N. D. KAPUR & CO.
CHARTERED ACCOUNTANTS

Monthly Updates

SEPTEMBER 2024

(I) CORPORATE LAW

COMPETITION (MINIMUM VALUE OF ASSETS OR TURNOVER) RULES, 2024

The Ministry of Corporate Affairs ("MCA"), via Notification No. 547(E) dated 9th September 2024, issued "The Competition (Minimum Value of Assets or Turnover) Rules, 2024. These rules framed under Section 63(2)(a) of the Competition Act ("Act"), 2002, set updated thresholds for mergers and acquisitions governed by the Act.

The minimum value of asset and turnover under Section 5(e) of the Act shall be Rs. 450 crore and Rs. 1.250 crore respectively.

The new standards are intended to improve regulatory monitoring of important commercial transactions, supporting fair competition in the market.

These rules shall be effective from 10th September 2024.

AMENDMENTS TO THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014

MCA via notification No. G.S.R. 583(E) dated 20th September 2024, introduced "Amendments to the Companies (Prospectus and Allotment of Securities) Rules, 2014 through the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2024. These amendments are made under the provisions of the Companies Act, 2013 ("Act") and primarily modify sub-rule (2) of Rule 9B.

The amendment introduces a proviso stating that producer companies must comply with the provisions of this rule within five years from the end of their financial year.

The principal rules were first issued on 31st March 2014 and had last been amended in October 2023. This update alters the timeline and compliance obligations specifically for producer companies with respect to the allotment of securities and the issuance of a prospectus.

AMENDMENT TO THE COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2024

MCA vide notification No. 555(E) dated September 9, 2024, has notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024. A new sub-rule (5) has been inserted into Rule 25A, w.r.t merger or amalgamation of a foreign company with an Indian company and vice versa. Where transferor foreign company incorporated outside India, is a holding company, and transferee Indian company, is a wholly-owned subsidiary company incorporated in India, enter into a merger or amalgamation, both companies must obtain prior approval of the RBI.

The transferer Indian company shall also comply with the provisions of the section 233 of the Companies Act, 2013 and shall make the declaration at the time of filing the application under Section 233.

THE INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) SECOND AMENDMENT RULES, 2024

The Investor Education and Protection Fund Authority ("IEPFA"), vide Notification No. G.S.R. 552 (E) dated 9th September 2024, issued The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024 ("Rules").

1. **Replacement of "Shares" with "Securities" in Schedule II:**

- The term "shares" has been replaced with "securities" throughout Schedule II of the rules, broadening the scope of these provisions to cover all forms of securities, including bonds, debentures, and other financial instruments, not just shares.

2. **Transmission of Securities for Legal Heirs:**

- When a legal heir certificate issued by a revenue authority (not below the rank of Tahsildar) is submitted for the transmission of securities, it must be accompanied by:
    - A notarised indemnity bond from the legal heir or claimant to whom the securities are transmitted.
    - A no objection certificate (NOC) from all other legal heirs, stating they relinquish their rights to the securities in favor of the claimant. This NOC must be notarized or attested by a gazetted officer.

3. **Valuation of Securities for Transmission:**

- The value of securities as of the application date must be quantified by the applicant as follows:
    - For listed securities, the value is based on the closing price at any recognized stock exchange on the day before submission of the application.
    - For unlisted securities, the value is based on the face value or maturity value, whichever is higher.

4. **Amendments to Schedule III (for Foreign Nationals and NRIs):**

- Explanation I: Foreign nationals or non-resident Indians (NRIs) are allowed to provide a self-declaration for securities that are lost, misplaced, or stolen, in place of the usual documents required. This declaration must be:
    - Notarized, apostilled, or consularized in their country of residence.
    - Accompanied by self-attested copies of their valid passport and overseas address proof.

- Explanation II: The valuation of securities for foreign nationals or NRIs follows the same method as for domestic applicants:
    - For listed securities, the value is determined by the closing price at any recognized stock exchange on the day before the application.
    - For unlisted securities, the value is determined based on the face value or maturity value, whichever is more.

5. **Schedule IV - Contingency Insurance for Claims**:

- Companies are now required to take a special contingency insurance policy to cover the risk associated with claims relating to the verification report under Rule 7(3) or the revised verification report under Rule 7(7) (second proviso). This ensures that the company is protected against potential financial risks arising from such claims.

These updates aim to streamline the transmission of securities, provide flexibility to foreign nationals and NRIs, and mitigate risks for companies handling securities-related claims.

(II) INDIRECT TAXATION

NEW INVOICE MANAGEMENT SYSTEM

The Goods and Services Tax Network ("**GSTN**") vide advisory dated **3rd September 2024,** introduced a new "**Invoice Management System" ("IMS")** on the GST portal to help taxpayers manage invoice changes and ensure proper Input Tax Credit ("**ITC**") claims.

The IMS enables taxpayers to match their invoices with those provided by suppliers, allowing them to accept, reject, or hold bills until they file GSTR-3B. In the case that no action is taken, the invoice will be considered approved. This solution also simplifies the GSTR-2B procedure, ensuring that only approved invoices are eligible for ITC. GSTR-2B will be prepared quarterly for taxpayers registered under the QRMP system.

