

R.C.JAIN AND ASSOCIATES LLP

NEWSLETTER

September 2022

*“Live for the moments
you can’t put into words.”*

-Priya Suthar



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Income Tax**1. Insertion of new proviso as per Notification No. 105**

These provision shall be deemed to have come into force from the 9th day of July, 2022. In Rule 114BB sub-rule (1) new proviso is inserted which states that this sub-rule will not apply to the person depositing the money - Cash deposit or deposits aggregating to twenty lakh rupees or more in a financial year, in one or more account of a person with, -

- (I) A banking company or a co-operative bank.
- (II) Post Office

2. Timeline for filing of Modified Income Tax Return as per Notification No. 110:

- i) CBDT extends timeline for filing of modified Income Tax Return (ITR) in Form ITR-A by a successor company u/s 170A from 30/09/2022 to 31/03/2023 in the cases where the order of business reorganisation was issued by the competent authority during 01/04/2022 and 30/09/2022.
- ii) In pursuance thereof, form ITR-A has been notified vide notification G.S.R. 709(E) dated 19/09/2022 and comes into effect from 01/11/2022. This has, however, reduced the time available for furnishing modified returns for successor companies in cases where the order of business reorganisation of the competent authority was issued in the period between 01/04/2022 and 30/09/2022.

3. Application for Re-computation of income as per Notification No.111:

- a. New IT Rule 132 on "Application for Re-computation of income under sub-section (18) of section 155" inserted by CBDT, along with new IT Forms 69 and 70, vide Income-tax (32nd Amendment) Rules, 2022 (Notification 111/2022).
- b. New IT Form 69 is meant for submitting Application by an Assessee, for Re-computation of Income under new IT Section 155(18), as inserted by the Finance Act, 2022, which deals with retrospective disallowance of surcharge/ cess as per amended Section 40(a)(ii). Accordingly, the AO shall modify the assessment order of past years on account of such retrospective disallowance of deduction for surcharge/ cess. Further, new IT Form 70 is meant for intimating the AO about payment of tax on re-computed income u/s 155(18).

4. Order: 28th September, 2022

- Order specifying the Collegium -

SI.No.	Appeals in Jurisdiction	Collegium to be Constituted By
<u>1.</u>	International tax and Transfer Pricing)	Pr. Chief Commissioner of Income-tax (International tax and Transfer Pricing)
<u>2.</u>	Exemption Charge	Pr. Chief Commissioner of Income-tax (Exemptions)
<u>3.</u>	Central Charges	Chief Commissioner of Income-tax (Central) or DGIT(Inv) - [Jurisdictional]
<u>4.</u>	All other cases	Pr. Chief Commissioner of Income-tax (CCA) - [Jurisdictional]

~ Compiled by Karthik Bhanushali

Case Law I:

Reference: [2022] 142 taxmann.com 529 (Kolkata - Trib.)[27-09-2022]

INCOME TAX :

Mere use of borrowings to purchase shares cannot alter assessee's consistent treatment of shares as investments accepted by Revenue for years Mere high volume of transactions & utilisation of borrowings in purchase of shares will not alter assessee's consistent treatment of shares purchased on delivery basis as investment [capital asset as defined in section 2(14)] and accepted by Revenue for several years except the impugned year/(s) where Revenue treated it as stock-in-trade merely on the basis of high volume of transactions & utilisation of borrowings in purchase without any material change in facts

PER ITAT:

- The assessee has consistently disclosed/reported her holdings in shares/mutual funds in the balance sheet under the head investments which manifests the intention of being an investor. The same have been reported in the income-tax return form consistently under the head investments and not under the head current assets. Also the revenue has not disturbed the status declared by the assessee and accepted the returns u/s 143(3) of the Act, for AYs 2006-07 to 2017-18 and it is evidently oozing out that in the earlier years as well as subsequent years, the status of the assessee as investor was not disputed except for the impugned year and AY 2012-pending before the Id. CIT(A). Id. Sr. D/R could not bring on record any material to demonstrate change in facts and applicable law in the year under consideration when compared with the preceding as well as subsequent years referred in the table above and therefore the rule of consistency is to be followed.
- Assessee has purchased the shares on delivery basis. Though the volume of transactions is high and certain borrowed funds have also been deployed but considering the judicial precedents including that of Hon'ble jurisdictional High Court, it is to be held that mere volume of transactions and utilization of borrowed funds are not the criterion to alter the treatment given by the assessee about her investment in the books.
- Therefore, considering all these facts, and the judicial precedents along with the CBDT circulars, appeal of the assessee is allowed and the Id. Assessing Officer is directed to treat the income earned by the assessee on share/mutual funds transactions under the head capital gains by considering the assessee as an investor, whether short-term or long-term capital gains, depending upon the period of holdings of the relevant shares/mutual fund units. In the result, grounds taken on this issue by the assessee are allowed and those by the revenue are dismissed.

