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BUSINESS ADVISORS

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**September 2022**

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# Direct Tax Case Laws



## Case Law 1:

**Money brought in India by non-resident for investment or for other purpose is not liable to tax under provisions of Act and question of assessment to income-tax arises only when there is no evidence to show that amount in question in fact represents remittance from abroad**

Whether money brought in India by non-resident for investment or for other purpose is not liable to tax under provisions of Act and question of assessment to income-tax arises only when there is no evidence to show that amount in question in fact represents remittance from abroad. During assessment year under consideration, Assessee-NRI had acquired two residential properties in India. Assessing Officer formed an opinion that assessee had failed to discharge onus cast upon him in terms of provisions of section 68 and he made addition under section 68 disbelieving explanation rendered by assessee in support of sources of money for acquisition of properties. It was found that purchase consideration was discharged by assessee partly by way of direct remittance from abroad to vendor and partly through banking channel and assessee also explained sources of credits appearing in NRE account as sale proceeds of gold bars and maturity proceeds of FDs. Assessee also adduced evidence in form of copies of invoices in support of sale of gold, copies of cheques issued by buyer of gold bar and had also filed confirmation letter from bank that

credit appearing in account represented maturity proceeds of FDs. Whether, on facts, assessee had discharged primary onus lying upon it and addition made by Assessing Officer could not be sustained. Held, yes and in the result, the appeal of the assessee stands allowed.

**Iqbal Ismail Virani v Income Tax Officer (International Taxation)**

## Case Law 2:

**Assessee, claimed deduction under section 43B based on issue of debentures in lieu of interest accrued and payable to financial institutions which was disallowed by Assessing Officer but allowed by Commissioner (Appeals) and said order was confirmed by Tribunal. High Court based on Explanation 3C to section 43B disallowed deduction under section 43B and held that to claim deduction under section 43B, actual payment is essential and any interest which had been converted into loan or borrowing could not be deemed to have been actually paid**

However, it was found that issue of debentures by assessee was, under a rehabilitation plan, to extinguish liability of interest altogether. No misuse of provision of section 43B was found as a matter of fact by either Commissioner or Tribunal. Explanation 3C, which was meant to plug a loophole, could not therefore be brought to aid of revenue on facts of instant case.

# Direct Tax : Case Laws

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Indeed, if there be any ambiguity in retrospectively added Explanation 3C, at least three well established canons of interpretation come to rescue of assessee in this case. First, since Explanation 3C was added in 2006 with object of plugging a loophole – i.e. misusing section 43B by not actually paying interest but converting interest into a fresh loan, bona fide transactions of actual payments are not meant to be affected. Second, a retrospective provision in a tax act which is 'for removal of doubts' cannot be presumed to be retrospective, even where such language is used, if it alters or changes law as it earlier stood. This being case, Explanation 3C is clarificatory – it explains section 43B(d) as it originally stood and does not purport to add a new condition retrospectively, as has wrongly been held by High Court. Third, any ambiguity in language of Explanation 3C shall be resolved in favour of assessee. Thus, High Court was clearly in error in concluding that 'interest', on facts of instant case had been converted into a loan. There was no basis for this finding - as a matter of fact, it was directly contrary to finding on facts of authorities below.