Furthermore, any modifications made to an invoice before the supplier submits GSTR-1 will result in a status reset in the recipient's IMS dashboard. The implementation of IMS is intended to improve the accuracy of ITC claims without incurring new compliance obligations by providing a transparent process for addressing invoice anomalies.

CBIC CLARIFICATION IMPLICATING CUSTOMS BROKERS AS CO-NOTICEE IN CASES INVOLVING INTERPRETATIVE DISPUTES

The Central Board of Indirect Taxes and Customs ("**CBIC**") vide **Instruction No. 20/2024-Customs** dated **3rd September 2024**, clarified the "**Role of Customs Brokers in cases of interpretative disputes**."

The instruction emphasises that Customs Brokers should not be routinely named as co-noticees in such disputes until it is demonstrated that they aided and abetted the concerns under investigation. Any allegations of abetment by Customs Brokers must be expressly stated in the investigating authority's Show CauseNotice.

This clarification is intended to ensure that Customs Brokers are only involved when there is clear proof of their involvement in the alleged misbehaviour, so avoiding needless regular inclusion in interpretive conflicts.

CLARIFICATION ON ITC FOR DEMO VEHICLES USED BY MOTOR VEHICLE DEALERS

The GST Policy Wing of the **Central Board of Indirect Taxes and Customs ("CBIC") vide Circular No. 231/25/2024-GST** dated **10th September 2024,** clarified the **"Availability of Input Tax Credit ("ITC") for Demo Vehicles used by Authorized Motor Vehicle Dealers."** Demo vehicles, typically purchased from manufacturers and recorded as capital assets, are maintained by dealers for trial runs and demonstrations to potential buyers.

The circular addresses two main issues: first, *does section 17(5) of the Central Goods and Service Tax Act, 2017("**Act**") allow for ITC on demo cars?* Secondly, *does capitalising these vehicles impact ITC eligibility?* The clarification states that ITC is often restricted under section 17(5)(a) of the Act, which limits credit for passenger-transporting motor vehicles with up to 13 seats, unless the vehicles are utilised for passenger-transporting, driving instruction, or further supply. Nevertheless, because demo cars are meant to encourage sales, they qualify for ITC as "further supply of such motor vehicles."

ITC is not accessible if demo cars are used for unrelated reasons, such as staff transportation or marketing services provided by the dealer as an agent. Even when demo cars are capitalised as assets, they qualify as capital goods under the CGST Act, and ITC is still receivable, as long as no depreciation on the tax component is claimed under the Income-tax Act, 1961.

GST ON ADVERTISING SERVICES FOR FOREIGN CLIENTS: A DETAILED CLARIFICATION

The Central Board of Indirect Taxes and Customs ("**CBIC**") vide **Circular No. 230/24/2024-GST** dated **11th September 2024**, issued a clarification **"Regarding the GST treatment of advertising services provided by Indian companies to foreign clients."** This clarification also intends to address commerce and industry concerns about the place of supply and the benefits of exporting these services.

The clarification is largely focused on three major issues:

Intermediary Status of Indian Advertising Companies: The CBIC has clarified that Indian advertising companies that provide services to international clients are not deemed "intermediaries" under Section 2(13) of the Integrated Goods and Services Tax Act, 2017("**Act**"). These firms work on a principal-to-principal basis, contracting directly with international customers to provide a complete range of advertising services such as media planning, media space acquisition, and campaign monitoring.

Section 2(93) of the Central Goods and Services Tax Act, 2017 defines the overseas client as the "recipient" of advertising services. This is because the overseas client is responsible for payment, and invoices and payments are raised and received directly from them, regardless of any representation in India.

Performance-Based Services: According to the CBIC, advertising services do not qualify as performance-based services under Section 13(3) of the Act since they do not need the receiver or their representative's physical presence.

Section 13(2) of the Act specifies that the recipient's location is the place of supply for certain advertising services. For overseas clients, the site of supply is outside India, hence these services are eligible for export advantages, subject to the appropriate requirements.

However, if an Indian advertising business operates solely as an intermediary in the acquisition of media

space, the place of supply is established using Section 13(8)(b) of the Act, which is the supplier's location in India.

GUWAHATI HIGH COURT: STATUTORY DEPOSIT MADE; ASSESSEE ELIGIBLE FOR FRESH HEARING

In the matter of **Megha Assam Pvt. Ltd. and Anr. v. State of Assam and Ors., WP(C)/7223/2016,** the Hon'ble High Court of Guwahati on **2nd September 2024**, ruled that the Assessee is entitled to a new hearing before the appellate authority because the Assessee has already made the statutory deposit required by Section 79(5) of the Assam Value Added Tax Act, 2003 ("**Act**").

As per the facts of the case, the assessee being assessed for Assam Value Added Tax in 2006-2007, 2007-2008, and 2008-2009. The assessee first failed to make the requisite deposit under Section 79(5), and their appeals were dismissed by the Commissioner of Taxes (Appeals). The assessee then deposited the appropriate amount, which was more than 25% of the contested tax, interest, and penalty. The assessee filed a writ suit with the Hon'ble Gauhati High Court after the Commissioner of Taxes denied his motion for reconsideration.

