R.C. JAIN AND ASSOCIATES LLP

NEWSLETTER

September 2023

"Progress has little to with speed, but much to do with direction."

INDEX

- **Circular No. 16/2023**

On consideration of difficulties reported by the taxpayers and other stakeholders, the Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Income-tax Act, 1961 (Act), provides relaxation in respect of following compliances:

l. The due date of furnishing Audit report under clause (b) of the tenth proviso to clause (23C) of section 10 and sub-clause (ii) of clause (b) of sub-section (1) of section 12A of the Income-tax Act, 1961, in the case of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution in Form 10B/Form 10BB for the Previous Year 2022-23, which is 30th September, 2023, is hereby extended to 31st October, 2023.

2. The due date of furnishing of Return of Income in Form ITR-7 for the Assessment Year 2023-24 in the case of assesses referred to in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, which is 31st October, 2023, is hereby extended to 30th November, 2023.

- **Notification No. 76 /2023, F.No.300196/19/2022-ITA-I**

1. In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961, the Central Government hereby notifies for the purposes of the said clause, 'Real Estate Regulatory Authorities' as specified in the schedule to this notification, constituted by Government in exercise of powers conferred under sub-section(1) of Section 20 of The Real Estate (Regulation and Development) Act, 2016 (16 of 2016) as a 'class of Authority' in respect of the following specified income arising to that Authority, namely:—

(a) Amount received as Grant-in-aid or loan/advance from Government (b) Fee/penalty received from builders/developers, agents or any other stakeholders as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (c) Interest earned on (a) & (b) above

2. This notification shall be effective subject to the conditions that each of the Real Estate Regulatory Authority-

(a) shall not engage in any commercial activity (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be deemed to be applied with respect to the financial year 2022-2023 relevant to assessment year 2023-2024.

- **Notification No. 71/2023, F. No. 225/103/2023-ITA-II**

1. In exercise of the powers conferred by sub-clause (d) of clause (viiab) of section 47 of the Income-tax Act, 1961, the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance, (Department of Revenue), number

16/2020, dated the 5th March, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii), vide number S.O. 986(E), dated 5th March, 2020, namely: -

In the said notification, in the first paragraph, -

(i) after clause (vi), the following clause shall be inserted, namely: -

"(vii) unit of investment trust

(viii) unit of a scheme

(ix) unit of an Exchange Traded Fund launched under International Financial Services Centres Authority (Fund Management) Regulations, 2022,"

(ii) in the Explanation, after clause (c), the following clause shall be inserted, namely: -

"(d) "Investment Trust" shall have the meaning assigned to it in clause (d) of sub-regulation (1) of regulation 83 of the International Financial Services Centres Authority (Fund Management) Regulations, 2022.

(e) "Scheme" shall have the meaning assigned to it in clause (ii) of sub-regulation (1) of regulation 2 of the International Financial Services Centres Authority (Fund Management) Regulations, 2022.".

- **Notification No. 79/2023/ F. No.370142/31/2023-TPL**

1. In exercise of the powers conferred by section 43D and clause (da) of section 43B of the Income-tax Act, 1961, the Central Government hereby notifies the following classes of non-banking financial companies (NBFCs), for the purpose of the said section, namely: –

(a) all NBFCs classified in the Top Layer (b) all NBFCs classified in the Upper Layer (c) all NBFCs classified in the Middle Layer.

Explanation –he classification of NBFCs in the Top Layer, Upper Layer and Middle Layer shall be according to the Reserve Bank of India's guidelines contained in Circular DOR.CRE.REC. No.60/03.10.001/2021-22 dated October 22, 2021.

- **Notification No. 81 /2023/F. No. 370142/9/2023-TPL Part (1)**

1. In exercise of the powers conferred by sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 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:

1. Short title and commencement. – (1) These rules may be called the Income-tax (Twenty first Amendment), Rules, 2023. (2) They shall come into force from the date of publication of the notification in the Official Gazette

2. In the Income-tax Rules, 1962, in rule 11UA, for sub-rule (2), the following sub-rules shall be substituted, namely: –'(2) Notwithstanding anything contained in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1): –

(A) the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares, as shall be determined under sub-clause (a), sub-clause (b), sub-clause (c) or sub clause (e), at the option of the assesse, where the consideration received by the assesse is from a resident ; and under sub-clauses (a) to (e) at the option of the assesse, where the consideration received by the assesse is from a non-resident, in the following manner:-

(a) the fair market value of unquoted equity shares =(A–L) × [PV/PE], where

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely: - (i) the paid-up capital in respect of equity shares.

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares

PE = total amount of paid up equity share capital as shown in the balance-sheet

PV = the paid up value of such equity shares or

(b) the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method

(c) where any consideration is received by a venture capital undertaking for issue of unquoted equity shares, from a venture capital fund or a venture capital company or a specified fund, the price of the equity shares corresponding to such consideration may, at the option of such undertaking, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from a venture capital fund or a venture capital company or a specified fund :

Provided that the consideration has been received by the undertaking from a venture capital fund or a venture capital company or a specified fund, within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.

Explanation – For the purposes of this clause, –

(i) "specified fund" shall have the same meaning as assigned to it in clause (aa) of Explanation to clause (viib) of sub-section (2) of section 56;

(ii) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the same meaning assigned to them in clause (b) of Explanation to clause (viib) of sub-section (2) of section 56.

(d) the fair market value of the unquoted equity shares determined by a merchant banker in accordance with any of the following methods:

(i) Comparable Company Multiple Method (ii) Probability Weighted Expected Return Method

(iii) Option Pricing Method (iv) Milestone Analysis Method (v) Replacement Cost Methods

(e) where any consideration is received by a company for issue of unquoted equity shares, from any entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, the price of the equity shares corresponding to such consideration may, at the option of such company, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from the notified entity:

Provided that the consideration has been received by the company from the entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.

(B) the fair market value of compulsorily convertible preference shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, as determined–

(i) in accordance with the provisions of sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assesse, or based on the fair market value of unquoted equity shares determined in accordance with sub-clause (a), sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assesse, where such consideration is received from a resident; and

(ii) in accordance with the provisions of sub-clauses (b) to (e) of clause (A), at the option of the assesse, or based on the fair market value of unquoted equity shares determined in accordance with sub-clauses (a) to (e) of clause (A), at the option of the assesse, where such consideration is received from a non-resident.

(3) Where the date of valuation report by the merchant banker for the purposes of sub-rule (2) is not more than ninety days prior to the date of issue of shares which are the subject matter of valuation,

such date may, at the option of the assesse, be deemed to be the valuation date:

Provided that where such option is exercised under this sub-rule, the provisions of clause (j) of rule 11U shall not apply.

(4) For the purposes of clause (A) or clause (B) of sub-rule (2), where the issue price of the shares exceeds the value of shares as determined in accordance with –

(i) sub-clause (a) or sub-clause (b) of clause (A), for consideration received from a resident, by an amount not exceeding ten per cent. of the valuation price, the issue price shall be deemed to be the fair market value of such shares;

(ii) sub-clause (a) or sub-clause (b) or sub-clause (d) of clause (A), for consideration received from a non- resident, by an amount not exceeding ten per cent. of the valuation price, the issue price shall be deemed to be the fair market value of such shares.

- **Notification No. 82/2023/F.No. 370142/29/2023-TPL**

In exercise of the powers conferred by sub-section (2A) of section 142 read with section 295 of the Income-tax Act, 1961 (hereinafter referred to as the Act), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: —

1. Short title and commencement. —

(1) These rules may be called the Income-tax (Twenty Second Amendment) Rules, 2023.

(2) They shall come into force from the date of publication in the Official Gazette

2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), for rule 14A, the following rule shall be substituted namely: —

"14A. Forms for report of audit or inventory valuation under section 142(2A). — (1) The report of audit of the accounts of an assessee which is required to be furnished under clause (i) of sub-section (2A) of section 142 shall be in Form No. 6B.

(2) The report of inventory valuation of an assessee which is required to be furnished under clause (ii) of sub-section (2A) of section 142 shall be in Form No. 6D."

