2024 - 2025

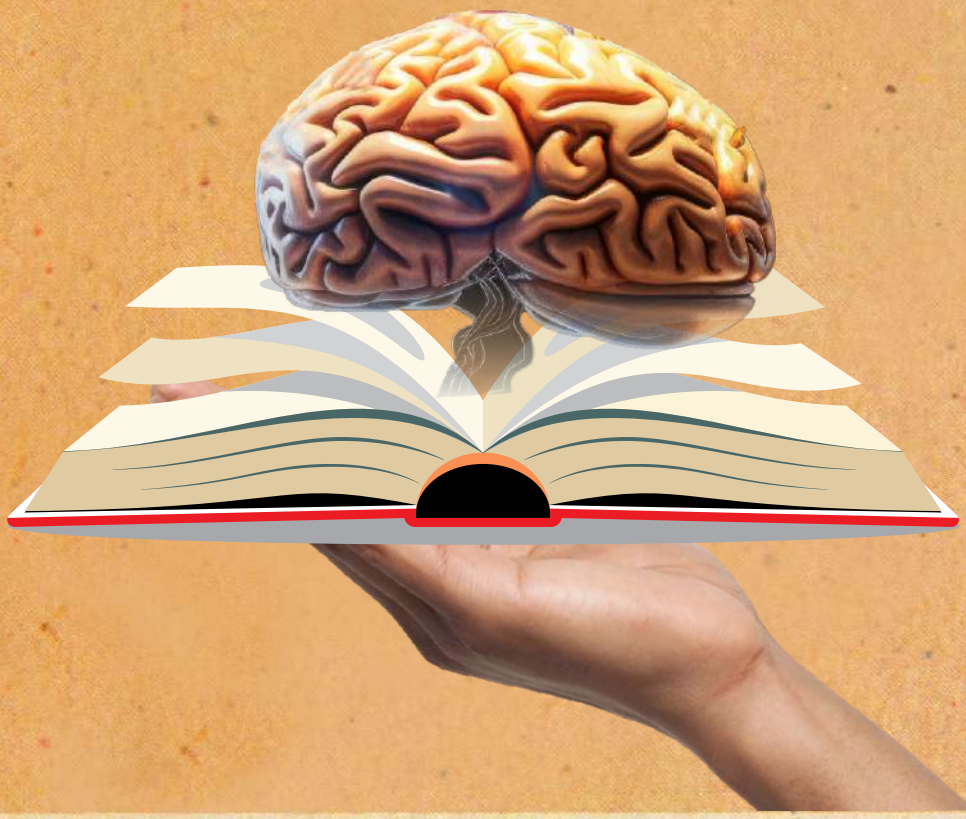
सा विद्या या विमुक्तये

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

TAX GURJARI

स्मृतिभिन्नं ज्ञानमनुभव ।

Experience is a knowledge which is distinct from memory.



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2024 - 2025

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Message from the President of All Gujarat Federation of Tax Consultants

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

Dear Members & Readers of Tax Gurjari,

As we proudly present the first volume of Tax Gurjari for the activity year 2024-25, it is an opportune moment to reflect on the significance of our collective efforts and the valuable contributions from writers across Gujarat. Tax Gurjari continues to be a platform where insightful articles on Indirect Tax, Direct Tax, and Allied Laws are shared, enriching our professional knowledge and fostering informed discussions.

By the time you will be reading this volume, union budget by the newly formed government would have already been presented. It is essential to reflect on its significance in shaping our nation's fiscal policies and achieving our growth objectives. The budget is not just a financial statement; it is a comprehensive plan that outlines the government's priorities and vision for the future.

Each one of us carries high expectations from each budget to introduce measures to bolster economic recovery, stimulate growth, and create a conducive environment for businesses. Key sectors such as infrastructure, healthcare, and education are anticipated to receive focused attention, which will have a multiplier effect on the economy. At the same time, in the era of increasing inflation, we expect some relief in personal taxation too.

India has set ambitious GDP targets, and the budget is a crucial instrument in achieving these goals. It is expected to introduce policies that encourage investment, both domestic and foreign, and provide incentives for innovation and entrepreneurship. By fostering a favourable business climate, the budget can significantly contribute to economic expansion and resilience.

Taxation is a fundamental aspect of the budget, directly influencing the nation's economic health. A fair and efficient tax system ensures the government has the necessary revenue to fund public services and infrastructure projects. It also promotes equity and reduces income disparities. The upcoming budget should aim at simplifying the tax structure, broadening the tax base, and enhancing compliance. This would not only increase revenue but also build a transparent and taxpayer-friendly environment.

As a bridge between Taxpayers and Government, our roles as tax professionals becomes more and more important. Tax Gurjari and such other publications are an attempt to share knowledge to the tax professionals which is relevant to fast changing world of taxation.

I extend my gratitude to all the contributors of Tax Gurjari for sharing their insights and expertise. Your contributions enrich our understanding and help us stay ahead in our field.

Warm regards,

CA (Dr.) Vishves Shah
President
All Gujarat Federation of Tax Consultants
27th July, 2024

From the Table of CHAIRMAN

Bharat L. Sheth
Chairman

My Dear professional Brothers and Sisters,

I have made it a habit to practice gratitude as I have traveled on both my personal and professional journeys, through twists and turns, successes and setbacks, joy and pain. So let me start with that. It has been an honor and a privilege to have served as Chairman of Tax Gurjary, a mouth piece of the (AGFTC) All Gujarat Federation of Tax Consultants.

I am grateful to President CA(Dr.) Vishves Shah and Hon. Secretary Adv. Shri Mrudang H. Vakil for giving me an opportunity to sharing knowledge through Tax Gurjary.

The Legendary lawyer of India, Shri Nani Palkhivala did not regard work as 'work' or as something that one had to do to earn a living while craving to do something else. For him, work was itself a source of pleasure; a tool of amusement and something that would refresh him.

The book by Shri Nani Palkhivala **"Courtroom Genius**" reveals some incredible secrets of Nani Palhivala's success formula that can be adopted by people like you and me, with average intellectual abilities.

- Thorough study of facts & research into law.
- Focus & Concentration on the task at hand.
- Well-thought out strategy before starting the matter.
- Persuasive style of advocacy.
- Courtesy to the Bench & the Bar.
- Made complicated issues look simple and boring issues look interesting.
- Time management.
- Single-pointed determination to succeed.
- Capacity for hard work.
- Speed reading & continuous self-improvement.

I would request all my professional brothers and sisters to use this 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. I am sure that this publication will be very useful and will benefit our members.

Best Wishes

Bharat L. Sheth
Chairman
All Gujarat Federation of Tax Consultants
27th July, 2024

From the Desk of HON. SECRETARY

Mrudang H. Vakil
Hon. Secretary

Dear Readers,

It is indeed a matter of pride for me to address my dear members as a capacity of Hon. Secretary of All Gujarat Federation of Tax consultants. I am honored to have been given this opportunity to serve the Federation.

"Experiences shape you and you shape experiences" – has been my mantra for this journey called life. You are the architect of your life and it is only You who can seek happiness for yourself, which can be found within.

I am delighted to know that the First Issue of Tax Gurjari is published within 20 days of time after taking the charge. Knowledge is something that will serve you your whole life. The most powerful thing in the world is knowledge. knowledge is power. It can change one's life and how one views oneself. Besides, it gives us the ability to influence what people do and how they act. This means that knowledge helps positively shape society, which benefits everyone. Keeping this in mind I am happy to pen down in this first issue of Tax Gurjari.

As AGFTC is entering in 33rd year of its existence, it is not a small journey for any institution. It is indeed a matter of pride for each member who are part of this Apex body of Tax Professionals so far as State of Gujarat is concern.

Tax Gurjari - is in real sense Cyclopaedia of direct & Indirect Tax of our association as it brings updates from experts and latest development in practicing law. Federation will always strive to enlighten its members to gain more knowledge and perform will in their respective profession. The only constant is taxation is change. And Tax Gurjari is articulated to update the members.

When this edition of Tax Gurjari will be published, the union Budget 2024(2) by the new government 3.0 would have been already presented from the floor of parliament. As the most burning issue which all are facing is Relief/Rebate U/s 87A in case of assessee having income chargeable at special rate. AGFTC along with ITBA has already represented the issue before the Hon'ble Finance Minister. Let us hope for some clarity from the officials to avoid future litigations.

At this juncture I must Thank Chairman, co-chairman, and members of Tax Gurjari committee for their continuous efforts to make it possible to publish first issue in very first month after taking the charge.

My heartfelt gratitude to the writers of articles for expressing their views on their respective subject inspite of their busy schedule and in such short span of time.

Mrudang H. Vakil (Advocate)
Hon. Secretary
All Gujarat Federation of Tax Consultants
27th July, 2024

Analysis of Section 43B(h) of the Income Tax Act, 1961.

CA Parin Shah
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The Finance Act 2023 has introduced amendment to Section 43B of the Income-tax Act, 1961, aiming to streamline timely payments to micro and small enterprises.

- The new clause (h) to section 43B of the Act specifies that any sum payable to a **micro or small enterprise which is paid beyond the time limit specified in Section 15** of the Micro, Small and Medium Enterprises Development Act 2006(Hereinafter referred as "MSMED") will be deductible in the year of actual payment.
- In other words, if any sum payable to the Micro and small enterprises that remained outstanding at the end of the financial year was paid in subsequent year after the due date provided in MSMED Act (whether paid or not paid before the due date of furnishing the Return of Income for that year), same shall be allowed as deduction in such subsequent year and not in the year in which such liability is incurred.This amendment has taken effect from April 1, 2023, applicable from the FY 2023-24.
- As per the MSMED Act an **"Enterprise"** means an undertaking engaged in the **manufacture or production of goods pertaining to any industry specified in the First Schedule** to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service.
- The MSMED Act classifies entities as Micro, Small and Medium Enterprise. Section 15 of the MSMED Act requires buyers to make payment to **Micro and Small Enterprise** within the time limits prescribed. Section 16 of the MSMED Act also provides for interest in case of delayed payment to Micro and Small Enterprises. **Such two provisions are not applicable to Medium Enterprise**. Accordingly, section 43B(h) of the IT Act has been enacted to protect the interest of Micro and Small Enterprises. The criteria for classification are as follows:

Micro Enterprises: Enterprises with an investment in plant and machinery or equipment not exceeding INR 1 crore and turnover not exceeding INR 5 crore.

Small Enterprises: Enterprises with an investment in plant and machinery or equipment not exceeding INR 10 crore and turnover not exceeding INR 50 crore.

- Both above conditions are cumulative in nature. For enterprises, crosses upper thresholds of any one criteria then it will be upgraded to next level. In case of demotion in above criteria, both conditions are cumulatively required to be fulfilled.
- Further, Section 23 of MSMED Act states that any interest paid or payable by the buyer, under this Act, shall not be allowed as a deduction under the IT Act. This disallowance would continue to operate as before.

The provisions of 43B(h) is summarized in Frequently Asked Questions (FAQ) form as follows:

1. **When will the amendment u/s 43B(h) of the IT Act come into effect?**
   Ans. The amendment has taken effect from April 1, 2023, and therefore is applicable from the Financial Year 2023-24 and onwards.
2. **Which enterprises will fall under the Section 43B(h) of the IT Act?**
   Ans. Section 43B(h) of the IT Act is applicable only to Micro and Small Enterprises as classified under the MSMED Act based on criteria of Investment value and Turnover. The same would not apply to Medium Enterprise as covered by MSMED Act.
3. **An enterprise is fulfilling the criteria to be classified as a Micro or Small enterprise but is not registered under the MSMED Act 2006. Whether the provision of 43B(h) of the IT Act would be applicable to such enterprises?**
   Ans. 'Supplier' is defined in section 2(n) of MSMED Act which means micro or small enterprise which has filed

memo-randum with the concerned MSME authority. Hence, those micro or small enterprises which have registered under the MSMED Act should be considered for the purpose of computing the disallowance u/s section 43B(h) of the IT Act.

4. Will the provisions of 43B(h) apply to traders registered under the MSMED Act 2006?

No, The MSMED Act defines an 'enterprise' as an undertaking engaged in the manufacture or production of goods or engaged in providing or rendering of any service. Thereby traders are not covered in this definition and out of the preview of MSMED Act. Therefore, provisions of section 43B(h) of the IT Act should not apply to traders registered under MSMED Act.Further, the Ministry of MSME vide office memorandum dated September 1, 2021, has also clarified that traders have been allowed to register on the MSME Udyam Portal and their benefits shall be restricted to Priority sector lending only and should not be entitled to other benefits including provisions of delayed payments as per the MSMED Act. Thus, traders should be out of purview of provisions of section 43B(h) of the IT Act.

5. Whether the provision of 43B(h) are applicable for amount outstanding as on March 31, 2023, which continued to remain outstanding (in part or as a whole) as on March 31, 2024?

The provision of section 43B(h) of the IT Act are applicable from FY 2023-24 and onwards hence there is no applicability of any outstanding balance as on March 31, 2023, which continued to remain outstanding as on March 31, 2024.

6. Whether Section43B(h) in case the payment is made beyond the time permitted under MSMED Act but within the same financial year?

Ans. No, there will not be any disallowance since the payment is made in same financial year in which expense is incurred and not outstanding as at the end of the year. The provisions of section 43B triggers for outstanding at the end of the financial year.

7. The amount outstanding to an MSE supplier as on March 31, 2024, is paid after due date specified under MSMED Act, 2006 however paid just before the due date of furnishing the return of Income u/s 139(1) of the IT Act. Whether such amount will be allowable as deduction in the tax return of FY 2023-24?

Ans. No, the first proviso to section 43B of the IT Act allows deduction of those dues in respect of which payment is made after the end of the financial year but before due date of filing of income tax return. However, such benefit is not available to the taxpayer making payment to Micro and Small Enterprises. Thereby unless such an amount is paid within the dates specified in section 15 of MSMED Act, amount should not be allowed as deduction in tax return of FY 2023-24. But same shall be allowed in year of actual payment.

8. A taxpayer has purchased and received goods from an MSE Supplier on March 1, 2024. After verification of goods, he raised a dispute with the MSE Supplier on March 5, 2024, stating that certain goods are defective. The dispute gets resolved between the parties on March 30, 2024. What would be the due date for payment for the taxpayer assuming there is no written agreement specifying due date of payment.

Ans. In this case, since there was no agreement between the taxpayer and the MSE supplier specifying the date of payment, the due date for payment would be 15 days from the date of receipt of goods i.e. March 15, 2024. However, since the taxpayer raised a dispute within 15 days from the date of receipt of goods, the payment now needs to be made within 15 days from the date on which the dispute is resolved. Therefore, in the current case, the payment needs to be made to the MSE supplier by April 13, 2024, to comply with the provisions of the MSMED Act and to ensure no disallowance is attracted u/s 43B(h) of the Act for the FY 2023-24.