The Hon'ble Court noted that, while it could not criticise the appeal authority's first judgement based on noncompliance with Section 79(5), it was inclined to award the assessee the benefit of a hearing because the required deposit had already been paid.

The Hon'ble High Court allowed the assessee a second hearing before the appeal body, citing prior judgments and the principle of equity, recognising that real situations of hardship deserve judicial relief even if the statutory criteria were not initially met.

PUNJAB AND HARYANA HIGH COURT: LOCAL SALES ASSESSMENT DOES NOT EXEMPT INTERSTATE SALES TAX CLAIMS

In the matter of **M/s Modern Food Industries (India) Limited v. State of Haryana and others**, **CWP No. 11972 of 2000,** the Hon'ble High Court of Punjab and Haryana on **2nd September 2024**, held that a local sales tax assessment by one state does not protect the Assessee from interstate sales tax claims filed by another. The Court dismissed the case, judgment that the Assessee must pay the tax levied by the state of Bihar.

As per the facts of the case, M/s Modern Food Industries (India) Limited ("**MFIL"**), a public sector corporation, has signed a Memorandum of Understanding ("**MOU"**) with the Government of Bihar to supply food goods for welfare programs. MFIL provided food from its Haryana facility, which was classified as interstate trade by the Excise & Taxation Officer in Faridabad and so chargeable under the Central Sales Tax Act("**Act**"). Despite the assessee's representations that they had already paid taxes in Bihar, the Haryana authorities sustained the demand for interstate sales tax.

The Hon'ble Court concluded that simply being taxed by the individual States for local sales did not free

MFIL of Bihar's interstate tax claim. Referring to *Tata Motors Limited v. Central Sales Tax Appellate Authority*, the Hon'ble Court stated that MFIL might seek a reimbursement from the different states for overlapping payments.

Therefore, the petition was rejected.

CESTAT: TRANSACTION VALUE OF GOODS CANNOT BE REJECTED UNDER RULE 8 WITHOUT PROPER GROUNDS

In the matter **of M/s Universal Offset v. Commissioner of Customs (Appeals)**, **CUSTOMS APPEAL NO. 50871 OF 2021,** the New Delhi Bench of the Hon'ble Customs, Excise, and Service Tax Appellate Tribunal ("**CESTAT**" / "**Tribunal**") on **2nd September 2024**, ruled that the transaction value of export goods declared by the Assessee cannot be rejected under Rule 8 of the Customs Valuation Rules, 2007("**Rules**") unless properly justified. The Hon'ble Tribunal concluded that the transaction value was incorrectly rejected and re-determined.

As per the facts of the case, M/s Universal Offset submitted a shipping bill stating a Free on Board ("**FOB**") value of US $7.65 per piece for printed banners totalling Rs.1,45,21,020. Customs authorities assessed the products, determined that the claimed value was excessive, and confiscated them under Section 113 of the Customs Act of 1962("**Act**"). A show cause notice suggested rejecting the reported value and re-determining it to Rs.2,75,400/- under Rule 6 of the Customs Valuation Rules, 2007. The Additional Commissioner's order included the s eizure of items and fines, which were upheld by the Commissioner of Customs (Appeals). The assessee then appealed to the Hon'ble Tribunal.

The Hon'ble Tribunal stated that the customs officer cannot change the transaction amount but may reject it if suspicions persist after asking further information. The Hon'ble Tribunal found no substantial reasons to reject the transaction value under Rule 8, and it emphasised the lack of additional inquiry into the stated value's conformity with similar products shipped to other customers.

It was ruled that the transaction value should not have been denied, hence the Tribunal granted the appeal.

The appeal was thus rejected.

CLARIFICATIONS ON PLACE OF SUPPLY FOR DATA HOSTING SERVICES TO OVERSEAS CLOUD PROVIDERS

GST Circular No. 232/26/2024, issued by the CBIC, addresses the determination of the place of supply for data hosting services provided by Indian service providers to cloud computing service providers located outside India. Concerns had arisen over whether such services qualify as intermediary services and how the place of supply should be determined under the Integrated Goods and Services Tax (IGST) Act, 2017. The circular clarifies that data hosting service providers in India **do not qualify as intermediaries** because they provide services on a principal-to-principal basis directly to cloud computing service providers, without interacting with the end users of the cloud services. Consequently, the place of supply

cannot be determined under Section 13(8)(b) of the IGST Act, which applies to intermediary services. The circular further clarifies that data hosting services do not relate to goods "made available" by the cloud computing service providers, nor do they directly relate to immovable property. Therefore, sections 13(3)(a) and 13(4) of the IGST Act, which apply to services related to goods made available and immovable property, respectively, do not apply to data hosting services. Instead, the place of supply should be determined by the default provision in Section 13(2) of the IGST Act, which states that the place of supply is the location of the recipient. As a result, when data hosting services are provided to recipients **located outside India, the place of supply is considered outside India, making these services eligible for export benefits under the IGST Act, provided other conditions are met**.

