

**R.C.JAIN AND ASSOCIATES LLP**

**NEWSLETTER**

**August 2022**

*“Problem is a part of life,  
Facing them is an art of life.”*

*-Priya Suthar*



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**Income Tax**

**1. Submission of certain documents to employer by employee as per Notification No. 90/2022/F. No. 370142/31/2022:**

In exercise of the powers conferred by sub-clause (c) of clause (ii) of the first proviso to clause (2) of section 17 of the Income-tax Act, 1961, the Central Government hereby notifies the following conditions, namely:-

The employee shall submit the following documents to the employer-

- the COVID-19 positive report of the employee or family member, or medical report if clinically determined to be COVID-19 positive through investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted;
  - all necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID-19 positive; and
  - a certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.
- This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the assessment year 2020-2021 and subsequent assessment years.

**Note :** It is certified that no person is being adversely affected by granting retrospective effect to this notification.

**2. Substitution of Form No.10 as per Notification No. 96/2022:**

As per sub-section (2) of section 11 read with section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby makes the following rules further to amend the Income tax Rules, 1962, namely:

For rule 17, the following rule shall be substituted, namely:-

Exercise of option etc. under Explanation 3 to the third proviso to clause (23C) of section 10 or section 11.-

## **DIRECT TAX**

(1) The option to be exercised in accordance with the provisions of sub-section (1) of section 11 of the Act in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under clause (a) of the Explanation 3 to the third proviso to clause (23C) of section 10 of the Act or under clause (a) of sub-section (2) of section 11 of the Act or under the said provision as applicable under clause (21) of section 10 of the Act shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall –

- i. specify the procedure for filing of Forms referred to in sub-rule (3);
- ii. specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(3), for purpose of verification of the person furnishing the said Forms; and
- iii. be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.

In the principle rules, in the APPENDIX, for Form No. 10, the following Form shall be substituted-

Kindly refer to the below mentioned link for detailed information about Form 10:

<https://incometaxindia.gov.in/communications/notification/notification-no-96-2022.pdf>

*~ Compiled by Pooja Thopte*

**Case Laws:**

**1. Issue Involved:**

Whether the prohibition of Benami property transactions act, 1988 as amended by the benami transactions (prohibition) amendment act, 2016 has a retrospective effect?

- In the Hon'ble High Court of Judicature at Calcutta in APO No. 8 of 2019 along with Writ Petition No. 687 of 2017., in case of M/s. Ganpati Dealcom Pvt. Ltd. vs Union of India

**Gist of the Case :**

- Ganpati Dealcom Pvt. Ltd., the respondent company had purchased a property with total consideration of Rs.9,44,00,000/- on 02.05.2011. It is said that the consideration for the aforesaid purchase was paid from the capital of the company. On 31.03.2012, 99.9% of the respondent-company shareholdings were acquired by M/s PLD Properties Pvt. Ltd. and M/s Ginger Marketing Pvt. Ltd. It is a matter of fact that the two directors of the respondent company (viz. Shruti Goenka & Ritu Goenka) also held directorship in the subsequent purchaser company.
- At the time when purchase transaction of property was made The Benami Transactions (Prohibition) Act, 1988 was in force. This Act was amended by the Benami Transaction (Prohibition) Amendment Act, 2016 on 1st November, 2016 as notified in the Official Gazette by the CG.
- On 29th August, 2017 the respondent company invoked Section 24(1) of the Act after its amendment due to which a notice was issued by The Deputy Commissioner of Income Tax (Adjudicating Authority) to show cause as to why the aforesaid property should not be considered as Benami property and the respondent company as Benamidar under Section 2(8) of the said Act of 1988, as amended. It also alleged violation of Section 2(9)(D) thereof. It said that the consideration for this transaction was provided by "non-traceable fictitious/shell entities having no real business", rendering the transaction Benami. The respondent company replied to this show cause notice stating that the property had been acquired by the fund of the company and not from fictitious persons.

