), **CA. Anand Jain** (Treasurer),  
**CA. Harsh Firods** (Imm. Past Chairman), **CA. Pankaj G. Shah** (Past Chairman)  
 Ex. Officio Member : **CA. Kemisha Soni** (CCM),  
**CA. Nilesh Gupta** (Chairman, CIRC of ICAI), **CA. Churchill Jain** (RCM)

## EDITORIAL TEAM

**CA Pankaj G. Shah**  
**CA Yash Khandewal**  
**CA Amitesh Jain**  
**CA Priyanshi Sikchi**



## *Down the Memory Lane* (Some MEMORIES never fade)

**CA Som Singhal**

(Past Chairman - Indore Branch 2017-18)

It is a matter of immense pride that the Indore branch of CIRC of ICAI has entered the golden jubilee year with its high morals of integrity and commitment.

I feel fortunate to have served as the chairman of the Indore branch of ICAI during the implementation of the biggest Tax and Economic reform since Independence-GST. In the time of chaos, we rigorously organised lectures and seminars not only for our members, but tax consultants, students, accountants and businessmen to impart knowledge about the new tax reforms and to support the government in this golden step towards making India an economically regulated and developed nation.

The Indore branch is committed towards development of its own members, as well as towards social responsibility. Be it adopting a school, or planting 11,825 saplings in a day, we have always been at the forefront. I am grateful for the platform the Indore branch provided me, which refined my skills to organise national conferences, like “निर्ममाण” Redesigning the Future”, in Daly College, which was a grand success.

Today, the Indore branch is the cohesion of diligence and dedication of every member and student, who has nurtured it with their knowledge and hard work in these last 50 years.

My heartfelt congratulations to all the members, students and every individual who has contributed to this golden journey.



**CA Sunil Maheshwari**

(Past Secretary,  
Indore Branch)

Year 2010-2013 were nostalgic years of my life when I joined the Indore Branch Managing Committee as the youngest member and served as Secretary for two consecutive years. In those years we had to set up the infrastructure of newly shifted branch and set the systems.

It was a challenge those days when branch was considered remote from city so we organized appropriate and customized sessions which persuaded members to come to branch. First CA week celebrations started in our tenure and a unique cultural fest of the member, by the member and for the member was organized, the memories of which still resonate with the members. Various infra accessories were also installed at branch during our tenure considering the day to day issues. The bonding developed with branch still keeps me bounded till date to the branch.





## *Down the Memory Lane (Some MEMORIES never fade)*

**CA Abhay Sharma**

(Past Chairman - Indore Branch 2018-19)

Dear Professional Colleagues,

As a member of ICAI Indore Branch; we take immense pride and honour on the successful completion of 50 years of its judicious and efficacious operations - made possible by the cooperation and hard work displayed by our Past Chairmen, Office Bearers, Central Councils, Regional Councils, Branch Staff, CA members and all our aspiring students over the years.

It is indeed a matter of great honour and privilege for me to have served as Chairman of the prestigious Indore Branch of CIRC of ICAI for the term 2018-19. I, along with my Managing Committee Members, have put our best efforts to make the year 2018-19, a historic memorable and glorious working year.

The year 2018-19 was full of achievements, accomplishments and accountability. In this year many golden feathers have been added to the crown of Indore Branch such as Naming of CA Street, Hosting 6 National Conferences, Launching Rs. 1500/- Single Payment Easy CPE Hours Scheme, Tie up with Leading Hospitals for Discount to the members on IPD/OPD/Investigations and Medicines, Installation of Statue of Swami Vivekanand, Getting 1<sup>st</sup> Prize in Best Branch of ICAI (Mega category); which is first time in the history of Indore Branch.

A brief overview of the specific achievements of Indore Branch during the year 2018-19 by contribution in academic, conduction of Certificate & Diploma Courses, organized programs under various committees of ICAI, new initiatives taken for the benefit of members, students & staff.

