

NewsBites

Sixty First Edition

Greetings!

We are delighted to present our news bite for the month of April 2023. This News Bites intends to give an overview of what is happening in the sphere of direct and indirect taxation, company law, government incentives, FEMA and other regulatory laws.

We hope you find this useful. For any feedback you can reach to us at info@sanca.in.

Best Regards,
S A N & CO.
Chartered Accountants

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Income Tax



CBDT notification on partial relaxation to Non Resident Tax payers with respect to electronic submission of Form 10F :

A non resident tax payer earning income in India is subject to withholding tax. From 16th July 2022 onwards, a non-resident taxpayer of India was required to file 'Form 10F' electronically through the Income Tax e-filing portal to claim an income tax treaty benefit in India.

Form 10F is a self-declaration form filled and submitted by a NR taxpayer receiving income from India and provided to the payer responsible for deducting withholding tax. The payor is then responsible for deducting the withholding tax as per the tax treaty.

Previously, the Non Resident taxpayers used to furnish the above requisite information in form 10F manually. However, the Indian Tax has now mandated the NR taxpayers to file Form 10F electronically on the Income tax e-filing portal along with the valid tax residency Certificate to avail tax treaty benefits.

Failing to file the Form 10F electronically may result in withdrawal of treaty benefits. Furthermore, there may be tax and penal consequences on the Indian resident payor for any shortfall/nil deduction of tax, as the case may be.

The requirement to file the Form 10F electronically w. e. f. April 1, 2023, means that NR taxpayers who otherwise were not required to have a PAN in India now must obtain one.

To mitigate this hardship faced by NR taxpayers without a PAN, the Central Board of Direct Taxes (CBDT) provided relief to impacted NR taxpayers by allowing them to manually file Form 10F until March 31, 2023.

In view of the continued practical challenges and to mitigate the genuine hardship being faced by non resident taxpayers, CBDT has extended the above-mentioned partial relaxation further **till 30th September 2023**.

The taxpayers may make statutory compliance of filing Form 10F till 30th September 2023 in manual form as was being done prior to issuance of the DGIT (Systems) Notification No. 3 of 2022.

Assessment made in respect of a transaction that wasn't disclosed in notice issued u/s 148A(b) is bad in law: HC

**HIGH COURT OF CHHATTISGARH
U.S. Associates**

**v.
Principal Commissioner of Income-tax**

Facts of Case

- Assessing Officer initially issued on assessee notice under section 148 and subsequently under section 148A(b)
- After this Assessing Officer passed order under section 148A(d) holding that assessee had suppressed a transaction of Rs. 14 lacs and this had also escaped assessment.
- Further Assessing Officer issued on assessee a notice under section 148 - Whether since in notices issued initially Assessing Officer had not disclosed fact of assessee having suppressed transaction of Rs. 14 lacs and this had also escaped assessment.

Held

- It is also glaringly visible from the two notices that were issued on 29-6-2021 as also on 25-5-2022 i.e. the notice initially issued under section 148 of the old

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Act and under section 148A(b) of the new Act that the department has not disclosed the fact in its notice of the petitioner having suppressed this 14 Lakh rupees transaction and this has also escaped assessment of the Department. In the absence of the same being reflected in the notice, the assessment yet being made of the said amount would be prima facie bad in the light of the judgment of the Supreme Court in case of Commissioner of Customs v. Toyo Engineering India Ltd. wherein in paragraph 16 the Supreme Court has emphatically held that the Department cannot travel beyond the show cause notice.

- The aforesaid facts and circumstances of the case and also keeping in view the circular of the Department dated 11-5-2022 is of the opinion that the order under section 148A(b) and order Section 148 of the Act of 1961 dated 22-7-2022 in the given factual backdrop would not be sustainable. The same therefore deserves to be and is hereby set aside reserving the right of the Department, if the law permits, to take appropriate recourse available in accordance with law.

Jurisdiction of assessee transferred to another AO without serving notice would render final assessment order void:

IN THE ITAT LUCKNOW BENCH 'B'
Shyam Sunder Bhartia

v.
Deputy Commissioner of Income-tax
(International Taxation)

Facts of the Case

- Notice under section 148 was issued by the Asstt. Commissioner, Moradabad to assessee on 3-7-2019
- The case of the assessee was transferred by Asstt. Commissioner, Moradabad to Dy. Director/

Asstt. Director (International Taxation), Lucknow, considering the NRI status of the assessee but no notice under section 127 was served on the assessee before transferring the jurisdiction, nor any copy of the letter/order for transfer of jurisdiction has ever been serviced on the assessee and final assessment order was passed.