9. In the above FAQ,suppose the dispute is raised on March 20, 2024 by the taxpayer i,e. after 15 days from the date of acceptance of goods. How would the provision of 43B(h) be construed?

Ans. Considering that the due date for payment was 15 days from the date of receipt of goods i.e. March 15, 2024, and the taxpayer did not make the payment to the MSE supplier till the said date, the amount should be disallowable u/s 43B(h) of the Act if the amount is outstanding as on March 31, 2024. It should be noted that since the dispute was raised after the expiry of 15 days i.e on March 20, 2024, the benefit of extension of 15 days from the date of resolution of the dispute is not available to the taxpayer.

10. Will the provisions of Section 43B(h) of IT Act be attracted if the buyer is opting presumptive taxation under section 44AD/44ADA of the IT Act?

Ans. The provision of section 44AD of the IT Act starts with a non obstante clause i.e. it overrides the provision of section 28 to 43C of the IT Act and therefore if the buyer is opting for presumptive taxation, any payment to Micro or Small enterprises will not attract disallowance u/s 43B(h) of the IT Act.

11. If the buyer of goods or services keeps an amount of retention money in accordance with the agreement with the MSE Supplier, whether disallowance would be attracted u/s 43B(h) of the IT Act by contending that retention amount is not paid within time permitted under MSMED Act?

Ans. The MSMED Act states that payment needs to be made to a MSE supplier within the time limit as specified in the said Act and accordingly, this section shall be applicable on retention money also.

12. A taxpayer has received goods along with an invoice including GST. Whether the disallowance u/s 43B(h) would be attracted on if GST amount withheld and principal amount has been paid?

Ans. Section 43B(h) of the IT Act uses the term “any sum payable by the Assessee” to a Micro or small enterprise and accordingly the provision triggers on non- payment of GST.

13. What is the situation, if goods purchased or expenditure incurred has been capitalized in his books and not claimed to Profit and Loss account and there is delay in payment to MSE vendor which remained outstanding at the year end?

Ans. As capital expenditure is not claimed by the taxpayer while computing its income u/s 28 of the Act, the provisions of section 43B(h) has no applicability.

14. What would be the treatment of interest in case of delayed payments to supplier?

In case of delayed payments, interest will be applicable in accordance with the MSMED Act, which would be disallowed to the buyer while computing his income chargeable to tax. Such disallowance of interest expense is irrespective of the fact that whether corresponding principal amount is paid in same financial year or not.

15. What is the meaning of 'investment' in plant and machinery for the purpose of understanding a 'micro' and 'small' enterprise?

As per RBI/2020-2021/26 - FIDD.MSME & NFS. BC.No.4/06.02.31/2020-21 dated 21 August 2020, the online form for Udyam Registration captures depreciated cost as on 31st March each year of the relevant previous year. Therefore, the value of Plant and Machinery or Equipment for all purposes of the Notification No. S.O. 2119(E) dated June 26, 2020 and for all the enterprises shall mean the Written Down Value (WDV) as at the end of the Financial Year as defined in the Income Tax Act and not cost of acquisition or original price, which was applicable in the context of the earlier classification criteria.

16. Can the terms of payment mentioned in the invoice itself can be considered as written agreement?

The term "written agreement" is not specified in the Act. An agreement means "an offer made by one person and accepted by another must be accepted by all parties involved" and therefore, even an invoice can be considered as written agreement as it contains all the characteristics of agreement.

17. Whether an 'account payee' issued in favour of the seller at a date before the stipulated date but cleared afterwards qualify for the purpose of deduction?

In such a scenario, it would be essential to examine:

(I)Date of acceptance of the instrument by the micro and small enterprise, and

(ii) The date on which the debit entry takes place in the buyer's account.

If the seller accepts that the instrument was handed over at an earlier date but could not be deposited in his account within the stipulated date, then it may suggest that the payment was made within the due date and no disallowance u/s 43B(h) be required.

I hope above discussion would resolve issues in practical situations, since issue is evolving and would be settled in phase manner by judicial forums.

I am a Warrier

Updated Provisions Related to Input Tax Credit

KAZA SUBRAHMANYAM
Indirect Tax Consultant

There are some conditions and restrictions specified under Section 16 to Section 21 of CGST Act, 2017and CGST Rules, 2017 regarding eligibility and conditions and restrictions related to Input Tax Credit. These conditions and restrictions are briefly discussed, hereunder:

1.0. ENTITLEMENT TO AVAIL INPUT TAX CREDIT

1.1. Every registered person shall, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount of ITC shall be credited to the electronic credit ledger of such person.

2.2. The conditions for availing Input Tax Credit are :

(a) The Taxpayer is in possession of a tax invoice or debit note issued by a Registered supplier; **Vide Finance Act, 2021 dated 28-03-2021 w.e.f. 01-01-2022** it has been made mandatory thatthe details of the invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 (furnishing details of outward supplies);

(b) The Taxpayer has received the goods or services or both;

(c) The tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;

(d) **Vide Finance Act, 2022 w.e.f. 01-10-2022** it has been specified that the details of input tax credit in respect of the supply of goods or services are communicated to registered person under section 38 (Communication of details of inward supplies and input tax credit) has not been restricted;

(e) The Registered Person has furnished the return under section 39 (Furnishing of Returns);

(f) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed;

(g) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier;

(h) Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under section 50 of CGST Act, 2017. The recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon;

(I) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

- Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

- The value of exempt supply shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II to CGST Act, 2017 (construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier), sale of building.''

- value of exempt supply'' shall not include the value of activities or transactions specified in Schedule III of CGST Act, 2017 except the value of activities or transactions Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building and Supply of warehoused goods to any person before clearance for home consumption.

- A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with these provisions, or avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

2.0. **RESTRICTIONS TO AVAIL INPUT TAX CREDIT**

2.1. Input Tax Credit shall not be available in respect of the following, namely:-

a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such motor vehicles; or
(B) transportation of passengers; or
(C) imparting training on driving such motor vehicles;

b) vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-
(A) further supply of such vessels or aircraft; or
(B) transportation of passengers; or
(C) imparting training on navigating such vessels; or
(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(c) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft:

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(d) the following supply of goods or services or both-

(I) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft except when used for the purposes specified therein, life insurance and health insurance: Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession: Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under

any law for the time being in force.

(e) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(f) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

(g) Goods or services or both on which tax has been paid under section 10 (Composition levy);

(h) Goods or services or both received by a non-resident taxable person except on goods imported by him;

(I) Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility

(j) Goods or services or both used for personal consumption;

(k) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(l) any tax paid in accordance with the provisions of sections 74, 129 and 130 of CGST Act, 2017 i.e. cases involving determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts, Detention, seizure and release of goods and conveyances in transit and Confiscation of goods or conveyances and levy of penalty.

3.0. **Availability of credit in special circumstances.**

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax;

(b) a person who takes registration, shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under Composition scheme, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9 (levy and collection of tax). The credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable. The credit on capital goods shall be reduced by such percentage points as may be prescribed.

3.1. A registered person shall not be entitled to take input tax credit (under the situations specified in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

3.2. Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business.

3.3. Where any registered person who has availed of input tax credit opts to pay tax under composition scheme or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the

credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption. After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

3.4. In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher. Where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15 of CGST Act, 2017 (Provisions related to value of taxable supply).

4.0. **Taking input tax credit in respect of inputs and capital goods sent for job work.**

4.1. The principal shall be allowed input tax credit on inputs sent to a job-worker for job-work.

4.2. The principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without being first brought to his place of business.

4.3. Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out. Where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

4.4. The principal shall be allowed input tax credit on capital goods sent to a job worker for job work.

4.5. The principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

4.6. Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out. Where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

5.0. **Manner of distribution of credit by Input Service Distributor.**

5.1. Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under reverse charge, shall be required to be registered as Input Service Distributor and shall distribute the input tax credit in respect of such invoices.

5.2. The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under Reverse charge mechanism, paid by a distinct person registered in the same State as the said Input Service Distributor.

5.3. The Credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit.

5.4. Where the Input Service Distributor distributes the credit in contravention of the provisions 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.

6.0. **CGST RULES RELATED TO INPUT TAX CREDIT.**

6.1. There are various Rules under CGST Rules, 2017 in respect of procedural issues related to availment of Input Tax Credit. These Rules are given below in tabulated manner.

Rule	Subject matter
36	Documentary requirements and conditions for claiming input tax credit
37	Reversal of input tax credit in the case of non-payment of consideration
37A	Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof
38	Claim of credit by a banking company or a financial institution
39	Procedure for distribution of input tax credit by Input Service Distributor
40	Manner of claiming credit in special circumstances
41	Transfer of credit on sale, merger, amalgamation, lease or transfer of a business
41A	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory
42	Manner of determination of input tax credit in respect of inputs or input services and reversal thereof
43	Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases
44	Manner of reversal of credit under special circumstances
44A	Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar
45	Conditions and restrictions in respect of inputs and capital goods sent to the job worker.

7.0. **IMPORTANT RULES INCORPORATED IN CGST RULES 2017:**

7.1. Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof - (Inserted vide NOTIFICATION No. 26/2022 – Central Tax dated 26-12-2022)

7.2. Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year. Where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon. Where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

8.0. **Matching, Reversal and Reclaim of input Tax Credit.**

8.1. Section 42 of CGST Act, 2017, which relates to Matching, reversal and reclaim of input tax credit has been omitted w.e.f. 1.10.2022. Rule 36 of CGST Rules, 2017 specifies the procedures related to documentary requirements and conditions for claiming input tax credit.

As per Rule 36 (4) of CGST Rules, 2017 substituted vide Notification No. 40/2021 – Central Tax dated 29-12-2021, w.e.f. 01-01-2022, no input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-
(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

(b) the details of input tax credit in respect of] such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60. This was inserted vide NOTIFICATION NO. 19/2022–Central Tax dated 28-09-2022 w.e.f. 01-10-2022 A proviso was Inserted vide Notification No. 30/2020–Central Tax dated 03-04-2020 specifying that that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

A proviso was substituted vide Notification No. 27/2021 – Central Tax dated 01-06-2021 that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

8.2. Rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, in toto, for the period from 01.04.2019 to 08.10.2019. For the period from 01.01.2020 to 31.12.2020, Rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of the that reported by the suppliers in their FORM GSTR-1 or IFF. Further, for the period from 01.01.2021 to 31.12.2021, Rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF. Consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act 2017 and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

CIRCULAR ISSUED BY CBIC IN RESPECT OF NON-AVAILABILITY OF GSTR-2A.

As per Circular No. 183/15/2022 dated 27th December 2022, only conditions relating to section 16 of CGST Act, 2017 are required to be fulfilled. The relevant portion of the Circular is reproduced below:

"2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19."

9.0. **Availment of input tax credit under Section 41 of CGST Act, was substituted w.e.f 1.10.2022 vide Finance Act, 2022, as under :** Every registered person shall,subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

The credit of input tax availed by a registered person in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed: Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed Before substitution Section 41 of CGST Act,2017 read as under :

Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section."

10. Matching, reversal and reclaim of input tax credit contained in Section 42 of CGST Act, 2017 has been omitted w.e.f. 1.10.2022 vide Finance Act, 2022.

11. SOME CASE LAWS ON THE SUBJECT OF MATCHING ITC :

a) **In case of St. Joseph Tea Company Ltd. Vs State Tax Officer,** reported in 2021 (7) TMI 988 - KERALA HIGH COURT, Hon'ble Kerala High Court held that ITC shall not be denied only on the ground that the transaction is not reflected in GSTR 2A.

Various High Courts have upheld the proposition that ITC cannot be denied to the recipients due to the defaults of the supplier:

I) R.S. Infra-Transmission [2018 (4) TMI 1800 – Rajasthan HC]

ii) D.Y. Beathel Enterprises-2021 (3) TMI 1020 - MADRAS HIGH COURT In case of M/s D.Y. Beathel Enterprises (recipient), the supplier's failure to pay taxes led to the recipient being asked to reverse the ITC with interest. The Madras High Court ruled that the buyer should not be required to reverse the ITC, for supplier's defaults, and action should be taken against the supplier instead. A Press release by CBIC dated 4th May 2018 stated that :'In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of ITC from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.'

Hon'ble Calcutta High Court in the case of SUNCRAFT ENERGY PRIVATE LIMITED AND ANOTHER VERSUS THE ASSISTANT COMMISSIONER, STATE TAX, BALLYGUNGE CHARGE AND OTHERS - 2023 (8) TMI 174 - CALCUTTA HIGH COURT has observed that in case of default in payment of tax by the seller, recovery shall be made from the seller first. Only under exceptional situations like missing supplier, closure of business by supplier or supplier not having adequate assets etc, the revenue can proceed to make recovery of ITC from recipient. A press release dated May 04, 2018, issued by CBIC clarifies on the similar lines.

Further, the Courts have consistently held under VAT regime that where the purchaser is bonafide and there is absence of mala fide intention, connivance or wrongful association of the purchaser with the supplier, the reversal cannot be sought from purchaser. The same view was upheld by the Hon'ble Supreme in the decision of ON QUEST MERCHANDISING INDIA PVT. LTD., SUVASINI CHARITABLE TRUST, VINAYAK TREXIM, K.R. ANAND, APARICI CERAMICA, ARUN JAIN (HUF) , DAMSON TECHNOLOGIES PVT. LTD., SOLVOCHEM, M/S. MEENU TRADING CO., & MAHAN POLYMERS VERSUS GOVERNMENT OF NCT OF DELHI & ORS. & COMMISSIONER OF TRADE & TAXES, DELHI AND ORS. - 2017 (10) TMI 1020 - DELHI HIGHCOURT.

Hon'ble Supreme Court vide order dated 10.1.2018 in the case of Commissioner of Trade & Taxes, Delhi v. Arise India Limited has dismissed the Special Leave to Appeal (C) No(s). 36750/2017 filed by the Revenue against the decision of the Hon'ble High Court of Delhi final judgment dated 26-10-2017 in WPC No. 2106/2015 in the case of Arise India Limited v. Commissioner of Trade & Taxes, Delhi. The Hon'ble High Court of Delhi held Section 9(2)(g) of Delhi VAT Act to the extent it disallows Input tax credit (ITC) to purchaser due to default of selling dealer in depositing tax, as violative of Articles 14 and 19(1)(g) of the Constitution of India. Similarly it was held by Hon'ble Punjab & Haryana High Court in the case of GheruLalBal Chand v. State of Haryana [2013] 29 taxmann.com 484 (Punj. &Har.)that mere non-payment of tax by the suppliers cannot disentitle the ITC in an otherwise genuine transaction.

International Taxation Methods for Elimination of Double Taxation - A Study in Brief

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In the world of International Taxation, the concept of the tax treaty or Double Taxation Avoidance Agreement (DTAA) has been developed. The vital object of any tax treaty/DTAA is to provide for Avoidance of Double Taxation and also its role in preventing tax evasion and tax avoidance keeping an interaction with the domestic legal framework. The crucial aspects in the International Taxation is to understand the specific country tax practice, domestic tax law provision, treaty practice together with the interpretation of the law made by the Courts. Hence, one has to understand the key features of domestic tax systems having impact on international taxation.

