

February 2024

# INMACS **TIMES**



# Table Of Contents

## Sr. No. Contents

- 01 [Nfra Plans Annual Auditor's Inspection](#)
- 02 [Bhartiya Nagrik Suraksha Sanhita \(bnss\), 2023](#)
- 03 [Empowering Women Through Legal Vigilance](#)
- 04 [Singhania Family Saga: Inter Religeon Marriage- Unfolding Legal Issues, Amidst Wealth, Relationship & Trusts](#)
- 05 [Provisions Regarding Stay Of Tax Demand Under Income Tax Act](#)
- 06 [Understanding The Applicability Of Sec.115bbe On Income Disclosed During Surveys, Search & Seizure](#)
- 07 [Understanding The Legal Dynamics Of Wills: A Comprehensive Overview](#)
- 08 [Latest Business Developments](#)
- 09 [Important Tax Judgements](#)

# 01 NFRA PLANS ANNUAL AUDITORS' INSPECTION




The National Financial Reporting Authority (NFRA) is planning to annually undertake inspection of major audit firms, including Big Four's to gauge their compliance with stipulated standards and processes, seeking to put in place an oversight mechanism of this kind for the first time.

The regulator's plan comes after it released, late in December 2023, inspection reports on deficiencies in the audit processes of major firms such as BSR & Co, Deloitte Haskins & Sells, SR Batliboi & Co, Price Waterhouse Chartered Accountants LLP and Walker Chandniok & Co.

NFRA's proactive approach to conducting annual inspections of major audit firms reflects a commitment to upholding the integrity and transparency of financial reporting, thereby reinforcing confidence in the Indian corporate ecosystem.

# 02 BHARTIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been passed by parliament to replace the Criminal Procedure Code (CrPC); key changes are listed below:

- **Property attachment and Seizure provision** (Section 107): That allows a police officer to apply to a court or a judicial magistrate (with the approval of the Superintendent or Commissioner of Police) for attachment of certain properties obtained directly or indirectly, as a result of criminal activity or the commission of any offence, or which are 'proceeds of crime' [The word 'proceeds of crime' is as defined in Sanhita [Section 111].
- 
- **Electronic Trial and Electronic Communication**, jurisdiction in the case of Electronic Communication have also been provided for in BNSS.
  - **Trial to be held against a person deemed an 'absconder'** even if he is not present. All a court needs to do is record reasons in writing and proceed with the trial. The proclaimed absconder has no right to appeal until he appears before the appellate court, and no appeal allowed after three years from the date of judgment.
  - In accordance with the provisions of CrPC, an accused individual is eligible for release on a personal bond once they have served half of maximum imprisonment period, except in cases where the offence carries the penalty of death; now the BNSS introduces modification to the same specifying that 'this right shall not be applicable to individuals involved in offences punishable by the imprisonment and those facing proceedings in more than one offence'.
  - **Medical Examination:** BNSS seeks to expand the authority to request such examination to any Police Officer.

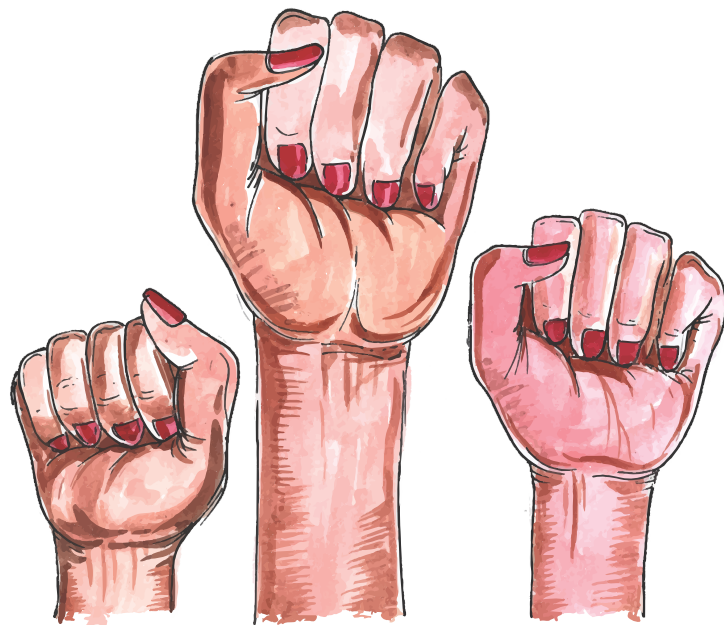


- A newly incorporated provision stipulates that offenses carrying a minimum of 7 years of imprisonment must undergo forensic investigation
- In continuation of the same, forensic experts will conduct on-site visits to crime scenes, collecting relevant evidence and documenting the procedure using a mobile phone or any other electronic device. In cases, where a state lacks forensic facilities, it is mandated to utilize the facilities of another state.
- BNSs broadens the provision to encompass the collection of finger impressions and voice samples [from those who have not undergone arrest].
- **Section 20 of BNSs** introduces the concept of Directorate of prosecution has been introduced for each of the states to establish (with a prescribed hierarchy) with the stated purpose of monitoring cases by scrutinizing police reports, expediting proceedings and providing opinions on filling of appeals, wherever applicable.
- **Arrest restriction: Section 35 of the BNSs now consolidates Section 41 and Section 41A** of the CrPC into one section- in relation to arrest in case of an offence punishable for less than 3 years and where a person is infirm or above 60 years of age, an arrest can be made only if an officer not below the rank of Deputy Superintendent of Police grants prior permission for such arrest.
- **Handcuffs permitted only in serious and heinous offences such as organized crime, terrorists:** Under Section 43 of the BNSs, a police officer is permitted to use handcuffs when arresting an accused in certain cases, mostly relating to serious and heinous offences such as organized crime, terrorists, etc.
- **Police to inform the relatives of a woman: Section 43 (1) of the BNSs**, an obligation has been cast on the police to inform the relatives of a woman where she is being held and information about such arrest.
- **Section 51 (3) of the BNSs** introduces an obligation upon a medical practitioner to forward without delay the examination report of an accused to the investigation officer.