**Commissioner of Income-tax, Delhi v M.M. Aqua Technologies Ltd.**

# Direct Tax Notifications



## S. No Notification

### 1. Notification No 105/2022

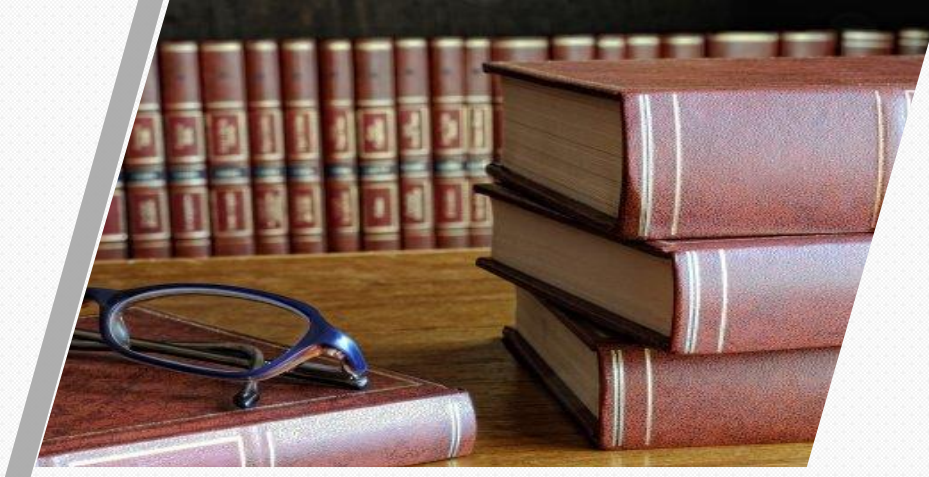
CBDT relaxes quoting of PAN-Aadhaar No. in certain transactions. It provides that the provisions of sub-rule 114BB shall not apply in a case where the person, depositing the money or withdrawing money or opening a current account or cash credit account, is the Central Government, the State Government, or the Consular Office.

### 2. Notification No 100/2022

CBDT amends Rule 128 of the Income-tax Rules, 1962, providing major relief to taxpayers in the matter of claiming Foreign Tax Credit (FTC). The Statement in Form No. 67 can now be furnished on or before the end of the relevant Asstt Year. The pre-amended Rule required the FTC claim to be filed by the due date of furnishing the Income Tax Return. The amendment operates retrospectively so that this benefit is available to all FTC claims filed during the current Financial Year.



# Indirect Tax : Case Laws



## Case Law 1:

### **HC: Directs CBIC to clarify on ISD-Credit distribution/ reporting: Allows availing window for filing/revising TRAN-1**

Bombay HC disposes batch of petitions filed in relation to procedural difficulties /objections raised w.r.t. distribution and/or utilization and/or eligibility of ISD credit of service Tax/excise duty u/s 140 of CGST Act 2017, intending to adopt the same approach as adopted by SC in Filco Trade. The main objective of the respondent is that ISD credit cannot be transitioned directly into the electronic credit ledger.

According to the provisions of CGST Act, the ISD credit ought to have been distributed to different units before 1/07/2017 and thereafter the transferee must file TRAN-1 to distribute ISD credit in electronic credit ledger. In this case petitioners attempted to distribute credit but unable to do due to some difficulties in relation to the forms and portal.

Court has decided to open a common portal to file/ rectify TRAN-1 and TRAN-2 for a period of 2 months i.e., 1st September 2022 to 31st October 2022 to overcome the hurdles faced and to avail the ISD credit. Considering the judgements of the HC every registered assessee is directed to file or revise the form irrespective of writ petition before HC or whether the case has been decided by ITGRC. GSTN must ensure that there is no technical glitch during the said time.

HC directed CBIC to clarify this issue, keeping in mind the problems faced by the parties within 21 days from the date of this order and the concerned officers are given 90 days to verify the veracity of the claim and pass appropriate orders in this regard.

With the council's consent, petitions are disposed of accordingly.

The order was passed by justice K.R. Shriram and justice Gauri Godse.

