

# Legal Update

April 24, 2021 extending the time limits for passing assessment / reassessment orders to June 30, 2021; However since this press release by Government of India was issued on 24<sup>th</sup> April 2021, respondent need not be in such a tearing hurry to pass the order impugned; The matter was remanded back for de novo consideration.

*LD/70/46; [ITAT Mumbai: I.T.A. No. 6908/Mum/2019] The Dy. Commissioner of Income Tax Vs. M/s VVF Limited, 09/08/2021*

ITAT allowed the deduction of incentive paid of Rs. 2.50 Crores to Director in recognition of his services, who held 68% shareholding; Assessee submitted that the Director played a significant role in excelling the Assessee's business and growth without drawing any remuneration for 3 years; Revenue had alleged that the special resolution was not passed in a fair and transparent manner and held the transaction to be a device to extend benefits to the Director and avoid dividend distribution tax, thus, disallowed the amount u/s 36(1)(ii); ITAT noted that if such payment was made as dividend, similar payments would have to be made to the other shareholders of the company; ITAT ruled in favour of assessee.

*LD/70/47; ITAT Delhi: I.T.A. No. 4264/Del/2018 Vardhaman Buildtech Pvt. Ltd Vs. The Asst. Commissioner of Income Tax, 03/08/2021*

ITAT held that amount of loan was not taxable where lender and recipient companies' had common substantial shareholding; Assessee-Company, had received a loan of Rs.1.18 Cr from one Vardhaman Estate and Developers Pvt. Ltd. and there was a common substantial shareholding of 25% in both companies by 4 persons; Revenue held that since Assessee availed loan from a company with common substantial shareholding, provisions of section 2(22) (e) are applicable; ITAT held that deemed dividend was chargeable to tax in the hands of the shareholders' not in the hands of assessee-company.

*LD/70/48; ITAT Delhi: I.T.A. No. 6941/Del/2017 Insta Exhibitions Pvt. Ltd. Vs. The Addl. Commissioner of Income Tax, 03/08/2021*

ITAT deletes disallowance of employees' contribution to ESI & PF for AY 2014-15 paid before the due date of return but after the date under respective law; ITAT observed that disallowance made by lower authorities was on account of the amounts being treated as income u/s 2(24); With regards to Revenue's contention that amendments of Finance Act, 2021 are applicable in instant case, ITAT refers to 'Notes on Clauses' introducing Finance Bill 2021, and holds that

amendment is effective from AY 2021-22, and thus not applicable to the year under consideration; ITAT ruled in favour of assessee.

*LD/70/49; ITAT Mumbai I.T.A. No. 4883/MUM/2014 The Income Tax Officer Vs. Braitrim India Pvt. Ltd., 19/07/2021*

Assessee, an Indian subsidiary of Braitrim UK, remitted part of sale receipts to its holding company towards recovery of proportionate share of discount passed on to the customers; Revenue held that discount / rebates were misnomer and the amount paid actually represented the income arising to the holding company remitted without deduction of tax at source and thus treated assessee as a defaulter u/s 201; Revenue also treated the Assessee as an agent of its holding company u/s 163 on the basis that there was a business connection between them; ITAT held that in absence of any income element in the sums paid, there is no obligation cast upon the Assessee to deduct tax at source u/s 195; With regards Assessee being treated as 'agent' of its holding company u/s 163, ITAT observed that CIT(A) did not deal with specific contentions raised by the assessee, and thus remitted back the matter.

*LD/70/50; ITAT Kolkata: I.T.A. No. 1055/Kol/2019 Tapan Chakraborty Vs. The Income Tax Officer, 07/07/2021*

Reopening of assessments based on AIR information held to be an invalid assumption of jurisdiction, and consequent proceedings held to be bad in law; ITAT held that the concept of assessment is governed by the time barring rule and an assessee acquires a right as to the finality of proceedings; Quietus of the completed assessments can be disturbed only when there is information or evidence/material regarding undisclosed income or AO has information in his possession showing escapement of income; Assessee-transporter being covered by presumptive scheme u/s 44AE, is not eligible for tax audit and thus, it is incumbent upon Revenue to conduct preliminary enquiry and collect some material so as to form 'a belief' that the income has escaped assessment.