Seniors are important because they can help us apply learnings of life, e.g. self-esteem, self-respect, self-discipline through their **Practical experience**. They gave valuable feedback and suggestions for branch operation. I am thankful to all the seniors for their kind hearted support and help in Branch's functioning.

I also like to convey my heartiest congratulations to the Central Council / Regional Council and Branch Managing Committee Members in this point of time. The journey of success of Indore Branch shall be continued.



## **GOLDEN JUBILEE CA OLYMPIC**

**30th - 31st July  
& 1st August, 2021**

***You are  
one step closer  
to show your  
pride***



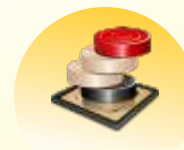
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## DIRECTOR REPORT

The Ministry of Corporate Affairs, Govt. of India, issued notification dated. 24th March 2021 to amend Companies (Accounts) Rules, 2014 to enhance the disclosures required to be made by the Company in Board Report;



## Latest Amendment in Directors Report and Auditor Report under Co. Act 2013

CA NITIN PATODI

These rules may be called the Companies(Accounts) Amendment Rules 2021.

Above mentioned **amendment** shall be applicable on Companies for FY start on or after 01<sup>st</sup> April **2021**.

Amendment in Rule 8 i.e. Matters to be included in Board's Report. In rule 8, sub-rule 5 after clause x, two new clauses added.

### NEW CLAUSES

(xi) The details of an application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.

(xii) The details of the difference between the amount of the valuation done at the time of one-time settlement and the valuation done while taking a loan from the Banks or Financial Institutions along with the reasons thereof.

**Disclosure on above mentioned two clauses are required to give in the Director's Report of Companies along with other disclosures.**

Amendment in Rule 3 i.e. Manner of Books of Account to be Kept in Electronic Mode. In Rule 3, in sub-rule (1) the proviso shall be inserted:

### NEW PROVISIO:

Provided that for the FY commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of:

- Recording audit trail of each and every transaction,
- Creating an edit log of each change made in books of account along with,
- The date when such changes were made and
- Ensuring that the audit trail cannot be disabled

**Audit Trail means,** an audit trail is defined as a **step-by-step sequential record** which provides evidence of the documented history of financial transactions to its source. An auditor can trace every step of, the financial data of a particular transaction right from the general ledger to its source document with the help of the audit trail. Audit trails are crucial when it comes to validating and verifying the source of a particular transaction. In case an audit trail learns about missing documents during the process, it means that the company does not adhere to the established accounting procedures.

### FACTORS TO CONSIDER

- An audit trail generally starts with an invoice receipt.

- Most businesses and organisations use audit trails as a useful management tool for monitoring finances along with other various resources
- Audit trails are considered one of the best tools for validating transactions, verifying, and discovering missing information in a company's financial data
- These records can also be electronically stored.

## AMENDMENT IN AUDIT REPORT

The Ministry of Corporate Affairs, Government of India, issued notifications dated 24th March 2021 to amend Companies (Audit and Auditors) Rules, 2014 to enhance the disclosures required to be made by the Company in its Audit Report

This amendment shall effect the Auditor Report as on 31<sup>st</sup> March 2022 i.e. (F.Y. 2021-22).

Amendment in Rule 11 i.e. other Matters to be Included in Auditors Report. In Rule 11.

- # Existing clause (d) shall be omitted.
- # New Clause (e), (f) & (g) inserted.
- Camouflaged lending or investment, that is, where out-bound or inbound loans, advances and investments are intended to be routed through a conduit entity, masking the identity of the ultimate beneficiary
- Compliance with section 123 of Companies Act, 2013 for payment of dividend (paid or declared)
- The need for accounting software to maintain an audit trail, that is, edit log, of the primary entries, possibly with a view to enable the detection of any changes in primary entries
- Gaps in valuations of securities, so as to reflect the valuations at the time of borrowing money, and at the time of OTS.

