BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

BSC BEACON

Tax & Regulatory Insights

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Glossary

ABBREVIATION	FULL FORM
ACIT	Assistant Commissioner of Income Tax
Act	Income-tax Act, 1961
APA	Advance Pricing Agreement
ALP	Arm's Length Price
AO	Assessing Officer
AE	Associate Enterprise
AY	Assessment Year
CIT	Commissioner of Income-tax
CUP	Comparable Uncontrolled Price Method
CPC	Central Processing Centre
CCIT	Chief Commissioner of Income Tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CIT(IT)	Commissioner of Income-tax (International Taxation)
CIT(E)	Commissioner of Income-tax (Exemptions)
CBDT	Central Board of Direct Taxes
Cr	Crores
DCIT	Deputy Commissioner of Income Tax
DTAA	Double Taxation Avoidance Agreement
DRP	Dispute Resolution Panel
DTVSV Act	Direct Tax Vivad Se Vishwas Act, 2020
FY	Financial Year
FTC	Foreign Tax Credit
FTS	Fees for Technical Services
HC	High Court
Hon'ble	Honorable
ITO	Income Tax Officer
ITR	Income Tax Return
ITAT	Income Tax Appellate Tribunal
JAO	Jurisdictional Assessing Officer
JCIT	Joint Commissioner of Income Tax
MAP	Mutual Agreement Procedure
NFAC	National Faceless Assessment Center

ABBREVIATION	FULL FORM
PCIT	Principal Commissioner of Income Tax
PY	Previous Year
RMS	Risk Management System
Rules	Income-tax Rules,1962
RBI	Reserve Bank of India
ROI	Return of Income
SLP	Special Leave Petition
SC	Supreme Court
SCN	Show Cause Notice
TP	Transfer Pricing
TCS	Tax collected at source
TDS	Tax deducted at source
TPO	Transfer Pricing Officer
TOLA	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020

I. Direct & International Taxation

A. Corporate Tax

1. *Hon'ble Delhi High Court[1]: JAO has concurrent jurisdiction and functions as complimentary with NFAC - distinguishes Hexaware[2].*

Background

Writ Petitions were filed by the Petitioners challenging the validity of the notices issued under Section 148 of the Act by the JAO for the reassessment.

Assessee's argument:

Assessee argued that JAO has no jurisdiction to commence reassessment proceedings after introduction of Section 144B and Section 151A read with E-Assessment of Income Escaping Assessment Scheme, 2022[3] as embodied in the Notification dated 29.03.2022. In this regard, the Assessee placed reliance on various judicial precedents of different High Courts.

Assessee further argued that JAO does not have any authority to invoke Section 148 of the Act once the tax authorities has chosen to adopt the faceless procedure. Since, Section 144B of the Act promulgated and encompassed the power to reassess under Section 147 of the Act, the same ousted other methodologies for the assessment / reassessment under different provisions of the Act.

Revenue's argument: Revenue contended that JAO and NFAC have concurrent jurisdiction since as per Section 144B of the Act, records need to be transferred back to JAO once the assessment proceedings are completed. Accordingly, the Act does not distinguish JAO or NFAC with respect to jurisdiction over a case.

Revenue further contended that the Faceless Reassessment Scheme 2022 had been

[1] T.K.S. Builders Pvt. Ltd. [TS-797-HC-2024(DEL)]
[2] Hexaware Technologies Limited [TS-298-HC-2024BOM]
[3] Faceless Reassessment Scheme 2022

introduced by the Notification dated 29.03.2022 which seeks to introduce checks and balances within the system and bifurcates the reassessment process into two levels. First is being JAO going through the prescribed procedure as per Section 148A of the Act. Second is reassessment proceedings which is conducted by the NFAC.

The Directorate of Systems randomly selects the cases based on the RMS criteria and the same are flagged to the JAO for the consideration. Also, the data compiled are made available on the Insight Portal which is accessible to the JAO. JAO has the right over the proceedings till the issuance of a notice under Section 148. Post that, NFAC allocates the assessment randomly to the Assessment Unit in accordance with Section 144B of the Act.

The Finance Act, 2022 has amended the provisions of Section 144B of the Act wherein the class of assessments have been expanded to cover reassessment as well. The CBDT has issued Instructions dated 8.04.2021 followed by the order under Section 119 of the Act dated 6.09.2021 and the amended order dated 22.09.2021. The said order excludes the categories of the cases from the faceless assessment viz., Assessment assigned to Central Charges/ International tax charges/ set aside to be done de novo, etc.

Further, the CBDT has issued Notification dated 13.08.2020 under Section 120 of the Act, wherein it is mentioned that the National e-Assessment Centre shall exercise the powers and functions of AO concurrently to facilitate the conduct of Faceless Assessment proceedings.

Judgement of Hon'ble Delhi High Court

The Hon'ble Delhi High Court observed that the Faceless assessment Scheme was introduced vide Notification dated 12.09.2019 to enhance efficiency, transparency and accountability in the process of assessment and reducing the human interface between the AO and the Assessee. However, the Notifications dated 12.09.2019 and 13.08.2020 have not excluded the involvement of the JAO in the Faceless Assessment Process.

The Notification dated 12.09.2019 mandates NFAC to transfer electronic records to the JAO after completion of assessment for the imposition of penalty; collection and recovery of demand; rectification of mistake; submission of remand report; etc. Further, Notification dated 13.08.2020 enables the Principal Chief Commissioner or the Principal Director General, in charge of National e-assessment Centre, if considered necessary, to transfer the case to the JAO with the prior approval of the Board at any stage of the assessment.

Further, as per Explanation 1 and 2 of Section 148 of the Act, the JAO may select cases which may require inquiry / investigation on the basis of the available information.

Hon'ble High Court observed that it would be erroneous to constitute Section 144B of the Act as solitary basis for reassessment proceedings as well considering NFAC may not have the data or material to initiate the proceedings of reassessment. Section 144B is inherently procedural outlining the process through which faceless assessments need to be conducted. It is one component within a broader statutory framework for lawful assessment and reassessment of returns.

Power of JAO is not in conflict with faceless assessment but it is an integral part of the assessment. The information available with JAO will be of no use if the JAO has no power for assessment. Also, it is impractical to oust the JAO from assessment. JAO and FAO has to work complimentarily to deliver comprehensive assessments.

Bench has distinguished the decision of Hon'ble Bombay High Court in the case of *Hexaware* and various other High Courts since the said rulings have not given reference to the notification dated 13.08.2020.

Hon'ble Bench has relied on the ruling of the Bench in the case of **Sanjay Gandhi Memorial Trust v. Commissioner of Income Tax (Exemption)**[4] and Hon'ble Gujarat High Court in the case of **Talati and Talati LLP v. ACIT**[5].

Therefore, the Hon'ble High Court concluded that, considering the various Schemes and statutory provisions, distribution of functions between the JAO and NFAC is complimentary and concurrent.

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2. ***Hon'ble Bombay High Court***[6]***:*** *If the application for registration under Section 12A is not disposed within 6 months, it does not lead to deemed approval.*

Background

Dr. Kasliwal Medical Care & Research Foundation (the Assessee), a Public trust operating a pediatric hospital in Pune, applied for registration under Section 12A of the Act by filing Form No. 10A. However, the CIT rejected the registration application.

[4] Sanjay Gandhi Memorial Trust v. CIT(E) [TS-281-HC-2023(DEL)]
[5] Talati And Talati LLP [TS-744-HC-2024(GUJ)]
[6] Dr. Kasliwal Medical Care & Research Foundation [TS-783-HC-2024(BOM)]

Assessee preferred an appeal before Hon'ble ITAT against the said order. Hon'ble ITAT allowed the Assessee's appeal, ruling that the CIT's failure to pass an order granting or refusing registration within six months, as stipulated by Section 12AA(2), resulted in the deemed grant of registration. The Tax Authority, aggrieved by this decision, appealed before the Hon'ble Bombay High Court.

The Revenue's contention was that Section 12AA(2) does not allow a deemed registration in cases where the CIT fails to decide the application within six months. It argued that the section only mandates that an order must be passed within the prescribed period, either granting or refusing registration, and does not recognize any deeming fiction of automatic registration. The issue thus centred on whether the delay in passing an order results in a deemed grant of registration.

