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BUSINESS ADVISORS

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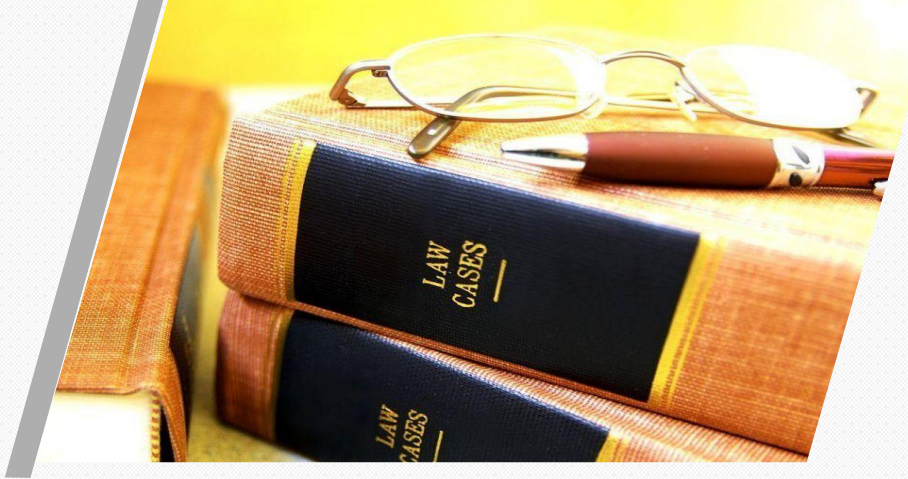
**May - 2022**

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# Direct Tax Case Laws



## Case Law 1:

**In case of assessee engaged in business of operation of ships in international traffic, benefit of article 8 of Indo-UAE Treaty must be extended to entire freight receipts, irrespective of whether earnings are relating to feeder vessels or by ships in international traffic**

## Facts:

- The assessee was a company incorporated in, and fiscally domiciled in, the UAE. It was engaged in the business of operation of ships in the international traffic and had earned freight income from the same.
- During assessment proceedings, the Assessing Officer noted that while the assessee had earned freight income of Rs. 275.45 crores, the assessee had produced the charter party arrangement in respect of 'MV OEL India' and only pooling arrangement in respect of OEL, FZCO, which covers receipt of Rs. 59.44 crores. It was thus noted that so far as freight receipts of Rs. 216 crores were concerned, his claim of exemption under UAE tax treaty was declined. It was then observed that the assessee had business connection by way of exclusive agent and front office which also constituted its permanent establishment in India. The income in question was thus held to be taxable in India and taxed at the rate of

- 7.5 per cent of gross receipts under rule 10.
- The Assessing Officer declined the Indo UAE tax treaty benefit in respect of the freight receipts of Rs. 216 crores and the resultant tax liability of Rs. 16.20 crores.
- The assessee filed an appeal to the Tribunal

## Ruling:

- The short question to be adjudicated is whether benefit of article 8 can be declined in respect of freight collections earned from cargo/containers loaded on slot of other vessels that the OEL, FZCO was entitled to under the joint business/pooling arrangements.
- As DRP fairly accepts the issue is covered, in favour of the assessee, by High Court's judgment in the case of DIT (International Taxation) v. Balaji Shipping UK Ltd. [2012]. The mere fact that an appeal against the said judgment is pending before the Supreme Court does not dilate the binding nature of this precedent. Once jurisdictional High Court takes a view, same is to be followed in letter and in spirit. Respectfully following the same, the plea of the assessee is upheld, and it is directed that benefit of article 8 must be extended to entire freight receipts irrespective of whether the earnings are relating to feeder vessels or by the ships in international

# Direct Tax : Case Laws

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- traffic. The assessee gets the relief accordingly.