- **Section 172 of the BNSS**, a newly inserted provision which casts an obligation on persons to confirm to the lawful directions of a police officer in the fulfillment of any of his duty pertaining to the preventive action of the Police.
- **Another change is found in Section 174 (4) corresponding to the Section 154 (4) of the CrPC**-provides that the complainant may file an application to the magistrate to register an FIR only if the Superintendent of Police does not investigate the case.
- Under **Section 174 (1)** augmented by introducing a time period of a fortnight for a police officer to forward the daily diary report to the Magistrate.
- **Charges to be framed within 60 days:** In relation to framing of charges, a timeline of 60 day has been specified under Section 251 (b) of the BNSS for the Sessions judge from the date of the first hearing to frame of the CrPC in writing a charge against the accused.
- **Judge shall give a judgment within 30 days: Section 275 (1) of the BNSS (Corresponding to Section 235 (1))** provides that after hearing arguments and points of law, the judge shall give a judgment within 30 days from the completion of arguments. Which may for specific reasons, extend to a period of 60 days.
- **Upload a copy of the judgment on its portal within 7 days: Section 392 of the BNSS** provides that the Court shall upload a copy of the judgment on its portal within 7 days from the date of the judgment.
- **Conclusively**, the unification of the provisions of CrPC in the BNSS is a good step towards efficient enforcement and clarity in the application of the offenses. The use of audio-visual and technological methods for conducting various processes during trials and investigations, as well as the implementation of tougher timetables, is a much-needed improvement.

## 03 EMPOWERING WOMEN THROUGH LEGAL VIGILANCE

“In the relentless pursuit of gender equality, it is imperative to empower woman with the knowledge and support necessary to protect their rights and interests. Women have long been engaged in a ceaseless battle for their rights, a battle that transcends centuries. The world we inhabit is rife with disparities in the burdens faced by women. Unfortunately, the world often underestimates their capacity for leadership, independence, objectivity and



profound reasoning. Women's empowerment entails an environment devoid of violence and gender discrimination, where women enjoy equal rights in the community, society and workplace. India grapples with the harsh reality that a significant portion of its women do not feel safe in the streets, workplaces, markets or even their homes”

**An all-encompassing assessment of women's laws** underscores the need to enhance the implementation and unwavering adherence to various acts and provisions aimed at safeguarding the well-being of women in the workforce. Strategies need to be devised to bolster women's capacity and empower them to mitigate the adverse social and economic consequences arising from globalization.

With respect to the applicability of '**Prevention of woman against sexual harassment at workplace**' (POSH Act, 2013), the court clarified that there was no legal bar on the Central Complaints Committee to look into the allegations levelled in the second complaint. It further added, that 'Since strict and technical rule of evidence' cannot be understood in a narrow technical sense as to include only that evidence adduced in a regular court of law when a person is examined

as a witness by administering oath. In sensitive matters such as sexual harassment and misconduct, there is an obligation to look into the entire evidence of the complainant that inspired confidence. Sexual harassment in any form at the workplace must be viewed seriously and the harasser should not be allowed to escape from the clutches of law. We say so because the same humiliates and frustrates a victim of sexual harassment, more particularly when the harasser goes unpunished or is let off with a relatively minor penalty. Sexual harassment is a pervasive and deeply rooted issue that has plagued the societies worldwide. It has been a matter of serious concern and the development of laws to combat sexual harassment is a testament to the nation's commitment towards addressing its problem. It is through the lens of the law that we can truly achieve gender equality and empower women to realize their full potential.



**The critique** to seek a menstrual leave for women and female students, wherein it could be a disregard towards hiring women at workplace; in continuation of the same, Supreme Court directed the Central Government to implement a uniform policy on menstrual hygiene including the distribution of free menstrual pads to students. Conclusively, it is through the lens of the law that we can truly achieve gender equality and empower women to realize their full potential.

## **BREAKING LEGAL BARRIERS**

“In a choice and a will of a woman to exercise residential choice at her natal home should not be viewed through patriarchal prism to deny her the residential status. There is a notion that a married woman completely abandons her native place and assumed her husband's place as her only place of residence. If a married woman chooses to live between her natal home and marital home on account of her employment, business or otherwise nothing can prevent her to exercise her option”

Furthermore, the amendment of 2005 to the Hindu Succession Act (this law was amended to include daughters as coparceners by birth carrying the same rights and responsibilities as sons), 1956 which has conferred coparcenary rights to the women, equivalent to that of men, is a quintessence of another reform in law relating to women empowerment.



However, the unwavering certitude in marginalisation of women, so deeply entrenched in Society, is perceived to be imperilled by the prospect of a woman taking the position of Karta in an HUF, a role that was traditionally assumed by men.

Enlightening the right of a divorced woman who was not allowed to adopt a child solely on the ground that she was a working lady and won't be able to give proper care and attention to the adoptive child.

It is well settled that when it comes to disciplinary proceedings, it is the inquiry authority and the disciplinary authority who could be said to be the fact-finding

authority and the courts in exercise of their powers of judicial review should not sit in appeal and appreciate the evidence or substitute its own findings, particularly those pertaining to matrimonial aspects (maintenance, adoption, succession etc.) and sexual harassment. For instance, a medical termination of on-going pregnancy was refused solely on the bases that the length of the pregnancy has crossed twenty-four weeks. But the Court under

Article 142 of the Indian Constitution has power to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

On the other hand it is imperative to understand the critique of the same, in respect of a wife's plea for maintenance under Section 125 CrPC, and she ends up blocking a substantial source of income of her husband. This clearly amounts to an abuse of process of law and is also against the interests of justice, the Court has to ensure that none of the parties suffer injustice. It is pointed out that enhancement of maintenance after blocking a substantial source of the husband's income is plainly against the interests of justice and abuse of the process of law. While moulding relief, the Court can go to the extent of relaxing



the application of law to the parties or exempting altogether the parties from the rigours of the law in view of the peculiar facts and circumstances of the case. This being so, it is clear that courts have the duty to do complete justice in a case when found necessary.

Conclusively, the advancement of women's rights is not only a moral imperative but also a legal one.

