

# FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

March 2024

Volume 11, Issue 01

*Dear Reader,*

*The Policy updates and Verdicts of Various High Courts are enclosed in this newsletter.*

*We would like to draw your attention to various important updates, including CBDT permitting Trusts & Institutions to submit Audit Reports for AY 2023-24 by 31st March 2024, MCA has deployed the 'Change Request Form' on the MCA-21 series, RBI has revised its Master direction on the Regulatory Framework for 'Bharat Bill Payment Systems', SEBI proposes to introduce an Audio-Visual Representation of Disclosures Made in Offer Documents for Public Issues and extensions of due dates for various compliances by various authorities.*

*Hope this issue will find you and your near & dear in good health. Be safe, and healthy*

*Regards*

*For Raju and Prasad*

*Chartered Accountants*

*Your Knowledge Partners*

*M Siva Ram Prasad*

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**“Tell me, and I forget. Teach me, and I remember. Involve me, and I learn”**

**-Benjamin Franklin**

# Policy Watch

## Direct Tax

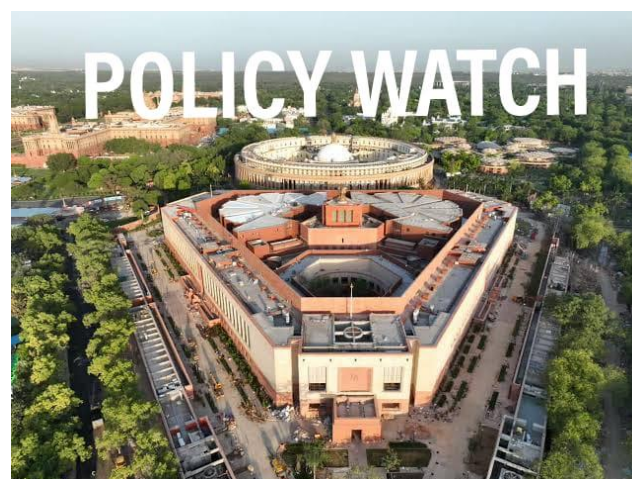


### **CBDT Permits Trusts & Institutions to Submit AY 2023-24 Audit Reports via Form 10B/10BB by March 31, 2024**

Rule 16CC and 17B of the Income-tax Rules, 1962 prescribes the form of audit report for trust or institution. It provided that the trusts or institutions approved under section 10(23C) were required to furnish report of audit of the accounts in Form 10BB, and the report of audit of the accounts of a trust or institution registered under section 12A shall be made in Form No. 10B.

With effect from Assessment Year 2023-24, these rules were amended. The amended rules provided that the report of the audit of the accounts of a trust or institution shall be furnished in Form No. 10B, if:

- i. The total income of trust or institution exceeds rupees five crores during the previous year;



- ii. Such trust or institution has received any foreign contribution during the previous year;
- iii. Such trust or institution applied any part of its income outside India during the previous year.

In other cases, the report is required to be furnished in Form No. 10BB.

The new forms, Form No. 10B and Form No. 10BB, were notified via Notification No. 7 of 2023 dated February 21, 2023. The due date for furnishing such audit reports for the AY 2023-24 was October 31, 2023.

It was noticed in a number of cases that trusts or institutions have furnished audit reports in Form No. 10B, whereas Form No. 10BB was required to be furnished for the AY

2023-24. Similarly, in several cases, trusts/institutions have furnished audit reports in Form No. 10BB, whereas Form No. 10B was required to be furnished for the AY 2023-24.

Since non-furnishing of audit report in the prescribed form would result in denial of exemption in such cases as it is one of the conditions which is required to be satisfied for the claim of exemption, CBDT vide circular no 2/2024 dated 05<sup>th</sup> March 2024 has authorized trusts and institutions that have submitted audit reports by October 31, 2023, using Form No. 10B when Form No. 10BB was required, and vice versa, to file their audit reports for the assessment year 2023-24 by March 31, 2024, under clause (b) of the tenth proviso of section 10(23C) and section 12A(1)(b)(ii), using the appropriate Form No. 10B or 10BB.

