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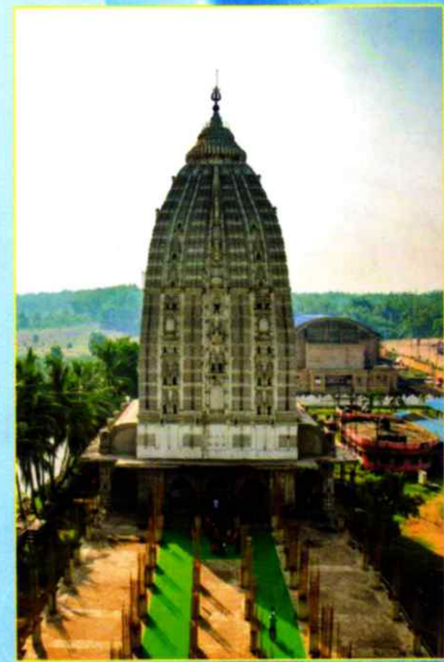
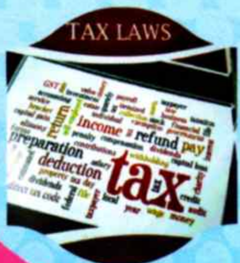




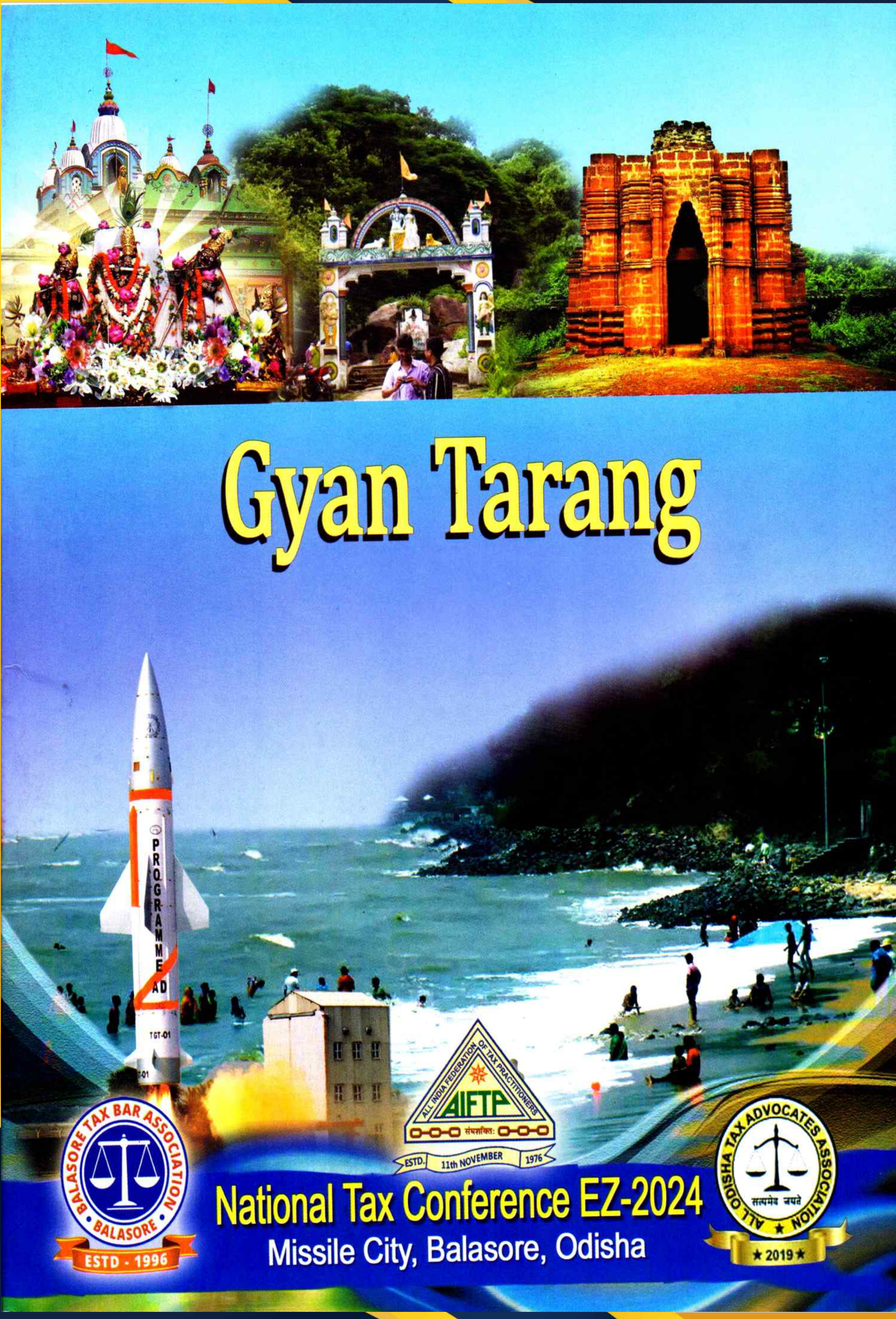
ON THE OCCASION OF

ONE DAY TAX CONFERENCE
AT BLACK DIAMOND AUDITORIUM, ANGUL
ON 28TH OF APRIL 2024

ORGANIZED BY
ALL INDIA FEDERATION OF TAX PRACTITIONERS - EZ

HOSTED BY
ANGUL DISTRICT TAX BAR ASSOCIATION, ODISHA

Gyan Tarang



National Tax Conference EZ-2024

Missile City, Balasore, Odisha

SOUVENIR

GST

GOODS AND SERVICES TAX

ETHICS
EDUCATION
EXCELLENCE

BRAHMAPUR TAX CONFERENCE

Gyan varsha

30th June, 2024

AIFTP

ALL INDIA FEDERATION OF TAX PRACTITIONERS

संघशक्तिः

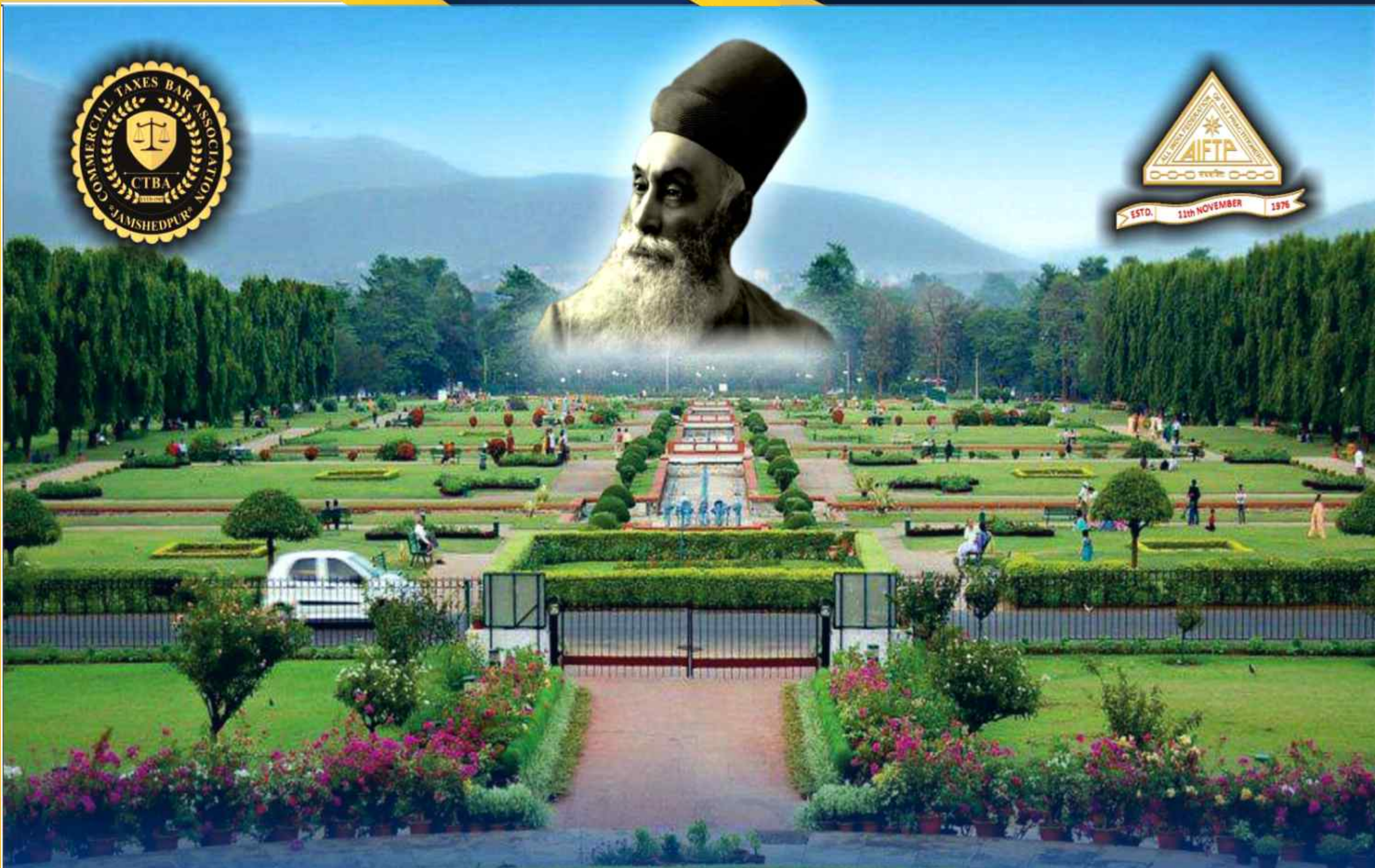
ESTD. 11th NOVEMBER 1976

ALL INDIA FEDERATION OF TAX PRACTIONERS – EZ

Brahmapur Branch
of ICAI of EIRC

Members of the
Tax Bar Association Brahmapur

Venue : CONVENTION HALL, S3 LAWN
AMBAPUA, BRAHMAPUR



ONE DAY TAX CONFERENCE

ज्ञान मंडपम्

1ST SEPTEMBER 2024 AT JAMSHEDPUR

Organised by

Commercial Taxes Bar Association, Jamshedpur

In Association with

ALL INDIA FEDERATION OF TAX PRACTITIONERS

Eastern Zone

Shortlisted Articles On

Income Tax

COGNISANCE OF OFFENCE OF MONEY-LAUNDERING

DR. DEBENDRANATH PANDA

1. Illegal gain of property as a result of criminal activity relating to a "scheduled offence" constitutes the offence of money-laundering under Section 3 read with section 2(p) of the Prevention of Money-laundering Act, 2002 (hereinafter interchangeably referred to as "PMLA" or "the Act"). The term "Scheduled Offence" is defined by section 2(y) which means - (i) the offence specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or (iii) the offences specified under Part C of the Schedule. Every Scheduled Offence is a Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the "proceeds of crime" including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering under section 3. Condition precedent for the existence of proceeds of crime is the existence of a scheduled offence and in the absence of such scheduled offence, there may not be any "proceeds of crime" within the meaning of clause (u) of sub section (1) of Section 2 read with section 3. If there are no proceeds of crime, the offence under Section 3 of the Act is not made out.

2. While the commission of a predicate offense constitutes the trigger for initiation of proceedings under the Act, the offense of money laundering must be tried and established separately. Charge of money laundering fails to survive after the charges in respect of the predicate offense are quashed or the accused is discharged upon the competent court finding that no offense is made out. The predicate offense does not merely represent the trigger for a charge of money laundering being raised but constitutes the very foundation on which that charge is laid. The entire edifice of a charge of money laundering is raised on an allegation of a predicate offense having been committed, proceeds of crime generated from such activity and a projection of the tainted property as untainted. Once it is found that an accused had not indulged in any criminal activity, the property cannot legally be treated as proceeds of crime or be viewed as property derived or obtained from criminal activity.

