2024 - 2025

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TAX GURJARI

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

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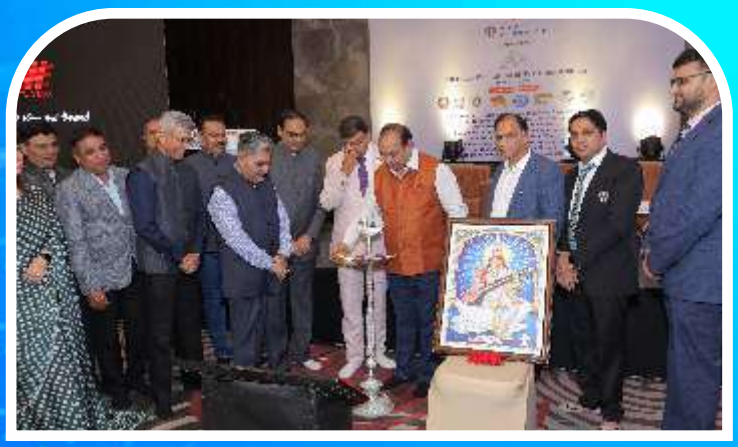
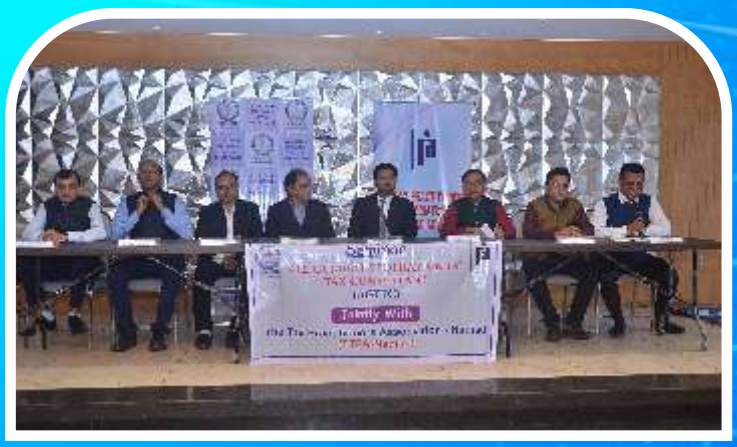
ACTIVITIES AT A GLANCE





ACTIVITIES AT A GLANCE

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President's Message

CA Dr. Vishves Shah
FCA, LLB, M.Com. DISA (ICAI),
Ph.D. in Commerce
SOCIAL AUDITOR

Dear Readers,

It is always a great to communicate through the pages of Tax Gurjari with all of you. As we enter a relatively quieter phase in our profession, with fewer compliance deadlines pressing upon us, this is the ideal time to turn our focus towards learning, introspection, and expanding our knowledge base. The quieter periods in the compliance calendar offer us a golden opportunity to engage in structured learning and explore new avenues of growth in tax practice. This edition of Tax Gurjari reflects this thought and brings together insightful articles on various critical topics, each of which has a significant impact on our profession.

The importance of continuous learning in our field cannot be emphasized enough. With the government proposing several changes in the recent Budget and introduction of the new Income Tax Bill, 2025, it is crucial for us to stay updated and refine our expertise. This edition covers a wide array of topics, including Benami Law and Supreme Court's Recall, and Recording of Statements During Income Tax Survey: Existing Law vs. The Income Tax Bill, 2025, which shed light on both existing and emerging legal intricacies. The other articles covering GST, RERA & Income Tax offers in-depth knowledge that will not only update our understanding but also help us prepare for the changes that are to come.

One of the key highlights of this phase is the opportunity to focus on areas of tax practice that might require further attention. In this knowledge era, we can use this time of learning to strengthen our core understanding. Though we are already professionals with a definite skillset, it is time to upscale and sharpen the skills and master one or two areas so that we can provide cutting edge services with confidence.

For young practitioners, the recent changes bring with them a wealth of opportunities. Now is the time to explore new areas of tax practice, whether it's expanding into Income Tax or GST litigation, RERA advisory or Business Advisory in complex financial world. With each new law, there comes a fresh set of opportunities to specialize and offer value-added services to clients. The scope of tax practice is no longer confined to compliance and filing; it has broadened into advisory, representation, analysis and dispute resolution, each of which holds significant potential for growth.

Looking ahead, the changes brought by the Income Tax Bill, 2025, will have far-reaching implications on the way we handle taxation in India. It is important that we, as tax professionals, not only understand these changes but also embrace them as new avenues for expanding our practice. The articles in this edition provide a comprehensive view of these changes, helping us prepare for what lies ahead.

I urge each of you to use this time wisely. Attend seminars, read extensively, and engage with your peers to discuss the implications of the new legal framework. Learning is a continuous process, and in this profession, it is the key to staying ahead.

Let us continue to strive for excellence and stay committed to upholding the values of professionalism and dedication.

Warm Regards,
CA (Dr.) Vishves Shah
President
AGFTC
21st March, 2025

From The Table of Chairman

Bharat L. Sheth
Chairman

Dear professional Brothers and Sisters,

I am delighted to publish this fourth and last issue of Tax Gurjary. I want to express my deepest appreciation to all the authors for sparing time and sharing their valuable views for the benefit of members of readers.

This is one of the greatest paradoxes ever recorded.

Many years ago, a Law teacher came across a student who was willing to learn but was unable to pay the fees.

The student struck a deal saying, "I will pay your fee the day I win my first case in the court".Teacher agreed and proceeded with the law course. When the course was finished and teacher started pestering the student to pay up the fee, the student reminded him of the deal and pushed days. Fed up with this, the teacher decided to sue the student in the court of law and
both of them decided to argue for themselves.

The teacher put forward his argument saying:

"If I win this case, as per law, the student has to pay me as the case is about his non-payment
of dues.

And if I lose the case, the student will still pay me because he would have won his first case...

So either way I will get the money".

Equally brilliant, the student argued back saying:

"If I win the case, as per law, I don't have to pay anything to the teacher as the case is about my non-payment of dues.

And if I lose the case, I don't have to pay him because I wouldn't have won my first case yet..!?! So either way, I am not going to pay the teacher anything".

Who is right and who is the winner?

This is part of ancient Greek history. The lawyer teacher was Protagoras (c.485-415 BCE) and
the student was Euthalos. This is known as Protagoras's Paradox. This case was not solved.
The most interesting part - this is still debated (even today) in law schools as a logic problem..!!

Key takeaways for all professionals, not just lawyers:

1,Respect your profession: Every action we take reflects on the reputation of our industry.

2, Accountability is non-negotiable: Whether you're a lawyer, consultant, or leader, own your role in driving results.

3, Serve your clients responsibly: Justice delayed is justice denied—not just for clients but for society as a whole.

I would request all my professional brothers and sisters to use the publication in the best possible manner and make their professional journey more effective and successful by taking advantage of the developments and information which have been published in this publication. I am sure that this publication will be very useful and will benefit our members.

Bharat L. Sheth
Chairman
AGFTC
21st March, 2025

From the Desk of Hon. Secretary

Mrudang H. Vakil
Hon. Secretary

My Dear Esteem Members,

I hope this message finds you well.

I am thrilled to announce the launch of the fourth and final edition of Tax Gurjari for the 2025-26 fiscal year in its printed format. This moment is a source of immense pride for all of us, as we unveil this edition during the esteemed Tax Conclave 2025. Since its inception, Tax Gurjari has played a crucial role in shaping the AGFTC community. It serves as a valuable resource where members have benefited from the profound insights of our esteemed authors and authors have also had the opportunity to disseminate their expertise and share invaluable knowledge with the broader professional fraternity. This collaborative exchange enriches our community and fosters a culture of continuous learning and improvement.

As we move forward to an end of Financial Year 2025, we find ourselves in an exciting period characterized by noteworthy economic developments and vibrant cultural celebrations. The recent presentation of the Union Budget has paved the way for India's economic path this year, introducing policies designed to stimulate growth and encourage innovation.

On February 13, 2025, the New Income Tax Bill was introduced in the Lok Sabha, aiming to simplify the intricate Income Tax Act of 1961. Whether this new bill will successfully achieve its goal of simplification remains to be seen. Historically, the Income Tax Act has evolved significantly since its inception, with annual adjustments made through the Union Budget. Over the past sixty years, it has transformed considerably, witnessing changes ranging from tax rate adjustments to the introduction of novel provisions, alongside the introduction of new exemptions and the elimination of outdated ones. This evolution has led to widespread calls from tax experts and taxpayers for a comprehensive restructuring of the tax law—one that starts from scratch, incorporating existing provisions while expanding upon them. If passed, the Bill is set to take effect on April 1, 2026, presenting an opportunity for a more coherent and effective taxation framework in India.

Another Talk of the town or to put it more appropriately - talk of the world - is “Maha Kumbh Mela” with Triveni Snaan at the holy town of Prayagraj in Uttar Pradesh. The Maha Kumbh Mela has been a grand success for India. I am sure many of our members would have visited Maha Kumbh Mela and taken a dip in the holy Triveni Sangam.

The AGFTC has consistently prioritized representing the taxpayers' interests, and I am thrilled to share that this issue of the journal has been published in record time, thanks to the dedicated efforts of our Chairman Bharat L. Sheth and Co-chairmen Hiren Vakil, Suvrat Shah, Ketul Soni, Hetal Shah, and Amit Soni. Their commitment to ensuring the timely release of this issue while upholding the high standards of our Journal deserves our heartfelt appreciation. I would also like to express my gratitude to all the authors who contribute their insightful articles across all four journals. Your collaboration is invaluable to our success.

Your continued trust has been the foundation of our journey, and I am thankful for your continuous support.

Success means different things to different people. For some, it means climbing to the top of the corporate ladder or create a brand product that changes the world. For others, it is getting paid to do what they love, or having the freedom to work on their own terms. But no matter what success looks like for you, one thing is certain—having the right mindset is the key to getting you there.

Mrudang H. Vakil (Advocate)
Hon. Secretary
AGFTC
21st March, 2025

Ignorance of developments may not be the excuse

CA Parag Raval

1. Latest trends in claims U/S 80GGC :

A. Introduction:

1. Of late, many assesses have received messages advising them to review the claim of 80GGC deduction in respect of donation to political parties and in case of wrong claim, they are advised to rectify it by filing updated returns.

2. 100% donation can be claimed U/s. 80GGC of the Income Tax Act for donations made to political parties registered U/s. 29A of The Representation of People Act, 1951.

B. In light of the same, it would be interesting to examine the latest cases on Sec. 80GGC:

1. Assessee had not explained how he contacted with such a political party and yet contributed 50% of the income to the political party:

ITAT in Jayeshkumar Gopalbhai Akbari vs. Deputy Commissioner of Income Tax [2024] 162 taxmann 395 (Surat-Trib.) had held that:

There was no evidence that the said political party was active or had ever contested any regional or national-level election.

Further, the assessee had not replied to the basic question and the objection raised by the assessing officer about his doubt on the genuineness of his contribution to such political party, except claiming that it is not his duty to verify the affairs of such political party.

The claim cannot be allowed

2. Income Tax Act does not impose an obligation on donors to ensure or verify the utilization of funds by the donees:

ITAT Ahmedabad in the case of ACIT vs. Armee Infotech (ITA No.1778/Ahd/2016) had held as below:

Income Tax Act does not impose an obligation on donors to ensure or verify the utilization of funds by the donees.

Once a donation is made to a duly registered political party through non-cash means, and all statutory conditions are met, the donor is entitled to the deduction under Section 80GGC.

The responsibility to monitor the utilization of funds lies with the authorities overseeing the donee entities, not the donor.

3. Political party was found to be involved in accepting bogus donations and returning cash to donors in exchange for cheques:

ITAT in the case of Milind Pankajbhai Shroff, ... vs The Principal Commissioner of Income (ITA No.93/RJ T/2023) had held that:

Given the findings from investigations indicating that the political party was involved in facilitating bogus donations, the PCIT's invocation of Section 263 is upheld.

C. Care to be taken in case a notice is received:

1. It is pertinent for the assessee to demonstrate the genuineness and reasonableness of the donation made to the political party.

2. All the necessary documentation such as receipts, bank entries, letter from Election Commission of India regarding recognition of the political party, KYC, etc have to made available for verification.

2. Co-owner who has not received income from house property cannot be taxed for the same: Delhi HC

Shivani Madan vs Pr. Commissioner Of Income Tax Delhi 01 (ITA 573/2023)

Facts:

1. A property situated at J-278, Saket, New Delhi, was in the joint ownership of the appellant and her husband and had been acquired on 08 March 2011.

2. In the course of assessment, the appellant was placed on notice to answer a query as to why income from the said property be not charged to tax in her hand under the head of 'income from house property'.

3. The appellant asserted that the property is essentially owned by the spouse and that her name appears in the instrument solely for and considering a contribution of INR 20,00,000/-, which was paid by her in A.Y. 2011-12.

4. This explanation was not accepted by the AO, who proceeded to hold that the property would be liable to be viewed as being jointly owned in equal share by the appellant and her spouse and thus taxed in accordance with Section 23(1)(a) of the Income Tax Act.

5. The AO proceeded further to thus compute the annual letting value and held that the income from house property would be liable to be pegged at INR 19,60,000/- and 50% thereof being assessed in the hands of the appellant.

Hon Delhi HC held as below:

1. The Income Tax Act fails to raise any presumption in law, of income necessarily arising or being liable to be assessed in the hands of an individual merely because it be a signatory to an instrument of conveyance.

2. In our considered opinion, the question of taxability would necessarily have to be answered bearing in mind the individual who had in fact obtained benefits from the property.

3. In the absence of any finding in tune with the above having been rendered in so far as the appellant is concerned, we find ourselves unable to sustain the order of the Tribunal. We accordingly allow the instant appeal and set aside the order of the Tribunal dated 05 January 2023 and allow the appeal by the assessee.

3. ITR has to be filed by non-residents in the case of royalty income :

1. Sec 115A amendment:

Section 115A of the Income Tax Act amendment in 2023 brings about changes in the withholding tax rates for Fees for Technical Services (FTS) or Royalty. The new rate is set at 20% plus Education cess and surcharge, resulting in an effective rate of 20.8%.