**Held:**

The High Court, vide impugned order dated 12.12.2019, while quashing the show cause notice dated 29.08.2017, held that the 2016 Act does not have retrospective application.

1. The 2016 Amendment Act, which came into force on 01.11.2016, was a new and substantive legislation, inter alia, substituting and widening the definition of 'Benami property and benami transaction', and in order to have retrospective operation for the period or transactions entered into prior to 01.11.2016, a provision to that effect should have been specifically providing under the said Act; in the absence of any express provision to that effect, simply by virtue of the provisions contained in subsection (3) of Section 1 of the 1988 Act [which remained unaltered by the 2016 Amendment Act, and have consequently been retained under the Benami Act], the provisions of the 2016 Amendment Act cannot be impliedly construed as retrospective;
2. The 2016 Amendments to Benami Act can't be applied retroactively to property transactions entered into prior to 25-10-2016

**2. Issue Involved:**

Reassessment notice can be issued even if time-limit has not expired for issuance of scrutiny notice u/s 143(2) in pursuance of itr filed u/s 139?

- In the ITAT of Bangalore, in the case of Deputy Commissioner of Income- tax, Circle (2)(1), Bangalore v/s C. Gangadhara Murthy

**Gist of the Case :**

The assessee an individual is an investor in mining firm as well as urban properties. The department had certain information regarding cash deposits made by the assessee during the relevant assessment year. It was seen that the assessee had not filed his return of income. On account of verification of the stop filer status of the assessee, the assessee filed a letter dated 05.11.2013 enclosing a copy of the return filed. The return filed was beyond the time prescribed. Since the return of income filed by the assessee needed to be regularized and also for the reason that the source for cash deposits made by the assessee needed to be verified, a notice u/s 148 of the I.T.Act dated 08.01.2014 was issued. In response to the same, the assessee filed letter dated 11.02.2014 enclosing the copy of the return filed earlier. The assessee also sought for the reasons recorded for issuance of notice u/s 148 of the I.T.Act. The A.O. provided the reasons recorded for issuance of notice u/s 148 of the I.T.Act

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to the assessee on 06.03.2014. The assessee filed objections to the reasons recorded by letter dated 16.09.2014. However, according to the assessee, the A.O. without disposing of the objections raised to the reasons recorded, passed an assessment order dated 03.11.2014 u/s 144 r.w.s. 147 of the I.T.Act. Notice under pre-amended Section 148 of the Act can be issued by the AO even if there is time-limit for issuance of notice under section 143(2) of the Act has not been expired in pursuance of return filed under section 139 of the Act for completing regular assessment under section 143(3) of the Act. The Assessing Officer has only to show that there is a case of under assessment as mentioned in either of the three clauses to Explanation 2 to preamended section 147. Thus, whether return of income is filed or not, even if it is filed assessment is made or not, what has to be pointed out in the reasons recorded by the Assessing Officer is that there is a case of under assessment. The argument that clause (b) to Explanation 2 will come into operation only when time period for issuance of notice under section 143(2) is expired and assessment is not made, is not acceptable as this will put another condition in Explanation 2(b) which is otherwise not inserted by the Legislature.

### Held:

1. In the instant appeal, it is noted that there was no sanction obtained from the Joint Commissioner and thus the entire proceeding, initiated u/s 147 of the Act will be rendered ab initio void. Therefore, in view of the above facts, and based on the remand report dated 20/02/2018, one is constrained to hold the assessment order passed u/s 144 r.w.s. 148 of the Act dated 20/8/2014 as unsustainable. Reliance is also placed on above judicial pronouncements cited in para 13 supra.
2. Ongoing through the entire judgement of the Coordinate Bench of the Tribunal (supra) the present case is squarely covered in favour of Revenue. In the judgment the details for issuing notice have been discussed elaborately after discussing many judgments regarding the issue of notice under Section 148 of the Act after satisfying the conditions of Section 147 of the Act. The case cited by the Id. D.R. is also applicable to the facts of the present case. While deciding the issue the ITAT Lucknow Bench, has concluded that the notice under Section 148 of the Act can be issued by the AO even if there is time limit for issuance of notice under Section 143(2) of the Act has not been expired in pursuance of return filed under Section 139 of the Act for completing regular assessment under Section 143(3) of the Act.