## Case Law 2:

### **Revenue cannot set off any 'taxable loss u/s 70 to 80 against tax-exempt incomes covered by Chapter III**

#### Facts:

- The assessee submitted Return of Income on 26.07.2016, declaring a total income of Rs. 17,25,67,630/- along with the following incomes Long-Term Capital Gain (STT Paid) and exempt u/s 10(38) – Rs. 2,62,06,472/- Long-Term Capital Loss (STT not paid) – Rs. 15,41,625/- Short-Term Capital Loss - Rs. 5,06,74,578/-
- As the Long-Term Capital Gain (STT paid) of Rs. 2,62,06,472/- is exempted u/s 10(38), the assessee claimed carry forward of Long-Term Capital Loss (STT not paid) of Rs. 15,41,625/- and Short-Term Capital Loss of Rs. 5,06,74,57
- The Ld. AO completed assessment u/s 143(3) and assessed the Total Income at the same amount of Rs. 17,25,67,630/- as declared by the assessee, but made set-off of Long-Term Capital Loss (STT not paid) of Rs.15,41,625/- and Short-Term Capital Loss of Rs. 2,46,64,662/- against the Long-Term Capital Gain of Rs. 2,62,06,472/- exempted u/s 10(38) and thus reduced the quantum of carried-forward losses. Being aggrieved, the assessee preferred appeal to Ld. CIT(A). The Ld. CIT(A) upheld the action of Ld.

#### Ruling:

Having considered the scheme of law as also the interpretation taken in various legal precedents discussed including the binding decision of Hon'ble Jurisdictional High Court of Gujarat in Kishor Bhai Bhikhabhai Virani (Supra), court held that the assessee has rightly claimed the carry forward of Long-Term Capital Loss (STT not paid) of Rs. 15,41,625/- and Short-Term Capital Loss of Rs. 5,06,74,578/- without setting off against the exempted Long-Term Capital Gain (STT paid) of Rs. 2,62,06,472/- u/s 10(38).

# Direct Tax Notifications



## S. No    Circulars

### 1. Notification No 48/2022

CBDT has notified Form ITR-U for filing of Updated return relating to assessment year commencing on the 1st April 2020 and subsequent assessment years.

### 2. Notification No 37/2022

CBDT has inserted new rule 12AB to notify conditions for furnishing return of income by persons referred to in clause (b) of sub-section 1 of section 139 (basically persons other than company and firm). Following for 4 conditions have been notified:

- a) if his total sales, turnover or gross receipts, as the case may be, in the business exceeds sixty lakh rupees during the previous year: or
- b) if his total gross receipts in profession exceeds ten lakh rupees during the previous year: or
- c) if the aggregate of tax deducted at source and tax collected at source during the previous year, in the case of the person, is twenty-five thousand rupees or more; or
- d) the deposit in one or more savings bank account of the person, in aggregate, is rupees fifty lakh or more during the previous year:

In the case of an individual resident in India who is of the age of sixty years or more, at any time during the relevant previous year, the provision of clause (iii) shall have effect as if for the words “twenty-five thousand”, the words “fifty thousand” had been substituted.

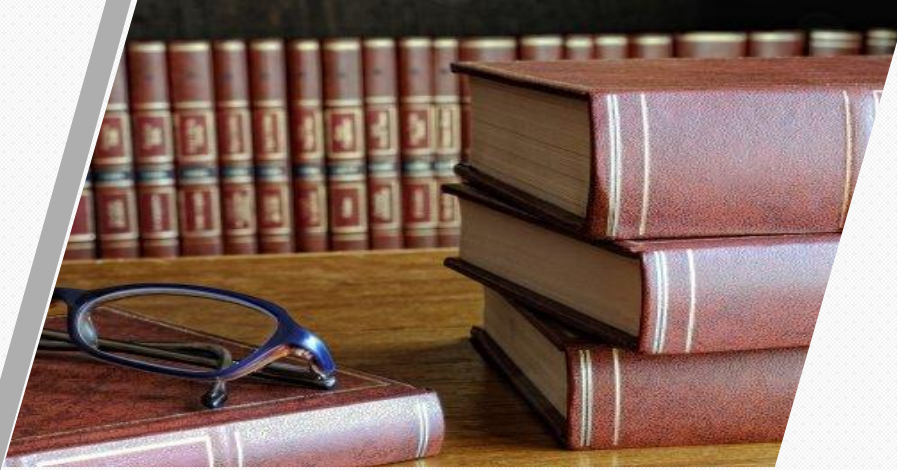
### 3. Notification No 27/2022

The Central Board of Direct Taxes (CBDT) has notified the e-Dispute resolution Scheme 2022.