2. DTAA rates:

Considering tax treaties with major countries (e.g. United Kingdom, Canada and the United States of America) provide for a tax rate of 15%, many non-residents receiving royalty and FTS were opting for the tax rate under section 115A. Furthermore, even in the case of most of the tax treaties (e.g. Belgium, Netherlands, Singapore) signed by India which provide for the tax rate of 10%.

3. Sec 90(2):

As per Sec 90(2) of the Income Tax Act, a non-resident can opt to be taxed as per the domestic tax provisions or tax treaty entered between India and the country of residence of the taxpayer or the Act, whichever is more beneficial. Thus, a tax resident of a country with which India has a DTAA can opt for a lower tax rate.

4. Requirement of filing ITR:

As per Section 115A(5), a non-resident (including a foreign company) is NOT required to file an ITR in India if:

Their only income in India is from:

Royalty (under Section 9(1)(vi))

Fees for Technical Services (FTS) (under Section 9(1)(vii)) Interest (e.g., on foreign currency loans, certain bonds) Sec. 115A(5) is applicable only if the taxes were withheld as per the rate provided under Section 115A.

Since the taxes would have been withheld at a lower rate provided in DTAA, ITR would have to be filed.

5. Conclusion:

Thus, with the amendment in tax rates for royalty and FTS, a non-resident taking advantage of DTAA would now be required to file his Income Tax Return in India.

4**. Merely paying penalty for delay in filing Income Tax Returns does not exonerate assessee from being prosecuted: Karnaatak HC**

Rajkumar Agarwal AND Income Tax Department (2025 LiveLaw (Kar) 40)

Facts:

1. It was alleged that the petitioner had wilfully failed to submit his income tax returns in time for the Assessment Years 2012- 13 to 2015-16 and thereby committed the alleged offence.

2. The Department filed four separate private complaints against the petitioner for an offence punishable under section 276CC of the Income Tax Act, after obtaining necessary sanction orders from the Competent Authority to prosecute.

3. The petitioner argued that on receipt of notice under section 139 of the Income Tax Act, he had submitted his income tax returns. Since there was a delay in filing the returns a penalty was levied which was paid by him. Therefore, there was no occasion for the respondent Department to initiate criminal prosecution against him for the alleged offence.

4. It was claimed that he was not granted an opportunity by the competent authority before issuing the sanction order. Moreover, he had not wilfully delayed the filing of the returns, and the delay was beyond the control of the petitioner since his brothers had died.

5. The Department filed four separate private complaints against the petitioner for an offence punishable under section 276CC of the Income Tax Act, after obtaining necessary sanction orders from the Competent Authority to prosecute.

6. It was alleged that the petitioner had wilfully failed to submit his income tax returns in time for the Assessment Years 2012-13 to 2015-16 and thereby committed the alleged offence.

7. The petitioner argued that on receipt of notice under section 139 of the Act, he had submitted his income tax returns. Since there was a delay in filing the returns a penalty was levied which was paid by him. Therefore, there was no occasion for the respondent-Department to initiate criminal prosecution against him for the alleged offence.

8. It was claimed that he was not granted an opportunity by the competent authority before issuing the sanction order. Moreover, he had not wilfully delayed the filing of the returns, and the delay was beyond the control of the petitioner since his brothers had died.

Hon Karanataka HC held as below:

1. Section 276CC is attracted on failure to comply with the provisions of Section 139(1) or failure to respond to the notice issued under Section 142 or Section 148 of the Act, within the time specified therein.

2. Proviso to Section 276CC takes in only sub-section 1 of Section 139 of the Act and the provisions of Section 142(1)(i) or Section 148 are conspicuously absent. The benefit of the proviso is available only to voluntary filing of the return as required under Section 139(1) of the Act. Thus, proviso would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or Section 148 of the Act, is issued calling for filing of the return of the income.

3. Under the circumstances, the explanation sought to be offered on behalf of the petitioner before this Court cannot be accepted and it is for the petitioner to lead evidence and produce necessary material before the learned Magistrate in support of his defence and rebut the presumption available against him under Section 278E of the Income Tax Act.

4. Therefore, merely because petitioner has paid the penalty levied by the Competent Authority for the delay in filing of the returns, the same does not exonerate the petitioner from being prosecuted.

5. Budget : Amendment in carry forward of losses-

1. Section 72:

Section 72 of the Income Tax Act provides that no loss (other than loss from speculation business) under the head "Profits and gains from business or profession" shall be carried forward for more than 8 assessment years immediately succeeding the assessment years for which the loss was first computed.

2. Section 72A:

Section 72A and 72AA of the Income Tax Act provide that accumulated loss of the amalgamating entity or predecessor entity shall be deemed to be the loss of the amalgamated entity or the successor entity for the previous year in which amalgamation or business reorganisation has been effected or brought into force.

3. Amendment:

In order to bring clarity and parity with the provisions of section 72 of the Act, it is proposed to amend section 72A and section 72AA of the Act to provide that any loss forming part of the accumulated loss of the predecessor entity, which is deemed to be the loss of the successor entity, shall be eligible to be carried forward for not more than eight assessment years immediately succeeding the assessment year for which such loss was first computed for original predecessor entity.

4. Rationale:

The proposed amendment is aimed to prevent evergreening of the losses of the predecessor entity resulting from successive amalgamations and to ensure that no carry forward and set off of accumulated loss is allowed after eight assessment years from the immediately succeeding the assessment year for which such loss was first computed for original predecessor entity.

5. Practical example why this amendment is proposed:

If X Company had a loss and carried forward the same from 2016 and suddenly in 2023 it got merged with Y Company, Y company was eligible to further carry forward losses for further 8 years.

This is called as evergreening of losses. This kind of amalgamation abuses the benefits provided in Sec. 72A and Sec. 72AA to carry forward the business losses pursuant to an amalgamation.

With the proposed amendment, the Government has essentially made the timeline for losses to stay fixed. Now, the losses can only be carried forward by the amalgamated company for a period of 8 years from the end of the Assessment Year in which such loss was first computed by the predecessor entity.

6. Point to note:

The change is only applicable to amalgamations or business reorganisations effected on or after 1st April, 2025. So, it will not impact the amalgamations already affected.

6. Offence committed before show cause notice compoundable as covered by 'First Offence' in Compounding Guidelines: SC : Vinubhai Mohanlal Dobaria Vs Chief Commissioner of Income Tax Special Leave Petition (C) No. 20519 of 2024

Facts:

1. The appellant, Vinubhai Mohanlal Dobaria, had filed a belated Income Tax Return (ITR) for AY 2011-2012 on March 4, 2013, whereas the due date was September 30, 2011.

2. As a result, the Income Tax Department proposed prosecution under Section 276CC of the Income Tax Act (which penalizes failure to furnish income tax returns) on October 27, 2014.

3. The assessee then sought compounding under the Guidelines for Compounding of Offences, 2008, which was granted on November 11, 2014 for both AY 2011-2012 and AY 2012-2013.

4. For AY 2013-2014, the appellant again filed a delayed return on November 29, 2014, whereas the due date was October 31, 2013.

5. A show-cause notice for prosecution under Section 276CC was issued on March 12, 2015, leading the appellant to seek compounding again.

6. However, this time, the compounding request was rejected in 2017, citing that compounding was only available for the first offence under the 2014 Guidelines, and since the appellant had already availed compounding for AY 2011-2012, he was ineligible.

7. The Gujarat High Court upheld this rejection, ruling that the compounding authority need not consider the circumstances of the delay and that such matters should be examined only during trial.

Hon Supreme Court held as below:

1. An offence under Section 276CC could be said to have been committed as soon as there is a failure on the part of the assessee in furnishing the return of income within the due time as prescribed under Section 139(1) of the Income Tax Act i.e. for AY 13-14, date after the due date Oct 31st, 2013.

2. Guidelines for Compounding of Offences, 2014, define a "first offence" as an offence committed prior to the date of the show-cause notice for prosecution.

3. Thus, both the offences under Section 276CC of the Act were committed prior to the date of issue of any show-cause notice for prosecution.

4. Thus, under the 2014 Guidelines, both AY 2011-2012 and AY 2013-2014 qualify as a "first offence", making the appellant eligible for compounding for AY 2013-2014.

7. Can employees be made liable if TDS is deducted but not paid by the employer?

1. Background:

Sec 199 of the Income Tax Act states that TDS deducted by the payer and paid to the government is treated as tax paid on behalf of the payee. The Central Board of Direct Taxes (CBDT) is authorized to issue rules for crediting TDS to the taxpayer.

Now a question arises as to when TDS is deducted by the employer but not paid to the credit of the employee would give rise to recovery of income tax from employee?

2. Section 205 bars recovery from the assessee: Sec 205 Explicitly bars income tax authorities from directly recovering unpaid TDS from the payee if it was already deducted by the deductor.

3. CBDT instructions also bar recovery:

The CBDT issued clear instructions in 2015 and 2016 stating, The Act puts a bar on direct demand against the assessee in cases where TDS has been deducted by the payer and the demand on account of tax credit mismatch cannot be enforced coercively.

4. Some latest High Court judgements on the matter:

Satwant Singh Sanghera (Delhi HC) (167 taxmann 713) Ruled in favour of the employee, allowing TDS credit despite the employer failing to deposit the deducted tax.

Orissa High Court in case of Malay Kar v. Union of India [2024] 162 taxmann 767 (Orissa) allowed the TDS credit to the employee where the employer had deducted tax at source but had not deposited amount to Central Government's account.

Consequently, if an employer fails to remit the deducted tax, the liability to pay that tax cannot be shifted to the employee.

5. Conclusion:

Sec. 205, CBDT Instructions and a series of High Court judgements have reinforced a basic jurisprudence that where TDS has been deducted by the employer but not paid to the government, recovery of the same cannot be made from employees, even in situations of any financial difficulties.

8. UAE Pillar 2 Rules Announced – Top-up Tax on MNEs

Introduction:

On 6th February 2025, the UAE Ministry of Finance has issued Cabinet Decision No. 142 of 2024 for imposition of Top-up Tax on Multinational Enterprises (MNEs).

Key Highlights:

1. MNE's with annual group revenue of EURO 750 million or more are covered.

2. For the purpose of revenue threshold, any two out of four immediately preceding years to be considered.

3. On account of application of top-up tax, covered entities would be subject to minimum tax of 15% effective January 2025.

4. UAE entities of MNE group ("covered entities"), which are either subject to corporate tax at 9% or 0% as per the UAE corporate tax law, would be subject to top-up tax.

5. Covered entities would be required to register with the Federal Tax Authority ("FTA") within the timelines to be prescribed.

6. Covered entities would be required to file annual top-up tax return with the FTA, or it can designate other group entity to file on its behalf.

7. Entities (to be specified in the Ministerial Decision) would be required to file the Pillar Two Information Return with the FTA

9. Why are the investments made abroad under the ODI route under scrutiny of enforcement agencies?

What is Overseas Direct Investment (ODI)?

1. Overseas Direct Investment (ODI) refers to investments made by Indian entities in a foreign country. In this form of investment, Indian companies and individuals can enter into a Joint Venture (JV) or have their Wholly Owned Subsidiary (WOS) in a different country.

2. Limits are prescribed for investments (e.g., up to 400% of a company's net worth).

3. ODI investments are subject to the Rules provided in Foreign Exchange (Overseas Investment) Rules, 2022.

Why are ODI investments under the scrutiny of the Enforcement Directorate?

1. Bona Fide Business Requirement:

Under FEMA, ODI transactions must be for genuine business purposes. Investments that are structured primarily for personal benefit (for example, to bypass domestic investment restrictions or to channel funds abroad without establishing a bona fide business activity) can be flagged as noncompliant. This means if the intended use of funds or the nature of the investment isn't clearly tied to a legitimate business strategy, the transaction might be challenged.

2. Regulatory and Documentation Burdens:

Compliance under FEMA requires that all ODI transactions are executed through approved banking channels, with all required documentation, disclosures, and reporting in place. Any lapse—such as incomplete documentation, inadequate disclosures, or failure to meet procedural requirements—can lead to enforcement actions, including ED notices, penalties, or even forced unwinding of the investment.

3. Investment Limits and Structural Constraints:

The ODI route is subject to limits based on the net worth of the Indian entity, and the structure of the investment must not create abusive multilayered arrangements (often referred to as "round tripping").

Conclusion:

Recent trends suggest that enforcement agencies like the ED are increasingly scrutinizing ODI transactions—even those carried out through formal banking channels—if they suspect that the investments are used to shift funds abroad without a clear business rationale. This heightened scrutiny means that even minor deviations from FEMA norms can lead to notices or penalties.

10. SC reinforces the principle that while granting registration, focus should be on proposed charitable activities and not past activities:

COMMISSIONER OF INCOME TAX EXEMPTIONS VERSUS M/S INTERNATIONAL HEALTH CARE EDUCATION AND RESEARCH INSTITUTE (SLP No. 19528/2018)

Facts:

1. The assessee claims to be a charitable trust engaged in activities like education, medical aid etc. The trust has been registered under the Indian Trusts, 1882 Act.

2. However, for the purpose of claiming exemption under Sections 10 and 11 respectively of the Income Tax Act, 1961 they applied for being registered under Section 12-AA of the Income Tax Act.

3. The registration was declined by the Commissioner on the ground that there was nothing on record to indicate that the Trust was undertaking any charitable activities.

4. Being dissatisfied with the order passed by the Commissioner declining registration under Section 12-AA, the assessee went before the Appellate Tribunal, The Tribunal allowed the appeal, which was further confirmed by the Rajasthan HC. The revenue then filed an appeal with the Hon. SC.

Hon. SC held as below:

1. The very purpose for any assessee to seek registration under Section 12AA is to claim exemption under Sections 10 and 11 respectively of the Act, as the case may be.

2. Therefore, before seeking registration, it is essential that the Trust should adduce cogent material to the satisfaction of the Commissioner that the activities are genuinely charitable in nature.

3. To the aforesaid extent there is no problem. We may only say that mere registration under Section 12-AA automatically does not entitle any charitable trust to claim exemption under Sections 10 and 11 respectively of the Act, 1961.

4. When a return is filed by any trust claiming exemption it is for the assessing officer to look into all the materials and satisfy itself whether the exemption has been claimed genuinely or not. If the assessing officer is not convinced it is always open for him to decline grant of exemption.

5. So, the appeal by the revenue is dismissed.

"According is not just about balancing the books; it's about balancing opportunities, risks and growth."