IGST REFUND FOR EXPORTERS WHO INITIALLY IMPORTED WITHOUT PAYING IGST & CESS

Circular No. 233/27/2024-GST, issued by the CBIC, addresses the regularization of Integrated Goods and Services Tax (IGST) refunds under sub-rule (10) of Rule 96 of the CGST Rules, 2017. This rule restricts the refund of IGST paid on exports if the exporter has availed concessional or exemption benefits on imported inputs. The circular clarifies that exporters who initially imported inputs without paying IGST and compensation cess under Notifications No. 78/2017-Customs and 79/2017-Customs can regularize their IGST refunds. This is applicable if the exporters subsequently paid the IGST and compensation cess, along with interest, on the imported inputs or are willing to do so. The explanation inserted into sub-rule (10) of Rule 96 by Notification No. 16/2020-CT, effective retrospectively from October 23, 2017, states that the benefits of the relevant exemption notifications are not considered availed if IGST and compensation cess have been paid on inputs, even if only the Basic Customs Duty (BCD) exemption was used. Applying this explanation, the circular clarifies that if the inputs were initially imported without IGST and compensation cess, but the taxes were paid later with interest, the refund of IGST on exports would not be in violation of Rule 96(10). The exporters need to have their Bill of Entry reassessed by the jurisdictional Customs authorities to reflect this payment.

APPELLATE TRIBUNAL EMPOWERED TO EXAMINE PRICE REDUCTIONS FROM TAX BENEFITS

The CBIC has issued two notifications regarding the examination of price reductions linked to input tax credits and tax rate changes. **Notification No. 18/2024** empowers the **Principal Bench of the Appellate Tribunal**, effective from **1st October 2024**, to examine whether registered persons are passing on the benefits of input tax credits or reduced tax rates through lower prices. **Notification No. 19/2024** specifies that from **1st April 2025**, the authority will **no longer accept requests** to examine such price reductions. These steps, following recommendations from the GST Council, aim to ensure businesses are complying with the requirement to pass on tax benefits to consumers.

ARCHIVAL AND RESTORATION OF GST RETURNS DATA ON THE GST PORTAL

The **CBIC** has started archiving GST return data after **seven years** as per Section 39(11) of the **CGST Act**. Data for **July 2017** was archived on 1st August 2024, and for **August 2017** on 1st September 2024.

This will continue monthly. However, due to requests from taxpayers, the archived data has been restored on the portal. Taxpayers are advised to **download and save** their relevant data before future archiving occurs.

SAFARI RETREATS CASE:

The Supreme Court in the case of ***Chief Commissioner of CGST & Ors. v. M/s Safari Retreats Private Ltd. & Ors. dated October 3, 2024*** upheld the constitutional validity of Section 17(5)(c) and (d) of Central Goods and Services Tax Act, 2017.

It also clarified that "Plant or Machinery" in Section 17(5)(d) cannot be equated with "Plant and Machinery" as defined in the Section 17. Finally, emphasizing the importance of the **functionality test** it remanded the underlying matter to the High Court, to determine whether the shopping mall in the present case, can be considered as "Plant", and to thereby allow Input Tax Credit. If not, then ITC may not be availed**. It has further stated that each case has to be dealt on case to case basis.**

REDUCTION IN THRESHOLD FOR REPORTING INVOICE-WISE DETAILS OF SUPPLIES TO UNREGISTERED DEALERS

The **Government** has reduced the threshold for reporting invoice-wise details of inter-state taxable supplies to unregistered dealers from **₹2.5 lakh** to **₹1 lakh**, as per **Notification No. 12/2024 – Central Tax** dated **10th July 2024**. This change is being developed on the portal and will be available soon. In the meantime, taxpayers should continue reporting invoice-wise details of supplies exceeding **₹2.5 lakh** in **Table 5 of GSTR-1** and **Table 6 of GSTR-5** until the new functionality is implemented.

FINAL OPPORTUNITY TO REPORT ITC REVERSAL OPENING BALANCE ON GST PORTAL

The **Government** has provided taxpayers with a final opportunity to report their cumulative ITC reversal (previously reversed ITC that has not been reclaimed) as an opening balance in the **Electronic Credit Reversal and Re-claimed Statement**. This functionality is available from **15th September 2024** to **31st October 2024**, with amendments allowed until **30th November 2024**.

- **Monthly taxpayers** should report ITC reversal up to **July 2023**.
- **Quarterly taxpayers** should report up to **Q1 of FY 2023-24** (April-June 2023).

After this period, the system will prevent the re-claiming of ITC exceeding the amount reversed earlier, so taxpayers are advised to ensure accurate reporting during this extended period to avoid discrepancies.

THE FOLLOWING AMENDMENTS HAVE BECOME EFFECTIVE FROM 27TH SEPTEMBER 2024 AS UNDER:

S. No.	Section No. of Finance (No.2) Act,2024	Amendment
1.	118	Section 16(5) & 16(6) of the CGST Act - Relaxation provided in relation to time limit for availing credit pertaining to FY 2017-18 to 2020-21
2.	142	Section 109 of the CGST Act - Empowering the Government to notify types of cases that shall be heard only by the Principal Bench of the Appellate Tribunal
3.	148	Section 171(2) of the CGST Act - Empowering the Government to notify the date from which the Anti- Profiteering Authority will not accept any anti profiteering cases and enabling Appellate Tribunal to be notified to as an Anti-Profiteering Authority
4.	150	No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 118 been in force at all material times.