Judgment of Hon'ble Bombay High Court:

The Bombay High Court acknowledged the conflicting Supreme Court decisions on the matter, specifically in the cases of *Society for Promotion of Education*[7] and *Harshit Foundation Sehmalpur*[8]. The former held that non-consideration of an application within six months would lead to deemed registration, while the latter rejected this notion. The Court referred to a full bench ruling in *Kamleshkumar Ishwardas Patel*[9], which stated that when faced with conflicting decisions, the High Court is free to follow the judgment it finds more correct, whether earlier or later.

After analyzing the conflicting decisions, the High Court concurred with the Supreme Court's decision in the case of Harshit Foundation Sehmalpur (supra), which clarified that Section 12AA(2) does not recognize a deemed grant of registration if the application is not decided within the specified time frame. The Court emphasized that the ruling in Harshit Foundation Sehmalpur (supra) is binding under Article 141 of the Constitution. As a result, the High Court allowed Revenue's appeal, ruling that the failure to pass an order within six months does not result in a deemed registration under Section 12AA(2) of the Act.

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3. ***Hon'ble Karnataka High Court[10]:*** *Allowed waiver of entire interest amount in case of post-search assessment under DTVSV Act 2020.*

Background

Govindachary (Assessee) was served with assessment orders pursuant to search proceedings for the period from AY 2006-07 to 2009-10 quantifying the amount of tax and interest payable. The Assessee filed an appeal before CIT(A) who dismissed

[7] Commissioner of Income Tax vs. Society for Promotion of Education, Allahabad [TS-5051-SC-2016-O]
[8] Harshit Foundation Sehmalpur Jalalpur Jaunpur vs CIT [TS-319-SC-2022]
[9] Kamleshkumar Ishwardas Patel vs. Union of India & Ors. [TS-5045-SC-1995-O]
[10] Govindachary S/O Late Sri Dasachary [TS-808-HC-2024(KAR)]

the appeal. On further appeal, the Hon'ble Bangalore ITAT remitted the matter back to CIT(A) and the Assessee filed additional grounds for the relevant AY's before the CIT(A).

During the pendency of the appeals, the Parliament passed DTVSV Act. Pursuant to the same the Assessee filed Form-1 & Form - 2, accepting to pay 125% of the disputed taxes as per the provision of Section 3 of DTVSV Act.

The PCIT vide Form-3, determined the liability much higher than what was declared by the Assessee. The Assessee filed submission and rectification application before the tax authorities. However, no response was received from the tax authorities. Subsequently, the CBDT issued a standing order for final issuance of Form-3 by 30.09.2024. Aggrieved by the same, the Assessee filed a writ petition before the Hon'ble Karnataka HC.

Judgement of Hon'ble Karnataka High Court

The Hon'ble Karnataka High Court held that the provision of Section 3 of the DTVSV Act provides no distinction for waiver of interest between the interest on disputed taxes and interest on tax not in dispute, in case of search assessments. Accordingly, the Assessee would be entitled to waiver of the entire interest amount as determined in the assessment orders. Consequently, the applications in Forms – 1 and 2 submitted by the Assessee to make payment of the disputed taxes as per Section 3 of the DTVSV Act by granting waiver of interest must be allowed by the Tax authorities. It held that the Form 3 issued by PCIT was without jurisdiction, illegal, arbitrary and contrary to facts and provisions of DTVSV Act.

It further directed to issue fresh certificate in Form-3 in favour of Assessee even though the same is beyond 30.09.2024.

4. ***Hon'ble Mumbai ITAT[11]:*** *Period of holding to be reckoned from provisional allotment even when possession was transferred later; Deduction under Section 54F of the Act allowed on long-term capital gains.*

Background

Mr. Sushil Shah ("the Assessee") purchased an office and paid the purchase consideration in instalments during the period from FY 1991-92 till FY 2006-07 as per the provisional allotment letter. The Assessee received the Occupancy Certificate of the said office property in 2009 and final allotment letter in 30.07.2010. The Assessee sold the said property on 12.03.2013 and claimed exemption under Section 54F of the Act against the long-term capital gains arising from sale of the said office property in his ROI for the AY 2013-14.

The AO denied the exemption under Section 54F of the Act by holding that the capital asset is a short-term capital asset considering the period of holding from date of final allotment letter (30.07.2010) to date of sale of said property (12.03.2013). The AO denied the benefit under Section 54F of the Act by further observing that the lease deed of the land, on which the property is situated, with Mumbai Metropolitan Region Development Authority (MMRDA) was executed on 31.03.2010 and that prior to execution of final allotment letter, the Assessee did not have any right in the said property. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A).

While upholding the order of the AO, the CIT(A) noted that the Assessee was granted occupancy right and possession of the said property vide final allotment letter only and the provisional allotment was primarily a confirmation and payment receipt.

Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

Decision of Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT observed that letter of allotment serves as a proof of the payment made to the seller or developer and is a contract between the buyer and the seller since it is considered as legally binding agreement under Indian Contract Act. If the seller is not able to fulfil his part of the deal, buyer can hold him legally responsible. It was further noted that the period of thirty-six month should be reckoned from the date of allotment as it extinguished right of the builder and

[11] Sushil P. Shah [TS-828-ITAT-2024(Mum)]

created right of the Assessee on the property.

The Hon'ble ITAT relied on the various judicial pronouncements[12] and CBDT Circular[13] to hold that where a letter of allotment was issued by the builder to the Assessee by which a right to own the property had accrued on the Assessee, the allotment is final unless it is cancelled. The right which accrued to the Assessee is the booking right i.e. the right to purchase the property and obtain the title. The Hon'ble ITAT held that period of holding of said property would be reckoned from date of provisional allotment letter. Accordingly, the Hon'ble ITAT treated the said property as long-term capital asset and held the capital gains as long-term. Accordingly, the Hon'ble ITAT allowed deduction under Section 54F of the Act and allowed the appeal of the Assessee.

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5. ***Hon'ble Mumbai ITAT[14]:*** *FTC on tax withheld in Japan, Nepal and Singapore cannot be denied on professional services rendered therein.*

Background

AZB and Partners ("the Assessee") is a partnership firm resident in India and engaged in providing professional services to its clients located in several countries. The Assessee claimed FTC under Section 90 of the Act for taxes withheld on income received from the services rendered to its clients in Japan, Singapore, and Nepal ("Source Countries") in the ROI filed for AY 2020-21. During the assessment proceedings, the AO rejected the FTC claimed by the Assessee. The AO opined that as per the provisions of the DTAA between India and the respective Source Countries, the income from said service was chargeable in the Source Countries only

[12] Richa Bagrodia v. DCIT [TS-6748-ITAT-2014(Mumbai)-O],Sanjay Kumath V ACIT [TS-6592-ITAT-2013(Indore)-O], Smt. Jennifer Chakraborty [TS-468-ITAT-2018(Kol)]

[13] CBDT Circular No. 417 dated 15.10.1985

[14] AZB and Partners [TS-819-ITAT-2024 (Mum)]

if the Assessee has fixed base regularly available to it in Source Countries. As per the respective DTAA provisions, the Assessee will have a fixed base of business if the Assessee is present in the Source Country for more than 183 days (in case of Japan and Nepal) / 90 days (in case of Singapore). Since the Assessee does not have a fixed base of business in any of the Source Countries, the AO held that said income was not taxable in Source Countries but only in India. Accordingly, no relief for FTC should be granted on taxes withheld in Source Countries.

Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A). The CIT(A) relied on Hon'ble Mumbai ITAT decisions[15] wherein it was held that when the tax authorities in Source Country opined that the income earned is taxable in the Source Country, withholding of tax was done in the Source Country. Accordingly, the CIT(A) held that credit of said taxes cannot be denied. Against the order of the CIT(A), the tax authorities filed an appeal before the Hon'ble Mumbai ITAT.

