

IBA INTERNATIONAL
BUSINESS ADVISORS

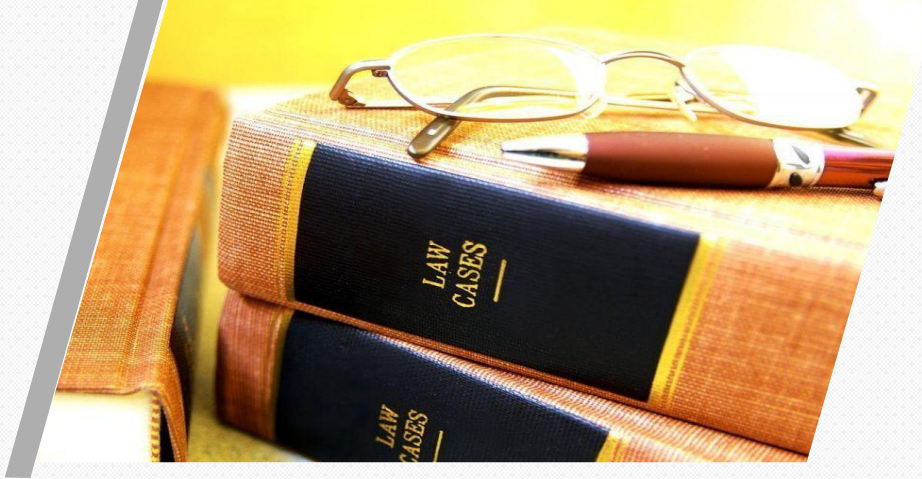
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March 2024

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Direct Tax Case Laws



Case Law 1:

Where assessee-trust claimed to have received cash donations in crores from various donors, since donations received in cash had not been deposited by assessee in bank account and letters issued to donors under section 133(6) were returned unserved, Assessing Officer was justified in holding that cash donations were anonymous as contemplated under section 115BBC

Filing of Return and Assessment: The assessee-trust, primarily engaged in operating educational institutions, filed a return in response to a notice issued under section 142(1) of the Income Tax Act. In this return, they disclosed receiving cash donations from 7145 individual donors, amounting to Rs. 2.89 crores.

Assessment by the Assessing Officer: Following the filing of the return, the Assessing Officer reviewed the disclosed cash donations. They concluded that these donations fell under the category of anonymous donations as defined by section 115BBC of the Income Tax Act. This determination implied that the trust would face tax implications or restrictions associated with anonymous donations.

Appeal to Commissioner (Appeals): Disputing the Assessing Officer's assessment, the assessee-trust appealed to the Commissioner (Appeals). In their appeal, they argued that only a portion of the donations, specifically Rs. 82,600, should be

considered anonymous, rather than the entire sum.

Tribunal's Decision: Despite the trust's appeal, the Tribunal, which adjudicates disputes related to taxation matters, sided with the revenue authority (the party responsible for collecting taxes). In essence, the Tribunal agreed with the Assessing Officer's classification of the donations as anonymous, upholding their decision.

Appeal to High Court: Dissatisfied with the Tribunal's decision, the assessee-trust further appealed to the High Court. In their appeal to the High Court, they raised several arguments, notably contending that the matter at hand wasn't solely a legal question and questioning the burden of proof regarding the donations' anonymity.

High Court's Decision: After reviewing the case, the High Court rendered its decision. The High Court, while acknowledging the complexity of the legal issues involved, ultimately rejected the trust's appeal. The court emphasized that the burden of proof lay with the trust to demonstrate that the donations weren't anonymous.

Additionally, the High Court highlighted several key points that influenced its decision:

- The trust's failure to adequately discharge the burden of proof, despite attempts to verify donor identities.
- Instances where donors denied making contributions when contacted.
- Challenges in verifying donations due to

Direct Tax : Case Laws

- undelivered letters and incomplete or vague addresses provided by donors.
- The Tribunal's decision was deemed justified, as it was based on both factual evidence and legal principles.

In conclusion, the High Court upheld the Tribunal's decision, affirming the classification of the donations as anonymous and dismissing the trust's appeal.