Benami Law and the Supreme Court's Recall : A Legal Crossroad

CA Harit Dhariwal

A. Introduction :

Benami transactions, a practice deeply rooted in India's history, refer to property held in one person's name while the actual owner provides the consideration. The term "Benami" means "withoutname"or"noname," signifying that the real title is detached fromthe apparent title. Historically, there was no law regulating or prohibiting such transactions, but the legal framework evolved significantly over time. Initially, the Benami Transactions (Prohibition) Act, 1988 (BTPA) came into existence, but it lacked mechanisms to seize benami properties, limiting its effectiveness. The practice primarily involved immovable assets like land and buildings, but also extended to movable assets such as shares, cash, and bonds.

Over time, benami transactions became a route to evade taxes, conceal black money and bypass state laws, especially in acquiring land banks. The introduction of new taxes, including wealth and gift taxes, further fueled this trend, making it a tool for bribery and debt evasion. To combat these issues, the Benami Transactions (Prohibition) Amendment Act, 2016, overhauled the legal framework, introducing stricter penalties, expanding the scope of prohibited transactions and providing authorities with enhanced powers to seize benami properties. This amended law represents a landmark step in curbing financial malpracticesand black money.

B. Evolution of Benami Law in India

The evolution of benami law in India has been marked by a series of key steps aimed at curbing fraudulent property transactions. Initially, provisions in the Code of Civil Procedure and the Income Tax discouraged benami transactions, but these measures proved ineffective. In 1969, a parliamentary committee recomended examining existing laws to potentially ban such transactions and a similar suggestion was raised during the 1971 debate on the Taxation Laws (Amendment) Bill. In 1972, the Law Commission of India was tasked and with exploring ways to stop benami deals and proposed a separate law.

The Law Commission's recommendations included preventing the real owner reclaiming property from the benamidar and exepmting HUFs and Trusts in 1988, the government issued an ordinance, which became the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, later enacted as the Benami Transactions (Prohibition) Act. This Act prohibited benami transactions, made them punishable with imprisonmentand finesand also allowed for property confiscation, though procedural weaknesses limited its effectiveness.

In 2011, a new Bill was introduced to replace the 1988 Act but lapsed with the dissolution of the Fifteenth Lok Sabha. A revised version,the Benami Transactions (Prohibition) Amendment Bill, 2015, was introduced in May 2015, passed in 2016, and received presidential assent on August 10, 2016. The Act was renamed the Prohibition of Benami Property Transactions Act (PBPTA), and its provisions expanded to 72 sections.

C. Benami Law and the Supreme Court Judgment in Union of India v. Ganpati Dealcom Pvt. Ltd. [2022] 141 taxmann.com 389 (SC)

The legal landscape surrounding property ownership in India has witnessed significant changes with the evolution of the Benami law. The BenamiTransactions (Prohibition) Act, 1988 and its subsequent amendment as the Prohibition of Benami Property Transactions Act, 2016, were introduced with the primary objective of curbing financial malpractices, particularly black money transactions.

A landmark case, Union of India V. Ganpati Dealcom Pvt. Ltd., played a pivotal role in shaping the legal interpretation of the Benami law. The Supreme Court's ruling in this case significantly impacted how the amended Act applies to past transactions.

In Union of India V. Ganpati Dealcom Pvt. Ltd., the Supreme Court had to decide whether the 2016 amendments to the Benami Act could be applied retrospectively. The primary contention was whether individuals who engaged in benami transactions before the 2016 amendment could be penalized under the newly enacted provisions.

I am reproducing the following important findings from the judgment verbatim :

- *"The language of section 2 (a) coupled with section 3, completely ignores the aspect of mens rea, as it intends to criminalize the very act of one person paying consideration for acquisition of property for another person. The mens rea aspect was specifically considered by the 57th Law Commission Report, and the some was not integrated into the unamended 1988 Act. The observations made in the 130th Law Commission Report indicate that benami transactions are abhorrent when it comes to public wealth and impedes the government from achieving its social goals. This clearly allows the inference that the 1988 law was envisaged on the tourchstone of strict liability." (Para 14.11)*

- *Reading section 2(a) with section 3(1) would have created overly broad laws susceptible to be challengedon the grounds of manifest arbitrariness. If the criminal provisions of the Benami Act were to have had force since1988,thenthe following deleterious consequences would ensue:*
  - *(I) Section 187C of the Companies Act,1956 assured protection to nominal and beneficial holding of shares if the prescribed declaration duly made are at serious risk.*
  - *(ii) Benami cooking gas connections which have been regularized from time-to-time are at risk.*
  - *(iii) Housing colonies and benami allotments of DDA flats which have been regularised from time-to-time are at risk. [Para 15.16]*

- *The criminal provision under section 3(1) of the 1988 Act has serious lacunae which could not have been cured by judicial forums, even through some form of harmonious interpretation.A conclusion contrary to the above would make the aforesaid law suspectto being overly oppressive,fanciful and manifestly arbitrary, thereby violating the 'substantive due process' requirement of the Constitution. [Para 15.17]·*

- *When such proceedings are contemploted under law, there need to be adequate safegaurds built into the provisions, without which the law would be susceptible to challenge under article 14 of the Constitution. Coming to section 5 of the 1988 Act, it was conceived as a half baked provision which did not provide the following and rather left the same to be prescribed through a delegated legislation :*
  - *(I) Whether the proceedings under section 5 were independent or dependent on successful prosecution ?*
  - *(ii) The standard of proof required to establish benami transaction in terms of section 5.*
  - *(iii) Mechanism for providing opportunity for a person to establish his defence.*
  - *(iv) No 'defence of innocent owner' was provided to save legitimate innocent buyers.*
  - *(v) No adjudicatory mechanism was provided for.*
  - *(vi) No provision was included to determine vesting of acquired property.*
  - *(vii) No provision to identify or trace benami properties.*
  - *(Viii) Condemnation of property cannot include the power of tracing, which needs an express provision.*

Such delegation of power to the Authority was squarely excessive and arbitrary as it stood. From theaforesaid, the stand that the 2016 Act was merely procedural, cannot stand scrutiny. [Para 15.19]

- *Such an inconclusive law, which left the essential features to be prescribed through delegation, can never be countenanced in law to be valid under Part III of the Constitution. The gaps left in the 1988 Act were not merely procedural, rather the same were essential and substantive. In the absence of such substantive provisions, the omissions create a law which is fanciful and oppressive at the same time. Such an overbroad provision was manifestly arbitrary as the open texture of the law did not have sufficient safeguards to be proportionate. [Para 15.20]*

- *Section3 (criminal provision)read with section2 (a) and section5 (confiscation proceedings) of the 1988 Act are overly broad, disproportionately harsh, and operate without adequate safeguards in place. Such provisions were still-born law and never utilized in the first place. In this light, it is found that sections 3 and 5 of the 1988 Act were unconstitutional from their inception. [Para 15.22]*

- *It is well settled that the legislature has power to enact retroactive/retrospective civil legislations under the Constitution. However, article 20(1) mandates that no law mandating a punitive provisions can be enacted retrospectively. Further, a punitive provision cannot be couched as a civil provision to by-pass the mandate under article 20(1) of the Consititution which follows the settled legal principle of that what cannot be done directly, cannot be done indirectly.' (Para 17.10)*

- *The Benami Act post the amendment, the interplay of sections27(3), (5) and 67 of the 2016 Act creates a confiscation procedure which is distinct from the procedure contemplated under the Cr.P.C. or any other enactment till now in India. This separation of the confiscation mechanism is not merely procedural. It has also altered substantive rights of the evidentiary standards from 'beyond reasonable doubt' to 'preponderance of probabilities'. Such a change of standards cannot be merely termed as procedural. [Para17.30]*

Key Observations of the 2022 SC Judgment:

1. **Unconstitutionality & Ineffectiveness of Sections 3 and 5 of the 1988 Act:** Section 3 (criminal provision) along with Section 2(a)and Section 5 (confiscation proceedings) of the 1988 Act are overly broad, excessively harsh, and lack adequate safeguards. These provisions were never effectively used and were essentially unenforceable from the beginning. As a result, it is concluded that Sections 3 and 5 of the 1988 Act were unconstitutional from the outset.
2. **Retrospective Application of Criminal Penalties:** The Supreme Court ruled that the retrospective application of punitive provisions would violate Article 20(1) of the Constitution, which prohibits retrospective penalization.
3. **Legislative Intent :** The judgement emphasized that while the 2016 amendement was intended to strengthen the existing law, penal provisions cannot be applied retrospectively unless explicitly stated by the legislature. The judgement criticized the in-rem forfeiture (a legal action that involves seizing property rather than a person) under the 2016 Amendment, which condemned not only the individuals in benami transactions
4. **Impact on Investigations:** The ruling resulted in the closure of numerous cases where transactions occurred before 2016, thus affecting on going investigations into illicitproperty holdings.

D. The Recall of the Judgment : UOI v. Ganpati Dealcom (P.) Ltd. [2024] 167 taxmann.com525 (SC)

The Union Government filed a review petition, arguing that the 2022 judgment had disrupted 40 years of jurisprudence.It contended that the 2022 verdict went beyond the central question of whether the 2016 amendments should be applied prospectively, as it declared Section 3(2) and Section 5 of the unamended 1988 Act unconstitutional.

In a rare move, the Supreme Court recalled its judgment by order dated 18th October 2024, acknowledging the need for further deliberation on the constitutional validity of the retrospective application. SC held that the Constitutionality of the provisions of the unamended Benami Transactions Act was never raised in the original proceedings. The only question which was framed by the bench which originally heard the matter was "whether the Prohibition of Benami Property Transactions Act, 1988, as amended by the Benami Transactions (Prohibition) Amendment Act, 2016, has a prospective effect.

"The matter will be argued a fresh before an ewly constituted bench, where the constitutionality of the benami law provisions can be reconsidered. The SC bench emphasized that the constitutional challenge requires proper adjudication with an active legal dispute.

Important extracts of the order are reproduced below :

· It is not disputed that there was no challenge to the constitutional validity of the unamended provisions. This is also clear from the formulation of the question which arose for consideration before the Bench in paragraph 3 of the judgment, which has been extracted above. In the submissions of parties which have been recorded in the judgment,

the issue of constitutional validity was not squarely addressed.

· A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. We accordingly allow the review petition and recall the judgment dated 23 August 2022. Civil Appeal No5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side.

Impact of the Judgment and its Recall

This recall has introduced new complexities in the interpretation and enforcement of benami laws. The implications of the Supreme Court's ruling and subsequent recall are far-reaching, affecting multiple stakeholders including businesses, legal practitioners, tax authorities and individual property owners.Below are the key impacts:

1. **Government's Power to Seize Properties**
   With the recall, government authorities have been reinvigorated in their pursuit of benami properties. Many cases that were previously deemed closed have been reopened, resulting in increased scrutiny over past transactions. For instance, a property acquired in 2010 under a benami transaction might still be subject to confiscation and investigation under the recalled judgment.
2. **Legal Certainty and Compliance Issues**
   The initial ruling provided relief to individuals engaged in transactions before 2016, but its recall has created legal uncertainty. Businesses and individuals are now left in ambiguity regarding past transactions that may be revisited by authorities. For instance, a real estate developer who structuredl and deals through proxies before 2016 may now face renew edlegal risks.
3. **Constitutional and Legislative Precedent**
   The case will set a legal precedent on whether amendments in criminal and property laws can have

retrospective effect. If retrospective application is upheld, it may influence future tax and property legislation. Similar precedents may be set in tax evasion cases where retrospective amendments are introduced in tax laws.

4. **Impact on Real Estate and Investment Climate**
   Foreign and domestic investors require legal certainty before making property investments. The recall of the judgment has led to caution in property transactions, with increased due diligence being exercised. Financial institutions may reassess lending policies for properties that could be scrutinized under the revived benami law provisions.

E.Conclusion

The Benami law remains a cornerstone in India's fight against black money and undisclosed assets. The Supreme Court's initial ruling in Ganpati Dealcom Pvt. Ltd. had a significant impact in limiting the retrospective application of penalties, but its recall has reopened legal debates. The final judgment will be instrumental in shaping the future enforcement of benami laws, affecting businesses, real estate transactions and anti-corruption measures. Stakeholders, including investors, legal professionals and regulatory authorities, must stay abreast of developments in this case.

We are at a pivotal moment in the legal journey of India's Benami law. This development presents a legal crossroad, where key questions of constitutional validity, retrospective application of laws and the broader implications for property rights and financial transparency are at the forefront. The evolving judicial stance will dictate how past transactions are treated and influence India's legall and scape regarding property ownership and financial transparency.

"Behind every successful business,
there is an accountant who understands the
number and drives financial performance."

Scope of Section73, Section 74 and Section 74A Under GST Law.

Bharat L. Sheth
Advocate

INTRODUCTION

Section 73, Section 74 and newly introduced Section 74A is part of Chapter XV "Demands and Recovery".Chapter XV includes Section 73 to Section 84. The Rule 142 to Rule 161 for demands and recovery is provided in Chapter XVIII of The Central Goods and Services Tax Rules, 2017. The Central Goods and Services Tax Act, 2017 refers this section in various sections under this Act for determination of Tax and Penalty.

DETERMINATION OF TAX

The difference between Section 73 and Section 74 of the Central Goods and Services Tax Act, 2017 is that Section 73 applies to any tax liability when there is no suspicion of fraud, wilful misstatement or suppression of facts while Section 74 applies to a tax liability only when there is a suspicion of fraud, wilful misstatement or suppression of facts. Newly introduced section 74A attempts to standardize the timeframe for issuing notice, tax demand, and penalty relief for any due tax liability irrespective of fraud, wilful misstatement, or suppression of facts. This section is applicable from FY 2024-25 and will supersede Sections 73 and 74.

The brief details of Section 73, Section 74 and Section 74A are as under;

Determination of tax pertaining to the period up to financial year 2023-24 not paid or short paid or erroneously refunded or input credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.

Section 73:

Determination of tax pertaining to the period up to financial year 2023- 24 not paid or short paid or erroneously refunded or input credit wrongly availed or utilized for any reason other than fraud or any wilful mis statement or suppression of facts.

