EY Tax and Regulatory Alert

September 2021

Prepared for ACMA

Contents

S. No.	Particulars	Description
Part A	**Key Tax Updates**	
1.	**Goods and Services Tax (GST)**	Key Circulars and Notifications ▶ Notification No. 32/2021- Central Tax dated 29.08.2021 ▶ Notification No. 33/2021- Central Tax dated 29.08.2021 ▶ Notification No. 34/2021- Central Tax dated 29.08.2021. ▶ 45th GST Council Meeting Updates ▶ Circular No 159/15/2021- GST dated 20.09.2021. ▶ Circular No 160/16/2021- GST dated 20.09.2021. ▶ Circular No 161/17/2021- GST dated 20.09.2021. ▶ GST Council announces Inverted Duty Structure correction measures to remove anomalies.
2.	**Customs and Foreign Trade Policy**	Key Circulars and Notifications ▶ Trade Notice No 18/2021-22 dated 20.09.2021 ▶ The Union Cabinet has approved Production Linked Incentive (PLI) Scheme for Automobile sector and notified by Ministry of Heavy Industries vide Notifications S.O. 3946 (E) and 3947 (E) dated 23rd September 2021 ▶ Notification No.26/2015-2020 dated 16.09.2021 ▶ Notification no. 75/2021-Customs dated 23.09.2021 ▶ Notification no. 76/2021-Customs dated 23.09.2021 ▶ Notification 29/2015-2020 dated 23.09.2021
3.	**Direct Tax**	Key circulars and notifications ▶ CBDT notifies methodology for computing taxable interest on employees' contribution to provident fund in excess of prescribed threshold ▶ CBDT provides broad contours for handling proceedings by Jurisdictional AO if transferred from faceless regime and also prescribes rule for authentication of records under faceless assessment proceedings ▶ CBDT further extends due dates for furnishing of income-tax returns and various audit reports for tax year 2020-21 ▶ CBDT directs to exclude set-aside and reassessment/assessment proceedings from faceless assessment ▶ CBDT grants few extensions relating to linking of Aadhaar with PAN, completion of penalty proceedings under ITL

Part B	Judicial Precedents	
	Goods and services Tax (GST)	
1.	**M/s Anjali Enterprises [Odisha AAR TS-377-AAR(OD)-2021-GST]**	Ruling wherein the AAR held that a two or three-wheeled "battery powered electric vehicle" when supplied with or without battery pack is classifiable under HSN 8703 as an 'electrically operated vehicle' and is taxable at 5% GST.
2.	**M/s Tata Motors Ltd [Gujrat AAR- GUJ/GAAR/R/39/2021]**	Ruling wherein the Authority had held that Section 17(5)(b)(i) followed by a provisio which ends with a semi colon is to be read as sub-clause independent of sub clause Section 17(5)(b)(iii) and its proviso.
	Direct Tax	
1.	**Palak Khatuja & others v. Union of India [Chhattisgarh High Court]**	Chhattisgarh High Court sustained validity of reassessment notice issued in June 2021 following erstwhile procedure of reassessment
2.	**Sakthi Metal Depot [(2021) 130 taxmann.com 238 (SC) Supreme Court]**	SC holds that gains arising on transfer of depreciable asset will be qualified as short-term capital gains
3.	**GE India Industrial Private Lin [[2021] 129 taxmann.com (Karnataka HC)]**	Karnataka HC rules amalgamating company is liable to pay advance tax for period from appointed date till date of sanction of amalgamation scheme by NCLT
4.	**South Indian Bank Ltd [[2021] 130 taxmann.com 178 (SC)]**	SC upholds beneficial allocation theory where tax-free investments are made from mixed funds

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of September 2021

- **Notification No. 32/2021- Central Tax dated 29.08.2021** is issued by CBIC to extend the filing of FORM GSTR-3B and FORM GSTR-1/ IFF by companies using electronic verification code (EVC), instead of Digital Signature certificate (DSC) to 31st October, 2021. It was earlier enabled for the period from 27.04.2021 to 31.08.2021

- **Notification No. 33/2021- Central Tax dated 29.08.2021** is issued by CBIC to extended the time-limit upto which amnesty for reduced late fee in respect of GSTR 3B (not in respect of GSTR 1 & GSTR 4) can be availed. The last date to avail the late fee Amnesty Scheme is now extended to 30th November, 2021 instead of 31st August, 2021.

- **Notification No. 34/2021-Central Tax dated 29.08.2021** issued by CBIC where a registration has been cancelled under Section 29(2)(b) or 29(2)(c) [Non filing of returns] of CGST Act and the time limit for making an application of revocation of cancellation of registration under section 30(1) of CGST Act falls during the period from the 1st March, 2020 to 31st August, 2021, the time limit for making such application shall be extended upto the 30th September, 2021.

- **The GST Council in 45th meeting held on 17th September 2021 has inter-alia made the following major recommendations relating to changes in GST rates on supply of goods and services and changes related to GST law and procedure.**

- Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended up to 30.9.2022, w.e.f 1.10.2021 unless otherwise stated.

- Further, Certain relaxations have been made in conditions relating to IGST exemption relating to import of goods on lease, where GST is paid on the lease amount, so as to allow this exemption even if such goods are transferred to a new lessee in India upon expiry or termination of lease and the lessor located in SEZ pays GST under forward charge, w.e.f 1.10.2021 unless otherwise stated.

- Earlier, the Government has notified that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest to be paid on “ineligible ITC availed and utilized” and not on “ineligible ITC availed”. It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017.

- Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards.

- Circular in order to remove ambiguity has been issued in relation to interpretation of the term “merely establishment of distinct person” in condition (v) of the Section 2 (6) of the IGST Act 2017 for export of services. A person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for considering a supply of service as export of services;

- Further, w.e.f. 01.01.2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of CGST Act, 2017;

- There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules, 2017.

- **<u>Measures for streamlining compliances in GST</u>**

- Aadhar authentication of registration to be made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.

- Late fee for delayed filing of FORM GSTR-1 to be auto-populated and collected in next open return in FORM GSTR-3B.

- Rule 59(6) of the CGST Rules to be amended with effect from 01.01.2022 to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.

- Rule 36(4) of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified, to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF and are communicated to the registered person in FORM GSTR-2B.