Case Law 2:

- I. Where assessee received loan from a company and said company and assessee had common shareholder who was in a position to control affairs of both lender company and receiver concern, deeming provisions of section 2(22)(e) would be attracted in hands of common shareholder and not assessee-concern**
- II. Where assessee received loan from a company and said company and assessee had common shareholder who was in a position to control affairs of both lender company and receiver concern, income would be deemed to have accrued in hands of beneficial shareholder and not in hands of assessee-concern**

Section 2(22) of the Income-tax Act, 1961 defines deemed dividend, particularly in cases involving a common shareholder, for the assessment years 2013-14 and 2014-15. The assessee received a loan or advances from another group company during this period. Despite not being a registered shareholder of the lender company, the assessee and the lender company shared a common shareholder who had the authority to control both entities.

In accordance with the provisions outlined in

section 2(22)(e) and the definition of substantial interest provided in section 2(32), it was determined that the beneficial ownership of shares rested with the common shareholder. Consequently, the deeming provision of section 2(22)(e) was deemed applicable only in the hands of the common shareholder, rather than the assessee-concern.

Similarly, under Section 5 of the Income-tax Act, 1961, regarding the accrual of income, particularly in cases of deemed dividend for the assessment years 2013-14 and 2014-15, when an assessee concern receives a loan from a company and both entities share a common shareholder capable of controlling their affairs, it was held that the income would be deemed to have accrued in the hands of the beneficial shareholder, not the assessee-concern.

Both decisions were ruled in favor of the assessee, supporting the argument that the deeming provisions and income accrual should be attributed to the common shareholder rather than the assessee-concern.

Direct Tax Circulars & Notifications



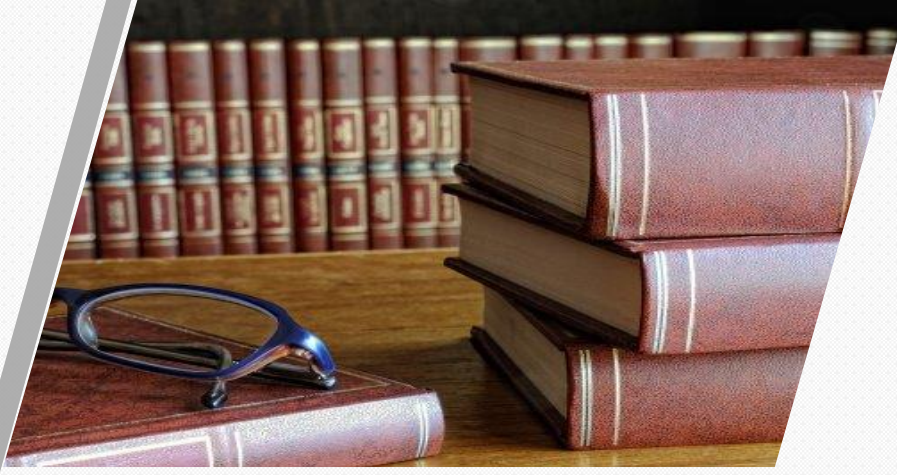
S. No Notification

1. Order of the CBDT in F.No 375/02/2023

The Central Board of Direct Taxes (CBDT) via an order dated February 13, 2024, stated that the tax department has started remitting and extinguishing eligible old tax demands which were outstanding as of January 31, 2024. Demands up to specific monetary limits across various assessment years until 2015-16 are covered, with an overall cap of ₹1,00,000 per taxpayer. This excludes TDS/TCS demand entries. Demand would be waived off for the Assessment Years as :

Assessment Year	Monetary Limit of Demand to be remitted
Upto AY. 2010-11	each demand entry upto Rs. 25,000
AY. 2011-12 to AY. 2015-16	each demand entry upto Rs. 10,000

Indirect Tax : Case Laws



Case Law 1:

Facts of the case :

Fairdeal Metals Ltd. (“the Petitioner”) engaged in procurement of goods from M/s Navaraj Trading Company (“the Supplier”), a recent registrant under the Central Goods and Services Tax Act, 2017 (“the CGST Act”) from October 9, 2023, in the State of Assam. Despite being registered, the Supplier failed to provide adequate documentation regarding the legal occupancy of their business premises as required under the West Bengal Goods and Services Tax Act, 2017 (“the WBGST Act”)/ the CGST Act and related regulations.

A Show Cause Notice dated December 31, 2023 (“the Impugned SCN”) was served to the Petitioner, citing discrepancies in FORM GSTR-3B of the Supplier for October and November 2023. The notice alleged that the Supplier's activities aimed to circulate bogus Input Tax Credit (ITC), claiming that transported goods were not covered under their GST registration. Additionally, suspicions were raised regarding the origin and legitimacy of the goods, suggesting an intention to evade tax through 'paper sales.

