

NewsBites

Sixtieth Edition

Greetings!

We are delighted to present our news bite for the month of March 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

Contents

Income Tax

1. Tax deduction on salaries: Tax will be calculated at New Tax Regime rates if employees don't opt out-CBDT Circular 2
2. Supreme Court Decision about Sec. 271C -Penalty can't be imposed for belated or non-payment of TDS 2
3. ITAT Jaipur Decision - CIT can't reject application merely because trust didn't perform activities of charitable in nature.. 2
4. CBDT introduced the cost inflation index for FY 2023-24..... 3

Goods & Service Tax

1. GST issues advisory on time limit for reporting invoices on Invoice reporting portal..... 4
2. High court directs authority to restore registration of assessee who didn't file returns due to ill health 4
3. New Amnesty Scheme for GST applicable with effect from 01/04/2023..... 4

Companies Act, 2013

1. Centre for Processing Accelerated Corporate Exit in STK-2 6
2. ROC penalizes company and CEO for non-appointment of an internal auditor as per the Companies Act, 2013 6

Government Scheme Updates

1. SIBC Signs MoU in Sustainable Infrastructure, Defence Manufacturing with Maharashtra Governments 7



Income Tax

Tax deduction on salaries: CBDT says tax will be calculated at New Tax Regime rates if employees don't opt out:

- CBDT vide Circular No. 04/2023-Income Tax clarified that Each year, employer shall seek information from each of its employees regarding their intended Tax Regime (Old or New under section 115BAC) and deduct TDS accordingly, if intimation is not made by an employee then his default tax regime is new Income Tax regime u/s 115BAC.
- CBDT further clarified that this intimation would not amount to exercising of option by employee, it means a person can select any regime at the time of filing ITR u/s 139(1).
- The above-mentioned new tax regime is the default tax regime applicable to all persons. However, under sub-section (6) of section 115BAC of the Act, a person may exercise an option to opt out of this tax regime. A person not having income from business or profession can exercise this option every year.

Supreme Court held that Sec. 271C penalty can't be imposed for belated or non-payment of TDS:

SUPREME COURT OF INDIA
US Technologies International (P.) Ltd.
v.
Commissioner of Income-tax

Facts of case:

Assessee-company, engaged in software development business, deducted tax at source in respect of salaries, contract payments etc. but deposited same belatedly CIT levied penalty under section 271(C) and subsequently an order under section 201(A) was passed levying penal interest.

High Court by impugned order upheld said order on ground that failure to deduct or remit TDS would attract penalty under section 271C i.e. amount equal to TDS.

It was noted that provision of section 271C(1)(a) shall be applicable in case of a failure on part of assessee to "deduct" whole of any part of tax.

Whether, on facts, it was not a case of non-deduction of TDS at all and thus assessee was not liable to pay penalty under section 271C.

Held:

It was not a case of non-deduction of TDS at all and thus assessee was not liable to pay penalty under section 271C, therefore, impugned order of High Court was liable to be quashed and set-aside.

CIT can't reject application merely because trust didn't perform activities of charitable in nature:

IN THE ITAT JAIPUR BENCH 'B'
Keeday Makaunday Foundation
v.
Commissioner of Income-tax, (Exemption)



image: Freepik.com

Facts of the case:

- The assessee, a company with charitable objects, was registered under section 8 of the Companies Act, 2013. The certificate of incorporation was issued on 20-4-2021 by the Ministry of Corporate Affairs and the license under section 8(1) was issued on 20-4-2021 by the Registrar of companies.
- It was granted provisional registration by the Commissioner.
- It applied for permanent registration under section 12AB on 31-3-2022.
- The Commissioner rejected the application for registration on the basis that only part of the details were submitted by the assessee and it did not perform the activities of charitable in nature, but business activities were visible.

Held

Whether since assessed had replied all issues raised by Commissioner and he did not controvert them and activities undertaken by assessee were interconnected with objects mentioned in memorandum of association which were not of profit motive, Commissioner was not justified in denying registration. Thus, appeal of the assessee deserved to be allowed.

CBDT introduced the cost inflation index for FY 2023-24:

The Central Board of Direct Taxes (CBDT) has notified the cost inflation index (CII) number for the current financial year, 2023-24. According to the notification dated April 10, 2023, the CII number for the current fiscal year is 348.



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Goods & Services Tax

GST issues advisory on time limit for reporting invoices on Invoice reporting 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 Average annual turnover greater than or equal to 100 crores. The Invoice Registration Portals (IRP) under GST is a portal that would help in authenticating the generated invoices by allotting Invoice Reference Numbers (IRN) and QR Code to each invoice or CDN (Credit or Debit Note).