- **<u>Circular No 159/15/2021- GST dated 20th September,2021</u>** issued by CBIC, in relation to the clarification on doubts relating to scope of "Intermediary" where there is broadly no change in the scope of 'Intermediary services' in GST regime vis-à-vis Service Tax regime, except addition of supply of securities in definition of 'Intermediary' under the GST Law. It lays out the primary requirements for intermediary services i.e. (i) presence of minimum 3 parties, (ii) 2 distinct supplies of main supply (between 2 principals) and ancillary supply (facilitating main supply between 2 principals), (iii) the intermediary service provider must have only a 'supportive role' and thus, must have the characteristics of an agent, broker or any other similar person, (iv) does not include a person who supplies such goods or services or both or securities on own account; Intimates that, sub-contracting for a service is an important exclusion from intermediary service.

- **<u>Circular No 160/16/2021- GST dated 20th September,2021</u>** issued by CBIC, clarifying certain issues in relation to the GST Council meeting held, summarized as:

- W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.

- For availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.2021.

- There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules (E-invoice).

- Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC.

- **<u>Circular No 161/17/2021- GST dated 20th September,2021</u>** issued by CBIC, in relation to the clarification that supply of services by a subsidiary/sister concern/group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013, to establishments of said foreign company located outside India would not be barred by condition (v) of sub-section (6) of section 2 of IGST Act 2017 for being considered as 'export of services'. It further explains that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities and accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".

- **GST Council announces Inverted Duty Structure correction measures to remove anomalies**

- Council in its meeting agreed to implement formula to have Inverted Duty structure (IDS) correction for textiles and footwear sector from January 1, 2022. It further, proposes increase in GST rates on Railway Parts/ Pens parts/specified renewal devices to sort out inversion issues and eliminate need for such sectors to claim refund on account of IDS.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of September 2021

- **Trade Notice No 18/2021-22 dated 20.09.2021** was issued by DGFT for informs that all Importer Exporter Codes (IECs) which are not yet updated shall now be de-activated. However, it adds that the concerned IEC holders are provided one final opportunity to update their IEC in this interim period till October 05, 2021. This de-activation activity is being initiated in a phased manner and is in continuation with the mandate of DGFT to all IEC holders to ensure that details in their IEC is updated electronically every year during April-June period (for which no user charges will be borne by the IEC holder)

- It further advises that any IEC so de-activated, would have the opportunity for automatic re-activation without any manual intervention or a physical visit to the DGFT RA. Also, suggests IEC holders to navigate to the DGFT website for IEC re-activation after October 06, 2021.

- Public Notice 58/2015-2020 would be initiated by the jurisdictional RAs.

- **The Union Cabinet has approved Production Linked Incentive (PLI) Scheme for Automobile sector** and has been notified by Ministry of Heavy Industries vide Notifications S.O. 3946 (E) and 3947 (E) dated 23rd September 2021, wherein the salient features of the scheme are as follows:

- **Objective**: To make India a Global Champion and to achieve Atmanribharata while promoting 'Make in India';
- **Total Outlay**: 25,938 Crores
- **Policy Period**: The tenure of the Scheme is for 5 years starting from FY 2022-23 to FY 2026-27
- **Target Sectors**:

- **OEM**: Battery electric vehicles and hydrogen fuel cell Vehicles of all segments
- **Auto Component**: Advanced automotive technology components of vehicles, CKD/SKD kits, vehicle aggregates of 2-wheelers, 3-wheelers, passenger vehicles, commercial vehicles, tractors etc.

- The scheme has two components viz.
  - **Champion OEM Incentive Scheme**: Applicable on Battery Electric Vehicles and Hydrogen Fuel Cell Vehicles of all segments;
  - **Component Champion Incentive Scheme**: Applicable on Advanced Automotive Technology components of vehicles, Completely Knocked Down (CKD)/ Semi Knocked Down (SKD) kits, Vehicle aggregates of 2-Wheelers, 3-Wheelers, passenger vehicles, commercial vehicles and tractors etc.
  - **Quantum of Incentives**:
    - Incentive of 13%-18% on net incremental sales of eligible products over base year for auto OEM
    - Incentive of 8%-13% on net incremental sales of eligible products over the base year for auto component
    - Additional 5% incentive for specified components of battery electric vehicle and hydrogen fuel cell vehicles.
    - The window for receiving applications through the Notice Inviting Applications will be for a period of 60 days.

- **<u>Government announces disbursement of the benefits under various export promotion schemes</u>** a recent Press Release issued by the Ministry of Commerce & Industry announcing allocation of funds by Central Government for various export promotion schemes. The key announcements are:

  - INR 56,027 crores is allotted in the current financial year for disbursement of pending export incentives under various schemes viz., Merchandise Exports from India Scheme (MEIS), Service Exports from India Scheme (SEIS), Rebate of State Levies (RoSL), Rebate of State and Central Taxes and Levies (RoSCTL), Remission of Duties and Taxes on Exported Products (RoDTEP) and other legacy schemes like Target Plus etc.
  - The above stated amount is over and above the budgeted outlay of INR 12,454 crores for RoDTEP and INR 6,946 crores for RoSCTL scheme already announced for exports made in FY 2021-22.
  - The amount would be disbursed to more than 45,000 exporters, out of which, 98% are small exporters in the Micro, Small & Medium Enterprises (MSME) category.
  - Service sector exporters will be able to claim SEIS benefits for FY 2019-20. Revisions in service categories and rates are being notified.
  - Eligible exporters are required to file export claims relating to earlier years by 31 December 2021. The online portal will be enabled shortly to accept scrip-based applications and would be integrated with a mechanism to monitor provisioning and disbursement of export incentives.

- **<u>Notification No.26/2015-2020 dated 16.09.2021</u>** was issued by DGFT to extend the last date for submitting online applications for Scrip based FTP Schemes and validity period of Duty Credit Scrips. The same stands revised to 31st December, 2021 for the following schemes as mentioned:

  - For MEIS (for exports made in the period (s) 01.07.2018 to 31.03.2019, 01.04.2019 to 31.03.2020 and 01.04.2020 to 31.12.2020)

  - For SEIS (for service exports rendered in FY 18-19 and FY 2019-20)

  - For 2% additional ad hoc incentive (under para 3.25 of the FTP – for exports made in the period 01.01.2020 to 31.03.2020 only)

  - For ROSCTL (for exports made from 07.03.2019 to 31.12.2020) and

  - For ROSL (for exports made upto 06.03.2019 for which claims have not yet been disbursed under scrip mechanism).

  - After 31.12.2021, no further applications would be allowed to be submitted and they would become time-barred. Late cut provisions shall also not be available for submitting claims at a later date.

- Further, the validity of any scrip issued under FTP from the date of this notification have been notified to be 12 months from the date of issue.