Before the issuance of the Impugned SCN, the Supplier cleared their tax dues on December 30, 2023. Despite this, an Order dated January 05, 2024 (“the Impugned Order”) was issued by the Revenue Department, demanding the Petitioner to pay tax and penalty, resulting in the detention of the vehicle and goods.

Findings in the Case:

The Hon’ble Calcutta High Court, in Writ Petition Application No. 170 of 2024, ruled as follows:

- The act of the Supplier in depositing the input tax prior to the issuance of the Impugned SCN negated the allegation of tax evasion, thereby rejecting the notion of an intention to evade tax. Emphasized that the Supplier was granted registration by the GST authority, indicating compliance with registration requirements. The payment of taxes further supported the validity of the Supplier's registration. Consequently, allegations against the Supplier were deemed baseless once registration and tax payment were completed.
- Asserted that the Petitioner, having no connection to the allegations against the Supplier, should not be held liable for penalties assessed against the Supplier.
- Directed the immediate release of the vehicle and goods to the Petitioner, while setting aside and quashing the Impugned Order imposing penalties.

In the matter of Fairdeal Metals Ltd. v. Assistant Commissioner of Revenue, State Tax, Bureau of Investigation (NB) [Writ Petition Application No. 170 of 2024 dated February 01, 2024].

Indirect Tax

Notifications & Circulars



S. No Notifications

1. IC notified “Public Tech Platform for Frictionless Credit” for Enhanced Credit Ecosystem Sharing

The CBIC, through Notification No. 06/2024 –Central Tax dated February 22, 2024, has endorsed the "Public Tech Platform for Frictionless Credit" for sharing information via a common portal with consent.

Explanation:- For the purpose of this notification “Public Tech Platform for Frictionless Credit” means the platform conceived by the Reserve Bank of India and developed by its subsidiary, the Reserve Bank Innovation Hub, aims to bolster the credit ecosystem. It facilitates digital access to information from diverse data sources for financial and data service providers through an enterprise-grade IT platform, featuring a standard, protocol-driven, open, and shared API framework.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1010019/ENG/Notifications>

Legal & Regulatory Notifications



S. No Notifications

INSTITUTE OF COMPANY SECRETARIES OF INDIA

The Institute of Company Secretaries of India (ICSI) has issued the following revised secretarial standards which shall be effective from April 01, 2024.

The secretarial standards are applicable to every company registered under the Companies Act, 2013 except the One Person Company (OPC) and Section 8 company. It covers a wide range of subjects, such as Board of Directors meetings, General Meetings, Related Party Transactions etc. The same has been implemented as there are changes in the Companies Act, 2013 from time to time and to align the secretarial standards with the amended provisions of the Companies Act, 2013, ICSI has amended the same.

As per the revised secretarial standards, the brief details of revisions are mentioned below:

A. Secretarial Standard on Meetings of Board of Directors (SS-1)

- Where any director has intimated the company for participation in the board meetings through Electronic Mode, such intimation shall not debar him from participation in the Meeting in person provided he gives such intimation sufficiently in advance to the company.
- “Material events in accordance with the listing agreement” has been deleted from the definition of Unpublished Price Sensitive Information.
- The company shall hold at least one meeting of Independent Directors of the company, if any, in a Financial Year without the attendance of non-independent directors and members of management.

B. Secretarial Standard on Meetings of Board of Directors (SS-2)

- Revised requirements for the notice of general meetings.
- Revised requirements related to voting by member who is a related party.

Link:

www.mca.gov.in/bin/dms/getdocument?mds=TC5liKr%252B0SpGVt5U%252BSzj%252Bw%253D%253D&type=open

MINISTRY OF CORPORATE AFFAIRS

1. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF FORM LLP BEN-2 AND FORM LLP 4D UNDER THE LLP ACT

(Circular dated February 07, 2024)

MCA introduced LLP (SBO) Rules, 2023 on November 09, 2023, requiring LLPs to file Form LLP

Legal & Regulatory

BEN-2 for declaration under Section 90 of the Companies Act, 2013. Similarly, MCA has amended LLP rules on October 27, 2023, prescribing Form LLP 4D for reporting beneficial interest in contributions.

