

had initiated proceedings u/s 263 on the premise that AO calculated the whole income at normal rate of 30% instead of charging special rate u/s 115BBE; ITAT held that issue does not pertain to non-applicability of Section 115BBE but pertains to applicability of rate of tax u/s 115BBE and the AO erred in not applying the rate of tax as per the amended law and the order so passed is rightly held by PCIT as erroneous.

*LD/71/69 ITAT Mumbai: ITA No.510/  
Chandi/2017 State Bank of India Vs. Asst.  
Commissioner of Income Tax  
10<sup>th</sup> November 2022*

ITAT Special Bench held that deduction u/s 36(1)(viiia) read with Rule 6ABA is to be allowed on the total outstanding advances at the end of each month considering the opening balances; Revenue had held that only incremental advances made during the month can be considered while calculating the figure of 'aggregate monthly average advances'; ITAT Special Bench observes that the identical issue has been decided in favour of the taxpayer by Calcutta HC in Uttarbanga Kshetriya.

*LD/71/70 ITAT Panaji: ITA No.462/PAN/2018  
Shri Anantnath Alpasankhyatar Vividh  
Uddeshagat Souhard Sahakarí Niyamit Vs.  
The Income Tax Officer 09<sup>th</sup> November 2022*

ITAT directed CIT(A) to pass a speaking order mentioning the relevant provision if any, under which the distinction between deposits/investments held for a period of more than one year to be treated as 'Income from other sources' and for a period less than one year as 'Business income' has been drawn; CIT(A) allowed deduction under Section 80P(2) on all the interest incomes except the interest earned on long term investments/deposits made for a period more than one year; ITAT remarked that relevant distinction between the short term and long term deposits and the consequential eligibility / non-eligibility for deduction u/s 80P, is not borne out from the impugned order of CIT(A).

*LD/71/71 Delhi High Court: W.P. No. 8422/2022  
Rajesh Katyal Vs. Income Tax Department  
03<sup>rd</sup> November 2022*

High Court ruled in favor of assessee on matter of non-retrospective application of the Benami Transactions (Prohibition) Amendment Act, 2016

by quashing notice issued under Section 53; It was noted that the alleged benami transactions undertaken by the Assessee were entered prior to Nov 1, 2016 i.e. before Benami Act came into force; HC noted that the one AK Infosystems Pvt. Ltd. was the owner of the land alleged to be held benami and the concerned land properties were purchased between 2007 to 2010 and that the Assessee resigned as a director of the said company in 2008 and sold his entire shareholding in the said company on May 31, 2014.

*LD/71/72 ITAT Chennai: ITA No. 3334/Chny/2019  
Asst. Commissioner of Income Tax Vs.  
Lifecell International Private Limited  
02<sup>nd</sup> November 2022*

An appeal or claim pending before the appellate forum which was withdrawn in terms of certificate issued by VsV authority shall deemed to have been revived, the moment any of the condition stipulated in the certificate is violated; ITAT observes that although it is a legal position that any appeal pending before the appellate authorities shall be deemed to have been withdrawn from the date certificate under Section 5(1) was issued by designated authority but as per Section 4(6) the declaration under Section 5(1) shall be presumed never to have been made if any material particulars furnished in the declaration are found to be false at any stage and all the consequences under the Income Tax act shall be deemed to have been revived.



*LD/71/73[2022-TIOL-1478-HC-  
Jharkhand-GST] [10-11-2022] M/S  
Usha Martin Ltd Vs. Additional  
Commissioner CGST & CEx and Ors*

The Hon'ble Court held that as the proceedings for wrongful availment of CENVAT Credit have been initiated under Section 73 (1) of the CGST Act instead of the relevant provisions of the C.E.A. and Finance Act read with Rule 14 of the C.C.R., 2004, the same is without jurisdiction.

*LD/71/74[2022-TIOL-1398-HC-MUM-ST] [3-10-  
2022] Sodexo India Services Pvt Ltd Vs.  
The Union of India and Ors*

The High court set aside the orders rejecting the appeals on the ground that payment of pre-deposit through DRC-03 is not permissible for appeals arising under the Pre-GST law and directs CBIC to issue a suitable clarification.

## Legal Updates

*LD/71/75[2022-TIOL-1449-HC-MUM-GST [14-11-2022] M/S Sanathan Textile Pvt Ltd Vs. UoI*

The court held that Notification No.79/2017 dtd.13-10-2017 extending the exemption of IGST and Compensation Cess to import of capital goods under the valid authorisation under the EPCG Scheme is retrospective in nature and hence, the exemption was also available during the period 01-07-2017 to 12-10-2017.

*LD/71/76[2022-TIOL-1496-HC-AHM-ST [ 12-10-2022] Modern Petrofils Vs. Commissioner of Central Excise and Service Tax Vadodara-II*

The Court held that the technicalities should not come in way in permitting the party to agitate the case on merits before the court of law and directed that appeal dismissed for delay in removing the objections raised by the office of the appellate authority, was directed to be restored on removing such deficiencies.

*LD/71/77[2022-TIOL-1132-CESTAT-AHM [ 28-11-2022] Safal Construction Pvt Ltd Vs. Commissioner of Central Excise and Service Tax*

When all the parties to the co-development agreement have been assigned their respective jobs and all have performed them in favour of the joint venture in which again all the three parties are participants, it cannot be said that one of the participants while performing its job has provided any service to the joint venture.

*LD/71/78[2022-TIOL-1062-CESTAT-KOL [ 17-11-2022] M/S ITC Sonar Vs. Commissioner of CGST and Central Excise*

The third proviso to Rule 4(1) of the CENVAT Credit Rules, 2004 inserted w.e.f. 1-09-2014 which introduced a time limit for the purpose of availment of CENVAT Credit within 6 months of the date of issue of any of the documents is prospective in operation and shall not be applicable to the documents issued prior to the said date.

### Disciplinary Case

*Issuance of certificates regarding pending shipping bills without proper verification -- Held, 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.*

**Held:**

In the instant case, the charge against the Respondent is that the "Company" has submitted negative statements (certificates) regarding pending shipping bills for realization of export proceeds issued by the Respondent for the period from 01.01.2007 to 30.06.2010. However, as per XOS statement issued by the Reserve Bank of India, Mumbai, four shipping bills (were shown as pending for realization against the same party for the same period for which negative statement was issued by the Respondent. The Committee noted that the Respondent had issued various certificates for the relevant period certifying exports of the Company for export shipments. Although it is noted that XOS statement of RBI has not been made available by the Informant to the Committee, however, upon perusal of the challan for payment and SBI's certificates dated 05<sup>th</sup> December, 2013, it is noted that there were four pending bills. The Respondent pleaded that the certificates were issued by relying upon the data and documents furnished by internal CA. of the Company and other Directors. The Respondent also stated that

he had carried out random checks as the volume of papers was very high. The Committee in this regard referred to provisions of "Guidance Note on Audit Reports and Certificates for Special Purposes" (pre-revised) wherein it has been stated that "A reporting auditor should appreciate the difference between the terms 'certificate' and 'report'. A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A report, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion thereon. Thus, when a reporting auditor issues a certificate, he is responsible for the factual accuracy of what is stated therein...."

Thus, in the light of above noted facts on record, challans for payment and certificate of SBI dated 5<sup>th</sup> December, 2013, the defence of the Respondent that he merely certified based on records produced by the Company through another CA is not acceptable and accordingly, the Committee held him guilty of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for issuing the alleged certificates without applying professional skepticism and due diligence.

**File No. :** [PR/P/70/2014-DD/48/INF/2014/DC/558/2017] CA. Yuvraj Kumar Agarwala