Decision of Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT relied on the decision of the Hon'ble Delhi ITAT[16] wherein reliance was placed on the decision of Hon'ble Mumbai ITAT in case of Amarchand Mangaldas & Suresh A Shroff & Co.[17]. In the case of Amarchand Mangaldas & Suresh A Shroff & Co., it was held that when interpretation of treaty provisions of Resident County is different from Source Country and due to such difference, Source Country has imposed tax on Resident of other country, credit of such tax paid / deducted cannot be denied.

The Hon'ble ITAT noted that the case of Assessee is squarely covered by the above-mentioned decisions and following the principle of consistency, affirmed the order of CIT(A). Accordingly, the appeal of the tax authorities was dismissed.

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6. ***Hon'ble Jaipur ITAT[18]:*** *Development fees is a Capital Receipt as it is utilized for the creation / addition to Capital Asset and cannot be considered as part of gross receipt.*

Background

Navratan Vidha Mandir Shiksha Samiti ("the Assessee") is a society registered under Rajasthan Societies Registration Act, 1958, and also under Section 12AA of the Act. The sole object of the Assessee is to impart education and running a school in the name of 'Central Academy School" in Jaipur. The Assessee filed its ROI for the AY 2012-13 declaring Nil Income. During the assessment proceedings, the AO

[15] M/s Cyril Amarchand Mangaldas [TS-6348-ITAT-2023(Mumbai)-O]
[16] Dynamics Drilling & Services (P) Ltd. [TS-5305-ITAT-2022(Delhi)-O]
[17] [TS-7830-ITAT-2020(Mumbai)-O]
[18] Navratan Vidha Mandir Shiksha Samiti [TS-800-ITAT-2024 (JPR)]

observed that the Assessee had received fees from its students as Development Fees (DF). Accordingly, the AO held the DF to be part of the total fees. The AO opined that the DF cannot be classified as corpus donation or contribution as the same is not voluntary and is not for any specified purpose. Accordingly, the AO considered DF as revenue receipt and made addition of the same to the returned income of the Assessee. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A).

The CIT(A) relying on various judgments[19] passed the order in favour of the Assessee holding that DF received is to be treated as capital receipt as it is utilized for the creation of / addition to capital asset. Also, the CIT(A) emphasized on the view that litmus test of a charitable institution is application of the funds and not the colour of the contribution. Aggrieved by the CIT(A) order, the tax authorities filed an appeal before the Hon'ble Jaipur ITAT.

Decision of Hon'ble Jaipur ITAT

The Hon'ble ITAT noted that DF is used in the construction of school / building. Therefore, it is directly credited to the development fund account, and not routed through the Income & Expenditure Account. Further, the Hon'ble ITAT observed that the DF is received apart from the tuition fees with a clear understanding that it is to be utilized for creation of capital asset necessary for achieving the objects of the Assessee. The Hon'ble ITAT accorded with the view of the CIT(A) that the litmus test of a charitable institution is the application of the funds and not the colour of contribution.

Also, the Hon'ble ITAT relied on the judgment of **Hon'ble Rajasthan High Court in Sukhdeo Charity Estate and Hon'ble Delhi High Court judgement in National Association of Software & Services Companies[21]** wherein it was held that ultimately the intention of the donor and the donee is to be seen. If the intention of the donor is that the donation given is to be treated as a capital receipt and the income thereof has to be applied for charitable purposes, then the said voluntary

[19] Global Institute Technology. Society [TS-9190-ITAT-2018(Jaipur)-O], ACIT vs. JSS Manavidyapeetha [TS-7119-ITAT-2013 (Bangalore)-O], Sadvidya Educational Institution vs ACIT [TS-5314-ITAT-2014(Bangalore)-O] and Hon'ble Karnataka High Court in Bharatiya Samaknb Vidyapith Trust vs. CIT in ITA Nos 278-282 of 2007

[20] [TS-5583-HC-1991(Rajasthan)-O]

[21] [TS-313-HC-2012(DEL)]

contribution is towards corpus of Trust.

The Hon'ble ITAT held that the DF received by the Assessee are capital receipts and not revenue receipts as it was explicitly used for the creation / addition of the capital assets. Accordingly, the Hon'ble ITAT upheld the order of the CIT(A) and dismissed the appeal of the tax authorities.

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7. ***Hon'ble Bangalore ITAT[22]:*** *Import of assets for testing free of cost not considered as taxable benefit under Section 28(iv) of the Act.*

Background

Samsung R&D Institute India – Bangalore Pvt. Ltd. ('the Assessee') is a wholly owned subsidiary of Samsung Electronics Company Ltd. (SECL), Korea. The Assessee is engaged in providing software development services to its AEs under a cost-plus mark-up model. The Assessee had filed its return of income for AY 2015-16 on 30.11.2015. The AO had referred the matter to the TPO to determine the ALP for the international transactions.

The TPO passed an order under Section 92CA of the Act proposing a TP adjustment of Rs. 1,86,94,215 towards software development services rendered by the Assessee to its AEs. The AO apart from incorporating the TP adjustment proposed by the TPO, has made other two additions: (1) a disallowance of Rs. 18.20 lacs under Section 40(a)(i) of the Act for non-deduction of tax at source on purchase of software, and (2) an addition of Rs. 7.37 Cr. under Section 28(iv) of the Act on the value of equipments received from AEs free of cost for the purpose of software development and testing. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A). The CIT(A) gave partial relief to the Assessee towards TP adjustment and confirmed the disallowance made under Section 40(a)(i) of the Act and the addition made under Section 28(iv) of the Act. Both the Assessee and the tax authorities were in appeal before the Hon'ble Bangalore ITAT against the order of the CIT(A).

Decision of Hon'ble Bangalore ITAT:

The Hon'ble Bangalore ITAT ruled in favour of the Assessee on all the issues. The Hon'ble ITAT relied on the decision of co-ordinate bench in the Assessee's own case from AY 2011-12 till AY 2014-15 and ruling of Hon'ble Apex Court in the case of Engineering Analysis Centre of Excellence[23] and deleted the disallowance made under Section 40(a)(i) of the Act.

With respect to addition made under Section 28(iv) of the Act, the Hon'ble ITAT

[22] Samsung R&D Institute India - Bangalore Pvt. Ltd [TS-784-ITAT-2024(Bang)]

[23] Engineering Analysis Centre of Excellence (P) Ltd. vs. CIT [TS-106-SC-2021]

observed that the equipments were either returned or destroyed once the testing is completed. Hence, such equipments neither give any enduring benefit to the Assessee nor were permanently available with the Assessee. Further, the dispute on the arms' length pricing of the software development services has already been tested by the TPO and the dispute on pricing is resolved through MAP with the competent authorities of both the countries (India and Korea). Any indirect benefits received by the Assessee were already embedded while arriving at the margin. Accordingly, the Hon'ble ITAT has deleted the said additions, thereby, allowing the Assessee's appeal in full.

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8. ***Hon'ble Mumbai ITAT[24]:*** *Dismissed penalty under Section 270A of the Act, as penalty notice was issued without alleging specific limb.*

Background

Manish Manohardas Asrani ('the Assessee') earned salary income from M/s. WM Global Sourcing India Pvt Ltd during the AY 2019-20. The Assessee filed his original ROI for AY 2019-20 thereby erroneously offering short salary income vis-à-vis actual salary received as reflected in the Form 16. He also declared the same salary income in ROI filed in response to the notice issued for defective return. During the assessment proceedings, the AO discovered the difference between the salary income offered in ROI and salary income reflected in Form 26AS and asked the Assessee to furnish further details. In response, the Assessee rectified the inconsistency and paid taxes on his total income. However, the assessment order was passed under Section 144C r.w.s 143(3) of the Act making addition of said difference of INR 62.93 Lakhs to the total income of the Assessee under the head 'Income from Salaries' on account of undisclosed income.

The AO initiated the penalty proceedings under Section 270A of the Act and issued two penalty notices under Section 274 r.w.s 270A of the Act for under-reporting of income. Thereafter, penalty order was passed under Section 270A of the Act

[24] Manish Manohardas Asrani [TS-812-ITAT-2024(Mum)]

wherein a penalty was levied at 200% of the tax payable on Rs. 62.93 Lakhs i.e., penalty for misreporting of income as well as under reporting of income. Aggrieved by the said order, the Assessee filed an appeal before CIT(A) who affirmed the penalty levied by AO.