To facilitate compliance during MCA-21 transition to version-3, LLPs can file these forms without additional fees until 15th May 2024. The two forms shall be made available in version 3 for filing purposes w.e.f. 15th April, 2024.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=yOp%252BjI5XJk7frEKhyroorQ%253D%253D&type=open>

2. DEPLOYMENT AND USAGE OF CHANGE REQUEST FORM (CRF) ON MCA21

(Circular dated February 19, 2024)

MCA vide circular dated February 19, 2024, has informed that Change Request Form (CRF) is available on V3 portal for the convenience of users of MCA-21 services. This web-based Form is to be used only under exceptional circumstances, for making a request to Registrar of Companies (RoCs), for the purposes which cannot be catered through any existing form or services or functionality available either at Front Office level (users of MCA-21 services) or Back Office level (RoCs).

It is not a substitute to any reporting, application, and registry requirements as per Companies Act, 2013, and LLP Act, 2008, and for such purposes the Form shall not be entertained and requests through this form are liable to be summarily rejected.

This Form should also not be used as a substitute for any approval related and registration related queries for which existing tickets and helpdesk facilities must be used.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=Gdp7pwkWmPucgX1GIBvdSw%253D%253D&type=open>

3. COMPANIES (REGISTRATION OFFICES AND FEES) AMENDMENT RULES, 2024

(Notification dated February 15, 2024)

Ministry of Corporate Affairs, vide its circular dated February 15, 2024, has issued rules named the Companies (Registration Offices and Fees) Amendment Rules, 2024 which came into force with effect from February 16, 2024.

The abovementioned rules states that the registrar of the Central Processing Center shall examine every application or e-Form or document required for approval or registration within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required. Earlier it was on straight through process (STP) mode. The list of forms are mentioned below:

Legal & Regulatory

S. No	Form Name	Particular
1	MGT-14	Filing of Resolutions and agreements to the Registrar
2	SH-7	Notice to Registrar of any alteration of share capita
3	INC-24	Application for approval of Central Government for change of name
4	INC-6	One Person Company- Application for Conversion
5	INC-27	Conversion of public company into private company or private company into public company
6	INC-20	Intimation to Registrar of revocation/surrender of license issued under section 8 of the Act
7	DPT-3	Return of deposits
8	MSC-1	Application to ROC for obtaining the status of dormant company
9	MSC-4	Application for seeking status of active company
10	SH-8	Letter of Offer under section 68 of the Act
11	SH-9	Declaration of Solvency under sub-section (6) section 68 of the Act
12	SH-11	Return in respect of buy-back of Securities under sub-section 10 of section 68 of the Act

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=TC5IiKr%252B0SpGVt5U%252BSzj%252Bw%253D%253D&type=open>



Forensic Accounting

By – Trishika Seth

IBA

What is Forensic Accounting :

Forensic accounting is a method of investigating financial transactions and business situations in order to obtain the truth and develop an expert opinion regarding possible fraudulent activity. Forensic accounting is the application of a specialized knowledge and specific skills to stumble upon the evidence of economic transactions.

Forensic accounting can be described as the use of auditing and investigation skills to examine financial statements in the preparation to be used in a court of law. Two area of expertise make up the field of forensic accounting: -litigation support and investigation or fraud accounting.

What Are The Difference Between Forensic Accounting And Audit ?

Forensic accounting and audit are two important fields of accounting that are often confused with each other. While they share some similarities, they also have significant differences.

Aspect	Forensic Accounting	Audit
Objective	Investigate financial crimes, disputes, and other irregularities	Provide an opinion on the financial statements
Focus	Investigative	Compliance
Scope	Narrow and specific	Broad and general
Nature of work	Reactive	Proactive
Reporting	Varied (reports, expert testimony, etc.)	Formal opinion (auditor's report)

Forensic Accounting Objectives :

The main objectives of forensic accounting are to provide evidence that financial fraud has taken place, and present the results of an investigation in such a way that it can withstand cross-examination in court. On top of proving whether irregularities have occurred, the practice also seeks to identify those involved so legal action can be taken against them.

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The key objectives of forensic accounting can be summarized as follows:

- **Identify Financial Crimes:** Forensic accountants use their knowledge and skills to identify financial crimes such as fraud, embezzlement, and money laundering. They analyze financial data, review accounting records, and look for inconsistencies or irregularities that may indicate illegal activities.
- **Gather Evidence:** Forensic accountants collect and analyze financial data to gather evidence that can be used in legal proceedings. They may also conduct interviews with employees or other individuals who may have information relevant to an investigation.
- **Quantify Damages:** In cases where financial harm has been done, forensic accountants can quantify the extent of the damages. They can calculate the amount of money that has been lost or stolen and provide a report that can be used in court.
- **Provide Expert Testimony:** Forensic accountants may be called upon to provide expert testimony in court. They can explain complex financial concepts to judges and juries and provide an opinion on the validity of financial evidence.