- **<u>Notification No.75/2021 - Customs dated 23 Sept 2021</u>** - Vide this Notification, the Electronic Duty Credit Ledger Regulations, 2021 have been notified. Key provisions from these regulations are listed below:

  - Once the claim is allowed, a scroll for duty credit will be generated by the proper officer in the customs automated system ("CAS"). The scroll details, including the details of shipping bill or bill of export, duty credit allowed and date of generation of scroll, shall be visible in the CAS to the exporter.

  - The exporter shall have the option to combine the duty credits, in one or more shipping bills or bills of export, and to carry forward the said duty credits to create an e-scrip in the ledger, customs station-wise, within a period of one year from the date of generation of the scroll in the CAS.

  - If the exporter does not exercise the said option of creating the e-scrip within the said period of one year, duty credit in each scroll will be combined customs station-wise and will be automatically created as a single e-scrip, for each customs station, in the ledger of the said exporter.

  - The e-scrip shall be automatically registered on the customs station of export and separate application for the same shall not be required to be filed.

  - The e-scrip shall be valid for a period of one year from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilized at the end of this period shall lapse.

- **<u>Notification No.76/2021 - Customs dated 23 Sept 2021 -</u>** As per the notification, the duty credit under RoDTEP scheme shall be subject to several conditions. Some of the conditions are listed below for ease of reference:

  - The duty credit will be issued against claim under the Scheme made by an exporter by providing the appropriate declaration at the item level in the shipping bill or bill of export in the customs automated system;

  - The value of the said goods for calculation of duty credit to be allowed under the Scheme shall be the declared export FOB value of the said goods or up to 1.5 times the market price of the said goods, whichever is less;

  - The claim will be allowed by Customs upon necessary checks, including on the basis of risk evaluation through appropriate selection criteria, and after filing of export manifest or export report.

  - Such duty credit shall be used for payment of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975 i.e. Basic Customs Duty only.

  - The duty credit allowed under the Scheme against export of goods notified in the Appendix shall be subject to realization of sale proceeds in respect of such goods in India within the period allowed under the Foreign Exchange Management Act, 1999, failing which such duty credit shall be deemed to be ineligible.

- **<u>Notification 29/2015-2020 dated 23.09.2021 -</u>** Vide this notification, DGFT notifies list of sector wise eligible services and respective rates under Service Exports from India Scheme (SEIS) for services rendered in FY 2019-20.

- Provides that a limit on total entitlement under SEIS has been imposed for service exports rendered in period ranging from April 1, 2019 to March 31, 2020 and capped at Rs. 5 cr per IEC;

- Apprises that facility to claim benefits under SEIS on payments in INR shall not be available for said FY;

- Intimates that deadline for submission of SEIS application for said FY shall be December 31, 2021 and applications will become time-barred after such period.

Direct Tax

Part-A Key Direct Tax update

1) CBDT notifies methodology for computing taxable interest on employees' contribution to provident fund in excess of prescribed threshold

Background

- Section (S.) 10(11) of the Income Tax Act (ITA) exempts any payment (including accumulated interest) from a PF to which the Provident Fund Act, 1925 applies or any other notified PF set up by the Central Government.

- S. 10(12) of the ITA exempts accumulated balance due and becoming payable to an employee participating in a "recognized" PF in specified circumstances like employee having rendered continuous service with employer for at least five years or, alternatively, employment being terminated due to reasons beyond the control of the employee such as ill-health, discontinuation of business by employer etc. The "recognized" PF includes statutory PF set up under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) or a privately managed PF set up by an employer for its employees, which obtains exemption from operation of EPF Act and approval from the tax authority.

- The PFs referred to in S.10(11) and 10(12) of the ITA are, hereinafter, referred to as qualifying PFs for the sake of brevity.

- FA 2020 made employer's contribution to National Pension Scheme (NPS), recognized PF (RPF) and approved superannuation fund (SAF), in excess of INR 0.75m taxable as perquisite in the hands of the employees in the year of contribution. It also made annual accretions on such excess contributions taxable as perquisite. By inserting new Rule 3B, the CBDT notified the mechanism of computing such annual accretions attributable to excess employer's contribution. These amendments are applicable from tax year 2020-21 onwards.

- The object of the above referred amendments was to reduce vertical inequity between: (a.) Taxpayers who earn high level of income and, hence, are able to make higher tax-free contributions to such retirement funds, resulting in higher tax savings. (b.) Taxpayers who earn low level of income and, hence, are unable to make higher tax-free contributions of such funds.

- In the same vein, in respect of employee's contribution to qualifying PFs made on or after 1 April 2021, FA 2021 withdrew exemption for interest accrued on contributions in excess of INR 0.25m (INR 0.50m) where there is no employer's contribution). The computation of taxable interest on excess employees' contributions was to be prescribed by rules.

- Pursuant thereto, the CBDT has issued the Notification which inserts the Rule in the Income Tax Rules, with effect from tax year 2021-22 onwards.

<u>Maintenance of separate accounts within PF for taxable and non-taxable contributions</u>

- The Rule mandates maintenance of separate accounts within the PF from tax year 2021-22 onwards for taxable contribution and non-taxable contribution made by a person.

- The non-taxable contribution account shall be the aggregate of:

  (i) Closing balance in the account as on 31 March 2021.
  (ii) Any contribution made by the person in the account during tax year 2021-22

and subsequent years, which is not included in the taxable contribution account.
(iii) Interest accrued on amounts referred in (i) and (ii) above,
as reduced by the withdrawal, if any, from such account.

- The taxable contribution account shall be the aggregate of:

  (i) Contribution made by the person during tax year 2021-22 and subsequent years, which is in excess of the threshold limit.

  (ii) Interest accrued on amount referred in (i), as reduced by the withdrawal, if any, from such account.

- The interest which will not qualify for exemption shall be interest accrued during the tax year in the taxable contribution account.

- The threshold limit for excess contribution is INR 0.25m (INR 0.5m where there is no employer's contribution)

2) CBDT provides broad contours for handling proceedings by Jurisdictional AO if transferred from faceless regime and also prescribes rule for authentication of records under faceless assessment proceedings

Background

Faceless Assessment under the ITL

- Faceless Assessment provisions authorize the NFAC to transfer ongoing cases to the JTA at any stage of the assessment, if considered necessary, with prior approval of the CBDT.

- Similar provisions exist in the Faceless Penalty Scheme (FPS), 2021 as well for transfer of cases to the Jurisdictional Tax Authority (JTA), which empowers the NFPC to transfer the proceedings to the JTA at any stage of the proceedings, if considered necessary, with prior approval of the CBDT.

