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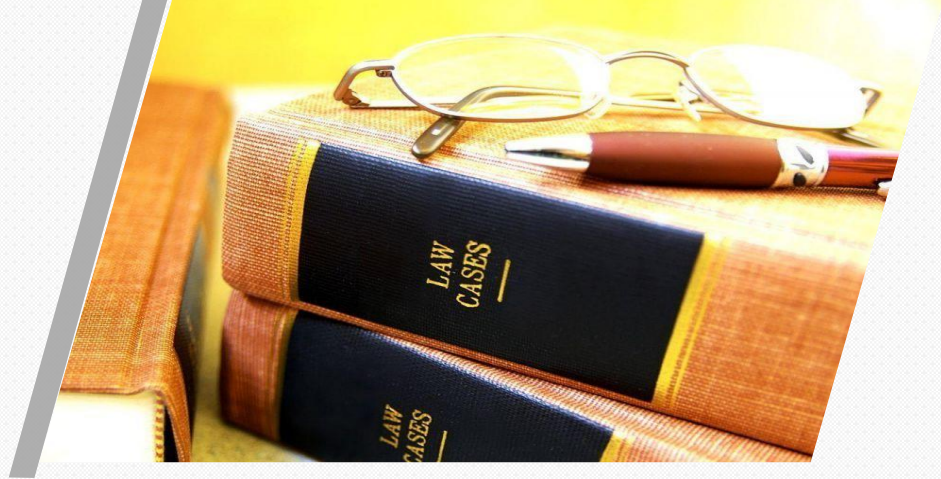
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October 2023

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Direct Tax Case Laws



Case Law 1:

HIGH COURT OF BOMBAY :

Kartik Sureshchandra Gandhi Vs. Assistant Commissioner of Income-tax

Facts :

1. The taxpayer, an individual with income from various sources, filed their Assessment Year 2019-20 income tax return on August 19, 2019.
2. The Assistant Commissioner later reopened the assessment on April 12, 2023, and issued an order under section 148A(d), prompting the taxpayer's complaint that the order lacked thorough evaluation and was mechanically approved.
3. The taxpayer argued that the approving authority failed to digitally sign the approval under section 151, rendering it invalid. They also contended that the reopening, being within three years, should be governed by section 149(1)(a) instead of 149(1)(b), highlighting a lack of careful consideration by the sanctioning authority.
4. In response, the tax department asserted that the taxpayer's petition was premature, suggesting they could address their concerns in their response to the notice and explore alternative remedies. They also argued that digital

signatures were unnecessary as section 151 approvals were system-generated and included a DIN (Document Identification Number).

Held:

The Stand taken by the revenue could not be accepted. Even in their affidavit, it's evident that there was a lack of thorough consideration. They admit that the Principal Chief Commissioner or Principal Director General (or in their absence, the Chief Commissioner or Director General) should grant sanction if more than three years have elapsed since the end of the relevant assessment year when issuing a notice for reopening under section 148. However, the approval box indicates that the time limit for the current proceedings falls under section 149(1)(b) - for more than 3 years but not more than 10 years. This discrepancy between the stated reopening timeline and the applicable provision indicates that neither the issuing authority (Assistant Commissioner) nor the sanctioning authority (Principal Commissioner) carefully assessed the situation and instead issued the notice mechanically .

Due to these procedural lapses and the lack of valid sanction, the order under section 148A(d) and the notice under section 148 should be invalidated solely on this basis . As a result, there is no need to delve into the issue of the absence of a digital signature on the sanction order issued under section 151 at this juncture, though it may be considered in a suitable case .

Direct Tax : Case Laws

Therefore, the order dated April 12, 2023, issued under section 148A(d), and the notice dated April 12, 2023, issued under section 148 must be quashed and set aside in light of these deficiencies in the procedural steps taken by the authorities.

Case Law 2:

IN THE ITAT KOLKATA BENCH 'B':

Howrah Improvement Trust vs. Deputy Commissioner of Income-tax, Exemption

Facts:

1. The assessee-trust was registered under section 12AA and was constituted for construction of infrastructure on behalf of Government of West Bengal. During relevant assessment year, the assessee received specific grants from Government through urban development department for implementation of various infrastructure projects. The assessee showed said funds in balance sheet as part of corpus of trust and did not offer same for tax as income.
2. The Assessing Officer opined that only voluntary contributions made with a specific direction that contribution shall form part of corpus could be treated as corpus donation. He, thus, added back government grant in income of assessee on ground that no express direction was given by Government that funds would form part of corpus and basic nature of grant was that it was meant for application.
3. On appeal, the Commissioner (Appeals) confirmed the additions made by the Assessing Officer.