3. In the principal rules, for rule 14B, the following rule shall be substituted namely: —

"14B. Guidelines for the purposes of determining expenses for audit or inventory valuation-

(1) Every Chief Commissioner shall for the purposes of clause (i) and clause (ii) of sub-section (2A) of section 142 shall maintain a panel of —

(i) accountants, out of the persons referred to in the Explanation to sub-section (2) of section 288

(ii) cost accountants, out of the persons referred to in the Explanation to section 142.

(2) Where the Assessing Officer directs —

(i) for audit under clause (i) of sub-section (2A) of section 142 on or after the 1st day of June, 2007

(ii) for inventory valuation under clause (ii) of sub-section (2A) of section 142 on or after the 1st day of April, 2023,

the expenses of, and incidental to, audit or inventory valuation (including the remuneration of the Accountant or Cost Accountant, qualified Assistants, semi-qualified and other Assistants who may be engaged by such Accountant or Cost Accountant) shall not be less than three thousand seven hundred and fifty rupees and not more than seven thousand and five hundred rupees for every hour of the period as specified by the Assessing Officer under subsection (2C) of section 142.

(3) The period referred to in sub-rule (2) shall be specified in terms of the number of hours required for completing the report.

(4) The Accountant or Cost Accountant referred to in clause (i) or clause (ii) of sub-section (2A) of section 142 shall maintain a time-sheet and shall submit it to the Chief Commissioner or Commissioner, along with the bill.

(5) The Chief Commissioner or the Commissioner shall ensure that the number of hours claimed for billing purposes is commensurate with the size and quality of the report submitted by the Accountant or Cost Accountant."

4. In the principal rules, in Appendix II, —

(a) in Form No. 6B: — (i) for the heading of the Form, the following shall be substituted, namely: — "Audit report under clause (i) of section 142(2A) of the Income-tax Act, 1961";

(ii) in the Notes, for serial number 2 and entries relating thereto, the following serial number and entries shall be substituted, namely –

"2. This report has to be given by the accountant nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax under clause (i) of section 142(2A) of the Income-tax Act, 1961."; (b) after Form No. 6C, the following Form shall be inserted, namely: —

<u>NOTE</u>: Kindly refer Form No. 6D and tables given in the notification.

- **<u>Notification No. 83/2023/ F. No.370142/32/2023-TPL</u>**

In exercise of the powers conferred by sub-section (5) of section 115BAE, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: —

1. Short title and commencement. —

(1) These rules may be called the Income-tax (Twenty-Third Amendment) Rules, 2023.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), after rule 21AH, the

following rule 21AHA shall be inserted, namely: –

"21AHA. Exercise of option under sub-section (5) of section 115BAE.

(1) The option to be exercised in accordance with the provisions of sub-section (5) of section 115BAE by a person, being a co-operative society resident in India, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2024, shall be in Form No. 10-IFA.

(2) The option in Form No. 10-IFA shall be furnished electronically either under digital signature or electronic verification code.

(3) 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 Form No. 10-IFA

(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (2), for verification of the person furnishing the said Form

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the Form so furnished."

- **Notification No. 84/2023 F. No. 300196/10/2022-ITA-I**

1. In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961, the Central Government hereby notifies for the purposes of the said clause, 'Punjab Nurses Registration Council' (PAN: AAABR0094H), a council constituted by the Government of Punjab, in respect of the following income arising to the Council, namely: - (a) Fees from Nursing students and affiliated nursing institutions (b) Interest earned on funds deposited in banks including fixed deposits.

2. The provisions of this notification shall be effective subject to the conditions that Punjab Nurses Registration Council –

(a) shall not engage in any commercial activity (b) activities and the nature of the specified income remain unchanged throughout the financial years (c) shall file returns of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961. 3. This notification shall be deemed to have been applied for assessment years 2022-2023 and 2023-2024 relevant for the financial years 2021-2022 and 2022-2023 respectively.

- **Notification No. 85 /2023 F.No.300196/20/2022-ITA-I**

1. In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961, the Central Government hereby notifies for the purposes of the said clause, 'National Farmers Welfare Program Implementation Society', (PAN: AAAGN0886J), a society established by Central Government, in respect of the following specified income arising to that Society, namely:

(a) Government Grant (b) Miscellaneous receipts from RTI, Tender Fee, Fines & Penalties and sale of obsolete items (c) Interest on deposits.

2. This notification shall be effective subject to the conditions that 'National Farmers Welfare

Program Implementation Society', -

(a) shall not engage in any commercial activity (b) activities and the nature of the specified income shall remain unchanged throughout the financial years (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be deemed to have been applied for Assessment Year 2022-2023 relevant to financial year 2021-2022 and shall apply with respect to Assessment Years 2023-2024 to 2026-2027 relevant to the financial years 2022-2023 to 2025-2026 respectively.

~ Compiled By Pooja Shinde.

CASE LAW

A. INCOME TAX : Where AO made disallowance of expenditure under section 14A by invoking rule 8D, since AO did not examine even a shred of accounts of assessee before making such disallowance, impugned disallowance made ignoring version of assessee that being a cash rich company, it did not have to deploy any person by way of any special effort which could be treated as expenditure to earn exempted income was unjustified

HIGH COURT OF DELHI

Principal Commissioner of Income-tax - 7

v.

Security Printing and Mining Corporation of India Ltd.

RAJIV SHAKDHER AND GIRISH KATHPALIA, JJ.

IT APPEAL NO. 162 OF 2023

SEPTEMBER 26, 2023

Section 14A of the Income-tax Act, 1961, read with section rule 8D, of Income tax Act, 1962 - Expenditure incurred in relation to income not includible in total income - Assessment year 2014-15 - Assessee filed its return of income - Assessing Officer observed that assessee had invested substantial money in mutual funds, dividend whereon income was exempt from tax; and that assessee also held shares of a joint venture company, which shares being assets, could yield exempt income - Thus, he made disallowance of expenditure under section 14A by invoking rule 8D - It was noted that admittedly, before recording aforesaid disbelief, Assessing Officer did not examine even a shred of accounts of assessee - Without looking into accounts of assessee, Assessing Officer held that assessee had infused funds by way of equity in joint venture company and also held that it was not believable that no expenditure had been incurred in relation to assets, income where from did not form part of total income - Completely ignoring version of assessee that being a cash rich company, it did not have to deploy any person by way of any special effort which could be treated as expenditure to earn exempted income, Assessing Officer recorded a conclusion that assessee had infused significant funds by way of equity in joint venture company - No cogent reasons, much less supported by data extracted from accounts of assessee were advanced by Assessing Officer to explain why case set up by assessee was not believable - Even quantification of disallowance was carried out under rule 8D(*iii*) without scrutinizing accounts of assessee and by jumping over mandate to first proceed under section 14A - Whether, on facts, impugned disallowance of expenditure under section 14A made by Assessing Officer was unjustified - Held, yes [Para 15] [In favour of assessee]

Puneet Rai and Ashvini Kumar *for the Appellant.* Rajiv Tyagi and Rohit Gupta, Advs. *for the Respondent.*

ORDER

Girish Kathpalia, J**.** - By way of this appeal, brought under Section 260A of the Income Tax Act 1961, the revenue has assailed order dated 30.06.2022 passed by the Income Tax Appellate Tribunal in ITA No. 272/Del/2019 pertaining to the Assessment Year 2014-15. On notice of the appeal, the respondent/assessee entered appearance through counsel. We heard learned counsel for both sides in the light of the judicial precedents cited by them.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The respondent/assessee, a public sector undertaking engaged in the business of designing and printing of bank notes, minting of coins, medallion seals and tokens etc, filed its return of income for the Assessment Year 2014-15 on 09.10.2014, declaring its income to be Rs.512,53,01,630/-.

2.2 The case of the respondent/assessee came under scrutiny and the Assessing Officer passed Assessment Order dated 19.12.2016 under Section 143(3) of the Act, thereby assessing the concerned income to be Rs.518,41,94,170/- after making additions to the tune of Rs.1,92,91,622/- on account of disallowance made under Section 14A of the Act and a further amount to the tune of Rs.3,96,00,919/- on account of Corporate Social Responsibility (CSR) expenses claimed by the assessee.