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 only apply to the document type invoice, and there will be no time restriction on reporting debit/credit notes.

4. In order to provide sufficient time for taxpayers to comply with this requirement, which may require changes to your systems, it is proposed to implement it from 01.05.2023 onwards.

High court directs authority to restore registration of assessee who didn't file returns due to ill health:

HIGH COURT OF DELHI
TS Events and Management
v.
Commissioner of CGST Delhi

Facts of the case:

Show cause notice was issued for cancelling registration on the ground of non-filing of returns for six months.

Petitioner was sole proprietor, and he was suffering from ill-health during period of pandemic, and he could not file returns or respond to SCN, but tax liability was discharged.

Assessee could not file his returns nor appear before concerned authority due to ill-health, for which his registration was cancelled.

Held:

Impugned order was passed dismissing appeal on ground of not showing sufficient cause for revoking cancellation of registration. Petition allowed considering mitigating circumstances. Impugned order was to be set aside.

Authority was directed to restore registration and petitioner shall file all returns up to date - Petitioner could seek waiver of penalty for late filing of returns which was partly occasioned on account of cancellation.

New Amnesty Scheme for GST applicable with effect from 01/04/2023:

a) **GST late fee waiver for the delay in filing Form GSTR-4 from July 2017 to March 2022 for Composition dealers:**

If Composition taxpayers who have failed to furnish the return in FORM GSTR-4 for the period from July 2017 to March 2022 and file the return during 1st April 2023 to 30th June 2023 then the late fee will be restricted to Rs. 500 per year



image: Freepik.com

- b) **Revocation of cancelled registration:** The registered person, whose registration has been cancelled on or before 31-12-2022, and who has failed to apply for revocation of cancellation of such registration within the time specified shall follow the following special procedure in respect of revocation of cancellation of such registration:
- May apply for revocation of cancellation of such registration up to the 30th of June 2023
 - The application for revocation shall be filed only after furnishing the returns along with payment of tax due up to the effective date of cancellation of registration.
 - No further extension of the time for filing applications shall be available in such cases.
- c) **Assessment Order:** The registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February 2023 such persons should furnish the said return on or before 30.06.2023 with payment of interest and late fees.
- d) **Late Fees of GSTR-9:** If a taxpayer has not filed GSTR 9 for the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return during 1st April 2023 to 30th June 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is more than twenty thousand rupees. Late Fees from FY 2022-23 shall be applicable as below:
- o If Turnover is up to 5 Crore – Late Fees of Rs 50 (Rs 25 CGST and Rs 25 SGST) per day shall be applicable for a maximum of up to 0.04 % of turnover.
 - o If the Turnover is between 5 Crore and 20 Crore – Late Fees of Rs 100 (Rs 50 CGST and Rs 50 SGST) per day shall be applicable for a maximum of up to 0.04 % of turnover.
 - o If Turnover is above 20 Crore – Late Fees of Rs 200 (Rs 100 CGST and Rs 100 SGST) per day shall be applicable for a maximum of up to 0.50% of turnover.
- e) **GSTR-10:** If GSTR-10 i.e., Final Return is not filed within the due date then the late fee will be restricted to Rs.1000 if it's filed between 01-04-2023 to 30-06-2023.



image: Freepik.com



Companies Act, 2013

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Centre for Processing Accelerated Corporate Exit in STK-2:

MCA vide notification dated April 17, 2023, these rules may be called the Companies (Removal of Names of Companies from the Registrar of Companies) Amendment Rules, 2023.

These rules will come into effect from May 01, 2023.

With this notification, MCA notifies:

- o An application for removal of the name of a company under sub section (2) of Section 248 shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form No. STK-2 along with a fee of rupees ten thousand.
- o The Registrar, Centre for Processing Accelerated Corporate Exit shall be Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No. STK-2 and all matters related thereto under Section 248 having territorial jurisdiction all over India.
- o In the said rule, Form No. STK-2, Form No. STK-6 and Form No. STK-7 shall be substituted.

CASE STUDY

ROC penalizes company and CEO for non-appointment of an internal auditor as per the Companies Act, 2013:

Internal auditor is mandatory for companies who satisfy the conditions prescribed under rule 13(1) of the Companies (Accounts) Rules, 2014. Hence, it is absolutely

necessary for those companies covered by the internal audit provisions to appoint an internal auditor either internally as whole-time employment or from outside – an individual or firm to carry out the internal audit function.

The regulators had put in place the internal audit for the selected class / classes of companies in order to improve efficiency in operations, evaluate the risk and also protect the assets of the company by ensuring organizational controls and above all ensuring absolute legal compliance.

The companies which are mandated to have an internal auditor, don't comply with the requirements by not appointing an internal auditor, the regulators would take penal actions against the company and its directors/officers and the company would end up paying a heavy penalty which can go up to two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person for each year of default.