At the time of determination of tax liability of the taxpayer, one has to understand some basic concept under the Income tax Act. More notably, the scope and ambit of Section 5 of the Income Tax Act which provides for the "Total Income" broadly categorized as:

- Received or Deemed to be received in India
- Accruing or arising or deemed to accrue or arise in India
- Accruing or arising outside India

More elaborately, the third category of income i.e. accruing or arising outside India will not be liable to tax in the case of non-resident or foreign company. In other words, the other two limbs of "total income" as defined u/s 5 of the Income Tax Act are liable to be taxed in India. That apart, the relevant sections of Income Tax Act required to be taken into account for the Computation of Income read with the provisions of Section 90 to 91 of the Act such as the term "transfer" u/s 2(47), income deemed to accrue or arise in India u/s 9, capital gains u/s 45, transactions not regarded as transfer as defined u/s 47, meaning of international transaction as defined u/s 92B, computation of Arm's Length Price (ALP) as defined u/s 92C read with I.T. Rules 10AB, 10B, 92CE, 92D, 92E, 92F, 92B also to I.T. Rules 10D, 10E, 10TD, 27BC with the relevant departmental Instructions/Circulars.

Chapter IX of the Income Tax Act, 1961 titled as "Double Taxation Relief" inter alia contains the provisions of Section 90, 90A and 91 of the Act. Section 90 makes provision for the definition and meaning of various terms with reference to the agreement with foreign countries or specified territories, while Section 91 provides for double taxation relief with reference to the countries with which no agreement exists. In other words, if the treaty/DTAA exist between the contracting States, the determination of total income and the tax liability of the taxpayer will be governed by the provisions of Section 90 of the Income Tax Act read with the provisions exists under the relevant Article of the treaty/DTAA between the particular contracting States. To be more precise, where the treaty/DTAA relief is not available, the only recourse with the taxpayer is to see the unilateral tax reliefs of the particular State's own domestic tax law.

The main treaty models predominantly used by contracting States are the OECD (Organization for Economic Co-operation and Development) and UN (United Nations) models, apart from the United States Model Convention and the ILADT Model. The deviations mainly exists from the OECD Model, in the specific treaties entered into by contracting States because of different approach under Domestic Law, which have been considered in their tax treaties. All the treaties between the contracting States, define

the separate Article on the subject "Methods for elimination of Double Taxation". There are two rules of taxation, firstly, Residence Rule which inter alia applicable to the income taxed by the Country of Residence (CoR) and secondly, Source Rule which inter alia applicable to the income taxed by the Source Country. The issue of Double Taxation arises only when two more countries impose tax on the same income in the hands of the same taxpayer for the relevant period. Double Taxation can be either Juridical Double Taxation or Economic Double Taxation. While adopting any of the method for elimination of double taxation, one has to understand the distinction between the residence-residence conflict, source-residence conflict and source-source conflict. DTAAs generally covers the cases of Juridical Double Taxation and not Economic Double Taxation (exception to this is India-Hungary DTAA). The issue of juridical double taxation arises mainly due to the source-residence conflict. More elaborately, when tax is levied on income earned from cross border activity in both the States of residence of the person deriving the income, taxing it under the status of resident by the residence State and on the other hand, by the source State under the status of non-residence on income earned from such source State. With the object to provide for relief for juridical double taxation and moreso, to eliminate the detrimental effect to carrying out cross border business activities, the method for elimination of double taxation, especially the levy of high income tax rates are contained in the treaties to provide for relief for the juridical double taxation to the taxpayers. Needless to say, if the treaty between the contracting States exist, the taxpayer has to see and consider the particular Article on methods for elimination of double taxation, before discharging his onus to declare/disclose the taxable income with tax liability. Largely, there are two methods for elimination of double taxation:

(1) Exemption Method
(2) Credit Method

Article 23A of OECD Model provides for "Exemption Method" and Article 23B of OECD Model provides for "Credit Method". Both the Articles provides for description, operation and effects of the method for eliminating the juridical double taxation that arises when both the source State and the residence State, tax the same item of income or capital in the hands of the same recipient- taxpayer. By and large, Article 23A and 23B of OECD Model are very much similar to Article 23A and 23B of UN Model, only with the notable difference with the effect that UN Model extends the application of credit method to royalties and fees for technical services.

In India, most of the taxpayers adopt the "Credit Method". Under the Credit Method, the residence State calculates its tax based the total income derived by the taxpayer which inter alia includes the income earned on foreign land which, "may be taxed" in the source State or the State of the Permanent Establishment (PE). After deriving the total income, under this method, the taxpayer has been allowed the deduction of the tax already paid in the source State from the tax liability determined. One more aspect is also very important while adopting the Credit Method. The principle of credit may be applied in two ways, namely,

1) The Full Credit Method and
2) Ordinary Credit Method.

Under the "Full Credit Method", the residence State taxes its residents on their worldwide income with the effect of full credit of actual foreign tax paid, while on the other hand, if the "Ordinary Credit Method" applied, the formula to calculate ordinary credit is foreign source income / total worldwide income X domestic income tax. Effectually, when the tax rate in the source State is lower than the tax rate in residence State, the ordinary credit has the effect of a full credit. In other words, the full credit method has the effect of denying the benefit of lower tax rate in the Country of Source, while the ordinary credit method will result in higher aggregate tax pay outs were the Country of Source (CoS) has a higher tax rate than CoR. The Indian Income Tax Law, as per the provisions of Section 91, provides for relief of foreign tax even in a scenario where there is no bilateral tax treaty. Needless to say, for claiming relief u/s 91, the same income must be taxed in both the countries and if, the income is

subject to deduction under the Indian Income Tax Law, without any tax in India thereon, no relief could be granted u/s 91. Obviously, the expressions "subject to tax" and "liable to tax" have different implications.

Apart therefrom, for the countries with which the Government of India has entered into tax treaty, for the purpose of benefit of Foreign Tax Credit (FTC), a country by country approach is followed and the FTC is allowed as per the provisions contained in the respective DTAAs.

On detailed analysis and an interpretation of the domestic laws of various countries read with the DTAAs' various articles, it would be concluded that as a general rule, the State/Country in which a person is resident (say Country of Residence (CoR)) would enjoy the complete powers to tax a taxpayer on his worldwide income. However, the DTAAs with foreign country may allocate the taxation powers differently. For allocation of taxation powers with regard to various categories of income, we can find the following expressions in the DTAAs, such as:

i) may be taxed
ii) may also be taxed
iii) shall be taxable only
iv) shall not be taxed

The expression "shall be taxable only" provides for a clear allocation of taxation power to one country i.e. only to the Country of Source (CoS) to the complete exclusion of Country of Residence (CoR). The expression "shall not be taxed" provides for the right to tax the income usually by the Country of Source (CoS) and shall not be taxed by the Country of Residence (CoR). As very much suggestive, the expression "may also be taxed" envisages taxation at by both the Contracting States i.e. double taxation of income whereby the Country of Residence (CoR) follow to grant a relief by way of tax credits for the tax paid in the Country of Source (CoS).

The expression "may be taxed" is unclear as to whether the allocation of taxation powers with regard to specific category of income is granted solely to the Country of Source (CoS) and therefore, it require judicial interpretation by the Courts of Law. For the purposes to provide unambiguous and clear interpterion of the expression "may be taxed", the Central Government issued Notification No. 91/2008 dtd. 28–08–2008. The Hon'ble ITAT, Mumbai Bench in Essar Oil Ltd. Vs. ACIT has observed that the Central Government, being one of the parties of the tax treaties with the other sovereign States has been empowered to assign meaning to the various terms and expressions used in the DTAAs and held that the interpretation and clarification given by the Central Government for the expression "may be taxed" vide Notification, have to be given precedence over the interpretation given by the Courts. Moreover, to remove the difficulties and moreso, to provide clarifications, Sub Section (3) to Section 90 of the Income Tax Act has been inserted in the Statute, applicable from the Asstt.Year: 2004–05.

On close reading of Section 90(2) of the Income Tax Act, it provides that where a double taxation avoidance treaty is entered into by the Government, the provisions of the Income Tax Act would apply to the extent they are more beneficial to the assessee. In the eventuality of any conflict between the provisions of the DTAA and the Income Tax Act, 1961, the provisions of the DTAA would prevail over the Act in view of the provisions of Section 90(2) of the Act, to the extent they are more beneficial to the assessee. Thus, the DTAA entered into by the Government of India has overriding effect over the domestic tax laws. However, Explanation 1 to Section 90 declares that the charge of tax in respect of a foreign company at the rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of foreign company. By illustration, if M/s ABC Ltd. a company incorporated in foreign land and having the branch office in Calcutta, had filed its return of income for the Asstt.Year: 2024–2025 showing the total taxable income at Rs. 80,00,000/- on which, the tax at the rate of 30% plus 4% HEC paid as applicable to domestic company as against the levy of higher tax rate of 40% in the source State (i.e. foreign country), in view of the Explanation 1 below Section 90, the tax at the rate of 40% is applicable and not 30%. Chapter XIIA of the Income Tax Act provides for the special provisions relating to

certain incomes of Non Residents which inter alia contain provisions of Section 115C to 115I of the Act.

For example, Mr. X enjoying the status of a Non Resident in view of the provisions of Section 6 of the Income Tax Act, is having income with a country outside India for which, DTAA entered into by the Government of India. As discussed earlier, as provided u/s 90(2) of the Income Tax Act, where the DTAA has been entered, the assessee Mr. X can opt to be governed by the provisions of DTAA, if the provisions are beneficial in comparison to the provisions of the Indian Income Tax Act. However, in view of sub-section (4) of Section 90A of the Income Tax Act, an assessee, not being a resident, in order to claim relief under the agreement, has to obtain Tax Residence Certificate (TRC) from the Government of that country, declaring the residence of the assessee Mr. X in that country outside India and for that purposes, in view of Rule 21AB(3) & (4), the assessee Mr. X is required to submit electronically Form No. 10FA and 10FB, along with the other documents and information as prescribed under Rule 21AB(1) to (2A) in Form 10F. Generally, the assessee has to provide the following information in Form 10F:

1. Status of the assessee i.e. Individual / Company / Firm /AOP/LLP, etc.
2. PAN of the assessee, if allotted
3. Nationality in the case of an individual and country or specified territory of incorporation or registration in the case of other assessees
4. TIN (Tax Identification Number) in the country or specified territory of the residence or in the absence of such number, the unique number on the basis of which the person is identified by the Government of such country or the specified territory of which the assessee claims to be a residence
6. Address of the assessee in the country or specified territory outside India during the relevant period.

On perusal of the provisions of Section 91 read with Rule 128 on Foreign Tax Credit (FTC), it would be amply clear that if a person resident in India has paid tax in any country with which no agreement (i.e. DTAA) u/s 90 exists, then for the purpose of relief or avoidance of double taxation, a deduction is allowed from the income tax payable under the Indian Income Tax Law, of a sum calculated on such doubly tax income at the rate applicable under the Income Tax law or at the rate of tax of such foreign countries, whichever is lower. To be more precise, the assessee taxpayer shall not be given any credit of the tax paid on the income earned in any other country, but shall be allowed a deduction from the tax liability determined as per the Indian Income Tax law. Notably, the deduction of tax determined under the Indian Income Tax law is allowed if both the rates i.e. the tax rate of such foreign country and the tax rate under the Indian Income Tax law, are equal.

However, to avail the benefit of deduction u/s 91 of the Income Tax Act, the assessee taxpayer has to fulfil the following conditions mandatorily:

1. He must be the resident in India during the relevant previous year
2. The income in question accrues or arises to him outside India in foreign countries during the relevant previous year and such income is not deemed to accrue or arise in India during the relevant previous year
3. The income in question shall be subjected to tax in the foreign countries in his hand and it is presumed that he has paid tax on such income in those countries
4. There is no agreement u/s 90 for the relief or avoidance of double taxation between India and the foreign country/countries where the income has accrued or arisen Nonetheless, there are certain circumstances such as taxes covered in the scope of the tax treaties (i.e. Federal Income Tax and State Income Tax), characterization of income, different period assessments, different basis of income adopted by the States, issue of shifting residential status, treaty shopping, triangular cases involving three States, etc.

Such issues may arise for the reason that the provisions in the various DTAAs granting relief of FTC are not identically worded.

If the DTAA with the foreign country is aligned to the purpose of Sub-Clause (i) of Section 90(1)(a) of the Income Tax Act, the onus is on the taxpayer to prove that the same income has doubly tax and that the taxpayer had paid tax both in India and foreign country on the same income. Sub-Clause (ii) of Section 90(1)(a) of the Income Tax Act provides that where the income of the taxpayer is chargeable under the Income Tax Act

as well as in the foreign country, the relief of Double Taxation would be subject to the terms of the DTAA. For example, Article 25 of the India-US DTAA provides for the full credit of tax paid in US by the Resident of India on the income derived, which is in conformity with the provisions of Section 90(1)(a)(ii) of the Income Tax Act.

The Courts of Law have held that the filing of Form 67 to claim the Foreign Tax Credit (FTC) is not mandatory but a directory requirement and the DTAA overrides the provisions of the Income Tax Act and Rules and moresowhen, Rule 128(9) of the I.T. Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67 and therefore, mere delay in filing Form 67 cannot entitled the assessing officer to disallow the relief claimed by the assessee. The recent judicial pronouncement on this issue may be referred;

1. CES Ltd. Vs. Dy.CIT
2. Sonakshi Sinha Vs. CIT (Appeals)
3. Power and Energy Consultants India (P) Ltd. Vs. ITO
4. Sumedha Arora Vs. ITO

Significance of the concept of "Permanent Establishment" (PE):

Generally, the Double Taxation Avoidance Agreements (DTAAs) entered into by the Government of India with other countries contain an Article which specifically provides that the business income is taxable in the country of residence, unless the enterprise has a Permanent Establishment in the country of source and such income can be attributable to the Permanent Establishment.

The term "Permanent Establishment" is defined u/s 92F(iiia) of the Income Tax Act. As per the provisions of Section 92F(iiia) of the Act, "Permanent Establishment" includes a fixed place of business through which, the business of an enterprise is wholly or partly carried on. Meaning thereby, there must be a place of business, which is fixed and the business of the enterprise must be carried out wholly or partly through this place. If we read the provisions of Section 9(1)(I) of the Income Tax Act, which provides for the existence of business connection for deeming business income to accrue or arise in India, while reading the DTAAs, the business income is taxable only if there is a Permanent Establishment in India. To be more precise, where the Government of India has entered into DTAAs with a country, the business income is taxable in India only when the PE test is satisfied, otherwise, such business income would be taxable in the source country. The recent judgement of the Supreme Court in Pr. CIT Vs. Krishak Bharati Co. operative Ltd. may be referred.