## 04 SINGHANIA FAMILY SAGA: INTER RELIGEON MARRIAGE- UNFOLDING LEGAL ISSUES, AMIDST WEALTH, RELATIONSHIP & TRUSTS

In the midst of a high-profile legal saga involving Raymond Ltd.'s prominent figurehead Gautam Singhania and his estranged wife Nawaz Modi Singhania, the family dynamics have become contentious, tracing back to Vijayapat Singhania's bitter property disputes with his son Gautam. Vijayapat's 2015 decision to transfer a substantial stake in Raymond to Gautam stemmed from a

lawsuit by his grandchildren challenging a 1998 family settlement.

The fallout left Vijayapat regretful and financially strained, leading to a plea for possession of a Bombay property. Adding to the complexity, Gautam publicly declared his separation from Nawaz after 32 years of marriage, citing baseless rumours. The legal intricacies involve constitutional rights, including the Special Marriage Act and Parsi Marriage and Divorce Act of 1936. The on-going legal

battle delves into spousal maintenance claims and the potential establishment of a family trust proposed by Gautam. Nawaz's reported demand of 75% of Gautam's alleged \$1.4 billion net worth adds further complexity, raising concerns about the discretionary power vested solely in Gautam as the managing trustee.

In the realm of marriage and religious identity, as determined by the Supreme



Court, that staunchly upholds an individual's constitutional prerogative to choose a spouse and exercise religious freedom. Emphasizing fundamental rights enshrined in Articles 19, 21, and 25 of the Constitution, the verdict underscores the autonomy and privacy integral to matrimonial and faith affairs. It affirms the principle that a woman's religious affiliation remains distinct from her husband's post-marriage.

The Special Marriage Act facilitates unions between individuals of diverse faiths, allowing them to preserve their religious identity, with the selection of a life partner and adherence to religious practices resting exclusively within individual discretion.

**Parsi laws:** Regarding maintenance rights, the Parsi Marriage and Divorce Act delineate provisions for the restitution of conjugal rights, permanent alimony, and



maintenance, empowering the court to issue orders based on the financial capacity of the parties involved, subject to modification or rescission under specific circumstances. In matters of succession, the Parsi Marriage and Divorce Act govern property distribution and inheritance among Parsis, while the Special Marriage Act grants individuals the choice between their religion's succession laws or the Indian Succession Act, 1925.

Analysing the family settlement between Nawaz Modi and Singhania, the prospect of establishing a family trust emerges as a viable option, providing asset protection, managerial flexibility, and a streamlined succession process without the need for probate. Nonetheless, a potential drawback arises from the husband's retained control as the managing trustee, necessitating meticulous consideration of its implications. In the examination of pertinent aspects within the Hindu legal framework in the on-going case, the relevance of the Gotra concept is deemed inconsequential, given the non-tracing of Parsis' lineage from the Hindu fold.

While the Hindu custom of Saptapadi holds significance in assessing marriage validity, the seven vows (Vachan) undertaken during Saptapadi do not expressly address matters of religious conversion or inter-faith marriages. In Hindu marriages involving individuals from different religions, such as Jain and Sikh, the imperative conduct of ceremonies like Saptapadi or Anand Karaj is stipulated for the marriage's validation. It is crucial to note that such ceremonies do not inherently imply a change in the religious identity of the spouses. Conclusively, the case intertwines family dynamics, financial stakes, and legal complexities, reflecting a multifaceted situation within the Singhanian family.

stipulated for the marriage's validation. It is crucial to note that such ceremonies do not inherently imply a change in the religious identity of the spouses. Conclusively, the case intertwines family dynamics, financial stakes, and legal complexities, reflecting a multifaceted situation within the Singhanian family.



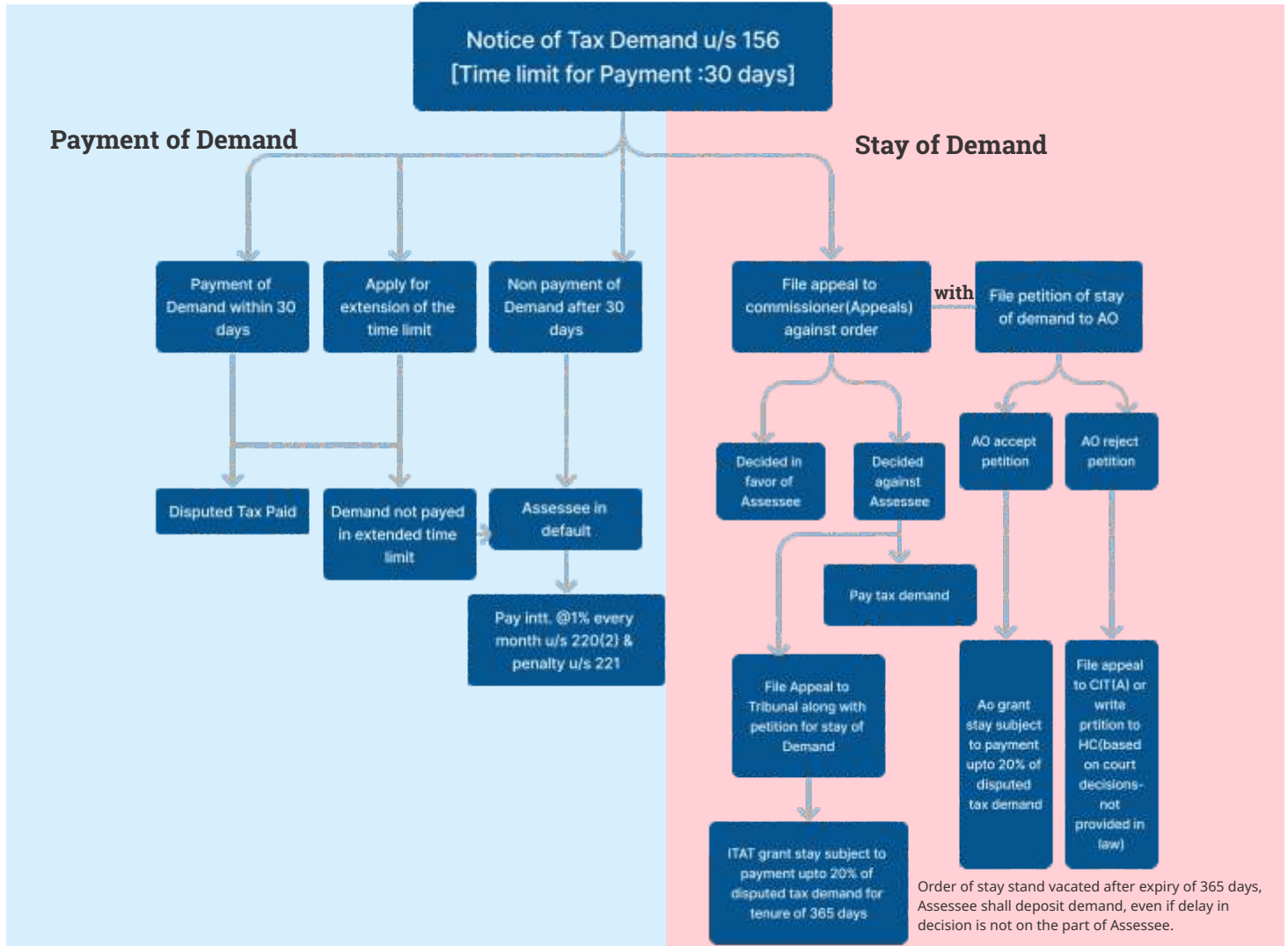
## 05 PROVISIONS REGARDING STAY OF TAX DEMAND UNDER INCOME TAX ACT