In order to facilitate faster resolution of tax disputes for small taxpayers, the Central Board of Direct Taxes (CBDT) notified the e-Dispute Resolution Scheme, 2022, on 5 April. This scheme is meant for taxpayers with a total income of up to ₹50 lakh and income tax disputes not exceeding ₹10 lakh. The taxpayer need not appear before tax officials either in person or through an authorized representative in connection with any proceedings under this scheme, and the entire communication will be electronic.



# Indirect Tax : Case Laws



## Case Law 1:

**Concessional GST rate of 0.75% on construction applies to promoter & not to sub-contractor**

**The applicant furnishes the following facts relevant to the issue on which the advance ruling has been sought-**

- The applicant is engaged in the business of construction of residential apartments as a sub-contractor and has filed the instant application on the basis of the memorandum of understanding entered with M/s KG Foundation Private Limited (builder), Chennai for the proposed construction of a residential project at Perubbakkam. The said project is related to the affordable housing scheme. It comprises 292 units under Pradhan Mantri Awas Yojna (PMAY) scheme.
- The applicant claims the eligibility of concessional rate of CGST/KGST @ 0.75% for construction of an affordable residential apartment by a promoter in a Residential Real Estate Project (hereinafter referred as RREP) as per Si. No.3(i) of the Notification No. 11/2017-Central Tax (Rate), dated 28th June 2017 as amended by notification No.30/2018-Central Tax (Rate) dated 31st December, 2018 and further amended by Notification No.03/2019-Central Tax (Rate) dated 29th March, 2019, which commences on or after 1st April, 2019

- and the promoter, therefore, would be charging CGST @ 0.75% (after deduction of 1/3 land cost on money consideration received).
- The applicant contends that work contract services given to the main contractor, which qualifies for affordable house project (AHP) status, is a composite supply of work contract as per Section 2(119) of CGST/KGST Act 2017.
- The applicant submitted that the benefit of concessional rate of tax is also available to any person who is supplying the 'work contract' services pertaining to low-cost housing in AHP. The applicants quoted the ruling of AAR Maharashtra in respect of 'Shree Construction' wherein it was held that benefit of 12% rate is also available to the sub-contractor who is supplying the services to the main contractor.

## Ruling :

Ruling given in above matter on the basis of that applicant admitted that he is not a promoter but a sub-contractor, and hence the benefit of said entry of the mentioned notification i.e. concessional rate of GST @ 0.75% for the proposed construction, is not applicable to the applicant.

**[In the matter of Om Construction Company (GST AAAR Karnataka), Advance Ruling No. KAR ADRG 14/2022, Dated 30/04/2022]**

# Legal & Regulatory Notifications



## S. No Notifications

### 1. COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2022 (MCA (MCA notification dated April 06, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification number G.S.R. 279(E)-dated April 06, 2022 has amended the Companies (Management and Administration) Rules, 2014.

#### The key highlights of the notification are:

- a) These rules now will be called as the Companies (Management and Administration) Amendment Rules, 2022.
- b) As per the notification, MCA has prohibited the inspection or extraction of the following information pertaining to any member, debenture holder, any other security holder, or any other annual returns:
  - ❖ Address or registered address (in case of a body corporate)
  - ❖ E-mail ID
  - ❖ Unique Identification Number
  - ❖ PAN Number

**Link:** [getdocument \(mca.gov.in\)](https://mca.gov.in/getdocument)

### 2. COMPANIES (INCORPORATION) AMENDMENT RULES, 2022

(MCA notification dated April 08, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification number G.S.R. 291(E)-dated April 08, 2022 has amended the Companies (Incorporation) Rules, 2014.

#### The key highlights of the notification are:

- a) These rules now will be called as the Companies (Incorporation) Amendment Rules, 2022.
- b) As per the notification, MCA has inserted a proviso stating that the Nidhi must obtain a declaration by the Central Government before the commencement of business and that shall be submitted at the time of incorporation of the Company, for a Company who wishes to incorporate as Nidhi Company.