❖ **A Tie-Breaker Rule under DTAAs:**

The concept of the residence is governed by Article 4 of each of the DTAAs distinguishes between individuals, companies and other entities. It primarily provides that the term "Residence of a Contracting State" means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criteria of a similar nature.

❖ **Tie-Breaker Rule for individuals :**

Most of the DTAAs provide the following Rule in relation to resident for individuals:
A Tie-Breaker Rule provided in the DTAAs is applicable where a person is a resident of two countries. A person shall be deemed to be a resident of the Contracting State in which, he has "permanent home" available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (Centre of Vital Interests (CVI)). For example, Mr. A has residential houses both in India and foreign country. While he has satisfied the first criteria of Tie-Breaker Rule, we have to see his personal and economic relations. Suppose, Mr. A has business connections and derives business income from foreign country and not having any PE of his business in India, Mr. A has his personal and economic relations with foreign country are closer (CVI) since, foreign country is a place where his property is located and the PE has been setup and accordingly, he shall be deemed to be resident of the foreign country for the particular assessment year. However, as provided u/s 90(4) of the Income Tax Act, Mr. A has to obtain Tax

Residency Certificate (TRC) declaring his residence of country outside India from the Government of that country and for that he has to submit the relevant prescribed forms with documents and information so as to avail tax relief under the DTAAs.

In the circumstances, if the Center of Vital Interests (CVI) is indeterminable or in the absence of "Permanent Home", the test of "Habitual Abode" will be applied and accordingly, the individual shall be deemed to be resident of that State in which he has a "Habitual Abode". Further, if the "Habitual Abode" exists in both States or non exists in both the States, then such individual shall be deemed to be a resident of the State in which, he is a National and if the individual is the National for both or neither of the State, then the Competent Authority of both States shall determine.

❖ **Tie-Breaker Rule for other than individuals:**

If a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall determine, by virtue of mutual agreement, the Contracting State of which such person shall be deemed to be a resident for the purpose of Convention. Most of the DTAAs, in relation to an entity other than an individual, provide that it shall be deemed to be a resident of State in which, its "Place of Effective Management (PEM)" is situated. Foreign taxes paid – whether deduction allowable as an expenditure u/s 37(1) of the Income Tax Act The term "tax" has been defined u/s 2(43) of the Income Tax Act which provides that "tax" means income tax chargeable under the provisions of this Act in relation to assessment year and includes the Fringe Benefit Tax payable u/s 115WA. Sub-Clause (ii) of Section 40(a) of the Income Tax Act provides for any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains. However, Explanations 1 and 2 were inserted by the Finance Act, 2005 w.e.f. 01–04–2006 below the said Sub-Clause (ii) of Section 40(a) of the Act. On conjoint reading of Explanation 1 with the provisions of relief of Double Taxation provided u/s 90 and/or u/s 91 of the Income Tax Act. It would be very much clear that when a taxpayer is otherwise entitled to relief of double taxation u/s 90 or u/s 91 of the Income Tax Act, then foreign tax would be governed by Section 40(a)(ii) of the Act and thus, not allowable as a deduction of expenditure u/s 37(1) of the Act. The Explanatory Note to the Finance Act, 2006 has provided the clarification on this issue. In the world of international taxation, it is the well-recognized principle that the tax levied on a non-resident being in the character of cost in carrying on business in foreign country (i.e. Country of Source), the foreign tax paid is deductible in the Country of Residence (CoR) to the extent relief is not granted.

In conclusion, navigating the intricate landscape of international taxation demands a comprehensive understanding of both domestic tax laws and the intricacies of Double Taxation Avoidance Agreements (DTAAs). The methods for eliminating double taxation, whether through exemption or credit, play a pivotal role in ensuring fair tax treatment for individuals and businesses operating across borders. DTAAs, modeled after frameworks such as those by OECD and UN, provide crucial guidelines for resolving conflicts and allocating taxation powers between contracting States. Moreover, the concept of Permanent Establishment (PE) and Tie-Breaker Rules further refine the application of tax laws in cases of residency and income attribution. As tax laws evolve and judicial interpretations refine, staying abreast of these developments remains essential for taxpayers and tax authorities alike to navigate the complexities of international tax regimes effectively.

GST on flats allotted to Landowner-Promoter & on Development Rights in case of Joint Development Agreementis illegal.

DEEPAK BAPAT
Advocate

1 Where a landlord sells the land to a developer, there is no role for him in a real estate project. GST on the sale of land is not payable by virtue of Para 5 of Schedule III appended to Central and State GST Act, which provides that a transaction of sale of land shall be treated neither as a supply of goods nor a supply of services.

2 The case is different, where the landlord does not want to sale land but want to develop the said land,jointly with a developerby entering intoJoint Development Agreement (JDA) on revenue sharing basis or area sharing basis or something in cash plus mixture of revenue & area sharing.JDA can be for:

(a) construction on vacant land.
(b) development of land into plots or apartments.
(c) demolition of existing building and constructing new building on the same land.
(d) converting existing building or a part thereof into apartments.

3 JDA is required to be drafted carefully, by taking into account, not only the liability to pay GST but, Capital Gain Tax, Stamp Duty, documents required for registration of the project under RERA and most important is, transfer of title of apartment or plot, to Buyers/Society.

4 JDA is nothing but a partnership by whatever name it is called or treated under the Income Tax Act, GST Act, etc. The Land and Development rights is a capital used by the landlord to carry out the business of development,jointly with a developer. The capital of a developer is his experience, skill, labour, goods and money he invests, for the said project. **I am of the view that, in JDA, development rights by the landlord and construction services by the developer cannot be treated as supplied to each other and to and by JDA, as a third entity/partyand the levy of GST on the said development rights and construction services invested in JDA as capital,is illegal.**

5 Under the GST Act, tax is being levied erroneously on the development rights in land and on goods/services respectively contributed as a capital by the co-venturer landlord and developer. For the purpose of levying tax on their capital contribution for JDA, with effect from April 2019, following amendments have been carried out toEntry 3 of the Notification No.11/2017-CT videNotification No.3/2019-Central Tax (Rate) dated 29/03/2019.

(a) It is defined that **Developer-promoter** is a promoter who constructs or converts a building into apartments or develops a plot for sale. [Refer Entry 3(i) to 3(id), clause (i) of the Explanation to 4th Proviso in condition column]

(b) It is defined that **Landowner-promoter** is a promoter who transfers the land or development rights or FSI to a developer-promoter, for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently. [Refer Entry 3(i) to 3(id), clause

(ii) of the Explanation to 4th Proviso in condition column]

(c) It is provided that the **developer-promoter** shall **pay tax on supply of construction of apartments to the landowner-promoter.**[Refer Entry 3(i) to 3(id), clause (i) of 4th Proviso, in condition column]

(d) Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of

construction service in respect of such apartmentsshall be deemed to be equal to total amount charged for similar apartments in the project from the independent buyers, other than the person transferring the developing right or FSI (including additional FSI), nearest to the date on which development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2. [Refer Para 2A of Notification No.11/2017-CT, as amended by Notification No.3/2019-Central Tax (Rate) dated 29/03/2019]

6 While making the aforesaid provisions, the provisions under RERA are not taken into account. As the JDA is a joint venture, under RERA, the responsibility on the landlord and developer is joint. Section 2(zk) of RERA defines the term 'promoter'. It does not define or explain, the term 'developer-promoter' or 'landowner-promoter'. The sum and substance of the definition of a promoter is that a promoter means a person who constructs or causes to be constructed an apartment for the purpose of selling and therefore the persons covered by clause (v) of the aforesaid Section are also promoter, if they acts as a builder, colonizer, contractor, developer, estate developer, or by any other name or claims to be acting as the holder of power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale. As per explanation to Section 2(zk) of RERA, **where a person who constructs/develops apartment or plot etc. for sale and the person who sells the same are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder.**

7 While amending the Entry 3, the existence of Joint Venture in the form of JDA is also not taken into account. In case of JDA, the Landlord, by a separate irrevocable Power of Attorney, allows the developer, to use the development rights, for carrying out the said project.As such there is no transfer of development rights by the landlord to a developer. Had it been so transferred, there was no need of power of attorney, for authorizing the developer to use the development rights.The land and all the **rights attached thereto, remains with the landlord, till conveyance deed is executed in favor of buyer/society.** As the said rights are not being transferred to a developer, the landlord (not the developer) executes 'Conveyance Deed' in favor of buyer of apartment or plot or society. The developer merely signs the conveyance deed on behalf of the landlordas well as in his capacity as a developer, as a confirming party.

8 When it is clear that in JDA, neither the land nor development rights are transferred to a developer, it is a legal error on the part of author of Notification No.3/2019-Central Tax (Rate) dated 29/03/2019 to insert Para 2A to Notification No.11/2017-CT providing thatthe value of construction service provided to landlord shall be equal to total amount charged, less the value of transfer of land as prescribed in para 2. Under the circumstance, following questions are important.

9 Whether allowing to use the development rights in a joint venture vide JDA is a sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made, by a landlord? In other words, whether allowing the use of development rights is a 'supply' withing the meaning of Section 7 of the Central and State GST Act?

In my view, allowing the use of development rights is different than permanent transfer or transfer for some period. For all kinds of supply covered by Section 7, transfer of goods or services to other person, permanently or for some period, is obligatory. As there is no transfer of developments rights to a developer, it is not a 'supply' within the meaning of Section 7.

10 Similarly, another question is, whether a developer is liable to pay output tax in case of allotment of flats/apartments or plots to landlord, of his share in JDA?

In my view, when the Real Estate Project is carried out by JDA, the allotment of under construction apartments or underdeveloped plots by the developer to the landlord, as landlord's share, cannot be treated as supply by the developer or by JDA within the meaning of Section 7 of the Central and State GST Act and hence no GST thereon can be levied.In other words, in case of JDA, there cannot

be two sales of under construction apartment or plot; first one by developer to landlord and second one from landlord to outside buyer. There can be only one sale by JDA to outside party. When a developer sells, landlord shall be a confirming party and when landlord sells, developer shall be a confirming party.

11 **GST Registration:** According to me, the ultimate purpose behind JDA is to sale, all or some of the apartments or plots to outsiders. The liability to pay GST on the sale of under construction apartments or plots to outside buyersis joint. Hence the landlord and developer should obtain single GST registration on the basis ofJoint Development Agreement, as AOP i.e. as 'Association' or 'Body of Individuals' whether incorporated or not. If the landlord wishes to take separate registration, he may obtain the same and file the returns and pay the output tax pertaining to sale of under construction flats/plots of his share. In the alternative i.e. where the landlord do not wish to take separate registration, the output tax on such sale,shall be paid by a developer, and a sale proceeds thereof, if received by the developer, shall be paid to the landlord by deducting the GST payable thereon or the landlord shall collect the sale proceeds from the buyer. Though such sale is shown by the developer in his returns, it should not be shown as sale in his Profit & Loss Account. The sale proceeds received from the buyers and paid to landlord should be respectively credited and debited to separate ledger account, which at the end will show zero balance.

12 **Concept of Joint venture:** A joint venture is a combination of two or more persons in a specific venture, where profit is jointly sought without any actual partnership or corporate designation. It is acommonenterpriseforprofits with a joint control over strategic financial and operative decisions. The relation between the co-venturer and joint venture is akin to that of a partner in a partnership firm. The partner contributes into a common pool, resources required for running the joint enterprise. If the venture is successful, the returns that he gets from the same, is his profits and not a consideration, for any specific service rendered. Likewise a co-venturer does not render any service to the joint venture for a consideration.

13 The opinion expressed in this article gets support from the judgment Mormugao Port Trust v/s Commissioner of Customs, Central Excise & Service Tax, Goa dated 07/10/2016. [2016 SCC online CESTAT 5095, 2017 ELT TRI BOM 4869, 2017 ELT TRI BOM 04869]

14 **Summing up:**The opinion expressed by me in this article may be pressed or relied upon by the landlord or a developer, only where the tax on transactions between the two is not paid and the show cause notice is received for the said levy. Otherwise, the Association of Builders should represent before the GST Council to amend the Entry 3, to do away the levy of GST on the so-called supply between the landlord and developer in case of JDA. The GST Act being new, many taxpayers and professionals are not ready to take the risk. As a result, there is a rising tendency of the taxpayers to assume (i) as something is received, it must be against a supply and (ii) as something is supplied, it must be for a consideration. Mormugao Port Trustjudgment is helpful to do away with the aforesaid assumptions. I am of the firm view that any enactment cannot evolve, unless every illegal provision is challenged by someone; may be, after payment of tax under protest. Any illegal provision in the law should not be allowed to be settled automatically, by inaction of the taxpayers.

- The facts involved in the case of Mormugao Port Trust and the observations and decision of CESTAT aregiven below.

15 **Facts:** Mormugao Port Trust (Mormugao) was rendering Port Services from its own land and was registered with the service tax authorities. Mormugao leasedout/rentedout the said land to M/s. South West Port Ltd.(SWPL) for the purpose of carrying out the business of providing the service of loading and unloading of cargo to ocean going vessels. SWPL constructed a jetty on the said land for the aforesaid business. Mormugao received license fee and royalty from SWPL. Mormugaopaid service tax on the license fee, but not on royalty. The Commissioner of Central Excise, issued the notice to Mormugao, proposing to levy service tax on royalty, under the head of Renting of Immoveable Property services. Mormugao replied to the Notice submitting that service tax cannot be levied, as there was no renting of land. The royalty earned by it

was infact its share of revenue from services which were jointly rendered by Mormugao and SWPL. The principal-client relationship which is the basic tenet for applicability of service tax, was not existing between the Mormugao and SWPL. Being not satisfied with the aforesaid submissions, the order was passed to levy service tax. On appeal before CESTAT,Mormugao argued that the impugned order has been passed without appreciating the true nature of agreement existing between the Mormugao and SWPL. The assumption that Mormugao had leased the land and the water front was erroneous and contrary to facts. Infact the arrangement between the Mormugao and SWPL was one where both parties were jointly rendering port services for earning profits. Both the parties were jointly controlling the operations of the two cargo handling berths. The relation between the Mormugao and SWPL was not that of a service provider and service recipient but was that of a co-venturer in a joint venture.