Being aggrieved by order of the CIT(A), the Assessee preferred an appeal before the Hon'ble Mumbai ITAT. The Assessee contended that notice under Section 270A of the Act was issued for under reporting of income whereas penalty was levied for 'under reporting of income as well as misreporting of income'. Also, he stated that no SCN was issued for misreporting of income. Further, the Assessee relied upon the judgement of Hon'ble Delhi ITAT in case of *Jaina Marketing & Associates vs. DCIT (2024)*[25], wherein the ITAT deleted the penalty on the ground that SCN issued for levy of penalty did not provide any details or specific limb under which penalty is proposed to be levied.

Decision of Hon'ble Mumbai ITAT

The Hon'ble Mumbai ITAT observed that AO has initiated the penalty proceedings under Section 270A of the Act without stating sub-clause of Section 270A of the Act. Further, the SCN only mentions under-reporting of income, whereas penalty was levied for under-reporting as well as misreporting of income.

Further, the Hon'ble ITAT noted that misreporting of income and under reporting of income are having two different connotations and different consequences. There was no mention about misreporting of income in the SCN issued. However, the penalty was levied for misreporting as well, for which no notice was issued. Accordingly, the notice issued by AO was vague.

The Hon'ble Mumbai ITAT relied on the decisions of *Saltwater studio LLP*[26] as well as *Jaina Marketing & Associates* (supra), and deleted the penalty levied under Section 270A of the Act and allowed the appeal of the Assessee.

[25] [TS-6917-ITAT-2024(Delhi)-O]
[26] TS-300-ITAT-2023(Mum)

B. International Tax

1. ***Hon'ble Supreme Court[27]:*** *Guarantee fee charges would not fall within the interest clause as per Article 12 of the India-UK DTAA.*

Background

Johnson Matthey Public Ltd Co (the Assessee) is a company incorporated in and a tax resident of the UK. It is engaged in the business of manufacturing of specialty chemicals. It has various subsidiaries across the world including India. The Assessee has entered into Intra Group Parental Guarantee and Counter Indemnity Services Agreement ('Intra Group Agreement – IGA') with its Indian subsidiaries whereby the Assessee charged guarantee fees at pre-determined rate on regular basis for providing guarantee by the Assessee and counter indemnification of liabilities of Indian subsidiaries. The Assessee has characterized the said guarantee fees as 'Interest' and offered to tax as per Article 12 of India-UK DTAA. However, during the assessment proceedings, the AO and DRP opined that guarantee fees shall be taxable under Article 23 of India-UK DTAA as 'Other Income'. The Assessee challenged the assessment order before the Hon'ble Delhi ITAT. Assessee also raised an additional and without prejudice ground before the Hon'ble ITAT that said guarantee fees were not taxable in India as the source of the same is outside India. Alternatively, the said income can also be categorized as business income and will be governed by Article 7 of the DTAA.

The Hon'ble ITAT noted that 'Interest' is defined under Article 12(5) of the India-UK DTAA to mean income from 'debt-claims of every kind'. The income can be categorized as Interest only when the same is in the context of loan and relates to the parties to the privity of contract. However, the guarantee fees were not received by the Assessee in respect of any debt owed to it by its Indian subsidiaries. Moreover, the Hon'ble ITAT observed that the said guarantee fees would not be covered under the definition of 'Interest' as per Section 2(28A) of the Act as the Assessee had not

[27] Johnson Matthey Public Ltd., Co vs. CIT (IT) [TS-734-SC-2024]

borrowed any monies, and the debt (if any) was not owed by its Indian subsidiaries. Accordingly, it held that guarantee fees would not be considered as interest as enunciated in the Act as well as the India-UK DTAA.

On the ground of taxability of guarantee fees in India, the Hon'ble ITAT noted that source of the guarantee fees is IGA which mandates a quarterly fee at prescribed rate on the outstanding balance of guarantee and counter-indemnification of liabilities of Indian subsidiaries. The Assessee received the guarantee fees from its Indian subsidiaries for the provision of service in India. The obligation to pay, was in respect of services utilized in India. Also, the guarantee fees were payable irrespective of default or failure on the part of the Indian subsidiaries. Therefore, the guarantee fees were deemed to accrue or arise in India and consequently taxable in India. The Hon'ble ITAT thus dismissed the appeal of the Assessee.

Aggrieved by the order of Hon'ble ITAT, the Assessee filed an appeal before the Hon'ble Delhi High Court. Hon'ble HC affirmed the findings given by the Hon'ble ITAT and dismissed the appeal filed by the Assessee. The Assessee filed the SLP before the Hon'ble Supreme Court.

Judgment of Hon'ble Supreme Court

The Hon'ble Supreme Court confirmed the order of the Hon'ble Delhi High Court and dismissed the SLP filed by the Assessee.

II. Transfer Pricing

1. ***Hon'ble Delhi ITAT[28]:*** *Upheld adjustment on reimbursement of consultancy charges.*

Background

Benetton India Pvt Ltd (the 'Assessee') has entered into an agreement for availing the quality control services for certain accessories imported from third parties ('consultancy services') from its AE (based out of Hong Kong) on 01.07.2013. Accordingly, the AE of the Assessee appointed one of its employees ('Mr. Daniel Leung-DL') to provide the consultancy services to the Assessee. In consideration of such consultancy services, the AE charged a fixed fee plus reimbursement of actual expenses to the Assessee. During the AY 2014-15, the Assessee claimed the said consultancy fees as an expense in its ROI.

The AO made a reference to the TPO during the assessment proceedings. The TPO determined the value of international transaction in respect of payment of consultancy fees to its AE as NIL based on the findings that (1) the documentary evidence in support of claim of travel expenses does not prove that expenses were paid by DL, and (2) the documents does not prove that DL was appointed by AE of the Assessee to provide the consultancy services to the Assessee. Hence, the TPO made the TP adjustment in respect of entire fixed fees and reimbursement of expenses claimed by the Assessee and the same was confirmed in the assessment order.

Aggrieved by the assessment order, the Assessee filed an appeal before CIT(A) who confirmed the impugned addition. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Delhi ITAT.

Before the Hon'ble ITAT, the Assessee contended that claim of reimbursement of consultancy charges paid to AE is like the issue of reimbursement of expatriate cost in the earlier AYs [AY 2007-08 to AY 2009-10]. Also, the Assessee stated that co-