### **Unichem Laboratories Limited vs Union of India & Ors. [TS-438-HC(BOM)-2022-GST]**

# Indirect Tax

## Circulars & Notifications



### S. No    Circulars

#### 1. Clarifications regarding applicable GST rates & exemptions on certain services

- CBIC vide circular no. 177/09/2022-GST dated 3rd August,2022 clarifies that when the body corporate hires motor vehicles for transportation of employees for a particular period shall be liable to pay GST under RCM. It also clarifies that GST is exempt on hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) by non-air-conditioned contract carriage, where transportation takes place over pre-determined route on a pre-determined schedule.
- It is clarified that exemption has been withdrawn on services by way of storage or warehousing of cotton in ginned and or baled form was covered under entry24B of notification no. 12/2017-Central tax dated 28/6/2017 in the category of raw vegetables fibres such as cotton w.e.f. 18/07/2022.
- It is clarified that sale of land after levelling, laying down of drainage lines etc. is not taxable under GST and any services provided for development of land, like levelling, laying down of drainage lines etc. shall attract GST at applicable rate.
- It is clarified that services provided by the guest anchors in lieu of honorarium, whose aggregate turnover in a financial year is Rs.20 lakhs and 10 lakhs for SEZ shall not be liable to take registration and pay GST.

#### 2. Clarifications regarding GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

- CBIC vide circular no. 178/09/2022 dated 3rd August,2022 clarifies that payments made to liquidated damages are not taxable.
- It is clarified that the fine/penalty that the supplier or banker imposes for dishonor of cheque is not a consideration of services and are not taxable.
- It is further clarified that GST is not applicable on penalty imposed for violation of law such as traffic violations, pollution norms etc.
- It also clarified that GST is not applicable for the compensation paid for cancellation of coal blocks.

#### 3. Clarifications regarding GST rates & classification of goods based on the recommendations of the GST council in its 47th meeting held on 28th-29th June,2022 at Chandigarh

- CBIC vide notification no. 179/09/2022 dated 3rd August,2022 clarifies that GST shall

# Indirect Tax Notifications & Circulars

Be applicable @ 5% on the electric vehicles whether battery fitted or not. It also clarifies that Motor chassis fitted with cabin body falls under HSN 8702 to 8704 and not in HSN 8706.

- It is clarified that supply of treated sewage water falling under HSN 2201 is exempt under GST.
- It is further clarified that as per entry no. 176B of the schedule II the items description of fly ash bricks or fly ash aggregates with 90% or more shall be liable to GST @12%. It also clarifies that the condition of 90% or more be applied only on fly ash aggregates and not on fly ash bricks and fly ash blocks w.e.f. 18/07/2022, the condition is omitted from the description.

## Indirect Tax Notifications :

### **1. Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs.10 crore from 1st October 2022**

CBIC vide notification no. 17/2022-Central tax dated 1st August,2022 had been substituted the turnover limit for every registered person issuing e-invoice from Rs.20 crores to Rs. 10 crores w.e.f. 1st October,2022.



# Legal & Regulatory Notifications



## S. No Notifications

### 1. The Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

(Notification dated August 24, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated August 24, 2022, has amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 by substituting the following provisions:

**The key changes are:**

❖ **In Form No. STK-1, the following shall be substituted, namely:**

“The company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12”

❖ **In Form STK-5, the following shall be inserted, namely:**

“The following companies are not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

M/s. \_\_\_\_\_ (indicate names of companies)

M/s. \_\_\_\_\_ ”;

❖ **In Form STK-5A, the following shall be substituted, namely:**

“The companies are not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12”

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=BHthybaS1kQ2huNiA54p%252BA%253D%253D&type=open>

### 2. The Companies (Acceptance of Deposits) Rules, 2016

(Notification dated August 29, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated August 29, 2022, has amended the Companies (Acceptance of Deposits) Rules, 2016 by inserting the words “and declaration to that effect shall be submitted by the auditor in Form DPT-3” after the words “auditor of the company”.

# Legal & Regulatory

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=G48YjzJXPg7MAA15VRH6Gg%253D%253D&type=open>

### **3. The Companies (Appointment and Qualification of Directors) Rules, 2014**

(Notification dated August 29, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated August 29, 2022, has substituted the e-form DIR-3 KYC and web- form DIR-3 KYC WEB.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=SEyg0svPsEeZiuMFUabO0g%253D%253D&type=open>

### **4. The Companies (Registration of Charges) Rules, 2014**

(Notification dated August 29, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated August 29, 2022, has amended the Companies (Registration of Charges) Rules, 2014 by inserting the new rule 13, namely:

“Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation.