In this particular case, the company was to face a penalty of rupees one lakh and forty thousand rupees for the non-appointment of an internal auditor and the companies are required to ensure absolute compliance in order to avoid the penalty and as well as the time spent on litigation.

Conclusion: Company and its directors / key managerial personnel and other responsible officers have to ensure absolute compliance at any time in order to avoid penal actions from the regulators. Any non-compliance would ultimately end up with penal proceedings and would result in penalties to the company as has happened in this case. The directors of the company are required to ensure utmost care in ensuring the applicable compliances to the company at all stages.

Government Scheme Updates

Industry News:

SIBC Signs MoU in Sustainable Infrastructure, Defence Manufacturing with Maharashtra Governments:

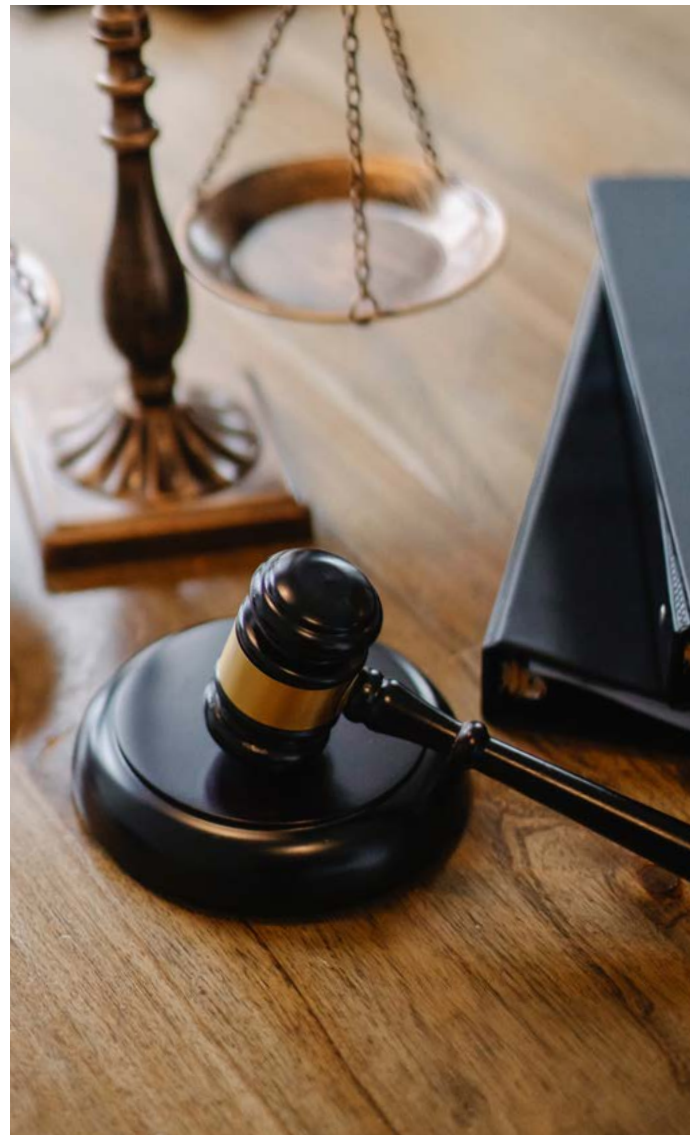
The MoU was signed between Sweden India Business Council (SIBC) and Maharashtra Industrial Development Corporation (MIDC)

Sweden India Business Council has signed a memorandum of understanding with the Maharashtra government for cooperation in the area of waste to energy, sustainable infrastructure and transportation, defence manufacturing and investment. The MoU was signed in the presence of Maharashtra Deputy Chief Minister in March 2023.

Maharashtra is the 'Second Home' to Swedish companies and 'Power House' of India. The relation between Maharashtra and Sweden is now 100 years old and we pledge to make it stronger ahead. Looking forward to work together in innovation, manufacturing, technology, solar energy, green and clean energies.

The MoU was signed between Sweden India Business Council (SIBC) and Maharashtra Industrial Development Corporation (MIDC). "Swedish industry will continue to expand and invest in Maharashtra. This MoU intends to support the two parties to reach a deeper collaboration for a more sustainable future and further job creation and technology cooperation.

The two parties, as in Sweden-India Business Council and the State of Maharashtra have also agreed to work together to explore and facilitate funding opportunities. "Maharashtra has historically been an important region for Sweden, right from the 1960s, when large Swedish companies set up operations in Pune. We delighted that we are deepening the ties in many ways and welcome the new collaboration between Maharashtra government and Sweden-India Business Council.



NewsBites

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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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