<https://incometaxindia.gov.in/communications/circular/circular-no-2-2024.pdf>

### **CBDT Waives Off Late Fees & Interest for Delayed Filing of Form 26QE for Period from July 2022 to Feb. 2023**

Section 194S of the Income-tax Act, 1961, provides for the deduction of tax at the rate of 1% from any sum payable by way of consideration for the transfer of a virtual digital asset. Further, as per rule 31A(4D), a 'specified person' is required to report such deductions in a challan-cum statement electronically in Form No. 26QE within 30 days from the end of the month in which such deduction is made.

However, due to the non-availability of Form 26QE, the specified persons who deducted tax under section 194S from 01.07.2022 to 31.01.2023 could not file Form No. 26QE and pay corresponding TDS on or before the due date. This resulted in the levy of fees under section 234E and interest under section 201(1A)(ii). Further, the specified persons who deducted tax under section 194S from 01.02.2023 to 28.02.2023 had insufficient time to file

Form No. 26QE and pay the corresponding TDS thereon.

To address the grievances of such specified persons, CBDT vide Circular No. 04/2024, dated 07<sup>th</sup> March 2024 has issued a circular extending the due date to 30.05.2023 for furnishing of Form 26QE for the tax deducted under section 194S during the period 01-07-2022 to 28-02-2023.

Accordingly, the fee levied under section 234E and interest charged under section 201(1A)(ii) in all such cases for the period up to 30.05.2023 shall be waived.

<https://incometaxindia.gov.in/communications/circular/circular-4-2024.pdf>

## MCA



### **MCA Deploys the 'Change Request Form' on MCA-21 for the Convenience of Users of MCA-21 Services**

MCA vide General circular no. 02/2024 dated 19<sup>th</sup> February 2024, has provided for deployment and usage of the 'Change Request Form'

(CRF) on MCA-21. Stakeholders are informed that CRF has been made available on the 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 ROC, for 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).

Further, this Form primarily is intended to be used for purposes like Master Data correction and to comply with certain directions of Courts/Tribunals, which ordinarily cannot be complied with through existing functionality of forms or services on the MCA-21 system.

Also, the Form must be processed by RoCs within 03 days of its filing, after which it should be forwarded to the Joint Director (e-governance cell), who shall process and decide the matter within a maximum time of 07 days.

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE5NDU5Nzc5&docCategory=Circulars&type=open>

## RBI Updates



### **RBI Revises Regulatory Framework for 'Bharat Bill Payment Systems' Streamlining the Bill Payment Processes**

RBI has put in place a revised regulatory framework for the Bharat Bill Payment Systems (BBPS). The framework aims to streamline the process of bill payments, enable greater participation, and enhance customer protection among other changes. It shall apply to NPCI Bharat Bill Pay Limited (NBBL – a wholly owned subsidiary of National Payments Corporation of India); and all Bharat Bill Payment Operating Units (BBPOUs). The revised framework shall be applicable from April 1, 2024. Refer the below link for RBI's Master Direction:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12616&Mode=0>

### **RBI Includes 'Clearing Corporation of India Ltd' as a Financial Information Provider Under Account Aggregator Framework**

The RBI Retail Direct Scheme was launched on Nov 12, 2021 to facilitate retail investors to invest in Government Securities. The Scheme enables individuals to open Retail Direct Gilt Accounts with the Bank and access the Government Securities market. Now, to enable aggregation of financial information on Government Securities held by retail investors in their Retail Direct Gilt accounts under the Scheme, RBI includes 'Clearing Corporation of India Limited' as a Financial Information Provider.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12611&Mode=0>

## SEBI



### **SEBI Proposes to Introduce an Audio-Visual Representation of Disclosures Made in Offer Documents for Public Issue**

SEBI has proposed that the disclosures made in Draft Red Herring Prospectus (DRHP) and Red Herring Prospectus (RHP) of public issues shall also be made available in Audiovisual (AV) format by the issuer companies desiring to list on the main board. The AV on the public issues will be in bilingual version i.e. English and Hindi and made available in the public domain.