3. If any property is derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property is proceeds of crime, section 3 is invocable. This Section covers every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. A property cannot be said to have any connection with the proceeds of the crime if the acts constituting scheduled offence were committed after the property was acquired. It is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that may be construed to have come into existence out of proceeds of crime. However, whether the accused has used tainted money forming part of the proceeds of crime for acquiring a property can be decided only at the time of trial.

4. Generally, the process of Money Laundering involves the following three stages:

(a) Placement :- The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) Layering :- The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co–operate in anti Money-laundering investigations.

(c) Integration :- Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies. The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

5. The offence under Section 3 is treated as a standalone offence. When it is described as a stand-alone offense, all that is sought to be conveyed is that it is to be tried separately in accordance with the procedure prescribed under the Act. But the charge under this section is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property that constitutes offence of money-laundering. The property qualifying the definition of “proceeds of crime” under Section 2(1)(u) only attracts section 3. It may be noticed that all or whole of the cri me property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “proceeds of crime” under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property or out of proceeds of crime within the meaning of Section 2(1)(u). On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

6. The offence under Section 3 being dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence, the Authorities under the Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money- laundering against him or any one claiming such property being the property linked to stated scheduled offence through him. Charge of money laundering will not survive after the charges in respect of the predicate offence are quashed or the accused is discharged. When it is found that the accused had not indulged in any criminal activity, the property cannot be treated as proceeds of crime. Mere allegation of offense of money laundering in itself would not confer jurisdiction to initiate proceeding under the Act after a competent court has come to hold that no criminal offense stands committed or situations where the primary accused is discharged of the offense or proceedings quashed.