Notes:-

1. In the Marginal heading, after the words "Determination of tax" the words and figures, "pertaining to the period up to Financial year 2023-24" inserted vide Section 136 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to forcevide notification No.17/2024 Central Tax dated 27-09-2024.

2, aftersub-section (11) thefollowing sub-section insertedvide Section 136 of The Finance (No.2) Act, 2024 (15 of 2024) The CBIC appoints date 01- 11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024. namely:-

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.

Section 74:

Determination of tax pertaining to the period up to financial year 2023- 24 not paidorshort paid or erroneously refunded or in put tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or uppression o f facts.

Notes;-

1, In the Marginal heading, after the words "Determination of tax" the words and figures, "pertaining to the period up to Financial year 2023-24" inserted vide Section 137 of The Finance (No.2) Act, 2024 (15 of 2024) The CBIC appoints date 01-11-2024 on which this provision shall come in to forcevide notification No.17/2024 Central Tax dated 27-09-2024.

2, after sub-section (11) and before Explanation 1, the following sub- section inserted vide Section 137 of The Finance (No.2) Act, 2024 (15 of 2024), The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09- 2024. Namely:-

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.

3, The Explanation 2 omitted vide Section 137 of The Finance (No.2) Act, 2024 (15 of 2024) The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

Section74A:

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by for any reasons pertaining to the period up to financial year 2024-25 onwards.

Note;-Section 74A inserted vide Section 138 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

SCOPE OF SECTION73, 74 AND 74A

1,SECTION10;CompositionLevy Sub-section(5)

If the proper officer has reasons to believe that a taxable person has paid tax under sub section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, beliable to apenalty and the provisions of section 73 or Section 74 or section 74Ashall, mutatis mutandis, apply for determination of tax and penalty.

Note;- In Section 10 of the Central Goods and Services Tax Act, in sub- section(5), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 115 of The Finance(No.2)Act,2024(15of2024).TheCBICappointsdate01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

2, SECTION21;

Manner of recovery of credit distributed in excess

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74 or section 74A, as the case maybe, shall, mutatis mutandis, apply for determination of amount to be recovered.

Note;- In Section 2 of the Central Goods and Services Tax Act, in sub- section(5), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 120 of The Finance (No.2) Act,2024 (15of2024). The CBI Cap points date01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

3,SECTION 35; Account and other records Section(6)

Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section(1),the proper off icer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or Section 74 or section 74A, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Note;- In Section 36 of the Central Goods and Services Tax Act, in sub- section(6), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 123 of The Finance (No.2) Act, 2024 (15of2024).The CBI Cappointsdate01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

4, Section49;Paymentoftax,interest, penalty and other amounts.

Sub-section(8)

Clause (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section74 or section 74A.

Note;- In Section 49 of the Central Goods and Services Tax Act, in sub- section(8), in Clause (c) after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 125 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

5,Section50;Interest on delayed payment of tax

Sub-section(1)

Proviso- Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provision of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 or section 74A in respect of the said period shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

Note;- In Section 50 of the Central Goods and Services Tax Act, in sub- section(1), in the proviso, after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 126 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

6, Section 51;Tax Deducted at source

Sub-section(7)

TheDetermination of the amount in default under this sections hall bemade in the manner specified in section 73 or section 74 or section 74A.

Note;- In Section 51 of the Central Goods and Services Tax Act, in sub- section(7), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 127 of The Finance(No.2)Act,2024(15of2024).The CBI Cap points

date01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

7,Section61; Scrutiny of retruns

Sub-section(3)

In case no satisfactory explanationis furnished with in a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action includingthose under section 65 or section 66 orsection 67, or proceed to determine the tax and other dues under section 73 or section 74 or section 74A.

Note;- In Section 61 of the Central Goods and Services Tax Act, in sub- section(3), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 129 of The Finance(No.2)Act,2024(15of2024).TheCBI Cap points date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

8,Section62;Assessment of non-filers of returns

Sub-section(1)

Not with standing anything to the contrary contained in section 73 or section 74 or section 74A, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specifiedunder section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Note;- In Section 62 of the Central Goods and Services Tax Act, in sub- section(1), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 130 of The Finance(No.2)Act,2024(15of2024).The CBI Cap points date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

9, Section63; Assessment of unregistered persons

Not with standing anything to the contrary contained in section 73 or section 74 or section 74A, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub- section (2) of section 29 but who was liable to pay tax, the proper officer may proceedto assess tax liability of the such taxable person tothe best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Note;- In Section 63 of the Central Goods and Services Tax Act, after the words and figures "section 73 or section 74" the words and figures and letter,"orsection 74A" insertedvide Section131ofTheFinance(No.2)Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

10,Section 64; Summary assessment in certains pecials cases

Sub-section(2)

On the application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or his own motion, if the Additional Commissioner or joint Commissioner considers that such order is erroneous, he may withdrew such order and follow the procedure laid sown in section 73 or section 74 or section 74A.

Note;- In Section 64 of the Central Goods and Services Tax Act, in sub- section(2), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 132 of The Finance(No.2)Act,2024(15of2024).TheCBICappointsdate01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

11,Section65; Audit bytax authorities

Sub-section(7)

Where the audit conducted under sub-section(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section

74 or section 74A.

Note;- In Section 65 of the Central Goods and Services Tax Act, in sub- section(7), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 133 of The Finance(No.2)Act,2024(15of 2024).The CBI Cap points date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024Central Tax dated 27-09-2024.

12,Section66; Special audit

Sub-section(6)

Where the special audit conducted under sub-section(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section 74 or section 74A.

Note;- In Section 66 of the Central Goods and Services Tax Act, in sub- section(6), after the words and figures "section 73 or section 74" the words and figures and letter, "or section 74A" inserted vide Section 134 of The Finance(No.2)Act,2024(15of2024).The CBI Cap points

date01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

13,Section75;General provisions relating to determination of tax

{A} Sub-section(1)

Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) ofsection 73or sub-sections (2) and (10) ofsection 74 or sub-sections (2) and (7) of section 74A, as the case may be.

Note;- In Section 75 of the Central Goods and Services Tax Act, in sub- section(1), after the words and figures "sub-section (10) of section 74" the words and figures and letter, "or sub-section (2) and (7) of section 74A" inserted vide Section 139 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

{B} Sub-section(11)

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in som other proceedings and an appeal to the AppellateTribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending,the periodspent between the dateofthe decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to insubsection (10) of section73 or sub-section(10) ofsection 74 or sub-sections (2) and (7) of section 74A where proceedings are initiated by way of issue of a show cause notice under the said sections.

Note;- In Section 75 of the Central Goods and Services Tax Act, in sub- section(11), after the words and figures "section 74" the words and figures and letter, "or sub-section (2) and (7) of section 74A" inserted vide Section 139 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

{C} Sub-section(12)

Not with standing anything contained in section 73 or section 74 or section 74A, where any amount of self-assessed tax in accordance with a return furnished undersection 39remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Note;- In Section 75 of the Central Goods and Services Tax Act, in sub- section(12), after the words and figures "section 73 or section 74" thewords and figures and letter, "or section 74A" inserted vide Section 139 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11- 2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

{D} Sub-section(13)

Where any penalty is imposed undersection 73orsection 74 or section 74A, nopenaltyforthesame act oromission shall be imposed on the same person under any other provision of this Act.

Note;- In Section 75 of the Central Goods and Services Tax Act, in sub- section(13), after the words and figures "section 73 or section 74" thewords and figures and letter, "or section 74A" inserted vide Section 139 of The Finance (No.2) Act, 2024 (15 of 2024).The CBI Cap pointsdate01-11-2024 on which this provision shall come in to forcevide notification No.17/2024 Central Tax dated 27-09-2024.

14,Section104; Advance ruling to be void in certain circumstances

Sub-section(1)

Explanation

The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing theperiodspecifiedinsub-section 92)and(10) of section73orsub-section

92) and (10) of section 74 or sub-section (2) and (7) of section 74ANote;-In Section 104 of the Central Goods and Services Tax Act, in sub-section(1), in the Explanation, after the words and figures "section 74" the words and figures and letter,"orsub-section(2)and(7)ofsection74A" insert edvide Section140 of The Finance (No.2) Act,2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to force vide notification No.17/2024 Central Tax dated 27-09-2024.

15, Section107; Appeal to Appellate Authority

Sub-section(11)

Second proviso

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed with in the time limit specified under section73 or section 74 or section 74A.

Note;- In Section 107 of the Central Goods and Services Tax Act, in sub- section(11) in the second proviso, after the words and figures“section73or section 74” the words and figures and letter, “or section 74A” inserted vide Section 141 of The Finance (No.2) Act, 2024 (15 of 2024). The CBIC appoints date 01-11-2024 on which this provision shall come in to forcevide notification No.17/2024 Central Tax dated 27-09-2024.SUMMINGUP

Section75 of the Central Goods and Services TaxAct,2017provides general provisions relating to determination of Tax. Sub-section (2) of section 75 provides that Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section(1) of section 74is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

The Central Board of Indirect Tax and Custom has issued Circular No. 185/17/2022–GST dated 27-12-2022 for clarification with regards to applicabilityof provision ofsection75(2) ofthe Central Goods andServices Tax Act, 2017 and its effect on limitation.

SPARK

The power of the lawyer is in the uncertainty of the law.

Jeremy Bentham

Concept of Purchase Vis-à-Vis Ownership and Consequences Under the Head Capital Gain.

Hiren R. Vakil
Advocate

(1) Introduction.

After pandemic 2019, and also uncertainty of death in its nature, for the sake of convenience, tax payers now a days making agreement in name of more than one person for smooth transfer and title to the property in hands of successor.

Hence,in the case of joint owners/co-owners, it becomes utmost important to understand the concept of 'purchase' and 'ownership' as regards transfer of property Act 1882 as well as under the Incometax Act1961.

(2) Transfer of property Act 1882 (TOPA)

As per section 45 of TOPA, where two or more persons purchase immovable property jointly by executing a registered deed of purchase, there share in the property will be proportionate to the amount of purchase consideration paid by them respectively and where share is not determinable, it has to be presumed that the interest of all the co-owners are in equal proportion.

So far as concept of ownership is concerned, where the consideration is paid out of separate funds belonging to them respectively, they are entitled to interests in such property in proportion to the shares of the consideration which they respectively employed.

(3) Ownership 'concept under income tax Act.

As per the provision of Sec. 2(14) of the Act which defines the term 'capital asset'. Accordingly even part interest in the property or fractional interest will Certainly be considered as 'property' for the definition of capital asset.

A person can be comepar towner of the property by several modes and also by act of other person.

(4) Working of Capital Gain

There are three modes for use of aproperty.

- Self-residence
- Givenonrent
- Usedforpurposeofownbusiness

The computation of income will vary according to use of the property per seco-owner and usage of the property.

The property used for business purpose that part became depreciable asset and on sale of the same, the income (Profit or loss) will be deemed short term capital gain u/s50 of the Act between sale priceand depreciable value.

The property used for self-residence and/or given on rent will be taxedat normal provisions of capital gain.

(5) Purchase, Ownership and Capital Gain.

The word 'Purchase' is not defined in the IT Act. The concept of ownership relates with consideration paid by the respective owner towards purchase of the property. This means that if the person is only name lender and hasn't contirbuted towards the purchase price then he/she may not be considered to be the real owner of the said property including for the purpose of computation of capital gain. Such name lender in the agreement of purchase deed have no right, title or interest therein and the real owner will be consider who actually paid the price to purchase the property. The name lender may be considering as co power or joint owner so far as TOPA is concern but they will not be regarded as owner of the purchase of income tax act.

(6) Issues regarding exemption u/s 54F, if the assessee is the owner, joint owner in more than one property.

The legislative has used the word "a" before the words "residential house in section 54F, Meaning, thereby that at the time of the sale, it must be a complete residential house and would not include share in a residential house. Ownership of a residential house menas ownership to the exclusion of all owners and where a house is jointly owned by two or more persons, none of them can be said to be owner of that house for the purpose of Sec. 54F.

What I want to contemplate is that the joint ownership of the property would not stand in the way of claiming exemption u/s 54F. Joint ownership in more than one residential property at the time of sale of original asset, the assessee being only a fractional owner in other properties was eligible for exemption u/s 54F of the Act.

Real Estate Regulation and Development Act, 2016 (RERA) Case Law Study Akshay Gopinath Awasare and Gopinath SakharamAwasare V/s Darode Jog Dangat Venture

CA Mahadev Birla

This article attempts to discuss the issues regarding refund of money undersection 18 of RERA Act.

Issues :

Whether unconditional right of allotee for refund under section 18 of RERA Act is depend on any contingency?

Whether recession in construction industry falls within the ambit of force mejure as explained in Section 6 of RERA Act?

Provisions:

Section 6 Extension of registration

6. The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority:

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation. For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

Section 18 Return of amount and compensation

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Fact of the Case:

Complainants booked a flat bearing no. Q-103 in the month of December, 20t2 in the project named"Shriniwas Greenland County phase-II for total consideration of Rs 40.13. Lacs. The Complainants paid Rs 8.61 Lacs against the sales consideration. The promoter promised to deliver the possession of flat within 2.5 Years.

The promoter failed to execute the agreement to sale therefore the complainants filed the complaint before the RERA Authority seeking relief for execution of agreement for sale and payment of interest for delay possession. The RERA Authority passed the order whereby the authority directed the promoter to execute the agreement for sale within a period of 1 month.

Despite the said Order of theAuthority, the Promoter neglected and failed to execute agreement for sale for the said flat. Further, the Promoter demolished all the constructed structure of buildingsof the said project and vacated the project land in January 2021.The Promoter also unilaterally revised the proposed date ofcompletion of the project to 30.12.2026.

Aggrieved with this act of the promoter, the complainants decided to withdraw from the project and filed another complaint seeking refund along with the interest under section 18 of the RERA Act.

The RERA Authority vide order dated 21.12.2021 dismissed the complaint on the ground of principle of res judicata. The RERA Authority observed that Complainants are seeking differentreliefs with the same facts and events and this situation is barred by theprinciple of res judicata.

Aggrieved with the said order of the RERA Authority , the complainants preferred the appeal before the RERA Appellate Tribunal on the ground that the RERA Authority erred in applying the principle of resjudicata even though the Promoter has not submitted such plea any where in its

pleadings. Further, the RERA Authority has exceeded its jurisdiction by dismissing the Complaint by suo motoin voking the principle of res judicata though the promoter did not plea for the res judicata.