This move is intended to facilitate an easier understanding of the key features of an offer and also provide reference to various disclosures of the proposed public issue. The comments on the same must be submitted by 09.04.2024.

Further, the duration of each bilingual version of the AV must be a maximum of 8 minutes. The AV must be published by the Issuer/Lead Manager within 5 working days both at the stage of submission and resubmission of DRHP. It must be made available on both digital/social media platforms of the Issuer and the Association of Investment Bankers of India (AIBI).

The web link of the said AV must be made available on the websites of Stock Exchanges and the concerned Lead Managers and must also be accessible from the QR code pertaining to the public issue. Also, lead managers to the public issue must be jointly responsible for the content and information made available in the AV.

[https://www.sebi.gov.in/reports-and-statistics/reports/mar-2024/consultation-on-draft-circular-audiovisual-av-representation-of-disclosures-made-in-the-public-issue-offer-documents\\_82385.html](https://www.sebi.gov.in/reports-and-statistics/reports/mar-2024/consultation-on-draft-circular-audiovisual-av-representation-of-disclosures-made-in-the-public-issue-offer-documents_82385.html)

### **SEBI Directs Intermediaries to Centralize FATCA and CRS Certifications at KYC Registration Agencies**

To promote ease of doing business and compliance reporting, SEBI suggests measures for the centralization of certifications under the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) at KYC Registration Agencies.



As per the new norms, SEBI has directed the intermediaries, who are reporting to financial institutions (RFI), to upload the FATCA and CRS certifications obtained from the clients onto the system of KRAs with effect from July 01, 2024.

Further, the existing certifications obtained from clients prior to July 01, 2024 must be uploaded by the intermediaries onto the systems of KRAs within a period of 90 days of the implementation of this circular. The onus of obtaining and reporting the FATCA and CRS certification and related compliances must lie with the respective intermediaries.

The intermediary must confirm the reasonableness of such certification based on the information obtained in respect of account opening, including any documentation obtained in accordance with the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and must update the self-certification, as and when, there is a change reported by the client.

Also, the KRAs must develop their systems/mechanisms in coordination with each other and follow uniform internal guidelines/standards, in consultation with the SEBI.

[https://www.sebi.gov.in/legal/circulars/feb-2024/centralization-of-certifications-under-foreign-account-tax-compliance-act-fatca-and-common-reporting-standard-crs-at-kyc-registration-agencies-kras-\\_81583.html](https://www.sebi.gov.in/legal/circulars/feb-2024/centralization-of-certifications-under-foreign-account-tax-compliance-act-fatca-and-common-reporting-standard-crs-at-kyc-registration-agencies-kras-_81583.html)

## Verdicts

### Direct Tax

Direct  
Tax

#### Act: The Income Tax Act, 1961

#### **1. Tax Deducted on Grants u/s 194C/194J Wouldn't Disentitle Assessee to Claim Sec. 11 Exemption**

Vide Decision of HIGH COURT OF Delhi  
Aroh Foundation v. Commissioner of Income-tax.

#### Facts of the case:

1. The assessee was a non-governmental organization registered as a charitable institution under Sections 12A read with 12AA



and 80G. The assessee was working to uplift the poor and underprivileged children and women, improve their health, preserve the environment, and address other social causes. The assessee receives various grants from the government and the private sector to fulfil its charitable objectives.

2. During the assessment proceedings, the Assessing Officer (AO) observed that the donor deducted tax under sections 194C and 194J while allocating requisite grants to the assessee. Contending that receipts were towards professional or technical services or contractual income and the assessee was hit by the proviso to section 2(15) of the Act, AO denied the exemption under section 11.
3. Aggrieved by the order, the assessee filed a revision petition under section 264, but all in vain. Subsequently, the assessee filed a writ petition to the Delhi High Court.