4. On appeal to the Tribunal :

HELD :

The undisputed facts are that the grants were given to the assessee for implementation of various infrastructure schemes. That the grants received by the assessee/state agency did not belong to the assessee. The grants did not form corpus of the assessee nor it was income of the assessee under section 11. Such grants were not the donations or voluntary contribution under section 12. It has also been held time and again that the entries in the books of account do not decide the nature of the receipts. The assessee was not authorized to utilize the said grants for any other purposes other than for which such grants were received by the assessee. The unutilized grants have been refunded back by the assessee to the Government. The assessee has also furnished the details of the funds received by the assessee for specific infrastructure projects, the details of utilization of such funds for those specific infrastructure projects. In view of this, the grants received by the assessee for specific infrastructure projects which has also been utilized for those specific purposes only and since the assessee was not authorized to use the said grants for any other purpose and further that the unused funds have been returned to the Government, therefore, the aforesaid grants, do not constitute the income of the assessee. Therefore, the lower authorities are not justified in making/confirming the impugned additions and the same are accordingly ordered to be deleted.

Direct Tax Circulars & Notifications



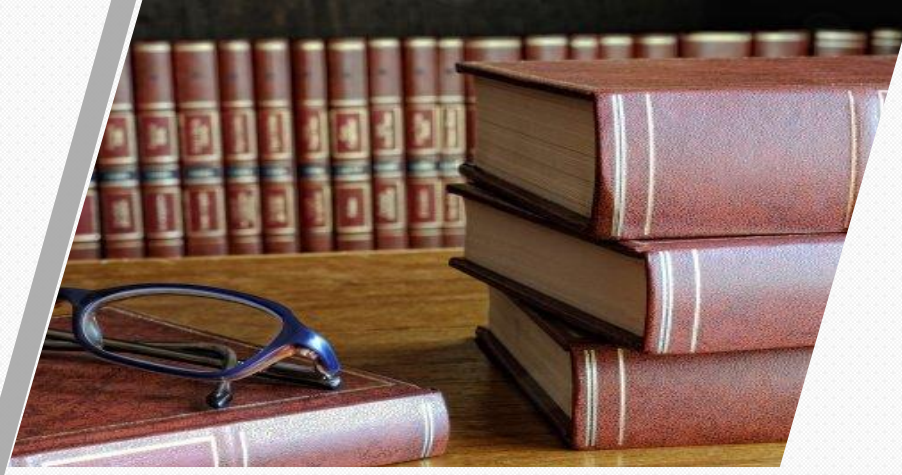
S. No Notification

1. Circular No 16/2023 :

Extension of timelines for filing of form 10B/10BB for previous year 2022-2023 which was 30th September is extended to 31st October 2023.

The due date of furnishing of return on Form ITR-7 for AY 2023-2024 which is 31st October 2023 is extended to 30th November 2023.

Indirect Tax : Case Laws



Case Law 1:

Facts of the case :

M/s Isha foundation is a charitable trust registered under GST, and aims to promote education, yoga, meditation, and charitable endeavors, with a specific focus on traditional Indian education through a gurukul-style system. This system emphasizes holistic development, including physical, mental, and energetic growth. The trust has exemptions under section 12AB and 80G of the Income Tax Act. The applicant filed an advance ruling for various questions and submitted related documents.

The applicant states that Isha Sanskriti is a residential school on its own curriculum, which is inline Bhartiya tradition of Gurukuls, and they believe that education sought to be provided by them is covered under entry No. 57 of notification No. 9/2017.

During personal hearing dated 13-04-2023, they submitted that while filing application they have inadvertently mentioned the entry no 57 instead of 69 of Notification No. 09/2017-IGST and in second hearing, under entry no. 1 of notification no. 9/2017. The applicant also submits circular no. 66/40/2018-GST with respect to Residential programmes meant for advancement of religion, spirituality, or yoga by religious and charitable trusts.

The applicant states that once the student completes 10 years of education, they can become professionals. In view of the above the applicant met the first condition but did not qualify for the second. It is observed that

the applicant is neither providing pre-school education nor education up to higher secondary school. Hence, they are not covered under the definition of educational institution as per notification No 09/2017.