7. Predicate Offences are investigated by agencies such as Police, Customs, SEBI, NCB and CBI, etc. under their respective Acts. As per Sections 48 & 49 of the Act, the officers of the Enforcement Directorate have been given powers to investigate cases of Money-laundering. The officers have also been authorised to initiate proceedings for attachment of property and to launch prosecution in the designated Special Court for the offence of money laundering. However, the authorities under the Act cannot resort to action under law against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. However, if the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him. It is not necessary that a person against whom the offence under Section 3 of the Act is alleged, must have been shown as the accused in the scheduled offence. Even if an accused shown in the complaint under the Act is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence. Projecting or claiming a property as untainted property brings the claimant to the charge if that is concerned with the process or activity constitutes the offence of money-laundering.

8. The expression "proceedings" occurring in Clause (na) of Section 2(1) of the Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of Enforcement Directorate (ED), the Adjudicating Authority, and the Special Court. The "investigation" in Clause (na) of Section 2(1) of the Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act. Similarly, the Explanation inserted to Clause (u) of Section 2(1) of the Act does not travel beyond the main provision predicating tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

9. In view of special mechanism embodied in the statute, ECIR (Enforcement Case Information Report) is not equated with an FIR under the Code of Criminal Procedure, 1973 (in short "Code"). Former is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime. Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest. However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.

10. The statements recorded by the Authorities under the Act are not hit by Article 20(3) or Article 21 of the Constitution of India. The process envisaged by Section 50 of the Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the Act (referred to in Section 48), are not police officers as such. There can be no contention for proportionality of punishment with reference to the nature of scheduled offence in view of the purpose for which the enactment is made.

11. Though the offence of money-laundering is regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of the Act and not by jurisdictional police) and punishable under Section 4, special complaint procedure is prescribed by the Act and the procedure prescribed by PMLA overrides the procedure prescribed under 1973 Code to deal with other offences (other than money-laundering offences) in the matter of registration of offence and inquiry/investigation thereof.

12. Cognizance of the offence of money-laundering charged under Section 3 and punishable under Section 4, can be taken by the Special Court upon a complaint filed by the Authority authorized on this behalf. Section 46 of the Act provides that the provisions of the Cr. PC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of the Cr. PC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act." Considering the provisions of Section 46(1) of the Act, save as otherwise provided in the Act, the provisions of the Code of Criminal Procedure, 1973 (for short, Cr. PC) shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr. PC will apply to the Complaint. There is no provision in the Act which overrides the provisions of Sections 200 to Sections 204 of Cr. PC. Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 of the Act is made out in a complaint under Section 44(1)(b). If the Special Court is of the view that no prima facie case of an offence under Section 3 of the Act is made out, it must exercise the power under Section 203 of the Cr. PC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 of the Cr. PC. Further, the beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the Act. As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply. In the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.

* *"In aday if you don't come across any problems - you can be sure that you are travelling in a wrong path."*

EVOLUTION OF TAXATION OF VIRTUAL DIGITAL ASSET IN INDIA

CA PRAMOD KUMAR PANDA

What Is a Digital Asset?

A digital asset is generally anything created and stored digitally, is identifiable and discoverable, and has or provides value. With the advancement of technology, digital assets have become more popular and valuable which now integrate into our personal and professional lives. In the past, digital assets such as data or scanned documents were owned and used by organizations to realize value. However, digital assets were again redefined when blockchainand cryptocurrency were introduced in 2009.

JOURNEY OF CRYPTOCURRENCY TO INDIA:

2008- Inception of Cryptocurrencies:-

The journey of cryptocurrency started with the publication of a paper titled "Bitcoin: A Peer to Peer Electronic Cash System" in 2008 by a Japanese Pseudonymous developer by the name of Mr. Satoshi Nakamoto.

2010: First Sale Using Crypto:-

Two years later, the first sale of an item using Bitcoin took place with someone swapping 10,000 Bitcoin for two pizzas. This attached a cash value to cryptocurrencies for the first time. Soon enough, other cryptocurrencies such as Litecoin, Namecoin and Swiftcoin began to emerge and the digital asset started gaining traction across the Globe, so also India.

2013: RBI Issues First Circular Regarding Cryptocurrencies:-

As crypto investments picked up in India too and exchanges including Zebpay, Pocket Bits, Coinsecure, Koinex, and Unocoin began springing up, the Reserve Bank of India (RBI) issued a circular warning users of the potential security-related risks pertaining to the use of virtual currencies in 2013.

2016-2018: Demonetisation and RBI's Banking Ban on Crypto:-

The increases in preference for digital payments brought about by the demonetisation experiment also gave an unintended boost to crypto investments, driving tech-savvy customers to the virtual asset. The Indian banks continued to allow transactions on cryptocurrency exchanges pushing the RBI to release another circular in 2017 conveying its apprehensions with virtual coins. Finally, a warning clarifying that virtual currencies are not a legal tender was issued by the RBI and the finance ministry by the end of 2017.

In March 2018, a draft scheme for banning virtual currencies was submitted by the Central Board of Direct Tax (CBDT) to the finance ministry and just about a month later the RBI came out with a circular restraining banks, NBFCs and payment system providers from dealing with virtual currencies and providing services to virtual currency exchanges. This dealt a heavy blow to crypto exchanges and trading volumes fell by 99%.

November 2018 Movement: #IndiaWantsCrypto:-

On 1st November 2018, ten years after Nakamoto's paper, Nischal Shetty, Founder of WazirX, started the #IndiaWantsCrypto campaign for the positive regulation of crypto in India. The earliest impact was seen when the campaign received a positive response from Rajeev Chandrashekhar, a sitting Rajya Sabha MP. The campaign was later joined by celebrities such as Sathvik Vishwanath of Unocoin, Polygon Co-founder Jaynti Kanani, renowned entrepreneur and investor Anthony Pompliano, and DJ Nikhil Chinapa. Nischal's relentless tweets and support for the campaign has garnered widespread acknowledgement with the hashtag trending on twitter during the budget session in February where the crypto bill was announced.

March 2020: Supreme Court Strikes Down the Crypto Banking Ban:-

The ban was a massive setback and resulted in crypto exchanges filing a writ petition in the Supreme Court and the ban was ultimately stricken down, declaring the RBI circular unconstitutional.Cryptocurrency exchanges, thus, sprung back to life and the SC ruling came at the best possible time, coinciding with the crypto boom.

2021: Announcement of Crypto Bill:-

However, the battle for cryptocurrencies in India was not over yet. On Jan 29, 2021, the Indian Government announced that it will introduce a bill to create a sovereign digital currency and subsequently put a blanket ban on private cryptocurrencies. In November 2021, the Standing Committee on Finance, met the Blockchain and Crypto Assets Council (BACC) and other cryptocurrency representatives and concluded that cryptocurrencies should not be banned but regulated. In early December 2021, Prime Minister Narendra Modi also chaired a meeting on cryptocurrencies with senior officials.

2022: Budget 2022-#

Taxation of Virtual Digital Assets Regime was anounced in Union Budget,2022. Budget 2022 introduced a 'flat rate' for taxing income earned from the sale of Virtual Digital Assets (VDAs) like cryptocurrencies, non-fungible tokens (NFTs) and any other VDAs notified by the government. The new tax rate for VDA came into effect from the financial year 2022-2023 (Assessment year 2023-24).