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar”. Accordingly, the following forms shall be substituted.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=uvc9RF%252FA3r38MjyNHmVwwQ%253D%253D&type=open>

# Column

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## Amendments: Ind AS 16- Property, Plant and Equipment

By – Trishika Seth

IBA

### Introduction

As per Ind AS 16, cost of Property, Plant and Equipment (PPE) comprises of the following

- **Purchase price:** Purchase price, including import duties and non-refundable purchase taxes, after deducting trade discounts and rebates
- **Directly attributable costs:** Any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management
- **Costs of dismantling:** Initial estimate of costs of dismantling and removing the item and restoring the site on which it is located.

### Amendment

The 2022 amendments have clarified the accounting treatment for 'excess of net sale proceeds of items produced over the cost of testing'. As per the 2022 amendments, the excess of net sale proceeds of items produced over the cost of testing, if any, should not be recognised in the statement of profit or loss but deducted from the directly attributable costs considered as part of cost of an item of PPE.

### Example

During the process of making an item of PPE available for its intended use, a company may produce and sell items e.g. minerals extracted in the process of constructing an underground mine or oil and gas from testing wells before starting production. The amendments issued by MCA have reiterated that the net sale proceeds of such items produced while the PPE is brought to its designated location and intended condition (net of cost of testing) would be deducted from the directly attributable costs considered as part of cost of PPE.

### Effective date

The amendments are effective for annual reporting periods beginning on or after 1 April 2022.

As this amendment is effective from 1 April, 2022, therefore a entity should consider the impact of the same in terms of paragraphs 30 and 31 of IND AS 8 “Accounting policies, changes in accounting estimates and errors while finalizing the financial statements for the year ended March 22.

<b>Prior to Amendment</b>	<b>After Amendment</b>
<p>IAS 16 on proceeds before intended use to prohibit an entity from deducting from the cost of an item of property, plant and equipment the proceeds from selling items produced while bringing an item of property, plant and equipment to the location and condition necessary for it to be capable of operating in the manner intended by management.</p>	<p>Paragraph 17(e) has been amended to clarify that excess of net sale proceeds of items produced over the cost of testing, if any, shall not be recognised in the profit or loss but deducted from the directly attributable costs considered as part of cost of an item of property, plant, and equipment.”.</p>



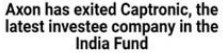

## Deal Bulletin – Tax & Legal Advisory

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**DEAL BULLETIN**

IBA acted as tax and legal advisory partner of Axon Partners Group, Spain for sale of their stake in Bangalore based Captronic Systems, to a French group, Safran.

Axon has enabled Captronic Systems to consolidate its position as a leader in the test category in the Indian market. This acquisition by Safran Data Systems will allow its expansion in India.



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## Ironman Kazakhstan



Congratulations Kapil for successfully completing Kazakhstan Triathlon. We wish you continue in the same spirit !!

## Learning Session – Annual Return Under GST



Thank you Amit & Sagar for delivering session on Annual Return under GST. It helped the participants to understand, analyze and interpret practical issues.



# Upcoming Compliances

Date	Compliance
September 11, 2022	Due Date for filing of Form GSTR-1 for the period August 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
September 13, 2022	Due Date for submission of invoices through IFF under QRMP scheme for the period August 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 August 2022 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
September 14, 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of July 2022
September 15, 2022	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August 2022 has been paid without the production of a challan
	Due date for the Second instalment of advance tax for the assessment year 2023-24
	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 August 2022
September 20, 2022	Due Date for filing of Form GSTR-3B for the period August 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
September 24, 2022	Due Date for Challan Payment for the period August 2022 for the registered taxpayers who have opted for QRMP scheme
September 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 August 2022
	Due date for filing of audit report under section 44AB for the assessment year 2022-23 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2022)

# Editorial Team



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## 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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