Rulings of the case :

The authority after analysing the documents submitted by the applicant, states the following against the advance ruling filed by the applicant:

Questions	Ruling
1. Whether the education provided by the applicant is exempt under entry No. 69 of notification No 09/2017 dated 28-06-2017 ?	Education provided is not exempt under entry No. 69 of notification No 09/2017 dated 28-06-2017.
2. If no for point (a), whether such service is exempt in any other notification?	The service is not exempt in any other notification.

In the matter of M/s Isha Foundation, against Advance ruling No. KAR ADRG 23/2023 dated 13-07-2023

Indirect Tax

Notifications & Circulars



S. No Notifications

1. Seeks to make amendments (Third Amendment, 2023) to the CGST Rules, 2017.

CBIC vide Notification No.45/2023-Central tax dated 06th Sept'2023, after rule 31A, rule 31B for Value of supply in case of online gaming including online money gaming and Rule 31C for Value of supply of actionable claims in case of casino has been inserted.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009850/ENG/Notifications>

2. Seeks to amend Notification No. 30/2023-CT dated 31st July 2023.

CBIC vide Notification No.47/2023-Central tax dated 25th September 2023, here by makes the following amendment in notification no. 30/2023, after the words and figures "w.e.f. 1st Jan'2024" shall be inserted w.e.f. 31st July 2023.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009862/ENG/Notifications>

3. Seeks to notify supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under section 15(5) of CGST Act.

CBIC vide Notification No.49/2023-Central tax dated 25th September 2023, in exercise of the powers conferred by section 15(5) of CGST Act,2017, the central government w.e.f. 1st October 2023 notifies the supplies related to online money gaming, the supply of online gaming other than online money gaming and the supply of actionable claims in casinos has been included in sub-section.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009871/ENG/Notifications>

4. Seeks to amend Notification No. 66/2017-Central Tax dated 15.11.2017 to exclude specified actionable claims.

CBIC vide Notification No. 50/2023-Central tax dated 25th Sept'2023, here by makes the following amendment in notification no. 66/2017, w.e.f. 1st Oct'2023 after the words and figures "composition levy under section 10 of the said Act", the words "other than the registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act" shall be inserted.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009872/ENG/Notifications>

5. Seeks to make amendments (Third Amendment, 2023) to the CGST Rules, 2017 in supersession of Notification No. 45/2023 dated 06.09.2023.

CBIC vide Notification No. 51/2023-Central tax dated 29th Sept'2023, here by makes the

Indirect Tax Circulars & Notifications

S. No Notifications

following amendment in notification no. 45/2023:

- **Rule 8:** In rule 8, sub-rule (1) shall be substituted.
- **Rule 14:** In the heading, after the words “online recipient” the letter and words “or to a person supplying online money gaming from a place outside India to a person in India” and in sub-rule (1), after the words “online recipient” the letters and words “or any person supplying online money gaming from a place outside India to a person in India” shall be inserted.
- **Rule 46:** In clause (f), in the proviso, after the words “Provided that” the words “in cases involving supply of online money gaming or in cases” shall be inserted.
- Further This amendment made certain changes in rule 87, 64, Form GST REG-10 and GSTR-5A.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009835/ENG/Notifications>

Legal & Regulatory Notifications



S. No Notifications

1. Holding of Annual General Meeting (AGM) and Extraordinary General Meeting (EGM) through Video Conference (VC) or other Audio Video means (OAVM).

(Circular dated September 25, 2023)

Ministry of Corporate Affairs, vide its circular dated September 25, 2023, has allowed companies to conduct the Annual General Meeting (AGM) and Extraordinary General Meeting (EGM) due in the year 2024, through Video Conference (VC) or other Audio Video means (OAVM) up to 30th September 2024.

However, this shall not be considered as any extension in time limit for holding of AGM and EGM.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=HaKq8Y72SkO5wlQe05fjLQ%253D%253D&type=open>

2. NAME RESERVATION APPLICATION PROCESS

(Notification dated August 28, 2023)

MCA vide its update dated September 29, 2023, informed the stakeholders that the processing of application forms for the purpose of name reservation and incorporation at the Central Reservation Centre (CRC) is faceless and randomised.