# Legal & Regulatory

- c) The form INC-20A has been modified.
- d) A declaration stating that the “Company shall not commence the business of Nidhi, unless all the required approvals including the declaration to be issued under section 406 of the Act have been obtained from the Central Government,” shall be inserted at the end of the SPICE+, Part B.

**Link:** [getdocument \(mca.gov.in\)](#)

### **3. COMPANIES (REGISTRATION OF CHARGES) AMENDMENT RULES, 2022**

(MCA Notification dated April 27, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification number G.S.R. 320(E)-dated April 27, 2022 has amended the Companies (Registration of Charge) Rules, 2014.

**The key highlights of the notification are:**

- a) These rules now will be called as the Companies (Registration of Charge) Amendment Rules, 2022.
- b) As per the notification, MCA has given exemption for registration of charge in case the Charge is created or modified by a Banking Company in favor of Reserve Bank of India.

**Link:** [getdocument \(mca.gov.in\)](#)

### **4. CLARIFICATION OF HOLDING OF ANNUAL GENERAL MEETING (AGM) AND EXTRA ORDINARY GENERAL MEETING (EGM) THROUGH VIDEO CONFERENCE (VC) OR OTHER AUDIO-VISUAL MEANS (OAVM)**

(MCA General Circulars dated May 05, 2022)

The Ministry of Corporate Affairs (MCA) vide its general circulars no. 2/2022 and 3/2022 dated May 05, 2022, has decided to allow the companies, to conduct their AGMs which are due in the year 2022 and EGMs as and when required, on or before December 31, 2022 through video conference or other audio visual means.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=ArgX2%252B%252BijiObjlpD2nMcUA%253D%253D&type=open>

<https://www.mca.gov.in/bin/dms/getdocument?mds=JBdXGa0hUFPRoITMEqTz6g%253D%253D&type=open>





## Cryptocurrency- The Indian Context

By – Puneet Sharma

IBA

### **Background and the Regulatory environment :**

The Indian Government and the Reserve Bank of India (RBI) have not given any legal recognition to cryptocurrencies yet. The Reserve Bank, on 24th Dec 2013 expressed its concerns with respect to the financial, operational, legal and security risks associated with virtual currencies such as crypto. It stated that virtual currencies, being currencies in digital form are stored in electronic wallets, and the holders/ traders of such currencies are consequently prone to suffer losses due to hacking, compromise of access credentials, loss of password, malware attack etc.

Despite the regulatory authorities expressing concerns in relation to the risks associated with virtual currencies on numerous occasions, no definitive ban has yet been imposed on individuals or entities from holding/ trading virtual currencies in India.

On April 6, 2018, RBI issued a circular restricting commercial and co-operative bank, payments banks, small finance banks, NBFCs, and payment system providers from dealing in virtual currencies, or providing services to all entities which deal with crypto exchanges. This stand was reversed by the Supreme Court order of March 2020.

The Reserve Bank of India has also stated that virtual currencies pose a serious threat to the macroeconomic and financial stability of the country. It has also raised doubts on the number of investors trading on cryptocurrencies and their claimed market value.

The RBI Governor had also reiterated his views against allowing cryptocurrencies, saying they are a serious threat to any financial system since they are unregulated by the Central bank.

### **Disclosure in the Financial Statements :**

On March 24, 2021, the Ministry of Corporate Affairs released a notification ('MCA Notification')

mandating companies to inter-alia make certain disclosures with respect to the virtual currency/ cryptocurrency transactions undertaken by them during a financial year. The MCA Notification requires companies to make disclosures in their financial statements with effect from April 01, 2021, in relation to:

- The profit earned/ loss incurred during a financial year on transactions involving virtual currencies/ cryptocurrencies
- Amount of virtual currencies/ cryptocurrencies held as on the reporting date
- The deposits or advances received by companies from any person for the purpose of trading or investing in virtual currencies/ cryptocurrencies.

### **Proposals in Union Budget FY 2022-23**

The Finance Ministry in its Union Budget FY 2022-23 has proposed a 30% tax on the exchange of all virtual assets, including cryptocurrencies and non-fungible tokens. It has also highlighted that losses on these crypto-assets cannot be offset to a later date. Any loss encountered during the trading of these assets will not be set off with other income sources and that it will be carried forward to the subsequent years.