After the completion of the Assessment/Penalty proceedings, in the cases where the Assessing Officer has difference of opinion on interpretation of law or facts /explanations as offered by the assessee during the assessment/penalty proceedings, the Assessing officer proposes the addition in income and issues assessment/penalty order under the respective sections of the Income Tax Act, 1961 (hereinafter referred as "the Act") along with notice of demand u/s 156 of the Act.

This article provides guidelines on dealing with such Notice of Demand in light of provisions of Income Tax Act and legal decisions pertaining to stay or recovery of tax demands.



## A. Provisions of Income Tax Act:



## B. Instructions of CBDT in regard of stay of demand

In order to provide relief to the assesses during pendency of appeal before CIT(A), Instructions dated 29.02.2016 were issued wherein it was provided as a general rule that in the cases where outstanding demand is disputed before CIT(A), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of disputed demand. The Assessing Officer was also given a discretion to direct for payment of higher or lower amount in deserving cases with the approval of Pr. Commissioner / Commissioner. It was also provided in the circular that in case the assessee is not satisfied with the decision of the Assessing Officer for making payment of 15% of the disputed demand, he can approach the Pr. Commissioner / Commissioner for review of the decision.

These Instructions were revised on 31.07.2017. It was stated that rate of 15% was found to be on the lower side which revised to 20% of demand. The aforesaid Instructions dated 31.07.2017 are in force at present. In the light of

aforesaid Instructions, the Assessing Officers are insisting on payment of 20% of the demand in all the cases irrespective of the merits of the case or quantum of the demand.

### C. Legal decisions pertaining to stay or recovery of tax demands

**No automatic grant of stay of demand** (Paulsons Litho Works 208 ITR 676(Mad)) Mere filing or pendency of appeal before Commissioner (Appeals) does not constitute automatic stay of the order under challenge or recovery of tax or penalty under dispute in such appeal.

#### **Stay of demand on payment of amount less than 20%**

Commissioner is not bound by administrative circulars issued by the CBDT and can grant stay of demand on payment of an amount less than 20% (Civil Appeal No. 6850 of 2018 – PCIT vs LG Electronics India Pvt Ltd)

**AO to judicially use discretion on stay petition:** Courts have held that AO discretion on decision of stay petition is coupled with duty and must be exercised in a just, reasonable and fair way.

The High Court in the case of KEC International Ltd. 251 ITR 158(160) has given guidelines to the Income tax authorities which should be kept in mind while deciding the stay application

- Conflicting decisions of High Court on subject matter
- Grounds of appeal
- Financial position of the Assessee
- Proof of appeal

#### **AO power to curtail payment of 30 days**

Though proviso to section 220(1) empowers AO to grant period shorter than 30 days in Notice of Demand for making payment, AO cannot curtail the period of 30 days without valid reasons recorded in writing.

In Mahindra and Mahindra Ltd. v. Assessing Officer (2007) 295 ITR 43 (Bom) (High Court), the court held that, no coercive / recovery action should be taken till the



expiry of the appeal period against the said order is over.

### **HC grants refund of Tax Recovered in excess of 20% against disputed Demand**

Rajasthan High Court directs AO to refund the excess amount being 80% of the demand that is already recovered from the petitioner. The AO is entitled to keep 20% of the demand (Ram Gopal Sharma Vs ITO (Rajasthan High Court)).

### **AO to release refund beyond 20% of tax demand even if 65% of demand adjusted by CPC**

The Gujarat High Court held that as per the CBDT's guidelines, AO is required to grant stay of demand till disposal of the First Appeal where the outstanding demand is disputed before the CIT (Appeals) on payment of 20% of the disputed demand. The only reason given by the AO for denying the request of the assessee was that the adjustment of the refund against the demand was done by the CPC system. This approach on the part of AO was not endorsable. AO was directed to refund the excess amount adjusted beyond the 20% demand raised (Neo structo construction pvt ltd vs Assistant Commissioner of Income Tax department).

### **Delhi HC restricts Set-off of Tax Refunds Against Disputed Demands at 20%**

In case of Jindal Stainless LTD vs DCIT (Deputy Commissioner of Income Tax), HC held that adjustment of outstanding tax demands against refunds should not exceed 20% of the disputed amount.



# 06 UNDERSTANDING THE APPLICABILITY OF SEC.115BBE ON INCOME DISCLOSED DURING SURVEYS, SEARCH & SEIZURE

## Background:

Any income received by an assessee in the previous year, for which the source is known and accounted, is subject to income tax under the particular head under which that source of income falls. Issues arise when the source of income is unknown or hidden from the revenue. In order to charge income tax on such unaccounted income, the parliament introduced Section 115BBE in the Income Tax Act, 1961 through the Finance Act of 2012. The objective of section 115 BBE of the Income Tax Act was to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit.