The Future of Forensic Accounting :

With the modern world's heavy reliance on the internet, the role of a forensic accountant is rapidly changing. The skills that forensic accountants have relied upon for decades may not all be used on a day-to-day basis anymore.

The rapid shift to using the internet for almost everything in business, from financial transactions to communication and more has seen a marked rise in the amount of fraudulent activity.

The anonymity that the internet gives also allows fraudsters some security. Due to the lack of face-to-face interaction, many of these scammers believe that they are able to conceal their tracks, and remain totally anonymous, allowing them to get away with their schemes.

This is where the modern forensic accountant comes in. The latest technology has supercharged the industry, what could have taken accountants hours in the past, will only take minutes today.

Application of Forensic Accounting :

Forensic accounting has a wide range of applications in various industries and legal and regulatory matters, which are illustrated as follows:

- Forensic accountants can assist in the implementation of AML policies and procedures for organisations to help prevent money laundering and other financial crimes.
- Forensic accountants can help businesses determine the value of their assets, liabilities, and equity, which is important in mergers and acquisitions, bankruptcy proceedings, and other business transactions.
- Cybercrime and the growing list of online criminal offences require forensic investigation.

- Forensic accountants can also be hired to analyse financial records in divorce cases, including property division, spouse support, and child support. They can also help determine the value of assets and identify hidden assets.
- Economic Offence Wing often requires a forensic investigation.
- Forensic accountants can assist insurance companies in investigating fraudulent claims, including false claims for property damage, theft, and other losses.
- Forensic accountants are often required to investigate cases of fraud, including embezzlement, asset misappropriation, financial statement fraud, and bribery. They use accounting and auditing techniques to detect financial irregularities and collect evidence for legal proceedings.
- Forensic accountants can provide litigation support in civil and criminal cases, including preparing financial reports, calculating damages, and serving as expert witnesses.
- A forensic investigation is conducted as part of due diligence.
- Multinational companies have many instances of internal fraud being reported, which warrants investigation.
- RBI often flags accounts that require forensic investigation.

Conclusion :

Forensic accounting is a dynamic and multidisciplinary field that combines financial expertise with investigative skills and legal knowledge. Forensic accountants play a crucial role in uncovering fraudulent activities, resolving financial disputes, identifying financial reporting irregularities, conducting business valuations, and calculating insurance claims. Through techniques like financial statement analysis, data analytics, and interviewing, they navigate complex financial data and bring clarity to intricate financial matters. Their work covers a wide range of financial crimes, including fraudulent financial reporting, asset misappropriation, money laundering, and bribery. In carrying out their responsibilities, forensic accountants must uphold ethical considerations such as confidentiality, avoiding conflicts of interest, maintaining professional skepticism, and ensuring independence.

By upholding these ethical principles, forensic accountants contribute to the integrity of financial systems and the pursuit of justice.

IBA NEWS

Celebrating Excellence: Champ of the Quarter Awards Announcement



Congratulations to our Team members– Shalini, Himanshu, Aditya & Vanshita for getting the awards for IBA Champ Of The Quarter. These awards are not just trophies on your shelves; this is a reflection of your shared values, hard work, and relentless pursuit of excellence.

Training Session



Elevating Knowledge by Session on Overview & Testing – Internal Financial Control Led by Rohan– His presentation shed light on the critical aspects of IFC and its application in our assignments, enriching our understanding and sparking engaging discussions.

Upcoming Compliances

Date	Compliance
March 11, 2024	Due Date for filing of Form GSTR-1 for the period February 2024 for the registered taxpayers who have opted for monthly filing of GST Returns
March 13, 2024	Due Date for submission of invoices through IFF under QRMP scheme for the period February pertaining to quarter January to March 2024 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period February 2024 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
March 15, 2024	Fourth instalment of advance tax for the assessment year 2024-25. Due date for payment of whole amount of advance tax in respect of assessment year 2024-25 for assessee covered under presumptive scheme of section 44AD / 44ADA.
March 16, 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194IB, 194M, 194S in the month of January 2024
March 20, 2024	Due Date for filing of Form GSTR-3B for the period February 2024 for the registered taxpayers who have opted for monthly filing of GST Returns
March 30, 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194IB, 194M, 194S in the month of February, 2024
March 31, 2024	Country-By-Country Report in Form No. 3CEAD for the previous year 2022-23 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group

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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.



Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

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