BELOW AMENDMENTS MADE IN THE CGST ACT, 2017 SHALL BECOME EFFECTIVE FROM 1ST NOVEMBER, 2024

S. No.	Section No. of Finance (No.2) Act, 2024	Section No.of the CGST Act,2017	Section Name
1.	114	Section 9	Levy and collection
2.	115	Section 10	Composition levy
3.	116	Section 11	Power to grant exemption from tax
4.	117	Section 13	Time of supply of services
5.	119	Section 17	Apportionment of credit and blocked credits
6.	120	Section 21	Manner of recovery of credit distributed in excess.

7.	121	Section 30	Revocation of cancellation of registration
8.	122	Section 31	Tax invoice
9.	123	Section 35	Accounts and other records
10.	124	Section 39	Furnishing of returns
11.	125	Section 49	Payment of tax, interest, penalty and other amounts
12.	126	Section 50	Interest on delayed payment of tax
13.	127	Section 51	Tax deduction at source
14.	128	Section 54	Refund of tax
15.	129	Section 61	Scrutiny of returns
16.	130	Section 62	Assessment of non-filers of returns
17.	131	Section 63	Assessment of unregistered persons
18.	132	Section 64	Summary assessment in certain special cases
19.	133	Section 65	Audit by tax authorities
20.	134	Section 66	Special audit
21.	135	Section 70	Power to summon persons to give evidence and produce documents
22.	136	Section 73	Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.
23.	137	Section 74	Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.
24.	138	Insertion of section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward
25.	139	Section 75	General provisions relating to determination of tax
26.	140	Section 104	Advance ruling to be void in certain circumstances
27.	141	Section 107	Appeals to Appellate Authority

28.	143	Section 112	Appeals to Appellate Tribunal
29.	144	Section 122	Penalty for certain offences
30.	145	Section 127	Power to impose penalty in certain cases
31.	146	Insertion of section 128A	Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods
32.	147	Section 140	Transitional arrangements for input tax credit
33.	149	Schedule III	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

(III) DIRECT TAXATION

NOTIFICATION OF RULES AND FORMS FOR THE DIRECT TAX VIVAD SE VISHWAS (DTVSV) SCHEME, 2024

The Central Board of Direct Taxes ("CBDT") has issued Notification No. 104/2024- in G.S.R 584(E), dated 20th September 2024, notify the rules and forms for the Direct Tax Vivad Se Vishwas ("DTVSV") Scheme, 2024, which will take effect from 1st October 2024. Introduced in the Union Budget 2024-25, this scheme aims to settle income tax disputes by providing lower settlement amounts for appellants.

Significantly, 'new appellants' and taxpayers who submit declarations by 31st December 2024 will enjoy reduced settlement costs compared to 'old appellants' or those filing after this date. The notification introduces four specific forms:

- Form-1 for declarations,
- Form-2 for certificates to be issued by the Designated Authority,
- Form-3 for payment intimation by the declarant, and
- Form-4 for full and final settlement orders by the Designated Authority.

Each tax dispute requires a separate Form-1, unless both the taxpayer and the tax authority have filed appeals on the same issue. Form-3 necessitates proof of payment and the withdrawal of any pending legal proceedings. All forms will be accessible electronically through the Income Tax Department's e-filing portal.

INSTRUCTION REGARDING SOP FOR HANDLING INTERNAL AUDIT OBJECTIONS

The Central Board of Direct Taxes ("CBDT") vide Instruction No. 2/2024 dated 9th September 2024 has issued an "Updated Standard Operating Procedure ("SOP")" for handling internal audit objections, superseding its previous Instruction No. 6/2017. This modification reflects the Department's changing duties, especially in a faceless world, and aims to improve responsibility and compliance with tax rules.

The internal audit process is overseen by the Principal Chief Commissioner of Income Tax ("PCCIT") and involves a variety of officials, including PCITs, Additional CITs, and others. The amended guideline emphasises the importance of detecting problems in tax assessments and requiring fast corrective steps. It adds a rechecking method for audited instances and defines major and minor audit objections.

Furthermore, the SOP requires all objections to be submitted via the Income Tax Business Application ("ITBA") portal to ensure openness and accuracy throughout the auditing process. The directive gives clear principles for resolving conflicts between auditors and tax officials, expediting the system for dealing with serious and minor objections

CBDT REVISES MONETARY LIMITS FOR TAX INCOME TAX APPEALS

The Central Board of Direct Taxes ("CBDT") released Circular No. 09/2024 (F.No.279/Misc./M-74/2024-ITJ) dated 17th September 2024, which revised the Department's Monetary Limitations for Submitting Appeals in Income Tax cases. This change to Circular 5/2024 establishes new monetary thresholds: Rs. 60 lakh for appeals before the Income Tax Appellate Tribunal ("ITAT"), Rs. 2 crores for appeals before Hon'ble High Courts, and Rs. 5 crores for appeals to the Hon'ble Supreme Court. These updated restrictions replace the prior criteria of Rs. 50 lakhs, Rs. 1 crore, and Rs. 2 crores, respectively.