How Income Tax Act define virtual digital assets?

- A new clause (47A) is introduced in Section 2 of the Income Tax Act, in order to define "virtual digital asset".
- According to the Sec-2(47A) of the Act, "virtual digital asset" means any information, code, number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise and can be called by whatever name.
- They provide a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically.
- Non-fungible tokens and; any other token of similar nature are included in the definition.

New tax rules for incomes from VDAs

As per the new tax rules, the income generated from the sale of cryptocurrencies, VDAs, NFTs, in FY 2022-23 will be subject to a tax rate of 30% and applicable surcharge and cess. It is important to note that you cannot avail deductions for any expenses other than the cost of acquisition when calculating such income.

For example, suppose an Assessee bought bitcoins in FY 2018-19 for Rs 10,000 and sold it in FY 2022-23 for Rs 50,000. Direct expenses like brokerage and transaction charges of Rs 5,000 on sale of bitcoins was incurred. The Assessee needs to calculate the income that will be taxable and reported in the ITR form. The new tax law allows the Assessee to deduct only the cost of acquisition (Rs 10,000 in the example) to arrive at profits. Hence, as per the above example, the Assessee will be required to report an income of Rs 40,000 (Rs 50,000 minus Rs 10,000) in his ITR form. Deduction related to brokerage and transaction charges incurred by the Assessee are not allowed.

The income calculated from the sale of VDA transfers will be subject to tax at a fixed rate of 30% without the benefit of the maximum exemption limit. Further, no tax deductions such as sections 80C, 80D, etc. from the income calculated under this provision will be permitted. However, the resident individual can claim the benefit of a rebate under section 87A of up to Rs 12,500 from the tax computed under this provision if the total income of such an individual does not exceed Rs 5,00,000.

Any loss arising from the sale of VDAs also must be reported in the ITR form. However, this loss can neither be carried forward nor be set-off against other incomes (such as salary, interest income) etc.

Taxable under which head of income

Income from VDA can be subject to taxation under either the head of business income or capital gains. When reporting such income in Schedule VDA, selecting the appropriate head under which it is offered for taxation is crucial.

Income from VDA taxed as business income: Where an individual holds VDAs for sale in the regular course of business, the profits from such transactions should be taxed as business income. This particularly applies to individuals actively trading in cryptocurrencies or engaging in VDA-related business activities.

Income from VDA taxed as capital gains: If the VDAs are held as capital assets (just like equity shares, mutual funds etc.), the income generated will be taxed under the head "Capital Gains." This scenario applies when individuals hold VDAs as long-term investments or personal holdings rather than actively engaging in trading or business activities. However, the benefit of indexation shall not be allowed from the sale of VDAs even if they were held as long-term.

Therefore, depending on the nature of VDA ownership and its purpose (trading or investment), the income will be categorised and taxed accordingly under either the head of business income (PGBP) or capital gains.

Though the tax rates are the same under the head of business or profession, or capital gains, this classification is essential for the computation of interest under section 234C. This section is applicable for penal interest in case of delayed advance tax payments. If a shortfall in payment of advance tax happens on account of underestimating or failure to estimate the accrual of capital gains, then such shortfall shall be ignored while computing interest under Section 234C.

Which ITR form is to be used to report income from VDA?

The selection of the appropriate ITR form will depend on the specific head under which you are choosing to declare this income for taxation purposes. If you opt to report it as capital gains, you can disclose it in ITR-2. On the other hand, if you opt to report it as business income, you can use form ITR-3. It is important to note that you cannot use ITR-1 or ITR-4 to report such income.

How to report income from VDA in ITR form?

Any income generated from the sale of VDAs must be reported in 'Schedule VDA' in the ITR form (ITR-2 or ITR-3, as applicable). Schedule VDA requires details such as the acquisition date, sale date, category of income for taxation (capital gains or business income), acquisition cost , and money earned from selling VDA.

If the VDA is received as a gift which was exempt in the hands of the recipient, the cost for which the previous owner acquired it shall be treated as the cost of acquisition. However, if the value of the VDA is charged to tax in the hands of the recipient under section 56(2)(x) at the time of receipt thereof, then such value shall be considered as the cost of acquisition.

TDS is applicable under Section 194S on payments made for buying VDA, at a rate of 1% of the amount paid. Taxpayers, who have sold their VDAs, are required to provide the necessary information regarding the TDS deducted on VDA sale in 'Schedule TDS' in the ITR form. Do note that usually this information is auto-populated in the ITR form. However, it is advised that one should cross-check this information to ensure that correct information is entered in the ITR form.

What is the due date to file ITR?

- If you earn income only from cryptocurrencies, the due date for filing your ITR depends on the head under which you report this income. When reporting income from the sale of virtual digital assets in 'Schedule VDA', you need to select whether it falls under the category of business income or capital gains. Here is how the due date is determined based on the chosen category:
- Capital Gains: If you report the income as capital gains, your due date for filing the ITR will be July 31.
- Business Income: If you report the income as business income, you need to compute the turnover to determine whether you must get your accounts audited. If your turnover exceeds the specified limit, you must have your accounts audited, and in that case, the due date for filing your ITR will be October 31. Also, you must submit the audit report to the income tax department.

* *The key to success is to focus on goals, not obstacles.*

* *A master has failed more times than a beginner has tried.*

TREND OF INCOME TAX NOTICE RECEIVED BY INDIVIDUAL TAXPAYERS

Himansu Kumar Dehury, Advocate
Angul District Tax Bar Association, Angul

Individual Taxpayers in general and salaried employees in particulars are receiving notices from the Income Tax Department seeking evidence / information on exemptions / deductions claimed in the Income Tax Return filed by them for past Assessment Years exercising the power vested under sub section (6) of section 133 of the Income Tax Act, 1961. These notices are issued where the Income Tax Department has observed inconsistence between the Return filed by the employer vice a vice Income Tax Return filed by the respective employee. These notices are also issued wherein inconsistencies are observed between the information available with them from other sources and the details disclosed in the Income Tax Return of the Individual Taxpayers. Inconsistencies are predominantly observed by them wherein the taxpayer has claimed exemptions / deductions or certain income has not been disclosed in the Income Tax Return which are mismatched with the information available with them.

Government Tax Reform and E- Initiative as an integral part of the Direct Tax reforms, Government of India has taken multifarious measures and initiatives to increase the direct tax base which has started visible in past few years. E – Initiatives in the form of systematization of PAN, e – filing of TDS & Income Tax Return, e – filing of Annual Information return, Centralized processing of these returns at CPC and TRACES has been initiated by the Government to increase the tax base and collection of direct tax. These E-initiatives has significantly caused growth in collection of personal tax in last few years.