Further elaborating on the taxation model for such virtual currencies, the Finance Minister outlined that all crypto transfers above a certain monetary threshold will be liable for a 1% TDS deduction, which will help the authorities keep track of the movement of such currencies in the economy.

### **Conclusion :**

Trading/ holding cryptocurrencies in India has not been easy thus far. Indian government and Reserve Bank of India do not appear to be keen on giving legal recognition to cryptocurrencies and the ecosystem has further been complicated by bringing in the tax implications. One needs to tread carefully till more clarity comes about and be wary of the consequences.

## Annual Party @ IBA



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We had an amazing time at our Annual Party. It was great celebration with DJ, Drinks & Dinner, full of fun and enjoyment.

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# Upcoming Compliances

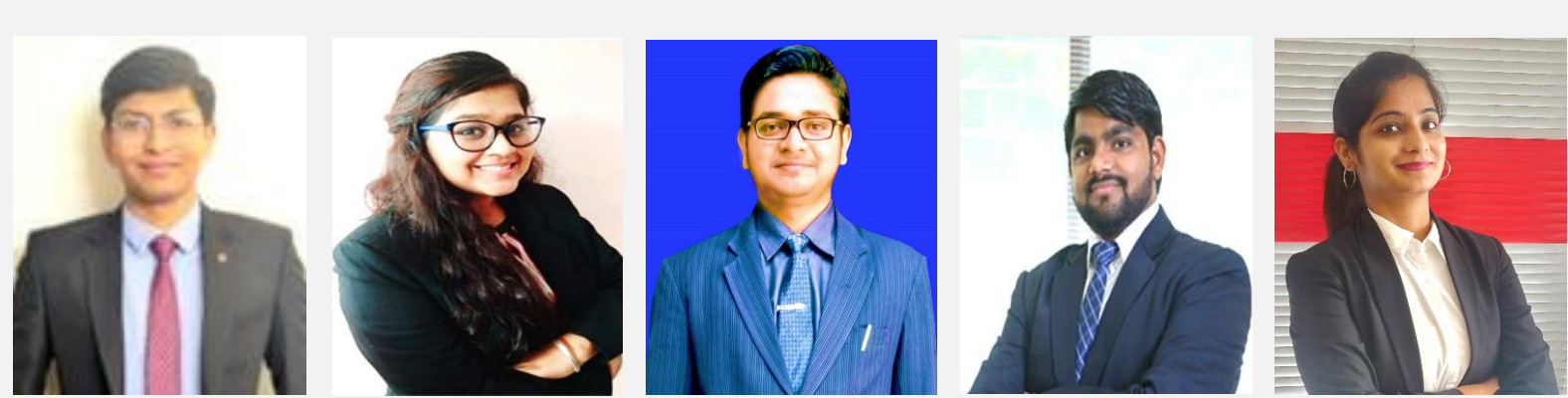
Date	Compliance
May 11, 2022	Due Date for filing of Form GSTR-1 for the period April 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
May 13, 2022	Due Date for submission of invoices through IFF under QRMP scheme for the period April 2022 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period April 2022 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
May 15, 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of March 2022
	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April 2022 has been paid without the production of a challan.
	Quarterly statement of TCS deposited for the quarter ending March 31, 2022
	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes have been modified after registering in the system for the month of April 2022
May 20, 2022	Due Date for filing of Form GSTR-3B for the period April 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
May 25, 2022	Due Date for Challan Payment for the period April 2022 for the registered taxpayers who have opted for QRMP scheme.
May 30, 2022	Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2021-22



# Upcoming Compliances

Date	Compliance
May 30, 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB & 194M in the month of April 2022
	Issue of TCS certificates for the 4th Quarter of the Financial Year 2021-22
May 31, 2022	Quarterly statement of TDS deposited for the quarter ending March 31, 2022
	Return of tax deduction from contributions paid by the trustees of an approved superannuation fund
	Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect for financial year 2021-22
	Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA(1)(k) (in Form No. 61B) for calendar year 2021 by reporting financial institutions
	Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2021-22 and hasn't been allotted any PAN
Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN	

# Editorial Team



## About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax (GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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