16 **Observation & Judgment:**

(a) That the issue to be decided by us is whether the amount received by Mormugao from SWPL, under the nomenclature of royalty, was a consideration for the renting/leasing of the land and the waterfront and accordingly liable to tax under the head of Renting of Immoveable Property services. After going through the licence agreement dated 11-4-1999 between the two parties, we find that the Commissioner was wrong in holding that Mormugao had merely leased out the land and water area to SWPL, and had done nothing else besides that. The agreement shows that besides leasing out the land and water area to SWPL for which a specific consideration by way of licence fees is charged by Mormugao (this licence fee is not subject matter of dispute in this appeal), Mormugao had also granted a permission to SWPL to conduct port operations. This permission was necessary for SWPL, as the right to exploit the water front by operating a port at Mormugao waterfront was by law, vesting only with Mormugao. Therefore, besides leasing out the land and the water area to SWPL, the other facility / right given to SWPL, is the right to conduct portperations at Mormugao water front. As per thelicence agreement, licence fee is the consideration agreed for the specific activity of leasing/renting of land and water area. Royalty on the other hand is the reward that Mormugao earns as his share of revenue from a joint port business enterprise run by the two parties in lieu of the various facilities, rights and resources contributed by Mormugao for the joint business. The main contribution of Mormugao, for which it is entitled for Royalty is the grant of permission/licence to carry on business on the water front at Mormugao. This exclusive right to exploit the water front which was available only to Mormugao as per law, was relinquished by Mormugao in favour of the joint venture. In addition to the above contribution, Mormugao was also obliged to do many more things for the smooth running of the port operations. These obligations are such as, providing information about licence premises to SWPL, approval of the provision and maintenance of all general port infrastructure, pilotage and towage on a non-discriminatory basis, overseeing dock-side safety, monitoring air pollution and water pollution at its own cost, compliance of environmental measures, supplying of power and water during construction, assistance for firefighting, obtaining/assisting in obtaining other sanctions and donations, scheduling entry, berthing and sailing of vessels, maintenance, dredging, removal of racks, debris of liquid spillage etc. The arrangement between MormugaoandSWPListhepublic privatepartnership.Inourviewthis arrangement in the nature of the joint venture where two parties have got together to carry out a specific economic venture on a revenue sharing model. Such PPP arrangement are common nowadays not only in the port sector but also in various other sectors such as road construction, airport construction, oil and gas exploration where the Government has exclusive privilege of conducting businesses. In all such models, the public entity brings in the resource, over which, it has the exclusive right, whether land, waterfront or the right to exploit the said land and water front, and the private entities brings in the required resources either capital, or technical expertise necessary for commercial exploitation of the resource belonging to the Government. These PPP arrangements are described sometimes as collaboration, joint venture, consortium, joint undertaking, but regardless of their name or the legal form in which these are conducted. These are

arrangements in the nature of partnership with each co-venturer contributing in some resource for the furtherance of the joint business activity. Sometimes, the contracting parties, may conduct such joint venture in the name of a separate legal entity, while at times, such a joint venture is carried out under the individual names of the parties. Suchinformal arrangements are called by different names either as a consortium, collaboration, joint undertaking, etc. Regardless of the legal form or name that is given to such a Joint Venture, the same are arrangements in the nature of partnership **but without the liabilities being joint and several.**

(b) The meaning of the term joint venture was interpreted by the Supreme Court in the case of Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. - (S.C.) wherein the Apex Court quoted with approval the following extract from the American jurisprudence Second Edition Volume 46 defines Joint Venture to mean that a joint venture is frequently defined as an association of two or more persons formed to carry out a single business enterprise for profit. More specifically, it is in association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business venture for joint profit, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership, a corporation or other business entity, pursuant to an agreement that there shall be a community of interest among the parties as to the purpose of the undertaking, and that each joint venture must stand in the relation of principal, as well as agent, as to each of the other coventurers within the general scope of the enterprise. Joint ventures are, in general, governed by the same rules as partnerships. The relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties, and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts freely apply partnership law to joint ventures when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other. Thus, the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships. A joint venture is to be distinguished from a relationship of independent contractor, the latter being one who, exercising an independent employment, contracts to do work according to his own methods and without being subject to the control of his employer except as to the result of the work, while a joint venture is a special combination of two or more persons where, in some specific venture, a profit is jointly sought without any actual partnership or corporate designation.

(c) An analysis of this judgment shows that in order to constitute a joint venture, the arrangement amongst the parties should be a contractual one, the objective should be to undertake a common enterprise for profit. Joint control over strategic financial and operative decisions was held to be the key feature of a joint venture. The other obvious feature of a joint venture would be that the parties participate in such a venture not as independent contractors but as entrepreneurs desirous to earn profits, the extent whereof may be contingent upon the success of the venture, rather than any fixed fees or consideration for any specific services.

(d) The question that arises for consideration is whether the activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has tobe in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks

taken by them for investing their resources in the venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

(e) In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be directandclear.Unlessitcanbeestablished that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity by a partner, it cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service.

(f) In Cricket Club of India v. Commissioner of Service Tax, it was held that mere money flow from one person to another cannot be considered as a consideration for a service.

(g) Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.

(h) Unless the existence of provision of a service can be established, the question of taxing an attendant monetary transaction will not arise. Contributions for the discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectives will not meet the criteria of taxation under Finance Act, 1994 in the absence of identifiable service that benefits an identified individual or individuals who make the contribution in return for the benefit so derived.

(I) Neither can monetary contribution of the individuals that is not attributable to an identifiable activity be deemed to be a consideration that is liable to be taxed merely because a club or association is the recipient of that contribution.

(j) To the extent that any of these collections are directly attributable to an identified activity, such fees or charges will conform to the charging section for taxability and, to the extent that they are not so attributable, provision of a taxable service cannot be imagined or presumed. Recovery of service tax should hang on that very nail. Each category of fee or charge, therefore, needs to be examined severally to determine whether the payments are indeed recompense for a service before ascertaining whether that identified service is taxable.

(k) We are accordingly of the view that activities undertaken by a partner/co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed.

(l) We may mention here that there are situations where a co-venturer or a partner may render a taxable service to the joint venture or the firm. This may happen if, for instance, the partner in individual capacity enters into a separate contract with the joint venture/partnership for providing a specific service in lieu of a separate specific consideration. Such consideration for specific services provided under an independent contract between a co-venturer/partner and joint venture/partnership can be taxable, as such contracts are executed by the partners not in their capacity of the partners but as independent contractors and such a relationship is governed by a separate contract independent of the partnership/joint venture agreement. To illustrate, a partner in a partnership firm may enter into a separate lease agreement with the firm for renting out his private property to the Partnership firm for a monthly rent. In this situation, the partner will be liable to pay service tax on the renting service rendered by him to the firm. On the other hand, if the partner chooses to grant the firm a right to use his office premises and regards this as his contribution to the hotch-potch of the partnership firm, the reward by way of profits which such partner may earn upon the success of the partnership venture will not be taxable

as the profit earned by the partner in such circumstances is not a consideration for the service of renting out the property to the partnership firm. By placing the office at the disposal of the firm to conduct its business the partner agrees to receive only a share of profit which is contingent upon the firm earning profits in the first place. If the venture fails and the firm does not earn any profit, the partner may not receive anything in return for the contribution made by him. On the other hand, if the firms venture is successful, the partner may earn profit which may be much more than the normal rent that he would have earned by simply leasing out the office to the firm for a fixed rent. The profits which the partner will earn in such circumstances is a reward due to an entrepreneur for the risk that he takes and cannot be regarded as a consideration for the renting of the office to the firm.

(m) The Commissioner has tried to support his conclusion to levy tax on Royalty by citing Mormugao'sown action of paying service tax on Royalty after April2012 when the negative list regime of taxation was introduced. Since there is no estoppels in law, we find this aspect to be totally irrelevant for deciding Mormugao's liability for the past period. In any case, we find that under the negative list regime the most significant change having a bearing on the issue in hand is the insertion of explanation (iii) in the definition of service in Section 65B(44). The said explanation (iii) reads as under:

(n) Explanation 3. - For the purposes of this Chapter, -(a)an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;(b)an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

(o) In our view all that the explanation stipulates is that an unincorporated association or a body of persons and members thereof, shall be treated as distinct persons. This explanation in our view does not have the effect of rendering the activities undertaken by the partner/co-venturer, which are actually for his own benefit, as being a service rendered by it to the partnership (joint venture). What the partner/co-venturer does is for his own benefit cannot ipso facto be considered as a service rendered to the partnership (joint venture). The mere fact that the partnership (joint venture) may also benefit from the same is irrelevant as there is no contract of service agreed upon or performed by the partner (co-venturer) to the partnership (joint venture). Additionally, there is no consideration agreed upon or provided. In the absence of there being a quid pro quo the essential requirement of the definition of service is not met with.

(p) The learned AR for the Revenue disputed the contention with regard to the enterprise being a joint venture and Mormugao being a joint venture partner on the ground that the agreement between the two entities in Clause 15.3 states that the duties, obligation and liabilities of the parties under the agreement are intended to be several and not joint or collective and that nothing contained in the agreement shall be construed to create an association, trust, partnership, agency or a joint venture amongst the parties. It has also been contended that there being no sharing of losses provided for, enterprise could not be called a joint enterprise.

(q) In our view, none of the two reasons urged by the learned Counsel for the Revenue would lead us to a conclusion that the arrangement between the two was not that of a Joint venture. The true nature of parties relationship has to be decided keeping in view the totality of the agreement by reading the agreement as a whole and not by reading one clause in isolation. If the agreement is read as a whole, it clearly comes out that Mormugao and SWPL were jointly undertaking a common enterprise, the revenue of which was shared between the two. Insofar as the other argument of the revenue that non-sharing of losses militates against the principle of partnership being canvassed by the Mormugao is concerned, firstly the broad principle of partnership of law applies to a transaction between co-venturer and joint venture and not the entire Partnership Act per se. Secondly, even under the Partnership Act there is no stipulation that the partners must necessarily share losses. Infact, the Honble Bombay High Court in the case of

Raghunandan Nanu Kothare v. HormasjiBezonji Bamji (1927) 29 BOMLR 207 have categorically held that it is not essential to constitute a partnership that a partner should share the losses. In any case in a joint venture of the present type where jointly controlled operations are being undertaken and one of the venturer brings in the land and the water front and the right to exploit such water front as his contribution while the other venturer brings in money to create infrastructure on the same as his capital, each of the partners is responsible/liable for loss of his capital incase the venture is not successful. Had the Mormugao chosen to give right in the land and the waterfront by way of auctioning the same, they could have gained substantial fixed amount, irrespective of revenue loss to the person who takes the right under auction. If the venture goes into loss the co-venturer who invested money will loose his money, at the same time the Mormugao will also not get anything being the consideration of the Mormugao is a share in the earning of the joint venture, that way the Mormugao is the looser of intrinsic auction value. Therefore, as per the present arrangement of joint venture, though there is clause the business of the joint venture but in fact, they are otherwise the looser of the deemed auction amount, in case of auction which the Mormugao could have opted instead of joint business venture. Therefore, in the present set of arrangement also, it is not correct to say that the Mormugao is not sharing the loss.

(r) We are accordingly of the view that there is no service that has been rendered by Mormugao, much less the taxable service of rentingo fim moveable property. The money flow to the Mormuga of rom SWPL, under the nomenclature of Royalty, is not a consideration for rendition of any services but infact represents the Mormugao's share of revenue arising out of the Joint Venture being carried on by Mormugao and SWPL. Consequently, the appeal is allowed.

अंतः अस्ति प्रारंभः। **The End is the Begining**

Tata Consultancy Services Limited Vs. Cyrus Investments Pvt. Ltd.: A Magna Carta on Law of Oppression and Mismanagement

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Prologue:

A bulk of litigating under company law jurisprudence will be pertaining to oppression and mismanagement and it will cover majority of pie chart on data analysis. However, there has been perennial ambiguity around law of oppression and mismanagement despite abundance of litigation on the subject, mostly because it's a discretionary and subjective relief based on equity and each case will depend on its own facts and circumstances. Recently, in case of Tata Consultancy Services Ltd. vs. Cyrus Investment Pvt. Ltd. Hon'ble Supreme Court has dealt with host of issues on law of oppression and mismanagement. This paper aims to analyze the law on the subject through the prism of recent ruling of Hon'ble Apex Court.

Facts in Nutshell:

On 24.10.2016, Board of Director of Tata Sons Pvt. Ltd. ["Company"] resolved to replace Mr. Cyrus P. Misty with Mr. Ratan Tata as the interim non-executive chairman. In otherwords, Mr. Mistry was removed as Executive Chairman, but it was left to his choice to continue as non-executive director of Company. Its worthwhile to note that Company is the holding company of Tata Group and holds the bulk of shareholding in the Tata group of companies.

Consequently, Mr. Cyrus P Mistry was discontinued from directorship of Tata Industries Ltd., Tata Consultancy Services Ltd. and Tata Tele Services Ltd. in extra-ordinary general meetings of respective companies. Thereafter, Mr. Cyrus P Mistry voluntarily resigned from Indian Hotels Company Limited, Tata Steel Limited, Tata Motors Limited, Tata Chemicals Limited and Tata Power Limited anticipatingimpending resolutions to remove his from directorship.

Thereafter, Mr. Cyrus P Mistry, through two companies namely Cyrus Investments Pvt. Ltd. and Sterling Investment Corporation Pvt. Ltd., 1 Tata Consultancy Services Ltd. vs. Cyrus Investment Pvt. Ltd.2021 SCC OnLine SC 272in which he has controlling stakes, filed a Company Petition before National Company Law Tribunal, Mumbai under Section 241, 242 and 244 of Companies Act, 2013 alleging oppression of minority shareholders and mismanagement of Company.

However, these two Companies were not qualified to file a petition under Section 241-242 of Companies Act, 2013 since these two companies collectively held only 2% total share capital of Tata Sons Pvt. Ltd. Under the circumstances, these Companies filed waiver application which came to be rejected by NCLT, Mumbai. However, the said decision was reversed in appeal by NCLAT and accordingly the matter was proceeded on merits.

NCLT, Mumbai, vide its judgement dated 09.07.2018, rejected the Company Petition after examining all the contention of both the sides in a thread bear manner and rejected allegation of oppression and mismanagement. NCLAT, vide its judgement dated 18.12.2019, reversed the judgement of NCLT, Mumbai. Consequently, several Civil Appeals were filed before Hon'ble Apex court and that is how the entire bandwagon moved before the Hon'ble the Apex Court

Issues before the Hon'ble The Apex Court.

(I) Whether Appellate Tribunal was justified in holding that affairs of company were conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground?

(ii) Whether the reliefs granted, and the directions

issued by the Appellate Tribunal, including the reinstatement of Mr. Cyrus P. Mistry into the Board of Tata Sons and other Tata Group of in case of a company having a share capital, a petition for oppression and maintenance under Section 241-242 is maintainable at the instance of minimum 100 members or members holding 1/10th of the total share capital of the Company.

3 Waiver application can be filed under Proviso to Sub-section (1) of Section 244 of Companies Act, 2013. The parameters for grant of waiver is discussed at length in the judgement of NCLAT reported in Cyrus Investments (P.) Ltd. v. Tata Sons Ltd. reported in [2017] 85 taxmann.com 317 (NCL-AT)

4Companies were in consonance with relief sought and powers available under Sub-section (2) of Section 242?

(iii) Whether the Appellate Tribunal could have interfered with various clause of Articles of Association of the Company and issued directions nullifying the effect of some of the clauses of Articles of Association?