The provisions of Sec.115BBE was held to be applicable from the assessment year 2013-2014. This section contains "Tax on income in nature of cash credits, unexplained investments, money, expenditure, etc., referred to in section 68, 69, 69A, 69B, 69C or 69D". Any income falling under the above said section shall be subject to tax at a flat rate of 30%.



Post-demonetization in FY 2016–17, there has been large scale cash deposits in bank accounts, out of which a substantial portion could be unexplained. Some persons with malafide intention can take the benefit of law under section 115BBE of the Income Tax Act, 1961 and convert their unexplained money to explained with payment of 30 percent tax plus applicable surcharges only. Therefore, Section 115BBE has been amended with effect from 01.04.2017 to increase the rate of tax from 30% to 60%.

## Section 115BBE - Taxing the unexplained

Section 115BBE includes any income that is not disclosed in the books of accounts, returns, or other documents furnished under the Income Tax Act. The



section applies to all types of taxpayers, including individuals, companies, and partnerships. Section 115BBE is applicable when the following conditions are met:

- The taxpayer has earned income from an undisclosed source.
- The income has not been disclosed in the books of accounts, returns, or other documents furnished under the Income Tax Act.
- The taxpayer has not paid tax on such income.
- The income is discovered during the course of any proceeding under the Income Tax Act.

Such income in nature of Cash credits, unexplained investments, money, expenditure, etc. under Sections 68 to 69D has been made liable for being taxed at higher rate @ 60% u/s 115BBE. Same would be the case for unexplained bullion/ jewellery/ stock/ other investment in shares and property etc. found during search or survey.

### **Taxability of income disclosed during survey, search and seizure**

But the question arise where the income disclosed during survey, search and seizure sought to be taxed at higher rate of tax.

Under the Punjab and Haryana High Court in case of Kim Pharma Pvt Ltd v CIT [2013] 35 taxmann.com 456 (Punjab & Haryana) held that the unexplained money disclosed during survey, which was not reflected in books of accounts and no source from where it was derived was declared by the assessee, was assessable as deemed income u/s 69 A and not the business income.

The ITAT Chandigarh, in case of Famina Knit Fab v ACIT [2019] 104 taxmann.com 306 (Chandigarh - Trib.) has also held that amendment made to section 115BBE w.e.f. 1-4-2017 denying set off of losses is prospectively applicable and the assessee could claim set off of losses, both current and brought forward, against its business income



as well as deemed income under sections 68 to 69C in assessment years prior to 1.4.2017.

**However, in the recent case, DCIT Vs. Tapes Tyagi, [TS-642-ITAT-2023(DEL), Delhi ITAT** sets aside rectification order under Section 154 for applying Section 115BBE on the income voluntarily surrendered by the Assessee in course of

search and seizure and offered to tax in the return of income. If an Assessee surrendered an amount as income which was offered to tax in the return of income for AY under dispute which itself establishes that at the time of search and seizure and an Assessee has explained the source of the amount offered as income which was not disputed by the Revenue; Observes that the term 'may' used in Section 69A implies that if explanation offered by the Assessee regarding source of money, bullion, jewellery or other valuable articles is satisfactory, it cannot be treated as unexplained money under Section 69A .

There is nothing on record to suggest that Assessee's explanation regarding the source of the income offered has either been doubted or disputed at the time of search and seizure or even during assessment proceedings; Opines that income offered by an Assessee cannot be treated as unexplained money under Section 69A and Section 115BBE would not be applicable.

## Conclusion

Section 115BBE is a powerful tool in the hands of the Income Tax Department to curb tax evasion and black money. It imposes a higher tax rate on income earned from undisclosed sources and penalizes non-compliance.

If we closely observe that in invoking provisions of sections 69, 69A, 69B & 69C, two conditions are required to be satisfied. They are (i) investment/expenditure are not recorded in the books of account of assessee & (ii) the nature and source

of acquisition of assets or expenditure are not explained or not explained satisfactorily. The expression "nature and source" used should be understood to mean requirement of identification of source and its genuineness. To explain "Nature" it would require the assessee to explain

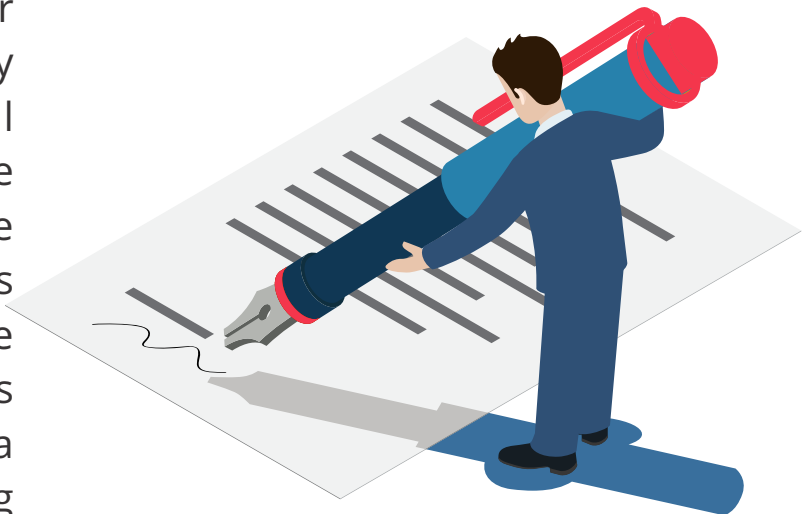


what is description of investment or expenditure, period and the manner in which it was done. To explain the source it would require the assessee to explain

the corpus or fund from where investment or expenditure has been met and also the head under which the investment or expenditure would fall such as whether investment/expenditure pertains to business or relates to acquisition of capital asset or to other source or to agriculture.