The revised levels apply to all instances, including those involving Tax Deducted at Source ("TDS") and Tax Collected at Source ("TCS") under the Income Tax Act ("Act") of 1961. Exceptions indicated in Circular 5/2024 allow appeals based on the merits of the case, regardless of the amount of tax involved. The circular emphasises that appeals should be made based on the merits of the case rather than just because the monetary restrictions have been exceeded, in order to minimise needless litigation.

The amended restrictions take effect immediately and apply to all new and current appeals in the ITAT, High Courts, and Supreme Court. The CBDT's goal is to improve litigation management, minimize the load on courts, and give more transparency and predictability in income tax assessments.

REOPENING OF ASSESSMENT PROCEEDINGS QUASHED BASED ON THE INCOME TAX OFFICER'S PERSONAL OPINION

In the matter of Dinesh Singla v. Assistant Commissioner of Income Tax and another, CWP No. 19667 of 2021 (O&M), the Hon'ble High Court of Punjab and Haryana on 2nd September 2024, overturned the reopening of assessment procedures commenced under Section 148 of the Income Tax Act ("Act") of 1961. The Court ruled that an Income Tax Officer ("ITO") cannot begin a review solely based on personal opinion or unhappiness with the previous assessment. The Court emphasised that reassessment must be backed by fresh, compelling evidence and cannot merely be the consequence of a shift in the view of a new evaluating officer.

As per the facts of the case, Dinesh Singla, the petitioner, had acquired an agricultural property and later transferred the same to DSS Mega City Projects. The said land was exempted from taxable income since it was agricultural in nature rather than a capital asset, as affirmed by the ITO in a 2016 assessment. In 2020, however, a notification was issued under Section 148 of the Income Tax Act ("Act"), indicating that income of Rs. 19.34 crores had eluded assessment in the fiscal year 2013-14. The reassessment procedures were commenced under Sections 144 and 147, with a draft order alleging unexplained income. The petitioner contested the notice, the draft assessment, and the rejection of his objections, claiming that no new evidence had been submitted to justify revisiting the matter.

The Hon'ble Court stated that reopening evaluations cannot be based merely on the subjective judgement of a new evaluating officer. It concluded that the reassessment procedures were unnecessary in the absence of new evidence or information.

The Hon'ble Court emphasised that recently completed evaluations should not be revisited just because a new officer disagrees with the previous results. The Hon'ble Court found that reassessment powers under Section 148 of the Act should be applied with caution and only when new information becomes available.

As a result, the Court overturned the reassessment procedures and granted the petition.

ITAT: INDIA-SINGAPORE DTAA BENEFIT GRANTED FOR LONG-TERM CAPITAL GAINS FROM SHARE SALE

In the matter of Tyco Electronics Singapore Pte Limited v. DCIT (ITA No. 1372/Del/2024), the Delhi Bench of the Hon'ble Income Tax Appellate Tribunal ("ITAT" / "Tribunal") on 5th September 2024, held that the Assessee, a Singapore-based company, was entitled to the benefits of the India-Singapore Double Taxation Avoidance Agreement ("DTAA") under Article 13(4), which exempts long-term capital gains on the sale of shares of an Indian company from taxation in India. The Tribunal emphasised that the Revenue Department bore the burden of proving that the Assessee was formed primarily to exploit the DTAA and had no legitimate economic operations in Singapore.

As per the facts of the case, the assessee, who trades electromechanical relays and other specialised items, sold shares in TE Connectivity Global Shared Services India Private Limited as part of a global

reorganisation. The assessee claimed exemption from long-term capital gains under the India-Singapore DTAA, which was backed by a valid Tax Residency Certificate ("TRC"). The Assessing Officer ("AO") denied the claim, citing tax evasion and treaty shopping, and added Rs. 211.61 crore to the assessee's taxable income.

The Hon'ble Tribunal found that the assessee had presented adequate statutory proof of its tax residence in Singapore, and that the Revenue had failed to counter this with any substantial evidence or investigation. The Tribunal further recognised that the assessee maintained significant commercial operations in Singapore, which satisfied the Limitation of Benefit section of the DTAA.

As a result, the Hon'ble Tribunal determined that the purchase was a lawful long-term investment choice, removing the addition and granting the assessee's appeal.

ITAT: ASSESSEE ENTITLED TO MODIFY NAV IN DETERMINING FMV OF SHARES UNDER SECTION 56(2)(VIIB)

In the matter of Leela Tourism and Heritage Pvt. Ltd. v. ACIT, ITA No.3685/Del/2023, the Delhi Bench of the Hon'ble Income Tax Appellate Tribunal ("ITAT") on 5th September 2024, held that the Assessee is entitled to modify the Net Asset Value ("NAV") when determining the Fair Market Value ("FMV") of shares issued at a premium, as long as such modifications are supported by evidence or a credible valuation method. The Hon'ble Tribunal emphasised that the Assessee's approach of valuing its overseas subsidiary's assets, whether using the Discounted Cash Flow ("DCF") technique or any other recognised method, is permitted if supported by a valuation report.