2.3 The respondent/assessee challenged the said Assessment Order before the Commissioner Income Tax (Appeals) [CIT (A)], but the said appeal of the respondent/assessee was dismissed vide order dated 05.10.2018, thereby upholding the additions made by the Assessing Officer.

2.4 However, the respondent/assessee succeeded before the Tribunal in the second appeal. Placing reliance on its earlier decisions in the case of the respondent/assessee for the Assessment Years 2012-13 and 2013-14, the learned Tribunal allowed the appeal and deleted both the impugned additions.

2.5 Hence, the present appeal by the appellant/revenue.

3. As would be evident, the present dispute revolves around the disallowance of CSR expenses and disallowance of expenditure under Section 14A of the Act. It would be apposite to briefly examine the view taken by the different authorities on these two aspects.

3.1 As regards CSR expenses, in its profit & loss account, the respondent/assessee recorded a sum of Rs. 3,96,00,919/- towards the same and was called upon by the Assessing Officer to explain as to why the said expenditure be not disallowed, being capital in nature. The respondent/assessee in reply dated 24.10.2016 took a plea that the said expenses had been legitimately claimed since no enduring benefit accrued or arose to the respondent/assessee in the future years. Taking note of the earlier

decisions of CIT(A), wherein similar disallowance had been confirmed, the Assessing Officer found the submissions of the respondent/assessee as untenable and treated the CSR expenses as capital expenditure and added back the same to the total income of the respondent/assessee for the reason that CSR expenses are incurred for enduring long term benefits for communities, cultures and societies in which the respondent/assessee operates.

3.2 As regards disallowance under Section 14A of the Act, the Assessing Officer observed that the respondent/assessee had invested substantial money in mutual funds, dividend whereon is exempt from tax; and that the respondent/assessee also held shares of a joint venture company, which shares being assets, can yield exempt income. Therefore, the respondent/assessee was called upon by the Assessing Officer to show cause why the expenditure related to earning of the exempt income should not be disallowed in view of Section 14A of the Act read with Rule 8D of the Income Tax Rules. The explanation advanced on behalf of the respondent/assessee to the effect that being a cash rich company, it did not have to incur any expenditure or deploy any person by way of any special efforts which could be treated as directly or indirectly an expenditure incurred to earn the dividend income, was held by the Assessing Officer to be not acceptable.

3.3 As mentioned above, the CIT(A) upheld the view taken by the Assessing Officer on both counts.

3.4 By way of order impugned in the present appeal, the learned Tribunal, expressing concurrence with their earlier orders pertaining to the respondent/assessee for the Assessment Years 2012-13 and 2013-14 held that the CSR expenses incurred by the respondent/assessee are not in the nature of personal expenditure or for violation of law and the same could not be held to be capital, therefore, the impugned disallowance of CSR expenses was liable to be deleted.

3.5 As regards the disallowance under Section 14A of the Act, the learned Tribunal, referred to their earlier orders pertaining to the Assessment Year 2011-12 when similar disallowance was deleted, observing that the investment advisors were managing the funds concerned without any cost to the assessee and there was no direct or indirect expense on account of establishment, audit fees or otherwise incurred qua operation of the said funds, as the dividend was being automatically reinvested in the plan by the UTI on the basis of instructions of the assessee. The learned Tribunal in that regard also referred to their earlier order pertaining to the year 2012-13, whereby the disallowance under Section 14A of the Act was deleted because while invoking the disallowance the Assessing Officer had nowhere recorded his satisfaction as to why the explanation rendered by the assessee was not tenable; and in this regard, the Tribunal had earlier placed reliance on the judgment of Hon'ble Supreme Court in the case of *Godrej & Boyce Manufacturing Co. Ltd.* v. *DCIT*, [2017] 7 SCC 421.

4. Before this court, in the backdrop of above two issues raised on behalf of the appellant/revenue, at the time of preliminary hearing dated 20.03.2023, learned counsel for appellant/revenue in all fairness conceded that the issue pertaining to CSR expenses already stands covered by a judgment dated 06.01.2023, passed by this court in ITA 03/2023 titled *PCIT* v. *Steel Authority of India Ltd.*, 2023/DHC/000307. Learned counsel for appellant/revenue sought admission of this appeal only with regard to the deletion of disallowance made by the Tribunal under Section 14A of the Act.

5. As such, the appeal was admitted on the following question of law: "Whether in the facts and

circumstances of this case, the deletion of disallowance made by the learned Tribunal under Section 14A of the Act was not in accordance with law?"

With the consent of learned counsel for both sides, we heard the appeal finally at this stage itself.

5.1 Learned counsel for appellant/revenue contended that the impugned order is contrary to law, so liable to be set aside. It was argued that the Tribunal wrongly placed reliance on its earlier decisions since it is settled principle of law that the doctrine of res judicata is not applicable to the proceedings under the Income Tax Act. It was argued by the learned counsel for appellant/revenue that the learned Tribunal failed to appreciate that it is not possible to earn such a substantial exempt income without incurring any expenditure and to that extent, deleting the disallowance under Section 14A of the Act was not sustainable. In support of his arguments, learned counsel for appellant/revenue placed reliance on the judgments in the cases of *India Bulls Financial Services Ltd.* v. *DCIT,* (2016) 76 Taxmann.com 268 (Delhi); *HT Media Ltd* v. *PCIT*, [2022] 145 Taxmann.com219 (Delhi); and *Devarsons Industries (P) Ltd.* v. *ACIT (OSD),* [2017] 84 taxmann.com 244 (Gujrat). Placing reliance on the judgment in the case of *India Bulls Financial Services Ltd* (*supra*), learned counsel for appellant/revenue argued that even though the Assessing Officer had not recorded his express dissatisfaction with regard to the disallowance made under Section 14A of the Act, it would not ipso facto be considered to be that the Assessing Officer was not satisfied or did not have cogent reasons for his dissatisfaction. Learned counsel for appellant/revenue strongly contended that it is natural and obvious that certain expenditure in the nature of administrative and other expenses would have certainly been incurred by the respondent/assessee for maintaining such assets.

5.2 Per contra, learned counsel for respondent/assessee supported the impugned order and contended that the appeal is completely devoid of merit. Learned counsel for respondent/assessee, at the outset, contended that the issue involved in the present case stands already covered by an earlier judgment of this court in the case of *Coforge Limited (formerly known as NIIT Technologies Ltd)* v. *ACIT*, ITA 213/2020, decided on 09.04.2021. Learned counsel for respondent/assessee contended that where the subject expenditure has no causal connection with the exempted income, such expenditure would obviously be treated as not related to the income that is exempted from tax and such expenditure would be allowed as a business expenditure. Learned counsel for respondent/assessee also argued that decision of the learned Tribunal in previous Assessment Years, as detailed in the impugned order, was not challenged by the appellant/revenue, which shows that the appellant/revenue had accepted the legality of the earlier decisions and now the appellant/revenue cannot reagitate the same. Learned counsel for respondent/assessee strongly contended that the Assessing Officer failed to examine the accounts of the assessee before passing the impugned Assessment Order, and that vitiated the Assessment Order. In support of his submissions, learned counsel for respondent/assessee placed reliance on the judgments in the cases of *Godrej & Boyce Manufacturing* v. *DCIT*, [2017] 7 SCC 421; *Maxopp Investment Ltd*. v. *CIT*, [2018] 15 SCC 523; *South Indian Bank Limited* v. *CIT*, [2021] 10 SCC 153; *Radha Swami Satsang, Agra* v. *CIT*, [1992] 1 SCC 659; *M/s Godrej Sara Lee Limited* v. *E.T.O cum A.O. & Ors* (2023) SCC Online (1) SCC 443; *Pr. CIT* v. *Steel Authority of India Ltd*., 2023/DHC/000307; *CIT* v. *Reliance Industries Ltd* [*CIT* v. *Reliance Industries Ltd*.] [2019] 20 SCC 478 : [2019] 410 ITR 466; *CIT* v. *Chenniappa Mudiliar* [1969] 1 SCC 591; *CIT* v. *Shoorji Vallabhdas & Co.* [1962] 46 ITR 144 (SC); and *Union of India* v. *Intercontinent Consultants*

and Technocrats Pvt. Ltd., [2018] 4 SCC 669.