The promoter in his submission contented that the project was not completed within the stipulated period because of worldwide recession in all industries including construction industry in the year 2015-16 due to which there wasno sale of units. The Promoter further contended that the work could not be started as the landowner has pressurized the promoter to hand over the entire project as well as remaining rights of land for development, as a result, the promoter had no option but to handover the said project with development rights to the landowner. The landowner has already taken the entire responsibility of the said project and accordingly he has or ally informed to the complainants that they can contact the landowner for addressing their issues and therefore the promoter has no responsibility for refund of amount.

While deciding the appeal, the Appellate tribunal observed that, the documents produced in the matter proves that there is valid and concluded contract between the complainants and the promoter and the promoter was liable to give the possession within a period of 2.5 years i.e. by June,2015.

Further, the appellate tribunal observed that the cause of action in the first complaints and the second complaint were also different and the complaints has valid reason for filing second complaint before the RERA Authority.

Further, the appellate tribunal observed that the force majeurefactors causing delay in completing theproject as demonstrated by the promoter also do not fall within theambit of explanation to Section 6 of RERA which clear clarifies that"force majeure"shall mean case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature,affecting the regular development of real estate project.

Further, the appellate tribunal observed that If the Allottee is not responsible for the reasons for the delay, he is entitled to reliefunder Section 18 of RERA and cannot be saddled with consequences for the delay in completing the project.

Further, in respect of the issue regarding application of the principle of res judicata the appellate tribunal observed that the settled principle of law is that the plea of res judicata is to be founded on proof of certain facts and then by applying the law to the facts so found. It is therefore necessary that the foundation for the plea must be laid in the pleadings and then the issue must be framed and tried.

Conclusion:

Recession in construction industrycannot be construed as "force majeure, the Promoter can neither expect Allottee to be aware of the likely delay nor make Allottee bear the brunt of the failure on the part of Promoter to act professionally by assessing the requisite date forpossession.

Even if, force majeure factors as demonstrated by thePromoter are given some consideration, the Promoter is not entitled to get benefit of the same for thereasons that the same are not attributable to the Allottee. Section 18 of RERA spells out the consequences that if promoter fails to complete or is unable to give the possession of apartment by dates specified in the agreement for sale, the allotee holds an unqualified rights to seek refund of the amount with the interest as such rate as may be prescribed in this behalf including compensation in the manner provided under RERA Act.

the principle of res judicata does notapply in this case and therefore the view taken by the Authority byinvoking the principle of res judicata while dismissing the complaintis not as per law and therefore not tenable.

"Accountants are the architects of financial stability, constructing solid foundations for businesses to thrive."

RCM Under Gst - A Master Chart For Popular Categories

CA Harshil Sheth

Abbreviations Guide:

RP – Registered Person
RCM – Reverse Charge Mechanism
RREP - Residential Real Estate Project
URD – Unregistered Dealer
FCM – Forward Charge Mechanism

RCM ON SERVICES

Entry	Nature of Service	Service Provider	RCM to be discharged by
Entry 1	Supply of Services by a goods transport agency (GTA), in respect of transportation of goods by road - EXCEPT when GTA is under Forward Charge	Goods Transport Agency (GTA)	Any Factory, Society, Co. Op. Company or Body Corporate, Partnership Firm, Association of Person, Casual Taxable Person
Entry 2	Legal services	An individual advocate including a senior advocate or firm of advocates	Any business entity other than exempted below
	Note : RCM is exempted to discharge by Any person other than a business entity; or a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year		
Entry 4	Services provided by way of sponsorship	Any person [other than company or body corporate]	Any Company or body corporate or partnership firm
Entry 5AA	Service by way of renting of **residential property for commercial purpose**	Any person (registered or unregistered)	GST registered person

Situation	Landlord	Tenant	RCM / FCM
1	RP/URP	RP	RCM
2	RP	URP	FCM
3	URP	URP	NO GST

Entry 5AB	Service by way of renting of **Commercial property**	Any unregistered person	GST registered person other than Person registered under Composition

Situation	Landlord	Tenant	RCM / FCM
1	RP	RP (incl.Composition)/URP	RCM
2	URP	RP (Other than those in Composition)	FCM
3	URP	URP	NO GST

Entry 6	**Services supplied by a director** to the said company or the body corporate.	A director of a company or a body corporate	Any Company or body corporate
Entry 14	**Security Services**	Any person other than a company or body corporate	GST Registered Person

Note : There is also an exception that the whole entry won't be applicable to Composition person in capacity of Recipient

RCM ON SECURITY SERVICES CHARGES PAID

Situation	Supplier	Recipient	RCM / FCM
1	Body corporate	ANY RP (whether or not under	RCM Not composition) applicable / FCM applies 18%
2	Any person other than Body corporate	ANY RP other than RP who is under composition	RCM applicable 18% RCM Not applicable /
3	Any person other than Body corporate	RP who is under composition	FCM applies 18%
4	RP who is under composition	ANY RP other than RP who is under composition	RCM applicable 18%, Here supplier will discharge 6% on this amount
5	RP who is under composition	RP who is under composition	RCM Not applicable, And supplier will discharge 6%

Entry 15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a company or body corporate	Any person, other than a company or body corporate and who is not under Forward charge	Any Company or Body Corporate

RCM ON GOODS

Entry	Nature of Purchase	Seller	RCM to be discharged by
Entry 8	Purchase of **Metal scrap** as in chapter 72, 73, 74, 75, 76, 77, 78, 79, 80 or 81	Any unregistered person	GST registered person
Entry 1,2,3,4A	Purchase of **Agriculture items** as in chapter 0801 - Cashew nuts, not shelled or peeled 1404 90 10 - Bidi wrapper leaves (tendu) 2401 - Tobacco leaves 5201 - Raw cotton	Agriculturist	GST registered person
Entry 4	Purchase of **Silk yarn** in chapter 5004 to 5006	Any person who manufactures silk yam from raw silk or silkworm cocoons for supply of silk yarn	GST registered person

Entry 3A	Purchase of **Essential oils** as in chapter 3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90 other than those of citrus fruit namely: - (a) Of peppermint (Mentha piperita); (b). of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-menthasylvestries), Bergament oil (ex -mentha citrate), Mentha arvensis	Any unregistered person	GST registered person

RCM FOR BUILDERS

- **Purchase of Inputs / Input services** (Except Salary, electricity, TDR / FSI, Land) (only In case of RREP: 80% must be purchased from Registered person. If not, then RCM @ 18% by next year's June
- **Purchase of Capital Goods** (onlyin case of RREP): Compulsory RCM if purchased from URD AT Respective rate
- **Purchase of Cement :** Compulsory RCM if purchased from URD – 28% - RCM in respective month (Whether or not RREP)

"Numbers don't lie, but they tell an imcomplete sotry."

Presentation of Appeal Before The Income Tax Appellate Tribunal

Adv. Tej Shah

1. The Income Tax Appellate Tribunal (referred to as the tribunal or ITAT) is the final fact-finding authority in direct tax litigation. Being the final fact-finding authority, no further appeal lies once a decision has been rendered. Only in cases where the high court feels that a substantial question of law is involved or the tribunal has passed a very perverse or cryptic order, then shall the high court entertain such an appeal. That is why it is very important to understand the powers of the tribunal and what should be kept in mind while appearing before it.

2. Filing procedureand Grounds of Appeal - S. 253 of the Income tax act, 1961 prescribes orders appealable before the tribunal. For example, an order passed u/s 250 by the CIT(A) or order cancelling registration u/s 12AA etc. This appeal has to be filed within 2 months from the date of receipt of such order by the appellant which can either be the assessee or the income tax department or both. Upon receipt of notice of having filed an appeal, the assessee or the department, as the case may be, may file cross objections against such appeal which will be treated as if it is a separate appeal in itself. The most important aspect of filing appeal/cross objections is stating the Grounds of Appeal. The appellant has to clearly and distinctly mention each and every ground of appeal against which the appellant is aggrieved by. It should not be elaborative but concise and to the point.

For eg. An assessee's case is reopened and addition is made u/s 68 for receipt of unsecured loan of Rs. 1 cr. During assessment proceedings, no opportunity of cross examination of the creditors has been granted to the appellant. This is confirmed in appeal before the CIT(A). Therefore, the assessee will have to raise the following grounds before the ITAT:

a) *That the Ld. CIT(A) erred in law and in the facts of the case in reopening the case of the appellant u/s 147 of the act;*
b) *That the Ld. CIT(A) erred in law and in the facts of the case in making addition of Rs. 1 cr. being unsecured loan received during the year u/s 68 of the act and;*
c) *That the Ld. CIT(A) erred in law and in the facts of the case in not providing an opportunity of cross examination of the parties from whom unsecured loan of Rs. 1 cr. was obtained.*

If any ground which was not taken before the lower authorities, can be filed as an additional ground before the tribunal. In the above example, if Ground (a) challenging reopening was not raised before the CIT(A), then it can be raised as an additional ground for the first time before the tribunal.

3. Limitation in filing an appeal - Pursuant to receipt of the impugned order, if the appeal is not presented in time (as mentioned above), then the appellant has to file a delay condonation application (duly notarised) in order to get the delay condoned. The appellant has to explain beyond reasonable doubt as to the reasons for which the appeal could not be presented in time. Not every day's delay has to be explained but the overall set of events which enables a reasonable person to appreciate that if such events had occurred to him/her, then he/she will be precluded to file an appeal within time.

For Eg. The impugned order is received by the assessee or his local accountant and he is either not aware of further procedure for filing appeal or he forgets to forward it to the Chartered Accountant. Only when notice of demand is enforced, he approaches the C.A. In certain cases, the assessee is either travelling abroad, undergoing a medical treatment or is dealing with serious personal issues. By and large, the tribunal has been liberal in

condoning delays. However, in cases where the appellant has been sitting tight because of negligence or callousness, then delay might not be condoned especially if it is long.

4. Filing evidence - Pursuant to filing appeal, the appellant should file all the evidence in support of grounds raised. This evidence should be in the form of a proper paginated paper book which should indicate what was filed before the lower authorities. The index should be followed by a certificate from either the Authorised Representative or the Appellant that the documents contained in the paper book were filed before the lower authorities or at least before the CIT(A). If the additional evidence is filed for the 1st time before the tribunal, then it has to be mentioned specifically and a separate application for admitting such additional evidence (with reasons) has to be filed.

5. Arguments to be made - Upon filing of appeal, the registry may fix a date for hearing of the appeal. The appellant will open his arguments by first indicating the court as to what is the central issue involved in the appeal. He has to concisely mention how the issue arose and how the authority passing the impugned order erred. So, by giving a glimpse of the matter before hand, it becomes easier for the court to better appreciate the main arguments.
Considering the example mentioned in Para 2, the appellant should start with indicating the additional ground of appeal. Thereafter, he will have to mention the issue before the AO, what were the evidences filed during assessment proceedings and its findings. The same procedure will be carried forward as to what transpired before the appellate authority. Depending on the bench of the tribunal, the appellant will be made to read the relevant portion of the order passed by either authorities.

Once this is done, the appellant will have to refer to the relevant part of the evidence mentioned in the paper book and demonstrate as to how the authority failed to consider or interpret such evidence. This is the most important part of arguments and the appellant will have to be very careful in doing so. He has to thorough himself with the facts and the law governing the issues in question and only then will he be able to convincingly respond to each and every query raised by the court.

Upon being primarily satisfied with the arguments of the appellant, the respondent will make his submissions and distinguish as to how the appellant has failed to establish his case and how the lower authorities have rightly made/upheld the addition or disallowance. If the court is of the view that the respondent too has substance in his submissions as well, it will ask the appellant to give a further rejoinder since it is the appellant's appeal. Once this is done, then the court will treat the matter as “HEARD” and reserve it for further judgment.

6. Orders and Powers of the Tribunal - Upon hearing both the sides, the tribunal will pass such orders thereon as it thinks fit. However, after giving ample opportunities, if either side does not appear, then the tribunal may decide the appeal ex-parte.

S. 254(1) uses the words “pass such orders thereon as it thinks fit”. The word 'thereon' means pertaining to the appeal in question. It means that the jurisdiction of the tribunal extends only to the grounds of appeal (including additional grounds) and cross objections raised before it. It cannot travel beyond that [unlike the CIT(A)] and find a new source of income detrimental to the assessee. Eg. If addition is made u/s 68, and if S. 68 is not applicable since there is no credit in the books of a/cs, then tribunal cannot direct the AO to consider addition u/s 69A of the act or; if the AO has denied depreciation on 2 trucks out of 10 then the tribunal cannot disallow depreciation on the remaining 8 if the department is not in appeal.

The 1st proviso to S. 254(1) states that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee can be made after providing an opportunity of hearing in this regard to the assessee. It means that if an amendment takes place with regard to the issue in appeal, the tribunal can enhance the assessment etc. only with regard to that issue. It certainly cannot find other issues. Also, such an amendment has to be applicable to the year in appeal. If it is not retrospective, then it cannot be made applicable.

Power to Grant Stay - As per the 1st and 2nd provisos to S. 253(2A), the tribunal has the power to stay the operation of demand for a period of 180 days from the date of filing of appeal subject to fulfillment of certain considerations. It can grant further extension but the aggregate shall not extend beyond 365 days and that the reason for extension beyond 180 days is not attributable to the assessee. The tribunal will also decide the appeal of the assessee

Power to allow additional ground - If the appellant has raised additional grounds which were never raised before the lower authorities, then it will remand the matter back to such authority. However, if such ground is technical in nature, then it can decide the matter on the basis of such ground. Eg. If the assessee challenges reopening for the 1st time before the tribunal by way of an additional ground and if it is satisfied that reopening is bad in law, then it can allow the case of the assessee by holding that reopening is bad in law.

Power to consider additional evidenceand Remand - The tribunal is the final fact finding authority. Its power to consider evidence is restricted only to the ones which were placed and examined by the lower authorities. However, in certain cases, additional evidence is produced before the tribunal. This can be in 2 forms. The first nature of evidence is that which was never produced before the lower authorities and the other is such which is over and above produced for the 1st time before the tribunal. In the former case, the tribunal will remand the case to the respective authority (i.e. the AO or the CIT) since such evidence was never examined by it. In the latter, the tribunal will apply its discretion whether to remand it back or not. If the additional evidence is so grave that it requires detailed examination, then the tribunal will remand it back otherwise it will consider such evidence and pass appropriate orders. Eg. In a case of addition u/s 68 for unsecured loans, if the additional evidence in the form of repayment of loan is produced for the 1st time and other evidence like confirmation, bank statement etc. was produced before the lower authorities, then the tribunal can decide the matter without remanding it back.

