

NewsBites

Fifty-Seventh Edition

Greetings!

We are delighted to present our news bite for the month of December 2022. 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

Last date to link PAN with Aadhaar is March 31, 2023:

Section 139AA of the Income Tax Act provides that every person who has been allotted a permanent account number (PAN), mandatorily link their Aadhaar with PAN before 31 March, 2023 by paying the fees Rs.1,000/-.

If the PAN is not linked with Aadhaar by the due date, then the PAN will become inoperative.

Having Sec.12AA doesn't mean Sec. 11 exemption is granted: ITAT

As per the provisions stated in section 2(15), if income received is in the nature of business which is purely on commercial basis, it cannot be considered charity.

Further, the tribunal clarified that it was stated while giving registration under section 12AA that the nature of income always remains a subject matter of assessment and is determined in accordance with the nature of income. Therefore, exemption under section 11 cannot be allowed merely based on having registration under section 12AA.

High Court quashed sec. 148A order as assessee was never asked to explain source of funds:

HIGH COURT OF DELHI
Catchy Prop-Build (P.) Ltd.

v.

Assistant Commissioner of Income-tax

Facts of the Case

Assessing Officer issued on assessee a notice under section 148A(b) seeking to initiate reassessment proceedings on account of some transactions of purchase and sale of shares undertaken by it - He further passed an order under section 148A(d) holding that company 'M' was not sound so as to make an investment of Rs. 3 crores to purchase shares of company 'B' and so source of investment remained unexplained - He also issued notice under section 148 to assessee - It was noted that in notice issued under section 148A(b) assessee was never asked to explain source of funds that were used by 'M' to purchase shares of 'B' - It was further noted that if foundational allegation was missing in notice issued under section 148A(b) same could not be incorporated by issuing a supplementary notice.

Held

Keeping in view the aforesaid, the present writ petition along with applications is allowed and the show cause notice issued under section 148A(b) of the Act as well as the order passed under section 148A(d) of the Act and the notice issued under section 148 of the Act for the assessment year 2018-19 are quashed.



Goods & Services Tax

Clarification to deal with difference in ITC availed in GSTR-3B and GSTR-2A for FY 2017-18 and 2018-19:

It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per **FORM GSTR-2A** were provided. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during **FY 2017-18** and **FY 2018-19**.

To ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

Sn.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

Goods & Services Tax

<p>d.</p>	<p>Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.</p>	<p>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p> <p>In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>	<ul style="list-style-type: none"> (i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents; (ii) that he has received the goods or services or both; (iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.
<p>In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR-2A of the registered person in respect of a supplier for the said financial year exceeds Rs. 5 lakhs, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR-3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICAI website https://eicmai.in/udin/VerifyUDIN.aspx.</p>			
<p>In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR-2A of the registered person in respect of a supplier for the said financial year is upto Rs. 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR-3B.</p>			
<p>However, it may be noted that for the period FY 2017-18, as per September section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date</p>			

of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR-1 for the month of March, 2019.

It may also be noted that the clarifications given hereunder are case specific and are applicable to the bona fide errors committed in reporting during FYs. 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

Government notified amendments in service exemption notification as per recommendations of 48th GST Council Meeting:

A notification issued by the Finance Ministry, dated December 30, said that the exemption will cover “services by way of renting of a residential dwelling to a registered person where –

(i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and

(ii)(ii) such renting is on his own account and not that of the proprietorship concern².

This notification shall come into force with effect from the 01st day of January 2023.

High Court directed department to restore GST registration of assessee within one week:

**HIGH COURT OF DELHI
Aditya Narayan Ojha**

v.

Principal Commissioner, Central Goods and Services Tax*

Facts of the case

Registration - Revocation of cancelled registration - Assessee was served with show cause notice (SCN) for cancellation of GST registration on ground that it was obtained by means of fraud, wilful misstatement and suppression of facts - Assessee did not answer SCN within prescribed time period and department cancelled his registration - Appellate Authority reversed impugned order on ground that assessee had already filed pending returns along with tax amount and would pay other government dues which amounted to sufficient cause for revocation of cancellation of GST registration - Assessee filed present appeal against non-compliance of order of appeal - Department raised issue that assessee was not found to be in existence during physical inspection of premises which was denied by assessee.

Held

Department should comply with order in appeal as department had cancelled GST registration on ground of ‘no response of assessee’ and now it did not advert to aforesaid reason - Present appeal was disposed of with direction that department should restore GST registration of assessee within one week.