## NOTES:

- The changes in relation to Board Report auditor report shall be applicable on all the companies
- The changes are applicable only for the annual financial statements



- Till date, TDS was deducted only on the notified nature of payments. **From 1st July, 2021**, businesses are required to deduct TDS on purchase of goods along with the current scope of TDS deduction applicable on notified nature of payment or expenditure. **With the insertion of a new section '194Q', the buyer is liable to deduct TDS on the goods purchases and remit it to the Government.**
- The CBIC has issued a notification seeking to **waive the penalty** imposed on non-compliance of **dynamic QR code provisions for B2C invoices** between 1st December 2020 and 30th September 2021.
- New section 206AB has been inserted by THE FINANCE ACT, 2021 NO. 13 OF 2021 Dated 28th March 2021. The section is inserted w.e.f. 1st July 2021. Section 206AB **"Special provision for deduction of tax at source for non-filers of income-tax return"**. Higher TDS/ TCS would attract for Non-Filers of Income Tax Returns.
- New reason code inserted for mentioning Reason for non-collection/lower collection/or collection at a higher rate. in Form 26Q, 27Q, 27EQ to make form in-line with the new provisions under Amendment to Rule 31A U/N 71/2021 Dt 08-06-2021 {Income-tax (17th Amendment) Rules, 2021}



# UNPAID

# SUBSCRIPTION MONEY

CA Vikram Gupte



## ISSUE

A company was incorporated on 15<sup>th</sup> October, 2020 with a capital of say 10 lakhs divided into 1 lakh shares of Rs.10/- each. There were 3 Subscribers to the Memorandum of Asso. namely A & B holding 30,000 equity shares each & C holding 40,000/- equity shares.

After incorporation of the Company, all 3 Subscribers paid 2 lakhs each totalling to 6 lakhs till 31<sup>st</sup> March, 2021. However, the entire subscription money was paid within 180 days i.e. before 13<sup>th</sup> April, 2021.

What would be the position of Co. as on 31<sup>st</sup> March, 2021 and how the Balance Sheet would be drawn up.

## ANALYSIS

Subscribers are persons who consent to take pre decided shares of the company by contributing capital to the entity after incorporation. Subscribers to MOA enter into a contract with the company to subscribe to invest the shares subscribed to.

The term “Subscription Money” refers to that amount where subscriber is willing to subscribe shares of the company at a face value and need to deposits the amount in bank of the company.

There was no time limit prescribed in the Co’s. Act for depositing the subscription money by the subscribers to the Company. A new Sec. 10A was inserted under the Act, by which some clarity has been brought in about bringing in of subscription money. A Company which has been incorporated on or after 02 Nov. 2018, shall within 180 days of incorporation required to file

the declaration by the director with the Registrar of Companies ('ROC') stating that every subscriber to the memorandum has paid the value of shares taken by them.

**Does it mean that Company is allowed to bring subscription money within 180 days from the date of incorporation?**

The definition of “Member” is given under Sec. 2(55) of Companies Act 2013 in relation to a company, means “the subscriber to the memorandum of the company who shall be deemed to have agreed to become a member of the company, and on its registration, shall be entered as a member in its register of members”. It means that the subscribers to the MOA become members of the Company on incorporation of the Company. Entry in the register of members is a matter of procedure and that is to be performed by the authorised director/secretary post incorporation of the company.

Clause (a) of Sec. 56(4) of the Act provides that “every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted, within a period of 2 months from the incorporation date, in the case of subscribers to the memorandum.

When the shares are issued by the Company it has right to call the amount from shareholders as per need i.e. either to pay in full or in instalments. The board resolution is required to be passed at board meetings for making calls on shares. Thus Company gives 14 days' notice to all the shareholders to pay call money and if

said amount is not paid within the prescribed time or shareholders are not willing to pay Company has the power to forfeit the shares and reissue them.

## CONCLUSION

The subscribers become the members of the Company on incorporation and share certificates are required to be issued within two months from the date of incorporation. The Company can call the amount as per its requirements and the amount is to be paid within 14 days. However, subscription money is now required to be paid before expiry of 180 days from the date of incorporation so as to enable the director to file declaration in Form INC-20A with ROC.