## GST

*LD/70/51 [2021-TIOL-511-Cestat-Mad] M/S Hyundai Motors India Ltd Vs. Commissioner of GST and Central Excise, Commissioner of GST and Central Excise 17/08/2021*

Where service tax was not payable under reverse charge mechanism in terms of the then-existing

Rules, however, if the same was paid and CENVAT credit thereof was utilised for payment of tax, as the treatment is revenue neutral, the order for recovery of such CENVAT credit which was declared by the Department as ineligible was set aside.

***LD/70/52 [ 2021-TIOL-1812-Hc-Mad-Stj Madurai Kamaraj University Vs. Joint Commissioner 16/08/21***

Where the exemption to educational services is provided, the same is applicable not only to schools or colleges but also will be applicable for universities with whom such institutions are affiliated to, as such affiliation is integral for providing education services and hence is related to admission or conduct of examination which are exempted by Clause 9 of the mega exemption notification. Even allied activities in their campus to the service providers like Bank, Post Office, or catering etc., directly beneficial to the students, staff, and faculty of the university, are exempted as they would fall within the extended meaning of educational services provided to students, faculty, and staff under the said Clause 9.

***LD/70/53 [2021-TIOL-237-SC-GST] Union of India & Ors. Vs. VKC Footsteps India Pvt Ltd. 13/09/2021***

There is no disharmony between rule 89(5) on the one hand and section 54(3) particularly Clause (ii) of its first proviso on the other hand. The said clause only permits refund of “inputs” as defined in the GST law and not of “input services”. Accordingly, rule 89(5) in defining Net ITC to mean “input tax credit availed on inputs” does not transgress the statutory restriction which is contained in proviso (ii) of section 54(3). The challenge to rule 89(5) as a piece of delegated legislation on the ground that it is ultra vires clause (ii) of the first proviso to section 54(3) is therefore lacking in substance. Rule 89(5) is within the rule-making powers conferred under section 164 of the Act i.e., for carrying out the provisions of the Act. As the said formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on the accumulation of unutilized ITC, the same cannot be read down.

## Disciplinary Case



***Auditor signing the financial statements of a Society without ensuring its authenticity -- Held, Respondent is guilty of professional misconduct falling under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949 (as amended).***

**Held:**

In the instant case, the allegation against the Respondent is that he relied upon the unauthenticated financial statements and completed audit by relying upon the same. The Respondent in his defence stated that in the Companies Act, 2013, there is a specific requirement that before placing the accounts to the auditor for audit, the accounts should be approved and signed by at least two directors. But in case of a Society, no such provisions or rule has been made stating that accounts should be pre-approved and signed by the office bearers of the Society. The Respondent further stated that

the accounts were prepared by the Accountants of the Society. He has only audited the accounts of the Society. The Committee noted that it is a case where the Respondent has signed the financial statement of the Society as an auditor without ensuring the authenticity of the financial statements. The financial statements were not signed by any office bearers of the Society. The Respondent failed to explain as to how he checked the authenticity of the financial statements. The Committee was of the view that the Respondent as an Auditor of the Society, before signing the financial statement, was required to check as to whether it is signed by the office bearers of the Society as authentic document of the society. Though signing the unauthenticated financial statements did not impact other aspect of the financial statements but being a professional person and as per practice followed, the Respondent should have exercised prudence and should not have signed the financial statements which had not been signed by any officer bearers of the Society thereby owning up of the same. In view of above noted facts, the Committee was of the opinion that the Respondent is GUILTY of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 (as amended).

*In the matter of Mr. Sanjeev Kumar & others Vs. CA. Preetam Shah.*