(iv) Whether Appellate Tribunal was right in company into a private company, required the necessary approval under Section 14 of the Companies Act, 2013 or at least an action under section 43A(4) of the Companies Act, 1956?

The Verdict

After tracing origin of oppression and mismanagement jurisprudence under Company law in England and India and evolution thereof, Hon'ble Supreme Court answered all the four issues at great length.

Verdict on Issue 1:

On invocation of just and equitable clause by NCLAT, Hon'ble Supreme Court held that at present, powers under Section 241-242 of Companies Act, 2013 can be invoked when following twin conditions are fulfilled:

(a) Firstly, tribunal shall be of the opinion that the company's affairs have been or are being conducted.

(I) in a manner prejudicial or oppressive to any member or members, or

(ii) prejudicial to public interest, or

(iii) in a manner prejudicial to the interests of the company;

and

(b) that otherwise the facts would justify the making of a winding- up order on the ground that it was just and equitable that the company should be wound up but since passing an order of

5 Winding up of the company would unfairly prejudice such member or members,

It is imperative that the Court's opinion on both these points has to be affirmative before any order could be made. One this opinion is formed, Court may, with a view to bringing to an end to the matters complained of, make such order as it thinks fit. Thus, the ultimate goal of invocation of jurisdiction under this provision is to bring an end to the alleged acts of oppression or mismanagement.

There has to be an act of oppression or mismanagement which is prejudicial to member, company or public interest and such act has to be grave enough to justify wining up of a company on just and equitable grounds. A mere lack of confidence between the majority shareholders and minority shareholders would not be sufficient to invoke jurisdiction of oppression and mismanagement under company law jurisprudence.

According to the Hon'ble Court just and equitable clause for exercising jurisdiction under this provision can be ordinarily invoked under two circumstances viz.

(i) when there is a functional deadlock which affects functioning of the Company at Board or Shareholders level or (ii) Where a company is a corporate quasi partnership and an irretrievable breakdown in trust and confidence between the participating members has taken place.

In the fact of the present case, it was held that Mr. Cyrus P Mistry and group had neither pleaded nor proved functional deadlock thus application of first category was ruled out automatically. Second category is concerned with claim of quasi partnership. Hon'ble Supreme Court rejected the claim of quasi partnership between the Tata Group and Mistry Group by holding that Tata Sons Pvt. Ltd. was never established as a quasi-partnership and infact Mistry group boarded the train half-way through the journey of Tata Sons Pvt. Ltd. Mr. Cyrus P Mistry and group became shareholders only after forty- eight years of the incorporation of Tata Sons Pvt. Ltd. and they did not even hold any directorial position until 1980.

6 Lastly, Hon'ble Supreme Court held that majority of shareholders of Tata Sons Pvt. Ltd. are philanthropic trusts and dividends from this Company is utilized for charitable purposes by these holding trusts. Hence even otherwise it would not be just and equitable to wind up the Company and leave trust to starve to death.

Verdict on Issue 2:

Hon'ble Supreme Court categorically held that removal from directorship can never be held to be an oppressive or prejudicial conduct. The validity of and justification for the removal of a person as director of the company can never be the primary focus of a Tribunal under Section 242, unless the same is in furtherance of a conduct oppressive or prejudicial to some of the members. The Court also went on to hold that NCLAT was not justified in directing reinstatement of Mr. Cyrus P Mistry since Sections 241 & 242 of Companies Act, 2013 do not specifically confer the power of reinstatement. The Hon'ble Court held that there is no scope for holding that such a power to reinstate can be implied or inferred from any of the powers specifically conferred under Section 241 & 242 of Companies Act, 2013.

On fact court held that reinstatement of Mr. Cyrus P. Mistry was even otherwise illegal since Mistry group never sought for such a relief at first place. Secondly, Mr. Cyrus P. Mistry had already ran out of the tenure as director and hence there was no question of reinstatement. It was held that NCLAT exceeded the scope of petition and grated reinstatement of Mr. Cyrus P. Mistry to Tata Group of companies which were not even party to the original petition and appeal. Such a relief was in gross violation of principles of natural justice moreso when these companies have followed the procedure prescribed by Statute and the Articles. Accordingly, Hon'ble Supreme Court struck down reinstatement of Mr. Cyrus P. Mistry both on law and on fact.

Verdict on Issue 3:

7 On challenge to various clauses of Articles of Association, Hon'ble Supreme Court held that a person who willingly became a shareholder and thereby subscribed to the Articles of Association and who was a willing and consenting party to the amendments carried out to those Articles, cannot later on turn around and challenge those Articles. The same would tantamount to requesting the Court to rewrite a contract to which he became a party with eyes wide open. Hon'ble Supreme Court has also carved out an exception to this rule and held that Tribunal has the power under Section 242 of Companies Act, 2013 to set aside any amendment to the Articles that takes away recognised proprietary rights provided that the conduct of bringing such an amendment itself was oppressive.

On facts, court held that Clause 75 of the AoA, which to empowered Company to demand any member to transfer his shares, have not been misused in past so as to oppress the minority and NCLAT could not have neutralized Article 75 merely on the basis of likelihood of future misuse, more particularly when remedy under Section 241 is not intended to discipline a management in respect of a possible future conduct. It was further held that affirmative voting rights for the nominees of institutions which hold majority of shares

in companies have always been accepted as a global norm and thus Article 104B, 121 and 121A, which provides for affirmative voting rights upon the Directors appointed by the Trusts in Tata Sons Pvt. Ltd. was held to be valid and legal.

Verdict on Issue 4:

The Hon'ble Court held from 12.09.2013 i.e. from the date of Coming into force of Section 2(68) of Companies Act, 2013, the question whether a company is a private company or not, will be determined only by the definition of the expression "private company" found in section 2(68) of the 2013 Act and according to that definition, Tata Sons Pvt. Ltd. was a private limited company. **The Peripheral Issues** On all other issues, which were originally raised by Mr. Cyrus P. Mistry and group before NCLT, Mumbai but not specifically dealt with by NCLAT, Hon'ble Supreme Court held that judgement of NCLAT was liable to be reversed and finding of NCLT, Mumbai are required to be restored on the short ground that NCLAT rejected specific findings of fact without even discussing the facts much 9 See Section 242(2)(h) and 242(2)(k) of Companies Act, 2013

10 As I conclude this, I must appraise the reader that a review petition is pending against this judgement. examining/analyzing the same. Hence, in a way, findings of facts of NCLT, Mumbai qua dealings of Tata Sons Pvt Ltd. with respect to Siva and Sterling Group of Companies, Air Asia, Mehli Mistry, Nano Car project etc. were restored and approved by Hon'ble Supreme Court wherein NCLT, Mumbai held that Mr. Cyrus P Mistry and group were part of majority of transactions and in some cases they have also benefitted out of transactions and hence they cannot be termed as act of oppression and mismanagement. In any case failed business decisions cannot be a ground for oppression and mismanagement.

The Hon'ble Court also held that proportionate representation, as sought by Mr. Cyrus P. Mistry and group was neither a statutory right nor a contractual right and such right does not stem from Section 151 163 of Companies Act, 2013.

Hon'ble Court also held that Mr. Cyrus P. Mistry could not have been reinstated as Director of Tata Group of companies i.e. downstream companies in absence of any specific prayer to that effect and without hearing those companies.

Epilogue and a Critique

Jurisprudentially, the fact that Hon'ble Supreme Court laid down in no clear terms that ultimate object of remedy of oppression and mismanagement under Section 241-242 is to bring an end to the matters complained of is the most important take away from Cut the debate and concludes that removal of director cannot be ground of oppression and mismanagement. The court also acknowledged the AoA is a contract amongst the member and, while exercising jurisdiction under Section 241-241, it can be interfered with when a subsequent amendment is introduced in oppressive manner so as to take away of recognised proprietary rights to the member. However, if a member has subscribed to memorandum with open eyes, it is not open for him to challenge the clauses of AoA at later stage. It also fairly concludes that failed commercial decision, wherein a member has actively participated cannot become a ground for oppression at a later stage. A holistic view of this judgement would suggest that it has ticked almost all boxes and it is next magna carta on law of oppression and mismanagement.

But the judgement also leaves several grey areas. Firstly, Hon'ble Court hold that just and equitable doctrine can be invoked only under two circumstances i.e. (i) functional dead lock (ii) quasi partnership amongst members. However, there may other instances such as scale siphoning or diversion of funds, repeated acts ultravires the AoA and Moa etc. These cases might not fall within the ambit of functional deadlock or quasi partnership but still be an act of oppression which may require invocation

of just and equitable doctrine. Infact, clause (a) of sub-Section (1) of Section 241 and sub-Section (1) of Section 241 provides that member of company can complaint even if acts of a company are oppressive to public interest.

Therefore, to limits the scope of invocation of just and equitable clause to these two instances would amount to limiting the scope and power.

Also, which Hon'ble Court did held that removal from directorship cannot be a ground for oppression and mismanagement. But a little window of ambiguity is left open where it is held that removal from directorship can be a ground for challenge under Section 241-242 when it is in furtherance to a conduct which is oppressive or prejudicial to some of the members. Now, an act that is in furtherance to a conductwhich is oppressive or prejudicial to some of the members is quiet subjective and different courts are likely to take different. Also, under Section 242 of Companies Act, 2013 one finds a power, both for removal and appointment of directors. That such power of removal and appointment will take into its sweep power to re-instate itself. Let's take a case where, person is removed as director in an act which is in furtherance to a conduct which is oppressive or prejudicial to some of the members, can such person not be reinstated even if Court concludes that action of this removal from directorship was oppressive to the members. Would such person be relegated to remedy of filing a suit despite the fact that NCLT concludes that acts were oppressive? In my opinion, answer has to be in negative.

Hon'ble Court also laid lot of emphasis on the fact that majority of shares of Tata Sons Pvt. Ltd. are held by philanthropic trust and in case where company is would up these philanthropic trusts will starve to death. However, one wonders if that is the yardstick for deciding a case under Section 241-242.

To conclude, the judgement which is projected as magna carta on law of oppression mismanagement under present company law jurisprudence, settles most of the issues arising in such litigations. However, it has left few grey areas and we will have to await another battle royal to reach till Hon'ble Supreme Court to get the answers of grey area.

Footer Note:

- According to Section 244 of Companies Act, 2013
- Tata Sons Pvt. Ltd. filed two Civil Appeals, Mr. Ratan Tata filed two Civil Appeals, Some of the companies of Tata Groupnamely Tata Consultancy Services Limited, Tata Teleservices Limited and Tata Industries Limited filed separate appeals. Even the original Complainants before NCLT, Mumbai filed cross Civil Appeals seeking some additional reliefs over and above NCLAT judgement.
- Therefor acts of oppression can be of past or present but it cannot be of distant past in the words of Hon'ble Apex Court Refer to S.P. Jain v. Kalinga Tubes Ltd, AIR 1965 SC 1535
- In Hanuman Prasad Bagri & Ors vs Bagress Cereals Pvt. Ltd. reported in (2001) 4 SCC 420 it is held that termination of directorship would not entitle such person to ask for winding up on just and equitable grounds inasmuch as there is an appropriate remedy by way of company suit which can give him full relief if such action had been taken by the company on inadequate ground.

The Verdict Under Scrutiny: The Saga of Madras High Court Decision for GST on Hostels

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The Madras High Court's recent ruling exempting hostels from Goods and Services Tax (GST) in the case of Thai Mookambikaa ladies hostel has stirred controversy, prompting scrutiny and debate amongst the industry members. The decision, hailed by some as a win for affordable lodging, has left others skeptical, awaiting further clarity.

Amidst a legal clash over the interpretation of GST exemption clauses, hostel operators, primarily catering to female students and working women, found themselves at odds with the Tamil Nadu Authority for Advance Ruling (TN AAR). While the High Court's ruling favored hostel operators, questions linger regarding the definitions of 'residential dwelling' and the distinctions between hostels and hotels.

With the Supreme Court's potential intervention pending and the initiation of Special Leave Petitions (SLPs) looming, the fate of hostel operators and the broader hospitality sector hangs in the balance, underscoring the complexity of tax jurisprudence in the hospitality industry.

❑ Facts

The motive: In a bustling city, the Thai Mookambikaa Ladies Hostel emerges as a haven (a place that offers safety, shelter, or favorable opportunities) for college students and working women, offering comfortable accommodations and hearty meals amidst their academic and professional pursuits.

Tariffs and Inclusivity: The hostel welcomes residents with open arms, offering very reasonable monthly rates ranging from Rs. 1200/- to Rs. 6,500/-, ensuring affordability for individuals from various budget backgrounds& even including the individuals having high aims in their life but due to some financial constraints they have been unable to pursue.

Cloud of Uncertainty: Despite the harmony within the hostel, uncertainty looms as the management finds themselves entangled in a legal saga, seeking clarity on the applicability of Goods and Services Tax (GST) exemption on accommodation charges.

Petition for Clarity: Believing in the noble nature of their enterprise, the hostel's management approaches the Tamil Nadu State Appellate Authority for Advance Ruling, fervently arguing for GST exemption, emphasizing the essential services they provide to students and working women.

Denied Exemption: Despite passionate pleas, the Authority for Advance Ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) deny the exemption, citing intricate clauses within GST laws and deeming the petitioner ineligible.

Financial Ramifications: The denial of GST exemption places a significant burden on the hostel, adding extra taxes to accommodation charges and impacting operational costs and pricing structures, posing challenges for future endeavors.

A reminder of Complexity: The Thai Mookambikaa Ladies Hostel case serves as a poignant reminder of the complexities faced by small businesses in navigating tax laws, highlighting the resilience of the hostel amidst adversity.

❑ **The Petitioner's Arguments**

The petitioner, operating a residential hostel for boarding and lodging under Section 5 of the Tamil Nadu Hostels and Home for Women and Children (Regulation Act) of 2014, c ontends that the accommodation provided falls within the purview of a "hostel" as defined by the Hostel Regulation Act.

This definition distinctly separates hostels from hotels, as hostels primarily cater to long-term accommodation for students and working individuals, whereas hotels provide temporary lodging. Moreover, the petitioner emphasizes that the hostel operates with a motive to offer safe residence at nominal charges, ensuring a clean environment without profit motives.

Furthermore, the petitioner highlights the legal distinction between a hostel and a hotel, drawing attention to the definitions provided by relevant legislation. While a hostel falls under residential regulations, a hotel is governed by commercial regulations.

The reference has been specifically made toSection 2(e) of the Tamil Nadu Hostels and Home forWomen and Children (Regulation) Act, 2014), the term hostel orlodging house in common parlance is defined to mean a building in which accommodation isprovided for women or children or both, either with boarding or not& hence it can be concluded that residential dwelling includes hostels.