6. It is in the above backdrop that rival contentions have to be examined. For the sake of convenience, the relevant portion of Section 14A of the Act is extracted below:

> "14A. *Expenditure incurred in relation to income not includible in total income*.— (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.
>
> (2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.
>
> (3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:
>
> Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1st day of April, 2001."
>
> (emphasis is ours)

6.1 In the case of *HT Media Ltd* (*supra*), relied upon by learned counsel for appellant/revenue, unlike the present case (where the respondent/assessee took a specific and reasoned stand having not spent any expenses coverable under Section 14A of the Act), the respondent/assessee took a stand having incurred some negligible indeterminate expenses pertaining to the exempt income and it was under these circumstances that the Assessing Officer invoked Rule 8D(2)(*iii*) and recomputed the expenses at higher amount. The Assessing Officer in the said case, unlike the present case, did not proceed on assumption that the assessee might have incurred some expenses. Unlike the present case, the Assessing Officer in the said case recorded explicit findings of negative satisfaction on the basis of examination of accounts of the assessee.

6.2 In the case of *India Bulls Financial Services Ltd.* (*supra*), relied upon by the learned counsel for appellant/revenue, unlike the present case, the Assessing Officer carried out an elaborate analysis of the record in order to arrive at computation of Rs.3,87,00,000/- as expenses attributable to the exempted income. In the said case, the Division Bench of this court observed that the Assessing Officer is under a mandate to apply the formulae prescribed under Rule 8D in view of the provisions under Section 14A(2) of the Act and in a given case if the Assessing Officer is confronted with a figure which prima facie is not in accordance with what should be the approximate figure on a fair working out of the provisions, the Assessing Officer is duty bound to reject the figure of disallowance explicitly and then proceed to work out the methodology. Rather, the records in the said

case clearly reflected that the Assessing Officer had carried out an elaborate analysis, which unfortunately did not take place in the present case.

6.3 Similarly, in the case of *Devarsons Industries (P) Ltd.* (*supra*), relied upon by learned counsel for appellant/revenue, the Division Bench of the Gujarat High Court also observed that sub-section (2) of Section 14A of the Act permits the Assessing Officer to determine such expenditure if he, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure.

6.4 In the case *Coforge Limited* (*supra*), relied upon by learned counsel for respondent/assessee, the Division Bench of this court, wherein one of us [Rajiv Shakdher, J.] was a member, the same issue as involved in the present case was examined at length and it was held thus :

12.5. As would be evident, the Tribunal's reasoning is based on an approach where it assumes that no income can be earned without incurring expenditure;

12.7. A careful perusal of Section 14A(2) of the Act would show that the AO is required to make a determination of the expenditure incurred, concerning the income which does not form part of the total income, if the AO is not satisfied, having regard to the accounts of the assessee, as to the correctness of claims made by the assessee about such expenditure.

12.8. Sub-section 3 of Section 14A of the Act makes it clear that the parameters stipulated in the said provision will also apply where the assessee claims that no expenditure has been incurred by him concerning income that doesn't form part of the total income under the Act.

13. Therefore, what emerges is, if the assessee claims a certain amount of expenditure was incurred by him to earn the income which does not form part of the total income, the AO is required to examine the accounts, and thus, satisfy himself as to the correctness of the claim made by the assessee about the expenditure incurred in that regard. It is when an AO is not satisfied as to the correctness of the claim made by the assessee, about the expenditure said to have been incurred by him on such income which does not form part of the total income under the Act, he then proceeds to determine the amount of expenditure, by following such method as is prescribed, i.e., Rule 8D of the Rules.

13.1. This methodology, as envisaged under Rule 8D of the Rules, is required to be followed even where the assessee claims that no expenditure was incurred by him concerning income which does not form part of the total income under the Act.

13.2. The approach of the Tribunal has been that, since a disallowance was made, it follows logically, that the AO was not satisfied. This, according to us, is not what is envisaged under the provisions of Section 14A of the Act. The satisfaction has to be arrived at by the AO having regard to the assessee's accounts and not otherwise. Concededly, there is nothing in the record to suggest that the AO examined the accounts from this perspective".

7. Section 14A of the Act has always been a highly litigious one on account of its universal

application because almost all assessees have investment portfolio which might give rise to tax free income. By way of Finance Act 2001, the provision under Section 14A was inserted in the Income Tax Act 1961 with retrospective effect from 01.04.1962. Section 14A of the Act basically provides that for the purposes of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. According to Section 14A of the Act, expenditure incurred in relation to exempt income cannot be claimed against any other income includible in the total income for the purpose of chargeability to tax. It is the decision of the Hon'ble Supreme Court in the case of *Rajasthan State Warehousing Corpn.* v. *CIT*, [2000] 242 ITR 450 that led to the process of insertion of Section 14A in the Act. In the said case, it was held that where an assessee had a composite and indivisible business having both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and the theory of apportionment of expense in relation to exempt income does not apply. The rationale behind insertion of Section 14A of the Act was that the basic principle of taxation is to tax net income only, i.e. gross income minus the expenditure incurred and on that analogy, the exemption is also in respect of the net income only, thus expenditure can be allowed only to the extent it is relatable to the earning of taxable income. [Ref.: Western India Regional Council of The Institute of Chartered Accountants of India Reference Manual 2022-23].

8. Like any other claim under the Act, the acceptance of assessee's claim qua the disallowance under Section 14A of the Act is subject to satisfaction of the Assessing Officer and that satisfaction has to be on the basis of scrutiny of accounts of the assessee. According to Section 14A of the Act, if the Assessing Officer, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure qua the exempt income, he shall determine the amount of expenditure incurred in relation to the exempt income in accordance with the method prescribed in that regard and this principle also applies to the cases where the assessee contends that no expenditure has been incurred in relation to earning of exempt income.

9. For effectuating the provisions under Section 14A of the Act, Rule 8D was framed in the Income Tax Rules in the year 2008, operable from Assessment Year 2008-09. In the year 2016, Rule 8D was amended, operable from Assessment Year 2017-18. For present purposes, the relevant portion of Rule 8D is extracted below:

> "8D. *Method for determining amount of expenditure in relation to income not includible in total income*. — (1) ……
>
> (2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-
>
> (*i*) the amount of expenditure directly relating to income which does not form part of total income;

(*ii*) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely:-

A*B/C

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (*i*) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year,

(*iii*) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.".

10. It is often seen that the Assessing Officers in the sphere of Section 14A of the Act make disallowance by direct resort to Rule 8D of the Act without recording satisfaction that the claim made by the assessee is incorrect having regard to the accounts of assessee. This, despite explicit judicial pronouncements of the Hon'ble Supreme Court in plethora of cases like Godrej & Boyce Manufacturing (supra), followed by Maxopp Investment (supra), in which it was held that where the assessee has suo motu made a disallowance or has made a claim that no expenditure has been incurred in earning the exempt income, the Assessing Officer needs to verify the correctness of such claim with regard to the accounts of the assessee and in case the Assessing Officer is satisfied that the claim is incorrect, he must record such satisfaction in an objective manner and only thereafter the Assessing Officer can take resort to the method prescribed in Rule 8D of the Rules.

11. In the case of Godrej & Boyce Manufacturing Co. Ltd. (supra), the Hon'ble Supreme Court examined the provisions under Section 14A of the Act and Rule 8D of the Rules as well as the mandate of consistency in decision making vis a vis the doctrine of res judicata in detail, concluding thus:

"38. In the present case, we do not find any mention of the reasons which had prevailed upon the Assessing Officer, while dealing with the Assessment Year 2002-2003, to hold that the claims of the Assessee that no expenditure was incurred to earn the dividend income cannot be accepted and why the orders of the Tribunal for the earlier Assessment Years were not acceptable to the Assessing Officer, particularly, in the absence of any new fact or change of circumstances. Neither any basis has been disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received. That any part of the borrowings of the assessee had been diverted to earn tax free income despite the availability of surplus or interest free funds

available (Rs. 270.51 crores as on 1.4.2001 and Rs. 280.64 crores as on 31.3.2002) remains unproved by any material whatsoever. While it is true that the principle of res judicata would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard we may remind ourselves of what has been observed by this Court in *Radhasoami Satsang* v. *Commissioner of Income-Tax*, [1992] 193 ITR (SC) 321.