## DRAWING UP THE BALANCE SHEET

Schedule III requires disclosure of shares:

- Issued;
- Subscribed and fully paid;
- Subscribed but not fully paid.

Though the disclosure is only for the number of shares, to make the disclosure relevant to understanding the company's share capital, even the amount for each category should be disclosed. Issued shares are those which are offered for subscription within the authorised limit. It is possible that all shares offered are not subscribed to and to the extent of unsubscribed portion, there will be difference between shares issued and subscribed.

As per the Guidance Note on Terms Used in Financial Statements, the expression 'Subscribed Share Capital' is "that portion of the issued share capital which has actually been subscribed and allotted." Though there is no requirement to disclose the amount per share called, if shares are not fully called, it would be appropriate to state the amount per share called. As per the definition contained in the Guidance Note on Terms Used in Financial Statements, the expression 'Paid-up Share Capital' is "that part of the subscribed share capital for which consideration in cash or otherwise has been received.

As per Sch. III, calls unpaid are to be disclosed separately. However, the unpaid amt. towards shares subscribed by the subscribers of the Memorandum of Association should be considered as 'subscribed and paid-up capital' in the Balance Sheet and the debts due from the subscriber should be appropriately disclosed as an asset in the balance sheet.

## AUDITORS' RESPONSIBILITY

If within 180 days the subscribers do deposit the amount, then it should be disclosed in the Balance Sheet in the Notes and the auditors need to qualify. Not investing the subscribed capital can lead to the striking off the name of the company by the ROC and therefore affects the Going Concern. In the present case, promoters have deposited the subscribed money before 180 days and adoption of the accounts. A suitable note be given in the accounts and the auditor should draw an Emphasis of Matter.

# COMPLIANCE CHART AUGUST, 2021

Return / Forms	Month/Year	Due / Ext. Date	Remark
GSTR 1	July-21	11 Aug. 2021	RP having monthly filing of return
GSTR 3B	July-21	20 Aug. 2021	RP having ATO > Rs 5CR
GSTR 5	July-21	20 Aug. 2021	Non-Resident taxable person
GSTR 6	July-21	13 Aug. 2021	ISD return
GSTR 7	July-21	10 Aug. 2021	TDS return
GSTR 8	July-21	10 Aug. 2021	TCS return
GSTR 2B	July-21	14 Aug. 2021	Auto-populate data for Rule 36(4)
CHALLAN FOR QRMP scheme	July-21	25 Auh. 2021	Taxpayer opting QRMP scheme
GSTR 1	July 21	13 Aug. 2021	



# INSERTION OF NEW SECTIONS RELATED TO TDS/TCS - Applicable w.e.f 01.07.2021



CA. Prajakta Mondhe

Tax deduction and collection at source are one of the most important measures for the income tax department to ensure tax collection and also keep a track on the incomes of the people. In the Finance Act 2021, some new sections were introduced related to deduction and collection of tax to bring more transactions under the pursuit of tax deduction/collection.

## SECTION 194Q - Deduction of tax at source on payment of certain sum for purchase of goods

WEF 01.07.2021, sec. 194Q mandates deduction of tax by any a buyer for purchase of goods from a resident of value or aggregate value exceeding 50,00,000 during any previous year . Such tax is to be deducted @ 0.1 % of such sum above 50,00,000 **at the time of credit or payment whichever is earlier**.

For the purposes of this sec. buyer means a person whose total sales, gross receipts or turnover from the business carried on by him **exceeds 10 crore** rs. during the FY immediately preceding the FY year in which the goods are purchased .

The provisions of this section shall not be applicable on a transaction on which –

- i. Tax is deductible under any other provisions of the Act, &
- ii. Tax is collectible under provisions of 206C other than a transaction to which section 206C(1H) applies.

As per the above points, sec. 194Q is not applicable if tax is collected under the prov. of sec. 206C, **except 206C(1H)**.

