

*LD/71/25 ITAT Mumbai: ITA No. 779/  
Mum/2022 Marvel Industries Limited Vs. The  
Dy. Commissioner of Income Tax 19<sup>th</sup> July 2022  
Income Tax*

ITAT held that CIT(A) is statutorily obliged to dispose of appeal on merits by a speaking order and that non-exercise of right to be heard cannot be a reason enough for the CIT(A) to not deal with the merits and statutory scheme does not provide for summary dismissal of appeal in disregard of the material on record; Scheme of Section 250 does not allow summary dismissal since sub-section (6) warrants CIT(A) to dispose appeal on merits; Right to be heard contained in Section 250(2)(a) is not a condition precedent for the disposal of appeal on merits in accordance with Section 250(6)

*LD/71/26 Bombay High Court: Income Tax  
Appeal No. 82 of 2018 Prin. Commissioner of  
Income Tax Vs. Kumar Builders Consortium  
18<sup>th</sup> July 2022 Income Tax*

Bombay High Court allowed pro-rata deduction under Section 80-IB(10) in respect of eligible residential units in housing project; Revenue disallowed the deduction holding that some residential units had built up area in excess of the limit prescribed in section 80-IB(10)(c), however CIT(A) and ITAT had allowed the deduction by restricting the claim to eligible units not exceeding the limit prescribed in Section 80-IB(10)(c); Words "each residential unit has a maximum built up area..." used in Section 80-IB(10)(c) clearly indicates that the intention of the legislature is to ensure that each and every residential unit which confirms the limit prescribed in Section 80-IB(10) would be eligible for deduction.

*LD/71/27 ITAT Mumbai: ITA No. 3009/Mum/2016  
Mehta Charity Trust Vs. Dy. Director of Income  
Tax (Exemptions) 13<sup>th</sup> July 2022 Income Tax*

ITAT held that Revenue was not justified in denying exemption under Section 11 where Trust received premium along with rent, which was alleged to be lower than the market rate from a company, whose promoter was one of the Trustees; Assessee's property was under possession of a Pvt. Ltd. Company in which the trustees were interested, however the company was Assessee's tenant in respect of an area of 2000 sq.ft. from the year 1994, whereas Company's promoter subsequently became the Trustee, in the year 1998;

Building under use and occupancy of the tenants was covered under the Rent Control Act, and the Assessee was only eligible to standard rent from the statutory tenants

*LD/71/28 ITAT Chennai: ITA No. 1017/Chny/2017  
George Oakes Ltd. Vs. The Asst. Commissioner  
of Income Tax 30<sup>th</sup> June 2022 Income Tax*

ITAT allowed loss on embezzlement discovered in earlier years to be written off in year under consideration, wherein Assessee realised that there was no scope of recovery of the embezzled amount; Meaning of expression 'discovery' about loss, has to be interpreted so as to mean that loss must be deemed to have arisen only when employer comes to know about the embezzlement and realizes that the amount embezzled cannot be recovered and not merely from the date of acquiring knowledge in which that embezzlement has taken place; Assessee, having finally realised that there was no scope of recovery of the said amount either from the accused or from the bank, wrote off the said amount in AY 2008-09.



### GST

*LD/71/29 [2022-TIOL-57-SC-GST] UOI  
and Ors vs Filco Trade Centre Pvt. Ltd.  
22-07-2022*

Hon'ble Supreme Court directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e., w.e.f. 01.09.2022 to 31.10.2022. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed a writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee. GSTN has to ensure that there are no technical glitches during the said time. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting the appropriate reasonable opportunity to the parties concerned. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.

## Legal Update

### *LD/71/30 [2022-TIOL-1050-HC-DEL-GST] Railsys Engineers Pvt Ltd and Anr Vs Railsys Engineers Pvt Ltd and Anr; 21-07-2022*

The extension of limitation granted by the order of the supreme court during the COVID-2019 pandemic in Writ Petition (Civil) No. 3/2020 vide Order dated 10.01.2022 would apply even to the condonable period, and not just to the prescribed period of limitation under Section 107 of the Act.

### *LD/71/31 [2022-TIOL-1003-HC-KAR-GST] M/s DPJ BIDAR vs UOI and ORS; 11-07-2022*

The payment of annuity in lieu of Toll collection rights is exempt under Entry 23A of Notification No.12/2012 CTR and Circular No.150/06/2021-GST dtd.17-06-2021 clarifying that the said annuity (deferred payment) for the construction of roads is not covered under the said exemption entry is bad in law.

### *LD/71/32 [2022-TIOL-892-HC-MAD-GST] M/S Progressive Stone Works Vs Joint Commissioner (ST); 16-06-2022*

High Court declined to exercise writ jurisdiction under Article 226 of the Constitution to set aside

the assessment orders raising demands due to a mismatch of ITC in GSTR-2A and ITC claimed by the assessee in GSTR-3B on the ground that the petitioner has an alternative remedy available and that the exceptional circumstances for admitting writ such as where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of a judicial procedure or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice etc were absent in the present case.

### *LD/71/33 [2022-TIOL-918-HC-AHM-GST] Sreejith K Prop of M/S Sridev Traders Vs State of Gujarat; 24-02-2022*

The show cause notice for cancelling the registration by mere incorporation of the relevant ground appearing in the Rules framed thereunder is held as vague and is accordingly set aside. Further order cancelling the registration based on the investigation report of some other officer in some other matter to which neither formed part of show cause notice nor disclosed to the writ applicant, is set aside as being passed in violation of principles of natural justice.

## Disciplinary Case



*Complaint against Respondent for preparing and filing of forged/ fraudulent documents with ROC due to which the shareholding pattern of the Complainant in the Company drastically reduced -Role of the Respondent limited to filing Forms 32, 5 and 2 and not related to any statutory audit - Respondent merely acted on the basis of documents/papers provided by one of the Directors -- No evidence to show malafides on part of Respondent -- Fit case for extending the benefit of doubt -- Held, Respondent NOT GUILTY of Professional Misconduct falling*

*within the meaning of Clause (2) Part IV of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949*

#### **Held:**

In the instant case, the allegation is that the Respondent had prepared and filed forged and fabricated documents of the Company with the help of one of the Directors of the Company due to which the shareholding pattern of the