As per the facts of the case, the assessee, a holding company for a foreign subsidiary, issued 10 lakh equity shares at a premium to M/s Legacy Food Pvt. Ltd. To calculate the FMV of the shares, the assessee utilised the market value of the property owned by its overseas subsidiary, Hotel Residence AG in Switzerland, rather than the book value. The Assessing Officer ("AO") contested this, recalculating the FMV based on the book value of the subsidiary's assets, determining that the share premium was excessive and applying Section 56(2)(viib) of the Income Tax Act of 1961("Act") to tax Rs. 6.1 crore as considered income.

The Hon'ble Tribunal, while accepting the assessee's appeal, stated that Section 56(2)(viib) of the Act is an anti-abuse provision designed to tax excess consideration received for shares issued at a premium. However, the assessee established that the fair market value of the subsidiary's assets had grown owing to significant changes in its commercial potential, therefore justifying the premium. The ITAT decided that the assessee is free to change the NAV of its investments using a logical technique such as the DCF method, and that the AO and CIT(A)'s approach of closely adhering to the book value was wrong.

As a result, the Hon'ble Tribunal determined that the assessee's premium was justifiable and hence exempt from taxation under Section 56(2)(viib) of the Act.

ITAT: UNSECURED LOANS TREATED AS ACCOMMODATION ENTRIES, ADDED TO U/S 68

In the matter of J.K. Global v. ITO, I.T.A. Nos. 3260, 3259 &; 3258/Mum/2023, the Mumbai Bench of the Hon'ble Income Tax Appellate Tribunal ("ITAT"/"Tribunal") on 5th September 2024, held that the Assessee's unsecured loans obtained from certain companies were nothing more than accommodation entries, and repayment of these loans was simply a return of the same. As a result, the money was judged to be the Assessee's unexplained income and was added to it under Section 68 of the Income Tax Act 1961 ("Act").

As per the facts of the case, the assessee took unsecured loans of Rs. 25 lakhs from Ryan International, Rs. 5 lakhs from Casper Enterprises, and Rs. 20 lakhs from Duke Business. According to evidence obtained from the Directorate General of Income Tax (Investigation), these firms, along with numerous others run by one Pravin Kumar Jain, were involved in supplying false accommodation entries such as unsecured loans and share applications. The assessee was one of the beneficiaries of these transactions, hence the Revenue classified the loans as unexplained under Section 68 of the Act.

After evaluating the facts of this case, the Hon'ble Tribunal determined that the loans were accommodation entries, and that repayment of these loans constituted a return of these entries. The assessee's claim that the loans were returned throughout the year and should be set off was rejected by the Bench.

The Hon'ble Tribunal confirmed the additions under Section 68, regarding the loan amounts as unaccounted money, and dismissed the assessee's appeal.

ITAT: ADVANCES COLLECTED BY INFRASTRUCTURE COMPANIES WILL NOT BE CHARGED TO THE PROFIT AND LOSS ACCOUNT

In the matter of ACIT v. Ardee Infrastructure Pvt. Ltd., ITA No.3584/DEL/2023, the Hon'ble Delhi Bench of the Income Tax Appellate Tribunal ("ITAT" / "Tribunal") on 6th September 2024, ruled that advances collected by infrastructure companies for future provision of common services cannot be charged to the profit and loss account while the project is still ongoing. These advances should be viewed as reimbursements and recorded in the Work in Progress ("WIP") account.

As per the facts of the case, the assessee firm, which is involved in real estate development, collaborated with other organisations to construct units for the Palm Grove Heights project in Gurugram. According to the Development Agreement, the External Development Charges ("EDC") received from buyers were to be utilised for common services such as sewerage, roads, and electricity improvements, and paid to the Haryana Urban Development Authority ("HUDA"). The Assessing Officer ("AO") contested the handling of these EDC charges, claiming that they were incorrectly represented as income.

The Hon'ble Tribunal determined that the EDC charges collected were meant to be utilised primarily to reimburse expenditures associated with the development of common amenities, and not as a profit aspect. As a result, these costs were accurately classified as advances and reported in the WIP account rather than in the profit and loss account.

The Hon'ble Tribunal consequently dismissed the Revenue's appeal, stating that EDC costs should not be included in the profit and loss statement.

CESTAT: PAYMENT MADE BY ASSESSEE DURING INVESTIGATION, WITHOUT SHOW CAUSE NOTICE, MUST BE REFUNDED WITH INTEREST

In the matter of M/s. Churchit International v. Commissioner of Customs (Export), Customs Appeal No. 51301 of 2023 [SM], the New Delhi Bench of the Hon'ble Customs, Excise, and Service Tax Appellate Tribunal ("CESTAT" / "Tribunal") on 6th September 2024, ruled that any amount paid by the Assessee during an investigation without the issuance of a Show Cause Notice cannot be considered a payment

against a demand raised by the Department. Such payments must be reimbursed with interest since they were obtained without a legitimate legal demand or authorisation.

As per the facts of the case, the Appellant, M/s. Churchit International, deposited Rs. 50,00,000 during an investigation under threat of detention from authorities. However, no Show Cause Notice was issued, and no demand was validated during the adjudication process. The proceedings were finally dismissed, and the appellant requested a return of the sum. Although the return was approved, the Commissioner of Customs rejected interest on the sum. The Appellant appealed the judgment to CESTAT, claiming that under Section 129EE of the Customs Act of 1962 ("Act"), interest should be given from the date of deposit.