Furthermore, Faceless Assessment provisions require the taxpayer to authenticate the electronic records in the following manner:

Category	Class of taxpayer	Manner of authentication of electronic record under Faceless Assessment
1	Taxpayer who are required to furnish their tax return using digital signature	Digital signature
2	Other taxpayers	(A) Digital signature; or (B) Electronic Verification Code (EVC) in the prescribed manner

- Faceless Assessment provisions and FPS do not provide any specific procedure for handling assessment or penalty proceedings by the JTA once it is transferred from the faceless regime to the JTA. Now, the CBDT, vide the Circular, has laid down broad contours for handling these proceedings by the JTA post transfer of the case by the NFAC or the NFPC.

- Furthermore, the CBDT introduced a new rule, vide the Notification, laying down the manner of authentication of electronic records under EVC for specified taxpayers (i.e., Category 2 in the above table) for the purpose of Faceless Assessment provisions. Thereafter, the CBDT issued the Press Release for extending the benefit of the new rule to all other taxpayers.

Circular

- The JTA is required to complete assessment or penalty proceedings once it is transferred by the NFAC (under Faceless Assessment) or NFPC (under FPS) following broad contours to the extent technically feasible:
  - The JTA is to conduct proceedings electronically, except for cases where the taxpayer does not have e-filling account or registered e-mail to communicate with the JTA. Alternatively, the JTA is required to endeavor to get the e-filling account of the taxpayer registered and then conduct the proceedings electronically.
  - Generally, the JTA is required to grant personal hearing on request of the taxpayer, with prior approval of the superior tax authority once a written submission is made. Personal hearing may be conducted through video conference. If video conference facility is not available, personal hearing may be conducted in a designated area in the tax department and such proceedings may be recorded.
  - The JTA may use faceless processes (under Faceless Assessment provisions under the ITL), such as verification Units for online verification or technical units for technical inputs etc., while conducting the proceedings.
  - The superior tax authority is compulsorily required to be involved in finalization of the assessment or penalty.
  - The JTA is required to consider the proceedings already conducted under Faceless Assessment provisions under the ITL or under FPS before the case is transferred to the JTA and then go ahead for further proceedings.

Notification

- For the purpose of authentication of records submitted under Faceless Assessment provisions by the taxpayer via EVC, the CBDT introduced a new rule under the ITL.
- It is now provided that any electronic records submitted through registered account of the taxpayers on the tax department's portal shall be deemed to have been authenticated by the taxpayer by EVC.
- The rule is effective from 6 September 2021.

Press Release

- The benefit of the new rule of deemed authentication is applicable to taxpayers of Category 2 in the aforesaid table. However, the CBDT, vide the Press Release, clarifies that the benefit of the new rule shall be available to all taxpayers (i.e., also to taxpayers who were earlier required to authenticate electronic records only through digital signature, such as corporate taxpayers, taxpayers who are required to get their accounts audited etc.). Necessary legislative amendment in this regard will be carried out in due course.

3) CBDT further extends due dates for furnishing of income-tax returns and various audit reports for tax year 2020-21

Background

- In wake of the second wave of the ongoing pandemic of COVID-19, the CBDT had extended the due date for various compliances under the Income Tax Laws (ITL) vide Circular No. 9/2021 dated 20 May 2021.
- Further, CBDT provides extension in the due dates of the following compliances on the part of the taxpayer as under:

S.No.	Particulars	Normal due date as per ITL	Last extended due date	Revised due date as per CBDT Circular
A	**In relation tax returns:**			
1	Taxpayers who are required to furnish transfer pricing report (including partners of a taxpayer being a firm who is covered in this category)	30 November 2021	31 December 2021	28 February 2022
2	Taxpayers who are required to get their accounts audited (including partners of a taxpayer being a firm who is covered in this category) and not covered in Sr. No 1 above	31 October 2021	30 November 2021	15 February 2022
3	Other taxpayers not covered in Sr. 1 or 2 above (e.g. individuals, firms not liable to audit etc.)	31 July 2021	30 September 2021	31 December 2021
4	Belated/revised tax returns	31 December 2021	31 January 2022	31 March 2022

S.No.	Particulars	Normal due date as per ITL	Last extended due date	Revised due date as per CBDT Circular
B	**In relation to audit/transfer pricing reports:**			
5	Tax audit report	30 September 2021	31 October 2021	15 January 2022
6	Transfer pricing report in respect of international/specified domestic transactions	31 October 2021	30 November 2021	31 January 2022

- The due date for payment of SA tax, not exceeding INR0.1m, without interest has been correspondingly extended till the revised due date of filing of tax return for taxpayers at Sr. Nos. 1 to 3 above. This relief is not available where SA tax exceeds INR0.1m.

4) CBDT directs to exclude set-aside and reassessment/assessment proceedings from faceless assessment

Background

- With the advent of the use of technology by the Central Government, the CBDT, in September 2019, had launched the Faceless Assessment Scheme, 2019 (Faceless Scheme) for automation of assessment proceedings under the ITL.

- The CBDT, vide its order dated 13 August 2020, had directed that with effect from 13 August 2020, all assessment orders are to be mandatorily passed only under the Faceless Scheme, except in the following two classes of cases:

  - Assessment orders in cases assigned to central charges.

  - Assessment orders in cases assigned to international tax charges.

- Subsequent to incorporation of the Faceless Scheme in the ITL (Faceless Assessment), vide The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TTAOLB 2020), CBDT issued an order prescribing similar scope of Faceless Assessment to all assessment proceedings under the ITL (except for two classes of cases as aforesaid).

- In furtherance to the aforenoted order, the CBDT, through its later order, further excluded assessment proceedings from Faceless Assessment where pendency could not be created on Income tax business application (ITBA) portal because of technical reasons or cases not having a PAN.

- The CBDT, vide the present order dated 22 September 2021, in view of technical/procedural constraints, further excluded certain other cases from the scope of Faceless Assessment.

- In addition to earlier exclusions, in view of technical or procedural constraints for completing assessments in a time-bound manner as per the procedure laid down under Faceless Assessment, the CBDT directs to also exclude the following cases from the scope of Faceless Assessment:

  - Assessment orders in cases set aside to be done de novo; or

  - Assessment orders in cases of reassessment proceedings.

- The aforesaid exclusion is restricted to cases where proceeding is pending with the Jurisdictional Tax Authority as on 11 September 2021 or thereafter and the time limit for completion of such proceedings expires on 30 September 2021.