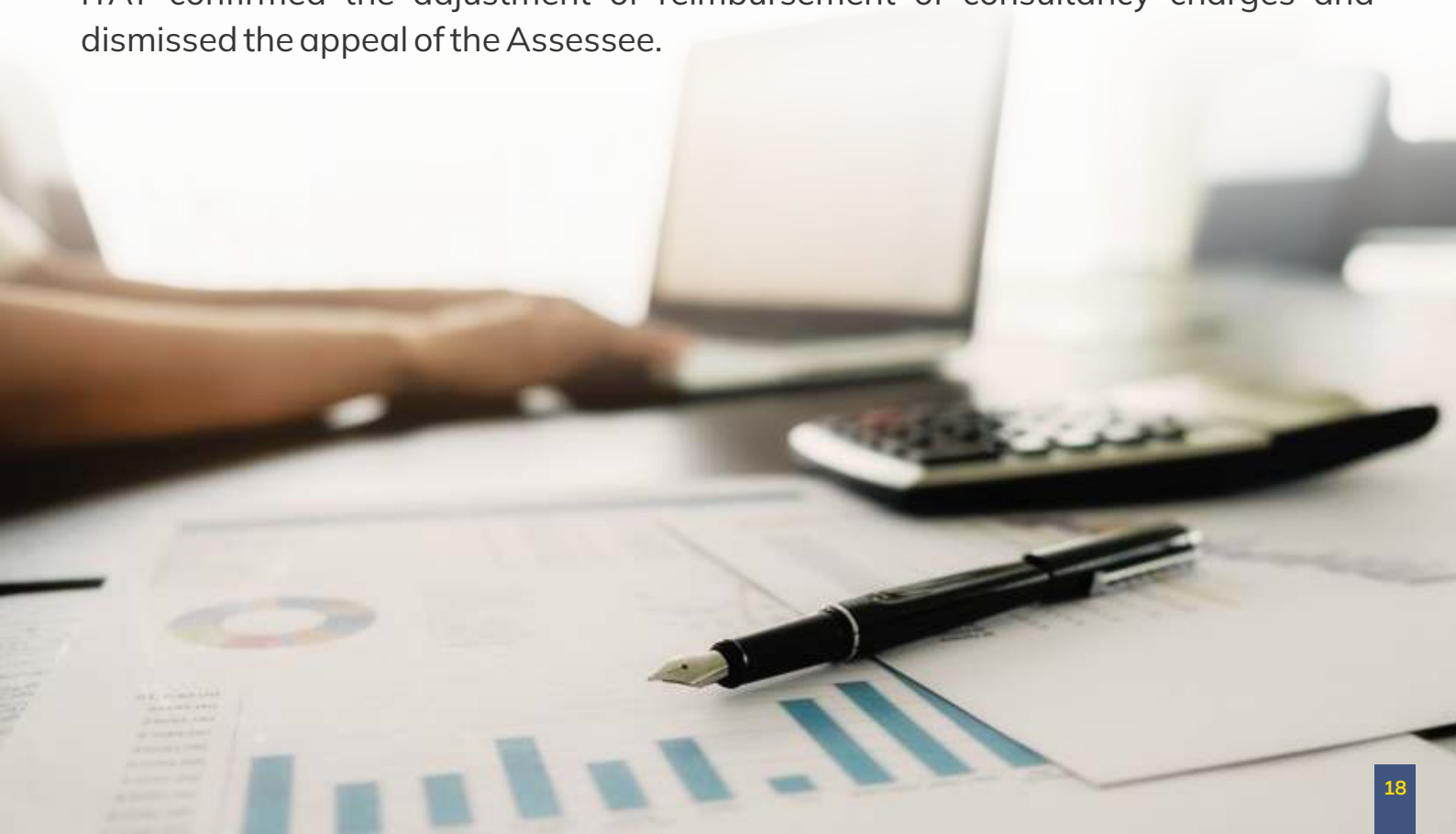
[28] Benetton India Pvt Ltd [TS-476-ITAT-2024(DEL)-TP]

ordinate bench of Hon'ble Delhi ITAT has deleted the TP adjustment for AY 2017-18 vide ITAT order dated 24.07.2024 by respectfully following the view adopted for earlier AYs. The Assessee also contended that since the issue of reimbursement of consultancy charges is of recurring nature, it must be adjudicated as a covered issue.

Per contra, the tax authorities clarified that since the consultancy agreement between the Assessee and its AE was executed on 01.07.2013, the impugned adjustment must be adjudicated as a fresh issue and cannot be considered as covered and recurring issue. Further, the tax authorities contended that salary paid to DL from January 2014 was more than the monthly fixed fees as reflected in the consultancy agreement and accordingly, it is not a case where DL had only worked for the Assessee.

Decision of Hon'ble Delhi ITAT

The Hon'ble Delhi ITAT took the cognizance of the fact that consultancy agreement between the Assessee and its AE was executed in July 2013 which is relevant to AY 2014-15. Hence, the same needs to be adjudicated as a fresh issue and cannot be treated as recurring issue. The Hon'ble ITAT also noticed that the Assessee has furnished the details of the benchmarking of the said reimbursement transaction and adoption of CUP method at the time of ITAT proceedings. The Hon'ble ITAT held that Assessee was unable to substantiate the benchmarking of the said transaction. Also, the Assessee has not provided any details regarding apportionment of salary of DL vis-à-vis the consultancy charges and other expenses. Therefore, the Hon'ble ITAT confirmed the adjustment of reimbursement of consultancy charges and dismissed the appeal of the Assessee.



III. Important Circulars and Notifications

1. *Monetary limits set for Income-tax authorities under Section 119(1) for reduction / waiver of interest under Section 220(2) of the Act.*

The CBDT has issued the circular in respect of Section 220(2) of the Act which provides for simple interest at rate of 1% per month on delayed payment of tax demanded as per Section 156 of the Act. Section 220(2A) empowers specified authorities (Pr.CCIT, CCIT, Pr.CIT, or CIT) to reduce or waive such interest under prescribed conditions.

Pursuant to the powers granted to income-tax authorities under Section 220(2A) of the Act for reducing or waiving interest under Section 220(2) of the Act, the CBDT has prescribed the following monetary limits for effective administration of the Act:

Sr. No.	Income tax Authority	Monetary limits for reduction or waiver of interest
01	Pr.CIT/ CIT	Up to Rs. 50 lacs
02	CCIT/ DGIT	Above Rs. 50 lacs and up to Rs. 1.50 crore
03	Pr.CCIT	Above Rs. 1.50 crore

The Power to reduce or waive interest under Section 220(2) of the Act shall remain the same subject to the following conditions outlined in Section 220(2A) of the Act:

1. The payment causes or is likely to cause genuine hardship to the assessee.
2. The default in payment was due to circumstances beyond the Assessee's control.
3. The Assessee has cooperated in inquiries related to the assessment or recovery proceedings.

2. Condonation of delay under Section 119(2)(b) of the Act for filing Forms 9A, 10, 10B, and 10BB for AY 2018-19 and later years.[29]

Sr. No.	Aspect	Details
01	**Supersession**	Replaces earlier instructions on condonation of delay for Forms 9A, 10, 10B, and 10BB for AY 2018-19 and subsequent years.
02	**Authorization for admitting and dealing of the condonation application:**	
03	**Delays Up to 365 Days**	Principal Commissioners (Pr. CITs) and Commissioners of Income Tax (CITs).
	Delays Beyond 365 Days	Principal Chief Commissioners (Pr. CCITs), Chief Commissioners (CCITs), and Director Generals of Income Tax (DGITs).
	Conditions for Condonation:	
	Reasonable Cause	The Authorities must verify that the delay was due to a reasonable cause and involves genuine hardship for the applicant.
	Compliance for Form 10	The Authorities must ensure accumulated funds are invested or deposited as per Section 11(5) of the Act.
	Time Limit for Applications:	
	Last day of filing Condonation application and applicability	No condonation applications will be entertained if filed beyond three years from the end of the relevant AY. The limit is for the applications submitted after the date of this circular.
	Disposal Timeline	Authorities must resolve condonation applications within six months from the end of the month in which the application is received.
	Pending Applications	Powers under this circular also apply to all applications pending as of the issue date of the circular.

3. Condonation of delay under Section 119(2)(b) of the Act allows late filing of Forms 10-IC and 10-ID for AYs 2020-21, 2021-22, and 2022-23.[30]

In exercise of powers under Section 119(2)(b) of the Income-tax Act, 1961, the CBDT, through Circulars No. 6/2022 (17.03.2022) and 19/2023 (23.10.2023), has

[29] Circular No.16/2024 dated 18.11.2024
[30] Circular No. 17/2024 dated 18.11.2024

condoned delays in filing Form No. 10-IC for Assessment Years 2020-21 and 2021-22, subject to certain conditions.

Based on the representation received for non-filing of Form 10-IC / Form 10-ID, the CBDT authorized the following authorities for addressing delays:

- Pr. CsIT/CsIT to handle applications with delays up to 365 days for Assessment Years 2020-21, 2021-22, and 2022-23.
- Pr. CCsIT/CCsIT/DsGIT to address delays exceeding 365 days for the same years.

The application for condonation of delay must meet the following criteria:

1. Income tax returns were filed on time as per Section 139(1) of the Act
2. The assessee opted for taxation under Section 115BAA or 115BAB in ITR-6.
3. There was a reasonable cause for delay, with genuine hardship.

No application will be entertained beyond three years from the end of the relevant assessment year, and condonation applications should ideally be disposed of within six months.

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4. The CBDT notifies the threshold limit in respect of variation between ALP and price at which international transaction / SDT subject to fulfilment of certain condition for AY 2024-25.[31]

In exercise of the powers granted by Section 92C of the Act, the Central Government notified that for the AY 2024-2025, if the variation between the ALP determined under Section 92C of the Act and the actual price of an international transaction or SDT does not exceed:

- **1%** of the actual price for wholesale trading, or
- **3%** of the actual price for all other transactions,

then the actual price shall be deemed to be the ALP.