As per section 192(1) of the Act, any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under the head of Salary income for that financial year. The section also provides that a person responsible for paying any income chargeable under the head "Salaries" shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof. For the purpose of estimating income of the assessee or computing tax deductions, section 192(2D) provides that person responsible for paying (DDOs) shall obtain from the assessee evidence or proof or particular of claims such as House rent Allowance (where aggregate annual rent exceeds one lakh rupees); Deduction of interest under the head "Income from house property" and deduction under Chapter VI-A as per the prescribed form 12BB laid down by Rule 26C of the Rules. Further, as per section 192 (2D) read with the rule 26C, it is mandatory for the DDOs to obtain details/evidence in respect of claim of exemption for leave travel concession or assistance before allowing the said exemption. The relevant form for furnishing details by employee is Form 12BB.

Consequently, employees are advised by the employer to furnish Form 12BB at the beginning of the Financial year furnishing therein the details of various investments / expenses that are eligible for tax exemption / deductions as the case may be to determine estimated Income Tax liability and collect the tax over the financial year. However, before the yearend employees are advised to submit proof of investments / expenses in order to enable DDO to determine the

Income Tax liability accurately and collect the same from salary. Certificate of Income Tax Deducted in Form 16 (Part A and Part B) along with Form 12BA is issued to the employee based on the salary actually disbursed during the financial year and Income Tax deducted from such salary taking cognizance of the proof of investments / expenses furnished by the employee. Inaddition to Form 16, Form 16A and Form 16B are also referred by the Individual tax payer for filing of Income Tax Return. Nevertheless, if an employee has failed to furnish proof of any investment / expense to the employer and the same was not considered while determining income tax liability such investment / expense may be claimed as exemption / deduction by the tax payer while filing the Return of Income. While claiming exemption / deduction, individuals should ensure that such deductions or exemptions claimed by them are in accordance with the receipts, invoices etc. maintained by them. Under such cases, the taxpayer must keep possession of these proofs with himself to be produced when sought by the Income Tax Authority.

In case a taxpayer receives a notice seeking evidence / information on exemptions / deductions claimed in the Income Tax Return which are inconsistent, it is foremost important for such taxpayer to take action immediately i.e. understand the details of discrepancies or issues that have been identified, collect relevant information / documents that could explain the inconsistencies listed in the notice, if choose to file self response draft response explaining & providing necessary evidence if any, keep copies of communications along with documentary evidences, Consult with a professional dealing with such matter if necessary. It is the sole responsibility of the tax payer in non audit cases for compliances of the provisions of the Income Tax Act.

"Life is given to us, we earn it by giving it".

- Rabindranath Tagore

Whether penal provision u/s.271DA will control curbing the cash transactions?

Natabar Panda

Government feels that cash transaction is the root cause of all evils. In order to curb cash transactions resultantly restricting black money circulation, two sections i.e. 269SS and 269ST of Income Tax Act were introduced.

The provision of Section-269SS w.e.f. 01.06.2015 runs as under:-

No person shalltake or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid ; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),is twenty thousand rupees or more :

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted by-

(a) theGovernment;

(b) any banking company, post office savings bank or co-operative bank ;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in clause-45 of section-2 section-617 of the Companies Act, 2013 (18 of 1956):

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation: For the purposes of this section-

(i) "banking company" means a company to which the provisions of the banking Regulation act,1949 (10 of 1949) applies and includes and banking institution referred to in section 51 of that Act;

(ii) "co-operative bank" shall have thesame meaning as assigned to it in Part-V of the Banking Regulations Act 1949 (10 of 1949);

(iii) "loan or deposit" means loan or deposit of money;

(iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

Similarly provisions of section 269ST,which was introduced w.e.f. 01.04.2017 says:-

No person shall receive an amount of two lakh rupees or more -

(a) In aggregate from a person in a day; or

(b) In respect of a single transaction; or

(c) In respect of transactions relating to one event or occasion from a person, Otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through bank account or through such other electronic mode as may be prescribed:

Provided that the provisions of this section shall not apply to-

(i) Any receipt by-

(a) Government;

(b) Any banking company, post office savings bank or cooperative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the official Gazette, specify.

Explanation- For the purpose of this section-

(a) "banking company" shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS;

(b) "co-operative bank" shall have the same meaning as assigned to it in clause (ii) of the Explanation to section 269SS.

Provisions of section 271DA says- (1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt;

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

In this connection the Press Release of Central Board of Direct Taxes dated-05.04.2017 is reproduced below for better understanding:-

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi, 5th April, 2017.

PRESS RELEASE

Budget 2017 takes Steps to discourage Cash transactions & curb Black Money.

Various legislative steps have been taken by the Finance Act, 2017 to curb black money by discouraging cash transaction and by promoting digital economy.

These prominently include placing restriction on cash transaction by introduction of new sections 269ST & 271DA to the Income-tax Act. It has been provided that no person (other than those specified therein) shall receive an amount of two lakh rupees or more,

(a) in aggregate from a person in a day;

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

Any contravention to the said provision shall attract penalty of a sum equal to the amount of such receipt. However, the said restriction is not applicable to any receipt by Government, banking company, post office savings bank or co-operative bank. It has also been decided that the restriction on cash transaction shall not apply to withdrawal of cash from a bank, cooperative bank or a post office savings bank. Necessary notification in this regard is being issued.

It has also been provided that any capital expenditure in cash exceeding rupees ten thousand shall not be eligible for claiming depreciation allowance or investment-linked deduction. Similarly, the limit on revenue expenditure in cash has been reduced from Rs.20,000 to Rs.10,000.

In order to promote digital payments in case of small unorganized businesses, the rate of presumptive taxation has been reduced from 8% to 6% for the amount of turnover realized through cheque/digital mode.

Restriction on receipt of cash donation up to Rs.2000 has been provided on political parties for availing exemption from Income-tax. Further, it has also mandated that any donation in cash exceeding Rs.2000 to a charitable institution shall not be allowed as a deduction under the Income-tax Act.

(Meenakshi J. Goswami)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT.

Similarly, Circular No.22 dated-03.07.2017 released Central Board of Direct Taxes,the same clarification has been issued as under:-

CircularNo.22of2017

F.No.370142/10/2017-TPL
Government of India Ministry of Finance
DepartmentofRevenue
(CentralBoardofDirectTaxes) (TPL Division)

Dated 03 rd July, 2017

Clarificationsin respect of section 269ST of the Income-tax Act, 1961

With a view to promote digital economy and create a disincentive against cash economy, a new section 269ST has been inserted in the Income-tax Act, 1961(the Act) vide Finance Act, 2017. Thesaidsectioninter-aliaprohibitsreceiptofan amountoftwolakhrupeesormorebyaperson,in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Penal provisions have also been introduced by way of a new section 271DA, which provides that if a person receives anyamount in contravention to theprovisions of section 269ST, it shall beliable to pay penalty of a sum equal to the amount of such receipt.

2. Subsequently, representations have been received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST of the Act shall apply to one instalment of loan repayment or the whole amount of such repayment.