- Accordingly, the assessment/reassessment proceedings with respect to cases which are excluded vide the present order are to be completed by the Jurisdictional Tax Authority.

5) CBDT grants few extensions relating to linking of Aadhaar with PAN, completion of penalty proceedings under ITL

CBDT has further extended the due dates for various compliances as follows:

Compliance pertaining to	Erstwhile disruption period	Erstwhile compliance date	Extended disruption period	Extended compliance date
Passing of penalty order under Chapter XXI of ITL	20 March 2020 to 29 September 2021	30 September 2021	20 March 2020 to 30 March 2022	31 March 2022
Issuance of notice and passing of order under Benami Law	20 March 2020 to 30 June 2021	30 September 2021	No change	31 March 2022

- Furthermore, the sunset date for linking of Aadhaar with PAN has been extended from 30 September 2021 to 31 March 2022.

Part B- Case Laws

Goods and Service Tax

1. M/s Anjali Enterprises [Odisha AAR TS-377-AAR(OD)-2021-GST]

Subject Matter: Ruling wherein the AAR held that a two or three-wheeled "battery powered electric vehicle" when supplied with or without battery pack is classifiable under HSN 8703 as an 'electrically operated vehicle' and is taxable at 5% GST.

Background and Facts of the case

- The applicant deals in battery powered Electric Two wheelers, as a dealer. The applicant purchases vehicles from M/s Omjay Eeve Ltd., Badchana under the brand name 'EEVE'. During transportation, the batteries are not fitted with the vehicle though they are transported together.
- The applicant was planning to manufacture similar batter powered electric vehicle, thus, they needed they required clarification whether fitting of the battery is mandatory in battery powered electric vehicle while selling the same to the dealers for getting the benefit of 5% GST rate applicable for electrically operated vehicle.
- In respect of the above, the following question was placed before the AAR:
- Whether fitting of battery is mandatory n two & three wheeled battery powered electric vehicle (hereinafter referred to as 'subject goods') while selling the same to the dealers for getting the benefit of 5% GST rate applicable for electrically operated vehicles?

Discussions and findings of the case

- The applicant had submitted that the only difference between the goods supplied with batteries and the ones without batteries is that, battery is not there in the latter one. Otherwise the goods without batteries are complete in itself to act as an agent of transportation which is propelled by a motor.
- The applicant referred to the case of **Reva Electric Car Company Ltd [2012 (275) ELT 488 (GOI)]** wherein it was held that even if the cars are not fitted with batteries, the same is classifiable as battery powered road vehicle.
- The Authority had referred to the definition of electrically operated vehicle as elucidated in explanation to Entry No 242 A of Schedule-1 to notification no01/2017- central tax (rate) dated 28.06.2017 which states that the said vehicles are "vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include e-bicycles".
- Accordingly, the authority held that vehicles will run solely on electrical energy derived from one or more electrical batteries, as and when put to use.
- The Authority also contended that the judgement in the case of **Reva Electric Car Pvt Ltd[2012 (275) ELT 488 (GOI)]** would be relevant in this case, hence, held that fitting of a battery in the vehicle, before or at the time of supply is not a precondition for the same to be classified as electrically operated vehicle.

Ruling

- In light of the above observations by the Authority, it was held that two or three-wheeled “battery powered electric vehicle” when supplied with or without battery pack is classifiable under HSN 8703 as an ‘electrically operated vehicle’ and is taxable at 5% GST

2. M/s Tata Motors Ltd [Gujrat AAR-GUJ/GAAR/R/39/2021]

Subject Matter: Ruling wherein the Authority had held that Section 17(5)(b)(i) followed by a provisio which ends with a semi colon is to be read as sub-clause independent of sub clause Section 17(5)(b)(iii) and its proviso.

Background and Facts of the case

- The Applicant had arranged canteen services for their employees in office premises and such services are provided by a third party vendor.
- For this purpose, the Applicant deducted a nominal amount from the employees’ salary for using such services. It does not retain any profit margin in this activity of collecting employees’ portion of canteen charges.
- The difference between amount paid to service provider and amount recovered from employees is a cost to company and treated salary cost.
- In respect of the above, the following questions were placed before the AAR:
  - Whether input tax credit (ITC) available to Applicant on GST charged by service provider on canteen facility provided to employees working in factory?
  - Whether GST is applicable on amount recovered by Applicants from employees for usage of canteen facility?
  - If ITC is available, whether it will be restricted to the extent of cost borne by the Applicant (employer)?

Discussions and findings of the case

- The Authority referred to the Section 17(5)(b) of the CGST Act,2017 to determine the admissibility of Credit on the GST paid on canteen services.
- The authority observed that clause of Section 17(5)(b)(i) ends with colon : and is followed by a proviso and this proviso ends with a semicolon.
- The Authority contended that Colons and semicolons are two types of punctuation. Colons are used in sentences to show that something is following, like a quotation, example, or list, whereas, semicolons are used to join two independent clauses/ subclauses, or two complete thoughts that could stand alone as complete sentences. That means they're to be used when one is dealing with two complete thoughts that could stand alone as a sentence.
- It was held by the Authority that semicolon creates a wall for conveying mutual exclusivity between the sub-clauses, in present matter.
- The Authority further contended that Section 17(5)(b)(i) followed by a provisio which ends with a semi colon is to be read as sub-clause independent of sub clause Section 17(5)(b)(iii) and its proviso. Thereby, the provisio to section 17(5)(b)(iii) is not connected to the sub-clause of Section 17(5)(b)(i) and cannot be read into it.

Ruling

- Basis the above observations, the AAR held that ITC on GST paid on canteen facility is blocked under Section 17(5)(b)(i) of the CGST Act and is inadmissible to the applicant.

- Further, GST, at the hand of the applicant, is not leviable on the amount representing the employees' portion of canteen charges, which is collected by the applicant and paid to the canteen service provider.

Part B – Case Laws

Direct Tax

1. **Palak Khatuja & others v. Union of India [Chhattisgarh High Court]**

Subject matter: Chhattisgarh High Court sustained validity of reassessment notice issued in June 2021 following erstwhile procedure of reassessment

Background

In relation to provisions for reassessment under Income Tax Law (ITL):

- FA 2021 has brought new provisions for conducting reassessment proceedings under the ITL (hereinafter referred as new regime of reassessment). The new regime of reassessment is made effective from 1 April 2021.