## 07 UNDERSTANDING THE LEGAL DYNAMICS OF WILLS: A COMPREHENSIVE OVERVIEW

In legal terminology, a 'Will' or 'Testamentum' is a testamentary disposition of a person's Real Property, representing the individual's desires regarding the distribution of assets posthumously. Section 2(h) of the Indian Succession Act, 1925 defines a Will as the declaration of a testator's intentions concerning their property after death.



To ensure statutory compliance, recent Supreme Court rulings emphasize the mandatory attestation of Wills by two or more witnesses. Additionally, principles under Section 63 of the Succession Act and Sections 68 and 71 of the Evidence Act, 1872 outline key aspects for validating a Will. These include the testator's free will, sound state of mind during execution, awareness of the document's nature, absence of suspicious circumstances, and the examination of at least one living attesting witness.

Contrary to compulsory registration, the Indian Registration Act, 1908 and Indian Stamp Act do not categorize Wills as mandatory registerable or subject to stamp duty. The absence of registration, however, does not render a Will improbable, as suspicious circumstances must be independently addressed. The registration of a Will helps in establishing the fact of its execution in a fair and transparent manner making it legally enforceable, in the absence of a

subsequent testament.

The Hindu Succession Act, 1956 allows any Hindu to dispose of property through a Will, whether self-acquired or inherited or his/her share in HUF property including immovable or movable property, irrespective of the place of execution of the Will. Once a property passes to the successor in pursuance to a Will, such inherited property shall be considered as good as a self-acquired property for all legal purposes.

Importantly, a Will remains ambulatory during the testator's lifetime, subject to revocation under Section 70 of the Indian Succession Act, with an exception for Hindu testators in the case of subsequent marriage.



In summary, this comprehensive overview sheds light on the legal intricacies surrounding Wills, emphasizing the importance of adherence to statutory requirements and evidence of the testator's intentions.

*\*INMACS LAW OFFICES: This article is intended for informational purposes and does not constitute legal advice.\**

## 08 LATEST BUSINESS DEVELOPMENTS

### ITR-U Enabled on Income Tax Portal for AY 2023-2024

The Income Tax Department has taken a significant step towards digital convenience by introducing e-filing options for ITR-U on the Income Tax Portal. This development applies to the Assessment Year 2023-2024, corresponding to the Financial Year 2022-2023. Taxpayers can now easily file their returns online, streamlining the process and enhancing accessibility for a hassle-free tax season.





## IT dept sends advisory to taxpayers over mismatch in ITR, TDS/TCS deductions

Regarding mismatch in TDS/TCS deductions and ITR filing data, the department said such communication is sent to facilitate the taxpayers and make them aware of the information available with the I-T department regarding the transactions reported by the Reporting Entities during the year. Such communication also highlights to the return filer to rectify intentional or unintentional mismatch. Taxpayers are requested to respond to the communication on priority.

## CBDT Notifies ITR-1, ITR-4 forms for AY 2024-25

CBDT has notified two new return forms, ITR-1 (SAHAJ) and ITR-4(SUGAM), for the AY 2024-25. These forms will come into effect from April 1, 2024. ITR-1(SAHAJ) is to be used by individuals with a total income upto 50 lakhs, having income from salaries, one house property and other sources (like interest) and agriculture income up to Rs.5000.

Budget 2023 has made the new tax regime as the default tax regime. Hence, unless an individual specifically opts out of the new tax regime, the online ITR form will automatically calculate the taxes using the income tax slabs of the new tax regime. The new tax regime disallows common deductions and tax

On the other hand ITR-4 (SUGAM) is applicable to individuals, HUFs and firms (other than LLPs) with the total income up to Rs.50 Lakh and income from

business and professional computed under Section 44AD, 44ADA or 44AE. Those who are eligible to file for ITR-4 will also have to opt out of new tax regime in case they don't want it, as the new tax regime will be the default regime in the ITR. The resident tax payers, whether they are Indian or Foreign citizens, are bound to



disclose beneficial interest in foreign assets, foreign bank accounts, foreign trust and similar details as prescribed.

## **CBDT Redefining Intra-Group Loan & outlines its 'Safe Harbour' transfer Pricing conditions**

The Central Board of Direct Taxes (CBDT) has recently amended the Safe Harbour Rules for international transactions vide notification. These latest amendments are with respect to the definition of operating expense and operating revenue and the scope of intra-group loan transactions that will be covered within the ambit of the Safe Harbour Rules. The amendments will come into force from 1 April 2024. Safe harbour rules for intra-group transactions prescribe the minimum price or return for specific categories of transactions which, if opted by the taxpayer, is accepted as it is by the tax authorities.

## **Centre notifies creation of principal bench of GST Appellate Tribunal**

Centre Government has notified the creation of the principal bench of Goods and Services Tax Appellate Tribunal (GSTAT).

## **Overseas staff on deputation: CBIC alert over GST notices:**

Central Board of Indirect Taxes and Customs (CBIC) has issued instructions urging officers



to exercise caution in raising demands in secondment cases. The Supreme Court's ruling in the Northern Operating Systems case determined that secondment of employees by overseas group companies a taxable service of 'manpower supply,' making Service Tax applicable. The CBIC emphasized that the Supreme Court ruling in the Northern Operating Systems case should not be applied mechanically and instructed officials to invoke Section 74(1) of the GST Act only in cases involving genuine fraud or evasion of taxes.

**Editor's comment:** It is important that the overseas group employees are deputed to India by appointing them on the role of Indian Company and making all payments from Indian company about salary and Perks. GST as well as transfer pricing and PE taxation issues in India can be professionally planned.

## **PMLA accused Corporate to given copy of grounds of detention within 24 hours**

In the opinion of Supreme court, in case a person is arrested, if he is informed or

made aware orally about the grounds of arrest at the time his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e.as early as possible and within reasonably convenient and requisite time

of 24 hours of his arrest, that would be sufficient compliance of not only section 19 of the PMLA but also of Article 22(1).