### Judgement:

1. The High Court held that the Proviso to Section 2(15) states that the advancement of any other object of general public utility involving trade, commerce, or service related to business for a fee is not considered charitable unless it's directly linked to advancing public utility, and the revenue from such activities doesn't surpass 20% of the trust's total receipts in the previous year.
2. In the instant case, the sole reason to construe the receipt by donors under the tax regime was on the assumption it was received towards professional/technical services or contractual income as tax was deducted under Sections 194C and 194J. Further, there was no element of activity in the nature of trade, commerce or business, or any activity or rendering any service in relation to any trade, commerce or business.
3. If the deductor, under misconception, deducted tax under Sections 194C and 194J, it would not disentitle the assessee to

claim benefit under Sections 11 and 12 unless the case of the assessee was specifically hit by the Proviso of Section 2(15).

4. Therefore, the proviso to Section 2(15) would not be attracted merely based on the tax deduction by the donor under a particular head, and accordingly, the writ petition was allowed.

## **2. No Sec. 194H TDS on Income of Franchisee/Distributor from Sale of Prepaid Coupons/Starter-kits.**

Vide decision of Supreme court of India in Bharti Cellular Ltd. v. Assistant Commissioner of Income-tax, Circle 57.

### Facts of the case:

1. The assessee is a cellular mobile telephone service provider. The assessee provides starter kits (SIM Cards) and prepaid coupons of a specified value at discounted prices to its distributors. Further, such SIM cards are sold by distributors to end users. The Assessing Officer (AO) considered that the difference between the discounted price and

the actual sale value is commission or brokerage. Accordingly, the AO contended that the assessee failed to comply with the provisions of tax deduction under section 194H.

2. The High Courts of Delhi and Calcutta have held that the assessee was liable to deduct tax at source under Section 194H. In contrast, the High Courts of Rajasthan, Karnataka and Bombay have held that Section 194H is not attracted.
3. The matter reached before the Supreme Court.

### Judgement:

1. The expression "direct or indirect" used in Explanation (i) to Section 194H is no doubt meant to ensure that "the person responsible for paying" does not dodge the obligation to deduct tax at source, even when the payment is indirectly made by the principal-payer to the agent payee. However, tax deduction at source in terms of Section 194H is not to be extended and widened in the ambit to apply to true or genuine business transactions, where the assessee is

not responsible for paying or crediting income.

2. In the present case, the assessee neither pays nor credits any income to the person with whom it has contracted. The word "indirectly" does not regulate or curtail how the assessee can conduct business and enter into commercial relationships. Neither does the word "indirectly" create an obligation where the main provision does not apply.

3. The legal position of a distributor is generally regarded as different from that of an agent. The distributor buys goods on his account and sells them in his territory. The profit made is the margin of difference between the purchase price and the sale price. The reason is that the distributor is an independent contractor in such cases. Unlike an agent, he does not act as a communicator or creator of a relationship between the principal and a third party. The distributor has rights of distribution and is akin to a franchisee.

4. Further franchise agreements provide a mechanism whereby goods and services may be

distributed. In franchise agreements, the supplier or the manufacturer, i.e. a franchisor, appoints an independent enterprise as a franchisee through whom the franchisor supplies certain goods or services. There is a close relationship between a franchisor and a franchisee because a franchisee's operations are closely regulated, and this possibly is a distinction between a franchise agreement and a distributorship agreement.

5. Franchise agreements are extremely detailed and complex. They may relate to distribution franchises, service franchises and production franchises. Notwithstanding the strict restrictions placed on the franchisees – which may require the franchisee to sell only the franchised goods, operate in a specific location, maintain premises which are required to comply with certain requirements, and even sell according to specified prices – the relationship may in a given case be that of an independent contractor.

6. An independent contractor is free from control on the part of his

employer and is only subject to the terms of his contract. However, an agent is not entirely free from control, and the relationship to the extent of tasks entrusted by the principal to the agent is fiduciary. The distinction is that independent contractors work for themselves, even when they are employed to create contractual relations with third persons. An independent contractor is not required to render accounts of the business, as it belongs to him and not his employer.

7. Thus, the term 'agent' denotes a relationship that is very different from that existing between a master and his servant, or between a principal and principal, or between an employer and his independent contractor. However, servants and independent contractors are parties to relationships in which one person acts for another and thereby possesses the capacity to be involved in liability. Yet, the nature of the relationship and the kind of acts in question are sufficiently different to justify the exclusion of servants and

independent contractors from the law relating to agency.