- The assessee submitted that without a valid order of transfer passed under section 127, the final assessment order, passed under section 147, read with section 144C (13) was without jurisdiction and was liable to be quashed.

Held

- The provisions of section 127 are, thus, clear that a Pr. Commissioner may transfer a case from one Assessing Officer subordinate to him, to any other Assessing Officer also subordinate to him, after giving the assessee a reasonable opportunity of hearing in this regard and after recording the reasons for transferring the matter.
- The mandate of section 127 is that before transferring the jurisdiction from one Assessing Officer to another, who is not subordinate to the same Commissioner, it must be ensured (i) that the Commissioners to whom the respective Assessing Officers are subordinate are in agreement inter se regarding the transfer, (ii) that reasons are recorded for transferring the jurisdiction, (iii) that a reasonable opportunity of hearing is provided to the affected assessee, and (iv) that an order is passed under section 127.
- That on the facts and circumstances of the case, the impugned final assessment order passed under section 147 r. w. s. 144C (13) of the Act. is illegal, beyond jurisdiction and void ab initio and ex facie contrary to the mandate of provisions of section 144C read with section 143(3) of the Act and consequently, deserves to be quashed.



Goods & Services Tax

Dept. can't attach bank accounts of creditors on a mere assumption that funds therein are owned by taxable person: HC

HIGH COURT OF DELHI

Sakshi Bahl

v.

Principal Additional Director General

Facts of Case

- Savings bank accounts of petitioners were provisionally attached.
- Directed the Bank Branch Manager, HDFC Bank, not to permit any withdrawal from the bank accounts of the petitioners which were operated under the same PAN numbers, without the permission of the Department.
- The petitioners have filed the present petition, inter alia, impugning an order dated 06.02.2023 (hereafter 'impugned order'), whereby the respondent (Principal Additional Director General, DGGI, DZU), had ordered provisional attachment of the savings bank accounts of the petitioners.

Held

- It is the petitioners' case that they are neither taxable persons nor persons covered under Section 122(1A) of the Central Goods and Services Tax Act, 2017 (hereinafter 'the Act'); therefore, the impugned order is ex facie without jurisdiction.
- He submits that the respondent had attached the petitioners' bank account in view of the statement made by one, Shri Rajiv Chawla during the course of investigation relating to fake firms involved in passing off fake Input Tax Credit

- It is also the petitioners' case that the funds received by them were return of advances and loans that were extended by the petitioners.
- It is not necessary for this Court to examine the nature of the payment made by Shri Rajiv Chawla to the petitioners. Clearly, the same cannot be a subject matter of adjudication in these proceedings. However, it is clear that the petitioners are not taxable persons. The power under Section 83 of the Act, to provisionally attach assets or bank accounts is limited to attaching the bank accounts and assets of taxable persons and persons specified under Section 122(1A) of the Act.
- In view of the above, the impugned order cannot be sustained. It is not open for the respondent to attach the bank accounts of other persons on a mere assumption that the funds therein are owned by any taxable person.

GSTN Advisory:

Time limit for Reporting Invoices on the IRP Portal:

Advisory dated April 12, 2023, and April 13, 2023, have been issued by the GSTN in respect of the time limit for reporting Invoices on the IRP Portal.

1. It is to inform you that it has been decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores.
2. To ensure timely compliance, taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting.
3. Please note that this restriction will apply to the all document types for which IRN is to be generated. Thus, once issued, the credit / Debit note will also have to be reported within 7 days of issue.



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4. For example, if an invoice has a date of April 1, 2023, it cannot be reported after April 8, 2023. The validation system built into the invoice registration portal will disallow the user from reporting the invoice after the 7-day window. Hence, it is essential for taxpayers to ensure that they report the invoice within the 7-day window provided by the new time limit.
5. It is further to clarify that there will be no such reporting restriction on taxpayers with AATO less than 100 crores, as of now.
6. In order to provide sufficient time for taxpayers to comply with this requirement, which may require changes to your systems, we propose to implement it from 01.05.2023 onwards.

Advisory on Bank Account Validation:

- GSTN is pleased to inform you that the functionality for bank account validation is now integrated with the GST System.
- This feature is introduced to ensure that the bank accounts provided by the Taxpayer is correct. The bank account validation status can be seen under the Dashboard → My Profile → Bank Account Status tab in the FO portal.
- Taxpayers will also receive the bank account status detail on registered email and mobile number immediately after the validation is performed for their declared bank account.