3. In this context, it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shallconstitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

(SalilMishra)
Director(TaxPolicy&Legislation)

Gyan Tarang

Let us discuss a case where penalty u/s.271DA of the Act has been imposed on an innocent assessee as underin routine manner:-

The assessee sold her land and building to a couple. The purchasers have paid the entire consideration value in cheque excepting rupees five lakhs in cash as their cheque bookswere exhausted and the sale deed was to be executed on the next date. In the Regd. Sale Deed payment details were written including the alleged cash payment of Rs.5,00,000.00.

The assesse filed her return of income in time, the same was processed and intimation u/s.143(1) of the Act was issued. No penalty proceeding u/s.271DA was then initiated.

Later on the JCIT of the concerned Range issued a notice to show cause against levy of penalty u/s.271DA of the Act at Rs.5,00,000.00 i.e. similar amount she received from the purchasers in cash. The assesse filed her reply. As the Ld. JCIT was not convinced he imposed penalty at Rs.5,00,000.00 u/s.271DA of the Act.

The assessee filed first appeal with the ground that the cash received from the purchasers were recorded in the Registered Sale Deed and she received the cash in extra in ordinary circumstances. Immediately on the next date she has deposited the alleged amount in her bank account. The identity of the purchasers can be proved beyond doubt. There is no iota of evidence of circulation of black money, no intention to evade tax and also no malafide motive behind the above transaction. She also filed a petition before the CIT(A), NFAC, Delhi to summon the purchasers and record a statement from them u/s.131 of the Act whether the seller has compelled the purchasers to pay the amount in cash or they have paid the cash in an extra ordinary circumstance. This aspect was not taken care by the CIT(A). He simplyconfirmed the order of the JCIT. Now the case is pending before the Hon'ble ITAT.

Let us discuss the intention of the legislature here under:-

That the Chapter XX-B of I.T.Act,1961 contains the sections 269SS and 269ST, which describe the requirements for mode of acceptance, payment or repayment in certain cases to discourage the evasion of tax. Here the intention of the legislature is very much clear about introduction of the above sections.The Press release of CBDT dated- 05.04.2017 also clarifies the legislative intention behind introduction of the Section-269ST.

Keepingthe legislative intention in mind, courts used to cancel the penalty levied u/s 271D/271E earlier for contravention of provisions of section 269SS/269T as the case may be, by observing that the acceptance/ repayment of loan in cash being genuine and bona fide, there is mere technical breach or venial violation of the provision of section 269SS/ 269T of the I.T. Act 1961 and hence penalty under section 271D/271E is cancelled.

Hon'ble Supreme Court in the case of Hindustan Steel Ltd V/s State of Orissa reported in(1972) 83 ITR 26 (SC)held that:-

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. The penalty will not also be imposed merely because of it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or when there is breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

ITAT Visakhapatnam Bench in the case of Smt. VijapuraruSudha Rao-Vrs.-ITO, Ward-3(1), Visakhapatnam bearing ITA No.111/Viz/2023 dated-29.11.2023 it has been held that:-

"The objective of the amendment proposed in 269SS of the Act is to curb generation of black money. In the instant case the fact is that cash received by the assessee has been deposited by the assessee into the bank account, hence does not attract the provisions of section 269SS of the Act since there is no suppression of cash receipts by the assessee. The assessee has also offered the capital gains to tax. Further, the explanation given by the assessee for receipt of sale consideration of Rs.29,65,000/- constitutes a "reasonable cause" as contemplated in section 273B of the Act and the assessee has accepted the cash under inevitably unavoidable circumstances as explained by the Ld. AR in his arguments and immediately on receipt of the cash, the assessee deposited the same in the bank account which contemplates the genuineness of the transaction and moreover the assessee has paid the capital gain tax thereon. Under these circumstances, we are of the considered view that the penalty levied by the Ld. AO-NFAC U/s. 271D and confirmed by Ld. CIT(A)-NFAC is unsustainable in law and accordingly the orders of the Ld. AO-NFAC and Ld. CIT(A)-NFAC are set aside and thereby we delete the penalty. It is ordered accordingly."

Hon'ble ITAT, 'A' Bench, Kolkata in case of Amit Breeder Farms Pvt. Ltd-Vrs- ACIT, Circle-11(1), Kolkata in ITA No.594/Kol/2022 dated-29.12.2022 deleted penalty u/s.271DA of the Act with the following observations:-

"We have heard the rival contentions and from the perusal of material placed on record, we find that there exists a good and sufficient reason in terms of proviso to section 271DA for deleting the penalty of Rs.2,04,000/- impose d by the Ld. AO. The facts demonstrated before us are uncontroverted which makes us incline towards the contentions made by the ld. Counsel narrated above. Considering the nature of business of the assessee and one of such transaction of deposit of cash by a party to a remote location in the bank account of assessee against a sales volume of Rs.56.93 Cr., we direct to delete the penalty imposed u/s. 271DA of the Act. Before parting, we make it clear to the assessee that this relief should not be construed as precedence and a lee way for accepting the money in the manner as in the present case. We direct the AO accordingly. The grounds taken by the assessee in this respect are allowed."

Here only point remains for consideration that "no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention. "Good and sufficient reason" has been explained in Order XLVII Rule-1 of CPC. Sufficient reason can be explained for judicial pleadings that the court is to be convinced about the occurrence of the incidence in an extra ordinary circumstance which could not have been avoided by any means.

In the above premises it is thus left to the Tax Practitioners to draft the reply to the show cause notice of the authority in such a manner giving 'good and sufficient reason' for receipt of cash from the other party in an unavoidable circumstance, so that the assessee will win the case at any stage.

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Capital Gains Tax In India : Types, Tax Rates, Calculation, Exemptions & Tax Saving

JITENDRA KUMAR, ADVOCATE
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Investment in a house property is one of the most sought-after investments primarily because you get to own a house. While others may invest with the intention of earning a profit upon selling the property in the future. It is important to note that a house property is regarded as a capital asset for income tax purposes. Consequently, any gain or loss incurred from the sale of a house property may be subject to tax under the 'Capital Gains' head. Similarly, capital gains or losses may arise from sale of different types of capital assets such as stocks, mutual funds, bonds and other investments. We will delve into the chapter on 'Capital gains' in detail here.

Budget 2024 Update

Budget 2024 has proposed the following amendments effective from FY 24-25

- For classifying assets into long-term and short-term, there will only be two holding periods: 12 months and 24 months. The 36-month holding period has been removed.
- The holding period for all listed securities is 12 months. All listed securities with a holding period exceeding 12 months are considered Long-Term. The holding period for all other assets is 24 months.
- The taxation of Short-Term Capital Gain for listed equity shares, a unit of an equity-oriented fund, and a unit of a business trust has been increased to 20% from 15%. Other financial and non-financial assets which are held for short term shall continue to attract the tax at slab rates.
- The limit on the exemption of Long-Term Capital Gains on the transfer of equity shares or equity-oriented units or units of Business Trust has increased from Rs.1 Lakh to Rs.1.25 lakh per year. However, the rate at which it is taxed has increased from 10% to 12.5%.
- The exemption limit to Rs. 1.25 lakhs has been increased for the whole of the year, whereas the tax rate has changed on 23rd July 2024.
- The tax on long-term capital gains on other financial and non-financial assets is reduced from 20% to 12.5%. While on the other hand, the indexation benefit that was previously available on sale of long-term assets, has now been done away with. So, any sale of long term asset made after 23rd July, 2024, will attract tax rate of 12.5% only without indexation benefit.