Case Law-II

Reference: [2022] 143 taxmann.com 11 (Delhi)[27-09-2022]

- **INCOME TAX: Delhi HC decides the date of issue of reassessment notices sent through various modes for purposes of time-barring.**

Category 'A' : The Notices falling under category 'A', which were digitally signed on or after 1st of April, 2021, are held to bear the date on which the said Notices were digitally signed and not 31 st March 2021. The said petitions are disposed of with the direction that the said Notices are to be considered as show-cause-notices under Section 148A (b) of the Act as per the directions of the Apex Court in the Ashish Agarwal judgment.

Category 'B' : The Notices falling under category 'B' which were sent through the registered e-mail ID of the respective JAOs, though not digitally signed are held to be valid. The said petitions are disposed of with the direction to the JAOs to verify and determine the date and time of its despatch as recorded in the ITBA portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after 1st of April, 2021, the Notices are to be considered as show-cause-notices under Section 148A (b) as per the directions of the Apex Court in the Ashish Agarwal judgment.

Category 'C' : The petitions challenging Notices falling under category 'C' which were digitally signed on 31st of March 2021, are disposed of with the direction to the JAOs to verify and determine the date and time of despatch as recorded in the ITBA portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after 1st of April, 2021, the Notices are to be considered as show-cause-notices under Section 148A (b) as per the directions of the Apex Court in the Ashish Agarwal (Supra) judgment.

Category 'D' : The petitions challenging Notices falling under category 'D' which were only uploaded in the Efiling portal of the assessee without any real time alert, are disposed of with the direction to the JAOs to determine the date and time when the assessee viewed the Notices in the E-filing portal, as recorded in the ITBA portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment. If such date of issuance is determined to be on or after 1st of April 2021, the Notices will be construed as issued under Section 148A (b) of the Act of 1961 as per the Ashish Agarwal judgment.

DIRECT TAX

Category 'E' : The petitions challenging Notices falling under category 'E' which were manually despatched, are disposed of with the direction to the JAOs to determine in accordance with the law laid down in this judgment, the date and time when the Notices were delivered to the post office for despatch and consider the same as date of issuance. If the date and time of despatch recorded is on or after 1 st of April, 2021, the Notices are to be construed as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the Ashish Agarwal judgment. • Notices sent to unrelated e-mail addresses: The petitions challenging Notices which were sent to unrelated e-mail addresses are disposed of with the direction the JAOs to verify the date on which the Notice was first viewed by the assessee on the E-filing portal and consider the same as the date of issuance. If such date of issuance is determined to be on or after 01st April, 2021, the Notices will be construed as issued under Section 148A (b) of the Act of 1961 as per judgment in Ashish Agarwal.

-Compiled by Tuba Momin

GSt Notifications:

The amendment mentioned in the Finance Act, 2022 shall come into force from the 1st October, 2022 through the Notification No. 18/2022-Central Tax.

1. Time limit to claim ITC increased

- Section 38 restriction inserted.
- The registered person gets additional time to claim ITC pertaining to a Financial year. Previously the claim of ITC was allowed for a financial year up to due date of return of September of next financial year. Now this clause has been amended and ITC can be claimed till 30th November of next financial year.

2. Reduction in time limit for of Cancellation of registration

- Initially the GST number used to get cancel if the Composition Dealer paying tax under section 10 has not furnished returns for three consecutive tax periods.
- This clause has been amended and as per the amendment in case a person paying tax under section 10 does not furnish the return beyond three months from the due date of furnishing the said return then the registration stands to be cancelled.