Also, referring to Para 4.13.1 of the Service Tax Education guide issued by CBIC, the expression 'residential dwelling' has to be understood in terms of thenormal trade parlance as any residential accommodationbut does not include hotel, motel, inn, guest house, campsite, lodge,house boat, or like places meant for **temporary stay.**

Generally, renting aresidential dwelling involves letting out any building or part of thebuilding by a lessor to a person for renttowards the rental premises which form part of a house as kitchen,bedroom, living room, etc., overall, as a residence. Thus, an ordinary understanding of the term "residential dwelling" is one wherepeople live treating it as a home.

The petitioner also underscores the significance of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act of 2017, asserting that the relationship between the hostel owner and the inmates constitutes a form of tenancy, with the inmates regarded as sub-tenants.

The petitioner relies on a series of legal precedents and case law to support their arguments:

I. Kishore Chandra Singh Vs Babu Ganesh Prasad Bhagat (AIR 1954 SC 316): The Supreme Court established that "residence" encompasses activities such as eating, drinking, and sleeping, irrespective of ownership.

II. Jagir Kaur Vs Jaswant Singh (Criminal appeal 143/1961): The Supreme Court's decision clarified the meaning of "reside."

III. VL Kashyap Vs R P Puri (Delhi High Court, 22.09.1976): The Delhi High Court's judgment elucidated the concept of a "dwelling house" or "residential house."

IV. Indo International Industries Vs Commissioner of Sales Tax (SC, 25.03.1981): The Supreme Court affirmed that in the absence of a statutory definition, a dictionary or popular meanings can be applied.

V. CCE Vs Air Conditioning Corporation (SC, 13.09.2006): This case underscored the importance of interpreting legal terms by their ordinary meaning.

VI. Balakrishna Vs Sakuntala Bai (AIR 1942 MAD 666): The Madras High Court's ruling established that "reside" implies an intention to remain at a place, not merely a temporary visit.

VII. Dennis Philips and Royna Goddard Vs Martin Francis (England and Wales High Court, 24.03.2010):
This decision reinforced the common understanding of the terms "residence" and "dwelling."
VIII. Additionally, the petitioner cites the decision of the Hon'ble Karnataka High Court in the case of **Taghar Vasudeva Ambrish vs. Appellate Authority for Advanced Ruling, Karnataka,** which upheld the exemption available to residential hostels under relevant tax notifications.

IX. As per the **Black Laws Dictionary**, Residence is a place where one lives or has his home. Dwelling means the house or other structure in which aperson or persons live, the structure used as a place of habitation.

The petitioner argues that the hostel's operations align with the legal definition of residential dwelling and therefore warrant exemption from GST, supported by both legislative provisions and judicial precedents.

❑ **The Respondent's Contention**

The revenue department argues that the applicant mainly aims to operate a ladies' hostel for profit. They acknowledge that the applicant charges fees for accommodation and food services, which fall within the definition of "supply" under Section 7 of the TNGST/CGST Act.
The applicant is duly registered under various acts to conduct its business activities. According to Section 2(17) of the TNGST/CGST Act, their activities qualify as "business," encompassing various endeavors pursued for pecuniary gain.
Contrary to the applicant's stance, the revenue department asserts that their services don't align with "services by way of renting of residential dwelling for use as a residence." Instead, they argue that the applicant merely rents out individual rooms to different occupants for varying durations, without formal rental agreements. Thus, their operations fall outside the scope of the Tamil Nadu Rent Regulation Act.

Moreover, the revenue department notes that the applicant fails to adhere to tax deduction at source (TDS) regulations under section 194 I of the Income Tax Act concerning rental income. Consequently, the claim of providing residential dwelling rentals for residence use is deemed invalid.

Further more, the state jurisdictional authority contends that the applicant's services constitute renting of immovable property with a business motive for financial gain. They classify these services under Heading 9963 (Accommodation, food, and beverage services) and specifically under Entry No. 7 (ix) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017. This entails that the applicable tax rate for the applicant's services is as per the aforementioned notification.

In summary, the revenue department maintains that the applicant's activities constitute taxable services falling under the category of accommodation, food, and beverage services, as per relevant tax notifications.

In summary, the revenue department maintains that the applicant's activities constitute taxable services falling under the category of accommodation, food, and beverage services, as per relevant tax notifications.
The respondent argues that when it comes to interpreting exemption notifications, there's already a clear legal precedent set by the Supreme Court. According to the Supreme Court's decision in the case of **'DILIP KUMAR AND COMPANY AND OTHERS,'** exemption notifications should be interpreted very strictly. This means that it's the responsibility of the taxpayer (the assessee) to prove that they qualify for the exemption mentioned in the notification.
In situations where there's any uncertainty or ambiguity in the exemption notification, which is already subject to strict interpretation, the benefit of the doubt can't be claimed by the taxpayer. Instead, it should be interpreted in favor of the revenue

authority. This means that if there's any doubt about whether the taxpayer qualifies for the exemption, the interpretation should lean towards supporting the revenue authority's position. The burden to prove that they are eligible for exemption should be at the petitioner's end and they have to explain how they are eligible for the exemption, which they failed in the current case.

So, in this case, the respondent contends that the exemption notification should be read and applied very strictly, and any uncertainty should be resolved in favor of the revenue authority, rather than the taxpayer.

- **The SLP creates more Uncertainty.**

In the case of Taghar Vasudeva Ambrish vs. Appellate Authority for Advance Ruling, as delineated in MANU/KA/0327/2022, the esteemed Division Bench of the Karnataka High Court has decisively pronounced that the provision of services involving the leasing out of residential premises as hostels to students and working professionals falls within the ambit of exemption outlined in Entry No. 13 of Exemption Notification No. 9 of 2017. This ruling, marked by the Karnataka High Court, delineates that hostel services are indeed exempted from the imposition of GST.

It's noteworthy that after the issuance of this order by the esteemed Division Bench, the respondents have taken recourse to a Special Leave Petition (SLP) before the esteemed Apex Court. However, as it stands, no stay has been granted by the Hon'ble Apex Court against the aforementioned order of the Karnataka High Court. It's pertinent to note that despite the absence of a stay, the 2nd respondent asserts their prerogative to form an independent perspective on the matter. This stance is underpinned by the fact that the issue remains unsettled and sub judice before the esteemed Supreme Court of India, awaiting its final adjudication.

Thus, while the legal proceedings continue before the apex judicial authority, it's imperative to acknowledge the absence of a definitive resolution and to exercise prudence in interpreting and implementing the legal implications of the subject matter.

Additionally, with effect from 18th July 2022, vide Notification No. 04/2022 – Central Tax(Rate), an additional burden on the registered persons has been imposed under the reverse charge mechanism wherein they are availing the services of renting residential dwelling other than for use in personal capacity or on his on account.

- **Conclusion**

In the swirling legal discourse surrounding the Madras High Court's recent ruling on GST exemption for hostels, divergent perspectives have emerged, highlighting the intricacies of tax jurisprudence in the hospitality sector. The high court has observed in the current case and gone beyond the normal understanding of the term residential dwelling and interpreted from the view of considering the following factors -

a. Non-Commercial Purpose
b. Similar to House or Home (Including Kitchen, Washroom, Beds, etc.)
c. Comparison with the situation of Homeless persons
d. Renting of Home v/s Renting of Hostel Room
e. What is rented and the purpose behind renting?

On one hand, the petitioner fervently argues for exemption from GST, citing legislative provisions and judicial precedents that align with their interpretation of residential dwelling. Conversely, the Revenue Department contends that strict interpretation of exemption notifications places the burden of proof on the taxpayer, urging caution in extending the benefit of the doubt.

Amidst this legal conundrum, the reference to the Karnataka High Court's decisive pronouncement in Taghar Vasudeva Ambrish vs. Appellate Authority for

Advance Ruling underscores the nuanced nature of the issue at hand. As the matter remains sub judice before the esteemed Supreme Court of India, with the Special Leave Petition pending, it is imperative to exercise prudence in interpretation and implementation. In navigating this legal landscape, a diplomatic approach is warranted, recognizing the complexities involved and the need for clarity in tax laws. The absence of a definitive resolution underscores the importance of awaiting the final adjudication while acknowledging the diverse perspectives. Ultimately, the pursuit of justice and equitable application of tax laws must guide our deliberations as we await the apex judicial authority's verdict.

Views expressed are strictly personal and cannot be considered as a legalopinion in case of any query. For feedback or queries email us yash@hnaindia.com

TTR – Tax Transparency Report

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❖ **Meaning of TTR:**

Tax Transparency Report (TTR) means a disclosure of the tax contributions made by the company to the Governments where they operate. Tax Transparency is a clear and accessible tax-related information published by a company for internal and external stakeholders. In India, TTR is a voluntary effort aiming disclosure to maintain transparent negotiation with stakeholders, on contributions made to public finances.

❖ **Purpose of TTR:**

The purpose of the TTR is the disclosure of the tax contributions made by the company to the Governments where they operate. Wherein thedetails of the different types of taxes paid by the company as well as the principles guidingits tax governance are explained publicly.

❖ **Need For TTR:**

History:

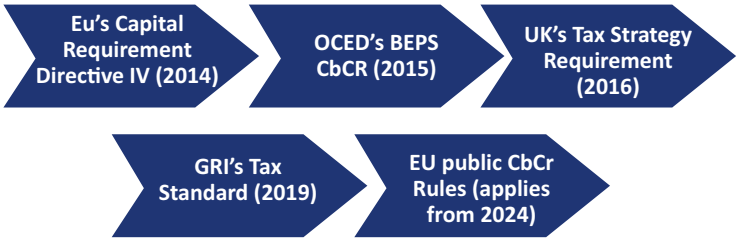
The Environmental, Social and Governance (ESG) agenda is gaining momentum across all facets of business & tax has no exception.The goal of ESG reporting is to use data to measure how a company's ESG initiatives compare with industry benchmarks and targets.Further, it also provides stakeholders valuable insight that can inform decision-making, highlighting potential opportunities and risks that might affect the valuation of a company. An ESG score is used to track company's ESG performance which provides greater visibility into its operations for investors, stakeholders and regulatory bodies. Organizations that provide more robust ESG reports typically score higher, whereas those that don't track or showcase their ESG performance will often have a lower ESG score.For tax transparency predate, the recent surge in focus is on ESG and the associated sustainability metrics and reporting, there is no doubt that they have intensified in recent times and that a wider variety of stakeholders than ever before have taken up that call.While some drivers – such as calls from civil society – have been present for the last 20 years, new drivers – such as calls from investors – are emerging as one of the leading forces of change. Voluntary reporting regimes are becoming more widely adopted and, in some jurisdictions the regulatory and legislative environment is also changing, often requiring more tax transparency from companies.

Not all companies are responding in the same way or at the same rate. However, when speaking to those who are leading in making increased disclosures, it is clear that they have taken incremental steps over a number of years rather than taking a “big bang” approach. In India many more Listed companies are publishing the TTR Reports to give the transparency to the public at large.

Evolution Phase:

Global Standards are evolving since 2014, for transparent reporting by the companies to it's stakeholders.

Below mentioned chart provides a brief about the phases of evolution:



The first big push for Country-by-Country Reporting (CbCR) began at the start of this century. Part of the focus – driven by civil society groups like Tax Justice Network and Publish What You Pay - was on getting companies to be more open; however, there was also a push to use tax transparency to make governments more accountable which led to the Extractive Industries Transparency Initiative. The next big step came after the financial crash when, in 2013, financial institutions in the EU were required to publicly report certain country-by-country data under the Capital Requirement Directive, IV. Mandatory CbCR was transformed when, in 2015, the OECD developed a common template for reporting as part of the BEPS action plan. The OECD initiative requires reporting privately between tax authorities. However, a recent agreement in the EU on public CbCR means that in the next few years any companies, over a certain size threshold, with EU operations will have to partake in public CbCR to some degree.

Voluntary tax transparency reporting standards have been emerging and developing in both the number of standards and in their sophistication.As the ESG agenda has gained momentum in the last few years, the world of reporting has reflected this shift with many voluntary tax transparency standards emerging, such as the Global Reporting Initiative tax disclosure standard – GRI 207, and the tax disclosures required by the Stakeholder Capitalism Metrics released by the World Economic Forum. Other stakeholders, such as the B Team, have developed responsible tax principles which include a call for transparency.

The direction of travel is clear – more tax transparency is being required by different stakeholders.

…An interesting example of investor activity is Norway's sovereign wealth fund which has stated it has divested in several companies because of "aggressive tax planning and cases where companies do not give information of where, and how, they pay tax"…

Requirement of TTR in Present:

Understanding effective tax rates (ETR) and any tax controversies a company faces is key for investors. While ETR variances in the home jurisdiction are usually explained well in the tax reconciliation, the tax impact of any overseas activities is often shown as only one line or number with little explanation. CbCR would enable a greater analysis of the impact of overseas tax.

Effective reporting requires clear documentation of tax principles, governance, planning and adherence to local laws which looks beyond the traditional view of corporate tax on profit and Covers wide spectrum of tax categories like customs duties, GST, local levies, stamp duty, social security contribution, and withholding taxes. Further, it can also disclose information such as related and unrelated party revenue, profit or losses, taxes, capital and assets.

Taxes can be a significant cost for the companies and represent a high financial risk. Due to these, investors would like to see how the overseas tax is actually composed and how it is affecting the overall effective rate and that is taken care by CbCR figures in TTR. Many investors are increasing the size and expertise of their tax departments looking at investee company tax risks and do have the capability to interpret the CbCR figures. It can be considered as positive scenario that companies are opening up more now than they may have in the past about international tax charges when they are approached to discuss their ETR and other CbCR information.

For investors, there is generally a type of rulebook for what access to information they have ~ as equity holders but that does not apply when they are debt providers. Where they invest in unlisted debt, they are trying to include clauses in the documentation about tax information. In all these cases, public CbCR information would make the analysis easier.Companies being more willing to discuss Country-by-Country information may be, in part, due to the requirement to disclose it to and discuss it with tax authorities in recent

years. However, as a result of the political agreement in the EU on public CbCR, certain companies will likely soon have to make the information available publicly.

Under the safeguard clause, member states may allow the deferral of disclosure of commercially sensitive information for a specified period up to a maximum of five years. However, what exactly is considered "commercially sensitive" information is unclear yet.

It is not certain when the directive would enter into force, but it may be approved by October 2021. Member states would have 18 months to transpose the directive into law, which is approximately April 2023. The requirement would then apply from the first financial year beginning one year after the transposition; for a calendar year taxpayer, that would be January 2025. Reporting would then be due within 12 months from the balance sheet date. It is possible though that some member states may want to impose an earlier start date.

There are concerns from companies about disclosing commercially sensitive information. While these may be legitimate, non-disclosure needs to be balanced with the need to build trust. Being open about the reasons for any redaction will likely be key.

Other concerns from businesses can generally be grouped into two main categories. Firstly, entering and trying to understand the tax transparency landscape for the first time. Secondly, there are concerns around how to collect data and obtain assurance. Because of the tax transparency landscape is evolving at such a rapid pace, everyone is at a different stage in their journey. There are businesses which are at the beginning of that journey trying to understand what the driving forces are, the various voluntary standards, mandatory regulations and stakeholder concerns.