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3. In the present case, we are only concerned with the operation of clause (b) to Explanation 2 and this clearly provides that where assessment is not completed, still then there could be a case of deemed escapement of income and notice under section 148(1) can be issued irrespective of the fact whether assessment proceedings initiated by virtue of filing the return or assessment proceedings by way of issuance of notice under section 143(2) are concluded or not.

### **3. Issue Involved:**

Which high court would have the jurisdiction to entertain an appeal exercising jurisdiction over more than one state?

- In the Supreme Court, in the case of **PCIT Chandigarh Vs ABC Papers Limited**

### **Gist of the Case :**

The Appellant herein, M/s. ABC Papers Ltd. had filed its income tax returns before the Assessing Officer, New Delhi, on 30.09.2008. The DCIT, Circle-1(1), New Delhi, issued a notice u/s 143 (2) of the Act and followed it up by an order of assessment. Aggrieved by that order, the Assessee preferred an appeal to the CIT (Appeals) - IV, New Delhi, and by his order, the Commissioner allowed the appeal. Against this appellate order, the Revenue carried the matter to ITAT, New Delhi. The ITAT, New Delhi, by its order upheld the order of the CIT (Appeals) - IV, New Delhi, and dismissed the appeal filed by the Revenue. Against this order of the ITAT, the Revenue filed ITA before the High Court of Punjab & Haryana. While the matter was pending appeal before the CIT (Appeals) - IV, New Delhi, a search operation under Section 132(1) of the Act was carried out at the office and factory of the Assessee in Chandigarh and certain places in the State of Punjab, by the Directorate of IT (Investigation), Ludhiana. After the search operation, an order was passed u/s 127 of the Act, the CIT (Central), Ludhiana, centralized the cases of the Assessee for the assessment years 2006-07 to 2013-14 and transferred the same to Central Circle, Ghaziabad. The Hon'ble Supreme court in this case was called upon to decide which High Court would have the jurisdiction to entertain an appeal against a decision of a Bench of the ITAT exercising jurisdiction over more than one state, particularly when case(s) of same assessment year are transferred under Section 127 of the Act. Should it be the High Court of the State in which the ITAT is physically located or the High Court of the State in which the Assessee is residing and/or doing its business or the High Court where the Assessing Officer who assessed the assessee is located.



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### Held:

1. The court after noting statutory provisions as contained in the Income-tax Act 1961 noted that a judicial remedy must be effective, independent and at the same time certain. Certainty of forum would involve unequivocal vesting of jurisdiction to adjudicate and determine the dispute in a named forum. The court also noted the decision of the Supreme Court in the case of Seth Banarasi Das Gupta, where it was held that the most appropriate high court for filing an appeal would be the high court where the assessing officer is located. However, the court was confronted of the peculiar situation in a case where the jurisdiction is transferred from one AO to another AO in a different state u/s 127 of the Act. Finally, the court after noting law and several decisions in this regard , held that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).
2. This decision will be important in deciding the jurisdiction of the High Court. However, applying the said decision in a faceless environment where all the orders are passed by NFAC, Delhi the jurisdiction probably will vest with Delhi High Court. The said issue has not been dealt with in the present cases.

*-Compiled by Tarun lakhani*

**GSt Notifications:**

**1. Applicability of E-invoicing as per Notification No. 17/2022 - Central Tax**

- The said notification seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs.10 CR from 1<sup>st</sup> October, 2022.
- In the notification of the Government of India No. 13/2020 - Central Tax, dated the 21st March, 2020, a class of registered person shall prepare invoice and other prescribed documents if aggregate turnover in a financial year exceeds twenty crore rupees. The limit has been reduced to Rs.10 crore.