"We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

12. In the case *Maxopp Investment* (*supra*) also, the Hon'ble Supreme Court described the legal position pertaining to and the genesis of Section 14A of the Act traversing through various judicial pronouncements on the subject and held thus:

"41. In the first instance, it needs to be recognised that as per Section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income".

(emphasis is ours)

13. Evidently, in order to ascertain the causal connection between the subject expenditure and the exempted income, the Assessing Officer has to mandatorily scan and scrutinize the accounts of the assessee.

14. In the present case, the Assessing Officer, to a certain extent, aptly observed that Section 14A(2) of the Act empowers (rather, it enjoins a duty upon) the Assessing Officer to determine the expenditure in relation to income not forming part of total income if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in regard to such expenditure. The Assessing Officer further observed:

"It is obvious that certain expenditure of the nature of administrative and other expenditures are bound to be have been incurred by the assessee simply for the reason that the assessee is maintaining such assets, in this case being units of mutual funds and shares of the joint venture company, which has yielded or can yield incomes which does not form part of total income"

The Assessing Officer proceeded to hold:"some expenditures such as those incurred on man-

hours spent on maintenance of accounts of such investments, man-hours spent on reconciliation of such investments, documentation, stationery, computer resources, accounting software etc. are attributable to the fact that the assessee is having such assets in its balance sheets". Similarly, the Assessing Officer also assumed that the expenditure incurred by the respondent/assessee towards audit of such investments and representation before the authorities are also expenses incurred towards maintaining such assets. Having thus concluded the disallowance under Section 14A of the Act, the Assessing Officer took recourse to Rule 8D(iii) of the Rules and quantified the disallowance to be Rs.1,92,91,622/-, being 0.5% of the average investment Rs.385,83,24,506/-.

15. Admittedly, before recording the aforesaid disbelief, the Assessing Officer did not examine even a shred of accounts of the respondent/assessee. Without looking into accounts of the respondent/assessee, the Assessing Officer held that the respondent/assessee had infused funds by way of equity in the joint venture company and also held that it was not believable that no expenditure had been incurred in relation to the assets, income wherefrom does not form part of total income. Completely ignoring the version of the respondent/assessee that being a cash rich company, it did not have to deploy any person by way of any special effort which could be treated as expenditure to earn the exempted income, the Assessing Officer recorded a conclusion that the respondent/assessee had infused significant funds by way of equity in the joint venture company. No cogent reasons, much less supported by data extracted from accounts of the respondent/assessee were advanced by the Assessing Officer to explain why the case set up by the respondent/assessee was not believable. Even the quantification of the disallowance was carried out under Rule 8D(iii) of the Rules without scrutinizing the accounts of the respondent/assessee and by jumping over the mandate to first proceed under Section 14A of the Act.

16. Such conjectural decision of the Assessing Officer, that too, to the prejudice of the respondent/assessee cannot be sustained. Therefore, we are unable to find any infirmity in the impugned order of the learned Tribunal and the same is upheld, answering the question of law framed above against the appellant/revenue and in favour of the respondent/assessee.

17. Accordingly, the appeal is dismissed.

B. INCOME TAX : Section 80HHC as amended by Taxation Laws (Second Amendment) Act, 2005 is prospective in operation and it would apply to both categories of exporters having turnover below Rs. 10 crores and above Rs. 10 crores

SUPREME COURT OF INDIA

Johnson G. Ommen

v.

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Commissioner of Income-tax (Central)

B.V. NAGARATHNA AND UJJAL BHUYAN, JJ.

CIVIL APPEAL NO(S). 2445 OF 2011†

SEPTEMBER 14, 2023

Section 80HHC of the Income-tax Act, 1961 - Deductions - Exporters (Computation of deduction) - Appellant-assessees were cashew exporters who had claimed deduction of income from export of cashew kernels under section 80- HHC(3) - Taxation Laws (Second Amendment) Act, 2005 introduced an amendment to section 80-HHC by introducing various provisos with retrospective effect from 1-4-1992 - In one case, original assessment had been completed under section 143(3) read with section 147and in another case regular assessment completed under section 143(1) was rectified under section 154 to make assessments in regard to grant of relief under section 80HHC consistent with amendments to provisos with retrospective effect - Challenge against validity of rectification orders issued under section 154 were turned down by Commissioner(Appeals) - However, Tribunal had allowed appeals by holding that assessment could not be rectified based on retrospective amendment - Thereafter, appeals were filed before High Court assailing order of Tribunal - High Court observed that Taxation laws (Second Amendment) Act, 2005 which had introduced section 80-HHC(3) and certain provisos to section 80-HHC(3) with retrospective effect from 1-4-1992 would grant benefit to said assessee's with retrospective effect-On appeal, it was found that in CIT v. Avani Exports[2015] 58 taxmann.com 100 (SC), Supreme Court had accepted that section 80HHC as amended by Taxation Laws (Second Amendment) Act, 2005 is prospective in operation and it would apply to both categories of exporters having turnover below Rs. 10 crores and above Rs. 10 crores - Whether in view of above, impugned orders of High Court were to be set aside - Held, yes [In favour of assessee]

Sanjay Kunur, Ravi Raghunath Vachher, Ramesh N. Keswani, Advs. and R.N. Keswani, AOR *for the Appellant.* N. Venkataraman, A.S.G. Rupesh Kumar, Akshit Pradhan, Mrs. Rekha Pandey, Shreeyash U. Lalit, Advs. and Raj Bahadur Yadav, AOR *for the Respondent.*

ORDER

1. Being aggrieved by the order of remand passed by the Kerala High Court in ITA Nos.1508, 1757 and 1760 of 2009 by judgment dated 23.03.2010, the assessee(s) has filed these appeals.

2. We have heard learned counsel for the appellant(s) and learned counsel for the respondent-Department.

3. During the course of submissions, our attention was drawn to a judgment of this Court in the case of *Commissioner of Income Tax-5 and Anr.* v. *Avani Exports and Anr.* [(2016) 16 SCC 741]. It was submitted that the amendments made to Section 80-HHC(3) of the Income Tax Act, 1961 (for short "the Act") by the Taxation laws (Second Amendment) Act, 2005 with retrospective effect i.e. with effect from 01.04.1992 was assailed by certain categories of exporters, namely, those exporters who

had less than Rs.10 crores of export per year and those exporters whose export turnover was more than Rs.10 crores per annum before the High Court. It was submitted that the High Court in the said case had held that the twin conditions appended in third and fourth proviso to Section 80-HHC(3) had been severed and declared to be ultra vires whereas, the rest of the amendments were held to be valid. The order of the High Court in the aforesaid cases was the subject matter of special leave petitions before this Court in Avani Exports (supra). This Court while considering the aforesaid judgment observed that the order of the High Court had to be substituted only to the extent and in the following manner:

> "Having seen the twin conditions and since Section 80-HHC benefit is not available after 01.04.2005, we are satisfied that cases of exporters having a turnover below and those above Rs.10 crores should be treated similarly. This order is in substitution of the judgment in appeal."

4. Having regard to the aforesaid judgment, the learned counsel for the respective parties submitted that these appeals could accordingly be disposed of.

5. In the circumstances, we have considered the factual matrix of these appeals. The question that fell for consideration before the High Court was, whether, the Revenue was justified in holding that the retrospective amendment to Section 80-HHC(3) of the Act entitled the Assessing Officer to invoke the powers of rectification under Section 154 of the Act to bring the assessment orders in tune with the amendment.

6. The appellant-assessees are cashew exporters who had claimed deduction of income from export of cashew kernels under Section 80-HHC(3) of the Act. The Taxation Laws (Second Amendment) Act, 2005 introduced an amendment to Section 80-HHC by introducing various provisos with retrospective effect from 01.04.1992. In one case, the original assessment had been completed and in another case assessment was completed under Section 143(1). The same were rectified under Section 154 to make the assessments in the context of grant of relief under Section 80-HHC consistent with the amendments to the provisos with retrospective effect. The rectification orders issued under Section 154 were assailed in appeal before the CIT (Appeals). The CIT (Appeals) turned down the challenge against the validity of rectification orders but the Tribunal had allowed the appeals by holding that the assessment could not be rectified based on retrospective amendment.