8. In other words, the term 'agent' should be restricted to one who has the power of affecting the legal position of his principal by the making of contracts or the disposition of the principal's property, viz., an independent contractor who may, incidentally, also affect the legal position of his principal in other ways.
9. Accordingly, it was held that the assessee would not be under a legal obligation to deduct tax at source on the income or profit component in the payments received by the distributors or franchisees from the third parties or customers or while selling or transferring the prepaid coupons or starter-kits to the distributors.



# Indirect Tax

## Act: Central Goods and Services Act, 2017

### **1. Duty Free Shops at Airports are Liable to Pay GST on Services Availed from Airport Authority of India**

Vide decision of HIGH COURT OF PUNJAB & HARYANA in Flemingo Duty Free Shop (P.) Ltd v. Union of India.

#### Facts of the case:

1. The petitioner was operating duty-free shops at international airports and it had entered into a concession agreement with the Airport Authority of India (AAI) to operate these shops. The agreement stipulated that the company would pay a 'license fee' to AAI. It was of the opinion that it wasn't liable to pay GST on the license fee since it was a duty-free shop.
2. The department was of the view that it was liable to pay GST on the license fees but it can claim a refund. It filed writ petition against it but divergent views emerged in 2 Judges division

bench, with one judge proposing modification to require tax payment by petitioner, while another restrained petitioner from paying GST. The matter was placed before Hon'ble Third Judge.

#### Judgement:

1. The Honorable High Court relied on the decision of Sandeep Patil v. Union of India 2020 (372) E.L.T. 794 (Bom.) and CIAL Duty Free and Retail Services Limited v. Union of India in CWP (C) No.12274 of 2020 where it was held that the operators of duty-free shops were exempt from GST on the sale of goods to passengers but liable to pay GST on the input services received.
2. The Court also pointed out that the concession agreement between the petitioner and AAI was clear and the petitioner was unequivocally obligated to pay GST on the services provided by AAI. Therefore, the Court directed the petitioner to reimburse AAI for the GST paid on its behalf, along with interest, as per the terms of the concession agreement. Thereafter,

it can claim the ITC, and then apply for a refund of the accumulated ITC from the relevant tax authorities.

## **2. Solar Panel Which Converts Sunlight into Electricity is Classifiable Under Heading No. 8541 and Taxable at 12%**

Vide Authority for Advance rulings, Uttar Pradesh, advance ruling no. UP ADRG -30/2023, dated August 25<sup>th</sup>, 2023

### Facts of the case:

1. The applicant was trading solar driven submersible water pumps and different components namely, solar panels, controller, and water pump. It filed an application for advance ruling to determine applicable tax rate on sale of solar panels and HSN code for solar panels as it would also help to determine correct classification of solar driven submersible water pumps.

### Judgement:

1. The Authority for Advance Ruling noted that the solar panels are most critical component of a solar water pump as they convert sunlight into

electricity. The panels are typically made of photovoltaic cells that convert sunlight into direct current (DC) electricity and are also known as a photovoltaic panel. Therefore, solar panels would be classifiable under Heading No. 8541 43 00 and GST would be charged at 12%.

<https://www.taxmann.com/research/gst/caselaws>

## Statutory and Tax Compliance

### Calendar of April 2024

#### GOODS & SERVICE TAX

<b>10-Apr</b>	GSTR 8 for Mar
<b>11-Apr</b>	GSTR 1 for Mar
<b>13-Apr</b>	GSTR 1 for QRMP for Jan-Mar
<b>13-Apr</b>	GSTR 3B for Mar
<b>20-Apr</b>	GSTR 5 for Mar
<b>20-Apr</b>	GSTR 5A for Mar

#### STATUTORY

<b>10-Apr</b>	Professional Tax (PT)
<b>15-Apr</b>	Provident Fund (PF), ESI Payment for Mar

#### INCOME TAX

<b>07-Apr</b>	TCS Payment for Mar
<b>30-Apr</b>	TDS Payment for Mar

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