3. Increase in time limit to issue credit notes pertaining to a Financial year.

The registered person is allowed to issue **Credit Notes** pertaining to a financial year provided it is declared in the GST return of

- 1) **30th November** of next financial year, or
- 2) The date of furnishing of the **annual return** for the financial year,
whichever is earlier.

(Initially it was allowed till September of next financial year.)

4. Increase in time limit to make rectification of error or omission in respect of the outward details furnished in GSTR 1.

The registered person who has furnished the details in GSTR 1, now gets additional time to rectify error and error or omission in respect of the outward details furnished in **GSTR 1 upto 30th Day of November** following the end of financial year.

INDIRECT TAX

5. GSTR 1 cannot be filed until all the previous GSTR 1 are filed.

A registered person will not be allowed to file GSTR 1 in case GSTR 1 of any preceding tax periods is pending.

6. Time limit to file return by NRTP

- Non-Resident taxable person shall file his GST return till Thirteenth after the end of calendar month (earlier it was to be filed till 20th).
 - In case of NRTP the amount of tax payable on account of supplies to be made shall be paid at the time of taking registration **after considering into account inward supplies of goods or service or both (i.e input tax credit availed or available)**
7. ITC for the previous financial year can be claimed in GSTR-3B in the succeeding financial year on or **before the due date of filing GST return for the month of October (i.e. 30th November)**
 8. Government on recommendation of council may allow a registered person or a class of registered **persons to furnish the return under section 39(1)** even if he has not furnished the returns for one or more previous tax periods
 9. **As per Section 41 (1)** every registered person be entitled to claim the eligible input tax credit on self-assessed basis and same shall be credited to Electronic credit ledger of the registered person.
 10. ITC claimed by a registered person as per above point in case of supplies of goods or services or both for which tax have not been paid by the supplier same shall be liable for reversal along with applicable interest rate (currently the interest rate is 18% p.a.). Also said tax amount is paid by supplier the ITC reversed by the registered person shall be reclaimed.
 11. ITC reversal on account of Common credit in case goods (Other than capital goods) and service or both **as per Section 42 have been omitted.**
 12. ITC reversal on account of Common credit in case capital goods as per Section 43 have been omitted.

INDIRECT TAX

13. Any registered person who have failed to furnish the details of outward supplies required under section 37 or returns required under section 39 or section 45 or Section 52 by the due date of filing the said returns will be liable to pay late fees of rupees one hundred for every day for the period the said failure continues to the maximum amount of rupees five thousand.
14. As per Section 49 of CGST Act, 2017, Notwithstanding anything contained in this Act, the government may on the recommendations of the council specify such maximum proportion of output tax liability (Tax Payable) which may be discharged through the electronic credit ledger (Input Tax Credit) by a registered person or a class of registered persons as may be prescribed under section 50 (i.e. Manner of utilisation of ITC)
15. As per Section 50 of CGST Act 2017 where the input tax credit has been wrongly claimed and utilised the registered person shall be liable to pay interest on such amount wrongly claimed and utilised @ 24% P.A. as and the interest shall be calculated in **such manner as may be prescribed.**
16. in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.
17. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council: Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty: Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

~Compiled by Sameer Yadav

Part A: Foreign Exchange Management Notifications**CURRENT RATES**

Policy Repo Rate	5.90%
Standing Deposit Facility Rate	5.65%
Marginal Standing Facility Rate	6.15%
Bank Rate	6.15%
Fixed Reverse Repo Rate	3.35%

1. RBI/2022-23/115
A.P. (DIR Series) Circular No. 14**Rupee Drawing Arrangement - Enabling Bharat Bill Payment System (BBPS) to process cross-border inbound Bill Payments**

- The Reserve Bank of India (RBI) has allowed the Bharat Bill Payment System (BBPS) to process cross-border inbound payments to facilitate payment of utility bills by non-resident Indians (NRIs).
- In a circular, the RBI said, "...it has been decided to allow foreign inward remittances received under the Rupee Drawing Arrangement (RDA), to be transferred to the KYC-compliant bank account of the biller (beneficiary) through Bharat Bill Payment System (BBPS)."
- Currently, foreign inward remittances received under the RDA are allowed to be transferred to the KYC compliant beneficiary bank accounts through electronic moded, such as, NEFT, IMPS, among others.
- The BBPS, conceptualised by the RBI and driven by the National Payments Corporation of India (NPCI), is a one-stop destination for payment of various bills like electricity, gas, water, DTH, among others. It offers an interoperable platform for standardised bill payment experience, centralised customer grievance redress mechanism, uniform customer convenience fee, among others.
- Last month, the central bank proposed enabling BBPS to accept cross-border inward payments to facilitate NRIs to undertake utility, education and other bill payments on behalf of their families in India.