*~Compiled by Revati Pillai*

**Part A: Foreign Exchange Management Notifications**

**1)RBI/2022-23/86**

**FMRD.FMID.No.04/14.01.006/2022-23**

**Liquidity Adjustment Facility- Change in rates**

- i) As announced in the Monetary Policy Statement dated August 05, 2022, it has been decided by the Monetary Policy Committee (MPC) to increase the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 4.90 per cent to **5.40 per cent** with immediate effect.
- ii) Consequently, the standing deposit facility (SDF) rate and marginal standing facility (MSF) rate stand adjusted to 5.15 per cent and 5.65 per cent respectively, with immediate effect.
- iii) All other terms and conditions of the extant LAF Scheme will remain unchanged.

**2)RBI/2022-23/102**

**REF.No.MPD.BC.394/07.01.279/2022-23**

**Standing Liquidity Facility for Primary Dealers**

As announced in the Monetary Policy Statement 2022-23 today, it has been decided by the Monetary Policy Committee (MPC) to increase the policy repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 4.90 per cent to 5.40 per cent with immediate effect.

- i) Accordingly, the Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralized liquidity support) from the Reserve Bank would be available at the revised repo rate of 5.40 per cent with immediate effect.

**3)RBI/2022-23/103****DOR.RET.REC.59/12.01.001/2022-23****Change in Bank Rate**

- i) Please refer to our circular DOR.RET.REC.44/12.01.001/2022-23 dated June 08, 2022 on the captioned subject.
- ii) As announced in the Monetary Policy Statement 2022-23 dated August 05, 2022, the Bank Rate is revised upwards by 50 basis points from 5.15 per cent to 5.65 per cent with immediate effect.
- iii) All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised as indicated in the annex.

**Annex****Penal Interest Rates which are linked to the Bank Rate**

<b>Item</b>	<b>Existing Rate</b>	<b>Revised Rate (With immediate effect)</b>
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (8.15 per cent) or Bank Rate plus 5.0 percentage points (10.15 per cent).	Bank Rate plus 3.0 percentage points (8.65 per cent) or Bank Rate plus 5.0 percentage points (10.65 per cent).

**4)RBI/2022-23/106****DOR.REG.No.63/19.51.052/2022-23****Section 23 of the Banking Regulation Act, 1949 (As Applicable to Co-operative Societies)  
- Opening of new place of business by District Central Co-operative Banks (DCCBs)**

District Central Co-operative Banks (DCCBs) are permitted to open new place of business/install ATMs or shift the location of such offices only after obtaining prior approval of the Reserve Bank of India (RBI).

- The criteria for opening of branches/extension counters/ by a DCCB are as follows:
- A licensed DCCB should have completed at least three years of operation
- CRAR not being less than 9 per cent

- No default in maintenance of CRR/SLR during the preceding financial year
- Net NPA being less than 5 per cent
- The bank should have made a net profit during the preceding two financial years
- The bank should have a good track record of regulatory compliance and no monetary penalty should have been imposed on the bank for violation of Reserve Bank of India directives/guidelines during last two financial years
- The bank should not have been placed under any specific direction issued by Reserve Bank of India during the preceding two financial years

The above parameters will be considered as they appear in the latest inspection report of NABARD.

- DCCBs shall be allowed to install on-site ATMs without seeking prior approval of the Reserve Bank of India. The conditions subject to which off-site/mobile ATMs can be operationalized by DCCBs are furnished in Annex I.
- DCCBs shall report to concerned Regional Office of the Reserve Bank under whose jurisdiction the Head Office of the DCCB is functioning, immediately after operationalization of the off-site/mobile ATMs and in any case not later than 15 days, as per the format enclosed in Annex II and Annex III and obtain authorization under Section 23 of the Banking Regulation Act, 1949 (AACs) from the concerned Regional Office of the Reserve Bank.