- Under the new regime of reassessment, Tax Authority is required to (a) conduct pre-notice inquiry on the basis of information in Tax Authority's possession which suggest that income has escaped assessment (b) provide an opportunity to taxpayer to support why reassessment should not be done and (c) pass an order if Tax Authority proceeds for issuing notice for reassessment. There is obligation on Tax Authority to obtain approval from higher authorities at multiple stages under the new regime of reassessment.

In relation to The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020:

- With a view to relieve various compliance burdens of taxpayers who were going through an unprecedented health and economic crisis due to the onset of the COVID-19 pandemic as also on Tax Authority, the Parliament had enacted Relaxation Act to relax various compliances under various laws including IT both for taxpayers and Tax Authority.

- As aforesaid, the Relaxation Act provided for certain relaxation on the part of Tax Authority as well. From ITL perspective, it provided that where time limit for completion of any proceedings, passing order, issuance of notice, intimation, notification, sanction, approval or by whatever name called which falls between 20 March 2020 to 31 December 2020 (Disruption Period), then compliance done in that regard on or before 31 March 2021 (Compliance Date) shall be considered as being compliance within the due date.

- The Relaxation Act has granted powers to Central Government (CG) for further extending the Disruption Period or Compliance Date, if required.

Facts of the case:

- Taxpayer had furnished tax return for tax year 2014-15 and no addition was made during initial scrutiny.

- Subsequently, Tax Authority had issued a notice for reopening of assessment for tax year 2014-15 on 30 June 2021 (within the time limit as extended by various notifications under Relaxation Act).

- Notice was issued as per provisions under earlier regime and without conducting pre-notice inquiry as required under the new regime of reassessment which was effective from 1 April 2021. Therefore, Taxpayer filed the writ petition before the HC challenging the validity of said notice.

Taxpayer's contention before the HC:

- Notice was issued without following the mandatory procedure laid down under the new regime of reassessment of pre-notice inquiry and granting an opportunity to taxpayer and is invalid. The notice was issued following the old regime of reassessment which was not on the statute books as on the date of issuance of such notice.

- Notifications issued by Ministry of Finance (MOF under Relaxation Act cannot override provisions of ITL as substituted vide FA 2021 with effect from 1 April 2021 to extend the period of operation of old regime of reassessment.

Tax Authority's contentions before the HC:

- Due to pandemic and lock down of all activities including the normal working of office, lot of difficulties were being faced by taxpayers and Tax Authority. Therefore, MOF, in exercise of power under the Finance Act issued the notification whereby the application of old regime of reassessment was extended till 30 June 2021.

HC's order:

The HC upheld the validity of notice issued in June 2021 by Tax Authority following the procedure of old regime of reassessment on following grounds:

- Due to COVID-19 pandemic and extended lock-down in the country, the Parliament had enacted Relaxation Act. Under the Relaxation Act, any time limit specified or prescribed or notified under ITL between 20 March 2020 to 31 December 2021 (or such further date which may be notified by CG) can be extended. The necessity occurred because of the COVID-19 pandemic lock down in the backdrop of the fact that taxpayers/Tax Authority could not perform their respective functions.

- Considering this complexity, the Parliament thought it is proper to delegate to the MOF to decide the date of applicability of the amended provision. This delegation is not a self-contained and complete act and is only been made in the interest of flexibility and smooth working of the law and out of practical necessity.

- The notifications issued under the Relaxation Act stated that the old regime of reassessment as in force as on 31 March 2021 was saved till 30 June 2021. Consequently, applicability of new regime is deferred till that date.

- It is a settled proposition that any modification by the Executive implies certain amount of discretion and to be exercised with the aid of the legislative policy of the act and cannot travel beyond the essential features, identity, structure or policy of an act. Therefore, this legislative delegation which is exercised by MOF by way of notifications to uphold the mechanism as prevailed in March 2021 was held not to be in conflict with any act and notifications issued by MOF would be the part of legislative function.

- The HC relied on the decision of Supreme Court in the case of A. K. Roy v. Union of India to support the proposition that power to provide an effective date of an amendment is not an essential power and the same can be delegated to executives though executives cannot make any amendment in the provisions of the law.

- Under the doctrine of conditional legislation, the legislature can give power to executives to decide in what circumstances the law should become operative or when the operation should be extended. In the present case, by delegation of power to specify the extended date to MOF (with conferment of the power to CG), the main purpose of Finance Act is not defeated.

- By effect of such notifications, the individual identity of power to issue notices under the old reassessment regime, which was prevailing prior to amendment and insertion of the new procedure to issue notices for reassessment was insulated and saved till 30 June 2021.

2) **Sakthi Metal Depot [(2021) 130 taxmann.com 238 (SC) Supreme Court]**

Subject matter: SC holds that gains arising on transfer of depreciable asset will be qualified as short-term capital gains

Background

- Under the provisions of the ITL, the assets in respect of which the same rate of depreciation is prescribed is clubbed as a block and depreciation is allowed on the block and not on individual assets. Furthermore, where all the assets comprised in the block of assets are sold or the sale value of any asset/s sold exceeds the value in the block comprising residuary assets, provisions relating to capital gains are triggered.

- The ITL has made a special provision for computing capital gains under the block concept. Against sale consideration (net of expenses incurred in relation to transfer), the ITL allows, by way of deduction, written down value (WDV) of a block of assets.

- To that extent, the special provision deviates from the normal manner of computation of capital gains under the ITL which, amongst other things, allows deduction for cost of asset and benefit of indexation if the asset transferred is long term in nature. Additionally, the special provision also makes capital gains so computed as deemed to be capital gains arising from transfer of short-term capital assets. Deeming fiction applies regardless of the holding period of the capital asset transferred under the block of assets (special provision).

Facts

- The Taxpayer was engaged in business, with the principal place of business at Kochi and a branch at Mumbai. The Taxpayer acquired a flat in Mumbai in tax year 1973-74 and used it as a branch office. The amount paid for acquisition of the flat was capitalized in the books of account of the Taxpayer.

- The Taxpayer claimed depreciation on the said flat from tax years 1973-74 to 1994-95 (i.e., 21 years) and the same was allowed as deduction while computing income under the ITL. The Taxpayer discontinued to claim depreciation on the said flat from tax year 1995-96 and reflected the flat as an investment in its balance sheet.

- Though it is not clear from the ruling, it seems that the flat was the only asset in the block of building assets.