Power of rectification - S. 254(2) enables the tribunal to rectify its own order in cases of any mistake apparent on record. An application in this regard has to be filed either by the assessee or the AO within a period of 6 months from the date of receipt of the ITAT's order to be rectified.

Error apparent on record is neither defined nor any guidelines laid down. But it means an error which is so apparent that would affect the findings of the tribunal. It refers to an inadvertent error made in the application of existing facts and law, where something unintended has occurred. Eg. not adjudicating a particular ground of appeal which was raised or argued, not following its own order for earlier years or not following a jurisdictional high court or co-ordinate bench's judgment. In a given case, if an assessee produces cash book to prove opening cash balance and still if the tribunal without considering in its true sense, makes addition for the entire cash deposits without considering opening cash balance, then such an order can be a subject matter of rectification.

However, a line needs to be drawn between rectification and review. If a judgment is rendered taking all facts and legal proposition into consideration and thereafter if a conscious decision is taken, that cannot be a subject matter of rectification as it amounts to review.

Conclusion:

Since the tribunal is the final fact finding authority, one must be well prepared on facts as well as on law. Once this foundation is clear and there is absolute clarity on how to proceed, it is a cake walk. Although, it should be kept in mind that initial failure should not deter oneself and only with experience and learning through mistakes, the art of appearing before the tribunal can be perfected.

"We don't run after what we need;
we run after what we think we need."

GST amnesty Scheme or Interest and Penalty Waiver

CA Tarang Kothari
B.Com./FCA/DIRN/DISA

Background

The Goods and Services Tax (GST), hailed as a landmark reform in India's indirect tax system, has witnessed its share of challenges since its inception. While its goal was to unify the country's market and streamline tax compliance, several issues have surfaced over time. Among these are delays in establishing the GST Tribunal, technical glitches in the GST Network, and the mounting backlog of notices faced by taxpayers. Compounding these challenges during the 53rd GST Council Meeting, the Council proposed the introduction of Section 128A in the CGST Act to provide for a one-time waiver scheme aimed at addressing issues related to demands raised under Section 73 for certain tax periods. This scheme will enable taxpayers to avail relief in terms of waiver of interest, penalty, or both, under specified conditions.

This scheme raises an essential question: Is it a genuine amnesty for taxpayers or merely a tactical waiver to address administrative bottle necks? The implications of this scheme, both for the government and the taxpayer community, merit a thorough examination. This article explores these dimensions, analyzing whether the waiver aligns with the broader objectives of GST and its compliance framework.

Relevant Notification /amendment and Circulars u/s 128A of the CGST Act,2017

1) Section 128A has been inserted vide Finance(No. 2) Act,2024
2) Notification 21/2024-CT dtd. 08/11/ 2024 – Date of applicability of Section 128A(1) applicable from 01 /11/2024 and last date for payment 31/03/2025
3) Notification 20/2024-CT dtd. 08/11/2024 - Insertion of Rule 164 – Procedure and conditions for closure of proceedings under section 128A in respect of demands u/s 73 of CGST Act
4) Advisory dated 08.11.2024 : Advisory for Waiver scheme under section 128A
5) Instruction no 02/2025- GST DTD 07/02/2025 - Procedure to be followed in department appeal filed against interest and/or penalty only, related to Section 128A of the CGST Act, 2017-

The application u/s 128A for waiver of interest and penalty is to be done in accordance with the provisions of the act and rules prescribed on or before 31stMarch ,2025

Category	Details
Criteria for Waivers	Notices/orders under sections 73, 107, or 108. Full payment of tax must be made by the notified date to avoid interest or penalties.
Period Covered	Financial year 2017-18 ,2018-19 and 2019- 20
Exclusion	Cases involving erroneous refunds.
	Cases with pending appeals or petitions not withdrawn by the notified date.
Additional Provisions	No refund for interest or penalties already paid. Appeals post-conclusion of waiver proceedings are not permitted. Need to Withdraw appeal filed with against the order before Appellant Authority, Tribunal (not yet functioning), High court .

From to be filed for availing benefit of section 128A , Procedure and forms prescribed in Rule 164 of the CGST Rules as tabulated below:

Form	Purpose	Details Required
FORM GST SPL-01	Application for waiver under Section 128A(1)(a). This case is not applicable to any tax payer as the time to issue order u/s 73 is already over for FY up to 2019-20	- Details of notice or statement issued. - Payments made via FORM GST DRC-03.
FORM GST SPL-02	Application for waiver under Section 128A(1)(b) or (c). To avail benefit upto 2019-20 , SPL-02 is required to be filed as DRC -07 issued up to FY 2019-20 and the tax payer is in appeal , revision or in process of filing appeal, order received from Appellate authority	- Details of the order issued. - Payments credited of tax amount to the Electronic Liability Register or transferred via FORM GST DRC-03A. - Details of payments made for tax liability under Section 128A in DRC -03.

FORM GST SPL-03	Notice of rejection of waiver application.	- Issued by the proper officer within three months if the applicant is deemed ineligible. - Principle of Natural Justice is to be followed , Personal hearing is required before order of Rejection.
FORM GST SPL-04	Response to rejection notice in FORM GST SPL-03.	- Applicant ₹ response to justify eligibility for the waiver within One month of issuance .
FORM GST SPL-05	Approval order for waiver application. Issuance of Order and Automatic Approval if No Order Issued	If the officer fails to issue an order within the prescribed time, the application is deemed approved, and the proceedings are considered concluded
FORM GST SPL-06	Waiver approval order	- if appeal against rejection of benefit is accepted by Appellate Authority.
FORM GST SPL-07	Rejection order for waiver application by appellate Authority.	- Issued if the application is not accepted, stating reasons for rejection. If the rejection is confirmed, the original appeal is restored. If the taxpayer does not make any additional tax payments required under Section 128A within the specified time.

Documents Required along with Application in APL 01 /APL 02 :

- ◆ Evidence of withdrawal of Appeal from Appellate Authority /writ petition form any court
- ◆ If withdrawal order is not received till date of application- documents filed for withdrawal
- ◆ Upload withdrawal order within One month post receipt from concern authorities.

If the taxpayer does not make any additional tax payments required under Section 128A within the specified time, the waiver granted under FORM GST SPL-05 or SPL-06 becomes void . Payment u/s 128A is required to be made within 3 months , else the entire liability will be crystalised and no further appeal can be allowed against such order.

Scope of Sections 128A is limited to waive interest u/s 50 of CGST act and Penalties under the Act with mandatory condition that the notice is under section 73 of the act (Non Fraud Cases) and full amount tax paid up to 31st March ,2025 and unconditional withdrawal of appeal is required.

To avail of the benefit under Section 128A, if a taxpayer receives an order with multiple points and accepts certain points in the order while disputing other points , the benefit of the scheme can not availed. This is because the full tax amount, as stated in the notice or order is pre- condition for application in SPL -1 or SPL -02(following exception available for 16(5) and 16(6))

◆ Therefore, the scheme is conditional and does not provide an absolute waiver of interest and penalties to the taxpayer.Budget 2024 has introduced new Section 16(5) and 16(6) intending to regularize the Input Tax Credit taken after the limitation period as prescribed in Section 16(4) of the CGST Act, 2017. If taxpayer is intended to take benefit of 128A section and order contains ITC which is claimed after limitation period over and with the insertion of 16(5) and 16(6) Taxpayer is entitled to avail benefit of interest and penalty waiver u/s 128A without payment of ITC disallowed in the notice /order (notification 20/2024- CT) .

To provide benefit to the taxpayer and Reduce litigations CBIC has issued instruction no 02/2025 on 7th February, 2025 - if department has gone in Appeal on the basis of wrong arithmetic calculation of interest, or where penalty is either not imposed or imposed less than the prescribed threshold etc. ,Benefit of 128A waiver should not be denied on such technicalities .The officer may withdraw such appeal filed by department if he is satisfied and taxpayer has paid the tax due.

Conclusion :

The introduction of Section 128A and Rule 164 brings advantages for both taxpayers and the Government. For taxpayers, it presents a chance to benefit from the waiver of interest or penalties, enabling them to carefully consider the likelihood of appeal success before deciding whether to take advantage of this opportunity.

For the Government, the scheme is equally valuable. It aids in recovering outstanding dues and reduces the backlog of pending cases. This process not only helps resolve disputes more quickly but also minimizes future conflicts and encourages the settlement of long-due cases, promoting better tax compliance and efficient administration.

“The scheme under Section 128A provides a conditional relief mechanism, primarily aiding taxpayers who fully accept orders while disputing only interest and penalties. It facilitates administrative efficiency and backlog reduction but does not constitute a pure amnesty due to its limited scope.”

Recording of Statement during Income Tax Survey: Existing Income Tax Law Vs. The Income Tax Bill, 2025

CA Mitish S. Modi

The prevailing Income Tax Act, 1961 provides for the different types of survey u/s 133A of the Act. Broadly, the income tax survey may be door to door survey of business or professional premises (general survey conducted by income tax authorities within the area of jurisdiction) or survey of premises where the business or profession regularly carried out or survey at the place of marriage or other functions or events or survey for verification of transactions falls within the TDS provisions.

Beside the other provisions regarding income tax survey, the provisions of Section 133A(3)(iii) of the prevailing Income Tax Act, 1961 provides that an income tax authority acting under this section may record the statement of any person which may be useful for, or relevant to, any proceeding under this Act. Thus, as per the existing income tax law, the income tax authorities empowered to conduct the survey u/s 133A of the Act may record the statement of any person which may be useful for or relevant to any proceedings under this Act, but the income tax authorities are not empowered to record the statement on oath. As per the existing provisions relating to survey under the income tax law, if the statement on oath of any person recorded during income tax survey has no evidentiary value, as settled bythe Hon'ble Supreme Court in the case of CIT Vs. S. Khader Khan Son (2013) 352 ITR 480 (SC), while affirming the view of Hon'ble High Court of Madras reported in (2008) 300 ITR 157 (Madras).To be more precise, no income tax authority is empowered u/s 133A to administer oath and take a sworn statement of any person during the course of income tax survey.

Unlike Section 132(4) of the I.T. Act, 1961 categorically provides to treat the statement recorded u/s 132(4) of the Act as "evidence in any proceedings under the Indian Income Tax Act, 1922 or under this Act", the provisions of Section 133A of the Act to allow the income tax authorities to record the statement of any person during income tax survey, but does not give any power to the income tax authorities to record statement on oath and thus, the statement recorded in income tax survey does not carry the same weightage as evidentiary value neither it can be termed as statement within the meaning and ambit of "evidence" in the eyes of law. The Hon'ble High Court of Kerala had an occasion to make distinction between the statement recorded u/s 132(4) as against that of recorded u/s 133A of the Act in the case of Paul Mathews and Sons Vs. CIT (2003) 263 ITR 101 (Kerala). To elaborate, under the existing provisions relating to income tax survey u/s 133A of the Act, even after recording the statement u/s 133A(3)(iii) of the Act, the assessee's right is open to explain the statement recorded u/s 133A(3)(iii) of the Act and the Assessing Officer is duty bound to appreciate the explanations substantiated with the materials, etc. before concluding the assessment.

The Hon'ble Finance Minister Ms. Nirmala Sitharaman, in her interim budget speech in July 2024 stated that the purpose of the comprehensive review of the Income Tax Act, 1961 is to make the Act "concise, lucid, easy to read and understand". While presenting Budget on 1st February, 2025, the Hon'ble Finance Minister said that "I also propose to introduce the new income-tax bill next week." Para 134 of the Budget Speech is reproduced herein below:

134. In Part A, I have briefly underlined Taxation Reforms as one of key reforms to realize our vision of Viksit Bharat. In respect of criminal law, Our Government had earlier ushered in Bharatiya Nyaya Sanhita replacing Bharatiya Danda Sanhita. I am happy to inform this August House and the country that the new income-tax bill will carry forward the same spirit of "Nyaya". The new bill will be clear and direct in text with close to half of the present law, in terms of both chapters and words. It will be simple to understand for taxpayers and tax administration, leading to tax certainty and reduced litigation.(emphasis provided)

The new Income Tax Bill, 2025 is recently introduced in Parliament on February 13, 2025, to replace the Income Tax Act, 1961, with the aims to simplify tax provisions for both taxpayers and tax administrators, fostering tax certainty and reducing litigation. The new Income Tax Bill, 2025 contains

536 Sections, 23 Chapters and 16 Schedules keeping with it the essence of the Income Tax Act, 1961. The new Income Tax Bill, 2025 will be applicable from 1st April, 2026 i.e. for the period 01-04-2026 to 31-03-2027 and onwards.

The Chapter-XIV, Part B- Powers of the Income Tax Bill, 2025 containsinter alia the powers of survey u/s 253. Notably, Clause (b) of Sub Section (5) of Section 253 of New Bill provides as under:

(5) An income-tax authority acting under this section may–

(a) .....

(b) record the statement of any person on oath which may be useful for, or relevant to, any proceeding under this Act;

(c) .....

(d) .....

On close reading of provisions of Section 253(5)(b) of new Income Tax Bill, it would be very much clear that under the new Income Tax Bill, the income tax authority's powers are magnified as relatively under the existing provisions of Section 133A of the Act.

In other words, when the new Income Tax Bill empowers the income tax authorities to record the statement on oath of any person during income tax survey, the statement so recorded on oath has evidentiary value in the eyes of law. The taxpayer covered under the income tax survey muchless, after the implementation of the new Income Tax Bill, has to take care of recording his statement on oath since it is now going to be equated with the statement on oath recorded under the search and seizure action. With the introduction of provisions of Section 253(5)(b) of new Income Tax Bill, the law settled by the Apex Court in Khader Khan's case (supra) is going to be nullified. Not only that, in the coming days, after introduction and implementation of the new Income Tax Bill, 2025, we have also to see the significance of CBDT's Instruction F.No. 286/2/2003-IT (INV. II) dtd. 10–03–2003 and fresh Instruction vide F.No. 286/98/2013-IT (INV. II) dtd. 18–12–2014.