### **RBI takes steps to curb fraud and guidelines in respect of inoperative bank accounts**

Reserve Bank of India (RBI) has issued comprehensive guidelines effective from Apr.01, 2024 on the measures to be implemented by the banks covering



various aspects of how to classify deposits and accounts as unclaimed deposits and inoperative accounts, respectively, periodic review of such deposits and accounts, fraud prevention measures such as tracing the customers of unclaimed deposits and inoperative accounts, including their nominees/legal heirs for account reactivation, interest or charges on inoperative accounts settlement of claims or closure to be followed. **The guidelines also mandate the transfer of credit balances in accounts untouched for 10 years or more to the Depositor Education and Awareness (DEA) Fund maintained by the RBI.**

### **RBI seeks to audit SROs for regulated entities**

The Reserve Bank of India announced draft omnibus norms for setting up self-regulatory organisations (SROs) by its regulated entities and in those it has proposed to audit the books of such institutions. The framework prescribes the broad objectives, functions, eligibility criteria, and governance standards, which will be common for all SROs irrespective of sectors they belong to. Reserve Bank may inspect the books of the SRO or arrange to have the books inspected by an audit firm.

## SEBI notifies the revised framework for computation of Net Distributable Cash Flow by REITs and INVITs

In order to promote ease of doing business, the SEBI has decided to standardize the framework for calculation of available Net Distributable Cash Flows (NDCF). Under the rules applicable from April 1, 2024, the Net Distributable Cash Flow (NDCF) is computed at the level of real estate investment trusts (REITs), and infrastructure investment trusts and their holding companies (HoldCo) or

special purpose vehicles (SPVs). Further, the minimum distribution should be 90 per cent of the NDCF at the Trust level as well as the HoldCo/SPV level, subject to applicable provisions in the Companies Act or the Limited Liability



Partnership Act. Option to retain 10 per cent distribution needs to be computed by taking together the retention done at SPV level and Trust level. Further, Trust along with its SPVs needs to ensure that minimum 90 per cent distribution of NDCF be met for a given financial year on a cumulative periodic basis. Similarly, any restricted cash should not be considered for NDCF computation by the SPV or InvIT.

## NFRA finds certain lapses in audit quality of network entities of Big 4

The National Financial Reporting Authority (NFRA) has disclosed a series of deficiencies in the auditing-related activities of 'Big 4' - Deloitte, Haskins & Sells LLP, BSR & Co LLP, SRBC & Co LLP, and Price Waterhouse Chartered Accountants LLP during detailed audit quality inspections, initiated in December of the previous year. The inspections covered various aspects, including review of firm-wide quality controls and selected audit documentation of annual financial statements for the year ended Mar.30, 2021, according to four reports released by NFRA.

# 09 IMPORTANT TAX JUDGEMENTS

## Direct Taxation

### Cash Availability with Different Companies Sufficient to Explain Cash Found during Search

The ITAT concluded that the availability of cash with different companies within the group sufficiently explained the cash found during the search. [DCIT Vs Creamy Foods Ltd (ITAT Delhi),06/12/2023; ITA No. 2179/DEL/2022, ITA No. 1911/DEL/2022]

### Land on Leasehold basis

**INCOME TAX :** Where assessee was allotted land on leasehold basis, since recognition of right to use lease hold land as intangible asset as per statement of account was not disputed by revenue, claim of depreciation was correctly made by assessee. Where assessee was allotted land on leasehold basis, since recognition of right to use lease hold land as intangible asset as per statement of account was not disputed by



revenue, claim of depreciation was correctly made by the assessee.

**TRANSFER PRICING :** Where assessee provided corporate guarantee to its AE, since assessee borrowed loan from bank at an effective rate of interest at 4.06 per cent per annum whereas AE had borrowed loan at rate of 4.92 per cent per annum despite corporate guarantee furnished by assessee, applying interest saving approach as assessee had not obtained any saving of interest/bank charges it would not be justifiable to make any addition on account of furnishing corporate guarantee to AE . [Adani Ports & Special Economic Zone Ltd.vs. Joint Commissioner of Income-tax (OSD); IT APPEAL NO. 319 (AHD.) OF 2020]



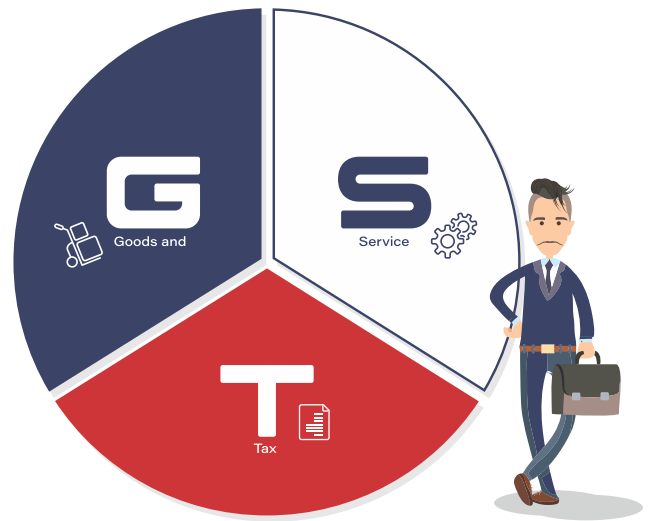
## GST

### **Demand stayed where petitioner wants to avail alternative remedy under section 112**

Held where petitioner wants to avail alternative remedy under provisions of law by approaching second appellate Tribunal which had not been constituted, therefore, as an interim measure subject petitioner depositing entire tax demand within 15 days, rest of the demand should be stayed. [Niranjan Parmanik vs. Commissioner of CT & GST, Odisha; W.P (C) NO.34924 OF 2023, I.A. NO. 16916 OF 2023]

### **If seller existed at the time of the supply but subsequently it was found non-existent- Buyers not to suffer**

Held where at time of supply, seller existed but subsequently it was found non-existent, since Authorities could have very well verified as to whether after filing of GSTR-1 and GSTR-3B how much tax had



been deposited by selling dealer but authorities had failed to do so, impugned order raising demand for entire amount of tax could not be sustained. [Rama Brick Field vs. Additional Commissioner, Grade-2; WRIT TAX NO. 909 OF 2022]