206C(1H) was introduced vide Finance Act, 2020 that requires a seller to collect tax if the value of sale exceeds Rs. 50,00,000 , @ 0.1% on such excess **at the time of receipt of such amount**. Provisions of 206C(1H) shall not be applicable if the buyer is liable to deduct tax under any other provisions and has deducted such tax .

## Clarification on 194Q – Circular no 13 of 2021 dt.30.06.2021

To clarify various doubts regarding 194Q, department has issued guidelines on this section vide circular no.13/2021 dt.30.06.2021. **Some important inferences** from it are-

1. On conjoint reading of 194Q and 206C(1H) , it is clear that if a transaction is covered under both 206C(1H) & 194Q then sec. 194Q will apply on it . However, if for any reason tax is collected by the seller before tax deduction, then it will not be subjected to tax deduction again.

So for any transaction undertaken before 01.07.2021, tax is to be collected under 206C (1H) if all the conditions of that section are satisfied.

From 01.07.2021 following cases can arise

Section applicable	Turnover of seller	Turnover of buyer
194 Q	>10 crore	> 10 crore
194 Q	<=10 crore	>10 crore
206 C(1H)	>10 crore	<=10 crore
Neither	<=10 crore	<= 10 crore

2. As the sec. has come into effect on 01.07.2021, it will not be applicable for any transaction undertaken before 01.07.2021. So, any transaction of which either of the event (credit or payment) is undertaken before 01.07.2021, will be outside the purview of 194Q.

3. The threshold of 50,00,000 will be checked for the full previous year i.e. from 01.04.2021. However, as the provision is applicable from 01.07.2021, tax will be deducted for transactions undertaken on or after 01.07.2021.

4. As the section requires deduction of tax at credit or payment, whichever is earlier, in respect of purchase return tax must have been deducted before purchase return happens. If the money is refunded for such purchase return then the tax deducted may be adjusted against next purchase.

In case of replacement of goods, no adjustment is required for tax deducted.

5. As per sec. 194Q tax is to be deducted at the time of credit or payment, whichever is earlier. So, it will be applicable on advance payment as well.

6. For requirement to deduct tax on GST component comprised in the amount payable, it is clarified that

– If tax is deducted at the time of credit of amount and the GST is indicated separately in the contract, TDS will be deducted on amount excluding GST

- If tax is deducted on payment basis then tax will be deducted on the whole amount

7. Provisions of 194Q shall not be applicable in the year of incorporation of the assessee.

8. To compute the limit of turnover of 10 crore of buyer , only business receipts are to be considered.

## PROVISIONS FOR NON FILERS OF IT RETURN

The department observed that there are certain group of assesseees who do not file their return of incomes, even though tax is deducted or collected so that they are not required to furnish their full details of income.

To curb such practices sec. 206AB/206CCA is introduced

### 206AB/206CCA- Special Provisions For Ded./colle. of tax at source for non filers of IT Return – w.e.f. 01.07.2021

We are well aware about the sec. 206AA , that states that if the deductee fails to furnish PAN tax is to be deducted @

- 20% (5% in case of 194Q and 194 O) or
- prescribed rate, **whichever is higher**

Also, we all know similar section for furnishing of PAN exists in TCS as well. Sec. 206CC requires for collection of tax at a higher rate ( in case the collectee fails to furnish PAN) of –

- Twice the rate specified in relevant provisions or
- Rate of 5% , **whichever is higher**

Now, sec. 206AB / 206 CCA are introduced to target the non filers of return.