Looking to the Section 253(5)(b) of new Income Tax Bill, the concept and objective of survey by the income tax authorities is seems to be missed. The powers of income tax authorities conducting survey cannot be equated with the powers of authorized officers conducting the income tax search. The prime object of survey is to bring within the tax net persons who have not come forward for filing of the income tax returns, for paying taxes if any, and also to collect information about the assessees and hence, the object of survey and the powers given to the income tax authorities to conduct the survey is not as draconian like powers of search and seizure. While introducing the magnified powers of the income tax authorities to record the statement on oath in income tax survey may prove to defeat the aims of the Government of India to make the Income Tax Law and its administration by the income tax authorities as taxpayers-friendly and muchless, against the object of tax certainty and reduced litigation.

In my opinion, effective and timely representation to the select committee formed by the Government to examine the Income Tax Bill, 2025 from the various trade and industry associations is very much needed.

"It's going to be hard, but hard does not mean impossible."

"Facts only Matters, Rest all is Chatter"

Throwback on "Facts & Relevancy of Facts" in Tax Litigations vis a vis BSA, 2023. (BhartiyaSakshya Adhiniyam,2023)

CA Sunnay Jariwala

Background : Once a law student narrated a true tale of a practicing doctor in the late 1980, who was caught red-handedwith possession of and also for producing illegal drugs in his laboratory. A case was booked with the doctor for manufacturing and doing the illicit trade of this banned drug under the relevant Narcotics Act. Moreover a search had taken place at his premises and drugs to the tune of Rs.5 Lakhs worth (in 1980's) were found and destroyed by the authority. The doctor in his ITR had claimed this loss as business loss as he had shown trading income from this activity and this stock (of banned drugs) was destroyed. The matter went to the Tribunal where it was held that this would be allowed as Business Loss.It was a finding of fact by the Tribunal in its order dated 31.3.1993 is that the assessee was engaged in manufacture and selling of heroine (drug). Once the Income Tax authorities records such a finding of fact, it follows that any loss from such a business is a business loss. The High Court further denied this claim and gave the adverse orders stating other reasons and taking grounds of morality and other aspects.Finally, the Apex Court upheld the order of the Tribunal and writ stands in favor of the taxpayer.(Ref. Case Law - Dr. T. A. Quereshi, SC Order dt-06/12/2006)

Conclusion : As seen from the above,matter of facts in question is important and not the trade or illegal activity or the morality of the same in which the appellant was engaged.

Wherein tax litigations are concerned "Facts Only Matters, rest all is Chatter".

Law is made and written in a language which has words. So to give the true meaning and interpretation of the same, the meaning enacted or the intention of the law maker has to be seen. Hence,there are various rules of interpretation and aids to interpretation to bring out the real effective meaning of the Law and to decipher the same so as to be helpful for a layman to understand or adhere to the rules. Law works in tandem (Refer Definition of word "Relevant" below). Facts are important but needs to be seen together with all other relevant aspects pertaining to the case and matter.

- **Types of Law :**
  - (a) Substantive Law - Defines and determines the rights and obligations of the citizen to be protected by law.
  - (b) Procedural Law – It outlines on how to enforce these rights. It deals with the enforcement of Law that is guided and regulated by the practice, procedure and machinery.

    Adjective Law : Subset under Procedural Law the portion of the law that defines the pleadings and methodology by which above 2 mentioned laws are governed. The erstwhile Indian Evidence Act,1872 and now BSA,2023 falls under this Adjective Law.

Let's look at some of the important aspects related to "FACTS" from the BhartiyaSakshya Adhiniyam,2023 (BSA,2023) w.e.from 01/07/24.

Sec 2(1) Defines,

(f) "fact" means and includes :

(i) any thing, state of things, or relation of things, capable of being
perceived by the senses;

(ii) any mental condition of which any person is conscious.

(g) "facts in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceeding, necessarily follows.**Explanation:** When a court records a specific issue of fact in a case, the fact being asserted or denied is considered a "fact in issue."

(i) "not proved".—A fact is said to be not proved when it is neither proved nor disproved;

(k) "relevant".—A fact is said to be relevant to another when it is connected

with the other in any of the ways referred to in the provisions of this Adhiniyam relating to the relevancy of facts;

Sec 104, Burden Of Proof : Whoever desires any Court to give judgment as to any legal right or liabilitydependent on the existence of facts which he asserts must prove that those facts exist, andwhen a person is bound to prove the existence of any fact, it is said that the burden of prooflies on that person.

❖ **Applicability in Tax Matters :-**

- Case Law : Chuharmal S/O TakarmalMohnanivs Commissioner Of Income-Tax, M.P., ... on 2 May, 1988 by

Supreme Court of India. In this judgement the Apex Court had concluded that laws of Evidence Act have an equal binding at times in taxation matters also.

❖ **Points to be kept in mind while Replying to GST Notices/SCN :-**

- As per Sec 160(2) of CGST Act,2017, the first reply or response to the notice the merits of the notice or jurisdiction can be questioned. Once, it is not questioned in the first reply than the same cannot be raised during the further proceedings.
- It is required to reject and dispute the allegations raised in the notice as per the merits of the case.
- Undisputed Facts do not require proof and hence the onus to prove the same at later stage shifts from Revenue to the tax payer.As per Sec 104, BSA Act 2023, the person making the assertion must prove it. Hence, it is important to note that the burden of proof is not shifted to taxpayer.
- **Proof Needed for Undisputed Facts:** If a fact is not challenged, no proof is required.
- **Facts as Foundation:** Facts form the basis of any claim or statement made by either party.
- Allegations supported by strong, unquestionable evidence become facts.
- Allegations that are not disputed are automatically accepted as facts.
- GST Law being a self assessment basis, hence except for ITC, for all other aspects the burden of proof is on the Revenue. When, proper facts or additional evidences/records are submitted without alleging and disputing the points raised in the notice, then the same becomes deemed acceptance.
- No Burden on Taxpayer for Omission: If the details of GSTR-3B filing are in time, clear and undisputed on the Common Portal, the taxpayer is not required to explain the interpretation of Section 16(4).
- Undisputed Information: Once the filing details are evident and uncontested, the taxpayer doesn't need to provide further explanation.
- Both Interpretations Can Be Incorrect: The interpretation by the taxpayer and the one by the Revenue may both be wrong.
- Purpose of the Notice: The notice issued is not for adjudicating the right interpretation, but to test the alternate interpretation presented by the Revenue.
- Role of Adjudicating Forums:
- Adjudicating or appellate forums may not choose between the taxpayer's or Revenue's interpretation.
- They only determine if the interpretation presented by the Revenue is legally and factually sustainable.
- Over enthusiasm and giving up additional reconciliations and records may prove more fatal than helpful at times in adjudication proceedings. So, care should be taken and what to submit, what not and when and where to take a stand for the tax payer. After all, it is not the fastest driver winning the race but the driver who drives carefully in the right direction and with the End Result in Mind.
- GST Proceedings will eventually end up.But, at which stage is an important matter of fact. For the same, the litigation strategy needs to be drafted before the Baby is Born (Notice is issued/replied).

Conclusion : As seen from the above, facts hold an important aspect in any legal matter not only taxation matters. It is of paramount importance to identify the facts of the case and strategise to put on records in the due course of adjudication, appeals etc. At the later stages of Tribunal/GSTAT being the last fact finding authority ,facts of the case matters. The splendid example of the Doctor case supra highlights the same.

So, one again the Maxim in Tax Matters – “Facts only Matter….”.

“The only limit to our realization of tomorrow is our doubts of today”

Navigating Change: Strategic Imperatives for Chartered Accountants

CA Pooja Thakkar

Introduction

In an era defined by rapid technological advancements and volatile economic landscapes, the role of Chartered Accountants (CAs) transcends traditional financial stewardship to encompass that of strategic change agents. As organizations strive to remain competitive, managing change effectively is crucial. This article explores strategic imperatives for CAs to adeptly navigate change, fostering organizational resilience and growth through a comprehensive, multidisciplinary approach.

The Changing Paradigm

Change management is a complex, multidimensional process that encompasses strategic vision, operational shifts, and human capital realignment. For CAs, this is not just a necessity, but an opportunity to evolve into change leaders. Equipped with analytical prowess, strategic foresight, and a keen awareness of stakeholder engagement, the modern CA can lead the way in navigating change.

Strategic Imperatives in Change Management

1.Visionary Leadership

Effective change management begins with visionary leadership. CAs must cultivate a strategic vision that aligns change initiatives with long-term organizational goals. This involves not only financial acumen but also the ability to anticipate market trends, regulatory shifts, and technological disruptions. A well-articulated vision serves as a guiding beacon, steering the organization through the complexities of change.

2. Comprehensive Risk Assessment

The essence of change management lies in mitigating risks while capitalizing on opportunities. CAs should employ a comprehensive approach to risk assessment, encompassing financial, operational, strategic, and reputational dimensions. Advanced data analytics and scenario planning can provide actionable insights, enabling CAs to develop robust contingency plans. This strategic foresight ensures that the organization remains agile and resilient in the face of uncertainty.

3. Stakeholder Alignment and Engagement

Successful change initiatives hinge on stakeholder alignment. CAs must proactively engage with diverse stakeholders, including employees, customers, investors, and regulators. Transparent communication and inclusive decision-making processes foster trust and buy-in. By aligning stakeholder interests with organizational objectives, CAs can facilitate smoother transitions and minimize resistance to change.

4. Cultural Transformation

Organizational culture plays a pivotal role in the success of change initiatives. CAs should collaborate with human resource professionals to assess the existing culture and identify areas for transformation. Promoting a culture of innovation, adaptability, and continuous learning is essential. This involves recognizing and rewarding behaviors that align with the desired cultural attributes, thereby embedding change into the organizational DNA.

5. Technological Integration

In the digital age, technological integration is a cornerstone of change management. CAs must champion the adoption of cutting-edge technologies that enhance efficiency, accuracy, and decision-making. This includes leveraging artificial intelligence, blockchain, and cloud computing to streamline financial processes and drive strategic initiatives. Technological prowess not only optimizes operations but also positions the organization at the forefront of industry evolution.

6.Continuous Improvement and Learning

Change management is an iterative process, necessitating a commitment to continuous improvement and learning. CAs should establish mechanisms for monitoring and evaluating the impact of change initiatives. Key performance indicators (KPIs) and feedback loops enable the organization to learn from its experiences and refine its strategies. This iterative approach fosters a culture of excellence and ensures sustained competitive advantage.

Detailed Steps for Implementation

1. Diagnostic Phase

o Assessment of Current State : Conduct a thorough analysis of the current organizational structure, processes, and culture. Utilize SWOT analysis to identify strengths, weaknesses, opportunities, and threats.

o Stakeholder Mapping : Identify all stakeholders and assess their influence and interest in the change process. Develop a stakeholder engagement plan to ensure their concerns are addressed.

2 Design Phase

o Vision and Strategy Development : Collaborate with leadership to define a clear vision for the change initiative. Develop a strategic plan that outlines objectives, timelines, and resource requirements.

o Risk Management Plan : Conduct a comprehensive risk assessment to identify potential obstacles. Develop mitigation strategies and contingency plans to address these risks.

3. Execution Phase

o Communication Strategy : Implement a communication plan that ensures transparency and clarity. Utilize multiple channels (e.g., town hall meetings, newsletters, and digital platforms) to disseminate information and gather feedback.

o Training and Development : Design and implement training programs to equip employees with the skills and knowledge needed to adapt to the change. Provide continuous support through coaching and mentoring.

1. Sustainability Phase

o Monitoring and Evaluation : Establish metrics and KPIs to track the progress of the change initiative. Conduct regular reviews and adjust strategies as necessary to ensure objectives are met.

o Embedding Change : Foster a culture of continuous improvement by encouraging innovation and rewarding adaptable behaviors. Ensure that change becomes an integral part of the organizational ethos.

Case Study: Strategic Change Management in Practice

Consider the case of a multinational conglomerate undergoing digital transformation. The CA leading the initiative recognized the need for a comprehensive strategy encompassing technological adoption, process reengineering, and cultural shift. By leveraging data analytics, the CA conducted a thorough risk assessment and developed a phased implementation plan. Engaging with key stakeholders through workshops and communication campaigns, the CA ensured alignment and buy-in. The result was a seamless transition to a digital-first operating model, yielding enhanced efficiency, reduced costs, and increased market responsiveness.

Conclusion

The role of Chartered Accountants in change management is both strategic and transformative. By embodying visionary leadership, conducting comprehensive risk assessments, aligning stakeholders, fostering cultural transformation, integrating technology, and committing to continuous improvement, CAs can navigate the complexities of change with finesse. These strategic imperatives empower CAs to drive sustainable growth and resilience in an ever-evolving business landscape.

"If you get Tired, Learn to rest not to Quit"

Valuation Pitfalls in Tax Refunds for Exports with Payment of IGST: The FOB or CIF Conundrum

CA Amin Alwani

India's export landscape is evolving with significant potential across sectors. India has achieved significant progress by expanding its global footprint. On the Tax front, Exports have always enjoyed a preferential treatment under the principle "Only the Goods be Exported and not the Taxes." However, there are still a lot of ambiguities surrounding the legal provisions governing export and their implementation by departmental authorities. As a result, the exporters are facing issues on two fronts, on the tax payment and while seeking refunds. The underlying principle is that tax paid on exports should be refunded in full. Let's delve into the intricacies of GST refund for exports with payment of tax.

Before examining the refund mechanism, let's understand the provisions relating to levy and valuation under GST Law in relation to exports:

Section 16 of the IGST Act, 2017, provides two options for the export of goods or services:

1. Exports with payment of IGST (except for specified categories); and

2. Exports without payment of IGST.

The primary issue revolves around determination of the value on which IGST should be paid for the goods exported. The values in Export and Import transactions depends on the commercial agreement which are based on INCOTERMS. Some of the known terminologies as per INCOTERMS are Ex-works, FOB, CIF, C&F, etc. Such disclosure of freight, insurance and other expenses separately also depends on the determination of prices and agreements between the parties to the contract.