Companies Act, 2013

MCA launching second set of company forms on MCA V3 portal:

- The Ministry of Corporate Affairs is launching second set of Company Forms covering 56 forms in two different lots on MCA21 V3 portal.
 - 10 out of 56 forms will be launched on 09th January 2023 at 12:00 AM and the remaining 46 forms on 23rd January 2023.
 - Following forms will be rolled-out on 09th January 2023: SPICe+ PART A, SPICe+ PART B, RUN, AGILE PRO-S, INC-33, INC-34, INC-13, INC-31, INC-9 and URC-1.
 - Further MCA V2 portal will be disabled in following manner:
 - (1) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 08th January 2023 11:59 pm for 10 forms which are planned for roll-out on 09th January 2023.
 - (2) Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 22nd January 2023 11:59 pm for 46 forms which are planned for roll-out on 23rd January 2023.
 - (3) MCA has advised that there should be no SRNs in pending payment and Resubmission status.
 - (4) Offline payments for the above 56 forms in V2 using Pay later option would be stopped from 28th December 2022 12:00 AM.
- (5) In view of the upcoming launch of 56 Company forms, V3 portal will not be available from 07th January 2023 12:00 AM to 08th Jan 2023 11:59 pm due to 10 company forms roll-out and from 21st January 2023 to 22nd January 2023 for 46 company forms roll-out.
 - (6) V2 Portal for company filing will remain available for all the forms excluding above mentioned 56 forms.

Government allows companies to hold Annual General Meeting through Audio Visual Means or Video Conferencing on or before 30/09/2023:

In continuation to Ministry's General Circular No. 20/2020 dated 05/05/2020 and General Circular No. 02/2022 dated 05/05/2022, it has been decided to allow the companies whose AGM are due in the year 2023, to conduct their AGM's on or before 30th September, 2023 through Audio Visual Means or Video Conferencing in accordance with the above mentioned General Circular.

Further it has been clarified that this circular shall not be construed as any extension of time for holding of AGM's by the Companies under the Companies Act, 2013 and the companies which have not adhered to the relevant timelines shall be liable to legal actions under



Government Government Scheme

Industry News:

Maharashtra government to invest Rs 36,000 crore in textile industry; generate 10 lakh jobs:

Maharashtra, which generates 28 percent of the country's overall cotton production, has plans to build textile hubs in the underdeveloped regions of Vidarbha and Marathwada.

The Maharashtra government is taking up initiatives to boost investment and employment in the textile sector. The government has set the objective of investing Rs 36,000 crore in the industry, which is anticipated to create 10 lakh jobs in the state. To aid the business, the state government has announced a variety of incentives, including reduced power tariffs and stable cotton prices.

Maharashtra, which generates 28 percent of the country's overall cotton production, has plans to build textile hubs in the underdeveloped regions of Vidarbha and Marathwada. In total, 42 lakh hectares of land are dedicated to cotton farming in the state, and between 40 and 45 lakh farmers are engaged in the industry.

The government has also taken note of the varying rates of cotton, which significantly impact the textile industry. The state government has promised to get involved and fix the issue in order to address the cost volatility. The government will purchase cotton at predetermined rates before transferring it to the textile industry for sale at such prices.

In addition, it will also deal with the challenge of recruiting qualified personnel. The state government has recommended building a brownfield park in Amravati (Vidarbha area) and Aurangabad under the PM Mega Integrated Textile Region and Apparel (PM MITRA) project (Marathwada region).

Prior to this, for the development of textile centres, the Maharashtra government had chosen 115 tehsils across 18 districts in Vidarbha, Marathwada, and areas of North Maharashtra that cultivate cotton. The mismatch of locating textile hubs in areas other than those where cotton is produced has damaged the sector over time, despite the fact that it is still ranked second in terms of employment generation.

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You may use any of the following means to connect with us:

CA Sachin Shinde	+91 98906 49497	sachin.shinde@sanca.in
CA Anil Shinde	+91 97660 37816	anil.shinde@sanca.in
CS Manisha Lalwani	+91 89595 05955	manisha.lalwani@sanca.in

Office Address:

SAN & CO. Chartered Accountants

B/38, 3rd Floor, Aamod Apartments,
Opp. Police Ground, Behind Hotel Shravan,
F.C. Road, Shivajinagar, Pune 411016
Maharashtra, India
+91 80870 70205 | +91 80870 70476 | +91 80877 00477
Web: www.sanca.in

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