Particulars	206AB	206CCA
<b>Provision</b>	Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source in case of <b>a specified person</b> , the tax shall be deducted at the higher of the following rates-  I. at twice the rate specified in the relevant provision of the Act; or ii. at twice the rate or rates in force; or iii. at the rate of 5 %.	Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source in case of <b>a specified person</b> , the tax shall be collected at the higher of the following rates-  I. at twice the rate specified in relevant provisions ii. rate of 5 %.
<b>NA on section</b>	192, 192A, 194B, 194BB, 194LBC or 194N	

Particulars	206AB	206CCA
<b>If the deductee/collectee fails to furnish PAN &amp; also falls under the definition of specified person</b>	If, both sec. 206AA & 206AB are applicable in a case, the tax will be deducted at a rate higher of 206AA & 206AB.	If, both sec. 206CC & 206CCA are applicable in a case, the tax will be deducted at a rate higher of 206CC & 206CCA.
<b>Specified Person</b>	Here Specified person means a person who I. has not filed the returns for <b>both of the 2 ass. years</b> relevant to the 2 previous years immediately prior to the previous year in which tax is required to be deducted, & <b>time limit of filing return of income under sub-sec. (1) of sec. 139 has expired</b> , and ii. the <b>aggregate</b> of TDS & tax collected at source in his case <b>is Rs. 50,000 or more in each of these 2</b> previous years .  (Shall not include a non resident who does not have a PE in India)	

Say, If we take an example of sec. 194C and assume that deductee is individual and both sec. 206AA & 206AB are applicable (i.e. neither PAN provided nor returns are filed ), then tax will be deducted at –

- ▶ As per 206AA- 20% (Higher of 20% and 1%)
- ▶ As per 206AB – 5% (Higher of 5% and twice of 1%)
- ▶ So tax is to be deducted at > 206AA and 206AB i.e. 20%

### How to check whether a person is a specified person for 206AB/206CCA ?

Now, the question arises how will the deductor /collector will know that whether the sec. 206AB or 206CCA is applicable on the deductee/collectee.

To ease this compliance burden the CBDT has issued a new functionality "**Compliance Check for Sec. 206AB & 206CCA**". This functionality is already functioning through reporting portal of the IT Department .( <https://report.insight.gov.in/>). The tax deductor/collector can feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee/ collecttee and can get a response from the functionality if such deductee/collecttee is a specified person.

So, with a combined reading of all the above provisions it can be said that from 01.07.2021 following points are to be kept in mind by the professionals regarding the collection and deduction of tax –

- Applicability of 194Q or 206C(1H) as the case may be
- Along with PAN of deductee/collecttee, to check whether the returns of last 2 yrs. are filed and the amount of tax deducted and collected in each of such years.



# RECENT JUDICIAL DECISIONS (Goods and Service Tax)

**1. Grant of Bail in case of GST evasion- Petitioner being CA was instrumental in registration of 11 fake firms and these firms have availed fraudulent input tax credit** - Taking note of the fact that the CA has remained in custody for a period of one year and five months and that petitioner is also having a child and also considering the contentions put forth by counsel for the petitioner, it was deemed proper to allow the bail application. It is directed that accused petitioner shall be released on bail provided he furnishes a personal bond in the sum of ₹ 1,00,000/- together with two sureties in the sum of ₹ 50,000/- each. Bail application allowed. {**BHAGWAN SAHAY GUPTA Vs UNION OF INDIA, OFFICE OF SR. INTELLIGENCE OFFICER, GST INTELLIGENCE DIRECTORATE, JAIPUR - RAJASTHAN HC - S.B. Criminal Miscellaneous Bail Application No. 5882/2021 – 04-05-2021**}

**2. Question regarding intermediary services, requirement to obtain registration and levy of GST** - From the Receipts and Payments Statement for the period ending 31st March 2019 it was observed that, the Applicant has received Remittances from their Head Office which is excess of the expenditure incurred, during the said period, by Rs.2,49,664/- which is surplus amount received. This amount is shown as closing cash balance by the applicant. This is nothing but profit for the applicant. It was held that the applicant satisfied all the conditions of an intermediary. As per the provisions of Section 13 (8) of the IGST Act, 2017, the place of supply in subject case of the applicant as an intermediary would be the location of the supplier of services i.e., the location of the applicant which is located in the State of Maharashtra, India. {**M/S. DUBAI CHAMBER OF COMMERCE AND INDUSTRY - AAR, MAHARASHTRA - GST-ARA-35/2019-20/B-14 – 24-05-2021**}