For example, understanding what value the customer base and employees place on your approach to and transparency around tax is becoming more important when attracting and retaining these stakeholders. Understanding how tax departments get buy-in from their senior management and the board of directors can revolve around addressing their concerns and, often, providing quality benchmarking against peers.

Once companies have made the decision to be more transparent, difficulties often tend towards how groups access and manage the data required to report on tax contributions, on a country by country basis.

❖ **Aids of TTR:**

- Transparency is a core value as businesses firmly believe in long-term sustainable value creation for their multiple stakeholders including the government and society at large. Many businesses remain at the forefront of tax reporting by managing their tax affairs in a succinct and straightforward manner.

- Businesses regarding sustainability as a strategic, long-term value driver, and they embed this approach throughout their business value chain.
- Businesses also believe that, with their sustainability approach, they will be able to address sustainability challenges, become more competitive and further sharpen their commitment to all stakeholders.
- Committed to pay the fair share of taxes and being transparent about what is paid and where it is paid is key to business management. Transparency is an enabler of sustainable development, and corporate must show commitment to support the meaningful disclosure of its economic contribution and has regularly made comprehensive disclosures of tax payments.
- Taxes are the lifeblood of societies and nations. These tax revenues enable governments to pay for essential public services, such as health care, education and well-being of the less privileged, whilst ensuring a robust infrastructure is built and maintained for the society at large.
- Citizens should have a clear understanding of the revenue gained by their government from the

corporate, and its allocation in the country's economic and social development. When companies provide transparent information about their revenue, the potential for corruption is reduced.

- The Tax Transparency Report produced on an annual basis is aimed at enhancing trust between businesses and stakeholders, especially in those countries in which it operates.
- Tax Transparency Reports of businesses provide an overview of how they meet their tax responsibilities. It also describes tax principles, tax strategies and trends of particular business. Report requires continue to review the reporting on tax payments and make appropriate improvements in line with any applicable regulatory developments.

List of Abbreviations Used:

- TTR: Tax Transparency Report
- ESG: Environmental, Social and Governance
- EU: European Union
- OCED: Organization for Economic Co-operation and Development
- BEPS: Base erosion and profit shifting
- CbCR: Country by country reporting
- GRI: Global Reporting Initiative
- ETR: Effective Tax Rates

Conclusion

Now-a-days, only few companies in India are publishing Tax Transparency Report in public domain. These companies are complying disclosure of TTR on voluntary basis. As mentioned above, Global standards are evolving so fast to make this Country-by-country Reporting effectively.We can predict that India will also follow this path and make some guidelines about publishing transparent reports in public domain for the benefit of stakeholders in near future.

The World is One Family

ACTIONSTAKENBYTHELEADERSOFTHEAGFTC[DURINGFY2024-25]:

HEREARE SOME MOMENTS WHICH NEEDS TO GET RECOGNITION

BELOW LISTED ACTIVITIES ARE JUST AS MALL STEPS WHICH ARE TAKEN BY THE MEMBERS, OR THE MEMBERS AND FOR THE BETERMENT OF THE FETERNITY:

❖ **Representation made before Hon'ble Smt.Nirmala Sitharamanji:**
(Union Minister of Finance & Chairperson, Goods and ServiceTax Council, Ministry of Finance):

To amend the penalty provision under section 73(9) of the CGSTAct, 2017

AND

To reduce higher amount of penalty under section 73(9) of the CGSTAct, 2017

AND

To change amount of minimum penalty under section 73(9) of the CGST Act, 2017

DATE:19/06/2024

❖ **Representation made before Hon'ble Smt.Nirmala Sitharamanji (Hon'ble Finance Minister):**

Incorrect Interpretation of Relief u/s 87Ain case of Assessees having Income chargeable at Special Rate of income tax by utility on the Income Tax Portal as well as by the Helpdesk &

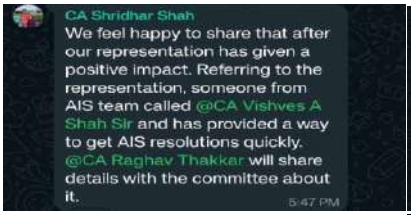
Problems in functioning of Income Tax Portal and update issues in AIS/TIS & Demand for Extension of Due date for filing of Income Tax Returns forAY 2024-25 from 31st July 2024 to 31st August 2024.

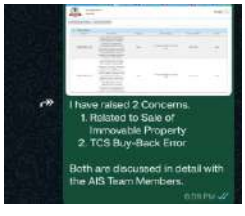
DATE:15/07/2024

APPLAUSABLE-EVENT:

We have received a quick response from the AIS/TIS team of the IncomeTax department and within 24 hours from our representation to CBDT, CA. (Dr.)Vishves Shah (the president ofAGFTC) got the call from AIS/TIS team member to post the queries of glit ches of AIS/TIS faced by the Chartered community.

Afterwards, Posting the query by the CA Raghav Thakkar (Member of AGFTC), we got the response within 2-3hours, and they informed us that our query is transferred to the head person of the AIS/TIS team and they will update us soon about resolution of glitches. Here, are some screenshots:





THIS CAN BE TRULYS AID THAT A SMA LL CHANGE CAN CREATE A BIG IMPACT FOR THE BENEFIT OF THE PUBLIC AT LARGE.

WE, AS AN ASSOCIATION STARVES FOR THE BETTERMENT OF THE SOCIETY AND WE ARE WORKING FOR THAT.

STAY CONNECTED AND TUNED!!!

વર્ષ ૨૦૨૪-૨૦૨૫ માટે હોદેદારો

ગર્વ ભૂમિ

ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્સકન્સલ્ટન્ટ્સ ની તા. ૦૬/૦૭/૨૦૨૪ના રોજ મળેલ ૩૨મી વાર્ષિક સામાન્ય સભામાં અને તા. ૦૯/૦૭/૨૦૨૪ રોજ મળેલ કારોબારી સમિતિની મિટિંગમાં નીચે મુજબના હોદેદારોની સર્વાનુમતે નિમણૂંક કરવામાં આવેલ છે.

પ્રમુખ	સી.એ. (ડૉ.) વિશ્વેશ એ. શાહ
પ્રેસિડેન્ટ એમેરીટ્સ	એડવોકેટ ધીરેશ ટી. શાહ
સિનિયર ઉપપ્રમુખ	એડવોકેટ આશુતોષ આર. ઠક્કર
ઉપપ્રમુખ (સાઉથઝોન)	એડવોકેટ અનિલ કે. શાહ
ઉપપ્રમુખ(નોર્થઝોન)	એડવોકેટ મહેન્દ્ર એચ. સ્વામી
ઉપપ્રમુખ (સૌરાષ્ટ્રઝોન)	એડવોકેટ રમેશ એન. ત્રિવેદી
ઉપપ્રમુખ (સેન્ટ્રલઝોન)	એડવોકેટ સુનિલ સી. શાહ
ઉપપ્રમુખ (અમદાવાદ ઝોન)	એડવોકેટ ધ્રુવિન ડી.મહેતા
માનદ્‌ મંત્રી	એડવોકેટ મૃદંગ એચ. વકીલ
સહમાનદ્‌ મંત્રી	એડવોકેટ અમિત જી. સોની
સહમાનદ્‌ મંત્રી	સી.એ. મિતીષ એસ.મોદી
સહમાનદ્‌ મંત્રી	સી.એ. મૌલિક બી. પટેલ
માનદ્‌ ખજાનચી	એડવોકેટ મૌલિન બી. શાહ

ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્સ કન્સલ્ટન્ટ્સના હોદેદારોની વર્ષ ૨૦૨૪-૨૦૨૫ માટે નિમણૂંક

ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્સ કન્સલ્ટન્ટ્સની તા. ૦૬/૦૭/૨૦૨૪ના રોજ મળેલ ૩૨મી વાર્ષિક સામાન્ય સભામાં અને તા. ૦૯/૦૭/૨૦૨૪ રોજ મળેલ કારોબારી સમિતિની મિટિંગમાં નીચે મુજબના હોદેદારોની સર્વાનુમતે નિમણૂંક કરવામાં આવેલ છે. પ્રમુખ સી.એ. (ડૉ.) વિશ્વેશ એ. શાહ પ્રેસિડેન્ટ એમેરીટ્સ એડવોકેટ ધીરેશટી. શાહ, સિનિયર ઉપપ્રમુખ એડવોકેટ આશુતોષઆર. ઠક્કર, ઉપપ્રમુખ (સાઉથઝોન) એડવોકેટ અનિલકે. શાહ, ઉપપ્રમુખ (નોર્થઝોન) એડવોકેટ મહેન્દ્ર એચ. સ્વામી, ઉપપ્રમુખ (સૌરાષ્ટ્રઝોન) એડવોકેટ રમેશ એન. ત્રિવેદી, ઉપપ્રમુખ(સેન્ટ્રલઝોન) એડવોકેટ સુનિલ સી. શાહ, ઉપપ્રમુખ (અમદાવાદ ઝોન) એડવોકેટ ધ્રુવિન ડી. મહેતા, માનદ્‌ મંત્રી એડવોકેટ મૃદંગ એચ. વકીલ, સહમાનદ્‌ મંત્રી એડવોકેટ અમિતજી. સોની, સહમાનદ્‌ મંત્રી સી.એ. મિતીષ એસ.મોદી, સહમાનદ્‌ મંત્રી સી.એ. મૌલિકબી. પટેલ, માનદ્‌ ખજાનચી એડવોકેટ મૌલિન બી. શાહ

એજીએફટીસી અને ટીપીએ નડિયાદ દ્વારા કરવેરા માર્ગદર્શન સેમિનાર યોજાયો

દિવ્ય ભાસ્કર ખેડા નડિયાદ 16-07-2024

નડિયાદ। ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્સ કન્સલ્ટન્ટ અને ધ ટેક્સ પ્રેક્ટિશનર એસોસિએશન નડિયાદના સંયુક્ત ઉપક્રમે ઈન્કમ ટેક્સ અને જીએસટી કાયદા અન્વયે પીપલગ ખાતે સેમિનાર યોજાયો હતો. જેમાં ઈન્કમટેક્સ વિષય પર વક્તા સીએ હરિત ધારીવાલ અને જીએસટી વિષય પર સીએ પુનિત પ્રજાપતિએ વક્તવ્ય આપ્યું હતું. આ પ્રસંગે એજીએફટીસી પાસ્ટ પ્રેસિડેન્ટ, આઈટી બાર પ્રેસિડેન્ટ શ્રીધર શાહ, અનિલ પરીખ, દીપક શાહ, સહમંત્રી અમિત સોની, અમિત પંચાલ આમ બંને એસોસિએશનના કારોબારી સભ્યો, જનરલ સભ્યો અમદાવાદ, આણંદ, નડિયાદ, કપડવંજ ટેક્સ વ્યવસાયીઓ જોડાયા હતા.

એજીએફટીસી અને ટીપીએ નડીયાદ દ્વારા કરવેરા માર્ગદર્શન સેમીનાર યોજાયો

નયા પડકાર તા 16-07-2024

ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્ષ કન્સલ્ટન્ટ અને ધ ટેક્ષ પ્રેકટીશન એસોસીએશન નડીયાદના સંયુકત ઉપક્રમે ઇન્કમટેકસ અને જીએસટી કાયદા અન્વયે હોટલ બેલવીઓ પીપલગ નડીયાદ ખાતે મોડીસીયલ સેમીનાર યોજાયો. આ સેમીનારના મોડીસીયલ કમીટી એજીએફટીસી પ્રમુખ સી.એ. ડો. વિશ્વેશ શાહ, આઇપીપીસીએ રવી શાહ ટીપીએ પ્રમુખ ચેતન ગજજર, સી.વાઇસ પ્રેસીડેન્ટ એડવોકેટ આસુતોષ ઠક્કર એજીએફટીસી મંત્રી મૃદંગ વકીલ ટીપીએ મંત્રી વિનીતસોની વકતા સીએ હરીત ધારીવાલ, સીએ પુનીત પ્રજાપતિના હસ્તે ઉદઘાટન કરેલ આ પ્રસંગે એજીએફટીસી પાસ્ટ પ્રેસીડેન્ટ એડવોકેટ ડો. ધ્રુવેન શાહ આઇટીબાર પ્રેસીડેન્ટ શ્રીધર શાહ અનીલ પરીખ, દીપક શાહ સહમંત્રી અમીતભાઇ સોની, અમીતભાઇ પંચાલ, બંને એસોસીએશનના કારોબારી સભ્યો જનરલ સભ્યો અમદાવાદ આણંદ– નડીયાદ કપડવંજ ટેક્ષ વ્યવસાયીઓ ઉપસ્થીત રહી કાર્યક્રમ

(તસવીર: રાજ મહેતા, નડીયાદ)

ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્સ કન્સલ્ટન્ટ્સના હોદ્દેદારોની વર્ષ 2024-2025 માટે નિમણૂક

નવગુજરાત સમય > અમદાવાદ: ઓલ ગુજરાત ફેડરેશન ઓફ ટેક્સ કન્સલ્ટન્ટ્સની 6 જુલાઈએ યોજાયેલી 32મી વાર્ષિક સભામાં અને 9 જુલાઈએ મળેલી કારોબારી સમિતિની મીટિંગમાં હોદ્દેદારોની વર્ષ 2024-2025 માટે સર્વાનુમતે નિમણૂક કરાઈ છે. જેમાં પ્રમુખપદે સી.એ. (ડૉ.) વિશ્વેશ એ. શાહ, પ્રેસિડેન્ટ એમેરીટ્સ એડવોકેટ ધીરેશ ટી. શાહ, સિનિયર ઉપપ્રમુખપદે એડવોકેટ આશુતોષ આર. ઠક્કર, ઉપપ્રમુખ પદે(સાઉથ ઝોન) એડવોકેટ અનિલ કે. શાહ, ઉપપ્રમુખપદે(નોર્થઝોન) એડવોકેટ મહેન્દ્ર એચ. સ્વામી, ઉપપ્રમુખપદે(સૌરાષ્ટ્ર ઝોન) એડવોકેટ રમેશ એન. ત્રિવેદી, ઉપપ્રમુખપદે (સેન્ટ્રલ ઝોન)એડવોકેટ સુનિલ સી. શાહ, ઉપપ્રમુખપદે (અમદાવાદ ઝોન) એડવોકેટ ધ્રુવિનડી. મહેતા, માનદ મંત્રી તરીકે એડવોકેટ મૃદંગ એચ. વકીલ, સહમાનદ મંત્રીપદે એડવોકેટ અમિત જી. સોની, સી.એ. મિતીષ એસ.મોદી, સી.એ. મૌલિક બી. પટેલ અને માનદખજાનચી તરીકે એડવોકેટ મૌલિન બી. શાહની વરણી કરાઈ છે.

ડો.વિશ્વેશ શાહ આશુતોષ ઠક્કર મૃદંગ વકીલ


ADV. PRAFUL C. SHAH