7. Thereafter, appeals were filed before the High Court assailing the order of the Tribunal.

8. The High Court observed that the Taxation laws (Second Amendment) Act, 2005 which had introduced Section 80-HHC(3) and certain provisos to Section 80-HHC(3) with retrospective effect from 01.04.1992 would grant the benefit to the said assessees with retrospective effect on the fulfilment of the twin conditions which are extracted as under:

> "(*a*) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and
>
> (*b*) the rate of drawback credit attributable to the customs duty was higher than he rate of credit allowable under the Duty Entitlement Pass Book Scheme, being Duty

Remission Scheme."

9. The High Court while considering the amendment to Section 80-HHC(3) by the Taxation Laws (Amendment) Act, 2005 with retrospective effect from 01.04.1992 and the fact that the assessments pertained to the years 1999-2000 and 2000-2001, although the assessments and reassessments were completed, held that the power of rectification under Section 154 of the Act was rightly exercised by the Assessing Officer. Therefore, the appeals filed by the Revenue were allowed and consequently the matter(s) were remanded to the Tribunal for reconsideration of the appeals on other grounds.

10. It is the aforesaid remand order which is assailed in these appeals.

11. This Court in Avani Exports and Anr. (supra) held as under:

> "5. We find that in essence the High Court has quashed the severable part of third and fourth proviso to Section 80-HHC(3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisos by the respondent has succeeded. However, to make the position crystal clear, we substitute the direction of the High Court with the following direction:
>
> "Having seen the twin conditions and since Section 80-HHC benefit is not available after 1-4-2005, we are satisfied that cases of exporters having a turnover below and those above Rs.10 crores should be treated similarly. This order is in substitution of the Judgment in appeal.""

This position has been clarified by this Court in Union of India vs. Paliwal Overseas Private Limited [(2016) 16 SCC 697] by holding as under:

> "2. The only question of law to be decided is whether Section 80-HHC of the Income Tax Act, 1961 as amended in 2005 is prospective in operation. It has since been settled by this Court that the same is only prospective.
>
> 3. As far as issue relating to turnover below 10 crores and above 10 crores is concerned, the same has already been answered by this Court in the recent order dated 30-3-2015 in *CIT* v. *Avani Exports making* it clear that it applied to both categories. In terms of the said order, these appeals are also disposed of. Order dated 30-3-2015, as mentioned above, shall form part of this judgment."

12. Having regard to the fact that this Court accepted the judgment of the High Court impugned therein except to the aforesaid extracted portion wherein this Court stated that the twin conditions under Section 80-HHC(3) which have been quashed by the High Court would apply to both categories of exporters having a turnover above Rs.10 crores and those having a turnover below Rs.10 crores and sustaining the impugned judgment of the High Court in all other respects, we find that the direction for remand after the judgment of this Court in the aforecited case would be otiose and wholly unnecessary. In fact, the issue having been settled, the remand has become redundant.

13. In the circumstances, we set aside the impugned order(s) of the High Court. The appeals are, accordingly, allowed. Consequently, the original orders of assessment i.e., prior to rectification are restored.

14. No costs.

C. HIGH COURT OF KERALA

Commissioner of Income-tax

v.

Johnson G. Oommen
C.N RAMACHANDRAN NAIR
AND P.S. GOPINATHAN, JJ.
ITA. No. 1508 of 2009
MARCH 23, 2010

T.M. Sreedharan, Smt. C.K. Sherin and V.P. Narayanan*for the Appearing Parties*.

JUDGMENT

Ramachandran Nair, J. - The question raised in the connected appeals filed by the revenue is whether the Income Tax Appellate Tribunal was justified in holding that retrospective amendment to the statute does not entitle the assessing officer to invoke the powers of rectification under Section 154 of the I.T. Act. We have heard senior standing counsel appearing for the revenue, and Sri. T.M. Sreedharan, learned counsel appearing for the respondent-assessee.

2. Two assessees in these cases are cashew exporters who have claimed deduction of income from export of cashew kernels under Section 80HHC of the Act. It is the admitted position that Taxation Law Amemdnment Act, 2005 introduced an amendment to Section 80HHC by introducing various provisos with retrospective effect from 1.4.1992. The original assessment completed in one case was under Section 143(3) read with Section 147 and in another case regular assessment completed under Section 143(1) was rectified under Section 154 to make the assessments in regard to grant of relief under Section 80HHC consistent with the amendments to the provisos with retrospective effect. The assessees contested the rectification orders issued under Section 154 on the ground that there is no mistake justifying rectification under Section 154 consequent upon retrospective amendment to the relevant provisions of the Act. Even though CIT (Appeals) turned down the challenge against the validity of rectification orders issued, the Tribunal on second appeal by the assessees, following the decision of the Supreme Court in Volkart Brothers' case, 82 ITR 50 (SC) and *CIT* v. *Keshri Metal Pvt. Ltd*., 277 I.T.R. 165 (SC) allowed the appeals by holding that assessments could not be rectified based on retrospective amendment. It is against these orders that the revenue has filed these appeals.

3. Before us, senior standing counsel appearing for the revenue has relied on the decision of the Supreme Court in *Venkitachalam* v. *Bombay Dyeing and Manufacturing Co. Ltd.* [1958] 34 I.T.R. 143 and another decision of the Supreme Court in *Maharana Mills (P) Ltd.* v. *I.T.O.*, [1959] 36 I.T.R. 350 and contended that retrospective amendment to the statute is a ground justifying rectification under Section 154. Even though CIT (Appeals) has relied on in his order later decision

of the Supreme Court we find from the above two decisions the position is made very clear by the Supreme Court that once retrospective amendment to the statute is made, it is as if the provision was there as on the date with which retrospectivity is given to it. Applying this principle, the provisos introduced to Section 80HHC by Taxation Law Amendment Act, 2005 with retrospective effect from 1.4.1992 should be deemed to have been in the statute during the relevant years in question that is 1999-2000 and 2000-01. When the regular assessments and reassessments were completed obviously the provisos were not actually there which were later brought with retrospective effect. So much so, the assessing officer while completing the assessments could not have taken into account the restrictions available under the provisions later introduced with retrospective effect. In our view, assessments completed have become mistaken orders because the provisos introduced with retrospective effect were not and could not have been taken into account while making regular assessments and re-assessments. Going by the decisions of the Supreme Court above referred, the assessing officer was perfectly justified in revising the assessments under Section 154. Consequently the appeals are liable to be allowed and we do so by reversing the orders of the Tribunal and by restoring the orders of the CIT (Appeals) confirming the assessments.

4. However, since the Tribunal has not considered other grounds on merits that is pertaining to computation of eligible deduction under Section 80HHC, liability for interest, etc., we remand the cases to the Tribunal for reconsideration of the appeals on other grounds

~ Compiled by Abhinav Shandilya

- **No. 47/2023- Central Tax**

These amendments are being made based on the recommendations of the Council.

The amendments are made to a previous notification, specifically "notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2023-Central Tax," dated 31st July, 2023.

The amendments include the insertion of the words and figures "with effect from 1st day of January 2024" after the words "hereby notifies the following special procedure to be followed."

This insertion is deemed to have been made with effect from 31st July 2023.

In essence, changes to certain procedures or regulations related to the Central Goods and Services Tax Act, 2017, which will come into effect on January 1, 2024, but are retroactively considered to have been in effect since July 31, 2023, based on the amendment described.

- **Pre-deposit made through E-credit ledger is valid under GST**

The Hon'ble Orrisa High Court in M/s. Kiran Motors v. Addl. Commissioner of CT & GST [W.P (C) No.22817 of 2023 dated August 10, 2023] set aside the appeal rejection order passed by the 1st Appellate Authority and held that a pre-deposit under GST can be made through electronic credit Ledger ("ECL").