**5)RBI/2022-23/108**

**DOR.ORG.REC.65/21.04.158/2022-23**

**Outsourcing of Financial Services - Responsibilities of regulated entities employing Recovery Agents**

- i) The Reserve Bank of India has from time to time advised regulated entities (REs) that the ultimate responsibility for their outsourced activities vests with them and they are, therefore, responsible for the actions of their service providers including Recovery Agents (hereafter referred to as 'agents').
- ii) It has been observed that the agents employed by REs have been deviating from the extant instructions governing the outsourcing of financial services. In view of concerns arising from the activities of these agents, it is advised that the REs shall strictly ensure that they or their agents do not resort to intimidation or harassment of any kind, either verbal or physical, against any person in their debt collection efforts, including acts intended to humiliate publicly or intrude upon the privacy of the debtors' family members, referees and friends, sending inappropriate messages

either on mobile or through social media, making threatening and/ or anonymous calls, persistently<sup>1</sup> calling the borrower and/ or calling the borrower before 8:00 a.m. and after 7:00 p.m. for recovery of overdue loans, making false and misleading representations, etc.

- iii) The instructions contained in para 2 above shall supplement and be read in conjunction with the existing guidelines/directions issued by the Reserve Bank of India, as amended from time to time, including those tabulated in Annex.
- iv) Any violation in this regard by REs will be viewed seriously.

### **Applicability**

This circular shall apply to the following REs:

- a) All Commercial Banks (including Local Area Banks, Regional Rural Banks, and Small Finance Banks) excluding Payments Banks;
  - b) All All-India Financial Institutions (viz. Exim Bank, NABARD, NHB, SIDBI, and NaBFID);
  - c) All Non-Banking Financial Companies including Housing Finance Companies;
  - d) All Primary (Urban) Co-operative Banks, State Co-operative Banks, and District Central Co-operative Banks; and
  - e) All Asset Reconstruction Companies.
- This circular shall not apply to microfinance loans covered under 'Master Direction - Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022', dated March 14, 2022.

*-Compiled by Yagnik Koriya*

**1. Amendments to the Companies (Incorporation) Third Amendment Rules, 2022**

The Ministry of Corporate Affairs (MCA) issued a notification on 18<sup>th</sup> August 2022 for an amendment to the Companies (Incorporation) Third Amendment Rules, 2022 and Rule 25B is inserted.