- The Taxpayer sold the said flat in tax year 1997-98, which resulted in a huge profit and under the ITL, such gain was offered to tax as long-term capital gains. This was claimed on the ground that the Taxpayer had stopped using the flat for business purposes after tax year 1994-95 and no depreciation was claimed for two years. Accordingly, the special provision applicable to the case of depreciable assets does not apply. Since the flat otherwise qualified as a long-term capital asset, the resultant capital gains were long-term in nature.

- The tax authority did not accept the Taxpayer's contention and held that the gain arising from transfer of the flat as a depreciable asset was taxable as short-term capital gains under the special provision of the ITL.

- Aggrieved, the Taxpayer filed an appeal before the first appellate authority (FAA) which confirmed the tax authority's contention.

- Aggrieved, the Taxpayer filed an appeal before the Income Tax Appellate Tribunal (Tribunal) which accepted the Taxpayer's claim for long-term capital gains solely on the basis that in the balance sheet, the flat was reflected as an investment and, hence, gains arising on investment (which qualified as long-term capital asset) was long-term capital gains.

- Aggrieved by the Tribunal's order, the tax authority filed an appeal before the HC which upheld the tax authority's contention.

- Aggrieved, the Taxpayer filed an appeal before the SC.

SC 's Ruling

The SC upheld the HC's view that the gains arising from transfer of the flat, being depreciable asset, shall be short-term capital gains. The SC noted and approved the following reasoning of the HC:

- The special provision under the ITL mandates that a depreciable asset in respect of which depreciation has been allowed when sold, should be assessed to tax as short-term capital asset.

- Unlike other capital assets, the special provision provides a separate mechanism for computation of cost of acquisition and other expenditure allowable for computing gains arising on transfer of a depreciable asset.

- The Taxpayer acquired the flat in tax year 1973-74 and claimed depreciation as a business asset for a period of 21 years up to tax year 1994-95. Such flat continued to be a business asset, as well as a depreciable asset. Depreciable asset forming part of a block cannot cease to be part of the block merely because, in one or two years, it was not used for business purposes.

- The reflection of the flat as an investment in the balance sheet was not relevant and such recharacterization was to avoid payment of tax on short-term capital gains on sale of the flat.

- As long as the Taxpayer continued business, the flat formed part of a block and would retain the same character, irrespective of the fact that the flat was not used for the purpose of business during some intervening years and no depreciation thereon during the period was claimed and allowed.

- Instead of selling the flat, had the Taxpayer started reusing the flat for business, the Taxpayer would have been entitled to claim depreciation thereon.

3) GE India Industrial Private Limited [[2021] 129 taxmann.com 122 (Karnataka HC)]

Subject Matter: Karnataka HC rules amalgamating company is liable to pay advance tax for period from appointed date till date of sanction of amalgamation scheme by NCLT

Background

- S.207 to 209 of the ITA cast obligation on the Taxpayer to pay advance tax during the financial year on estimated current year's income and where tax liability on such income exceeds INR 10,000.

- S. 211 of the ITA requires the Taxpayer to pay specified percentage of advance tax amount in four instalments during each financial year on specified due dates.

- S. 210 of the ITA empowers Tax Authority to pass order requiring taxpayer to pay advance tax specifying instalments amount payable.

- There is no specific provision under ITA which deals with obligation of amalgamating and amalgamated company to pay advance on income arising between appointed date and sanction date.

- In case of succession of business (otherwise than on death of the taxpayer), S.170 of ITA provides that the predecessor shall be assessed for income up to the date of succession and the successor shall be assessed in respect of the income after the date of succession.

- Typically, amalgamation schemes provide that on and from the appointed date till the effective date (i.e. when NCLT order approving amalgamation scheme is filed with the Registrar of Companies), the amalgamating company will carry on business in trust for the amalgamated company and all profits & losses during such period will belong to the amalgamated company.

Facts of the case

- Taxpayer, a private limited company, was engaged in business of export. During the tax year 2016-17, the Taxpayer entered into scheme of amalgamation with another group company with appointed date of 1 April 2016. The scheme of amalgamation was approved by NCLT on 20 March 2017 (i.e. sanction date).

- During the intervening period from 1 April 2016 to 20 March 2017, the tax authority issued notices for non-payment of quarterly advance tax instalments on the Taxpayer. The Taxpayer argued that, under scheme of amalgamation as sanctioned by NCLT, it ceased to exist from the appointed date i.e., from 1 April 2016, and the fact that NCLT sanctioned the scheme on 20 March 2017 did not impact operation of scheme from the appointed date.

- It argued that upon sanction of scheme, the amalgamation becomes effective from appointed date and hence, demand raised for intervening period is not in accordance with ratio of SC decision in case of Marshal Sons & Co. (India) Ltd. v. ITO and PCIT v. Maruti Suzuki India Ltd.

- Tax authority rejected the Taxpayer's submission on ground that the Taxpayer was in existence till sanction date i.e., 20 March 2017 and until then it was an independent company.

- Being aggrieved by order under passed u/s.210 and demand notices, Taxpayer filed writ petition before Karnataka High Court.

Issue before HC

Whether the Taxpayer is liable to pay advance tax instalments on income earned during intervening period from appointed date till sanction date?

HC Ruling

- Dismissing the Taxpayer's writ petition, the HC held that the advance tax is applicable on current year's income. The Taxpayer is liable to pay advance tax instalments for intervening period as the current year's income is not earned as in capacity of amalgamated company but as individual company in its own capacity.

- The Taxpayer is not required to pay last instalment of advance tax. However, it cannot escape first three instalments (i.e., on 15thJune, 15th September and 15th December) of advance tax on the ground that it ceased to exist from appointed date.

- Furthermore, the HC distinguished SC ruling in the cases of Marshall Sons and Co. (India) Ltd and Maruti Suzuki India Ltd (supra) relied upon by the Taxpayer. As per HC:

- In the case of Marshall & Sons and Co. (India) Ltd., the SC held that scheme of amalgamation took effect from date of sanctioning of scheme. Hence, even in present case, the scheme of amalgamation would be effective only from date of sanction by NCLT and until then, it would be liable to pay advance tax.

- Even as per decision of Maruti Suzuki India Limited, the Taxpayer company lost its existence only on 20 March 2017 on sanction of amalgamation scheme by NCLT.

4) South Indian Bank Ltd [[2021] 130 taxmann.com 178 (SC)]

Subject Matter: SC upholds beneficial allocation theory where tax-free investments are made from mixed funds

Background & Facts of the case

- In the batch of appeals before the SC for tax year 2000-01, there were common facts represented by the lead case of South India Bank Ltd. In that case, the Taxpayer, a scheduled bank, had made investment in bonds, securities and shares in course of normal banking business. It earned exempt income in the form of interest and dividend.