- **Investment advisory services to foreign companies qualifies as export of service**

The Hon'ble Delhi High Court in M/s. Cube Highways and Transportation Assets Advisor Private Limited v. Assistant Commissioner CGST Division & Ors. [W.P.(C) 14427 of 2022 dated August 17, 2023] held that, the advisory services were treated as 'export of services' under service tax and the assessee was not treated as 'Intermediary' under the Finance Act, 1994 ("the Finance Act") and since, the definition of 'Intermediary' is similar to the definition under Sub-section (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act") therefore the advisory services to be treated as export of service.

- **Service Tax is not leviable on School buses as they are not categorised under the definition of 'Cab'**

The CESTAT, Ahmedabad in Akshar Travels v. C.C.E. & S.T.-Daman [Service Tax Appeal No. 263 of 2012-DB dated August 17, 2023] ruled that, use of motor vehicle for transportation of school children is clearly different from rent-a-cab service, hence no service tax is to be leviable on transportation of children to and from school.

- **ITC is eligible on inputs used for construction of foundation of machinery**

The AAR, Rajasthan, in M/s. Uvee Glass Private Limited [Advance Ruling No: RAJ/AAR/2023-24/05 dated June 30, 2023] held that, Input Tax Credit ("ITC") of GST paid on the inward supply for fixing of plant and machinery to earth by foundation or structural support which is used for making outward supply of taxable goods is allowed.

- **GSTN issued important advisory for applicants where GST Registration application marked for Biometric based Aadhaar Authentication**

The GSTN has issued an Advisory dated August 28, 2023 for applicants where GST Registration application marked for Biometric-based Aadhaar Authentication.

Rule 8 of CGST Rules had been amended to provide that those applicants who had opted for authentication of Aadhaar number and identified on the common portal, based on data analysis and risk parameters, shall be placed for biometric-based Aadhaar authentication and taking photograph(s) of the applicant. Pilot for implementation of the above change is ready and the functionality is ready for roll out by GSTN portal.

This functionality is being launched in Puducherry from 30th August, 2023 in the pilot phase. After submission of application in Form GST REG-01 and before generation of ARN, the applicant will either get the message for visiting GST Suvidha Kendra (GSK) or a link on the declared Mobile and Email ID as may be applicable at TRN stage, based on identification by common portal so that registration process may be completed.

Those applicants who get the link on Mobile & Email ID for Aadhaar Authentication, they can proceed for completing their application as per existing implementation. However, those applicants who get message for visiting GSK, will be required to visit at the designated GSK as conveyed on Mobile/Email and get biometric authentication for all required persons as per the GST Application Form REG-01.

The applicants are requested to visit GSK before the TRN expiry date as detailed in Email for Biometric-based Aadhaar Authentication process. In this case, Application Reference Number (ARN) will be generated only after the completion of Biometric-based Aadhaar Authentication process The days of operation of GSK would be as advised by the administration in your state.

- **GST Audit cannot be conducted after closure of business.**

The Hon'ble Madras High Court in Tvl. Raja Stores v. The Assistant Commissioner (ST), West Veli Street Circle [W.P.(MD). No. 15291 of 2023 dated August 11, 2023] held that, that Section 65 ("Audit by tax authorities") of the Central Goods and Services Tax Act, 2017 ("the CGST Act") applies only to registered businesses and concluded that authorities cannot conduct audits for businesses that have closed and further clarified that there is no barring in initiating proceeding under Section 73 and 74 of the CGST Act.

- **No ITC available on test drive vehicles when retained as replacement vehicles.**

The AAR, Telangana, in M/s. Sai Service Pvt. Limited [TSAAR order no. 13 of 2023 dated August 01, 2023] ruled that, Input Tax Credit ("ITC") cannot be availed on test-drive vehicles when retained

in a workshop as a replacement vehicle.

- **CBIC notified Rules 31B and 31C for Determining the Value of Supply for Online Gaming and Actionable Claims in the Case of Casinos.**

The CBIC vide Notification No. 45/2023 – Central Tax dated September 06, 2023 has introduced the Central Goods and Services Tax (Third Amendment) Rules, 2023. These rules will take effect on a date specified by the Central Government through an Official Gazette notification. They include new rules added after rule 31A in the Central Goods and Services Tax Rules, 2017 ("the CGST Act"), based on the recommendations of the Council.

"31B. Value of supply in case of online gaming including online money gaming.–

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

31C. Value of supply of actionable claims in case of casino. –

Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required

Provided that any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

- **ITC available on gold coin distributed to dealers as incentive under the scheme**.

The AAR, Karnataka, in M/s. Orient Cement Limited [Advance Ruling No. KAR ADRG 27 of 2023 dated August 24, 2023] ruled that, ITC on gold coins is not restricted under section 17(5)(h) of the Central Goods and Services Tax Act, 2017 ("the CGST Act"), since the gold coin is not given as gifts but as the achievement of marketing targets set by the assessee.

- **Section 16(4) of the CGST Act is constitutionally validity.**

  The Hon'ble Patna High Court in Gobinda Construction v. Union of India [Civil Writ Jurisdiction Case No. 9108 of 2021 dated September 08, 2023] held that, Section 16(4) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") is constitutionally valid and are not violative of Article 19(1)(g) and Article 300 (A) of the Constitution of India and is not inconsistent with or in derogation of any of the fundamental right guaranteed under the Constitution of India.

- **Marketing and support services provided in India on direction of the foreign Company is export of service.**

  The CESTAT, Bangalore in M/s. Sun Microsystems (I) Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, LTU [Service Tax Appeal No. 449 of 2009 dated June 28, 2023] set aside the demand order passed by the Adjudicating Authority and held that, marketing, sales promotion, and technical pre-sales support service provided by the assessee to Indian customer on the direction of the foreign company tantamount to 'export of service'.

- **Central Government notified the State Benches of the GST Appellate Tribunal.**

  The Ministry of Finance, Department of Revenue, issued Notification vide F. No. A-50050/150/2018-CESTATDoR dated September 14, 2023, in accordance with the Central Goods and Services Tax Act, 2017, and superseding previous notifications, has established State Benches of the Goods and Services Tax Appellate Tribunal. The number of State Benches is determined for each state as per the table below, specifying the state, the corresponding number of benches, and their respective locations. This notification takes effect upon its publication in the Gazette of India (Extraordinary), and it is enacted based on the recommendation of the Goods and Services Tax Council namely: —

- **ITC cannot be denied to the recipient solely on the ground that transaction not reflected in GSTR-2A.**

  The Hon'ble Kerala High Court in Diya Agencies v. The State Tax Officer [WP(C) No. 29769 of 2023 dated September 12, 2023] held that, if the taxpayer is able to prove that tax amount is paid to the seller and the Input Tax Credit claim is Bonafide so the Input Tax Credit cannot be denied merely on non-reflection of transaction in GSTR-2A.

  The Kerala High Court in this case underscores the unfairness of denying ITC solely on the basis of non-population of transaction in GSTR-2A. The court recognizes that taxpayers should not be held liable for a condition which is outside the control, such as the non-payment of taxes by the Supplier. The court has instructed the Adjudicating Authority to give taxpayers the chance to furnish evidence in support of their ITC.

- **Not carrying valid documents during transit will be considered a deliberate act of tax evasion.**

  The Hon'ble Kerela High Court, in M/s. EVM Passenger Cars India Pvt. Ltd. v. State of Kerela [WP(C) NO. 10565 OF 2018 dated August 23, 2023] dismissed the petition filed

against the order of the Adjudicating Authority and held that it is duty of the owners/dealers to substantiate why the goods during transportation did not accompanied by the documents as specified under GST law and in case the assessee is not able to substantiate, it would mean that assessee wilfully attempted to transport the goods without any documents and tried to evade the tax liability on the goods.

- **No ITC available for canteen expenses incurred for contract workers.**

The AAR, Gujarat, in M/s. Eimco Elecon India Ltd. [Advance Ruling No. Guj/Gaar/R/2023/28 dated August 24, 2023] ruled that, assessee will not get Input Tax Credit ("ITC") of GST on canteen facility provided to contract worker because contract worker are not employees of the assessee but are employees of the Contractor and there is no obligation on the assessee to provide canteen facility to such contract worker.