### **GST Registration cannot be retrospectively Cancelled Arbitrarily: Delhi HC**

The Delhi High Court delivered a significant judgment on the retrospective cancellation of GST registration. The court addressed the arbitrary nature of such cancellations and emphasized the importance of providing valid reasons. [Sanchit Jain Vs. Avato Ward-46 Stae Goods & Service Tax; W.P.(C) No. 16211 Of 2023, C.M. Appl. No. 65181 Of 2023]

### **Refund of Tax paid on export is not barred by period of Limitation: Delhi HC**

Delhi high court held that the petitioner would be entitled to refund of tax paid (IGST paid either under the RCM on inputs or the IGST on exports). The revenue's contention that any claim for refund of ITC would be barred is also not

persuasive. [Grapes Digital pvt. Ltd. Vs Principal Commissioner & Anr (Delhi High Court); W.P.(C) No. 2918/2021

### **ITC claimed by the Recipient cannot be denied without conducting due diligence of Supplier**

The Hon'ble Supreme Court reaffirmed on Dec.14,2023 the order wherein the Court set aside the order of reversing excess credit availed in Form GSTR-3B as compared to Form GSTR-2A and held that the demand notice issued to the assessee for reversing the ITC could not be sustained without proper inquiry into the supplier's actions[ Assistant Commissioner Of State Tax Vs Suncraft Energy Private Limited & Ors. (Supreme Court of India); Special Leave to Appeal (C) No(s).27827-27828/2023] Editor's comment: The GST law has undergone a shift now and GST credit is now legally restricted to what is reflected in GSTR 2 A. The judgement is very important and relevant for earlier tax periods.

### **SEBI directs Raju brothers, SRSR, Srinivas & Ramakrishna to disgorge gains of 624 crores from insider trading in Satyam shares**

Directors and employees of Satyam CSL since January 2001, connived and collaborated in overstatement, fabrication, falsification and misrepresentation of books of account and financial statements of SCSL. They presented a rosy picture about the financials of SCSL before its investors in order to mislead them and ultimately to defraud them. Further, B Suryanarayana Raju, the brother of Ramalinga Raju had sold shares during the period January 2001 to December 2008 when in possession of unpublished price sensitive information about the adverse financial position of the company.

SEBI ordered B. Ramalinga Raju and B. Rama Raju to restrain from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, till July 14.2028. Also, SEBI directed that the Noticees shall disgorge the unlawful gain made by them along with simple interest at the rate of 12% per annum from January 7, 2009 till the date of payment. As directed by the Hon'ble SAT vide its order dated February 02, 2023, the unlawful gain shall be borne individually. [Satyam Computers Services Ltd., In re ANANTH NARAYAN G., MEMBER WTM/AN/SRO/29840 OF 2023-24]

## Order passed by SEBI cannot travel beyond the measures proposed in the Show Cause Notice

Where Show Cause Notice issued under section 11B of SEBI Act asked the noticee Venture Capital Fund in winding up as to why suitable directions under section 11B and Regulations 29(c) and 29(d) of Venture Capital Fund should not be issued, SEBI (Whole Time Member) cannot pass directions u/s 11(4)(b) of SEBI Act barring directors of the VCF from accessing securities market or imposing penalty u/s 11B as these measures were not proposed in show cause notice and notice was not put on notice. [Urban Infrastructure Trustees Ltd. v. Securities and Exchange Board of India; APPEAL NOS. 93 TO 99 OF 2023]

### Our Team

75	07	05	120	14
Chartered Accountants	Company Secretaries	Advocates & Solicitors	Trainee & Others	Others

### Our Offices

#### New Delhi:

4696 Brij Bhawan  
21A Ansari Road  
Darya Ganj,  
New Delhi-110002. INDIA  
Tel : +91-11-2328-8101

#### Gurgaon:

101, Global Business Square  
Building No. 32, Sector 44,  
Institutional Area Gurgaon,  
122003, India  
Tel : +91-124-4786-200

#### Nehru Place:

503, Chiranjiv Tower,  
43, Nehru Place  
New Delhi 110019. India  
+91-11-2622-3712,  
2622-6933

#### Nehru Place:

505, Chiranjiv Tower,  
43, Nehru Place  
New Delhi 110019. India  
+91-11-2643-0349,  
2641-9527

#### Karol Bagh:

17A/55, Triveni Plaza,  
Gurudwara Road,  
Karol Bagh,  
New Delhi  
Tel : +91-11-4504-4453

#### Chandigarh:

SCO-705, 1st Floor,  
NAC Manimajra  
Chandigarh-160101. India  
Tel : +91-172-5077-789,  
5077-790

#### Mumbai:

201, 2nd floor,  
Madhava Building,  
Bandra Kurla Complex,  
Bandra East. Mumbai  
-400051  
+91-22-4974-6258

#### Vasant Vihar:

F-9/9, 1<sup>st</sup> Floor,  
Poorvi Marg,  
Vasant Vihar,  
New Delhi-110057  
+91-11-4160-6744

### Our Associates

INMACS through its our associates offices offers you professional support all over the world

### Associate Offices in India:

Bhubaneswar Ahmedabad	Guwahati Bengaluru	Hyderabad Chennai	Jaipur Trichy	Kolkata Ranchi	Indore Kanpur
--------------------------	-----------------------	----------------------	------------------	-------------------	------------------

### Associate Offices Outside India:

New Jersey, USA British Virgin Islands	Tanzania Dubai	Mauritius Singapore	Nigeria Kenya	Hong Kong Canada	St. Lucia London
---	-------------------	------------------------	------------------	---------------------	---------------------

For more information or for any queries, write to us at [solution@inmacs.com](mailto:solution@inmacs.com)

### © INMACS

#### CA Vaibhav Jain

Mobile No: +91-9711310004  
E-mail: [vaibhavjain@inmacs.com](mailto:vaibhavjain@inmacs.com)

[www.inmacs.com](http://www.inmacs.com)

#### Er. Pankaj Jain

Mobile No: +91-8800161476  
E-mail: [pankajjain@inmacs.com](mailto:pankajjain@inmacs.com)

#### Er. Sunil Chauhan

Mobile No: +91-9999662544  
E-mail: [sunilchauhan@inmacs.com](mailto:sunilchauhan@inmacs.com)