While allowing the appeal, the Hon'ble Tribunal determined that the sum placed during the investigation was a "Revenue Deposit" and could not be retained by the Department in the absence of a proper demand.

As a result, the assessee was entitled to a return of the money plus 12% annual interest, calculated from the date of deposit to the date of refund.

ITAT: AGRICULTURAL INCOME EXEMPT FROM TAX; BOOK OF ACCOUNTS MAINTENANCE NOT REQUIRED

In the matter of Ishwar Chander Pahuja v. ACIT, ITA No.2560/DEL/2023, the Delhi Bench of the Hon'ble Income Tax Appellate Tribunal ("ITAT" / "Tribunal") on 6th September 2024, ruled that the Assessee's agricultural income is exempt from tax under Section 10(1) of the Income Tax Act, 1961 ("Act"), and that agriculturalists are not required to keep books of accounts as required by Section 44AA of the Act.

The circumstances of the case include the assessee declaring an income of Rs.8,61,560/- with agricultural income of Rs.23,36,957/-, which was claimed as exempt under Section 10(1) of the Act. The Assessing Officer ("AO") recognised the absence of any reported costs for the agricultural revenue and questioned its validity, resulting in the disallowance of the claimed exemption.

The Hon'ble Tribunal found that, notwithstanding the lack of comprehensive accounts and costs claimed by the assessee, the Revenue reported was constant over multiple years and supported by sales records.

The Hon'ble Tribunal determined that agricultural revenue properly came under Section 10(1), and there was no basis to suspect its genuineness.

As a result, the Hon'ble Tribunal granted the appeal, sustaining the exemption of agricultural income from taxation and eliminating the need to keep books of accounts under Section 44AA of the Act.

ITAT: PROVISION FOR LEAVE ENCASHMENT NOT TAXABLE IF NOT DEBITED TO THE PROFIT AND LOSS ACCOUNT

In the matter of DCIT v. Gujarat State Electricity Co. Ltd., ITA No.854/Ahd/2016, the Ahmedabad Bench of the Hon'ble Income Tax Appellate Tribunal ("ITAT" / "Tribunal") on 6th September 2024, ruled that the provision for leave encashment inherited by the assessee company as a result of the restructuring of the Gujarat Electricity Board ("GEB") and pertaining to employees onboarded by the company cannot be added to the Assessee's income if it has not been debited to the profit and loss account.

As per the facts of the case, during the assessment, the Assessing Officer ("AO") noticed a significant rise in the provision for leave encashment liabilities, from Rs.5.38 lakhs at the start of the year to Rs.6746.46 lakhs at the end of the year. The AO advised disallowing the provision and adding it to the assessee's income, assuming that the whole amount was unpaid and so taxed. The Commissioner of Income Tax (Appeals) ("CIT(A)") later overturned this disallowance on appeal.

The Hon'ble Tribunal noted that the assessee had not deducted any amount linked to the provision for leave encashment in the profit and loss account, and that the obligation arose as a result of GEB's reorganisation, which included workers from previous periods. The Hon'ble Tribunal determined that the AO neglected to examine the assessee's answers and did not check the facts before issuing the disallowance.

Consequently, the Hon'ble Tribunal affirmed the CIT(A)'s judgement to remove the disallowance of Rs.5874.34 lakhs, since it was not relevant to the disputed year and had not been credited to the profit and loss account.

DELHI HIGH COURT: RE-OPENING ASSESSMENT BASED ONLY ON VALUATION REPORT IS UNSUSTAINABLE

In the matter of Divine Infracon Private Limited v. DCIT, W.P.(C) 2516/2016, the Hon'ble Delhi High Court on 9th September 2024, ruled that revisiting an assessment under Section 148 of the Income Tax Act, 1961 ("Act") simply on the report or estimate of the Valuation Officer ("VO") is unsustainable. The Hon'ble Court emphasised that the closeness of the causes to the suspicion of income evasion is an important consideration when reconsidering an assessment. A mere suspicion, without a concrete cause to believe, cannot serve as a solid basis for evaluation.

The Assessing Officer ("AO") reopened the assessment for the challenged assessment years based on a valuation report produced by the District Valuation Officer ("DVO"). The DVO evaluated the assessee's investment at Rs.211.99 crore, which the AO said was revenue that had eluded assessment. This was despite the fact that the assessee had previously disclosed the property's cost under "Fixed Assets and Capital Work in Progress" at Rs. 592.13 crore in the original assessment.

The Hon'ble High Court noted that, while the AO has the jurisdiction to reconsider assessments, this power is not absolute. The legislation requires the AO to have "reason to believe," rather than merely "reason to suspect." The court observed that the AO failed to apply his mind to the value report and provided no justification for relying on it. The AO's reasoning did not include any inquiry into whether the valuation was correct or if the assessee had already revealed the value.

As a result, the Hon'ble Court annulled the notice issued under Section 148 and set aside the proceedings based on the reopened case.