- The Taxpayer had not maintained any separate accounts for tax-free investments and investments which gave rise to taxable income. Hence, it was not possible to easily identify expenditure incurred for exempt income.

- The tax authority made proportionate disallowance of interest expenditure attributable to exempt income on the ground that since the Taxpayer had earned substantial income from exempt income, it can be inferred that the Taxpayer may have incurred substantial expense to earn such income.

- While the first appellate authority upheld the contentions of the tax authority, the income tax appellate tribunal ruled in favor of the Taxpayer deleting the disallowance made by tax authority on pro-rata allocation of interest expenditure.

- The tribunal held that since interest-free funds available with the Taxpayer in the form of surplus funds and reserves was more than tax-free investments made; the Taxpayer's business is indivisible; tax-free investment is in nature of stock-in-trade, it can be presumed that tax-free investment were not made out of interest-bearing funds.

- However, on further appeal by the tax authority, the Kerala High Court (HC) reversed the order of the tribunal. Hence, the Taxpayer appealed before the SC.

Issue before SC

Whether proportionate disallowance of interest paid by the Taxpayer can be made under s.14A for exempt interest and dividend earned from tax-free investments given that the Taxpayer held sufficient interest-free own funds which were higher than the amount of tax-free investments made?

SC Ruling

- The SC ruled in Taxpayer's favor and held that if tax-free investments are made out of mixed funds and the Taxpayer has interest-free funds available larger than tax-free investments, then it can be presumed that tax-free investments are made using interest-free funds and hence, disallowance of interest expense under s.14A is not permissible.

Theory of beneficial allocation of funds:

- The SC noted the legislative history of s.14A. It observed that while s.14A was introduced with retrospective effect from 1 April 1962, the proviso inserted by Finance Act, 2002 has neutralized the retrospective effect of s.14A.

- Thus, s.14A is essentially applicable to tax year 2000-01 onwards and for pending assessments for past tax years as on date of enactment of s.14A.

- The SC held that in a situation where the Taxpayer has mixed funds (made up partly of interest-free funds and partly of interest-bearing funds) and tax-free investment is made from such mixed funds, the tax-free investment must be considered to be made from interest-free fund. The Taxpayer has the right of appropriation of mixed funds and also the right to assert from what part of the fund a particular investment is made. It is not permissible for the tax authority to make an estimation of a proportionate figure. In this regard, the SC approved similar ratio laid down in Bombay HC rulings in the cases of PCIT v. Bombay Dyeing and Mfg. Co Ltd. and CIT v. Reliance Industries Ltd. and other HC rulings.

No mandate under ITL to maintain separate books of accounts:

- Rejecting the HC's basis for sustaining disallowance on the ground of absence of separate accounts for tax-free investments, the SC held that there is no statutory compulsion to maintain separate accounts for different types of funds.

- On this point, the SC distinguished the earlier SC decision in the case of Honda Siel Power Products Ltd. v. DCIT relied by the tax authority.

- The said case dealt with taxpayer's responsibility to fully disclose all material facts in relation to expenditure incurred for earning exempt income in the course of assessment proceedings to preclude initiation of reassessment. The decision is not an authority for legal obligation on the taxpayer to maintain separate books of accounts for tax-free income.

<u>Reference to Maxopp Investment and Godrej & Boyce decisions:</u>

- The SC took note of its earlier rulings in the case of Maxopp Investments Ltd. v. CIT and Godrej & Boyce Manufacturing Co Ltd. v. DCIT. In the first case, the SC held that disallowance cannot be made in respect of tax-free investments held as stock-in-trade since such investment is made to earn taxable business profits from trading and not to earn exempt dividend income which is received by quirk of fate of holding the shares on the date of declaration of dividend. In the second case, the SC held that where taxpayer claims investment to be made from interest-free funds, it is necessary for the tax authority to establish that expenditure is incurred in earning of exempt income.

Our offices

Ahmedabad
2nd floor, Shavlik Ishaan
Near. C.N Vidyalaya
Amba wadi
Ahmedabad – 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
12th & 13th floor
“U B City” Canberra Block
No.24, Vital Malia Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)

Ground Floor, ‘A’ wing
Devisee Chambers
11, O’Shaughnessy Road
Langford Gardens
Bengaluru – 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

Chandigarh
1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai
Tidal Park
6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salami
Tar Amani, Chennai – 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR
Golf View Corporate
Tower – B
Sector 42, Sector Road
Gurgaon – 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Atrocity New Delhi – 110 037
Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA - 201 304
Gautam Bodh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Hyderabad
Oval Office
18, labs Centre
Hitech City, Madhapur
Hyderabad – 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur
1st Floor,
Shanti Niketan Building
Holding No. 1, SB Shop Area
Bistoury, Jamshedpur – 831 001
Tel: + 91 657 663 1000

Kochi
9th Floor “ABAD Nucleus”
NH-49, Maraud PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22, Camaca Street
3rd Floor, Block C”
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 6615 3750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor Block B-2
Nylon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune
C—401, 4th floor
Pinch-hit Tech Park
Yeravda (Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

For more information, please visit
www.ey.com/india

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/india.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camaca Street, 3rd Floor, Block C, Kolkata - 700016

- This work product has been prepared by EY LLP on the basis of a scope of work agreed with the Automotive Components Manufacturers’ Association of India (ACMA), and does not purport to be all-inclusive or to contain any information that a prospective reader may expect or desire. Accordingly, if made available to ACMA’s members or any other person or entity, this work product is solely for their information and should not be used, circulated, quoted, relied upon, or otherwise referred to for any other purpose, nor included or referred to in whole or in part in any document without EY LLP’s prior written consent.
- The information in this document has been printed on the basis of data from various EY subscribed databases, media reports, publicly available information, internal data and other reliable sources believed to be true. While every effort is made to ensure the accuracy and completeness of information contained, EY LLP takes no guarantee and assumes no liability for any errors or omissions of the information.
- Due to the dynamic nature of the subjects covered by this document, readers of this document are cautioned that (a) any information contained in this document may not be current after the date hereof, and (b) any forward-looking statements are not predictions and may be subject to change without notice.
- Information in this publication is intended to provide only a general outline of the subjects covered, on the basis of a scope of work agreed with ACMA. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. EY LLP accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.
- This disclaimer forms an integral part of this work product.

EY contacts for ACMA Knowledge Partnership:

- Rakesh Batra, National Automotive Sector Leader – rakesh.batra@in.ey.com / +91 124 464 4532