~ Complied by Usama Shaikh

RBI

1. RBI/2023-24/64
DCM(Plg) No. S-1288/10.27.00/2023-24
September 30, 2023

2000 Denomination Banknotes – Withdrawal from Circulation – Review

- Of the total value of 3.56 lakh crore of 2000 banknotes in circulation as on May 19, 2023, 3.42 lakh crore has been received back leaving only 0.14 lakh crore in circulation as at the close of business on September 29, 2023; thus, 96% of 2000 banknotes in circulation as on May 19, 2023 has since been returned.
- As the period specified for the withdrawal has come to an end, and based on a review, it has been decided to extend the current arrangement for deposit / exchange of 2000 banknotes until October 07, 2023.
- Banks shall continue to maintain daily data on deposit / exchange of 2000 banknotes in the format prescribed vide circular dated May 22, 2023 referred to above and submit the same to RBI.
- With effect from October 8, 2023, banks shall stop accepting 2000 banknotes for credit to accounts or exchange to other denomination banknotes.
- 2000 banknotes shall continue to be allowed to be presented at the 19 Regional Offices of RBI having Issue Departments (RBI Issue offices) for credit to the bank accounts in India or exchange as indicated in the Press Release.

2. RBI/DoR/2023-24/105
DoR.FIN.REC.40/01.02.000/2023-24
September 21, 2023

Master Direction - Reserve Bank of India Directions, 2023

The Reserve Bank of India issued the Master Directions, 2023, focusing on prudent regulations on Basel III capital framework, exposure norms, significant investments, classification, valuation, and operation of investment portfolio norms, and resource raising norms for all Indian financial institutions.

3. RBI/2023-24/60
DoR.MCS.REC.38/01.01.001/2023-24
September 13, 2023

Responsible Lending Conduct – Release of Movable / Immovable Property Documents on Repayment/ Settlement of Personal Loans

- In terms of the guidelines on Fair Practices Code issued to various Regulated Entities (REs) since 2003, REs are required to release all movable / immovable property documents upon receiving full repayment and closure of loan account.
- The REs shall release all the original movable / immovable property documents and remove charges registered with any registry within a period of 30 days after full repayment/ settlement of the loan account.
- The timeline and place of return of original movable / immovable property documents will be mentioned in the loan sanction letters issued on or after the effective date.
- In order to address the contingent event of demise of the sole borrower or joint borrowers, the REs shall have a well laid out procedure for return of original movable / immovable property documents to the legal heirs.
- These Directions shall be applicable to all cases where release of original movable / immovable property documents falls due on or after December 1, 2023.

4. RBI/2023-24/59
DOR.RET.REC.34/12.01.001/2023-24
September 08, 2023

Reserve Bank of India Act, 1934 - Section 42(1A) - Requirement for maintaining additional CRR

- Reserve Bank of India Act, 1934 - Section 42(1A) - Requirement for maintaining additional CRR Please refer to the circular DOR.RET.REC.29/12.01.001/2023-24 dated August 10, 2023 and relative notification on the captioned subject.
- As announced in the RBI Press Release dated September 08, 2023, on a review, it has been decided to discontinue the incremental CRR (I-CRR) in a phased manner.
- Based on an assessment of current and evolving liquidity conditions, it has been decided that the amounts impounded under the I-CRR would be released in stages so that system liquidity is not subjected to sudden shocks and money markets function in an orderly manner.
- The release of funds would be as follows-

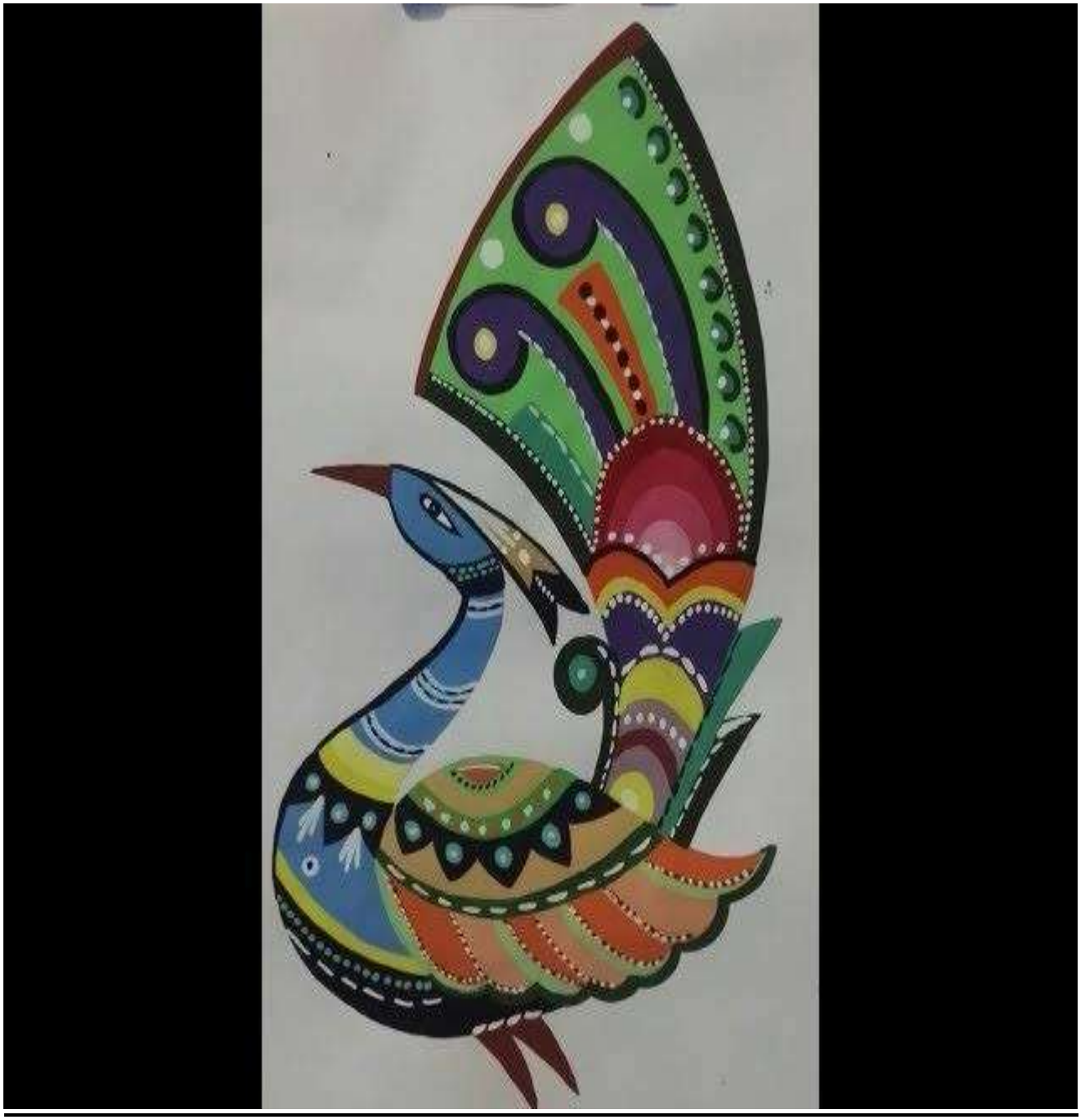
DATE	Amount to be released
September 09, 2023	25 per cent of the I-CRR maintained
September 23, 2023	25 per cent of the I-CRR maintained
October 07, 2023	50 per cent of the I-CRR maintained

The Reserve Bank of India has directed all Scheduled Commercial Banks, Regional Rural Banks, Scheduled Primary Co-operative Banks, and Scheduled State Co-operative Banks to maintain an additional average daily balance with the bank during the following fortnights. (As per DOR.RET.REC.35/12.01.001/2023-24)

During the fortnight	**Amount to be maintained**
September 09-22, 2023	An additional average daily balance which shall not be less than 7.5 per cent of the increase in net demand and time liabilities between May 19, 2023 and July 28, 2023
September 23, 2023 - October 06, 2023	An additional average daily balance which shall not be less than 5.0 per cent of the increase in net demand and time liabilities between May 19, 2023 and July 28, 2023
From October 07, 2023	Nil

~ Complied by Prachi Dubey

#HUNAAR ART



~ By Rushikesh More

Allow us to tell you more!

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