The applications if sent for resubmissions are normally not processed by the same official who has processed the application at the first instance

The stakeholders requested to inform the Ministry in case of any malpractice or irregularity on the part of any official/officer at CRC or any professional with supporting evidences at CVO-MCA@GOV.IN for taking action in accordance with the extent CVC guidelines.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=oU9sC5%252BIH5Z5uPkEDZC3QA%253D%253D&type=open>



CORPORATE SOCIAL RESPONSIBILITY

By – Paridhi Agarwal

IBA

Introduction:

The notion of Corporate Social Responsibility (CSR) is on the rise all over the world, and in India as well. CSR is a vital concept in business practices that goes beyond profit generation. It entails a company's commitment to contribute positively to society, the environment, and its stakeholders. The Corporate Social Responsibility is governed by Section 135 of the Companies Act, 2013, Schedule VII of the Act and Companies (CSR Policy) Rules, 2014 wherein the entire concept, its implementation and reporting mechanism have been provided.

1. CSR Applicability :

The Corporate Social Responsibility (CSR) was made mandatory in India for companies who go beyond a certain financial threshold in immediately preceding FY:

- Net worth of INR 500 crore or more
- Turnover of INR 1000 crore or more
- Net profit of INR 5 crore or more

2. CSR Outlay :

- The eligible companies are required to spend at least 2% of their average net profit for the immediately preceding three financial years on CSR activities.
- No specific tax exemptions have been extended to CSR expenditure per se.

3. Key CSR Requirements :

- Companies eligible for CSR activities must constitute a committee of the Board of Directors consisting of 3 or more directors/ Where a company is not required to appoint an independent director, the CSR committee shall be constituted of 2 (two) or more directors.
- Further, where the CSR amount to be spent by the company is less than INR 50 lakhs, it does not require to constitute a CSR committee and the duties of the CSR committee shall be discharged by the board of directors of the company.

- CSR Committee must plan CSR programmes towards spending the prescribed amount of expenditure on CSR activities as per CSR Policy. CSR Committee must also monitor effective implementation of CSR Policy.

❖ **Activities Covered under CSR :**

Companies Act 2013 provides a list that qualify as CSR activities:

- Eradicating hunger, poverty, and malnutrition,
- Promoting health care including preventive health care and sanitation
- Promoting education
- Promoting gender equality, empowering women
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare
- Protection of national heritage
- Training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- Contribution to the prime minister's national relief fund
- Research and development projects in the field of science, technology, engineering, and medicine,
- Contributions to public funded Universities
- Rural development projects
- Slum area development.
- Disaster management, including relief, rehabilitation, and reconstruction activities.

4. Compliance and Reporting :

- Companies are required to disclose their CSR policies and activities in their annual reports and on their websites, if any.
- The Board's Report referring to any financial year initiating on or after the 1st day of April 2014 shall include an annual report on CSR.
- In the case of a foreign company, the balance sheet filed shall contain an Annexure regarding a report on CSR.
- Filing of Form CSR-2 with MCA.

Conclusion :

CSR is a significant step towards making businesses more responsible and accountable to society. The Act ensures that the companies allocate a portion of their profits to meaningful social and environmental causes. By adhering to CSR obligations, companies can contribute to the betterment of society while also enhancing their own reputation and long-term sustainability in the business world.

Colour of the day



Thank you lovely ladies for participating in #colour of the day activity. Together, we shine brighter and create a workplace filled with beauty and inspiration.

Upcoming Compliances

Date	Compliance
October 11, 2023	Due Date for filing of Form GSTR-1 for the period September 2023 for the registered taxpayers who have opted for monthly filing of GST Returns.
October 13, 2023	Due Date for submission of invoices through IFF under QRMP scheme for the period Jul-Sept 2023 for the registered taxpayers who have opted for quarterly filing of GST Returns.
	Due Date for filing of Form GSTR-6 for the period September 2023 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration.
October 15, 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September, 2023 has been paid without the production of a challan.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB, 194IA, 194M, 194S in the month of August, 2023
October 20, 2023	Due Date for filing of Form GSTR-3B for the period September 2023 for the registered taxpayers who have opted for monthly filing of GST Returns
October 24, 2023	Due Date for filing of GSTR-3B and Challan Payment for the period Jul-Sept 2023 for the registered taxpayers who have opted for QRMP scheme.
October 30, 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194IA, 194M, 194S in the month of September, 2023. Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2023.
October 31, 2023	Quarterly statement of TDS deposited for the quarter ending September, 2023.
October 31, 2023	Due date for filing of return of income for the assessment year 2023-24 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A apply.

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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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We have our branch offices in Gurgaon, Mumbai, Bangalore and New York and associate arrangements in other major cities of USA and India.



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