**3. Generation of E-way bills of 16 firms by concealing the identity of the real purchaser and real seller** - A close perusal of the complaint prima facie reveals that there are 16 firms, which were part of scrutiny by the investigating agency. As per the case of the prosecution, the applicant is involved in misusing the registration numbers of these 16 firms and the total tax evasion by generating e-way bill without revealing the true identity of the real purchaser or real seller is stated to be Rs. 9,60,47,253/-. The applicant is also ready and willing to

deposit some of the amount. Taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, the Court allowed the Bail application. {**SUPRIMKUMAR JITENDRABHAI PATEL -GUJARAT HC - R/CRIMINAL MISC. APP. NO.1724 of 2021 – 03-05-2021**}

**4. Due to search action and the seizure of documents, filing appeal u/s 107 was becoming difficult for the petitioner. Whether delay, if any, would be condoned?** – Petitioner was permitted to file appeal(s) for the relevant assessment years before the appellate authority in accordance with law expeditiously preferably within a period of two weeks. In case the petitioner finds any difficulty in filing the effective appeal for want of some information, the petitioner may move an application to the appellate authority who will consider the same and, if necessary, provide the necessary information to enable the petitioner to supplement his appeal. {**Mars Goods Carriers Vs. Union Territory Of J&K and Others – HC of Jammu and Kashmir - WP(C) No.344/2021 – 29-03-2021**}

**5. Export of services** (as understood in the ordinary common parlance) are treated as inter-state supplies. However, by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India, the said provision runs contrary to the scheme of the CGST Act as well as the IGST Act. Hence Section 13(8)(b) is ultra vires the IGST Act besides being unconstitutional. The power to stipulate the place of supply as contained in Sections 13 (8)(b) of the IGST Act is pursuant to the provisions of Article 269A (5) read with Article 246A and Article 286 of the Constitution and hence is constitutionally valid and is a fiscal legislation within the domain of the parliament. The petitioner's supply is admittedly the same is supply in the course of inter-state trade or commerce pursuant to the provisions of Sec.7 of IGST Act. The provisions are not violative of Article 14 and Article 19(1)(g) of the Constitution of India and do not suffer from extra-territorial jurisdiction. - **2021-TIOL-1297-HC-MUM-GST] Dharmendra M Jani Vs. UOI, 09/06/2021.**





# RECENT JUDICIAL DECISIONS

## INCOME TAX ACT



1.As per provisions of sec. 23, annual value shall be deemed to be actual rent received or receivable by assessee and proviso provides for deduction of municipal taxes levied by any local authority and annual maintenance charges do not amount to taxes paid to local authority. When Income is calculated under the head House Property, then besides statutory deduction of 30% u/s 24, an assessee is entitled only for deduction with respect to taxes levied by any local authority. Thus, society maintenance charges' as paid by the assessee, by no stretch of imagination, could be held to be taxes paid to local authority. **[2021] 127 taxmann.com 381 (Mumbai - Trib.) IN THE ITAT MUMBAI BENCH 'SMC' in the case of Rockcastle Property (P.) Ltd. v. IT Officer-5(3)(1), Mumbai dated 18.05.21**

2.Where show-cause notice-cum-draft assessment order calling upon assessee to file its objections qua same were issued and request for accommodation was made by assessee on 27-4-2021, wherein a reference was made to CBDT circular dtd. 24-4-2021, whereby, limitation for passing assessment order had been extended till 30-6-2021, impugned assessment order, notice of demand and notice for initiation of penalty proceedings against assessee were to be quashed and set aside as no leeway had been granted to assessee to respond to show-cause notice-**[2021] 127 taxmann.com 643 (Delhi) HIGH COURT OF DELHI in the case of RKKR Foundation v. National Faceless Assessment Centre, Delhi dated 17.05.21**