While we refer the provisions of GST Law, there are no specific valuation provisions in relation to Export of Goods and hence, provisions of Section 15 of the CGST Act should apply on the Export transactions as well. As per Section 15, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

This means, IGST in case of Exports with tax method has to be paid on the value agreed upon which can be Ex-works, FOB, CIF, etc. Reconciling this with the disclosure mechanism in the shipping bill, the CBIC has issued an advisory clarifying that in cases where the arrangement in the Export transaction are CIF / C&F, the item level values in Shipping Bills are also required to be mentioned at CIF / C & F. The system will auto calculate the item level FOB, considering the actual values of Freight, insurance or any other component specified while filing of Shipping Bill.

The various values mentioned in the shipping bill, including FOB, align with INCOTERMS and customs laws for identifying and calculating export incentives. While the shipping bill allows mentioning IGST value, the value should be the transaction value (at par with the sales value as specified in commercial invoice) per Section 15 of the CGST Act.

Now based on the rationale underlined in the GST Law, Exporter should get refund of the IGST as declared in Shipping Bill and also deposited in GST Returns. However, the industry faces issues where refunds for exports with payment of IGST are restricted to the GST portion on FOB value. Thus, one may have paid higher IGST based on transaction value, but the refund is limited to the FOB portion.

Analysing the issue further, attention is drawn on the provisions of Rule 89 of the CGST Rules, which deals with Application for refund of tax, interest, penalty, fees or any other amount. The explanation to Sub-rule 4 provides that for the purpose of this rule the value of goods exported out of India shall be taken as FOB value as declared in Shipping Bill. Conversely, Rule 96 of the CGST Rules which deals with the Refund of integrated tax paid on goods or services exported out of India, provides that the shipping bill filed by an exporter of goods shall be deemed to be an application for refund of IGST paid on the goods exported.

Comparing Rule 89 and Rule 96, since the shipping bill is considered as an application for a refund, provisions of Rule 89, which deals with the Application of refund concerning with the cases other than those covered in Rule 96, should not apply. Therefore, the valuation of Export determined as per Rule 89 should not apply in case of Rule 96. The IGST paid on transaction values should be considered as the entitle value of refund for exports.

Multiple judicial decisions consider Rule 96 of the CGST Rules the basis for claiming refunds for goods exported with payment of tax. In one such case, the Madras High Court (2019-VIL-563-MAD) emphasized that Rule 96 of the CGST Rules provides a deeming fiction. The shipping bill filed by the exporter of goods is deemed to be an application for a refund of the integrated tax paid on the goods exported out of India. Thus, Section 54 should be read with Rule 96 of the Rules.

Thus, the legal provisions and proceeding makes it clear that the refund amount in case of export with payment of tax is equivalent to the GST discharged in Shipping Bill and hence, if such GST is discharged on Transaction Value, refund should not be restricted only to the extent of IGST on FOB Value.

Author's Comments:

Though the provision in respect of taxes on export and refund thereof seems to be quite simple and much clear especially in case of exports with payment of tax, it carries a lot of anomalies as the authorities consider conjoint reading of Rule 89 and Rule 96 for the purpose of value of refund.

In recent news, one of the pharma companies has announced that they have received a demand order on account of export refund claimed on CIF value instead of FOB value (though it is unclear whether the transaction involved payment of IGST). The company intends to file an appeal against the confirmed demand.

"Keep your face always toward the sunshine and shadows will fall behind you"

"Pro-active Update/s: Avoid Penalties and Interest with Early Compliance!"

CA Monika Thakkar

To avoid the Interest and Penalties, one has to comply with the Law and Regulation in time :

As we are moving from FY 2024-25 to FY 2025-26, Here are some crucial check points to be consider from Perspective of GST:

1. Submission of LUT (Letter of Undertaking)& Compliance with Rule 96A of CGST Act :

Any Registered Person under GST Act - who supplies Goods or Services outside India or supplies to Special Economic Zones (SEZs), (i.e. involved in zero rated supplies) without paying IGST (integrated GST), has to file LUT (Letter of Undertaking) in FORM RFD – 11 by 31/03/2025.

a. In the case of exporting Goods or Services; under bond or LUT (letter of Undertaking), registered person must comply with the below mentioned conditions, otherwise; such supply will be treated as domestic supply.

- **For Export of Goods:** The Export shall be done within 3 months from the date of issue of the invoice for Export.
- **For Export of Services**: For export of services, payment of such services shall be received in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India within one year from the date of issue of the invoice for export.
- **Recommendation:** Conditions should be reviewed on invoice basis regularly; to avoid any mis-compliance. As end of Financial Year has been approaching, Registered person should revisit and ensure that there are no defaults in compliance.

b. Remittance from Exports:

Ensure that any inward remittance from Export of Goods/ Services would comply with FEMA Regulations to avoid any reversals of refund.

2. RCM on Rentals forResidential and Commercial Property:

- Rentals for residential properties are exempt from GST unless the property usage is other than residential.

The below table summarizes levy of GST on renting of residential property in various scenarios:

Usage	Supplier (Landlord)	Recipient (Tenant)	Taxability
Residential Usage	Registered	Registered	RCM*
Residential Usage	Registered	Unregistered	Exempt
Residential Usage	Unregistered	Unregistered	Not in GST purview
Residential Usage	Unregistered	Registered	RCM*
Commercial Usage	Registered	Registered	RCM
Commercial Usage	Registered	Unregistered	FCM
Commercial Usage	Unregistered	Unregistered	Not in GST purview
Commercial Usage	Unregistered	Registered	RCM

** Note: If an individual takes it for its own purpose on his own account and not for the furtherance of the business(who is proprietor) it will not be covered by the RCM provision.*

- Rentals for Commercial properties are subject to provision of GST; RCM is applicable on rented commercial properties; whereLandlord is unregistered person andtenant is registered persons.

The below table summarizes levy of GST on renting of commercial property in various scenarios:

Usage	Supplier (Landlord)	Recipient (Tenant)	Taxability
Residential/Commercial (any usage)	Registered	Registered (Including Composition)	FCM
Residential/ Commercial (any usage)	Unregistered	Registered (Other Than Composition)	RCM
Residential/Commercial (any usage)	Registered	Unregistered	FCM
Residential/ Commercial (any usage)	Unregistered	Unregistered	Not in GST purview

** FCM: Forward charge mechanism,RCM: Reverse charge mechanism*

3. Opting for Composition Scheme:

Eligible businesses (having T/o below Rs. 1.5 crore / below Rs. 75 lacs (for selected states), to avail the benefit of Composition Scheme for FY 2025-26, shall file an intimation in FORM GST CMP-02, on the common portal, prior to the commencement of the financial year i.e. on or before 31st March 2025; for which the option has been exercised.

Additionally,it shall furnish the statement in FORM GST ITC-03, within a period of sixty days from the commencement of the relevant financial year i.e. by 30th May 2025.

This may impact the decision related to GST

Note:

1. Registered Person who has already opted for Composition scheme needs to file their Annual Return in Form GSTR 4 before 30th April 2025 for FY 2024-25.

2. Subject to the Provision of Composition Scheme, Registered Person, whohas Non- eligibility of ITC business such as Restaurant Business; should make a practical choice:

a. Whether to opt for Composition scheme (without bearing an additional burden of RCM on Rental of Commercial property),

or

b. To continue to collect GST under regular Scheme and pay the RCM on Rental of Commercial Property without availing ITC of the same.

4.Quarterly Return Monthly Payment (QRMP) Scheme Selection:

Registered Person having an aggregate turnover up to Rs. 5 crores can opt into or out of the QRMP scheme, which allows for quarterly return filing with monthly tax payments.

To opt in / out option for FY 2025-26 should be complied by April 30, 2025.

5. Adopting new series of Invoice:

As new Financial Year is approaching it is advisable to adopt a new invoice numbering / series for each and every transactions/ credit notes/ debit note / Bill of supply (exempt supplies) for systematic record-keeping and to maintain compliance with Rule 46(b) of CGST Rules; for avoiding mismatches in records.

6. Declaration from Goods Transport Agencies (GTA):

For FY 2025-26, collect declarations from GTA that opt to pay GST under the forward charge mechanism. This documentation is crucial to justify the non-payment of GST under RCM.

7. Reassessment of Aggregate Turnover:

Registered Person should re-assess their aggregate turnover for FY 2024-25 to determine the applicable compliance requirements for FY 2025-26.

This may impact the decision related to GST registration and eligibility for the various measures, including the Composition Scheme, the QRMP scheme, e-invoicing mandates, and adherence to Rule 86B of the CGST Rules concerning 1% cash payment.

8. Check Applicability of E-Invoice:

Entity is mandatorily liable to generate an E-invoice from April 1, 2025, for businesses with Aggregate turnover exceeding Rs. 5 crores in any financial year from FY 2017-18 to FY 2024-25.

Note: Taxpayers having an Aggregate Turnover of Rs. 10 Crores or more will not be allowed to generate E-invoices older than 30 days from the date of invoicew.e.f 01-04-2025.

9. Reconciliation of Outward Supplies:

Reconciliation of supplies reported along with taxes; in FORM GSTR 1, GSTR 3B and Books of accounts shall be done.

In case of any Correction/Amendment can be made in GST returns of March 25; such as below: – Interchange of the SGST /CGST paid as IGST and vice versa, POS wrongly reported, GSTIN wrongly mentioned for any other party, Value wrongly punched for any invoice/ debit note/ credit note/ bill of supply etc.

Reconciliation of the supply as per books shall also be reconciled with the E-invoice and E-way bill generated during the period as per the applicability.

10. Reconciliation of Input Tax Credit (ITC):

A reconciliation between the entity's books of accounts, FORM GSTR-2B, and GSTR-3B, is essential to identify and rectify discrepancies.

Ensuring that all eligible ITC for FY 2024-25 is claimed, ineligible credits are reversed, and mismatches are addressed to maintain compliance and accuracy in tax filings.

11. Common ITC Reversal at the year-end:

As per Rules 42 and 43 of the CGST Rules, 2017, every registered person is required to reverse ITC claimed against inputs and input services which are used for purposes other than business, and which are used for effecting exempted supplies.

12. GST TDS/TCS credit:

- A taxpayer shall check for any GST TDS/TCS credit available on our GST Portal and claim

after checking its authenticity from the books of accounts.

- ❖ TDS and TCS credit received' is a facility available after logging in to the GST portal which can be filed by all the taxpayers who are making sales on the e-commerce platforms and/or entered into any kind of works contract with Government departments.
- ❖ The form is mostly similar to GSTR-2A as it auto-populates details from GST returns like GSTR-7 and GSTR-8 together (which is filed by deductors/collector of tax) .User can click on 'TDS and TCS credit received' tab available on return dashboard which can help him to claim or reject the credit of TDS and TCS deducted or collected by their corresponding Government deductor or e-commerce operator.
- ❖ For availing credit of GST TDS/TCS; all the deductee need to file 'TDS/TCS credit received' tab on the portal. The deducted amount will appear in Cash Ledger which can be used for payment of balance amount of tax after setting off with the Input tax credit.

Note: There is no due date or late filing fees for filing TDS/TCS credit received. But, preferably it must be filed before the deadlines where tax payment is due.

13. Reconciliation of Electronic credit/cash/ reclaimable ITC Ledgers:

Reconciliation between the electronic credit and cash ledger as per the GST portal and the books of accounts shall be done. And, a reconciliation of reclaimable ITC statement as per GST Portal and ITC pending to be claimed as per FORM GSTR 2B working shall also be performed.

14. Settlement of Reverse Charge Mechanism (RCM) Liabilities:

Businesses shall review all transactions to identify the transactions subject to RCM, and ensure the timely payment of RCM liabilities, report them accurately in FORM GSTR-3B, and claim corresponding ITC wherever applicable.

Advise: Raising & maintaining self-invoices for RCM-applicable transactions procured from unregistered suppliers is also crucial for compliance.

15. GST Amnesty Scheme 2025:

The government has introduced an amnesty scheme to encourage businesses to clear outstanding GST dues under Section 73 of the CGST Act. The deadline for payment of outstanding GST dues is March 31, 2025, and the relevant form submission due date is June 30, 2025.

This scheme offers a waiver of interest and penalties for past FYs of 2017-18, 2018-19, and 2019-20 as per Section 128A of the CGST Act.

Note: Here, before applying for the scheme, appeal should be withdrawn.

16. Input Service Distribution (ISD):

It is mandatory to obtain Input Service Distributor (ISD) registration for businesses having GST registrations in multiple states. Along with that Input Tax Credit (ITC) must be distributed across all GSTINs by filling monthly return of GSTR-6 from 01-04-2025.

Here, the most challenging aspect is to identify common services, including those under reverse charge, and following the complex process for reverse charge payment and credit distribution among different GST registrations.

17. Filing DRC-03A for Correct Adjustment:

GST authorities have clarified that FORM GST DRC-03A can be used to re-align your payment under the correct category (if selected the incorrect “cause for payment” while making payment via FORM GST DRC - 03).

The amount paid in FORM GST DRC-03 will be treated as if it was made towards the demand on the date of intimation through FORM GST DRC-03A.

Note: If the proceedings have already been concluded via a FORM GST DRC-05 order, then FORM GST DRC-03A cannot be filed.

"Anyone who has never made a mistake has never tried anything new." **- Albert Einstein**

ACTIVITIES AT A GLANCE

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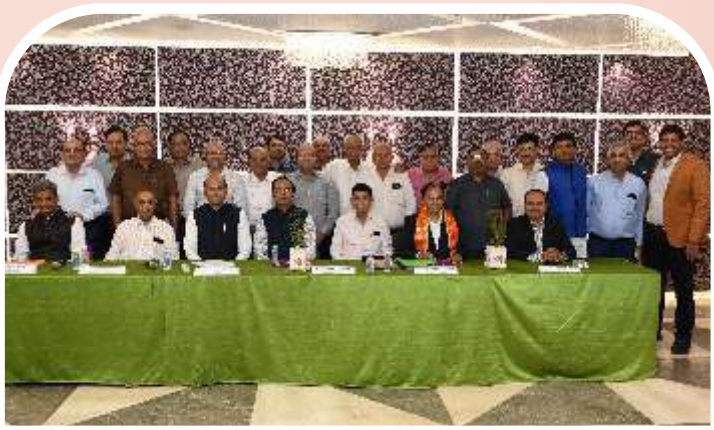

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