**PHYSICAL VERIFICATION OF THE REGISTERED OFFICE OF THE COMPANY BY ROC:-**

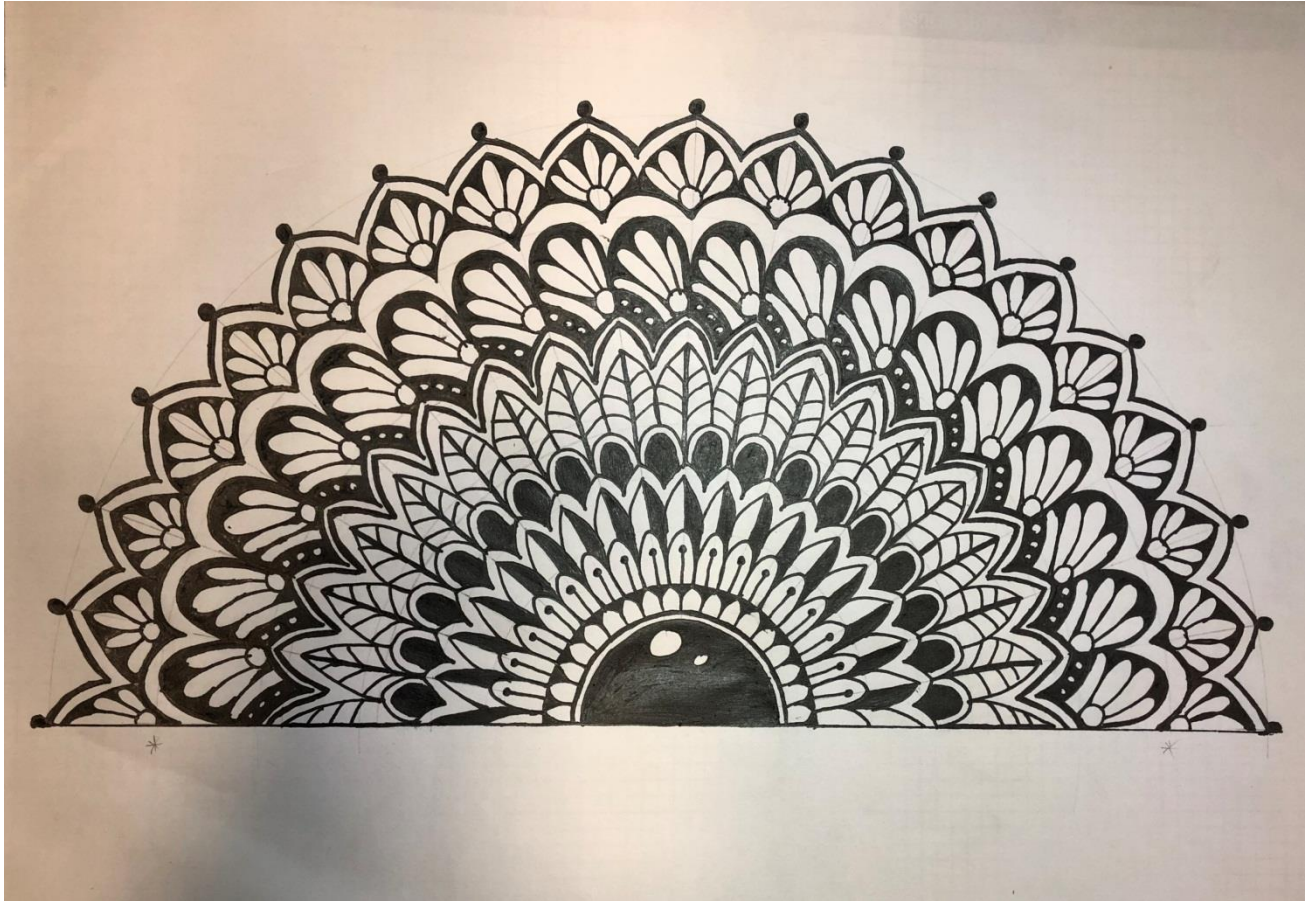
- i) When the ROC has a reasonable cause to believe that the Company is not carrying on any business or operations pursuant to section 12(9) of the Companies Act, 2013. In such situations, ROC can carry out physical verification of the Registered Office.
- ii) The Registrar shall carry the documents as filed with the MCA while physical verification and shall cross verify with the documents filed by the Company.
- iii) The Registrar shall take photograph of the registered office while conducting physical verification of the registered office of the Company.
- iv) The report of such verification shall be prepared and relevant attachments shall be attached.
- v) Where the Registrar is not getting any reply from the Company on the notices sent by it, the Registrar shall send a notice to the Company and its directors of intention to remove the name of the Company from the register of companies within 30 days from the notice.

**NOTE:**

- The verification shall be conducted in the presence of two independent witness of the locality.
  - While performing the verification Registrar may seek assistance of the local police (if required).
- 2.** In view of the upcoming launch of 9 Company forms (DIR3-KYC WEB, DIR-KYC E-FORM, DPT-3, DPT-4, CHG-1, CHG-4, CHG-6, CHG-8 & CHG-9) which were discontinued in MCA21 V2. MCA21 V3 portal for filing above forms will be available from 31<sup>th</sup> August, 2022.

*~Compiled by Kalpesh Bhanushali*

**#HUNAAR HAAT**



*~CS Manan Vandhan*



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