Defining Capital Assets

Land, building, house property, vehicles, patents, trademarks, leasehold rights, machinery, and jewellery are a few examples of capital assets. This includes having rights in or in relation to an Indian company. It also includes the rights of management or control or any other legal right.

He following do not come under the category of capital asset:

a. Any stock, consumables or raw material, held for the purpose of business or profession
b. Personal goods such as clothes and furniture held for personal use
c. Agricultural land in rural(*) India
d. 6½% gold bonds (1977) or 7% gold bonds (1980) or National Defence gold bonds (1980) issued by the central government
e. Special bearer bonds (1991)
f. Gold deposit bond issued under the gold deposit scheme (1999) or deposit certificates issued under the Gold Monetisation Scheme, 2015 and Gold Monetisation Scheme, 2019 notified by the Central Government.

*Definition of rural area (effective from AY 2014-15) – Any area which is outside the jurisdiction of a municipality or cantonment board, having a population of 10,000 or more is considered a rural area. Also, it should not fall within a distance given below Shortest aerial distance from the local limits of a municipality or cantonment board Population according to the last census1≤ 2 kms> 10,0002> 2 kms but ≤ 6 kms> 1,00,0003> 6 kms but ≤ 8 kms> 10,00,000

Types of Capital Assets?

1. STCA (Short-term capital asset) An asset held for a period of 36 months or less is a short-term capital asset. So, if you sell the asset within a period of 36 months of purchasing, then it would be called as a short-term capital asset. However, in some of the assets, the holding period is reduced to 24 months and 12 months.

The criteria is 24 months for unlisted shares (those shares which are not listed in a recognized stock exchange in India) and immovable properties such as land, building and house property from FY 2017-18. For instance, if you sell house property after holding it for a period of 24 months, any income arising will be treated as a long-term capital gain, provided that property is sold after 31st March 2017. The reduced period of the aforementioned 24 months is not applicable to movable property such as jewellery, debt-oriented mutual funds etc.

Some assets are considered short-term capital assets when these are held for 12 months or less. This rule is applicable if the date of transfer is after 10th July 2014 (irrespective of what the date of purchase is). These assets are:

- Equity or preference shares in a company listed on a recognized stock exchange in India
- Securities (like debentures, bonds, govt securities etc.) listed on a recognized stock exchange in India

2. LTCA (Long-term capital asset): An asset held for more than 36 months is a long-term capital asset. They will be classified as a long-term capital asset if held for more than 36 months as earlier. So, if you sell the asset after a period of 36 months of purchasing, then it would be called as a long-term capital asset. However, in some of the assets, the applicable holding period is 24 months and 12 months.
Capital assets such as land, building and house property shall be considered as long-term capital asset if the owner holds it for a period of 24 months or more (from FY 2017-18).
Whereas, below-listed assets if held for a period of more than 12 months, shall be considered as long-term capital asset.

1. Equity or preference shares in a company listed on a recognized stock exchange in India

2. Securities (like debentures, bonds, govt securities etc.) listed on a recognized stock exchange in India

3. Units of UTI, whether quoted or not

4. Units of equity oriented mutual fund, whether quoted or not

5. Zero coupon bonds, whether quoted or not

Note: Capital gains from the sale of units of a specified mutual fund acquired on or after April 1, 2023, and market-linked debentures will always be treated as short-term capital gains, regardless of how long they have been held

Deductible Expenses

A. Sale of house property: These expenses are deductible from the total sale price:

- Brokerage or commission paid for securing a purchaser
- Cost of stamp papers
- Travelling expenses in connection with the transfer – these may be incurred after the transfer has been affected
- Where property has been inherited, expenditure incurred with respect to procedures associated with the will and inheritance, obtaining succession certificate, costs of the executor, may also be allowed in some cases.

B. Sale of shares: You may be allowed to deduct these expenses:

- a. Broker's commission related to the shares sold
- STT or securities transaction tax is **not allowed** as a deductible expense

C. Where jewellery is sold: In case of sale of broker's jewellery and where a broker's services were involved in securing a buyer, the cost of these services can be deducted.

Note: The expenses deducted from the sale price of assets for calculating capital gains are not allowed as a deduction under any other head of income, and you can claim them only once.

Indexed Cost of Acquisition/Improvement

The cost of acquisition and improvement is indexed by applying CII (cost inflation index). It is done to adjust for inflation over the years of holding the asset. This increases one's cost base and lowers the capital gains. **The indexed cost of acquisition is calculated as:**

Exemption on Capital Gains

Example: Ayush bought a house in July 2004 for Rs.50 lakh, and the full value of consideration received in FY 2016-17 is Rs.1.8 crore.

Capital asset type: Since this property has been held for over 3 years, this would be a long-term capital asset.

Cost of acquisition: The cost price is adjusted for inflation and indexed cost of acquisition is taken. Using the indexed cost of acquisition formula, the adjusted cost of the house is Rs 1.17 crore.

Capital gain: Hence, the net capital gain is Rs 63, 00,000.

Tax: Long-term capital gains on sale of house property are taxed at 20%. For a net capital gain of

Rs 63, 00,000, the total tax outgo will be Rs.12,97,800.

This is a significant amount of money to be paid out in taxes. This can be lowered by taking benefit of exemptions provided by the Income Tax Act on capital gains when profit from the sale is reinvested into buying another asset.

Saving Tax on Sale of Agricultural Land

In some cases, capital gains made from the sale of agricultural land may be entirely exempt from income tax or it may not be taxed under the head capital gains. See below:

a. Agricultural land in a rural area in India is not considered a capital asset and therefore any gains from its sale are not chargeable to tax. For details on what defines an agricultural land in a rural area, see above.

b. Do you hold agricultural land as stock-in-trade? If you are into buying and selling land regularly or in the course of your business, in such a case, any gains from its sale are taxable under the head Business and Profession.

c. Capital gains on compensation received for compulsory acquisition of urban agricultural land are tax exempt under Section 10(37) of the Income Tax Act.

If your agricultural land wasn't sold in any of the above cases, you can seek exemption under Section 54B.

Capital gains is determined by reducing the purchase price from the sale price. However, for an asset that has been held for a long time, it would not be appropriate to determine gains by merely reducing purchase price from sale price without giving any effect to the inflation. Hence, the concept of indexing the purchase price has been brought in. This way, the indexed purchase price

can be reduced from sale price to determine gains. So, indexation applies only to assets held for long-term.

Should an NRI pay taxes on gains made on the sale of property in India?