Further the term "Wholesale trading" is defined to mean an international transaction or SDT involving the trade of goods, which meets the following criteria:

[31] Notification No. 116/2024/F. NO. 500/1/2014-APA-II) dated 18.10.2024

- The purchase cost of finished goods is **80% or more** of the total cost of such trading activities.
- The average monthly closing inventory of these goods is **10% or less** of the sales from such activities.

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5. Specified Forms 3CEDA and Form 3C-O notified to be furnished electronically.[32]

Director General of Income Tax (Systems), vide Notification No. 5/2024 dated 30.10.2024, specifies that Form 3CEDA for application for rollback of an APA and Form 3C-O for application for approval under Section 35CCC(1), shall be furnished electronically under Rule 131(1) and (2) and shall be verified as per Rule 131(1). This notification is effective from 31.10.2024.

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6. Extension of due date for furnishing return of income in case of Assessee who required to furnish a report referred in Section 92E of the Act for the AY 2024-25.[33]

The CBDT exercising its authority under Section 119 of the Act has extended the deadline for submitting the ROI as stipulated in Section 139(1) of the Act for the AY 2024-25. This extension applies to the Assessee specified in clause (aa) of Explanation 2 to sub-section (1) of Section 139 from 30.11.2024 to 15.12.2024.

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7. CBDT extended existing safe harbour rules for AY 2024-25.[34]

CBDT has amended the safe harbour rules as prescribed under Rule 10TD of the Rules to extend till AY 2024-25.

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8. CBDT notifies safe harbour rules for AY 2024-2025: Safe Harbour of 4% of gross receipts introduced for foreign company engaged in selling raw diamonds in any notified special zone.[35]

CBDT introduces critical amendments to the Rules, with a focus on foreign companies engaged in the diamond sector. It establishes Safe Harbour Rules to streamline compliance and provide clarity regarding tax obligations for these

[32] Notification 5/2024 dated 30.10.2024
[33] Circular No.18/2024 dated 30.11.2024
[34] Notification No.124/2024/F.No.370142/13/2024) dated 29.11.2024
[35] Notification No.124/2024/F.No.370142/13/2024) dated 29.11.2024

businesses. The notification applies retrospectively from 01.04.2024, and is relevant for the AY 2024-25. Below is a detailed summary covering all aspects:

The notification defines key terms to establish the framework. An eligible Assessee is a foreign company engaged in diamond mining that opts to apply the Safe Harbour Rules. Eligible business refers to the sale of raw diamonds in specific special zones as notified under the Act. These raw diamonds must be uncut, unpolished, non-conflict diamonds, certified under the Kimberley Process, and classified under Tariff Heading 7102.

To qualify for Safe Harbour, a **minimum profit margin of 4% on the gross receipts** from eligible businesses is required. Gross receipts include all amounts received or receivable from the sale of raw diamonds. By adhering to these rules, the Assessee gains simplified compliance, as income declarations meeting the criteria are accepted without further dispute unless the declaration is proven invalid.

The Safe Harbour Rules impose restrictions on certain tax deductions. Deductions under Sections 30 to 38 of the Act, such as depreciation, are deemed fully utilized under this framework, and no additional claims for such deductions are allowed. Furthermore, the Assessee cannot offset losses from other businesses or other heads of income against the income from the eligible business. This ensures a clear and consistent calculation of taxable income under the Safe Harbour framework.

The procedural requirements for availing of Safe Harbour are outlined. Eligible Assessee must submit **Form 3CEFC** to their AO before filing their ROI for the relevant year. If the AO identifies misrepresentation or concealment of material facts, the Safe Harbour option can be invalidated after providing the Assessee an opportunity to be heard.

Additionally, international transactions involving the eligible business must comply with TP documentation requirements under Sections 92D and 92E of the Act. However, the MAP under international tax treaties cannot be invoked for disputes related to income governed by these rules, reinforcing the finality of the Safe Harbour framework.

IV. Goods and Service Tax

A. GST UPDATES:

1. Advisory: Authorised e-Invoice Verification Apps.

a. GSTN has prepared a consolidated document on authorized B2B e-Invoice verification apps available for download. The said document would serve as a reference to ensure that taxpayers have the most up-to-date information regarding approved B2B e-Invoice verification apps.

b. Taxpayers could access and download the PDF document by clicking on the link below:

https://tutorial.gst.gov.in/downloads/news/authosied_e_invoice_verification_apps.pdf

2. Locking of auto-populated liability in GSTR-3B.

a. In order to assist taxpayers in filing their returns and minimizing human errors, GSTN has continuously improving the GST return filing process and in this endeavour the GST Portal now provides a pre-filled GSTR-3B form, where the tax liability is auto-populated from the declared supplies in GSTR-1/ GSTR-1A/ IFF by the supplier, while the Input Tax Credit (ITC) is auto-populated from GSTR-2B. A detailed system generated pdf of the auto populated GSTR-3B is also provided to all the taxpayers.

b. Now, taxpayers also have a facility to amend their incorrectly declared outward supplies in GSTR-1/IFF through GSTR-1A, allowing them an opportunity to correct their liabilities before filing their GSTR-3B. Additionally, to manage inward supplies and ensure accurate ITC claims in GSTR-3B, taxpayers have the option to take informed actions of accept/reject/pending on inward supplies via the Invoice Management System (IMS) which is now available to the taxpayers.

c. It may be noted that tentatively from January 2025 tax period, the GST Portal is going to restrict making changes in auto-populated liability in pre-filled GSTR-

3B from GSTR1/1A/IFF to further enhance accuracy in return filing. It is once again suggested hereby that in case any change is required in auto-populated liability, the same may please be handled through GSTR-1A.

d. However, locking of auto-populated ITC in GSTR-3B, after the roll out of IMS, will be implemented from a later date. For the same a separate advisory would be issued after addressing all the issues related to IMS, raised by the trade.

3. Barring of GST Return on expiry of three years.

a. As per the Finance Act, 2023 (8 of 2023), dt. 31-03-2023, implemented w.e.f 01-10-2023 vide Notification No. 28/2023 – Central Tax dated 31th July, 2023, the taxpayers shall not be allowed file their GST returns after the expiry of a period of three years from the due date of furnishing the said return under Section 37 (Outward Supply), Section 39 (payment of liability), Section 44 (Annual Return) and Section 52 (Tax Collected at Source). These Sections cover GSTR-1, GSTR 3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6, GSTR 7, GSTR 8 and GSTR 9.

4. Advisory for Form GST DRC-03A.

a. It has been observed that some taxpayers have paid the demanded amount vide DRC 07/DRC 08/MOV 09/MOV 11/APL 04 through DRC-03 instead of using payment facility 'Payment towards demand' available on GST portal. This led to a situation where demand has been paid by the taxpayer, however the demand is not closed in the electronic liability register. To address this issue, the government has notified a new form named GST DRC-03A which was notified vide Notification No. 12/2024 dated. 10th July 2024.

b. Accordingly, GSTN has developed the new Form GST DRC-03A on GST portal which is available now to adjust the paid amount through DRC-03 against the corresponding demand order. Therefore, it is advised to the taxpayers to use the DRC-03A form to link the payment made vide DRC-03 with the demand order. Only DRC-03 forms where the cause of payment is either 'Voluntary' or 'Others' can be used in the Form GST DRC-03A.

c. Taxpayers will be required to enter the ARN of the DRC-03 along with the relevant demand order number on the portal. Upon entering the ARN and selecting the demand order number of any outstanding demand, the system will auto-populate relevant information of the DRC-03 form as well as from the specified demand order against which the payment is to be adjusted.