3.Penalty u/s 271(1)(c) levied for treating speculative loss as business loss and setting it off against business income, deleted by ITAT. CIT(A) had deleted the penalty by noting that assessee had disclosed and explained its transaction and that the genuineness of the transactions and the loss incurred had been accepted in the assessment proceedings. Merely because the AO has treated the business loss claimed by assessee as a speculation loss, the same cannot tantamount to concealment of income warranting levy of penalty under section 271(1)(c). Also the notice issued under section 274 r.w.s 271 by the AO without striking off the inappropriate words in the said notice was held to be bad in law. - **[ITAT Delhi: ITA No.4418/Del/2016], Dy. Commissioner of Income Tax Vs. M/s Sucon India Limited, 27/05/2021**

4.Assessment order passed under faceless assessment scheme without dealing with the adjournment request made by assessee, set aside by the Delhi High Court. Assessee sought adjournment on April 23, 2021 at 12:59 hours through the e-portal, however, Revenue passed the assessment order on April 23, 2021 without dealing with the request for adjournment and without waiting for the timeframe given in the show cause notice-cum-draft assessment order to expire.

High Court gave assessee the liberty to file its response/objections, to the Show cause notice within one week from the date of the receipt of a copy of the this order passed by High Court. Further directs Revenue to grant a personal hearing through video conferencing. - **Delhi High Court: W.P. (C) 5418/2021], Blue Square Infrastructure LLP Vs. National Faceless Assessment Centre, Delhi, 20/05/2021**

5.Assessee's writ petition filed against faceless assessment order passed against the assessee without considering its objections to the draft assessment order, set aside by the High Court. A draft assessment order was passed on 19.04.2021 which was received by the assessee on 20.04.2021, requiring the assessee to respond by 21.04.2021. Assessee filed response on 22.04.2021 and the assessment order was passed on the same day without considering assessee's submission / objections. High Court directed the Revenue to pass fresh assessment order after taking into account assessee's objections of 22.04.2021, and also asked Revenue to grant a personal hearing to the assessee. - **Delhi High Court: W.P.(C) 5234/2021], KBB Nuts P. Ltd. Vs. National Faceless Assessment Centre, 10/05/2021**

6. ITAT deleted the addition made u/s 68 r.w.s. 115BBE wherein tax was levied at 60%, made on account of sales recorded on 08.11.2016 after announcement of demonetisation. ITAT noted that purchase/ sales matched with inflow/ outflow of stock. An amount of 5.72 Crores in cash was deposited by assessee in cash in demonetised notes recording that the same was out of cash sales and advances on 08.11.2016. Revenue had conducted survey on the assessee and had noted that no proper KYC of customers was provided by the assessee and that the one day sale was against past pattern. ITAT found force in assessee's submission that due to demonetisation, the public panicked as the cash available with them in old denomination notes became illegal from 09.11.2016 leading to investment in jewellery. - **ITAT Visakhapatnam: I.T.A. No. 253/Viz/2020], The Asst. Commissioner of Income Tax Vs. M/s Hirapanna Jewellers, 12/05/2021**





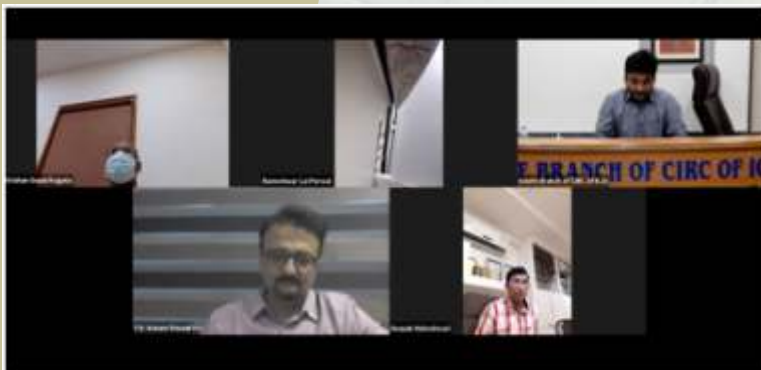
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17th, 18th &  
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29-06-2021



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