Property sold in India is generally subject to tax deduction. The person buying the property must deduct taxes at the rate applicable to the NRI's income slab, if the property is a short-term asset. If the property is a long-term asset, 20% LTCG tax is charged. Further, it is important for the NRI to ensure that taxes are deducted on the gains made and not on the sale proceeds. A jurisdictional Assessing Officer can help to determine the gains on which taxes should be deducted by the purchaser.

What is the rate of tax on long-term capital gains on sale of house property?

Long-term capital gains on sale of house property is taxable at the rate of 20% flat on the quantum of gains made.

''आपको अपने अंदर से बाहर की तरफ विकसित होना पड़ेगा।
कोई भी आपको यह नहीं सीखा सकता, और न ही कोई आपको आध्यात्मिक बना सकता है।
आपकी अपनी अंतरात्मा के अलावा आपका कोई शिक्षक नहीं है।''

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New Income Tax Regime in Income tax Law : An Overview

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In recent years, the Government of India has introduced significant changes to the income tax act which may considered as the steps towards total reform or replacement of Income Tax Act that aimed at simplifying the tax process, enhancing compliance and widening the tax net.

One of the most notable changes made and introduced is the "New Income Tax Regime" through proposal made in Budget 2020 and insertion of section 115BAC from FY-2020-21 (AY-2021-22). Since the introduction of this section it has undergone significant modifications. Here's a comprehensive look at the new income tax regime as it amended through Budget- 2024.

A) Concept Of New Income Tax Regime.

The new income tax regime was introduced to provide Individual & HUF taxpayers with a simplified tax structure, with lower tax rates but with fewer exemptions and deductions. It has been made as an alternative to the old tax regime. The old tax regime includes various exemptions and deductions.

Although from the financial year 2023-24 (AY-2024-25), the new income tax regime was made available as the default tax regime, a taxpayer however will have the option to choose between the old and new tax regimes based on the type of income earned. If income earned in the nature of business or professional then switching is available only once in a lifetime by filing Form 10-IEA. But if the income type is other than from business or profession taxpayer can switch between the old and new tax regimes on yearly basis based on their respective tax benefit.

B) Advantages of the New Regime

i) **Lower Tax Rates:-** The new regime features lower tax rates compared to the old regime. The new regime is aimed at reducing the tax burden on individual / HUF assesse specially. The new tax slabs applicable w.e.f 01-April-2024 for taxpayers (as amended by Budget-2024) are as follows:

Total Income	Tax Rate
Rs.0 to Rs.3,00,000	0%
Rs. 3,00,001 to Rs. 7,00,000	5%
Rs. 7,00,001 to Rs.10,00,000	10%
Rs.10,00,001 to Rs.12,00,000	15%
Rs. 12,00,001 to Rs.15,00,000	20%
Above Rs.15,00,000	30%

Additionally, a rebate under Section 87A up to Rs. 25,000 is available for income up to Rs. 7 lakh, which effectively means no tax is payable on a taxable income up to Rs.7 lakh.

ii) **Marginal Tax Relief : -** In addition to section 87A above one more rebate in the form of "Marginal Relief" is available for taxpayers having total income just above Rs. 7 lakhs. Like If the income of an individual exceeds Rs 7,00,000 and tax payable on such income is exceeding the income amount over and above Rs.7 lakhs, then the tax will be limited to the extent of such income exceeding Rs. 7 lakhs.

iii) Allowable Exemption & Deductions:-

Budget -2024 proposed to enhance the monetary limit of some existing exemption & deductions along with introduction of some new exemption & deductions. For example for

a) salary & pensioners the standard deduction of Rs.50,000 was proposed , which was only available under the old regime.
b) Those receiving a family pension can claim a deduction of ₹15,000 or 1/3rd of the pension, whichever is lower.
c) The surcharge rate on income over ₹5 crores has been reduced from 37% to 25% reaulting in reduction of tax rate from 42.74% to 39%.
d) Higher Leave Encashment Exemption: The exemption limit for non-government employees has been raised from ₹3 lakhs to ₹25 lakhs.

iv) **Simplified Filing:-** With fewer exemptions and deductions to consider, the new regime simplifies the filing process, making it easier for taxpayers to comply with tax regulations.

v) **Flexibility:-** Taxpayers having income other than from business or profession can switch between the old and new regimes every financial year that allow them to choose the most benefited option based on their financial situation.

vi) **Processing Time:**- At the end of CPC level the average processing time (after verification) for income tax returns reduced to 10-15 days and 4-5 days in some cases like nil payable or small refund cases.

C) Disadvantages of the New Regime

i) **Loss of Deductions:**- The new regime's major drawback is the elimination of numerous tax deductions and exemptions which can be a disadvantage for individuals who benefit from these tax-saving schemes.

ii) **Loss of small investment fund:** - By disallowing numerous tax deductions and exemptions the government will lose huge amount of small investment fund that comes from investment made by medium and large scaled taxpayer.

iii) **Adverse effect on Real estate sector:-** Disallowance of Loss with other income or no deduction of interest on home loan on self-occupied house property, disallowance of carry forward loss from previous years etc will discourage the buyer from purchasing new home and thus would result in adverse effect on Real estate sector,

iv) **Increased Tax Burden :**- For individuals who regularly claim deductions and exemptions, the new regime might result in a higher tax liability compared to the old regime.

v) **Limited tax planning & Savings:-** The new tax regime does not offers extensive tax planning opportunities as compared to the old tax regime.

vi) **Pressure on Tax Professionals :**- Now tax professional are investing more time comparing between old & new tax regime, filing Form 10-IEA, opting in & opting out of tax regimes and discussion with clients without any extra cost charged which put undue pressure on tax professional .

D) Who Should Consider the New Regime?

The new income tax regime is particularly beneficial for individuals /HUFs who do not make use of many tax deductions and exemptions or those who prefer a simpler tax filing process. It can also be advantageous for those who earn a higher income and would benefit from the reduced tax rates.

On the other hand, taxpayers who regularly claim deductions for investments, home loans, or other eligible expenses might find the old regime more beneficial. An extensive comparison of computation is advisable before choosing between old vis-à-vis new tax regimes. Many on line software as well as income tax portal offers comparison which can be used by the taxpayer in deciding the regime with limitation & caution kept in mind that both tax regime offers.

E) Take Away

Both the old and new tax regimes have advantages and disadvantages of its own. Whereas the new tax regime represents a significant shift towards a simpler and more calculation less tax system the old tax regime represents more planning, habit of savings and creating assets. Contrary to the old tax regime the new tax regime involve less process, application of less provisions of law and hence safer & sound. However, the choice between the old and new regimes depends on individual financial circumstances and preferences. Taxpayers should evaluate their specific situation, financial condition, future options, saving patterns etc to determine which regime fits best with their financial goals. It is advisable to take assistance of tax professional for better advice and overall decision.

F) Disclaimer:- The information, content, data etc. provided in this article is for general information purposes only and is not intended to be used for legal interpretation.

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