5. Advisory for Waiver Scheme Under Section 128A.

a. For reducing the tax disputes and to provide a big relief to the taxpayers, GST Council in its 53rd meeting held on 22nd June, 2024 had recommended for waiver

of interest and penalties in the demand notices or orders issued under Section 73 of the CGST Act, 2017 (i.e. the cases not involving fraud, suppression or wilful misstatement, etc.) for the Financial years 2017-18, 2018-19 and 2019-20. To avail this waiver, the condition is that the full tax demanded is paid on or before 31.03.2025.

b. In view of the above, Rule 164 of CGST rules, 2017 was notified through Notification No. 20/2024 dated. 8th October 2024, effective from 1st November 2024. This rule provides procedural guidelines for the said waiver scheme. As per the waiver scheme, if a notice or order is issued under Section 73 for the financial years 2017-18, 2018-19 and 2019-20, the taxpayers are required to file an application in FORM GST SPL-01 or FORM GST SPL-02, respectively on the common portal within three months from notified date, which is 31.03.2025.

c. In this regard it is to inform that Form GST SPL-01 and Form GST SPL-02 are under development and same will be made available on the common portal tentatively from the first week of January 2025. In the meantime, taxpayers are advised to pay the tax amount demanded in the notice, statement, or order issued under Section 73 on or before March 31st, 2025, to ensure that they receive the waiver benefits by paying their taxes before the deadline

d. Taxpayer can pay the demanded tax amount through the "payment towards demand" facility in case of demand orders and through Form GST DRC-03 in case of notices. However, if payment has already been done through Form GST DRC-03 for any demand order then taxpayer need to link the said Form GST DRC 03 with such demand order through Form GST DRC-03A, which is now available on the common portal.

6. Advisory regarding IMS during initial phase of its implementation.

a. Invoice Management System (IMS) is an optional facility introduced from October 2024 on GST Portal, on which the invoices/records saved/furnished by the supplier in GSTR-1/1A/IFF, can be accepted, rejected or kept pending by recipients. Based on the action taken by the recipient on the IMS, system will generate the GSTR 2B of the recipient on 14th of subsequent month

b. The Taxpayer can accept/reject/keep pending the invoice/record on IMS after due verification from his accounts. The ITC for the rejected record will not be available to the recipient in the GSTR 2B. Further, ` the liability and input tax credit are being auto - populated in GSTR 3B of the taxpayer on the portal based on his liability declared in GSTR 1/1A and input tax credit made available in his GSTR 2B. However, the taxpayer can presently edit the said auto-populated details in GSTR 3B before filing the same

c. IMS, being a new functionality introduced on the portal, there may be cases where in the initial phase of implementation of IMS, the recipient may make error/mistake while taking action (like acceptance/rejection/keeping pending) on the IMS in respect of an invoice/record. As GSTR-2B of the recipient will be generated on the portal based on the actions taken by the recipient on the IMS, any mistake in the action taken by the recipient on the IMS could result in incorrect details of available/eligible input tax credit to the recipient being shown in his GSTR-2B, which will also be auto-populated in his GSTR-3B on the portal. In such cases, the recipient can change the action on the IMS in respect of an invoice/record (e.g. from rejected to accepted or vice versa) and can recompute his GSTR-2B at any time till the filing of GSTR-3B for the corresponding tax period, so that correct ITC is auto-populated in his GSTR-3B.

d. Despite this, there may still be some cases, where the recipient is not able to correct the action taken on the IMS, resulting in wrong auto-population of ITC in GSTR-3B of the recipient or wrong auto-population of liability in GSTR-3B of the corresponding supplier. Therefore, during this initial phase of implementation of IMS, the taxpayers are advised that in such cases, where due to any inadvertent mistake in the action taken on the IMS, if incorrect details of ITC/ liability are auto-populated in GSTR-3B on the portal, the taxpayer may before filing their GSTR-3B return, edit such wrongly populated ITC/liability in their GSTR-3B, to correctly avail ITC or pay correct tax liability based on the factual position as per the documents/records available with him.

B. Judicial Pronouncement Updates /AAR /AAAR:

1. Mere issuance of SCN not enough to cancel GST Registration in the case of M/s. Subhana Fashion v/s. Commissioner of Delhi Goods and Service Tax.

In a recent judgment, the Delhi High Court has reaffirmed that the mere issuance of a show cause notice (SCN) by the tax authority is not enough to cancel the Goods and

Services Tax (GST) registration of any entity. The judgement addresses the ongoing uncertainty surrounding the authority to cancel registration based solely on an SCN, and the prevailing doubts over its cancellation with retrospective effect. In a petition filed by Subhana Fashion, the court invalidated the decision of cancelling GST registration terming the SCN as 'in violation of principles of natural justice.' The court ruled that the authorities must provide some 'intelligible reasons' and an 'opportunity of being personally heard' while proposing to cancel the GST registration. It further said that the 'non-payment of dues for three months' is not a prescribed ground for cancelling the registration.

2. *The Supreme Court's GST Ruling brings much needed clarity to issue of ITC eligibility for construction cost in the case of M/s. Safari Retreats Private Limited v/s. Chief Commissioner of Central Goods and service tax & others.*

The Supreme Court of India has clarified that the classification of a building as a "plant" for GST purposes depends on its functionality within the business of the registered person. If the construction of the building is essential for carrying out the activity of supplying services, such as renting or leasing, it could be considered a plant. The Court has remanded the cases back to the High Court to decide whether the shopping malls in question qualify as plants using the functionality test. This means that each case will be decided on its own merits, and the issue must be resolved through appropriate proceedings.

3. *GST on Corporate-Guarantee from overseas group entity payable only onetime, not periodically: Rajasthan's AAR in Green infra wind Farm assets Limited.*

Goods & Services Tax (GST) on corporate guarantee from overseas group entity payable only one-time, not periodically, Rajasthan's Authority for Advance Ruling (RAAR) has held. Experts say though the ruling is in line with the Circular, it poses the

challenge of paying the full tax upfront for the entire duration of the guarantee. “GST under reverse charge mechanism (RCM) is required to be paid at one time and not periodically for guarantee has been issued only once and is valid for a specified period of time without requirement of any periodical renewal (until the final settlement date of loan contract with Bank/Financial Institution),” RAAR said in a recent ruling.

4. The Kerala High Court directed that GSTN proceedings should be conducted separately for each financial year, rather than on a consolidated basis in the case of Mr. Haries Muhammed v/s. the Assistant Commissioner, State goods and Service Tax Department.

The learned counsel appearing for the petitioner and the learned Government Pleader and having regard to the facts and circumstances of the case, the writ petition will stand disposed of, directing that the Competent Authority shall consider the issue for each of the years separately, if there is warrant for doing so, also taking into consideration the submission of the petitioner that there was no just cause or reason to invoke the provisions of Section 74 of the CGST/SGST Acts, for the years 2018-19 till 2021-22. Any taxes paid by the petitioner shall also be given due credit to while finalizing the proceedings. It is made clear that the petitioner shall be afforded an opportunity of personal hearing before orders are passed by the Adjudicating Authority. The writ petition is disposed of with the aforesaid directions.

5. Supply of manpower to foreign company for working in India to attract GST, says UPAAR of M/s.Pacific Staffing Solutions.

Supply of manpower for work in India to foreign clients having no permanent establishment here will not be treated as export of services and accordingly attract GST, Uttar Pradesh's Authority for Advance Ruling (UPAAR) has said. The applicant, Noida-based Pacific Staffing Solutions sought advance ruling on its plans to provide manpower services. It plans to enter into agreements with various customers to provide Human Resource-related services, primarily, Manpower Supply services, to customers located outside India who do not have an establishment or presence in India.

C. Importance of AI in Finance Sector

1. AI in Finance: A Game-Changer for the Global Financial Sector.

Artificial intelligence (AI) is now becoming widespread across all the industries, it's no surprise that it is taking off within the world of finance.

In this article, Let's explore what AI in finance really is, its significant roles, its

benefits, and some compelling use cases within our industry.

Artificial Intelligence (AI) is significantly influencing the global and Indian financial sectors. With India emerging as one of the fastest-growing digital economies, AI adoption in finance is enabling faster decision-making, improving efficiency, and ensuring better customer experiences.

According to a recent study by Boston Consulting Group (BCG), India is leading in the adoption of Artificial Intelligence (AI), with **30%** of Indian enterprises optimizing value through the usage of such emerging technology. On an average all industry leaders in India are spending around **10-12%** of their annual budget on AI.