2. **RBI/2022-23/122**
A.P. (DIR Series) Circular No. 16

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999 (FEMA)

The Late Submission Fee (LSF) was introduced for reporting delays in Foreign Investment (FI), External Commercial Borrowings (ECBs) and Overseas Investment related transactions with effect from November 07, 2017, January 16, 2019 and August 22, 2022 respectively. It has now been decided to bring uniformity in imposition of LSF across functions. The following matrix shall be used henceforth for calculation of LSF, wherever applicable:

Sr. No.	Type of Reporting delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	$[7500 + (0.025\% \times A \times n)]$

~ Compiled by Gerard Manjaly

1. Amendment of the companies (CSR policy) rules, 2014 of the Companies Act, 2013:

MCA has made amendment under CSR rules to be effective from the Financial Year 2021-22 onwards:

- i) Any Company having any amount pending in its ***“UNSPENT CSR ACCOUNT”*** as per the provision as per sub-section (6) of section 135, Such Company shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of Section 135 of Companies Act., 2013.

The provision of sub-rule 2 of Companies (Corporate Social Responsibility Policy) Rules, 2014 which states that CSR once applicable to a Company, the Company is required to comply it for three consecutive Financial Years is ***OMITTED***.

After omission of Sub-Rule 2, only a Company which falls under Section 135(1) shall require to constitute CSR Committee. Therefore, if CSR Committee is applicable for one year, it can be dissolved after one year.

According to section 135(1), every Company having net profit of Rs. 5 crores or more OR having turnover of Rs. 1000 crores or more OR having net worth of Rs. 500 crores or more shall be required to comply with CSR Provisions.

- ii) The Cost that Can be incurred in Financial Year for undertaking impact assessment as per rule 8 (3), shall be restricted to:
 - a) 2% (earlier it was 5%) or
 - b) 50 Lakhs

Whichever is higher (*earlier it was lower*).

- iii) MCA has introduced new format for CSR Reporting i.e. ***Annexure-II*** under which complete detailing of CSR is taken note of.
<https://www.mca.gov.in/bin/dms/getdocument?mds=1Wt3uUYzV0rGCr2Vxa8ztQ%253D%253D&type=open>

The Board shall ensure that the CSR activities are conducted by itself or through-

- a) A company registered under Section 8 of Companies Act, 2013 or a registered trust or registered society exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80

CORPORATE LAW

G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company;

- b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government;
- c) any entity i.e. statutory body established under an Act of Parliament or a State legislature to undertake activities covered in Schedule VII of the Act.’.
- d) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities. Explanation.- For the purpose of clause (c), the term “entity” shall mean a statutory body constituted under an Act of Parliament or State legislature to undertake activities covered in Schedule VII of the Act.’.

A) COMPANIES (SPECIFICATION OF DEFINITION DETAILS) AMENDMENT RULES, 2022

MCA has amended definition of *SMALL COMPANY* under section 2(85) of Companies Act:

Small Company means a Company other than Public Company having-

- a) Paid-up Share Capital upto Rs. 4 Crores (earlier Rs.2 Crores) and;
- b) Turnover upto Rs. 40 Crores (earlier Rs. 20 Crores)

Hence, MCA has increased the limit of small Company to cover more private companies under these criteria and to do ease of business from Financial Year 2022-23 onwards.

B) AMENDMENT UNDER SCHEDULE III OF COMPANIES ACT, 2013:

MCA wide notification dated 26/09/2022 clarified that with respect to notification GSR. 207(E) dated 24th March 2021; mandates companies to round off figures appearing in Financial Statements to nearest depending upon Total Income.

Further, the professional certifying form AOC-4 won't be responsible and stated incorrect for stating absolute values in the said form filing with respective Registrar of Companies.

~ Complied by Pooja Gorana

#HUNAAR HAAT

Happy Diwali and Prosperous New Year



~Pragati Erande & Rupal Khona

Allow us to tell you more!



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