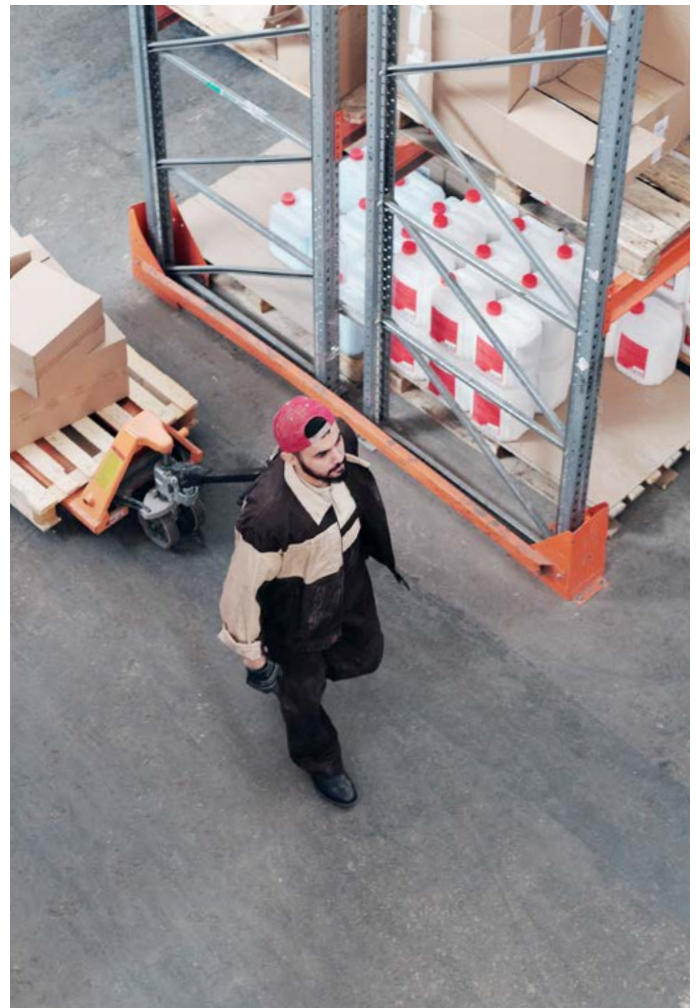


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Companies Act, 2013

CASE STUDY

Clubbing of entities for purpose of FPIs can be permitted if there is common ownership of over 50% or common control: SEBI:

A company sought informal guidance from SEBI regarding whether one FPI can be part of two investor groups and entities not having same common ownership or common control should be considered part of same “Investor Group” in order to club two or more FPIs. In response to query, SEBI clarified that there is no express bar in FPI regulation upon FPIs to be part of multiple investor groups. Further, FPIs of entities having common ownership of more than 50% or common control can be clubbed together.

For the purposes of prosecution, director’s resignation intimated by him to Registrar of Companies is effective even if company failed to intimate RoC:

HIGH COURT OF CALCUTTA

Pranab Kumar Roy

v.

Securities and Exchange Board of India.

SHAMPA DUTT (PAUL), J.
CRR NO. 773 OF 2021
MARCH 27, 2023

As per Section 168 of the Companies Act 2013, it is the duty of the company who shall inform the ROC about the resignation of director. The resigning director may also inform the Registrar of Companies (RoC). When director had resigned in 2013 and informed the RoC of resignation, his resignation is in accordance with section 168.

Therefore, he cannot be held responsible in a matter pertaining to year 2017 merely because his name continued to be reflected in RoC records as director in 2017 due to non-intimation of resignation by company since criminal complaint for default of NCDs pertained to 2017 i.e., after director had resigned.

This is especially as accused had joined the Board of the company as Additional Director after allotment of NCDs and was not responsible for day-to-day functioning of company and had resigned in 2013 as director after four months with intimation to RoC and SEBI.

Government Scheme Updates

Industry News:

Nashik to receive investments of over Rs 7,770 crore:

State Industry Minister, who was in Nashik on 26th April 2023 to attend the two-day annual conference of general managers of the District Industries centres (DIC), said the government was backing the industrial growth in Nashik and the district would see investments of Rs 7,771 crore.

He said Reliance Lifesciences Limited would invest Rs 4,200 crore in Dindori, while another pharma major's investment would be about Rs 1,200 crore. Apart from this, three companies are carrying out expansion.

Hike in Project cost under CMEGP Scheme:

A hike in project cost was announced by the Maharashtra State industry minister under the CMEGP from Rs 20 lakh to Rs 50 lakh in service sector and from Rs 50 lakh to Rs 1 crore in the manufacturing sector. Bank officials were urged to quickly dispose off applications received under the scheme.



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