Let's dive deeper into how finance in India is evolving across five key areas.

2. Boosting Decision-Making & Financial Reporting.

AI is reducing human intervention in financial planning which is resulting in faster, more accurate decision-making and significant cost savings. Financial institutions in India are using AI-powered solutions to unlock revenue growth opportunities, minimize operating expenses, and automate manually intensive processes.

- **Applications in Accounting and FP&A:** According to a study, **72%** of companies surveyed are piloting or using Ai in financial reporting which is expected to increase to almost **99%** by 2027.
- Companies like **JSS Pro** and **Bluecopa**, Indian startups are providing real-time financial insights through AI-powered automation tools, helping businesses optimize cash flows and track KPIs.
- **Lending Decisions:** Companies like ZestMoney and MoneyTap are using AI to improve how they assess creditworthiness by considering alternative data like transaction history and digital footprints.

3. Risk Management and Fraud Detection.

AI adoption in risk management is reducing non-performing assets (NPAs) and ensuring financial stability. Fraudulent activities and credit defaults are major concerns for the Indian financial ecosystem. AI-based solutions are enhancing risk mitigation efforts.

Fraud Detection: Platforms like **Fractal Analytics** deploy machine learning algorithms to detect anomalies in real-time, helping banks like HDFC and ICICI strengthen against fraud risk.

Credit Risk Assessment: AI-driven risk models are enabling lenders to assess loan eligibility more accurately, particularly for underserved markets like MSMEs and rural borrowers.

4. Bringing Finance to Every Indian.

AI has the potential to significantly enhance financial inclusion by improving access to credit, reducing transaction costs and providing personalized financial education.

- Startups like **Crediwatch** utilize AI to analyze alternative data, such as utility bills or social media activity, to tailor credit profiles for individuals and small businesses.
- **Rural Banking Access:** AI-enabled chatbots and voice assistants in regional languages, such as those developed by **Jio Financial Services**, are helping bridge the gap in rural areas by providing easy access to banking services.

5. Shaping the future Customer Experience.

AI is transforming customer experience by increasing engagement, reducing turnover, and boosting satisfaction in India's competitive financial market.

With advanced tools, financial institutions are creating more meaningful connections with their customers.

- **Chatbots and Virtual Assistants:** Major Companies like **HDFC Bank** and **Axis Bank** leverage AI assistants (e.g., Eva by HDFC) for 24/7 customer support, enabling quicker query resolution. Indian Companies like **CoRover** are now becoming leaders in this space. CoRover is offering conversational AI chatbots, AI voicebots, AI videobots, IVR bots, and WhatsApp bots to huge businesses like IRCTC, LIC and Google.
- **Personalized Offerings:** Platforms such as **Policybazaar** use AI to recommend insurance policies tailored to individual preferences and budgets.

6. Innovating Trading and Market Insights.

AI in trading is levelling the playing field, giving everyday traders access to advanced tools that were once only available to the institutions.

By using AI for trading and market analysis, investors can now make smarter and data-driven decisions.

- **Algorithmic Trading:** Indian firms like **AlgoTrader India** and **Algo Bulls** are making algorithmic trading accessible to individual investors, leveraging AI to identify

profitable trades in real-time.

- **Market Sentiment Analysis:** Startups like **StockEdge** use AI and Natural Language Processing (NLP) to analyze news and social media sentiment, aiding investors in predicting market movements.

7. Key Challenges for AI Adoption in India.

1. **Regulatory Frameworks:** The lack of clear AI-focused regulations, especially for data privacy and algorithmic transparency, remains a hurdle.
2. **Infrastructure Gaps:** Limited access to high-quality datasets and computing infrastructure is slowing adoption in smaller financial institutions.
3. **Skilled Workforce:** A shortage of AI-trained professionals constrains scalability and innovation.

Opportunities: With initiatives like the National AI Strategy (NITI Aayog) and the Digital Public Infrastructure, India is laying the groundwork to address these challenges.

Conclusion:

AI is not just a technological upgrade, it is a strategic enabler for India's financial sector.

From startups like **JSS** Pro and **CoRover.AI** to traditional players like HDFC and ICICI, the integration of AI is improving financial automation, reducing risk and enhancing inclusion.

Addressing challenges like regulation and infrastructure is critical to fully unlocking its potential. For the future of the financial sector, collaboration among stakeholders is essential to overcome challenges and foster industrial growth.

The future of AI is now taking the shape!

V. Compliance Calendar Dec. 24

A. Income Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Dec	November 2024	TDS / TCS Payment	Non-Government Deductors
02	15th Dec	Form 16A (Oct. to Dec.)	Salaried Employees	All deductors
03	15th Dec	FY 2023-24	Filing of Income tax Return (Including partner of such firm covered under TP)	Assesses covered under Transfer Pricing
04	15th Dec	FY 2024-25	Payment of Third Installment of Advance Tax	All Assessees (excluding senior citizens not having business income)
05	31st Dec	FY 2023-24	Filing of Revised or Belated Income tax Return for A.Y. 2024-25	All Assessee

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Dec.	November 24	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Dec.	November 24	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Dec.	November 24	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Dec.	November 24	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
05	13th Dec.	November 24	GSTR – 6 (ISD)	Person registered as ISD

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
06	20th Dec.	November 24	GSTR – 3B	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for QRMP scheme
07	13th Dec.	November 24	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
08	20th Dec.	November 24	GSTR - 5A (OIDAR)	OIDAR services provider
09 -	25th Dec.	November 24	GSTR – 3B - QRMP scheme- Monthly payment *	Aggregate Turnover is up to Rs. 5 crores
10	31st Dec.	F.Y. 2023-24	GSTR-9 & 9C (Annual Return and GST Audit)	Refer below table***

* i - Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), option having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -1 states

*ii - Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -2 states

*iii - - GSTR 9 & 9C Applicability:

Sr. No.	Particulars	GSTR-9	GSTR-9C
01	Applicability Turnover	GST regular taxpayer except with aggregate turnover above INR 2 crores	GST regular taxpayer with aggregate turnover above INR 5 crores
02	Exclusions	a) Casual Taxable Person b) Non-Resident Taxable Person c) Input Service Distributor d) Unique Identification Number Holders e) Online Information and Database Access Retrieval (OIDAR) Service providers f) Composition Dealers g) Persons subject to TCS or TDS provisions	Not Applicable
03	Due date	31st December 2024	31st December 2024
	Late fee / Penalty for delayed filling	Late fees of Rs 200 per day of delay (INR 100 each in case of CGST and SGST) subject to a maximum cap of 0.25% of total turnover in respective State / UT	No specific provision so general penalty under Section 125 i.e., INR 50,000 (25,000 each in case of CGST and SGST)

C. FEMA Compliance

Sr. No.	Due Dates	Particulars	Applicable to
01	7th Nov.	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non-resident lenders

BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

About us

Bhuta Shah & Co LLP (BSC) is a dynamic professional Chartered Accountants firm with a distinctive blend of skill sets, experience and expertise. Established in the year 1986, we operate from our Head Office in Nariman Point, Mumbai while having 6 offices across India in Mumbai, Pune, Ahmedabad and New Delhi.

We offer our clients a wide range of services including Audit & Assurance, Direct Taxation, Indirect Taxation, Transaction Advisory, Corporate Finance, Corporate Advisory, Risk Advisory, Cyber Security and Resolution & Insolvency Advisory.

We provide services to a diverse set of leading Indian and Multinational Clients, including FPIs, Mutual Funds, Large Banks, Broking Institutions, Listed Companies including Pharmaceutical Companies, Manufacturing Companies, Insurance Companies, Realty Companies, Jeweller y Companies, Hospitals and several other Large and Medium Businesses.

Our forte is high quality services to our clients based on the core principles of Quality, Focus, Timeliness and Commitment.

The Leadership Team comes with rich experience and is supported by a competent and efficient team of Professionals including Chartered Accountants, Professionals with Big-4 Consulting and Industry experience, Advocates, Company Secretaries, MBAs, Former IRS Officers, who are committed to providing timely, professional and quality services to our clients.

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